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联合国人权事务高级专员的年度报告

以及高级专员办事处的报告和秘书长的报告

联合国人权事务高级专员的报告

增编

联合国人权事务高级专员关于其危地马拉办事处活动情况的报告* **

内容提要

本报告概述危地马拉的人权状况和联合国人权事务高级专员办事处(人权高专办)2010 年开展的活动。根据授权,危地马拉办事处开展监测活动并向国家机构和民间社会提供咨询服务和技术合作,以协助落实前几份报告所载的各项建议。

通过监测活动,人权高专办危地马拉办事处收集了该国人权状况的大量资料。本报告分析了人权方面的几个关键问题,如安全和正义,包括生命权、武器的扩散和提供、公共安全私有化的趋势、剥夺自由等。报告还述及人权维护者和妇女的权利日益脆弱的情况。它还描述了土著人权利的不到正式承认的情况及其对获得司法正义、政治参与和享有协商权的歧视性影响。报告还分析了享有粮食、教育和健康权的进展情况,概述了人权高专办危地马拉办事处 2010 年的活动,包括向国会、宪法法院、司法培训人员学校、监察官办公室、其他国家机构和民间社会成员提供的技术合作和咨询活动。

* 本报告迟交以反映最新资料。

** 本报告的内容提要以各正式语文分发。报告正文附在内容提要之后,仅以英文和西班牙文分发。

高级专员敦促危地马拉政府落实联合国各机构和各区域保护机制提出的建议，包括她本人提出的建议。她还呼吁所有国家机构执行 2008 年普遍定期审议时产生的建议。高级专员还呼吁国际社会确保合作活动的目标针对加强危地马拉履行其国际人权义务。

Annex

Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala

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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 Guatemala for the establishment of a country office. Under this agreement, the mandate of OHCHR-Guatemala is to monitor the situation of human rights in order to advise State institutions and civil society. The mandate was extended for three years on 19 September 2008.
2. The present report provides an overview of the human rights situation in Guatemala, focusing on several key issues, such as security and justice. It also describes the work conducted by OHCHR-Guatemala in accordance with its mandate, including information on the advisory services and technical cooperation provided to assist implementation of the recommendations contained in the High Commissioner's previous annual reports.

II. National context

3. In spite of recent efforts to address the issues of justice and security, the level of impunity and insecurity continues to be of great concern. Mounting insecurity marked political debates, with strong calls for repressive measures, while a weak justice system has been unable to tackle impunity.
4. There were, however, important advances in criminal procedures against a former president and various former high-level officials, including ministers, accused of corruption, money-laundering and serious human rights crimes. A solid investigation, conducted with full respect for due process, sent a message of hope to the population on the pre-eminence of the law over all of its citizens.
5. Several key ministers resigned or were dismissed, including those responsible for the interior, finance, education, agriculture, energy and mining. This lack of continuity, particularly in the security and justice institutions, with constant change of high-ranking officials, delays in their selection and a lack of internal control and accountability mechanisms, among other factors, makes it difficult to sustain and consolidate institutional achievements.
6. Following the resignation of the Commissioner for the International Commission against Impunity in Guatemala (CICIG), Carlos Castresana, the United Nations Secretary-General appointed Francisco Dall'Anese, former Attorney General of Costa Rica, to succeed him in August.
7. In 2010, Guatemala was hit by several natural disasters, which affected over 723,000 people and caused 96 deaths and major damage to infrastructure and productive capital.
8. Different factors, such as the decrease in the State's fiscal revenue and the rejection of the proposed 2010 national budget by the Congress, left the State underfunded, which affected not only the implementation of public policies, but also the general functioning of the State and its capacity to fulfil international human rights obligations.

III. Overall human rights situation

9. Fourteen years after their signing, the Peace Agreements have not been effectively implemented, despite the clear opportunity they provided to break the persisting patterns of social, political and economic exclusion. There is a consistent failure by the State to make

adequate use of the opportunities, time and capacity it has to carry out effective measures to comply with human rights obligations, including some that require no financial resources.

10. Despite the ratification of international human rights treaties and other achievements, the implementation of international and regional human rights obligations remains a challenge. The steps taken to ensure human rights protection are still insufficient, while some remain ineffective or unsustainable. Many of the achievements are frequently formalistic, lack impact, depend on specific circumstances and personal efforts and do not represent long-term institutional changes.

11. Although positive steps were taken by the Public Prosecutor's Office on the prosecution of high-impact cases, high levels of impunity remain a major concern, and the justice system has not yet been able to respond to some cases of serious human rights violations pursued by the Public Prosecutor's Office with the support of CICIG. Examples of such cases include those regarding the assassination of three representatives of the Central American Parliament (February 2007) and the killings at the Pavón penal farm (September 2006), in which a former Minister of the Interior, a former Chief of the National Civilian Police (NCP) and a former director of the penitentiary system were allegedly involved in extrajudicial executions.

12. Although Guatemala has consistently improved its Human Development Index (increasing from 0.408 in 1990 to 0.560 in 2010),¹ poverty (54.8 per cent) and extreme poverty (29.1 per cent) continue to affect most people.² The Government increased social expenditure, mainly by enhancing conditional cash transfer programmes. With an annual gross domestic product (GDP) growth of 2 per cent, Guatemala should adopt distributive measures to improve the living conditions of the poorest, especially indigenous peoples. A progressive fiscal reform that enables the State to fulfil its human rights obligations and tackle the challenges regarding current low tax levels and the collection and exemption regimes is urgent. It is crucial to address inequality gaps through an economic and social policy that guarantees universal access to economic, social and cultural rights. The Government and Congress should also take measures to ensure that the resources are well-distributed and spent in due time.

13. The development model in Guatemala is based primarily on the extractive industry, large energy development projects and large-scale agricultural exports. The State faces the challenge of ensuring that development is conducted in a way that respects individual and collective rights, particularly those of indigenous peoples, including their rights to a safe environment, to consultation and to decide their own priorities for the process of development.

14. Social conflicts related to the right to land and territory, environmental rights and, in general, the right of indigenous peoples to be consulted about decisions affecting them, have not yet been dealt with through effective mechanisms. Moreover, these mechanisms do not target the root causes of these conflicts and the institutional response fails to assume the standards of a multicultural and inclusive State. The declaration of states of emergency to address such conflicts, together with the abusive use of the penal system, affects the freedoms of assembly and demonstration.

15. The absence of legal recognition of community radio stations has led to their criminal prosecution, while legislation establishes economic criteria for the distribution of

¹ United Nations Development Programme (UNDP), *Human Development Report 2010* (New York, 2010), p. 150.

² Economic Commission for Latin America and the Caribbean, *Social Panorama of Latin America*, 2010, p. 13.

radio frequencies, therefore affecting equal conditions of access for all sectors of the population. Although preliminary steps have been taken in the implementation of the law on access to information to ensure the transparency of public institutions, an overall policy on State accountability vis-à-vis civil society is pending.

16. In pre-electoral periods, there has been a strong tendency by some public and political sectors and part of civil society to promote repressive measures, even the death penalty, as the only possible option to tackle all forms of violence, especially by youth gangs (*maras*). Besides being fear-inducing, stigmatizing or contrary to human rights principles, most of these measures have not proven effective in reducing crime or solving the root problems. Furthermore, their implementation would lead to weaker institutions that are more vulnerable to illegal groups and more susceptible to the prevalence of individual interests and to the repetition of measures that have deepened exclusion and generated serious human rights violations.

17. Security measures based on human rights standards are the only viable option to tackle the current and long-term challenges related to violence. If backed by the political will to provide the necessary conditions and resources, such measures would guarantee strong institutions with the legitimacy, stability and effectiveness demanded by the population, enabling them to address the causes of violence, systematic social and political exclusion, and the monocultural understanding of the State.

IV. Security and justice

18. There were 4,925 violent deaths in 2010, including 564 women and 393 children; 41 people were murdered by lynching and 6,132 people were injured as a result of violent attacks. A total of 2,878 investigations were initiated for crimes against life and 179 sentences were issued, reflecting a high level of impunity.³ The percentage of deaths by firearms continues to be approximately 85 per cent.⁴

19. Although the number of violent deaths decreased in relation to 2009,⁵ the situation remains alarming and requires a comprehensive approach by the State. There are structural differences in situations of violence between urban and rural areas, and specific characteristics in border regions affected by drug and arms trafficking, trafficking in persons and the infiltration of organized crime. Patterns of violence inherited from the past have not been overcome. Several forms of severe and recurrent violence, such as femicide, homicide of socially marginalized persons (so-called “social cleansing”), domestic violence, lynching, extortion and kidnapping exist in the country.

20. Structural changes in security and justice have not been put forward, neither to diminish the causes of crime nor to address the social, cultural and economic risk factors of violence. Insecurity and impunity affect daily life and generate mistrust and social dissatisfaction. All this is exacerbated by the lack of adequate attention to victims.

21. The State lacks a comprehensive and strategic policy to combat crime, consistent with human rights principles. The High Commissioner reiterates that the National Agreement for the Advancement of Security and Justice, adopted in 2009, constitutes a key

³ From January to 8 December 2010, impunity remained at 95 per cent for crimes against life. Regarding all crimes, 3,389 sentences (1.28 per cent) were issued in relation to 265,095 complaints filed. Source: Judicial system.

⁴ NCP.

⁵ NCP. Number of violent deaths: 4,925 (October 2010); 5,432 (October 2009). Number of persons injured or killed by bullets (at October) 2010: 8,457; 2009: 6,498 and 2008: 6,244.

tool to guide strategic action. For it to have any practical value, the implementation must be supported by the decisive political will of the institutions.

22. On the legislative front, the Law on Private Security Services, the Law on Seizure of Assets and the Law on the National Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Decrees 52-2010, 55-2010 and 40-2010, respectively) have been adopted. All these laws need to be implemented promptly and in compliance with human rights standards, with adequate resources. The adoption of key legislation to combat insecurity, organized crime, corruption and impunity, such as the amendments to the Law on Arms and Ammunitions, and the amendments to the laws on *amparo* and preliminary hearings is still pending.

23. On 5 October, Congress approved a law that would regulate a procedure to enable the application of the death penalty. It was subsequently vetoed by the President. The High Commissioner welcomes this veto and reiterates her conviction that Guatemala should take definite steps towards the abolition of death penalty, as it is one of only two countries in Latin America that have not yet done so.

A. Security

24. The proliferation and availability of legal and illegal firearms exacerbate the phenomenon of armed violence and increase the number of violent deaths. The State should promote policies and clear legislation to reduce and control the number of firearms held by private corporations and individuals, including, for example, by prioritizing the implementation of a national plan for disarmament. The Constitutional Court decision of 25 May interpreting the scope of the Law on Arms and Ammunitions of 2009 does not promote a strict limitation on the number of firearms permitted per person.

25. Security functions have continued to be handed over, *de facto*, either to private entities over which there is still no effective control, or to the military, through the promotion of neighbourhood patrols and combined police and army patrols. The capacity of private security companies is still notoriously larger than that of the NCP. This separates the concept of security from the State's obligation to protect human rights and turns security into a market product accessible only to those sectors with the resources to pay for it. The proposal of the Commission that was established to design and carry out the police reform, which reflects the recommendations issued by the High Commissioner, is a positive step. However, police reform should be agreed upon as a State policy as soon as possible, with its own budget, and a political consensus on it should be reached, regardless of the results of the electoral process. Moreover, working conditions, including salaries, must be improved in particular for members of the police and employees in the penitentiary system.

26. The High Commissioner would like to recall that the prevention of violence and crime must be an essential element of the design, implementation and evaluation of a comprehensive security policy.⁶ The State has promoted some positive initiatives in this regard, including the Unit for the Community Prevention of Violence and the Division for Crime Prevention under the Ministry of the Interior, and Open Schools⁷. These actions

⁶ See report of the Secretary-General (E/CN.15/1993/3), pp. 4-5. See also Inter-American Commission on Human Rights (IACHR), "Report on Citizen Security and Human Rights" (OEA/Ser.L/V/II.), 2009.

⁷ Open Schools provide youth with recreation and training activities.

should be institutionalized and addressed in a comprehensive manner within a preventive and sustainable social policy, which would also be less costly.⁸

B. Justice system

27. Significant progress was observed in the Public Prosecutor's Office with the adoption of the Regulations of its Human Rights Section and strategic investigation and prosecution in high-impact cases. These cases, including those brought by the Special Prosecutor Unit supported by CICIG related to extrajudicial executions, drug trafficking and money-laundering, among others, are encouraging signs in the fight against impunity and the dismantling of criminal structures. The High Commissioner encourages the Public Prosecutor's Office to build upon those advancements.

28. Nevertheless, the actions taken by Public Prosecutor Conrado Reyes, in office for only a few days between May and June 2010, which reversed many of the positive institutional advances regarding prosecution methodology and strategies, revealed that the institution is still fragile and that sustainability of achievements is a main challenge.

29. The selection processes for the posts of Public Prosecutor and Director of the Public Criminal Defence Institute were invalidated, given that there had been serious flaws in the application of the Law on Nominating Commissions. The new selection process for Public Prosecutor showed progress in the implementation of the Law. Claudia Paz, a prominent civil society lawyer, was appointed as Public Prosecutor after being selected by the President. Nevertheless, the decisions taken by the Nominating Commissions in the final stage of these processes must continue to be based on open discussions and objective criteria. The lessons learned should be applied during the upcoming selection of the magistrates of the Constitutional Court, to ensure that those selected have the authority and legitimacy required for these posts.

30. OHCHR-Guatemala received reports of threats to and pressure on judges, prosecutors and other parties to the proceedings that increase their risk level, in particular that of those involved in high-impact and human-rights cases. The Judiciary and the Public Prosecutor's Office have yet to implement measures to ensure the protection of justice operators, witnesses and the accused.

31. The weak professional career system in the Judiciary and the Public Prosecutor's Office undermines the independence and impartiality of staff, allowing abuses, such as the relocation of judges as disciplinary sanctions. Nevertheless, the discussions held by the Supreme Court to reform the Law on the Judicial Career constitutes a positive action, the result of which should be in accordance with international standards.

32. As expressed in previous reports, the Judiciary has not moved away from the predominant monocultural vision of justice nor has it recognized legal pluralism. Law faculties should promote this change.

C. Transitional justice

33. The Public Prosecutor's Office continued increasing efforts towards the criminal prosecution of emblematic cases of human rights violations which occurred during the

⁸ "Estimates are that every dollar spent on preventing violence saves up to six dollars in the cost of controlling and suppressing crime and dealing with its consequences." Mayra Buvinic, in IACHR, "Report on citizen security" (note 6), para. 58.

internal armed conflict, remaining open to plaintiffs and victims in these cases. These efforts should be consolidated and broadened, taking into account the fact that only four prosecutors are in place to respond to violations that resulted in more than 200,000 victims, according to the Commission for Historical Clarification.

34. Access to information facilitates the enjoyment of the rights to truth and justice. In this regard, documental evidence provided by the Historical Archive of the National Police is a significant step. The conviction in October of two police officers for the disappearance of trade-union leader Edgar Fernando García showed that such evidence can be decisive for the criminal processes. The Public Prosecutor's Office should use this evidence to investigate and prosecute high-ranking officials under command responsibility in this and other cases still under investigation.

35. The Supreme Court rejected the grounds for excluding criminal responsibility (duress and due obedience to superior orders) in the case of the Río Negro massacre (1982). However, the resolutions of the Supreme Court and the Constitutional Court, which failed to implement the decisions of the Inter-American Court of Human Rights,⁹ and led to the closure of at least one case of gross human rights violations, have created significant gaps in combating impunity for past human rights violations.

36. The Commission for the Declassification of Military Archives announced progress in its work, but the information is not yet available to the public. The High Commissioner welcomes the statement made by the President affirming that technical assistance from the United Nations would be sought to review the documents preliminarily categorized as classified by this Commission, to ensure that information pertaining to cases of human rights violations is declassified. This constitutes an important opportunity to apply relevant international standards.

37. The results of an overall evaluation on the impact of the Government's reparation programme for victims of the internal conflict should guide the adoption of possible corrective measures to ensure its compliance with international standards.

D. Deprivation of liberty

38. The situation in the penitentiary system remains critical and requires urgent measures as recommended repeatedly by the High Commissioner. The implementation of the Law on the Prison System and the adoption of its regulations are still pending. The treatment and conditions in places of detention for men and for women, including maximum security centres, do not comply with international human rights standards. It is worrying that the Government, citing the weaknesses of the penitentiary system, authorized the detention of persons in military premises.¹⁰ Although these are under the authority of the penitentiary system, the decision reinforces the trend towards ceding public security functions to the army.

39. Children and adolescents deprived of liberty, under the authority of the Social Welfare Secretariat, live in extremely overcrowded conditions, some of them spending most of the day locked up, with very limited access to recreational and educational activities or training, and without clear separation according to age, type of crimes or legal situation. OHCHR-Guatemala received information concerning cases of physical violence

⁹ See *Niños de la Calle (Villagrán Morales y otros) vs. Guatemala* (1998); *Panel Blanca (Paniagua Morales y otros) vs. Guatemala* (1999); *Bámaca Velásquez vs. Guatemala* (2000); and *Carpio Nicolle y otros vs. Guatemala* (2004).

¹⁰ Ministerial agreement 126-2010.

among juvenile detainees, and concerning the use of a military-type regime, which gives priority to disciplinary measures, including corporal punishment and the use of pepper spray, contrary to the prohibition of torture and other forms of ill-treatment. This approach to detention perpetuates cycles of violence, does not support reinsertion, accentuates marginalization, affects children's growth and development, strengthens criminal networks, and increases the probability of recidivism.

40. OHCHR-Guatemala welcomes the willingness of the Social Welfare Secretariat to cooperate with the office and is confident that it will implement prompt and effective measures to guarantee both security and absolute respect of human rights standards.

V. Human rights defenders

41. Human rights defenders play a crucial role in the consolidation of democracy and the rule of law. They promote development, fight against poverty, carry out humanitarian work, foster the reconstruction of peace and justice and promote civil, political, economic, social, cultural and environmental rights. However, there is a mistaken perception among some sectors of society, sometimes echoed by the media, that human rights defenders defend criminals. It is crucial for the State to send a clear message acknowledging the importance of the work of human rights defenders.

42. OHCHR-Guatemala observed that some groups of human rights defenders are particularly vulnerable to attacks, such as union, community or indigenous leaders, environmental rights defenders, journalists, women leaders and youth defenders. In 2010, 250 human rights defenders were victims of attacks, the results of which included eight deaths.¹¹ The murder in Sololá of Leonardo Lisandro Guarcax, an indigenous promoter of cultural rights, on August 26, demonstrates how those involved in defending Mayan tradition and art come under attack. Moreover, the kidnapping and murder in Huehuetenango, of Emilia Quan, a sociologist at the Center for Studies and Research of the Guatemalan Western Frontier (CEDFOG) on 7 December reflects the insecurity and violence suffered by human rights defenders.

43. Additionally, environmental activists such as members of the non-governmental Centre for Legal, Environmental and Social Action (CALAS) and the ProPetén Foundation are often victims of threats and violations of their rights, for defending protected areas, demanding socio-environmental governance and justice, transparency and sustainable development. No investigation into these cases has proven effective.

44. Journalists are also the target of frequent attacks. During 2010, the Human Rights Section of the Public Prosecutor's Office received 27 reports related to threats, coercion, injuries and other attacks against journalists.

45. The context of insecurity and violence has a negative impact on human rights defenders. Non-State actors such as vigilante groups, private security companies and organized crime are a growing threat to their security, in particular when the work of human right defenders threatens these actors' interests. OHCHR-Guatemala received information alleging the acquiescence or complicity of local authorities in some cases of threats to, the discrediting of, legal action against and even the murder of defenders. It is of concern that investigations into such serious allegations have not yet yielded results.

46. A state of exception was declared in the Department of San Marcos on 22 December and extended eight times during 2010. These measures restricted the rights to freedom of

¹¹ Protection Unit for Human Rights Defenders (UDEFEQUA).

assembly, movement and expression in the municipalities that opposed the operation of the electric company Unión Fenosa, but were imposed without clear justification of the motives, proportionality and temporality. The murders of three leaders of the Front for the Defence of National Resources, Víctor Gálvez (24 October 2009), Evelinda Ramírez (13 January 2010) and Octavio Robledo (17 February 2010), carried out in this context, remain unpunished.

47. Neither the strengthening of the Unit for the Analysis of Attacks against Human Rights Defenders nor the creation of a comprehensive protection programme have been given priority. Despite the serious insecurity faced by human rights defenders, none of the 17 prioritized actions of the National Agreement for the Advancement of Security and Justice provides for the strengthening of protection measures. Moreover, insufficient resources for the operation and coordination of the Special Criminal Investigations Commission of the NCP, and national human rights institutions, weaken their capacity for protection, prevention and early warning.

VI. Women's rights

A. Violence against women

48. Despite a legal framework aimed at guaranteeing the right of women to live free from violence, prevention and eradication of violence remain a challenge. The necessary conditions for the equal enjoyment of women's rights are not yet present and Guatemala occupies one of the lowest positions in the region in gender equality.¹²

49. The State breaches its international obligations to protect women's right to life if it does not investigate, prosecute and provide reparations in cases of violence. Two years after the adoption of the Law against Femicide and Other Forms of Violence against Women, the creation of specialized courts as provided for in the law, as well as the approval of its Protocol, and the National Information System on Violence against Women are signs of progress. The coverage of these jurisdictional entities should be widened, and the Protocol should be disseminated and implemented.

50. Nevertheless, impunity remains high, due to a lack of investigative resources, adequate training, sensitization and coordination among the authorities, as well as victims' fear of reprisals and economic dependency on the attacker. In addition, justice operators do not comply with their obligation to initiate ex officio investigations for these crimes, laying the burden of pursuing the cases on the victims.

51. The available protection mechanisms for victims are insufficient, and measures are needed to ensure the allocation of resources for the creation and sustainability of shelters.

52. The conditions and treatment of women deprived of liberty are of specific concern. In particular, monolingual indigenous women do not have access to interpreters during the judicial process and detention, infringing upon their right to defence and sentence commutation.

¹² In the *Global Gender Gap Report 2010*, the World Economic Forum ranks Guatemala 109th of 134 countries surveyed - the lowest in Latin America and the Caribbean (p. 9). See www.weforum.org/pdf/gendergap/report2010.pdf.

B. Sexual and reproductive health

53. The recent adoption of the Law on Healthy Motherhood (Decree 32-2010) constitutes a step forward toward the eradication of maternal mortality. However, medical coverage for women, especially in rural areas, and training for health professionals, including midwives and other health promoters in indigenous communities, is required. There was an increase in maternal deaths (275 cases in 2009 and 206 between January and August 2010), mostly affecting rural areas.¹³ The recommendation of the Human Rights Committee to take measures to guarantee the right to life of pregnant women who wish to interrupt their pregnancy has not been complied with.¹⁴

54. In 2010, 1,086 births by girls aged between 10 and 14 were registered, mostly in Alta Verapaz, Huehuetenango, Petén and Santa Rosa,¹⁵ highlighting the need to adopt effective sexual and reproductive health measures and policies. At the same time, the lack of information on the causes of early pregnancies challenges the implementation of the State's obligations. The ministries of health and education need to provide prompt comprehensive sex education based on a gender and diversity perspective and consistent with international human rights standards,¹⁶ not only in schools but also for the population excluded from the educational system. Additionally, family planning programmes for men and women, including access to contraception and health services, are not adequately designed or extended to adolescents.

VII. Indigenous peoples

55. Structural patterns of racism persist in the political, economic and social arenas, which translates into various forms of discrimination against indigenous peoples. Despite progress achieved in formal recognition of their rights they still hold the most disadvantaged position in society and are subject to exclusion and poverty with no effective opportunities to demand and enjoy their rights, leading to a systematic de facto denial of their condition as rights holders.

56. The implementation of international obligations has been limited to the criminalization of discrimination and the creation of some governmental institutions, including the Presidential Commission against Discrimination and Racism against Indigenous Peoples (CODISRA), the Office for the Defence of Indigenous Women (DEMI) and the so-called "indigenous desks" (directorates, departments and offices). These efforts are important but insufficient to ensure the State guarantee of indigenous peoples' rights under a multicultural vision.

A. Racism and discrimination

57. OHCHR-Guatemala has observed that discriminatory practices based on gender and ethnicity, known, tolerated, and in some cases carried out by State officials or with their acquiescence, include racial hatred, violence against women and limitations on certain rights, particularly education. Discrimination increases poverty levels by, inter alia, limiting educational and work options.

¹³ Observatory for Reproductive Health, Guatemala (OSAR).

¹⁴ CCPR/CO/72/GTM, para. 20.

¹⁵ OSAR.

¹⁶ See A/65/162.

58. The number of victims who file complaints or pursue judicial proceedings for discrimination is very low, due in part to the socio-economic situation of the victims and to the insufficient response of the judiciary. The 513 cases filed before the Public Prosecutor's Office between 2005 and August 2010 indicate a general tendency for cases to be closed or dismissed, and not always on solid grounds. OHCHR-Guatemala has observed that when a victim of discrimination does not pursue a case, the Public Prosecutor's Office does not initiate ex officio investigations. Investigations regarding cases of discrimination are often paralyzed due to the burden of proof placed on the victim by the Public Prosecutor's Office, including the requirement to provide an expert's cultural appraisal prior to the initial statement of the accused, which in most cases is not useful for proving this crime.

59. The case of Candelaria Acabal Alvarado, an indigenous K'iché' woman who was subject to domestic servitude for 10 years under inhuman conditions (such as deprivation of liberty, malnutrition and corporal punishment), illustrates the serious effects of discrimination and racism on the physical and psychological integrity of indigenous women held in a contemporary form of slavery. Despite the severity of the situation, investigations remain pending, no punishment has been meted out to the perpetrators and no compensation given to the victim.

60. Information compiled by CODISRA, DEMI and OHCHR-Guatemala in six departments reveals that women in indigenous communities do not have sufficient information on their rights, complaint mechanisms and protecting institutions. Additionally, acts of racial and gender-based discrimination are not identified as such.

B. Political participation

61. In practice, the transformation from the predominant monocultural State towards a plural and democratic system has not yet taken place. Despite a progressive increase in local political participation of indigenous peoples (mainly male), the political-electoral system has not incorporated traditional models of indigenous participation, or mechanisms that guarantee the cultural and linguistic particularities with regard to the right to vote and to be elected. Only two Ministries - Culture and Economy - have been headed by indigenous persons in the current Government. There are no indigenous magistrates in the highest courts, and according to the Supreme Electoral Court, indigenous representation in Congress in the last electoral period reached an average of only 9.5 per cent, out of which 2.56 per cent are women. Likewise, the ethno-demographic composition of the country is not reflected in non-elected high-level positions.

C. Right to consultation

62. The right to consultation gives democratic access to decision-making processes on the development model pursued by the State. The State of Guatemala did not comply with its international obligation to consult indigenous peoples with the objective of achieving their free, prior and informed consent on all legislative or administrative measures affecting them directly. None of the processes by which permits were approved for the exploitation of natural resources to date has complied with this right. To claim their collective rights, some indigenous communities have held "good faith community consultations", which resulted in the rejection of specific projects and mining activities in their territories.

63. The Government has held that it has not granted new mining permits, a de facto moratorium that should be formalized and extended to the exploitation of other natural resources in indigenous territories if the right to consultation is not previously guaranteed. The State should urgently regulate this right in accordance with international standards and

the legal instrument regulating it should be widely consulted upon. Even in the absence of such regulations, the State should immediately initiate consultation processes.

64. The lack of consultation and of proper forms of land ownership, among other structural causes, has resulted in serious conflicts throughout the country. Community leaders have been subject to harassment, attacks and sexual violence, and no prompt and proper investigations and judicial proceedings have been carried out. In stark contrast, members of indigenous communities have been subjected to rapid judicial proceedings in the context of social protests, in which legitimate acts in defense of human rights are often criminalized.

VIII. Economic, social and cultural rights

65. With a human development index of 0.56, Guatemala is ranked 116th among 169 countries.¹⁷ Despite important steps registered in the past two decades, Guatemala still lies behind the Latin American average index (0.70).¹⁸ To overcome this gap, Guatemala must strengthen its efforts to level the structural conditions of inequality that hinder its development.

66. The High Commissioner recognizes the increase in social investment in the past three years, but reiterates the need for Congress to ensure the resources necessary to fulfil the State's international human rights obligations. A key factor in guaranteeing the sustainability of social expenditure, as argued in previous reports of the High Commissioner, is to undertake a thorough fiscal reform and to overcome the high dependency on indirect taxes. The urgency of this measure has been revealed by the decrease in tax levels from 12.9 per cent in 2007 to 10.4 per cent¹⁹ in 2010.

67. During 2010, investments in the conditional cash transfer programme Mi Familia Progresá increased steadily. Efforts to extend the impact of these programmes are positive, but there is a need to guarantee their stability and transparency through a strong legal framework. Moreover, a human rights-based approach should be incorporated, in line with the recommendations of the Special Rapporteur on the right to food (A/HRC/13/33/Add.4, para. 87 (b)). Such programmes should not undermine or replace the institutions responsible for ensuring the universality of social rights.

68. In 2010, climate-related events affected 723,736 people, resulted in 263 deaths and damaged livelihoods,²⁰ compounding the problems provoked by Hurricane Mitch and Tropical Storm Stan. Although the State has taken concrete measures to reduce risks, it has not yet consolidated a national strategy on prevention and relief or on risk and vulnerability assessment, which would limit the negative impact of these phenomena, particularly for those who depend on local self-sustainability (see A/HRC/10/61).

A. Right to food

69. Following the food crisis in 2009, the Government adopted measures that allowed for progress in coordinated actions with civil society organizations and the international

¹⁷ UNDP, *Human Development Report 2010* (note 1), p. 145.

¹⁸ *Ibid.*, p. 146.

¹⁹ Ministry of Finance.

²⁰ See National Coordination for Disaster Reduction.

community regarding medical equipment, auxiliary nurses, teachers and nutritionists, and the production of disaggregated information on cases of acute malnutrition.

70. Nevertheless, the limited availability and lack of sustainable access to food persist due to several factors, including the insufficiency of the current minimum wage to cover the basic food basket, the lack of access to land and the gradual weakening of key institutions for the development of peasant economies, such as the Ministry of Agriculture, Livestock and Food (MAGA) and the land fund (FONTIERRA). In 2010, the Ministry of Public Health and Social Assistance registered 14,666 cases of acute malnutrition, in comparison with 5,320 cases in 2009.²¹ The numbers reported are alarmingly high and demonstrate the continued effects of the food crisis, but also more accurate reporting.

71. It is necessary to implement a comprehensive rural development policy and to strengthen the legal framework on this subject in accordance with human rights standards in order to reduce dependency and to guarantee complete and equitable access to the resources and means needed for an adequate standard of living, with a special focus on discriminated groups.

B. Right to education

72. The implementation of the policy of free pre-primary, primary and secondary education, adopted in November 2008, is a fundamental achievement in breaking the cycle of exclusion and poverty. In order to maintain this progress, the Ministry of Education must adequately address the challenges posed by the increased demand, particularly the inefficient administrative mechanisms for the distribution of funds, and the hiring and designation of a sufficient number of teachers.

73. There is still a need to guarantee quality education, in particular at rural and indigenous schools, especially those with bilingual and inter-cultural programmes. The High Commissioner calls upon the authorities to improve efficiency regarding the inspection and evaluation of educational facilities, both public and private, and to adopt adequate measures to improve the quality of education.

C. Right to health

74. For the tenth consecutive year, the budget allocated to health remained at an average of 1.2 per cent of the GDP, one of the lowest in the region.²² This translated into a persistent lack of medical staff, medications, supplies and basic materials. Despite the fact that the 2011 budget for the Ministry of Public Health and Social Assistance increased by 35 million quetzales, it represents only 7.22 per cent of the annual budget, which is less than what was designated in 2010. The assigned funds remain insufficient, in particular with regard to the Coverage Extension Programme, which brings basic health services to nearly a third of the population: the poorest and most excluded, who are mainly rural and indigenous. As highlighted by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the procurement system also allows Government officials too much discretion in determining which

²¹ Ministry of Public Health and Social Assistance (figures corresponding to January-November 2010).

²² Ibid.

companies to contract with, and leaves open the possibility for abuse.²³ This could limit the availability of and access to medication and other supplies.

75. OHCHR-Guatemala received information regarding cases of discrimination against lesbian, gay, bisexual and transgender people by public officials within the health services. These acts include humiliating gestures and attitudes, a lack of adequate medical attention and the violation of the right to confidentiality.

IX. Activities of the Office of the United Nations High Commissioner for Human Rights in Guatemala

76. OHCHR-Guatemala conducted field missions to monitor the human rights situation, and held meetings with authorities, public institutions, social organizations, witnesses, victims and their families to follow up on reports of possible human rights violations. The office issued press releases on several human rights issues. It disseminated the 2009 annual report on the activities of the office in Guatemala (A/HRC/13/26/Add.1) and held press conferences and meetings with opinion leaders.

77. OHCHR-Guatemala monitored the situation of human rights defenders, the election process of the Public Prosecutor, as well as judicial processes concerning human rights violations of the past. It also supported the Dialogue Table between the communities affected by the Chixoy Hydroelectric Plant and the Government.

78. OHCHR-Guatemala supported the visits of the Special Rapporteur on the right to health and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, in May and June 2010, respectively. It also advised social organizations on drafting shadow reports for submission to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and to the Human Rights Committee.

79. Congress was provided with technical assistance on the main draft security laws prioritized in the National Agreement for the Advancement of Security and Justice. OHCHR-Guatemala also supported dialogue on initiatives regarding rural development and the national compensation programme as well as the law on the National Commission for the Search of Victims of Enforced Disappearances and the International Convention for the Protection of All Persons from Enforced Disappearance, and opposed those draft laws incompatible with international standards, such as the draft laws against youth gangs (anti-mara) and the draft law on the commutation of sentences for persons on death row.

80. With the Presidential Commission on Human Rights (COPREDEH), the Ombudspersons's Office and social organizations, OHCHR-Guatemala provided technical advice on the law concerning the national preventive mechanism against torture.

81. Cooperation with the Constitutional Court included capacity-building activities on international human rights standards for judicial clerks and magistrates, a public forum and two round tables. An agreement was established for the drafting of specialized documents to complement the Constitutional Court's analyses regarding international human rights standards.

²³ Preliminary remarks on the visit of the Special Rapporteur on the right to health to Guatemala, from 12 to 18 May 2010. See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10123&LangID=E.

82. With the School of Judicial Trainers, OHCHR-Guatemala developed a practical module on the use of international standards in the resolution of cases and another on economic, social and cultural rights. Technical advice was provided to the Supreme Court in drafting the proposed legal reforms for the judicial profession.

83. Capacity-building activities on human rights and international humanitarian law were held for three units of the Public Prosecutor's Office. In coordination with Impunity Watch, OHCHR-Guatemala held a workshop on human rights protection mechanisms for social organizations specialized in transitional justice.

84. OHCHR-Guatemala produced and disseminated a CD on international human rights standards. It also published an *amicus* brief on enforced disappearance and the report of the Special Rapporteur on the independence of judges and lawyers (A/HRC/11/41/Add.3), who visited the country in 2009. The office supported the Working Group on Transitional Justice, and the Transitional Justice Programme (PAJUST) under the United Nations Development Programme in Guatemala. It also supported several inter-agency groups and led the inter-agency working group on security and justice.

85. OHCHR-Guatemala, the Inter-American Commission on Human Rights (IACHR) and the United Nations Children's Fund (UNICEF) organized the presentation of the joint "Report on citizen security and human rights" with the participation of IACHR Commissioner Paulo Sérgio Pinheiro. In coordination with the Instituto Centroamericano de Estudios para la Democracia Social, it held a forum on freedom of expression, with the participation of rapporteurs of the Organization of American States and the United Nations.

86. The office held workshops on the right to consultation for Government officials, indigenous authorities, civil society organizations, journalists and the private sector, and disseminated information regarding this right throughout the country.

87. OHCHR-Guatemala, jointly with CODISRA and DEMI, implemented the project entitled "Contributing to the eradication of racism and ethnic and gender discrimination, particularly against indigenous women" (funded by the Government of Germany) and followed up on the national campaign entitled "Indigenous women have rights; we demand that they be met", through radio advertisements and interviews in community radio stations in six departments, and through workshops with female indigenous leaders.

88. Capacity-building workshops were held with officials of the legal units of CODISRA and DEMI, and with prosecutors across the country to strengthen investigation, prosecution and criminal procedures against discrimination. OHCHR-Guatemala disseminated approximately 800,000 copies of six capacity-building kits for children on human rights, discrimination and indigenous women's rights. It also produced a study on discrimination within the judicial system, a manual on strategic litigation in cases of discrimination and a compilation on international standards on discrimination, which was disseminated nationwide.

89. Within the framework of the Maya Programme (funded by the Government of Norway), OHCHR-Guatemala continued to implement the Technical Training Programme for Strategic Human Rights Litigation for Indigenous Peoples' Rights addressed to university students and representatives of 24 indigenous organizations. In all, 12 technical programmes for strategic litigation (on the rights to consultation, natural resources, land, non-discrimination and cultural rights) were designed, and the students completed an internship programme. In cooperation with the Mariano Gálvez, the San Carlos and Rafael Landívar Universities, training programmes were initiated for a second group of indigenous organizations, university students and professors.

90. OHCHR-Guatemala organized training programmes on human rights indicators for officials from several public institutions. Together with the Food and Agriculture

Organization of the United Nations, the Ministry of Environment and Natural Resources and the Secretariat for Food and Nutritional Security, the office published an informative guide on the right to adequate food.

91. OHCHR started to implement the project entitled “Education and promotion of the rights of children and youth” (funded by the Catalan Agency for Development Cooperation) and produced educational material, including a CD with interactive games for children. Four websites were created and more than 43,500 copies of publications were distributed.

X. Follow-up to recommendations

92. The adoption of the Second Optional Protocol to the International Covenant on Civil and Political Rights, the International Convention on the Protection of All Persons from Enforced Disappearance and the Rome Statute of the International Criminal Court is still pending. The recognition of the competence of the Committee on the Elimination of Racial Discrimination, and adherence to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights are also pending.²⁴

93. Achievements in compliance with previous recommendations on justice are still limited, isolated and lacking sustainability. Particularly urgent is the implementation of those relating to the establishment of an inter-institutional coordination mechanism for criminal investigation and prosecution,²⁵ the system of professional careers,²⁶ and access to justice based on the principles of non-discrimination, and cultural and linguistic appropriateness.²⁷ Regarding human rights violations committed during the armed conflict, it is necessary to increase efforts to investigate, prosecute and sanction the masterminds and perpetrators and provide comprehensive reparations to the victims.²⁸

94. There is still a need to take effective measures to implement all the recommendations aimed at protecting the right to life and integrity, mainly through strengthening public security institutions; controlling firearms possession; preventing violence, particularly lynching; and ensuring effective access to justice for victims.²⁹ In and of itself, the lack of funds cannot be used to explain the absence of concrete measures to move towards a State that guarantees security and justice.

95. The adoption of the law establishing a national prevention mechanism against torture represents an important step. Congress should effectively establish the mechanism and allocate sufficient budget. Nevertheless, it is still urgent to implement the

²⁴ See reports of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala, A/HRC/4/49/Add.1, para. 82; A/HRC/7/38/Add.1, para. 83; A/HRC/10/31/Add.1, para. 95; and A/HRC/13/26/Add.1, para. 86.

²⁵ See the report of the High Commissioner on the situation of human rights in Guatemala (E/CN.4/2006/10/Add.1), paras. 34 and 84; A/HRC/4/49/Add.1, paras. 24 and 87; A/HRC/7/38/Add.1, paras. 31-32, 35-36 and 94; A/HRC/10/31/Add.1, paras. 42 and 44-46; and A/HRC/13/26/Add.1, paras. 31, 33-34 and 90.

²⁶ E/CN.4/2006/10/Add.1, paras. 34 and 84; A/HRC/4/49/Add.1, para. 27; A/HRC/7/38/Add.1, para. 95; A/HRC/10/31/Add.1, paras. 43, 48 and 105 (c); and A/HRC/13/26/Add.1, paras. 32 and 37-38.

²⁷ E/CN.4/2006/10/Add.1, paras. 71 and 94; A/HRC/4/49/Add.1, para. 26; A/HRC/7/38/Add.1, paras. 38-40; A/HRC/10/31/Add.1, paras. 55-56; A/HRC/13/26/Add.1, paras. 39 and 94.

²⁸ E/CN.4/2006/10/Add.1, paras. 45, 51 and 86-88; A/HRC/4/49/Add.1, paras. 28-32 and 89-90; A/HRC/7/38/Add.1, paras. 41-43 and 91; A/HRC/10/31/Add.1, paras. 58-61 and 105 (c); and A/HRC/13/26/Add.1, paras. 46-50.

²⁹ A/HRC/4/49/Add.1, paras. 86-87; A/HRC/7/38/Add.1, paras. 92 and 94; A/HRC/10/31/Add.1, paras. 10-24 and 105 (b); and A/HRC/13/26/Add.1, paras. 11-20 and 87-88.

recommendations aimed at reducing overcrowding in detention centres, mainly by rationalizing the use of deprivation of liberty and using alternatives to detention; guaranteeing the integrity, security and life of all persons deprived of liberty; and improving conditions of detention.³⁰ Effective access to all places of detention, including NGO monitoring visits, should be guaranteed.

96. Efforts to implement the recommendations on protection of human rights defenders and to promote the crucial role they fulfil toward strengthening democracy and the rule of law should be strengthened.³¹ Cooperation and coordination between the Public Prosecutor's Human Rights Section and district and municipal prosecutors should also be reinforced together with the analysis and identification of patterns of violations.

97. The reinforcement of the investigative capacity and sensitization of the Public Prosecutor's Office and the NCP on cases of violence against women are also pending.

98. Regarding economic, social and cultural rights, the High Commissioner reiterates her recommendations concerning fiscal reform,³² budgetary increase,³³ the incorporation of a human rights and gender perspective to social policy,³⁴ the decentralization of public services and programmes in urban areas,³⁵ discriminated and/or vulnerable groups,³⁶ and the creation of indicators and monitoring mechanisms.³⁷ The High Commissioner has welcomed important efforts regarding free education and recommended its consolidation and sustainability,³⁸ as well as compliance with minimum core obligations in order to break cycles of hunger³⁹ and the creation of monitoring and law-enforcement mechanisms related to labour conditions.⁴⁰ These positive steps should be accompanied with measures that are, inter alia, sustainable, accountable, non-discriminatory and that offer adequate quality while maximizing the use of available resources.

99. The High Commissioner has made recommendations on the rights of indigenous peoples to access to justice, the fight against racism and discrimination and consultation. OHCHR-Guatemala values the efforts undertaken by the Government in this area and emphasizes that there is still a long way to go for the effective implementation of all those recommendations.⁴¹

³⁰ A/HRC/10/31/Add.1, paras. 12, 23-24, 52 and 105 (b); and A/HRC/13/26/Add.1, paras. 41-44.

³¹ A/HRC/4/49/Add.1, para. 99; A/HRC/7/38/Add.1, para. 27; A/HRC/10/31/Add.1, paras. 30-34; and A/HRC/13/26/Add.1, paras. 25-27.

³² E/CN.4/2006/10/Add.1, para. 79; A/HRC/4/49/Add.1, para. 97; A/HRC/7/38/Add.1, para. 99; A/HRC/10/31/Add.1, para. 105 (f); and A/HRC/13/26/Add.1, para. 97.

³³ E/CN.4/2006/10/Add.1, para. 89; A/HRC/4/49/Add.1, para. 97; A/HRC/7/38/Add.1, para. 99; and A/HRC/10/31/Add.1, para. 105 (f).

³⁴ A/HRC/4/49/Add.1, paras. 97 and 100; and A/HRC/7/38/Add.1, para. 99.

³⁵ A/HRC/10/31/Add.1, para. 105 (f).

³⁶ E/CN.4/2006/10/Add.1, paras. 79 and 89-90; A/HRC/4/49/Add.1, para. 100; and A/HRC/13/26/Add.1, para. 99.

³⁷ E/CN.4/2006/10/Add.1, para. 89; A/HRC/4/49/Add.1, para. 100; A/HRC/7/38/Add.1, para. 100; A/HRC/10/31/Add.1, para. 105 (f); and A/HRC/13/26/Add.1, para. 100.

³⁸ A/HRC/13/26/Add.1, para. 98.

³⁹ Ibid., para. 99.

⁴⁰ A/HRC/4/49/Add.1, para. 98.

⁴¹ A/HRC/7/38/Add.1, paras. 49 and 52; A/HRC/10/31/Add.1, paras. 37, 97 and 104; and A/HRC/13/26/Add.1, paras. 54 and 94-95.

XI. Recommendations

100. In 2008 the United Nations High Commissioner for Human Rights welcomed the fact that the Government accepted all the recommendations made under the universal periodic review. She now welcomes efforts taken in this regard and renews her call on all State institutions to promptly adopt the necessary measures to implement all of these recommendations.

101. The decisions and recommendations from protection mechanisms of the United Nations System and the Inter-American System, including the recommendations issued by OHCHR since 2005, constitute a sound, precise and comprehensive guide for Guatemala to advance in the field of human rights. Hence, the High Commissioner recommends relevant institutions to implement these recommendations in a timely manner.

102. The High Commissioner urges the State to make use of the database on follow-up to international recommendations created by the Presidential Commission on Human Rights (COPREDEH), not only to implement these in an inter-institutional and coordinated manner, but also to open a space for an annual national evaluation of compliance with these recommendations, with broad participation of civil society and the international community.

103. In the context of the process towards the election in 2011 of the President and local authorities, the High Commissioner invites all political parties to commit to the implementation of these recommendations, incorporate them in their programme agendas, and consider affirmative actions in favour of women and indigenous people, such as quotas for high-level positions, both on voting ballots and in public institutions.

104. The High Commissioner calls upon the international community to ensure that its cooperation activities are aimed at strengthening compliance with international human rights obligations, while sustaining cooperation that enhances State accountability, and promoting an effective institutionalization and continuity of projects and programmes that have a proven impact on human rights protection.
