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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年度报告

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

本报告概述了危地马拉的人权状况和联合国人权事务高级专员危地马拉办事处(人权高专办危地马拉办事处)2011 年的工作情况。根据其任务，人权高专办危地马拉办事处开展了监督活动，向各国家机构和民间团体提供了咨询和技术援助，以协助它们履行危地马拉国际人权义务和执行以前报告中的建议。

在新政府 2012 年 1 月就职时，高级专员重申，现在时机已经来临，需要执行紧急行动议程，解决享受人权方面长期存在的巨大差距，如减少严重的不安全、有罪不罚和贫困现象，消除营养不良和对妇女的歧视及暴力。报告还专门开辟一章叙述土著人民的情况，以及他们在政治、经济、文化和社会领域受到的结构性歧视。

* 本文件迟交，是为了反映最新的资料。

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高级专员还呼吁缔约国执行以前报告中的建议，强调 2012 年在普遍定期审议机制下对危地马拉的审议是新政府的一次机会，可藉此加强其人权承诺，与民间团体进行有意义的交流。

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 the agreement, the functions of OHCHR-Guatemala are to monitor the human rights situation and provide advice to State institutions and civil society. The agreement was extended for a second time, for three years, on 19 September 2011.

2. The present report provides an overview of the human rights situation in Guatemala, focusing on several key issues. It also describes the work conducted by OHCHR-Guatemala and includes a series of recommendations.

II. National context

3. In 2011, the national political context was marked by general elections. On 11 September, voting for President, Congress, the Central American Parliament, mayors and municipal councils took place. As the required majority was not obtained in the Presidential election, a second round was held on 6 November, and former general Otto Pérez Molina was elected as President. No party obtained sufficient seats for a majority in Congress.

4. Campaign debates were dominated by the issue of insecurity. Candidates appeared to focus on ways to combat insecurity through mostly repressive measures (including a return to the application of death penalty), rather than addressing root causes or proposals for a preventive approach. Human rights issues were mostly absent from the debate. The High Commissioner issued a public statement urging candidates to include human rights priorities at the top of the political agenda.

5. A historic number of voters were registered for this election (7,340,841). For the first time, women constituted the majority. The number of registered voters from indigenous departments increased substantially. The overall level of voter participation was 68.4 per cent in the first round and 60.8 per cent in the second round. Nevertheless, the proportion of elected indigenous and women candidates did not increase compared to previous elections, which reflects a contrast between electoral participation and representation.

6. According to the Office of the Human Rights Ombudsperson, more than 160 acts of violence took place during the electoral period. These included assassinations, attacks and threats affecting delegates from the Supreme Electoral Court, political parties, candidates and their family members and party sympathizers. Investigations into these incidents have yet to lead to effective prosecutions. The lack of transparency on party funding and the extremely limited control and sanctioning power of the Supreme Electoral Court reinforce the need to reform the Law on Elections and Political Parties (Decree No. 1-85 of 1985).

III. Overall human rights situation

7. High rates of violence and impunity in the country continued to be linked to the generalized weakness of public institutions and the lack of a comprehensive State policy to combat them. Investigations carried out by the Attorney General, head of the Public Prosecutor's Office, with the support of the International Commission against Impunity in Guatemala (CICIG) continued to reveal the expansion of organized criminal networks.

8. Although advances in the criminal investigation and prosecution in emblematic cases were notable, necessary reforms of the justice sector to overcome impunity remain unaccomplished.

9. The poverty rate has increased by 2.71 per cent since 2006, reaching 53.71 per cent of the population (7.8 million), while extreme poverty declined by 1.87 per cent, affecting 13.3 per cent of the population (1.9 million).[1] Although Guatemala is classified as a middle-income country, its Human Development Index is lower than that of other countries of Central America with lower incomes.[2] Regarding children underweight for age (under 5), Guatemala is in a position similar to some of the poorest countries in the world, [3] which have a per capita income 10 per cent that of Guatemala.

10. These figures reveal that, as in previous years, economic growth and the implementation of targeted social programmes, such as conditioned cash transfer programmes, were insufficient on their own to eliminate the structural causes that lead to poverty.[4] Although there has been an increase of social expenditure—up by 5.5 per cent of the gross national product[5]—Guatemala is still the second-to-last of the 21 countries in the region, well below the average of 18 per cent.[6]

11. No political agreements were reached to adopt fiscal reforms. During 2011 the tax revenue was 10.3 per cent of the gross domestic product, while the Peace Agreements of 1996 had established the goal of 12 per cent by 2000 (later postponed to 2002). The High Commissioner has reiterated that under-budgeting of State institutions has been one of the main obstacles to complying with international human rights obligations.

12. The situation of indigenous peoples epitomizes the structural patterns of racism and discrimination that persist in Guatemala, to a degree that could amount to segregation. The exclusion of indigenous peoples was observed in all spheres, including land ownership, access to basic services, labour conditions, access to the formal economy and to justice, participation in public decision-making processes and State institutions, and representation in mainstream media and public debate.

IV. Security and justice

13. The State continued to lack a strategic policy to combat insecurity and impunity. The failure to implement the National Agreement for the Advancement of Security and Justice, [7] approved in 2009 by all branches of power, puts into question the political will to make urgently needed structural changes.

14. Draft laws relevant to human rights protection in the areas of security and justice, including reforms to the judicial and prosecutorial careers, the laws on *amparo* (writ of protection), impeachment, arms and ammunitions, corruption, as well as on the reparations programme and a search commission for victims of enforced disappearance,

[1] National Statistics Institute, National Survey on Living Conditions (ENCOVI), 2011. Available from www.ine.gob.gt/np/encovi/encovi2011.htm.

[2] United Nations Development Programme (UNDP), *Human Development Report 2010*, p. 145.

[3] UNDP, *Human Development Report 2009*, pp. 177-178.

[4] Wilson Romero Alvarado, *Estrategias de reducción de la pobreza en Guatemala 1985-2009*, Cuaderno de Desarrollo Humano, 2009/2010-3 (Guatemala City, UNDP, 2010), pp. 49-51.

[5] Source: Ministry of Public Finance.

[6] Economic Commission for Latin America and the Caribbean, *Social Panorama of Latin America* (2010), p. 142.

[7] See the previous report of the High Commissioner on the activities of her office in Guatemala (A/HRC/16/20/Add.1), para. 21.

were still not approved by Congress. No effective oversight or control mechanisms for the implementation of adopted legislation were applied by Congress.

A. Security

15. Worrying levels of insecurity continued, generating mistrust and despair among the population. According to the National Civilian Police (NCP), from 1 January to 31 August, there were 3,806 violent deaths, including 448 women and 295 children; 4,162 people were injured as a result of violent attacks, and 34 deaths and 15 injuries resulted from lynching. However, the numbers on lynching reported by the Human Rights Ombudsperson (39 deaths and 160 injured) suggest significant underreporting by the NCP.

16. The violence caused by organized crime was of particular concern. On 15 May, 27 peasants, including two women and two children, were beheaded by members of an organized criminal group in La Libertad, El Petén. The homicide and dismembering of Allan Stowlinsky, an auxiliary prosecutor in Cobán, Alta Verapaz, two weeks later appeared related to this act, as he was investigating cases relating to drug trafficking and organized crime. These cases illustrated the State's weakness in protecting its population and its loss of territorial control, leaving Guatemalans vulnerable in the face of organized crime.

17. Two states of emergency were declared: one in response to the increased presence of organized crime in Alta Verapaz (December 2010 to January 2011) and one following the massacre of 27 peasants in El Petén (May to August 2011). OHCHR-Guatemala considers that measures that could better have an impact on the decrease of violence (i.e. increased presence by security forces, better inter-institutional coordination and effective weapons control), should have been taken under non-exceptional conditions.

18. The NCP has a total of 24,255 active officers, which corresponds to 1.68 officers per 1,000 inhabitants, far below the international standard of 4 per 1,000.[8] This makes the reform of the NCP all the more urgent, including effective mechanisms for selection, internal monitoring, accountability and modifications to the police career, training and incentives.

19. The State continued delegating citizen security functions to private companies, with minimal accountability. Guatemala has one of the highest ratios worldwide of private security officers to police officers.[9] The High Commissioner has repeatedly expressed concern over the fact that private security companies have substituted the State in providing security, without adequate registration or control. Although the General Directorate for Private Security Services was put in place in 2011 to perform these functions, there is concern that it does not have the adequate resources or institutional backing to fulfil its mandate.

20. Delegation of citizen security functions to the military was revealed in the issuance of Governmental Decree No. 216-2011, which authorizes the military to expand without any limit the number of its forces "according to the current national security needs". This measure differs from previous ones issued in 2004 and 2009 that clearly established a maximum of military forces, following the spirit of the Peace Agreements.

[8] 2006 report of the High Commissioner on the situation of human rights in Guatemala (E/CN.4/2006/10/Add.1 and Corr. 2), para. 27, endnote 10.

[9] The Small Arms Survey 2011 estimates that the ratio of private security officers to National Civilian Police officers is 6:1 (*Small Arms Survey 2011: States of Security* (Geneva, 2011), p. 105).

21. In the departments of Quetzaltenango, San Marcos and Sololá, OHCHR-Guatemala observed that local security committees [10] and security commissions [11], originally constituted under the notion of community-based crime prevention, in some cases carried out State security functions, including territorial control and the use of force, with the acquiescence or direct participation of local authorities. In Sololá, OHCHR-Guatemala received complaints of severe abuses and illegal detentions committed by members of these bodies.

22. The authorities should derogate General Order 11-99 of the NCP, which established local security committees, as it blurs the State's obligation to guarantee human rights, specifically those related to liberty, security and justice. They should also implement operational and normative measures that clearly define community participation in crime prevention, guaranteeing that citizens do not carry out State security functions.

23. The legal framework on arms and ammunitions and its interpretation by the Constitutional Court allows for unlimited numbers of arms per person and inadequate controls over the possession of arms and ammunitions. In a country where 82 per cent of violent deaths[12] were committed with firearms, the State has a responsibility to amend the aforementioned legal framework and urgently implement a public policy on disarmament, to ensure and guarantee the right to life.

24. The penitentiary system continued to face serious challenges, including overcrowded detention facilities with precarious living conditions and frequent allegations of ill-treatment. The regulations to implement the 2006 Law on the Penitentiary System (Decree 33-2006) have not yet been approved.

25. Despite the approval of Decree 40-2010 on the creation of a national torture prevention mechanism, the selection process has so far not complied with the principles of transparency, objectivity, suitability and publicity, and was stalled in the Congressional Human Rights Commission.

B. Justice

26. The High Commissioner welcomes the important results obtained in investigations by the Public Prosecutor's Office in high-profile cases relating to corruption by public servants, drug trafficking and organized crime, such as the bombing of a bus in Ciudad Quetzal in January, the massacre of 27 people in El Petén and the assassination of an auxiliary prosecutor in Alta Verapaz, in May. These actions demonstrated a strengthened institutional commitment to combat impunity and the political will of the authorities within the Public Prosecutor's Office and the Ministry of the Interior to cooperate and coordinate actions. It is expected that this will evolve into a permanent and sustainable institutional mechanism. The technical support provided by CICIG certainly contributed to achieving these results.

27. Overcoming impunity requires that such progress is achieved in all institutions of the justice system, particularly in the Judiciary. To this end, it is essential to overcome obstacles regarding the independence of the Judiciary. However, no effective measures were taken to guarantee that judges are able to impart justice protected from improper interferences, with full impartiality, transparency and accountability.

[10] Local security committees are regulated by General Order 11-99 of the National Civilian Police.

[11] Security commissions were established under article 24 of the Law on Urban and Rural Development Councils (Decree 11-2002).

[12] Between January and August 2011. Source: NCP.

28. The Supreme Court of Justice has yet to demonstrate its readiness to implement reforms that would allow for a separation of administrative functions (e.g. appointment and relocation of judges) from jurisdictional ones.

29. In addition, the disciplinary regime in the Judiciary and the Public Prosecutor's Office still did not ensure agile, objective and transparent procedures that respect guarantees of due process. Current procedures do not allow for the removal of public servants who do not perform their duties in an independent and impartial manner.

30. Congress should prioritize the discussion and approval of the necessary legal reforms to the career system in the Judiciary and the Public Prosecutor's Office, including the proposed constitutional reform in accordance with international standards.

31. Programmes driven by the Supreme Court of Justice to combat impunity and corruption have not yet shown results. Under its new leadership, the Court has the opportunity to carry out the transformations that are urgently needed, in particular with regard to the judicial career, in full compliance with international standards.

32. In a positive development during 2011, crucial decisions by the Constitutional Court regarding cases of adoption, the legal personality of indigenous authorities and the right to consultation have shown an increasing application of international human rights standards.

C. Transitional justice

33. Relevant progress was made in 2011 in the investigation, prosecution and trial of those responsible for serious human rights violations committed during the internal armed conflict. The High Commissioner welcomes this progress and acknowledges the efforts by the Public Prosecutor's Office, victims and civil society organizations to confront and break current patterns of impunity. The High Commissioner further welcomes actions taken to restore victims' dignity and the formal apologies by the State to honour the memory of victims, as well as the creation of a unit in the Public Prosecutor's Office to investigate crimes committed by non-State actors during the internal armed conflict.

34. An encouraging development is the progress achieved in the investigation of the first case of genocide, which includes the presentation of charges against a former Chief of Staff of the Armed Forces on 6 September, relating to the atrocities committed in the Ixil region in 1982 and 1983. For the first time, the racial character of the violence suffered during the internal armed conflict is being recognized.

35. In a historical trial in the case of the 1982 massacre in Dos Erres, concluded on 2 August, the court found four former military officers guilty of "crimes against the duties of humankind" and assassination, and ordered the Public Prosecutor's Office to continue investigations until all those responsible are brought to justice. This ruling, as well as the detention of four high-ranking military officers in June and October, and of two high-ranking police officers in April and July suspected of serious human rights violations, sends an encouraging message that justice is possible in Guatemala.

36. Nonetheless, intimidations, threats and attacks suffered by some victims, witnesses and judicial operators in proceedings relating to cases from the past remain an obstacle to the fulfilment of the rights to truth and justice. The Attorney General was also subject to pressure as these cases moved forward in the justice system.

37. The achievements of the National Reparations Programme should be strengthened and ensured through the provision of some form of institutional sustainability. The main forms of reparation under the Programme have been financial, while other important aspects, such as psychosocial care and symbolic reparations, including culturally and linguistically appropriate comprehensive care, were not prioritized, particularly in cases of

sexual violence. The High Commissioner recalls the right of victims to comprehensive reparations, as set out in international human rights standards.

38. In 2011, continued progress was made in the systematization and digitalization of the Historical Archive of the National Police, discovered in 2005, which has provided a significant contribution to the investigation and prosecution of emblematic cases from the past, as well as for the elucidation of historic memory. According to official information received by OHCHR-Guatemala, the standards found in the Johannesburg Principles on National Security, Freedom of Expression and Access to Information were not applied in the process of declassifying the military archives. Additionally, obstacles to and limitations on accessing the archives persist.

39. The State failed to comply with the 2010 reparations agreement reached with the communities whose rights were affected by the construction of a hydroelectric plant in Chixoy (1978-1982), infringing its duty to redress past human rights violations. The failure to comply with this agreement, mediated by the Organization of American States, and in which OHCHR-Guatemala participated as an observer, resulted in an increased mistrust in the Government and a loss of legitimacy of dialogue processes.

V. Human rights defenders

40. Human rights defenders in Guatemala continued to be subjected to a high level of attacks. The Public Prosecutor's Office received 159 complaints of attacks during 2011. The year was marked by the death of several young human rights defenders. Among these was Víctor Leiva, who promoted artistic activities for those who wanted to break free from the spiral of violence in an effort to challenge the stereotypes linking youth with crime. He was killed on 2 February. Three young indigenous defenders, Sebastián Xuc, Alberto Coc and Catalina Mucú were assassinated on 12 February They were seeking, through dialogue, a solution to the land conflict of their community of Quebrada Seca, Izabal. This conflict was exacerbated by the presence of organized crime in the department of Izabal and by its interests in acquiring large segments of land for drug-trafficking. Investigations on these cases have not led to any prosecutions.

41. OHCHR-Guatemala has observed that some authorities tended to discredit human rights defenders and criminalize their activities. In March, defenders of indigenous rights who participated in a public rally related to the Technological Corridor project in Chiquimula were convicted of "activities against national security" and their five-year imprisonment sentence was commuted to a prohibition to participate or promote illegal public demonstrations. In El Quiché, local authorities referred to the communities that claimed their right to consultation as "groups that were seeking to destabilize the system".

42. Moreover, in press releases issued in March related to the evictions in Polochic Valley and acts of protest by the communities affected by the Chixoy dam, the Government referred to some social organizations as ones "with radical behaviour [that] have systematically recurred to the implementation of de facto measures".[13] These public statements, rather than promoting opportunities for dialogue, increased polarization and contributed to the stigmatization of human rights defenders.

43. Activists working on environmental rights and staff of the National Council on Protected Areas (CONAP) denounced cases of corruption related to licences being awarded for industrial activity in Punta de Manabique, Izabal and the Laguna del Tigre National

[13] Guatemala, "Es deber del Gobierno de Guatemala preservar la gobernabilidad y el Estado de Derecho", official press release 128-2011, 17 March 2011. Available from www.minex.gob.gt/noticias/Noticia.aspx?id=969.

Park, El Petén. Although their protests were aimed at securing the implementation of core legal provisions for the protection of the officially declared natural areas, they were criticized by the Government and subjected to strong pressures. Some high-level CONAP officials were forced to resign.

44. On the south coast, OHCHR-Guatemala observed that labour rights defenders were targets of threats and unfair dismissals. In March, the Palo Gordo sugar refinery dismissed seven members of the only existing union of the sugar industry in Guatemala, and invited other unionists to quit, seemingly to discourage the defence of labour rights.

45. When women defenders of gender and reproductive rights questioned traditional structures of male power, such as the case of members of the Generando association in Chimaltenango and of the Observatory on Reproductive Health in Alta Verapaz, they were subjected to harassment. In a social environment where prejudices prevail, OHCHR-Guatemala received information from defenders working with lesbians, gays, bisexuals and transsexuals who were stigmatized and discriminated against when they tried to file complaints, which were mostly rejected by the authorities, including in cases of presumed hate crimes.

46. Despite this challenging context, some progress was made in terms of investigations related to violations affecting human rights defenders referred to in previous reports, such as the cases of the policeman who was lynched in San Juan Cotzal (A/HRC/13/26/Add.1, para. 13), Leonardo Lisandro Guarcax (A/HRC/16/20/Add.1, para. 42), Víctor Gálvez (ibid., para. 46) and Emilia Quan (ibid., para. 42).

VI. Women's rights

A. Violence against women

47. Femicide and gender-based violence remained of utmost concern, with 448 deaths between January and August.[14] The cruelty with which some of these crimes were perpetuated shows how deeply rooted patterns of discrimination are in society, and also reveals the lack of institutional measures to tackle them. Despite the important work carried out by the three specialized tribunals against femicide, there is still an enormous gap between the cases resolved by the Judiciary and the number of complaints filed (144 out of 6,318).[15]

48. Although violence against women is a phenomenon that goes beyond class and ethnicity, OHCHR-Guatemala observed that indigenous women who decide to break the cycle of violence face a double barrier permeating the justice system: male chauvinism and racism. Important deficiencies remained regarding the application of the Law against Femicide and Other Forms of Violence against Women (Decree 22-2008) in non-specialized tribunals, such as their resistance to apply the criminal definition of femicide and to adopt measures to protect the victims.

49. Despite the number of complaints regarding violence against women received by the Public Prosecutor's Office (30,256 from January to August),[16] the National Plan for the Prevention of Domestic Violence and Violence against Women (PLANOVI) has not been fully implemented, as the State funding for prevention and attention to victims was insufficient. In this regard, the limited number of care centres that provide the only support

[14] Source: NCP.
[15] Source: National Center for Judicial Analysis and Documentation (CENADOJ), data up to June.
[16] Source: Public Prosecutor's Office.

for female survivors of violence can assist only a minimum number of victims, leaving many women in rural areas with all but no support.

B. Sexual and reproductive rights

50. Despite important legislative progress, [17] women still face difficulties in gaining access to comprehensive sexual and reproductive health services. The goal of reducing maternal mortality to 55 per 100,000 live births is still far from being reached—currently it stands at 136 per 100,000.[18] This situation is worse among indigenous women, with a mortality rate that is three times higher than that of non-indigenous women. Another major concern is the large number of pregnancies among girls between 10 and 14 years old (748 cases) , [19] the majority of them resulting from sexual violence within the family and a lack of access to sex education. The resistance of some sectors to provide sex education and services derived from the right to sexual and reproductive health is a matter of special concern.

51. In line with recommendations made by the Human Rights Committee[20] , the Committee on the Elimination of Discrimination against Women [21] and the Special Rapporteur on the right to health[22] , it is necessary to widen the criteria established by the criminal code for the exemption from punitive measures for abortion, at least in cases of sexual violence and medical emergencies.

VII. Indigenous peoples

A. Racism and discrimination

52. Although the Constitution recognizes the principle of equality and there is no explicit legal restriction for indigenous people to access State services, they remained de facto excluded from access to the social, political and cultural spheres. Being indigenous in Guatemala continued to entail a denial of rights, despite the fact that indigenous peoples constitute the majority population (60 per cent).[23]

53. The enormous disparity in social indicators between indigenous and non-indigenous populations reveals discrimination patterns that compromise the State's international obligation to ensure adequate development and protection, as well as the full and equal enjoyment of their rights. The departments with an indigenous majority register higher rates of both poverty (74.8 per cent) and extreme poverty (27.2 per cent).[24] The chronic malnutrition rate for indigenous children under five is 58.6 per cent.[25] The departments with

[17] See the Law on Universal and Equal Access to Family Planning Services (Decree 87-2005) and the Law on Healthy Maternity (Decree 32-2010).

[18] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on his mission to Guatemala (A/HRC/17/25/Add.2), para. 55.

[19] Between January and August 2011, information provided by the Observatory on Reproductive Health.

[20] CCPR/CO/72/GTM, para. 19.

[21] CEDAW/C/GUA/CO/7, para. 36.

[22] A/HRC/17/25/Add.2, para. 69.

[23] Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people on his mission to Guatemala (E/CN.4/2003/90/Add.2), para. 10, endnote 2.

[24] National Statistics Institute, ENCOVI 2006, national results, table No. 1.1.

[25] National Statistics Institute, *Guatemala: V Encuesta Nacional de Salud Materno Infantil 2008-2009 – informe preliminar* (2009), p. 46.

higher levels of maternal and infant mortality also have an indigenous majority.[26] In Alta Verapaz and Quiché, both with indigenous majorities, the rate of enrolment in and completion of primary school are the lowest.[27] Literacy rates showed a significant disparity between indigenous (59.6 per cent) and non-indigenous populations (83.4 per cent).[28]

54. OHCHR-Guatemala reiterates that the structure of the State does not reflect the multicultural nature of its society. Isolated governmental institutions with specific mandates on indigenous people, such as the Presidential Commission against Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA) and the Office for the Defence of Indigenous Women (DEMI), carried on their functions without adequate funding, political power, regional presence or independence.

55. There are still challenges in ensuring full participation of indigenous peoples in the design and implementation of development policies and programmes and in breaking the existing social preconceptions according to which indigenous peoples are seen as an obstacle to development.

B. Right to lands and territories

56. Although the Constitution grants general protection for indigenous peoples' lands and territories, there are still no laws that recognize the traditional practices of land tenure, possession and collective ownership by indigenous communities. This creates serious obstacles for communities to legally defend the rights over their lands, particularly in the face of irregular or illicit registration of property and the overlap of registries, the uncertainty of land delimitations and the lack of a reliable cadastre. In this regard, OHCHR-Guatemala observed the current legal struggle of the Soledad Sayaxut community in San Pedro Carchá, Alta Verapaz, to recover its land, where 32 Q'eqchi' families were evicted from their ancestral land in 2004, after the area was declared vacant by the State and the families could not present proof of their ancestral ownership. In the case of the Indigenous Municipality of Santo Tomás Chichicastenango, [29] after five years of litigation, the Constitutional Court established an important precedent by recognizing the legal standing of the indigenous authorities before the Judiciary. However, the Court did not decide on the question of ownership, which will now be resolved by ordinary jurisdiction.

57. The lack of legal and institutional guarantees to protect indigenous lands and territories places indigenous peoples in a vulnerable situation, particularly when facing large-scale development projects. OHCHR-Guatemala observed that in the context of the Fénix mining project of the Guatemalan Nickel Company in El Estor, Izabal, some indigenous communities that were displaced since 2007 due to their supposed lack of rights remain without legal recognition with regard to these lands.

58. In 2011, the Constitutional Court took a positive step in the case of the Agua Caliente [Lote 9] community, ordering the adoption of necessary measures to give legal certainty to their right to property.[30]

59. In 2011, the Ministry of Energy and Mines granted four licences, and eight are in process of approval, for the installation of hydroelectric plants in indigenous territories. These licences are in addition to other concessions granted since 2008: 15 for

[26] Ibid., p. 26.
[27] UNDP, *Guatemala: hacia un Estado para el desarrollo humano: informe nacional de desarrollo humano 2009/2010*, p. 175.
[28] Ibid., p. 174.
[29] Constitutional Court Decision of 4 May 2011, file 1101-2010.
[30] File 934-2010 of February 2011.

hydroelectric projects, 18 for exploration and exploitation of construction material, and 33 for exploration for and exploitation of metals and non-metals—all have been granted without respect for the indigenous peoples' right to consultation recognized in international standards.[31] This is the case of the Ixil region in El Quiché , where OHCHR-Guatemala monitored social conflicts due to a lack of consultation prior to the granting of the licences for the Xacbal, Palo Viejo I and Hidroxil hydroelectric plants.

60. In Lanquín, Alta Verapaz, legal action was taken to appeal against the Ministerial Agreement authorizing the Entre Ríos hydroelectric project, on the grounds of failure to carry out prior consultation. The appeal was rejected by the Supreme Court of Justice, although one of the magistrates, in a dissenting opinion based on international standards, argued that the Agreement should have been considered null as a result of the lack of consultation with indigenous peoples. The case is now pending before the Constitutional Court. Additionally, some indigenous communities have carried out 10 "good faith community consultations" in different regions, adding up to a total of 58 consultations undertaken since 2005, which resulted in the rejection of these activities in their territories.

61. In March, the Government promoted an initiative to regulate the right of indigenous peoples to consultation. This initiative was widely rejected by many indigenous communities, who alleged that they were not adequately consulted during the process. Some indigenous organizations filed an injunction (*amparo*) before the Constitutional Court against the process established by the Government to approve this initiative. The Court ordered the definitive suspension of the process, considering that it was not in accordance with the scope of the right to consultation established in International Labour Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

VIII. Economic, social and cultural rights

62. The efforts made in the last four years to reduce poverty constituted a positive change in public policies. There was rapid expansion of Mi Familia Progresa, a conditional cash transfer programme, which covered 800,000 families.[32] Nevertheless, there were significant obstacles to guaranteeing sufficient resources to maintain adequate levels of operations, as well as to ensuring transparency and accountability.

63. The lack of adequate budgeting for education and health, made evident by the critical drug shortage, the scarcity of textbooks, and the precarious infrastructure in schools, revealed that conditional cash transfer programmes might lose their impact if wider public policies that guarantee quality in education and health services are not strengthened.

A. Right to food and access to land

64. Access to food continued to be critical, especially for rural and low-income families. The cost of the basic food basket showed a sharp increase (11.2 per cent between March 2010 and March 2011), and the national price of white maize increased 46 per cent compared to 2010.[33]

65. In April, the National Food Security and Nutrition Council (CONASAN) approved the 2011 Emergency Plan and declared a state of "nutritional risk"[34] in order to assist 96,060

[31] United Nations Declaration on the Rights of Indigenous Peoples, arts. 10, 17 and 19.
[32] UNDP, *Ejercicio de Apreciación Sustantiva Mi Familia Progresa (MIFAPRO)* (2011), p. 16.
[33] Source: Ministry of Agriculture, Livestock and Food, figures corresponding to May 2010-2011.
[34] CONASAN resolution 01-2011 of 15 April 2011.

families living in conditions of food insecurity. Nevertheless, the implementation of this strategy lacked sufficient coverage, was hampered by insufficient resources, and institutional efforts were focused mainly on short-term strategies, such as direct food assistance and provision of private goods (fertilizers or pesticides), rather than on the full implementation of the National Policy for Comprehensive Rural Development.

66. An unequal system of land distribution continued to prevail, hampering the right to food of rural families, including access to adequate food and to the necessary means to provide it for themselves. Large-scale production still covered 70 per cent of the fertile land, controlled by 2 per cent of landowners, while the parcel-owning peasants, mainly indigenous people, had access to only 2.5 per cent of this land.

67. OHCHR-Guatemala received information regarding land buying and selling processes, mainly in the departments of Izabal and El Petén, that resulted in an increasing number of peasant families without land. A significant number of these land transfers were seemingly the result of threats and pressures made by some palm oil companies aimed at forcing the consent of small landowners. Although State institutions recognized the need to provide these peasants with alternatives to prevent land transfers, no effective protective measures were implemented. The Special Rapporteur on the right to food has stated that the acquisition, or long-term leasing of large swathes of arable land (more than 1,000 ha) can violate the right to food, if this limits the availability of land and subsequently deprives local communities of the access they need to the resources required for subsistence (A/HRC/13/33/Add.2, paras. 4 and 11).

68. Despite important efforts made by the land fund (FONTIERRAS), the institution mandated to promote access to land, the low budget assigned (82 million quetzales in 2011) and the reliance solely upon the free market proved to be insufficient to meet the demand of land of the poorest families. FONTIERRAS estimated that, following the reception of 285,000 applications for access to land since its creation in 2000, the number of families without land in Guatemala may currently reach 800,000, out of which only 19,968 have benefitted from the land purchase programme.

B. Labour rights

69. The issuance of an internal directive by the Labour Inspectorate in February, establishing that labour inspectors cannot violate workers' inalienable rights when carrying out conciliation procedures, is a positive measure. Nonetheless, the State has not yet complied with its duty to monitor labour practices and sanction those that violate labour rights, in accordance with ILO Convention No. 81 (1947) concerning Labour Inspection in Industry and Commerce, mainly due to the absence of adequate budgetary allocations to the Labour Inspectorate (2.8 per cent of the total budget of the Ministry of Labour). There is also a great imbalance between the total number of inspectors and establishments to be inspected (i.e. there are 124 inspectors for 14,314 tax-paying agricultural establishments).[35] It is urgent that the Labour Inspectorate recovers its power to impose administrative sanctions.

70. The human rights situation of domestic and agricultural workers illustrates the great challenges ahead in the fulfilment of labour rights. Domestic workers (about 183,000),[36] mainly indigenous women, are frequently subjected to a quadruple form of discrimination: based on their gender and their ethnic origin, as well as on their social and rural status. Most domestic workers also suffer forms of segregation in everyday life, including the

[35] Source: Ministry of Labour.
[36] ENCOVI 2006.

provision of inadequate living conditions, restrictions on the quality and quantity of food, the imposition of degrading activities and the use of exclusive entrances.

71. The Labour Code establishes a special regime for these workers that weakens their rights and leaves them vulnerable to work in precarious conditions, including earning wages below the minimum wage, unpaid overtime, and denial of benefits such as indemnity pay and access to social security. The ratification by Guatemala of ILO Convention No. 189 (2011) concerning Decent Work for Domestic Workers would strengthen the protection of their rights.

72. With regard to the 475,600 agricultural workers, [37] the vast majority live in poverty, without access to adequate housing, water and food, and with an average of 2.4 years of schooling.[38] Based on interviews with agricultural workers, OHCHR-Guatemala observed that in some situations they are forced to accept labour conditions that infringe their rights due to the lack of better work alternatives.

73. OHCHR-Guatemala also observed a tendency by the agro-industry to condition workers' salaries to their productive outputs, with targets in place that are usually excessive, and without guarantees of earning the minimum wage (the average monthly salary was 1,215 quetzales, while the minimum wage was 1,953)，[39] contrary to ILO Convention No. 99 (1951) concerning Minimum Wage Fixing Machinery in Agriculture. Women's and children's work assisting the male worker to meet his imposed goals is often invisible and thus unrecognized and unpaid. The use of strategies to avoid paying benefits and social security (only 29 per cent of agricultural workers are registered for Social Security) was also observed.

74. The working and sanitary conditions frequently put these workers' health and even their lives at risk. Following similar incidents that occurred in the previous year, an accident that took place in September 2011 in San Marcos—two Mam agricultural workers were killed and eight were severely injured while being transported in an overcrowded bus from a coffee plantation—highlights the persistence of inhuman treatment.

75. In relation to access to justice, OHCHR-Guatemala observed that agricultural workers face a series of obstacles when they file labour complaints, such as a lack of free legal aid, lack of the sanctioning power of the Labour Inspectorate and the delays associated with conflict resolution in labour tribunals (average of five years). At the one hundredth session of the ILO Conference in 2011, the situation of attacks against trade unions in Guatemala was described as "a serious situation of almost total impunity".[40]

C. Forced evictions

76. The Judiciary issued 44 judicial orders to the Public Prosecutor's Office, to undertake evictions with the support of the NCP, out of which only 14 were executed as at August.[41] OHCHR-Guatemala observed the evictions that took place in the Polochic Valley, Alta Verapaz, which affected 732 Q'eqchi' families (15 March)； Retalhuleu, which affected 139 peasants (28 July); and Sierra del Lacandón National Park, El Petén, which affected 69 families (24 August). Taking into account Committee on Economic, Social and

[37] Source: Ministry of Agriculture, Livestock and Food (2011).

[38] Source: National Bank of Guatemala.

[39] The average monthly rural salary for indigenous people was 980.55 quetzales and 1,480.55 for non-indigenous people, ENEI 2010, "Guatemala: Salarios promedio – categorias seleccionadas". The monthly cost for the basic food basket was 3,921 quetzales.

[40] *Conference Committee on the Application of Standards, Extracts from the Record of Proceedings of the One Hundredth Session of the International Labour Conference*, *Geneva 2011*, part II, p. 26.

[41] Source: Public Prosecutor's Office, figures from the period January-August 2011.

Cultural Rights general comment No. 7 (1997) on the right to adequate housing: forced evictions, OHCHR-Guatemala observed actions that were inconsistent with human rights standards and principles with regard to the manner in which those evictions took place, such as the absence of prior notification and of the opportunity for those being evicted to exercise their rights to defence and due process; the participation of non-State agents (security guards and groups of workers); the infringement of the right of those being evicted to housing and food throughout the destruction and burning of housing and crops; the lack of a plan to relocate the communities to a different area; and elements that suggest the excessive use of force by the police.

77. The High Commissioner welcomes general instruction 07-2011 issued by the Attorney General on 3 August, which seeks to harmonize actions with international standards before and during evictions. Similar complementary internal instructions were not adopted by the Judiciary, and a protocol drafted by the Presidential Commission on Human Rights (COPREDEH) had not yet been approved by the Ministry of the Interior. To avoid such violations, a moratorium on evictions should be established by all relevant institutions, until an internal mechanism consistent with human rights standards is adopted.

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

A. Human rights monitoring

78. OHCHR-Guatemala conducted 52 missions to monitor the human rights situation throughout the country, and held meetings with authorities, public institutions, social organizations, witnesses, victims and their families to follow up on reports of possible human rights violations relating to economic, social and cultural rights; the rights of indigenous people, women and human rights defenders; security; justice for past and present human rights violations; and the electoral process.

79. OHCHR-Guatemala further monitored the selection process for magistrates of the Constitutional Court and for the Rapporteurs of the National Mechanism for the Prevention of Torture, as well as judicial proceedings in emblematic cases.

B. Technical assistance

80. Technical assistance was provided to Government authorities and other stakeholders on a number of issues. OHCHR-Guatemala provided assistance on international human rights standards relating to a number of legislative initiatives, including reforms to the Statutory Law of the Public Prosecutor's Office and reforms to the Criminal Code relating to anticorruption measures and the death penalty, as well as a constitutional reform on security and justice. OHCHR-Guatemala also provided support to civil society organizations lobbying for the approval of the Law on the National Search Commission for Victims of Enforced Disappearance, the National Reparations Programme and the ratification of the Rome Statute of the International Criminal Court. Additionally, OHCHR-Guatemala continued monitoring the discussion on a project to reform the Law on the Judicial Career, promoted by the Supreme Court of Justice.

81. OHCHR-Guatemala continued the training programme with the School of Judicial Trainers, in which non-discrimination, indigenous peoples, gender and transitional justice modules were implemented. It further continued capacity-building activities with legal clerks and magistrates of the Constitutional Court, and provided specialized documents

systematizing international human rights standards to complement the analyses of the Court. Trainings were further held as part of ongoing capacity-building efforts with the Human Rights Unit and the Unit for *Amparos* within the Public Prosecutor's Office.

82. Technical assistance was provided to State institutions in drafting the third periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights and in preparing the reports on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities.

83. OHCHR-Guatemala participated in capacity-building activities directed at key actors in the fields of transitional justice, women deprived of their liberty, the death penalty, torture, the independence of the Judiciary and economic, social and cultural rights. It also supported human rights training programmes at the Law Faculties of the Rafael Landívar University and San Carlos University.

84. Technical assistance was provided to the Judiciary, the Public Prosecutor's Office and the Ministry of the Interior to draft an inter-institutional agreement to harmonize the procedures applied relating to evictions with international human rights standards. OHCHR-Guatemala provided support to promote among prosecutors the "General Instruction on the Procedure for Evictions" adopted by the Attorney General.

85. Within the framework of the Maya Programme (funded by the Government of Norway), OHCHR-Guatemala implemented the third year of the Technical Training Programme for Strategic Human Rights Litigation for Indigenous Peoples' Rights, addressed to university students and professors, as well as representatives of 20 indigenous organizations. A total of 11 technical projects for strategic litigation continued, and 9 others were started. The cases focused on the rights to land, territory and natural resources, consultation, self-determined development, identity, freedom of expression and communication, intercultural bilingual education, non-discrimination and free access to sacred places. In collaboration with the Mariano Gálvez, Rafael Landívar and San Carlos Universities, OHCHR-Guatemala concluded training programmes for a second group of indigenous organizations, university students and professors.

C. Promotion of human rights

86. OHCHR-Guatemala organized or participated in a number of events and seminars on relevant human rights issues. Following the massacre of 27 peasants in la Libertad, El Petén, OHCHR-Guatemala organized a round-table discussion in Flores, entitled "Petén, how many more ? ", with the participation of the Attorney General, the CICIG Commissioner, the Governor of El Petén, the local bishop and representatives of civil society. In addition, on the International Day of the World's Indigenous Peoples, OHCHR-Guatemala facilitated a national meeting in Totonicapán, to reflect on strategies and the impact achieved in defending ancestral lands and indigenous territories.

87. Together with other United Nations agencies, OHCHR-Guatemala co-organized a number of events on labour rights, the right to water and the role of media in preventing juvenile violence. OHCHR-Guatemala further organized public presentations of the reports of the visits to Guatemala by the Special Rapporteur on the right to health and the Special Rapporteur on the rights of indigenous peoples.

88. OHCHR-Guatemala continued providing support to the dialogue among the international community through the Working Group on Transitional Justice, and continued to support the Transitional Justice Programme (PAJUST) of the United Nations Development Programme, and participated in several inter-agency working groups, as well as in the establishment of the Peacebuilding Fund. In addition, OHCHR-Guatemala

participated in the International Conference in Support of the Central American Security Strategy, organized by the Central American Integration System (SICA).

89. Together with the Faculty of Law at Rafael Landívar University, OHCHR-Guatemala presented a publication on jurisprudential tendencies of the Constitutional Court with respect to human rights. OHCHR-Guatemala disseminated a compact disk on international human rights standards and a manual on human rights in the administration of justice.

90. Through the project entitled "Education and promotion of the rights of children and youth" (funded by the Catalan Agency for Development Cooperation), OHCHR-Guatemala carried out more than 25 awareness-raising and capacity-building activities with teachers and students. Printed and interactive materials on the rights of youth, persons with disabilities and the fight against discrimination were elaborated and disseminated.

91. Through press releases, opinion pieces and interviews, OHCHR-Guatemala promoted public debate on key current human rights-related topics. It presented the High Commissioner's annual report on the activities of OHCHR-Guatemala in the capital and four departments; and disseminated a compilation of recommendations by the High Commissioner and a priority human rights agenda for the new authorities. It distributed more than 56,000 copies of publications and supported the Second Film Festival on Truth, Memory and Justice and the Sixth Exhibit on Theatre for Human Rights.

X. Follow-up to recommendations

92. In her previous report to the Human Rights Council (A/HRC/16/20/Add.1), the High Commissioner compiled all the recommendations made in her previous five reports to the Government, Congress, the Judiciary, the Public Prosecutor's Office, civil society organizations and the international community, relating to the following themes: the legal framework for the protection of human rights; the right to life and security; the rule of law and impunity; indigenous peoples' rights; women's rights; and economic, social and cultural rights. The issues reflected in these recommendations are also addressed in the recommendations made to Guatemala under the universal periodic review.

93. Despite certain advances in the implementation of some of these recommendations, particularly regarding an increase of social expenditure, the prioritization of social programmes in the poorest municipalities, and criminal investigation and prosecution in emblematic cases, most of them have yet to be implemented.

XI. Recommendations

94. **The United Nations High Commissioner for Human Rights reiterates the importance of establishing a priority agenda for human rights action that should constitute a road map for the newly elected authorities for the period of 2012-2016.**

95. **In the light of the situation as observed by OHCHR-Guatemala, the High Commissioner:**

(a) Calls on the State to implement security and justice policies based on the respect for and guarantee of all human rights, without discrimination. The State should reverse the tendency to privatize public security, and strengthen the registration and control over private security enterprises. It should also implement a national disarmament plan;

(b) Calls on the Government and justice sector institutions to assume ownership of the achievements of the International Commission against Impunity in Guatemala and to take all necessary measures to ensure that the accomplishments achieved be preserved and protected and judicial independence guaranteed;

(c) Urges the Congress to ensure that reforms to the Laws on Professional Careers in the Judiciary and the Public Prosecutor's Office are adopted according to international standards, guaranteeing effective independence of the Judiciary and the separation of administrative functions from jurisdictional ones;

(d) Reiterates to the Government the need to implement and adequately fund the National Plan for the Prevention of Domestic Violence and Violence against Women and urges the justice sector to enforce the Law against Femicide and Other Forms of Violence against Women, including through the expansion of specialized courts, and the elimination of barriers that prevent victims from filing complaints;

(e) Calls on the Government to guarantee the continuance of the Unit for the Analysis of Attacks against Human Rights Defenders and strengthen its capacity to produce accurate analysis in order to achieve a real impact on the protection of human rights defenders;

(f) Urges the State to revert the current patterns of discrimination and exclusion that affect indigenous peoples by transforming the monocultural vision of the State to a truly multicultural and inclusive vision that ensures the full participation of indigenous peoples and respect for their individual and collective rights;

(g) Calls on the Government to promote a national dialogue with full, meaningful participation of the authorities of all indigenous peoples to discuss the best means to guarantee their right to decide their own development priorities;

(h) Calls on the Government to integrate the cash transfer programmes within social protection policies, providing solid legal and institutional frameworks and establishing clear and consistent criteria to select beneficiaries. These programmes should incorporate effective complaint and accountability mechanisms, guarantee access to information, and be designed, implemented and evaluated with the full participation of beneficiaries;

(i) Urges the Government to promote a sustainable and inclusive rural development policy, investing in public goods and production systems that revalue and strengthen the role of small-scale agriculture to guarantee indigenous and peasants' food security. A moratorium on all evictions should be adopted until due process and the right to food and adequate housing, among other rights, are guaranteed;

(j) Urges the State to implement a comprehensive and progressive tax reform that enables an expansion of fiscal resources, social expenditure and redistribution, while including a review of the tax collection and exemption systems, ensuring transparency, efficient use of public resources and accountability;

(k) Recalls that Guatemala will be examined for a second time by the Human Rights Council at the end of 2012, under the universal periodic review mechanism. The Government should make the most of this process and bring together all State institutions and civil society for an accountability exercise on the measures taken to ensure the effective implementation of all accepted recommendations formulated under the universal periodic review mechanism in 2008, as well as those issued by the United Nations and the Inter-American System protection mechanisms.