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ЕЖЕГОДНЫЙ ДОКЛАД ВЕРХОВНОГО КОМИССАРА ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ ПО ПРАВАМ ЧЕЛОВЕКА И ДОКЛАДЫ УПРАВЛЕНИЯ ВЕРХОВНОГО КОМИССАРА И ГЕНЕРАЛЬНОГО СЕКРЕТАРЯ

Доклад Верховного комиссара Организации Объединенных Наций по правам человека о деятельности ее Отделения в Гватемале в 2008 году* **

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Резюме

В данном докладе описываются некоторые аспекты ситуации в области прав человека в Гватемале и деятельность Управления Верховного комиссара Организации Объединенных Наций по правам человека (УВКПЧ) в 2008 году в этой стране. В соответствии с мандатом, утвержденным в Соглашении от 10 января 2005 года между УВКПЧ и правительством Республики Гватемала, действие которого было продлено на три года 19 сентября 2008 года, Отделение УВКПЧ в Гватемале продолжало свою деятельность по мониторингу ситуации в области прав человека и оказывало национальным учреждениям услуги по консультативной и технической помощи в целях выполнения рекомендаций, содержащихся в его предыдущем докладе (A/HRC/7/38/Add.1).

Обстановка в Гватемале, в которой Отделение проводило свою деятельность, характеризовалось продолжающимся насилием и отсутствием общественной безопасности. Отделение с особым внимание следило за сложным положением в стране, препятствующим осуществлению в полной объеме права на жизнь и требующим от государства укрепления механизмов предупреждения, расследования и наказания нарушителей этого права. Отделение внимательно следило за положением в области безопасности, влияющим на права человека, нерешенными проблемами борьбы с безнаказанностью, процессом укрепления правового государства, борьбы с дискриминацией и положением правозащитников.

Отделение собрало обширную информацию о ситуации в области прав человека в стране и предоставило услуги по техническому сотрудничеству и консультативной помощи государственным учреждениям и организациям гражданского общества.

Отделение предоставляло техническую помощь различным национальным учреждениям, включая, в частности, Конгресс, Президентскую комиссию по правам человека, Министерство внутренних дел, Государственную прокуратуру, Президентскую комиссию по проблемам дискриминации и расизма, Управление по защите коренных женщин, Национальную программу репараций и Управление Уполномоченного по правам человека. Оно также содействовало деятельности гражданского общества в деле взаимодействия с договорными органами и специальными процедурами, а также в области распространения рекомендаций и контроля за их осуществлением.

В докладе рассматриваются вопросы прав человека, вызывающие особую обеспокоенность, включая, в частности, нарушения права на жизнь и безопасность, насилие в отношении женщин, нападения на правозащитников, укрепление правового

государства и борьбу с безнаказанностью, борьбу против расизма и дискриминации, отправление правосудия в переходный период и экономические, социальные и культурные права. В докладе также делается обзор деятельности Отделения в 2008 году и работы по осуществлению рекомендаций, сформулированных в предыдущих докладах Верховного комиссара, относительно ситуации в области прав человека в Гватемале.

Верховный комиссар настоятельно призывает Гватемалу в полной мере осуществить рекомендации, сформулированные в 2007 году, и предлагает 15 рекомендаций, касающихся законодательных рамок защиты прав человека, права на жизнь и безопасность, укрепления правового государства, борьбы с безнаказанностью, положения коренных народов, прав женщин, экономических, социальных и культурных прав, а также технического содействия и консультативной помощи, оказываемой Отделением УВКПЧ в Гватемале.

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I. INTRODUCTION

1. On 10 January 2005, the Office of the United Nations High Commissioner for Human Rights (OHCHR) signed an Agreement with the Government of the Republic of Guatemala on the establishment of an OHCHR office in Guatemala. The agreement was approved by Congress on 31 May 2005, ratified by the President on 23 June 2005, and officially communicated in writing to the High Commissioner on 16 September 2005. The OHCHR office in Guatemala (OHCHR Guatemala) officially started its work on 20 September 2005. On 19 September 2008, its mandate was extended for a period of three years.

2. Under the agreement, and in accordance with General Assembly resolution 48/141 of 20 December 1993, the mandate of the OHCHR office in Guatemala is to monitor the situation of human rights in order to advise State institutions and civil society.

3. This report aims to provide an overview of the human rights situation in Guatemala, as well as of the work carried out by the OHCHR office in Guatemala in accordance with its mandate. It contains comments on the current human rights situation and information on the advisory services and technical cooperation provided to assist implementation of the recommendations contained in the High Commissioner's reports for 2005, 2006 and 2007.

II. CONTEXT

4. Guatemala rates low on the human development scale, and has a highly unequal distribution of income, as indicated by the National Human Development Report 2007/2008[1].

5. The indices of violence and personal insecurity continued to increase during the year. Drug-related violence worsened as well, and there is considerable evidence that some of the drug-trafficking cartels from the North of Mexico are moving operations to Guatemala. Booming drug-related crime presents a growing threat to Guatemalan political stability and governability. Within this context the International Commission against Impunity in Guatemala (CICIG) formally initiated its work in January 2008.

6. On 14 January 2008, Alvaro Colom took up his functions as President of Guatemala. The President stated that citizens' personal and social security, guaranteed by a democratic rule of law, are priorities for his four-year mandate.

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[1] National Human Development Report 2007/2008, Guatemala.

7. One of the first initiatives to be launched by the new Government was the Council for Social Cohesion, whose goal is to articulate government measures in reducing extreme poverty. This council has focused its initial attention on the country's poorest municipalities via mechanisms such as conditional cash transfers to poor families.

8. In May 2008, Guatemala was amongst the first countries to be reviewed under the new mechanism of the Human Rights Council, the universal periodic review. Several recommendations were made in the final report of the UPR Working Group on the Universal Periodic Review which the Government of Guatemala has committed itself to implement.

9. The Deputy High Commissioner, Kyung-wha Kang, visited Guatemala in September 2008, to renew the mandate of the OHCHR office in Guatemala. Official visits were made by the Special Rapporteur on the human rights of migrants, Jorge Bustamante, and the Special Rapporteur on the right to education, Vernor Muñoz. The Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, carried out a follow-up visit.

III. HUMAN RIGHTS SITUATION

A. Right to life and security

1. Right to life

10. The National Civilian Police reports that during 2008 there were 6,244 violent deaths, compared with 5,781 recorded in 2007; 83 per cent of these deaths were caused by firearms. In 2008, 591 violent deaths of children and adolescents were registered, compared with 274 deaths in 2007[2]. Guatemala has a rate of 48 homicides per 100,000 inhabitants, one of the highest among countries formally at peace.

11. Extrajudicial executions continued, with the direct and indirect participation of State agents, such as that of Mario Caal in Livingston, Izabal, caused by an excessive use of police force[3]. and the case of the family members of the Mayor of Ocos, San Marcos, in which three investigators of the Criminal Investigation Division (DINC) of the National Civilian Police (NCP) have been charged. A number of these crimes can be attributed to organized crime

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[2] Instituto Nacional de Ciencias Forenses (INACIF), the national forensics institute.

[3] Resolution of the Office of the Human Rights Procurator, 23 May 2008.

structures infiltrated into security institutions, despite efforts by the new authorities to disband them.

12. The number of murders in custody increased in 2008[4]. In many cases, youth gangs in custody were involved in the killings, at times extremely violent ones, while in some cases prison guards were also involved. The lack of immediate, exhaustive and impartial investigations has encouraged a recurrence of such acts. The State has a duty to protect detained persons with greater diligence and should strive to uphold its duty to prevent such arbitrary deprivation of life.

13. The discovery of bodies with signs of torture and marks of execution, together with the established profiles of the victims and the conditions and circumstances of the crimes, confirmed the persistence of the phenomenon known as "social cleansing". There are indications that armed groups, such as those said to be operating in Palin, Escuintla, San Juan Sacatepéquez and in the Terminal Market in Zone 4 in Guatemala City, are responsible for this practice and crimes.

14. In 2008, mob lynchings took place in 13 departments of the country[5] and resulted in the deaths of 22 people. Minors were also among the victims of these acts of collective violence. It has to be noted that the National Civilian Police intervened in a number of such cases, possibly preventing some killings. However, none of those responsible were captured.

15. The failure to investigate these incidents and the lack of reliable statistics make it difficult to asses their true scale. The office draws attention to the fact that these acts of "social cleansing" and lynchings often encounter acceptance or indifference among various segments of society, including the authorities themselves. The rate of impunity and the consequent feelings of frustration among the population can be no excuse for condoning or abetting this behaviour, which are wholly contrary to basic human rights principles.

2. Security

16. During 2008 several incidents proved the existence of clandestine security apparatuses that have inserted themselves within the State institutions. Homicides such as those of the former

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[4] There were 17 violent deaths in 2008 compared to 15 in 2007. *Source*: General Directorate of the Prison System.

[5] There were 56 lynchings in 13 departments of the country, according to the Judiciary National Commission to Support the Lynchings Prevention Programme.

anti-kidnapping chief of the Ministry of the Interior, Victor Rivera, and of 260 bus drivers[6], extortions and kidnappings, and various massacres demonstrated that these groups continued to operate in almost total impunity.

17. The Government was compelled to make various changes as a result of the deaths of the Minister of the Interior, Vinicio Gómez, and the Vice Minister for Security in a helicopter crash in June 2008. The newly-appointed Interior Minister, Francisco Jimenez, continued with the reorganization and internal clean-up of NCP as well as with the process of strengthening the General Directorate for Civilian Intelligence (DIGICI). The appointment of a new Director of the NCP, Marlene Blanco, supported this process, as she proceeded with the immediate dismissal of 17 police officers who had under their charge all General Sub-Divisions. The new officials inherited an institution which has historically faced significant challenges and is infiltrated by organized crime, while having a generally unfavourable public image. These new changes may represent encouraging steps towards rebuilding and strengthening this institution.

18. By the end of 2008 the NCP had 19,454 staff members - one police agent for every 704 inhabitants, the lowest rate in Central America. The institution continued to face serious difficulties incorporating new members and officials. At year's end the NCP had 3,850 vacancies left to fill. Police numbers were manifestly insufficient to face the severe security situation, with less than half of the 45,000 members the authorities officially recognize as being needed.

19. The lack of police agents and a vacancy of almost half of all higher ranks, severely affected the organization and its deployment. The professionalization of the police career, its operational aspects and improving the conditions of police stations continue to be important challenges.

20. The organizational restructuring, amending the Governmental Agreement 662-2005, which would both elevate the status of the Inspector General and create an institutional planning body, remained pending.

21. Criminal police investigations continued to have limited institutional support, and demonstrate insufficient results. In addition to reduced personnel and few assigned resources, the Criminal Investigation Division maintained an inadequate organizational structure and scarce territorial deployment. Lack of operational intelligence and criminal analysis, limited training, absence of manuals, procedural protocols and management indicators, coexisted with the historical problem of coordination with the Public Prosecutor's Office. Unfavourable living and

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[6] Office of the Human Rights Procurator.

working conditions in DINC have been cited as causes of corruption and illegal actions of the investigators.

22. DIGICI approved rules establishing its administrative and operative structure, increasing civil and police personnel, and carrying out a professional-development plan directed by experts provided by the international cooperation. This institution-building process has shown encouraging results for civil intelligence. However, the institution faces challenges in terms of strategic intelligence, deployment and technological resources for special intelligence operations.

23. At the same time, the General Directorate of the Prisons System (DGSP) continued to face numerous challenges mainly often due to the tensions among juvenile gangs, at times violent, as well as internal corruption and criminal acts perpetrated within prison centres. Despite efforts to recruit and train a greater number of officials, prison personnel remained insufficient, working conditions were precarious and salaries low. Prisons suffered from high levels of overcrowding, critical substandard detention and sanitary conditions, as well as difficulties in relation to accessing adequate medical care, particularly for women.

24. Regulations for the Prisons Act (2006) have yet to be passed, making its implementation difficult in the 19 prison centres in the country. Additionally, the 27 detention centres managed by PNC remain outside the control of the prisons system and the purview of this law.

3. Violence against women

25. Violent deaths of women continued to increase in 2008, totalling 722 compared to 590 deaths in 2007, reports the National Civilian Police.

26. The Congress approved on 9 April 2008 a new “Law against Femicide and Other Forms of Violence against Women” (decree 22-2008), which criminalizes gender-based physical, psychological, sexual and economic violence in the private and public spheres. This law filled various legal gaps and established a set of measures to prevent and punish these forms of violence against women’s rights to life and integrity. In order to provide the victims with adequate protection, the authorities must produce without delay the uniform, clear and coordinated institutional guidelines for the full implementation of the law.

27. Since the entry into force of the law, complaints and requests for protection measures increased significantly. While some measures to address these complaints were strengthened, the training of justice officials on the special characteristics of investigating and punishing violence against women was carried out primarily in the capital, reaching only 10 per cent of personnel.

As a result, the specialized justice system was only partially implemented and has failed to achieve an articulated and effective response so far.

28. In 2008, 37,358 complaints were filed as domestic violence[7]. Under the new law, 18 cases were filed for "femicide" and 1,853 for violence against women. The real extent of violence against women continues to be unknown as the figures registered by the relevant institutions differ and not all crimes are being reported.

29. The High Commissioner welcomes the new Law against Femicide and Other Forms of Violence against Women. She encourages the State to pursue its efforts to enhance the protection of women against violence through immediate, exhaustive and impartial investigations, trial of perpetrators and reparation of victims.

4. Situation of human rights defenders

30. Human rights defenders carried out their work in an environment marked by threats and attacks. The civil society-run Protection Unit for Human Rights Defenders registered 221 attacks against defenders in 2008, primarily against union leaders, environmentalists and community organizations. The near-fatal attack suffered by Yuri Melini, Director of the Guatemalan Centre for Legal, Environmental and Social Action (CALAS) in September 2008 is one recent example.

31. The investigation of complaints on attacks against human rights defenders continued to be ineffective. Of the 58 complaints filed with the Public Prosecutor's Office, the alleged perpetrators were identified in only three cases.

32. There were 68 violations reported of journalists being targeted[8], doubling the figure registered in 2007. These include four killings, various death threats, attacks, cases of discrimination, limitations on free access to information and other violations to freedom of expression. The Public Prosecutor's Crimes against Journalists Unit received 36 complaints but filed charges in only one case.

33. There were some positive steps, such as the drafting by the Presidential Human Rights Commission of a Government Agreement on a Programme of Prevention and Protection

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[7] Judiciary National Commission.

[8] Observatory of Journalists of the news agency Centro de Reportes Informativos sobre Guatemala (CERIGUA).

Measures for Human Rights Defenders and Other Vulnerable Groups. Further consensus with members of the civil society on this document should be reached.

34. Another encouraging development has been the creation of a "forum for the analysis of attacks against human rights defenders", which aims at analysing patterns of attacks against defenders. This opened a worthwhile space for analysis and collaboration between government institutions and civil society and made some initial contributions to investigations.

5. Combating racism and racial discrimination

35. While the Government has reiterated its commitment to ensure the participation of indigenous peoples in political processes, the number and type of government positions held by indigenous peoples continued to be low, although a small increase among regional Governors was reported. Achieving greater indigenous participation and overcoming the weak representation of indigenous peoples at the State level remains a challenge.

36. Social conflicts related to the exploitation of natural resources in indigenous communities continued to be a source of concern. Lack of consulting with the affected communities and failure to provide them with adequate information fuelled discontent and protests which at times has resulted in violent incidents. For example, in several local communities of San Juan Sacatepéquez, the construction of a cement factory caused social tensions and violent disturbances leading to the death of a community leader, Francisco Tepeu, in June 2008. A state of prevention[9] was declared as a result of this incident and 43 indigenous peoples were arrested.

37. The persistence of such conflicts reaffirms the need to reform the legal framework governing the exploitation of natural resources and to establish mechanisms for prior consultation with the affected communities regarding the impact of such exploitation in their communities.

B. Rule of law and impunity

1. General situation

38. During 2008, impunity, a structural problem which has negated the dissuasive function of the justice system and seriously weakened its punitive function, continued to contribute to high levels of violence. The investigations, prosecutions, judgements and punishments which the

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[9] A state of "prevention" is the first phase within the five modalities of the state of exception established by Guatemalan legislation; it is applicable in less serious situations.

State has a duty to oversee, and which are necessary to address the issue, were not systematically undertaken.

39. The State has the duty to take efficient measures to prevent and punish criminal acts. This obligation becomes more onerous when it is clear that previous measures taken were neither adequate nor effective. Inaction or the repetition of ineffective measures in a situation of generalized violence constitutes in itself a breach of the obligations of the State.

40. The weakness of the State in resolving non-criminal disputes (labour, civil, family and property jurisdictions) contributed to these conflicts overlapping into the criminal sphere, where the highest percentage of cases is concentrated.

41. Guatemala still faces generalized institutional weakness, reflected in the absence of legal norms, policies and adequate measures for a coherent vision of public service in which the authorities assume their responsibilities and the State fulfils its role as the duty-bearer towards the realization of human rights of all, without discrimination.

2. Public Prosecutor's Office

42. The appointment of Amilcar Velásquez as a new Public Prosecutor, in March 2008, and the replacement of other high-level officials within the Public Prosecutor's Office have brought a positive message of transparency, making possible new forms of collaboration, such as the creation of a special unit which will work jointly with the International Commission against Impunity in Guatemala (CICIG). It is expected that these changes will be translated into effective and consistent measures against impunity.

43. The career system for prosecutors remained unstable, although some efforts were made, such as a preliminary revision of the performance evaluation system. This system should involve all technical staff and should contribute substantially to design and implement personnel management policies and capacity-building training sessions. The disciplinary regime is not based on due process, the right to defence or the rights of victims.

44. A lack of clarity persists in relation to the competencies of the various divisions within the Public Prosecutor's Office and the distribution of matters among them, and also as regards the management of the cases. The Public Prosecutor's Office announced a restructuring plan for the divisions, which might help to overcome these problems.

45. Noteworthy are the efforts to establish an effective witness-protection mechanism, and an agreement between the Public Prosecutor and the Ministry of the Interior. These efforts should

be complemented by a delineation of functions and the development and implementation of policies and clear directives under the permanent control of the Council for the Protection of the Service.

46. Advances achieved by the National Forensic Science Institute (INACIF), which include an increase in personnel and the development of norms and operational procedures, have not yet been complemented by measures which would guarantee an adequate budget allocation, and the strengthening of inter-institutional coordination.

3. Judiciary and justice sector

47. The performance of the judiciary remained at similar levels as in previous years, and efforts to speed up case management have shown very limited results, which reportedly are hardly noticeable by users.

48. During the year 2008 there were no significant steps forward to strengthen the legal framework for judges' professional development, particularly in relation to performance evaluations, the disciplinary regime, transfers and the separation of jurisdictional and administrative functions.

49. Attacks and threats against justice operators - which resulted in the killing of seven public officials - remain a cause for serious concern, particularly as there are no significant advances towards the investigation, trial and punishment of perpetrators.

50. The budget allocated to the National Commission on Strengthening the Justice System (CNSAFJ) for the drafting of a new law to reinforce the Coordinating Body of the Justice Sector and the initiatives to construct common evaluation indicators should contribute to a more effective coordination and to the establishment of holistic policies.

4. Deprivation of liberty

51. It is the State's duty to ensure that the use of custodial measures is legal and respects the criteria of necessity and proportionality.

52. During 2008, over half of all persons deprived of their liberty were in preventive detention, and often were subjected to undue delays. The case of Luis Cruz Cho Tut, who was charged with murdering Congressman Mario Pivaral, and detained (despite the lack of legal basis and evidence), arbitrarily deprived of his liberty for more than two years and finally declared innocent, is an example. The application of certain rules which exclude the use of non-custodial

measures, and Sentencing Tribunals' powers to retain in custody persons who have been acquitted by Court of First Instance, contribute to the problem.

53. It is of concern that detained persons are brought before judicial authorities, which decide on their legal situation at times over several days, without legal or linguistic assistance thus negatively affecting those with limited means, especially indigenous peoples. The lack of jurisdiction of lower courts to resolve these matters also contributes to the problem.

54. OHCHR observed that the custodial measures applied by the juvenile justice system are not always consistent with the best interests of the child, particularly in view of its nature as a last resort measure, and with the respect for the legal provisions about its maximum duration.

5. Justice and indigenous peoples

55. The justice sector as a whole continued to operate without ethnic and linguistic diversity. Efforts undertaken to improve indigenous people's access to the official justice system, such as training, the provision of interpreters and the production of expert cultural reports, continued to be isolated, of little impact, lacking in understanding towards and respect for indigenous law and not reaching all branches of the official justice system.

56. Substantive improvements are needed to guarantee non-discriminatory, linguistically and culturally relevant access to justice that affirms the system's effectiveness to dissuade violations of rights, especially those of rural women and those speaking indigenous languages.

57. The increase in complaints relating to the crime of discrimination, compared to previous years, was not reflected in an increase in the number of charges filed nor convictions obtained. The strengthening of institutional capacities to criminally prosecute this crime has been insufficient. It is also imperative that the Public Prosecutor's Case Management System takes into account criteria on ethnic and cultural identity.

6. Transitional justice

58. The sentencing of low-level perpetrators of the Rio Negro massacre to 30 years of imprisonment and the commencement of the trial, in Chimaltenango, of the first case of enforced disappearance, are positive advances. However, the overwhelming majority of human rights violations committed during the internal armed conflict remain unpunished. The application of an amnesty by the Constitutional Court in another case involving enforced disappearances (El Jute case), on the basis of a determination that the actions of the accused were "political crimes" was inconsistent with international standards. The suspension of proceedings in the case

of the Dos Erres massacre due to the failure of national courts to resolve more than 30 amparo actions pending since 2004 resulted in the presentation of the case before the Inter-American Court of Human Rights by the Inter-American Commission on Human Rights on 30 July 2008[10].

59. The filing of multiple legal actions in order to prevent prosecutors' access to military information relevant to genocide investigations, as well as procedural delays, demonstrated patterns of obstruction in those cases.

60. The President's public announcement on 25 February 2008 of granting public access to military archives was challenged by the Minister of Defence based on arguments of "national security". It is of concern that, in the process of drafting and approving the Access to Public Information Act, the Congress failed to define criteria for the classification of military documents on the basis of national security[11].

61. The National Reparations Programme proceeded with an important amount of financial compensation paid to victims, and the Government carried out symbolic acts of recognition to help restore the dignity of victims. However, the State still needs to take measures commensurate with the integral and interrelated nature of its obligations for guaranteeing the rights to truth, justice and full reparation[12].

7. Death penalty

62. The Presidential veto on 14 March 2008, to prevent Congressional Decree 6-2008 from becoming law, permitted the de facto moratorium on the application of the death penalty to be maintained. In the same spirit, the Supreme Court decided on 10 October 2008 to commute four death penalties into maximum prison penalties. This should pave the way to the permanent abolishment of the death penalty. In the meantime, the death penalty may only be applied once the pardon has been regulated and the criminal laws reformed, in compliance with international human rights law. The High Commissioner recommends observing the moratorium currently in force with a view to abolishing the death penalty.

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[10] Case 11.681, massacre in the village Las Dos Erres, Guatemala.

[11] Approved on 23 September 2008.

[12] The United Nations Commission for Historical Clarification estimated in 1999 that the domestic armed conflict had claimed more than 200,000 victims.

C. Economic, social and cultural rights

63. Guatemala has adopted all of the relevant international treaties on economic, social and cultural rights and its legislation includes strong commitments to economic and social rights. However, the record of implementation has shown slow progressive realization of these rights and reflecting weak social and economic policies.

64. A detailed analysis of the 2008 budget shows both low levels of expenditures for basic human rights priorities in health and education, as well as inadequate prioritization to redress inequality and address the needs of the poorest. It is therefore very positive that the budget for 2009 is increasing resources for primary education and basic health. The conditional cash transfers to the poorest families are also positive affirmative action to reverse historical exclusion.

65. If the Government is going to be able to live up to its obligations for more rapid pace of realization of social and economic rights through more progressive and proactive social spending and promotion of pro-poor growth, fiscal revenues and political support from society at large are needed. The Government has very limited fiscal space which will become even more of a challenge in 2009. Guatemala already has a very low tax base. To raise the tax base and undertake major fiscal reform will require a major political effort.

66. Legal enforcement of economic, social and cultural rights has not been assumed by the State as an obligation. Legal actions initiated by the Office of the Human Rights Procurator before the Constitutional Court, against laws limiting the right to public, free and compulsory education, as well as discriminatory laws relating to social security, which later were declared unconstitutional, were positive measures. However, the court maintained discriminatory dispositions regarding domestic work in private homes, making a full enjoyment of rights difficult for women, particularly indigenous women, who carry out most of this work.

IV. ACTIVITIES OF THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS IN GUATEMALA

A. Activities of the office in Guatemala

67. In the course of 2008, the OHCHR office in Guatemala carried out 50 monitoring missions in the 22 departments of Guatemala, accounting for a total of 97 days in the field: 135 complaints were received, of which 47 were selected for follow-up as they referred to violations of human rights. In addition, the office carried out 595 meetings and interviews with authorities and representatives of civil society to supplement its assessment of the human rights

situation. This enabled the office to gather the necessary information needed to analyse the human rights situation and adjust the office's advisory and technical cooperation services, and to provide support to victims and witnesses, facilitating their cooperation with authorities. The office provided advice to civil society organizations and national institutions in a number of cases.

68. In commemoration of the sixtieth anniversary of the Universal Declaration of Human Rights, the office launched a campaign aimed at young people in order to promote knowledge of human rights. This included an interactive website and material for the media. Other activities included a music concert, an artistic festival for human rights, and a television documentary. The office continued promoting awareness of human rights and providing information regarding its work via press conferences and press releases, interviews, publications, workshops with journalists, students and teachers and by way of its documentation centre.

69. With respect to follow up to the international commitments of Guatemala, the office assisted the Ministry for Foreign Affairs and the Presidential Commission on Human Rights (COPREDEH) with the preparation of reports for the universal periodic review. As a follow-up to the recommendations deriving from the review, COPREDEH and the office published a compilation of the 43 recommendations, which was presented at various seminars to government institutions and civil society.

70. In order to promote implementation of Guatemala's obligations deriving from treaties, the office published the study "Recommendations of the treaty bodies to Guatemala", which evaluates the recommendations and identifies an agenda of pending actions. This publication was presented in 22 workshops to government institutions, the Congress, the judiciary, the Human Rights Procurator (PDH), the United Nations Country Team and NGOs.

71. The office provided technical assistance to the Presidential Commission on Discrimination and Racism Against Indigenous People (CODISRA) in relation to the drafting of the twelfth and thirteenth periodic reports to the Committee on the Elimination of Racial Discrimination, using a national, participatory and inter-institutional methodology. The office commenced the provision of technical assistance to COPREDEH in relation to the third periodic report of Guatemala under the International Covenant on Civil and Political Rights. With a view to improving capacity development of COPREDEH personnel, the office conducted a series of training sessions on international human rights treaties, drafting of reports and individual communications to the Committees.

72. With regard to strengthening the international legal framework, the office promoted the recognition by the Congress of the competence of the Committee on the Elimination of Racial

Discrimination to receive individual communications. The office organized events to promote the ratification of the International Convention for the Protection of All Persons against Enforced Disappearance.

73. With respect to the Convention on the Rights of Persons with Disabilities, a strategy was implemented jointly with the National Council for the Attention to Persons with Disabilities (CONADI) and PDH. This strategy aimed at publicizing the Convention nationally and increasing awareness of its importance within the Congress. Public events were promoted and the office participated in round tables together with representatives of the Congress, civil society and the media. With a view to strengthening the capacity of the PDH, the office organized workshops about the Convention addressed to the directors of the institution's units. The Convention was promoted in various departments in the interior of the country and was ratified by the Congress in September 2008.

74. Following the ratification in 2007 of the Optional Protocol to the Convention, the office facilitated a range of workshops for public institutions and civil society on the standards applicable to establishing a national prevention mechanism and the guidelines of the Subcommittee on the Prevention of Torture. The office provided technical assistance to COPREDEH, PDH and NGOs in relation to a draft law to create a national prevention mechanism against torture.

75. The office provided technical assistance to the Ministry of the Interior and the NCP on monitoring techniques. A plan was developed to contribute to strengthening the capacities of institutions in the security sector, and in the implementation of their human rights obligations. The office conducted the training of 350 NCP officials on human rights instruments relevant to police work, use of force and firearms, torture, police investigations, non-discrimination and women's rights. The same topics were covered in training provided to instructors at the Police Academy. Training was also provided on women's rights to the personnel of the NCP Gender Division.

76. The office carried out a training programme for the Department of Civilian Intelligence (DIGICI) on issues such as information-gathering and arbitrary interference with privacy, codes of ethics and human rights issues relevant to the carrying out of intelligence in public and private spheres. Jointly with CICIG, the office trained police assigned to it for the investigation of extrajudicial executions, the use of force and firearms, torture, as well as on police projects that were respectful of human rights.

77. In coordination with CICIG, the office provided technical assistance to the DIGICI authorities in relation to the creation of a Criminal Analysis Unit, and to the PNC authorities on a

plan to restructure criminal investigations. The office also carried out a consultancy with the Public Prosecutor's Office in order to formulate recommendations for the strengthening of the disciplinary system, performance evaluations, as well as a programme for the protection of witnesses and others involved in criminal proceedings. In addition, the office assisted the Ministry in the drafting of a criminal prosecution policy for human rights violations.

78. The office in Guatemala remained in contact with authorities of diverse institutions with the aim of providing support through information sharing and technical assistance. It facilitated presentations to the Modernization Roundtable of the National Commission for Monitoring and Supporting the Strengthening of Justice (CNSAFJ) on international standards and assisted the training units of justice sector institutions with the adoption of a common format for training on human rights and carried out workshops with trainers.

79. The office convened social organizations, experts, government bodies and opinion makers, promoting reflection on issues such as the death penalty, the rights of indigenous peoples and enforced disappearance. The office facilitated dialogue between the company Cementos Progreso, indigenous communities from San Juan Sacatepéquez and the Government, with the aim of finding a peaceful solution to the conflict generated by the installation of a cement factory. The office also facilitated dialogue between bilateral donors and United Nations agencies on indigenous people's rights and transitional justice issues.

80. The High Commissioner presented an amicus curiae brief to the Constitutional Court to contribute to the incorporation of legal arguments deriving from international law in the first case of enforced disappearance to be brought before national courts.

81. The OHCHR office in Guatemala, together with UNICEF, prepared a practical guide on international standards applicable to criminal juvenile justice.

82. Follow-up was given to recommendations of the Committee on the Elimination of Discrimination against Women, by assisting the Congressional Committee on Women. Together with the United Nations Population Fund (UNFPA) and the United Nations Development Fund for Women (UNIFEM), advice was provided on the Law against Femicide and Other Forms of Violence against Women, which was passed in April 2008. An interpretive guide to the law is being produced by the office on the basis of international instruments on women's rights. The office included in its trainings for police officers an explanation of the new responsibilities deriving from the Law against Femicide. In addition, the office provided technical assistance on the draft law against sexual violence, exploitation and human trafficking.

83. The office in Guatemala collaborated with the Gender Equity Division of the National Civilian Police in relation to the production of an institutional policy on access to and service with the NCP, as well as gender perspective in the prevention of crime and the evaluation of institutional conditions relative to female police.

84. The office provided assistance to the Forum for Analysis of Attacks against Human Rights Defenders, in which the Ministry of the Interior, the DIGICI, the PNC, the Public Prosecutor's Office and NGOs participate. Patterns of attacks on defenders were analysed, and advice was provided in relation to the coordination of preventive measures. The office continued advising COPREDEH on prevention and protection measures for human rights defenders and on the drafting of the respective government directive.

85. Numerous monitoring activities relating to attacks on defenders were carried out with civil society organizations, the Office of the Human Rights Procurator and the institutions responsible for the investigation and criminal prosecution of these matters. Two public solidarity events were organized in support of defenders working on transitional justice and economic, social and cultural rights.

86. In relation to the rights of indigenous peoples, the office provided technical assistance for the design of the "National campaign for cultural diversity and togetherness" of CODISRA and participated in the design of the monitoring and evaluation system relating to the "Public policy on togetherness and the elimination of racism and racial discrimination".

87. The office implemented with the Office of Defence for Indigenous Women (DEMI) and CODISRA the project "Contributing to the eradication of racism and discrimination on the basis of ethnicity and gender, particularly towards indigenous women".

88. Assistance was provided to the representatives of CODISRA and DEMI who participated in the Regional Preparatory Conference for the Evaluation of the Durban Programme and Plan of Action, held in Brasilia, on the preparation of progress reports. Workshops on human rights and the rights of indigenous peoples were carried out nationally.

89. In order to contribute to the legal empowerment of civil society, especially indigenous peoples, the office organized in April 2008, together with the Rafael Landivar University, an international seminar in Guatemala City on strategic litigation and legal clinics. On the basis of the results of the seminar, a technical training and institutional strengthening programme was designed for civil society. Implementation of this programme will begin in 2009.

90. To promote indigenous peoples' access to justice, the office worked with the Social Studies and Research Association (ASIES) on following up the implementation of the recommendations of the study "Human rights-based approach to indigenous people's access to justice: perspectives from indigenous law and from the official justice system".

91. In addition to carrying out observation of situations relevant to economic, social and cultural rights in order to make recommendations and provide technical assistance, the office began the development of indicators for measuring compliance with the right to food, with the support of the Food and Agriculture Organization of the United Nations, PDH, COPREDEH, the Ministry of Health and Centre for Human Rights Research (CIIDH).

92. The office participated actively in the new analysis and programming cycle for the Common Country Assessment/United Nations Development Assistance Framework (CCA/UNDAF), ensuring the incorporation of the human rights-based approach.

B. Follow-up to recommendations made in previous reports of the High Commissioner on the human rights situation in Guatemala

93. In her report to the seventh session of the Council (A/HRC/7/38/Add.1) the High Commissioner formulated 12 recommendations directed to the Government, the Congress, the judiciary, as well as to civil society organizations, on the following issues: the legal framework for human rights protection, life and security, rule of law and impunity, indigenous peoples, women's rights, economic, social and cultural rights and advisory and technical cooperation services of the OHCHR office in Guatemala, which has supported and monitored implementation of these recommendations.

94. The High Commissioner welcomes the approval by Congress of the International Convention on the Rights of Persons with Disabilities, and encourages its ratification and prompt implementation. The High Commissioner also welcomes the adoption of the Access to Information Law, the Law against Femicide and Other Forms of Violence against Women, on which the office presented harmonization reports.

95. The High Commissioner notes that approval by Congress is still pending on the Second Optional Protocol to the International Covenant on Civil and Political Rights, the International Convention for the Protection of All Persons from Enforced Disappearance, the Rome Statute of the International Criminal Court and the acceptance of the competence of the Committee on the Elimination of Racial Discrimination in accordance with article 14 of the relevant Convention.

96. The High Commissioner recognizes that the National Council on Adoptions, established by the new Adoptions Law, represents an important advance for the protection of the rights of the child.

97. The High Commissioner draws attention to the failure, so far, of Congress to pass a range of laws on security and justice issues, in particular the laws governing private security companies, on arms and ammunition, as well as reforms to the amparo, habeas corpus and constitutionality law, the law on the National Reparations Programme, the law to establish a National Search Commission for the Disappeared, as well as the reforms to the public order laws. The High Commissioner notes that approval of a law to regulate consultations in accordance with ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) is also pending, a reform to the laws on migration, in accordance with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and legal reforms to combat discrimination against women.

98. The High Commissioner recognizes the efforts made to restructure the National Civilian Police, the continuing process of vetting and the permanent strengthening of the General Civil Intelligence Directorate.

99. The High Commissioner notes with concern that the implementation of an integrated process of functional and operational management for criminal investigations and prosecutions, which includes an inter-institutional analysis of criminal trends, as well as effective coordination mechanisms to produce results in combating impunity, remains pending on behalf of the Public Prosecutor's Office and the National Civilian Police.

100. The High Commissioner welcomes the initial efforts undertaken by the Public Prosecutor's Office in order to develop a performance evaluation system which may strengthen the professional development of prosecutors. However, she encourages the adoption of measures, both applicable to support staff and top-level officials that ensure the effective application of internal control systems and a disciplinary regime by the justice institutions as a whole, including strengthening of the respective legal framework.

101. The High Commissioner calls on the judiciary and other judicial institutions to prioritize and coordinate efforts for the development and implementation, in consultation with indigenous peoples, of a sector policy for access to justice which incorporates linguistic, geographic and cultural considerations and which responds to the need to incorporate juridical pluralism.

102. The High Commissioner notes that a strengthening of statistical analysis from a human rights perspective is pending as is the construction and use of adequate indicators in order to advance implementation of civil, political, economic, social and cultural rights.

103. The High Commissioner notes that the judicial institutions are yet to recognize the continuous nature of the crime of enforced disappearance, and to this effect presented an amicus curiae brief to the Constitutional Court which underlines this characteristic as established by international human rights law.

104. The High Commissioner welcomes the commencement of the "National campaign for cultural diversity and togetherness" of CODISRA and the evaluation of the "Public policy on togetherness and the elimination of racism and racial discrimination".

V. CONCLUSIONS AND RECOMMENDATIONS

105. **The High Commissioner urges the State to take coordinated, coherent and effective action to implement all the recommendations contained in the OHCHR reports for 2005, 2006 and 2007:**

a) Legislative framework. The High Commissioner urges the Congress and the Government to continue to refine the legislative framework for the protection of human rights, through the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at abolishing the death penalty, the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute of the International Criminal Court; and to recognize the competence of the Committee on the Elimination of Racial Discrimination;

b) Right to life and security. The High Commissioner urges the Government to undertake sustained efforts to improve criminal investigations carried out by the National Civilian Police, on the basis of an appropriate organizational structure, trained personnel, an adequate territorial deployment, and the availability of technical and scientific resources. She calls on the Government to utilize operational intelligence and criminal analysis, and to develop manuals, procedural protocols and management indicators. She also recommends strengthening internal and external accountability mechanisms;

- **The High Commissioner also urges the General Directorate of the Prisons System (DGSP) and the Public Prosecutor's Office to undertake immediate, exhaustive and impartial investigations into the deaths of persons deprived of their liberty. She calls on the Ministry of the Interior and the DGSP to adopt**

urgent measures to prevent the recurrence of violent incidents within detention centres, and to protect the life and integrity of all persons.

- **The High Commissioner calls on the authorities to adopt regulations which effectively implement the Prisons Act and which guarantee the application of this law to all detention centres within the country, including those centres under the authority of the National Civilian Police. She urges the Government and the Congress to establish a national mechanism for the prevention of torture, within the time frame and conditions mandated by the Optional Protocol to the Convention against Torture.**

c) Rule of law and impunity. The High Commissioner urges the State to take action to strengthen areas of civil jurisdiction, in order to prevent civil conflicts becoming criminal matters, and she encourages the State to take measures to ensure indigenous peoples' access to these jurisdictions in a way which is culturally and linguistically relevant;

- **The High Commissioner urges the Public Prosecutor's Office to strengthen prosecutors' professional development via the implementation of a disciplinary regime which respects due process and an evaluation system based on the development of management policies and training of all technical personnel.**

- **The High Commissioner recommends that the Public Prosecutor's Office give special attention both to cases of human rights violations committed during the internal armed conflict and to those committed after the termination of this conflict, with the aim of understanding the nature of and the particular logic required to investigate these cases, and to improve its effectiveness in the criminal prosecution of perpetrators.**

- **The High Commissioner urges the judiciary to implement management monitoring systems in all areas of its jurisdiction with a view to identifying strategies for speeding up processes and applying legal and technical reasoning in judicial decisions. These systems should include mechanisms which guarantee the full participation of the civil society.**

- **The High Commissioner calls on the judiciary and the Public Prosecutor's Office to undertake efforts to rationalize the use of the deprivation of liberty and broaden the application of non-custodial measures, particularly in cases of minor offences, and criminal offences committed by adolescents, in accordance**

with international human rights law including the United Nations Standard Minimum Rules for Non-custodial Measures and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

d) Indigenous peoples. The High Commissioner urges the State to adopt special measures to combat discrimination in all areas, and in particular to overcome the conditions of inequality which impede indigenous peoples' access to economic, social and cultural rights; to generate greater opportunities for the inclusion and participation of indigenous peoples in management and decision-making positions; and also to guarantee their access to management of mass media. She calls on the Congress to pass legislation to provide for the consultation of indigenous peoples in accordance with the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the United Nations Declaration on the Rights of Indigenous Peoples;

- **The High Commissioner reminds the Government of the need to strengthen the implementation of the Policy on the Elimination of Racism and Racial Discrimination, on the basis of plans and programmes, disaggregated statistics and structural, process and results-based indicators relating to international human rights instruments. She urges governmental and judicial institutions to update disciplinary rules in order to correct discriminatory attitudes and conduct in relation to indigenous peoples.**

e) Women's rights. The High Commissioner encourages the Government to strengthen measures to increase the understanding and application of the new Law on Femicide and Other Forms of Violence against Women. She urges the Government to intensify efforts to train justice officials at a national level with the aim of ensuring the holistic application of the prevention and assistance measures provided for by this law;

- **The High Commissioner urges the judiciary and the other judicial institutions to prioritize the implementation of a specialized justice system for the investigation and punishment of new crimes codified under criminal law, through the creation of precise, coordinated and homogenous institutional directives. She urges the strengthening of inter-institutional coordination with a view to guaranteeing the gathering of information and statistics on the causes, consequences and frequencies of cases of violence against women, and which permits an understanding of the real extent of the phenomenon and the adoption of appropriate measures.**

f) Economic, social and cultural rights. The High Commissioner reiterates the need to promote a comprehensive tax reform, enabling an expansion of fiscal resources and an increase in tax collection. The High Commissioner calls on the State to adopt measures to overcome weaknesses in budgetary allocation and spending, in order to comply with the State's obligation to use its maximum resources available to ensure the effective enjoyment of economic, social and cultural rights. In addition, she encourages the State to increase measures to broaden and decentralize social programmes and services, to guarantee budgetary spending and accountability, to generate current and reliable statistical information in relation to implementation of obligations as regards economic, social and cultural rights;

g) Technical cooperation and advisory services. The High Commissioner invites State institutions and civil society organizations to avail themselves fully of the advisory and technical cooperation services provided by the OHCHR office in Guatemala. She also invites the international community to provide the technical and financial support required by the various State institutions, NGOs and OHCHR to make an effective contribution to the implementation of these recommendations.
