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教育权问题特别报告员弗农·穆尼奥斯先生的 报告*

增编**

对危地马拉的访问

(2008年7月20日至28日)

* 本报告的内容提要以所有正式语文分发，报告本身附于提要之后，仅以原文和英文印发。

** 本文件延迟提交是因为要将最新资料包括进去。

内容提要

教育权问题特别报告员弗农·穆尼奥斯·比利亚洛沃斯先生于 2008 年 7 月 20 至 28 日之间访问了危地马拉。在其访问期间，特别报告员考察了教育权的情况，并考虑到各级教育，即学前教育、小学、中学和高等教育的情况。

在本报告中，特别报告员分析了危地马拉教育制度的主要特点，包括组织、覆盖面、基础设施、国家津贴和当前政府政策等方面；以及各个特别方案，如双语和跨文化教育、国家教育自治计划 (PRONADE) 和国家扫盲委员会 (CONALFA)。

特别报告员也观察到影响教育体制的各项挑战。他关切地注意到教育经费的减少，它只占国内生产总值的 2% 左右(该区域内最低的)，以及土著人民的教育权实际上只限于双语教学的问题，只在有限的几间政府学校中为小学头三年的学生提供土著语言教学，而且也只仅限于少数几个语言。

特别报告员也注意到教育私有化的趋势，这违反了既有的义务教育原则；他也注意到 80% 的教育手段是在私立学校掌握下，因此难以保证为所有人提供基本和多样化的教育。

特别报告员认为危地马拉政府应该确保增加教育方面的投资并在全国家达到政治上的共识，以便拨出充分的预算，履行它在这方面的义务。特别报告员支持将没有列入预算的教师正规化的计划，和国家教育自治计划 (PRONADE)，以及增加新的职位。他也建议，除其他外，增加关于跨文化双语教育的预算，使其符合有关人口的比例，加强跨文化双语教育副部长的参与并制定文化多元化、跨文化性和多种语言等方面的标准，使得各个土著群族的特殊性都得到照顾。

Annex

Report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos, on his mission to Guatemala (20 to 28 July 2008)

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I. Introduction

1. The Special Rapporteur on the right to education, Mr. Vernor Muñoz Villalobos, visited Guatemala from 20 to 28 July 2008. He visited the cities of Guatemala and Quetzaltenango. The Special Rapporteur had the honour to be received by H.E. the President of the Republic, the Minister of Education, the Deputy Ministers of Education and Foreign Affairs, the Human Rights Ombudsman, the Presidential Commission on Human Rights, the President of the Education Commission of Congress and other national and local authorities.

2. In some 40 meetings the Special Rapporteur interacted with over 300 representatives of civil society, including indigenous leaders, teachers, students, parents, teachers' organizations and representatives of United Nations system organizations in Guatemala. He had an opportunity to visit primary and secondary schools and a regional campus of the University of San Carlos (USAC), two penitentiary centres, one adult night school and formal and non-formal education projects of non-governmental organizations (NGOs), as well as other related State institutions such as the National Literacy Training Committee (CONALFA). The Special Rapporteur wishes to express his gratitude to the Government for the invitation extended to him and for providing him with the opportunity to meet all the authorities relevant to his mandate and to all the people whom he met in the course of his visit.

II. The right to education: principles, norms and standards

A. International legal framework

3. The State of Guatemala is a party to international human rights instruments such as the International Covenant on Civil and Political Rights (accession in 1992), the International Covenant on Economic, Social and Cultural Rights (1992), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1990), the International Convention on the Elimination of All Forms of Racial Discrimination (1983), the Convention on the Elimination of All Forms of Discrimination against Women (1982), the Convention on the Rights of the Child (1990), the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Sanction and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and International Labour Organization (ILO) Conventions No. 97 concerning Migration for Employment, 1949 (accession in 1952), and No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, 1989. They all contain specific provisions on education and commit States to adopt all necessary measures to protect, respect and promote the exercise of the right to education for all within their territories without discrimination.

4. Article 46 of the Constitution lays down that "in human rights matters, treaties and conventions accepted and ratified by Guatemala shall take precedence over domestic law". National legislation and international instruments on human rights ratified by Guatemala establish the State's obligation to make available and provide education to its inhabitants without discrimination.

B. Domestic legal framework and national policies

5. The two main statutory texts on education in the country are the 1985 Political Constitution of the Republic of Guatemala (Section four: Education), whose principles are referred to above, and the National Education Act (Legislative Decree No. 12-91 of 1991).

6. The Peace Agreements of 1996, which establish educational reforms, constitute the framework within which the changes outlined below are being carried out. Of special importance in the implementation of the Peace Agreements was the setting up of the Joint Commission on Educational Reform under Governmental Decision No. 262-97, dated 20 March 1997, whose purpose was to devise a reform of the education system consistent with the Peace Agreements, in particular the Agreement on Identity and Rights of Indigenous Peoples. The Consultative Commission on Educational Reform (CCRE) was established by Governmental Decision No. 748-97 of 29 October 1997, its term being extended for a further four years by Governmental Decision No. 145-2001.

7. As stipulated in article 74 of the Constitution, education is compulsory and free of charge for the age group from 6 to 15 years, covering the pre-primary, primary and lower secondary school levels.

8. The State of Guatemala has adopted the necessary regulatory and legislative measures to create an education system aimed at guaranteeing the exercise of the right to education. Within a general context, the regulatory framework is governed by the articles of the Constitution that refer to education and by the National Education Act. For the implementation of both sets of general norms there are other laws and regulations that refer to more particular aspects of the education system and which will be mentioned specifically in the course of the present report, according to the topics to which they relate.

9. The Constitution recognizes the right to education, stipulating that it “guarantees the freedom of education and teaching”, requiring the State to “make available and provide education for its inhabitants without discrimination”.¹ It also affirms that the aims of education are “the all-round development of the human person and knowledge of the reality and culture of Guatemala and the world”.² In accordance with the Constitution, primary and lower secondary education are free of charge and compulsory.³ With regard to literacy training, the Constitution declares this to be an “urgent national need”, referring to the “social obligation to contribute to it”, and commits the State to “organize and promote it using all necessary recourses”.⁴ As regards bilingual education, the Constitution lays down that at “schools established in areas with a predominantly indigenous population, instruction shall be preferably given in bilingual form”.⁵

10. On 12 January 1991, Congress adopted the National Education Act (Legislative Decree No. 12-91), which seeks to “strengthen and reinforce the education system (...) in order to meet the social needs and requirements of the country and its multilingual, multi-ethnic and multicultural reality, which call for a regionalized, bilingual approach with a decentralized administrative structure at the national level”.⁶ The Act recognizes, as fundamental principles, that education is an inherent right of the human person and an

¹ Political Constitution of the Republic of Guatemala, art. 71.

² Ibid., art. 72.

³ Ibid., art. 74.

⁴ Ibid., art. 75.

⁵ Ibid., art. 76.

⁶ Republic of Guatemala, Legislative Decree No. 12-91, adopted on 12 January 1991 (hereinafter the National Education Act).

obligation of the State,⁷ being “aimed at the all-round development and advancement of human beings through an ongoing, gradual and progressive process”. The country’s multicultural context is also recognized in the Act, which states that education “is defined and framed within a multilingual, multi-ethnic and multicultural setting on the basis of the communities which comprise it”.⁸

11. Article 33 of the National Education Act sets out the State’s education obligations, which include: (a) promoting free and compulsory education; (b) promoting and encouraging education without discrimination; (c) guaranteeing the all-round development of every human being and knowledge of the country’s reality; (d) according priority to education in resource allocation under the national budget; (e) encouraging and guaranteeing literacy training as a matter of urgency by providing and using the necessary resources; (f) constructing school buildings and premises for official centres of education; and (g) providing all official centres of education with the infrastructure, school furniture and equipment necessary for effective teaching and learning.⁹

12. In accordance with the National Education Act, the education institutional framework is constituted by the national education system, which is defined as an “organized and interrelated set of elements, processes and actors through which education is imparted in a manner consistent with the characteristics, needs and interests of Guatemala’s historical, economic and cultural reality”.¹⁰ It is composed of the Ministry of Education, the educational community and centres of education¹¹ and comprises two subsystems, i.e. formal education and non-formal or parallel education.¹²

III. Main features of the Guatemalan education system

A. Structure and organization of the education system

1. Pre-primary education

13. Pre-primary education is for children from 4 to 6 years of age. It is compulsory by law but in practice is not always provided owing to the shortage of establishments. Three forms of pre-primary education are offered: infant; bilingual pre-primary (Spanish and Mayan languages) and accelerated pre-primary. The first two programmes provide an average of two hours’ care per day. Accelerated pre-primary education consists of a preparatory programme for children of 6 years of age, which is provided for 35 days during school vacations.

2. Primary education

14. Primary education is compulsory for children from 7 to 14 years of age. It covers six years of study, divided into two three-year stages, the basic stage and the supplementary stage, at the end of both of which a diploma is awarded. The working schedule is five hours per day.

⁷ Ibid., art. 1, para. 1.

⁸ Ibid., art. 1, para. 4.

⁹ Ibid., art. 33, paras. 2 to 5, 8 and 26.

¹⁰ Ibid., art. v3.

¹¹ Ibid., art. 5.

¹² Ibid., art. 6.

3. Secondary education

15. Secondary education comprises a basic or general stage (lower level) of three years' duration and a specialized or vocational stage (upper level), whose duration is two or three years depending on the course chosen. On completion of the first stage, a study diploma is awarded, and, on completion of the second stage, a certificate is awarded, allowing the pursuit of an occupation and entry into university. The options offered to students at the specialized stage include two-year arts and science courses, three-year training courses leading to a commercial, industrial, agricultural or technical qualification, and a three-year teacher-training course. The basic stage is compulsory by law, although the lack of establishments at this level constitutes a significant restriction. The specialized stage is optional. The working schedule for secondary education is from five to six hours per day.

4. Higher education

16. Higher education is offered by one national university and nine private universities. There are three-year technical courses at the intermediate higher level, then bachelor's degree courses (generally two years of study) and, at the post-graduate level, master's degree and doctorate courses.

17. The school year comprises a total of at least 180 tuition days.

B. Coverage

18. As regards coverage, Guatemala's primary enrolment rate is 94.46 per cent, which means that virtually the whole but not the entire child population between 7 and 12 years of age is enrolled at this level of schooling. However, it is important to bear in mind that this rate refers to enrolled children but does not take into account actual retention and completion rates, which are factors that lower the education coverage rate.

19. The very high dropout levels mean that Guatemala continues to have the lowest primary completion rates (72.5 per cent in 2006) for the whole region.¹³ Secondary enrolment rates (34.7 per cent for the basic stage and 20 per cent for the specialized stage) are the lowest in Latin America.¹⁴

20. Major inter-ethnic disparities in access to education can be observed. Primary enrolment and completion rates are particularly low in the departments of Alta Verapaz and Quiché, two of the departments with a high proportion of indigenous inhabitants. A systematic disparity between boys and girls is also apparent. According to data for 2003, the percentage of enrolled students who fail to complete primary schooling on time is greater in the case of girls (43 per cent) than boys (37 per cent).¹⁵

¹³ “¿Derechos o privilegios?: El derecho a la salud y a la educación en Guatemala, un momento decisivo”, Centre for Economic and Social Rights and Central American Institute for Fiscal Studies, October 2008.

¹⁴ United Nations Development Programme (UNDP), *Human Development Report 2007*, in “¿Derechos o privilegios?: El derecho a la salud y a la educación en Guatemala, un momento decisivo”, Centre for Economic and Social Rights and Central American Institute for Fiscal Studies, October 2008.

¹⁵ Planning and Programming Secretariat of the Office of the President (SEGEPLAN), Second report on progress towards attainment of the millennium development goals, 2006, in “¿Derechos o privilegios?: El derecho a la salud y a la educación en Guatemala, un momento decisivo”, Centre for Economic and Social Rights and Central American Institute for Fiscal Studies, October 2008.

C. Free education

21. The Constitution and the National Education Act stipulate that education imparted by the State is free of charge. Nevertheless, a presidential decision of 1968, which is still in force, regulates charges for school meals and other levies applied by the country's official educational establishments. That presidential decision furnishes local authorities and school management bodies with the means to impose financial collections of any kind. With regard to "voluntary fees", many complaints have been presented to the media concerning enrolment charges made by State schools. Such charges include not only enrolment fees but also requests relating to school equipment, uniforms and meal costs.¹⁶

D. Infrastructure

22. The issue of educational infrastructure is particularly worrying in Guatemala. Several organizations pointed out to the Special Rapporteur the absence of reliable and precise data on the number of educational facilities existing in the country. The Office of the Human Rights Ombudsman put the number of centres of education at around 25,800.

23. According to a document on the status of the education system, 49 per cent of schools do not have drinking water, 36 per cent are without electrical power and 8 per cent report that their roof is in poor condition, 5 per cent that their walls are in poor condition and 8 per cent that their floor is in poor condition. It is also stated in that document that, according to the National System of Indicators, 15 per cent of establishments in the official sector meet the necessary quality standards to operate.¹⁷

24. The National Education Act lays down that the State has an obligation to construct "school buildings and premises for official centres of education" and to provide "all official centres of education with the infrastructure, school furniture and equipment necessary for effective teaching and learning". However, the law does not specify which institution or entity is responsible for executing or coordinating that directive. According to the information received, it is the development councils, municipal authorities, NGOs and social funds which have undertaken to develop the educational infrastructure. In view of the foregoing and the current infrastructure situation, the Ministry of Education is working in conjunction with Congress in an effort to have responsibility for coordinating all matters relating to educational infrastructure handed over to it.

25. Under the Ministry of Education Organizational Regulations, amended in 2007, the Directorate for Educational Coverage and Infrastructure (DIGECOVER) was established with, in regard to infrastructure, the tasks of "undertaking studies, making recommendations and coordinating with government agencies, cooperative bodies and NGOs the execution of school infrastructure policies and plans within the national education system". This new directorate would have an essential role in evaluating the needs of communities in regard to educational infrastructure and maintenance of school premises and would assist the work of the Ministry if responsibility for coordinating related matters were assigned to it.

¹⁶ The Government reported that Governmental Decision No. 226-2008 had been issued, stipulating, inter alia, that the provision of education as a public service was free and that entry to and enrolment and attendance at pre-primary, primary and secondary centres of education were accordingly not subject to, conditional upon or linked to any compulsory or voluntary payment.

¹⁷ Somerville Muñoz, Sergio and Emilio Porta Pallais, "*Guatemala: Estado del Sistema Educativo en Guatemala 2006*", classification CDR 1037, Guatemala, Ministry of Education of Guatemala/USAID, 2006.

E. State expenditure on education

26. Social spending by the State of Guatemala on education is allocated under different budgetary categories. The following general distinctions can be made:

(a) Spending by institution: This is usually about 2 per cent of gross domestic product (GDP), which is earmarked for the Ministry of Education;

(b) Spending by purpose and function: This represents between 2.5 and 2.7 per cent of GDP. It is a cross-cutting expenditure, being distributed among different State institutions which are not attached to the Ministry of Education but which themselves discharge educational responsibilities involving different sectors of the population. Of these institutions, mention can be made of the Adolfo V. Hall Institute, the Office of the Human Rights Ombudsman, the University of San Carlos, etc.;

(c) Spending by item: This relates to expenditure which is invested in various official institutions by way of salaries, educational materials, infrastructure, transfers, etc.

27. In 2007, the Ministry of Education had a budget of some 5,800 million quetzals (about 737 million United States dollars). According to the transparency portal of the Ministry of Public Finance, the Ministry of Education had implemented 75.75 per cent of the annual budget as at 9 November 2007. The budget allocated for 2008 is 6,500 million quetzals (about 826 million dollars).

IV. Special programmes

A. Intercultural bilingual education

28. In 1995, the State established the Directorate for Intercultural Bilingual Education (DIGEBI) as the governing body for intercultural bilingual education (IBE) for the Mayan, Xinka and Garífuna communities. The main objectives of DIGEBI are scientific and technical advancement of IBE; strengthening of the identity of the country's indigenous peoples; curriculum development, implementation and evaluation; advancement, strengthening and preservation of the Mayan, Xinka and Garífuna languages through educational activities; and development of social bilingualism among the Mayan-speaking student population and harmonious coexistence between peoples and cultures.¹⁸ Bilingual education is offered only up to the third primary grade, with no provision for the other educational levels. It is apparent, however, that a large portion of the budget needed by DIGEBI for its operation is met through international cooperation.

29. Under Governmental Decision No. 377-2007, the Ministry of Education adopted new internal organization regulations, which allocated increased responsibilities to DIGEBI. The purpose of the organizational structure, with new divisions and technical departments, is, according to the Ministry of Education, to guarantee the right to intercultural bilingual education. However, several indigenous organizations have expressed their concern since they believe that the withdrawal of the finance and media functions and other responsibilities could have a negative impact on the functioning of the bilingual education system.

30. Despite the progress achieved in this regard since 1995, bilingual education still faces major challenges in fully meeting international standards. In 2007, the DIGEBI

¹⁸ Ibid.

restructuring undertaken by the Ministry of Education was opposed by a large proportion of specialized organizations since they believed that such restructuring jeopardized the continuity of bilingual education. In March 2008, the new Ministry of Education authorities submitted a public policy on bilingual education, which was favourably received by the organizations, who undertook to support its implementation.

B. National Programme for Educational Self-Management

31. With a view to expanding educational coverage, the National Programme for Educational Self-Management (PRONADE) was established in 1993 in order to “increase the coverage and improve the quality of education services in rural areas and encourage community participation”.¹⁹ This has made it possible to raise primary enrolment rates, especially in departments having high indigenous concentrations and in rural regions, and has provided a means of involving communities through the community educational committees (COEDUCAs) and parents’ committees.

32. One of the most interesting aspects of this Programme is community participation in education management from teacher selection to ongoing supervision of teaching activities. Under the Programme, each community is organized as an educational committee with separate legal status and responsibility for financial resource administration and teacher recruitment for the operation of the community self-management schools (EACs).²⁰

33. PRONADE teachers’ pay conditions differ from those of teachers in the formal education sector. Under the Law on Advancement and Classification of the National Teaching Profession,²¹ the contractual relationships of PRONADE teachers are established directly with the community educational committees and not with the Ministry of Education.

34. The educational committee members’ work is not remunerated, which can affect the communities, since most are in situations of vulnerability and poverty. According to a report by ActionAid and Colectivo de Educación para Todas y Todos,²² each community educational committee member spends some 48 days per year on school administration, which can have an impact on an already poor household economy and consequently affect the exercise of other rights, such as the right to work.

35. According to the information received, during 2007 PRONADE served a total of 455,437 children living in 4,678 communities in 21 departments of the Republic, 83 per cent of whose schools are located within communities in situations of extreme poverty, the level of coverage thus achieved being 94.46 per cent of children in primary education.²³

36. However, one of the main problems relates to coverage at the pre-primary and lower and upper secondary levels, with almost two million children outside the education system owing to financial problems, child labour or domestic work of girls. It should be recalled

¹⁹ Governmental Decision No. 457-96 of 22 October 1996, art. 1. That Decision replaces Governmental Decision No. 768-93 of 17 December 1992 establishing PRONADE.

²⁰ Ibid., art. 3. See also Ministry of Education, Governmental Decision No. 565-98, “Regulations on the adoption of statutes, recognition of legal status and functioning of community educational committees and school boards”, 26 August 1998.

²¹ Decree No. 1485 of 7 September 1961: Law on Advancement and Classification of the National Teaching Profession.

²² ActionAid and Colectivo de Educación para Todas y Todos, “*Derecho a la educación: el precio que pagan las y los pobres. El modelo PRONADE en la educación rural de Guatemala*”, Guatemala, 2006, p. 3.

²³ Ministry of Education, *Informe de Transición Institucional 2007–2008*, Guatemala, 2007.

that the State has “an obligation to ensure that communities and families are not dependent on child labour”.²⁴ In this connection, the Committee on Economic, Social and Cultural Rights has affirmed the importance of education in eliminating child labour and the obligations set out in article 7, paragraph 2, of Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,²⁵ which was ratified by Guatemala in 2001.

37. To develop secondary education, a pilot programme involving national distance-learning secondary institutes under community self-management (INTACs) was set up within PRONADE and in 2007 extended to eight communities, to the benefit of 198 first-grade, 150 second-grade and 197 third-grade students.

38. As regards the budget earmarked for this programme, provision is made for PRONADE in the national budget prepared by the Ministry of Public Finance; also, funds or donations are received from “national or foreign individuals or corporate entities”.²⁶ The Special Rapporteur was informed that each community self-management school received a monthly allocation to cover the costs of school meals, educational equipment, including teaching materials, and teachers’ pay, plus 1,500 quetzals (about 190 dollars) for minor infrastructure repairs.

C. National literacy training

39. The Constitution of Guatemala declares that literacy training is a “matter of national urgency” and a “social obligation” which must be organized and promoted by the State using “all necessary resources”.²⁷ To comply with this constitutional mandate, Congress adopted in 1986 the National Literacy Act (Decree No. 43-86) and its implementing regulations.

40. With regard to the establishment of mechanisms for the development of literacy programmes, the National Literacy Training Committee (CONALFA) was set up under that Decree as the coordinating body for literacy training in the country with responsibility for defining and approving the country’s literacy policies and schemes, promoting literacy training and approving programmes and budgets, in addition to discharging administrative duties.²⁸ CONALFA’s membership comprises the Minister of Education, the Minister of Culture and Sport, the Minister of Urban and Rural Development, the Minister of Labour and Social Welfare, the Minister of Agriculture, Livestock and Food and the Minister of the Interior. It also includes representatives from the academic sector (University of San Carlos), the private sector and the National Development Council.²⁹

41. The National Literacy Act stipulates that beneficiaries of literacy programmes must be persons deemed illiterate who are resident in the country and aged 15 years or over.³⁰ Under its implementing regulations, priority will be accorded to persons between 15 and 30 years, then to persons between 31 and 45 years and finally to persons over 46 years.³¹ It is

²⁴ Ministry of Education, *Políticas Educativas 2008–2012*, pp. 20–22.

²⁵ Committee on the right to education, general comment No. 13 (art. 13 of the Covenant), E/2000/22-E/C.12/1999/11, annex VI, para. 55.

²⁶ Ibid., note 23.

²⁷ Political Constitution of the Republic, art. 75.

²⁸ Ibid., art. 8.

²⁹ Ibid., art. 7.

³⁰ Congress of the Republic of Guatemala, Decree No. 43-86 of August 1986, art. 2.

³¹ Office of the President of the Republic of Guatemala, Governmental Decision No. 137-91 of 15 March 1991, art. 2.

important to bear in mind that the official education system has to guarantee schooling up to the age of 14 years. CONALFA pointed out in this connection that there are approximately 42,000 young persons aged 13 and 14 years who are not served by either system and who have to wait until they reach the regulation age to benefit from literacy programmes.

42. During 2007, 139,373 females and 66,586 males enrolled on literacy programmes, of whom 39,065 females and 16,816 males enrolled on bilingual programmes. One of the major obstacles to achieving illiteracy reduction targets in Guatemala is student dropout, which is about 40 per cent of enrolments. With a view to lowering this rate, CONALFA has, following a community initiative and with the support of NGOs, set up literacy training in conjunction with production programmes executed by the Ministry of Agriculture, Livestock and Food. The Special Rapporteur also noted a lack of dissemination of CONALFA literacy programmes.

43. Despite the restrictions observed during visits to penitentiary centres, the Special Rapporteur could see that literacy programmes were offered to many inmates. Nevertheless, it was also apparent that prisoners did not have instructional materials or textbooks; thus the success of such programmes continues to be limited.

V. Challenges facing the education system

A. Low level of investment in education

44. In Guatemala, public expenditure on education as a percentage of GDP remained static at around 2.7 per cent of GDP during the period from 2001 to 2007. It is the lowest funding level in Central America and one of the lowest in Latin America (where the average is 4.6 per cent of GDP), which is inconsistent with the extent of the country's educational shortcomings and with the fact that Guatemala is the largest economy in Central America. Per capita, public expenditure fell in real terms between 2001 and 2007 from 354.6 to 329.1 quetzals per annum (from 45 to 41 dollars), which has a detrimental impact on the quality of education of Guatemalans.³² While a spending level of 2.8 per cent of GDP was reached in 2008,³³ it hardly represents any increase on the 2001 budgetary allocation (2.8 per cent).

45. Article 89 (1) of the National Education Act, adopted by Congress under Legislative Decree No. 12-91, provides for an education appropriation of not less than 35 per cent of current revenue of the general State budget. However, in 2007, the Ministry of Education's budget in relation to the total government budget was 13.45 per cent, the lowest ratio in the last four years.³⁴ According to the 2007 report of the Social Expenditure Monitoring Centre, the Ministry of Education saw its budget reduced by 344.3 million quetzals in the readjustment.³⁵ Further analysis by educational level reveals that cuts ranging from 9 to 15.5 per cent have occurred. Pre-primary education is the most affected, with a reduction of 87.1 million quetzals on the 561.6 million quetzals allocated in the readjustment, the largest reductions affecting urban teaching, textbook provision and feeding programmes. Primary

³² Data from the Ministry of Public Finance, Human Rights Ombudsman Section, "*Unidad de Estudio y Análisis. El derecho a la educación*", Guatemala, February 2008.

³³ The budget allocated in 2008 was over 6,500 million quetzals and a budget of over 7,588 million quetzals was approved for 2009, representing a spending level of 3.1 per cent of GDP.

³⁴ Ibid.

³⁵ Coordinating Unit for NGOs and Cooperatives (CONGCOOP), Social Expenditure Monitoring Centre, Guatemala, 2008.

education has undergone a 10.7 per cent cut in the regular system, with a reduction of 344 million quetzals on revenue of 3.973 million quetzals, and shows decreases principally in allocations for urban teaching and rural bilingual education, textbooks, food and grants for girls. Lower secondary education, which is relatively less affected than the other levels, has undergone a cut of around 4 per cent, with a reduction of 16.4 million quetzals on 422.8 million. There are also cuts at the upper secondary level, in this case amounting to 9 per cent overall.³⁶

46. In summary, textbook provision has been insufficient and there have been significant budget reductions on food and, to a lesser extent, equipment supplies and educational grants, resulting in a decrease of 160.6 million quetzals for support programmes excluding the instructional kit.³⁷

47. On examining budgetary developments in the Ministry of Education's main programmes, the Special Rapporteur observed that most efforts focused on the primary level, both under the official programme and under PRONADE. According to the latest data from the United Nations Educational, Scientific and Cultural Organization (UNESCO), primary education in 2006 accounted for 66 per cent of public expenditure on education, while 8 per cent and 10 per cent were earmarked for pre-primary and secondary education respectively. With regard to bilingual education, the Monitoring Centre for Education of Indigenous Peoples reports that, of the total budget earmarked for teachers' pay in the public sector, only 6 per cent is earmarked for bilingual teachers' pay. The Special Rapporteur also observed that a large portion of the budget needed by DIGEBI for its operation was met through international cooperation, a trend which could be maintained given that the budget approved for 2008 represented a 12 per cent reduction compared with the 2007 budget.

48. The Special Rapporteur considers it necessary that the legislation in force be complied with so that the State grants an adequate budget to fulfil its obligation in this regard and that that budget should not be regressive. The Special Rapporteur considers it necessary to introduce a tax reform that will enable sufficient revenues to be collected in order that investment in education can be increased by 0.5 per cent of GDP per annum. There is also an urgent need to improve efficiency in the execution of spending earmarked for social programmes and especially for the education sector since, even with the current meagre budget, not all the resources budgeted for the education system are being invested. He considers it essential that the Office of the Human Rights Ombudsman oversee the steps to secure political consensus in this regard and calls for the early entry into operation of the National Education Council, with appropriate funding so that it can progress as a body with the capacity to participate in public policy formulation.

B. Education of indigenous peoples

49. Indigenous peoples' right to education is in practice confined to the issue of bilingualism despite the fact that plans and programmes established some years previously had incorporated culture as a substantive topic. Although the structure of the Ministry of Education includes a deputy minister's office and a directorate for intercultural bilingual education, the fact is that most activities focus on the teaching of indigenous languages for students in the first three years of primary schooling only, at a very small number of State

³⁶ Data from the International Centre for Human Rights Research – Integrated Accounting System (SICOIN-CIIDH), Social Expenditure Monitoring Centre, Third report, 2007.

³⁷ Ibid.

schools and solely for indigenous pupils, but not on promoting the study of the cultures, world views, arts or ancestral traditions of this country's first peoples.

50. That reductionist view is not only problematic; it also threatens the very existence of the original peoples, given that indigenous inhabitants make up a large portion of the population. Furthermore, intercultural education should not be restricted to some indigenous peoples but should also be aimed at centres of education for non-indigenous inhabitants so that a culture of respect for diversity and social commitment can be developed.

51. The Special Rapporteur noted that intercultural bilingual education constituted one of the core policies of the Ministry of Education. However, he also observed that the directorate entrusted with its implementation (DIGEBI) had a very limited budget — it receives 6 per cent of the Ministry of Education's resources, which, inexplicably, is even underutilized — and that its coordination was the responsibility of a deputy minister's office with no real operational authority within the Ministry.

52. Owing to the magnitude of the challenges facing the country, it is essential to set as a benchmark in education policymaking the right of indigenous peoples to education and culture and thus to view the linguistic issue as a structural component and not as an end in itself. To address this problem, the Special Rapporteur considers it necessary to promote the participatory design of a State policy for education that will make it possible to regulate the National Education Act on the basis of Guatemala's international obligations and the intercultural needs of the country.

53. Mainstreaming indigenous peoples' rights in all ministerial measures should make curricular activities a vehicle for strong affirmative action in their favour so that the specificities of indigenous peoples are not seen as an adjunct to the basic national curriculum, in which indigenous communities do not always feel represented. Underlying all these considerations is the conviction that a standardized and monolithic education system is by definition opposed to social diversity and unable to respond to the educational needs of the indigenous and mixed-race peoples as well as other members of Guatemalan society.

54. The low self-esteem which the Special Rapporteur noted in some indigenous inhabitants regarding their languages and cultures clearly indicates the impact of exclusion. It is therefore necessary to implement affirmative action as a matter of national urgency to promote and enhance the status of indigenous languages and cultures in order to show to all members of society the benefits of a culturally and linguistically focused education.

55. Indigenous teachers cannot foster the education of citizens proud of their cultures if they themselves are neither aware of nor respect their identities. In this connection, it is also necessary to promote an indigenous-language literacy training scheme for public officials which includes at least the instrumental use of the mother tongues of peoples living in regions where they work and the development of awareness of the value of cultures.

56. The Special Rapporteur also observed the low level of bilingual education coverage in a country whose indigenous population is close to half the total. In 2006, 74 per cent of children between 7 and 12 years of age who were enrolled in the education system received lessons solely in Spanish, while only 13 per cent received lessons in Spanish and a Mayan language.

57. Also, according to the education monitoring centre of the National Standing Commission on Educational Reform (CNPRES) (2007), the percentage of indigenous students enrolled in the period 2003–2006 grew by 0.8 per cent only, and, although access to primary education increased in the last year, the trend is still unfavourable for inhabitants of rural areas (where 70 per cent of the population living in poverty or extreme poverty

reside). Indigenous student attendance rates in secondary education are equally worrying and show no signs of change. At the lower secondary level, indigenous students account for less than one fifth and, at the upper level, less than one tenth.

58. The vast majority of indigenous teachers work in primary education, generally owing to the stagnation of secondary education and to serious limitations on teacher training offered at higher levels. Furthermore, the budget earmarked for indigenous teachers' pay is much lower when compared with other sectors (they receive between 1,800 and 1,900 quetzals per month, i.e. between about 229 and 242 dollars) and it has accordingly proved difficult to recruit bilingual teachers. It should be emphasized that the situation is becoming more problematic, with teacher-training colleges weakened and failing to allow for the historical needs of indigenous peoples, which include their world views and educational traditions.

59. The Special Rapporteur also noted that the number of qualified bilingual teachers still fell far short of requirements. Of 90,000 teachers nationwide, only 20,000 are indigenous and, of these, 13,000 have bilingual teaching posts or training and are present in only 18 of the 24 indigenous communities. In the face of this shortage, the Special Rapporteur recommends that intercultural bilingual education be strengthened and its coverage expanded and that specialist teachers be trained or priority be given to the recruitment of bilingual indigenous teachers to new posts offered.

60. The Special Rapporteur is particularly concerned that only 40 per cent of the 32 education commitments set out in the 1996 Peace Agreements have been fulfilled. He is struck by the absence of regulations implementing the 2003 National Languages Act, the inability to set up the Mayan university and the serious shortcomings in compliance with the obligations laid down in ILO Convention No. 169.

61. Against that background, the Special Rapporteur welcomes the commitment, adopted by the new Government in its education policy for 2008–2012, to strengthen intercultural bilingual education through a budget increase and discussion of the IBE model in Guatemala with representatives of indigenous organizations, respecting their world views, teaching resources, materials and textbooks, with increased bilingual teacher recruitment in the different levels and forms of education and improvements in the working conditions established in the legislation on expanding intercultural bilingual education.

62. The Special Rapporteur suggests that indigenous issues should be mainstreamed in all Ministry of Education policies in order to promote the study of indigenous languages and cultures, not only for indigenous but also for white and mixed-race students. The opportunity which Guatemala has for establishing genuine intercultural education could mean both a significant contribution to social peace and also the creation of a regional leadership role on a key issue for the human development of the Central American countries.³⁸

C. Privatization of education

63. The Special Rapporteur noted the trend towards privatization of education, which undermines the principle of free education as established in international human rights instruments and conflicts with the principles of education for all and with article 71 of the Constitution. Governmental Decision No. 99-68, which authorizes special levies, should be repealed immediately. The Special Rapporteur observed that there were no cost-free State

³⁸ The Government reported that DIGEBI had prepared textbooks and materials in 13 different languages, which were in the process of being distributed to classrooms.

schools. In several schools visited, teachers were paid by impoverished, indigenous head-of-household mothers. In this way, costs are passed on to families, who have to decide whether to send their children to school or to work.

64. It is striking to note that 80 per cent of secondary education is in the hands of private fee-paying schools, which makes it impossible for thousands of families to ensure lower or upper secondary schooling for their children owing to their poverty status. Secondary education faces many obstacles to its advancement, such as the lack of teachers and infrastructure, with low levels of coverage in cities and rural areas.

65. The lack of centres of education and of educational opportunities generally also forces many adolescents and young persons of school age to enrol at night schools, which do not meet the necessary minimum standards to offer them quality education or an atmosphere appropriate to their age and psychopedagogical characteristics.

66. The Special Rapporteur also noted a high degree of privatization in higher education. Article 84 of the Constitution stipulates that “the University of San Carlos [the only State university] shall be granted an exclusive allocation of not less than 5 per cent of current revenue of the general State budget”. However, the Special Rapporteur was informed that Congress earmarks around 3 per cent of current revenue to the State university.

67. The low level of investment in the State university system prevents it from strengthening its participation in teachers’ professional development or from responding more effectively in communities where there is discrimination. It has also forced it to offer a number of “self-financing” courses, which are dependent on students’ ability to pay and which therefore never or virtually never reach rural and indigenous inhabitants, who are normally also unable to meet the costs of or requirements for entry into higher education.

68. The means for building up the scientific, technological and cultural skills required by the country to make qualitative progress in its development and the advancement of its peoples are linked to the need to guarantee secondary and university education. For that reason and to enhance enjoyment of the right to education, the Special Rapporteur recommends that support be given to plans for expanding and strengthening secondary education and the State university.

D. Employment situation of teachers

69. In Guatemala there are 13,000 “unbudgeted” teachers, whose salaries are below the minimum wage and who do not enjoy the same rights as official or budgeted teachers. Such teachers are hired by the Ministry of Education as “auxiliary specialists” for a 10-month period (from 2 January to 31 December) with no sick leave and are subject to a performance appraisal every two years. Unbudgeted teachers have not had continuity of employment or enjoyed the same conditions of work stability or welfare protection as their other colleagues and are not offered the same terms of pay.

70. Over the last 20 years, various teacher classifications have been created in State education: category 001 teachers, who are budgeted teachers recruited on the basis of competition and merit; category 021 teachers, who are unbudgeted teachers within the Ministry of Education but hired as “auxiliary specialists” under contractual arrangements and not employment schemes; and teachers who are employed under the PRONADE project, whose recruitment is in the hands of families. There are also teachers working for the *Fe y Alegría* programme and municipal teachers paid by the local authority, whose salaries are lower than those of regular teachers.

71. The Special Rapporteur expresses his concern regarding the tensions between teachers and the authorities owing to the loss of purchasing power of salaries and the

demands for pay rises and regularization of their status. The Special Rapporteur has noted some progress in post allocation with leaders of the National Assembly of Teachers (ANM) and Union of Education Workers of Guatemala (SETEG) and the Ministry of Education, and these improvements have been accompanied by better pay for teachers. Nevertheless, at the end of 2007, only teachers with over 9 years of service (in some cases over 13 years) could just manage to meet the cost of the basic shopping basket from their salaries. The remainder are within a group of poorly paid teachers who have to spend time pursuing other productive, income-generating activities, resulting in diminished quality of education for Guatemalan children.

72. The Special Rapporteur noted the Government's efforts to regularize the employment status of a large number of teachers, whose system of recruitment to date has infringed their labour rights. The present Government has agreed to discontinue some forms of recruitment, such as PRONADE and the "auxiliary specialist" classification, which violated the employment rights of teachers, whose pay levels force them into multiple employment, and has undertaken to introduce a competitive examination procedure, under which teachers take up budgeted posts. In May 2008, the Ministry of Education and SETEG signed the first Collective Agreement on Working Conditions, aimed at regulating, harmonizing and advancing the mutual interests and relations of the Ministry of Education and all its workers with a view to enhancing their well-being. The present Government has also set up the Solidarity Programme, which includes medical and bereavement care for teachers and their relatives.

73. The Special Rapporteur welcomes the regularization scheme for 20,000 unbudgeted teachers and 12,000 PRONADE teachers, and the creation of 10,000 new posts on a competitive basis.³⁹ The Special Rapporteur also welcomes the Government's decision to discontinue PRONADE and absorb it within the regularization scheme. That process has to be carried out in an efficient and orderly fashion, without haste and in an equitable manner for all.

74. Moreover, 70 per cent of teachers in Guatemala have only completed secondary education, the teaching workforce is very small and the quality of teaching is generally poor. Also, in Guatemala, unlike in other countries of Central America, no pay incentives have been introduced to encourage teachers to work in rural or disadvantaged areas. Therefore, the challenge seen by the Special Rapporteur is to provide teachers with the necessary tools to perform their duties through in-service training and skills development and the recognition of their daily work, which will directly contribute to improved quality of education in the country.

75. The Special Rapporteur considers that the efforts of the Government and of society as a whole to improve the standards of the national education system should include as a core element the provision of resources to the University of San Carlos so that the execution of programmes for the professional development of the teaching force can become part of those efforts.

E. Inclusive education

76. The 6- to 18-year-old school population with disabilities is estimated at 22 per cent of all students. In the education system, some 14,000 students have some form of identified

³⁹ The Government reported that over 47,000 teachers were being recruited on permanent contracts and 20,000 on temporary contracts, which would be offered to them under the regular budgetary category through the respective selection notifications.

disability. Their disabilities are often the result of illnesses, malnutrition problems in infancy, the legacy of the armed conflict or accidents. Many of the children suffering from a disability do not attend school either because the centres of education are not equipped to teach them or because their disabilities are considered by many in the Mayan culture to be a divine punishment.

77. The Special Rapporteur noted the need to set up special care programmes for students with disabilities, with specialist teachers and materials adapted to their particular needs.⁴⁰

78. The Special Rapporteur also observed the need to include a gender perspective in education policies with the aim of offering programmes on sexual and reproductive health education in the school curriculum, given the high maternal mortality rates and the existence of serious cases of sexual and gender-based violence against women and female children and adolescents, and in view of the need to build human relations founded on respect for all.

VI. Conclusions and recommendations

79. The Special Rapporteur thanks the Government of Guatemala, civil society representatives and United Nations agencies for their cooperation in what proved to be a successful visit. The Special Rapporteur reiterates that education is the true engine of development and applauds the Government's determination in endeavouring to improve resource allocation for education, its self-criticism in recognizing the huge challenges and its resolve not to be discouraged by what is certainly an unattractive prospect. That commitment should be supported by all sectors of society, including, first and foremost, Congress. A major effort is nonetheless necessary to reach national strategic agreements that are not questioned with changes of government or municipal authorities. In this connection, the Special Rapporteur notes with concern the low level of investment in education, which is approximately 2 per cent of GDP (the lowest in the region), although the President of the Education Commission of Congress assured him that for 2009 there would be an increase for education equivalent to 0.5 per cent of GDP.

80. The Special Rapporteur noted that indigenous peoples' right to education was in practice confined to the issue of bilingualism despite the fact that plans and programmes established some years previously had incorporated culture as a substantive topic. Although the structure of the Ministry of Education includes a deputy minister's office and a directorate for intercultural bilingual education, most activities focus on the teaching of indigenous languages for students in the first three years of primary schooling only, at a very small number of State schools and solely for indigenous pupils and in a few languages, but not on promoting the study of the cultures, world views, arts or ancestral traditions of this country's first peoples.

81. The Special Rapporteur observed that existing legislation, including constitutional provisions, revealed a gulf between the law and its practical application. Constitutional principles on education must cease to be a dead letter and become everyday practice guiding concrete actions. The exclusion, discrimination and even racism which still persist in Guatemala have well-known historical roots and affect

⁴⁰ The Government reported that the Inclusive Schools for Special Children Programme announced in October 2008 aimed to cater in 2009 for 9,000 children with disabilities or special educational needs, with the support of 200 educators and 200 peripatetic teachers.

primarily indigenous populations and communities of mixed descent living in rural areas and, within them, children and young persons. In the sphere of education, these social problems have given rise to marked disparities and imbalances in enrolment and dropout rates, which hamper the realization of the human right to education, affecting over one million children.

82. The Special Rapporteur also notes that the trend is towards privatization of education, which undermines the principle of free primary and lower secondary education, as established in international human rights instruments, and conflicts with the principles of education for all and with article 71 of the Constitution. Many families have to meet various school fees and expenses, ranging from small contributions to the payment of teachers' salaries. It is also striking to note that 80 per cent of secondary education is in the hands of private schools, which makes it impossible for thousands of families to ensure lower or upper secondary schooling for their children owing to their poverty status.

83. The Special Rapporteur could nevertheless observe progress in early childhood education coverage (48 per cent in 2006). It is encouraging to note major progress in primary enrolment, which must now be supplemented by sustained efforts to reduce the high dropout rates. Also, the conditional cash transfers programme being promoted by the Government is a scheme which is boosting education, as are the various vouchers granted both to students and to teachers. The Special Rapporteur acknowledges and appreciates these endeavours and calls upon the competent authorities to continue and expand them.

84. In the light of these conclusions, the Special Rapporteur makes the following recommendations to the Government of Guatemala:

(a) Ratification of the Convention on the Rights of Persons with Disabilities with a view to developing the legal and institutional mechanisms for its implementation and establishing an inclusive education model;

(b) Repeal of Governmental Decision No. 399-68, which authorizes education levies payable by families;

(c) Creation of a legal mechanism to ensure an increase in investment in education of 0.5 per cent of GDP per annum so that the rate remains constant until it progressively reaches 6 per cent of GDP, with priority given to combating discrimination in education and promoting quality. Public oversight of this mechanism should be fostered and individuals and communities should be guaranteed the possibility of demanding it. The Special Rapporteur calls for a reform of tax policy to allow the necessary revenues to be collected so that the State can meet its education obligations;

(d) Setting up and entry into operation as soon as possible of the National Education Council, as established under the Constitution, and of other consultative, advisory and decision-making bodies on education policies that are essential to building democratic and participatory societies. The National Education Council should receive appropriate funding so that it can progress as a body with the capacity to participate in education policymaking. It should also take over education reform monitoring under its mandate to avoid starting from scratch, commencing with an examination of Guatemala's education commitments;

(e) Securing of national political consensus so that the State grants an adequate budget to fulfil its obligation in this regard. That budget should not be regressive and efforts should be made to reach national agreements that are not overturned with each change of government;

- (f) Promotion of the participatory design of a State policy for education that will make it possible to regulate the National Education Act on the basis of Guatemala's international obligations and the intercultural needs of the country;
- (g) Incorporation of gender mainstreaming in education policymaking to foster the inclusion of sexual and reproductive health education in the school curriculum;
- (h) Stronger involvement of the Office of the Human Rights Ombudsman in mechanisms for the enforceability and justiciability of the right to education;
- (i) Implementation of affirmative action as a matter of national urgency to promote and enhance the status of indigenous languages and cultures in order to show to all groups of society (including non-indigenous groups) the benefits of a culturally and linguistically focused education;
- (j) Establishment, within all ministerial departments, of the criteria of multiculturalism, interculturalism and multilingualism in the design and implementation of projects and programmes developed at the Ministry of Education;
- (k) Mainstreaming of indigenous peoples' rights in all ministerial measures, which should make curricular activities a vehicle for affirmative action in their favour so that the specificities of indigenous peoples are not seen as an adjunct to the basic national curriculum, in which indigenous communities do not always feel represented;
- (l) Review of the role of the Office of the Deputy Minister of Intercultural Bilingual Education so that it can be accorded greater decision-making authority both in the development of curriculum policies and in the general administration of institutional processes;
- (m) Ensuring of an equitable and appropriate ministerial distribution in the programming and execution of loans granted by international organizations to the national education system for the educational advancement of indigenous peoples;
- (n) Support for plans to expand and strengthen State secondary and university education, with the provision of greater resources to those levels, without any reduction in funds earmarked for the lower levels, and the training of a larger number of teachers so that State education is made accessible to all. The State university (University of San Carlos) should be provided with adequate resources, as allocated to it by law, to allow the execution of programmes for the professional development of the teaching force;
- (o) Improvement of school infrastructure (with priority given to the supplying of water and electricity to centres of education) since very serious challenges still exist owing to the lack of financial resources;
- (p) Increase in the intercultural bilingual education budget in proportion to the population served by the 13 departmental directorates for intercultural bilingual education in 2009;
- (q) Execution of the first phase of the World Programme for Human Rights Education,⁴¹ covering public officials and members of the municipal authorities and councils, in accordance with the mandate established by the Constitution;

⁴¹ See the Revised draft plan of action for the first phase (2005–2007) of the World Programme for Human Rights Education (A/59/525/Rev.1).

(r) Continued implementation of the cash transfers programme, which makes it possible to help ease the financial burden of families wishing to send their children to school. The arrangements should allow the correct identification of the beneficiary population, technical follow-up and linkage of the programme to the country's budgetary developments so that it does not become a process based on favouritism, to which end it would be necessary to improve the monitoring mechanisms;

(s) Guaranteeing of the legal, technical and administrative processes and resources necessary to achieve a genuine and effective transformation of the 13 departmental directorates for education into directorates for intercultural bilingual education;

(t) Development of direct and positive encouragement of the recruitment of bilingual teachers so that new teaching posts are assigned to serving the educational needs of indigenous communities. The Special Rapporteur also recommends that intercultural bilingual specialists be hired for the purpose of providing specialized teaching support in intercultural bilingual classes;

(u) Promotion of an indigenous-language literacy training scheme for public officials which includes at least the instrumental use of the mother tongues of peoples living in regions where they work and the development of awareness of the value of cultures. The Special Rapporteur also recommends the establishment of clear guidelines and the effective application of the intercultural bilingual education methodology in initial teacher training, in particular that offered by intercultural bilingual teacher-training colleges;

(v) Preparation of textbooks and educational materials for the Garífuna and Xinka peoples and of intercultural bilingual education support and reference materials and textbooks for lower secondary education and initial teacher training;

(w) Development of an effective care system for indigenous children who have for various reasons moved to the large cities, in particular the capital, in order to alleviate loss of identity and acculturation. To that end, the Special Rapporteur recommends the adequate provision of teachers and educational materials to enable such children to receive an education of cultural and linguistic relevance;

(x) Setting up of special care programmes for students with disabilities, with specialist teachers and materials adapted to their special needs.
