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RAPPORT DU HAUT-COMMISSAIRE DES NATIONS UNIES AUX DROITS DE L'HOMME ET SUIVI DE LA CONFÉRENCE MONDIALE SUR LES DROITS DE L'HOMME

Additif

Rapport de la Haut-Commissaire des Nations Unies aux droits de l'homme sur les activités du bureau du Haut-Commissariat au Guatemala*

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé, et il est distribué dans la langue originale et en anglais seulement.

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Résumé

Le présent rapport rend compte des activités menées pendant l'année 2007 par le bureau du Haut-Commissariat des Nations Unies aux droits de l'homme au Guatemala, conformément au mandat défini dans l'accord conclu le 10 janvier 2005 entre la Haut-Commissaire des Nations Unies aux droits de l'homme et le Gouvernement guatémaltèque. Le bureau du Haut-Commissariat au Guatemala a continué à étudier la situation des droits de l'homme et à fournir des services consultatifs et une assistance technique aux institutions de l'État, de manière à donner suite aux recommandations formulées dans le rapport précédent (A/HRC/4/49/Add.1).

Les activités du bureau se sont déroulées dans un contexte caractérisé par la persistance de la violence et de l'insécurité et le lancement de la campagne en vue des élections générales de 2007. La Haut-Commissaire a relevé particulièrement que la situation difficile compromettait la jouissance du droit à la vie et nécessitait que l'État renforce la prévention et les mesures prises pour enquêter sur les attentats et les violations de ce droit et punir les responsables. La Haut-Commissaire a également étudié avec attention la situation touchant la sécurité publique et ses répercussions sur les droits de l'homme, les changements intervenus au sein du Ministère de l'intérieur à la suite d'une grave crise institutionnelle, les défis qui s'attachent à la lutte contre l'impunité, le renforcement de la primauté du droit et la situation des défenseurs des droits de l'homme. En outre, la Haut-Commissaire se félicite de ce que le Congrès ait approuvé l'accord en vue de l'établissement de la Commission internationale contre l'impunité au Guatemala.

Le bureau du Haut-Commissariat au Guatemala a été renforcé pendant l'année 2007, ce qui lui a permis de recueillir une abondante information sur la situation des droits de l'homme dans le pays et d'améliorer ainsi les services consultatifs et la coopération technique fournis aux institutions nationales comme aux organisations de la société civile. Plusieurs institutions nationales, telles que le Congrès, la Commission présidentielle des droits de l'homme, le ministère public, le Secrétariat présidentiel à la condition féminine, le programme national d'indemnisation et le Bureau du médiateur aux droits de l'homme ont bénéficié des services consultatifs techniques du bureau. Ce dernier a facilité les échanges et contacts de la société civile avec les organes conventionnels et avec les titulaires de mandats au titre des procédures spéciales, ainsi que la diffusion des recommandations de ceux-ci et le suivi de leur application.

Le rapport traite des principales préoccupations concernant la situation des droits de l'homme, comme le droit à la vie et à la sécurité, la violence à l'égard des femmes, les agressions contre les défenseurs des droits de l'homme, la primauté du droit et l'impunité, l'accès des peuples autochtones à la justice, la justice de transition, les droits politiques, la lutte contre le racisme et la discrimination raciale, les droits économiques, sociaux et culturels, et expose les activités du bureau et la suite donnée aux recommandations. La Haut-Commissaire encourage à poursuivre la mise en œuvre des recommandations qu'elle a faites en 2006 et formule 12 recommandations nouvelles concernant le cadre normatif de la protection des droits de l'homme, la sécurité publique, la primauté du droit et la lutte contre l'impunité, la situation des peuples autochtones, les droits des femmes, la pauvreté ainsi que les droits économiques, sociaux et culturels, et concernant les services consultatifs et la coopération technique du bureau du Haut-Commissariat au Guatemala.

ANNEXE

REPORT OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS ON THE WORK OF ITS OFFICE IN GUATEMALA

CONTENTS

		Paragraphs	*Page*
Introduction		1 - 3	4
I.	NATIONAL CONTEXT	4 - 11	4
II.	HUMAN RIGHTS SITUATION	12 - 56	5
	A. Right to life and security	12 - 28	5
	B. Rule of law and impunity	29 - 43	8
	C. Political rights	44 - 48	11
	D. Combating racism and racial discrimination	49 - 52	11
	E. Economic, social and cultural rights	53 - 56	12
III.	WORK OF THE OFFICE	57 - 88	13
	A. Follow-up to recommendations	80 - 88	17
IV.	RECOMMENDATIONS	89 - 101	18
	A. Legislative framework	90 - 91	19
	B. Right to life and security	92 - 93	19
	C. Rule of law and impunity	94 - 96	19
	D. Indigenous peoples	97	19
	E. Women's rights	98	20
	F. Economic, social and cultural rights	99 - 100	20
	G. Technical cooperation and advisory services of the OHCHR office in Guatemala	101	20

Introduction

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

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

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

I. NATIONAL CONTEXT

4. In 2007, the national agenda was dominated by the general elections for members of Congress, mayors and the President and Vice-President of the Republic, held on 9 September. In the second round, on 4 November, Álvaro Colom of the Unidad Nacional de la Esperanza (UNE) was elected President of the Republic, defeating Otto Pérez Molina of the Partido Patriota.

5. The elections were marked by acts of violence, but also by a high level of participation in rural areas, facilitated by the recent decentralization of polling stations.

6. The Government launched a transition process to help future officials better understand the current state of public administration. This effort was viewed positively by a broad range of sectors.

7. The Congress elected Human Rights Procurator Sergio Morales to a second five-year term in that office.

8. Also, Congress adopted an agreement establishing the International Commission against Impunity in Guatemala (CICIG), upon the successful conclusion of consultations on the constitutionality of that body. The Secretary-General of the United Nations appointed the Spanish jurist Carlos Castresana to head the Commission. Congress also passed an Adoption Act in December 2007, establishing the National Adoptions Council to regulate this activity.

9. The Government was faced with critical situations, particularly in the area of public security. The extrajudicial execution of three Salvadoran members of the Central American Parliament and their driver, and the subsequent violent deaths in a maximum-security prison of the four police officers purported to have been involved in that incident, triggered a crisis that led to the dismissal of top officials of the Ministry of the Interior and the National Civil Police (PNC).

10. Although the economy grew by more than 5 per cent, this was not reflected in any improvement in the living conditions of the population.

11. Moreover, the failure of the Banco del Comercio exacerbated the banking-sector crisis which had been set off in October 2006 by the closure of the Banco del Café, affecting thousands of users of the financial system.

II. HUMAN RIGHTS SITUATION

A. Right to life and security

1. Right to life

12. In 2007 there were 5,781[1] violent deaths, slightly fewer than the 5,885 such cases recorded in 2006. While these statistics remain very high, it is the first time since 1999 that there has not been an increase. Guatemala's homicide rate was 47 per 100,000 people, making it one of the most violent countries in Latin America and in the world, of the countries officially at peace.[2]

13. The State's inability to ensure and guarantee the right to life was evidenced in various ways, among the most serious of which was the persistence of what is commonly known as "social cleansing", observed inter alia through bodies being found showing signs of torture and subsequent execution. Since investigations are not carried out, these deaths are attributed to common crime. Nevertheless, the circumstances in which these crimes are perpetrated, and the profile of the victims, indicate that "social cleansing" is being practised, sometimes under the direct or indirect responsibility of State officials. The OHCHR office in Guatemala noted the existence of organized groups carrying out such acts, often with the support of the local authorities and help from private security agencies.

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

15 The direct participation of members of the police force in the extrajudicial execution of three Salvadoran members of the Central American Parliament and their driver, and the subsequent deaths of the alleged perpetrators of those killings during their detention at the high-security El Boquerón prison, brought to the public eye the fact that organized structures are operating within various State institutions and committing serious human rights violations. These structures have been utilized by organized crime, drug traffickers and other powerful groups.

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[1] According to National Civil Police statistics.

[2] *Informe Estadístico de la violencia en Guatemala*, Public Security and Violence Prevention project of the United Nations Development Programme (UNDP), 2007.

Furthermore, the cases demonstrate that these structures carry out their activities with the help, acquiescence or tolerance of high-ranking officials in the Ministry of the Interior and the National Civil Police (PNC).

16. In response to those incidents, the heads of the Ministry of the Interior and the PNC were dismissed in March. Since that time, the new management has undertaken an internal clean-up of the PNC in three phases, covering 1,929 personnel. The first two stages resulted mainly in the dismissal of officers already on leave, and also of 495 active officers. While misgivings and indications exist as to the possible involvement of personnel of the Criminal Investigation Division (DINC), only 27 of those dismissed worked for that division.

17. In spite of these clean-up efforts, in September, various PNC officers were allegedly involved in the abduction and subsequent extrajudicial execution of one minor and four juveniles in the El Gallito neighbourhood, demonstrating that these processes have yet to successfully dismantle the above-mentioned structures, which continued to commit extrajudicial executions and other serious violations of rights.

2. Security

18. Violence and insecurity fuelled by such underlying factors as unemployment, social exclusion and non-enforcement of the law - which, according to statistics, tend to occur mostly in less-poor areas where the population is non-indigenous[3] - and also stemming from drug trafficking and organized crime pose a major challenge to the State, which, after the peace accords were concluded, committed itself to the professional development of the public security forces under the authority of the civil administration.

19. The current state of the National Civil Police (PNC) is the result of the fitful attention it has been paid by the various Governments since its establishment in 1997. Ten years later, the authorities have yet to set up effective mechanisms for selection, internal monitoring, accountability and clean-up within this body. This has hindered efforts towards sustained institutional strengthening of the police. In the period from 1997 to 2004, the United Nations Verification Mission in Guatemala (MINUGUA) warned in various reports about the ineffectiveness of the mechanisms in place for the selection and clean-up of the police force.

20. The lack of comprehensive public policies for strengthening the PNC and the failure to develop a police career structure left a gap in the upper ranks of the force, which on occasion was filled by elements linked to organized crime, significantly affecting the State's governability. To tackle these challenges, the PNC will need to undergo a thorough restructuring process if it is to regain its dignity, maintain its civil character and win back the trust of the population. This restructuring will have to take into account aspects relating to organizational matters, personnel, deployment, police career structure and ethics, training and incentives, the consolidation of mechanisms for accountability, monitoring and clean-up, and the restructuring

[3] Ibid.

and reorienting of the criminal investigation bodies. Greater priority should be given to public policies on crime prevention, with an increase in the budget of the office of the Deputy Minister for Community Support.

21. The civil intelligence system needs to be strengthened and implemented to ensure its independence from other bodies. Two years after the adoption of the Act on the Department of Civil Intelligence (DIGICI), recently, in the last few months of the Administration, that Department was allocated an initial budget and substantive civil and police personnel, and work has been started on creating its administrative structure. With international assistance, the Centre for the Compilation, Analysis and Dissemination of Information on Crime (CRADIC) was established as an analytical unit to help in crime investigation.

22. The Prisons Act entered into force in April, but the limited budget allocated to the prison system has impeded its implementation. Implementation of the Organized Crime Act, in force since August 2006, has also been hampered by the lack of funds, staff training and technology needed, even though three regulations for its functioning have been adopted.

23. The State of Guatemala is faced with the challenge and obligation to protect the lives and guarantee the security of its population by implementing a comprehensive public security plan. The openness that the Ministry of the Interior has shown over the last eight months, the efforts to strengthen the Department of Civil Intelligence (DIGICI) and the progress made in the clean-up process, together with the restructuring of the General Inspectorate of the PNC, are auspicious signs of this necessary change in direction.

3. Violence against women

24. Although the number of violent deaths among women is high (590, according to PNC data), an institutional response for diligent prevention, investigation and sanctioning in such cases has yet to be devised. Discriminatory practices are engaged in by justice system officials, as reflected in the non-investigation of cases and the tendency to attribute a high degree of responsibility to the victims themselves. There have also been cases of State officials sexually abusing women under detention or under their authority.

25. Domestic violence continued to be one of the most serious problems faced by women. In 2007, the judiciary registered 29,138[4] complaints of domestic violence. Shortcomings in the implementation of protection measures and in comprehensive assistance services, and gaps in the legal framework for the criminalization of domestic violence against women, have led to inadequate protection and enabled the phenomenon to persist.

26. The office recognizes the efforts being made by civil society organizations for the protection and care of women who are victims of violence, and encourages State institutions to show a continued willingness to work jointly on developing measures to combat all forms of violence against women.

[4] Judiciary, National Centre for Analysis and Documentation of the Judiciary, 2007.

4. Human rights defenders

27. Human rights defenders carried out their work in a context marked by threats and attacks, particularly in the early months of the year. Initiatives that focus on prevention, such as the analysis of patterns of attacks against human rights defenders or the rapid response units set up over the last few months in coordination with the Ministry of the Interior, have helped reduce the incidence of attacks against human rights defenders by 30 per cent. However, complaints about threats or attacks against human rights defenders have scarcely been investigated by the Public Prosecutor's Office. The OHCHR office in Guatemala therefore urges the authorities to assume fully their responsibility to prevent and investigate such cases and to prosecute and punish perpetrators.

28. The office takes particular note of the process being spearheaded by the Presidential Human Rights Commission (COPREDEH) and civil society organizations to develop a comprehensive policy for the protection of human rights defenders which includes an agreed catalogue of measures and a mechanism for the prevention and protection of those persons. This comprehensive policy must be adopted and implemented as a means of ensuring the protection of human rights defenders.

B. Rule of law and impunity

1. Justice and impunity

29. The systematic lack of criminal investigation and prosecution procedures contrasts with the high crime rate, and is a measure of the State's failure to comply with its duty to guarantee rights.

30. Some progress has been made in the implementation of the strategic sectoral plan for criminal justice reform; for example, four new criminal courts operating on a rotating basis were opened, but a systematic, interdependent and comprehensive method for their functioning has yet to be put in place. Also noteworthy are the efforts of the Public Prosecutor's Office to implement the plan for a criminal prosecution policy, strengthen the analysis unit and adopt two general instructions on the coordination of criminal investigation efforts with the PNC. The Ministry of the Interior adopted the 1500-2007 accord with the same aim.

31. These measures have not yet been effective in attacking the causes of impunity and have not had any significant impact. In relation to criminal action and investigation procedures, the efforts of the Public Prosecutor's Office have been insufficient and incommensurate with the magnitude of the problem of impunity. Given the material and human resources currently available, better results should be achieved than has been the case to date.

32. The ineffectiveness of the Public Prosecutor's Office was evident in problems such as the low level of identification of suspected perpetrators, inadequate examination and handling of evidence and of crime scenes, and serious failings in ensuring the chain of custody and in concluding initial investigations. The OHCHR office noted a lack of coordination among prosecutors' offices in exchanging information on potentially related case files. Many case transfers from one prosecutor's office to another do not constitute any real progress, and there is

confusion regarding which specialized prosecutor's office particular cases should be referred to. This situation could be addressed through general rules governing jurisdiction. The PNC has also demonstrated shortcomings in assisting criminal investigations; for example, it often fails to carry out arrests.

33. On the issue of crimes committed against women, the justice system's weaknesses and shortcomings with regard to investigation, especially into sex crimes, together with the lack of a proper legal framework and the discriminatory attitude of those running the system, continue to hinder women's access to justice and perpetuate the impunity of perpetrators of crimes against women.

34. Although numerous studies[5] and recommendations have repeatedly pointed to the shortcomings in the disciplinary and performance evaluation mechanisms within judicial institutions, the measures needed for guaranteeing effective internal controls have yet to be taken. While guidelines are drawn up, their implementation is not effectively monitored, nor are any disciplinary sanctions imposed as a direct result of ongoing monitoring. In the Public Prosecutor's Office, there is also a lack of effective and comprehensive regulation of prosecutors' careers.

35. The Public Prosecutor's Office has set up a case management system designed to ensure that these efforts are monitored effectively, subject to the creation of the management capacity needed for it to be fully utilized. In order for the witness protection mechanism to serve as a fundamental tool in investigation and prosecution, appropriate policies, programmes and instructions should be developed so that its efforts can be coordinated with those of prosecutors and it is provided with sufficient resources.

36. The recent entry into operation of the National Institute of Forensic Science (INACIF) may be a significant step towards strengthening criminal investigation, as long as it is guaranteed resources to function effectively, and a strict chain of custody is ensured starting at the crime scene. The general regulations pertaining to the INACIF Organization Act must be supplemented in order to clearly define its functions and its relationship to other entities within the justice system.

37. The establishment and operation of the International Commission against Impunity in Guatemala (CICIG) will be another important tool to help national institutions to combat impunity.

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[5] National Commission on the Strengthening of the Justice System, *Una Nueva Justicia para la Paz, el Proceso de Implementación 1998-2004*; Social Studies and Research Association (ASIES), *Proceso del Fortalecimiento del Sistema de Justicia: avances y debilidades 2003-2006*.

2. Indigenous peoples' access to justice

38. The extension of the justice system's geographical coverage within the Republic[6] and the implementation of initiatives such as the "Proposed public policy guidelines for indigenous peoples' access to justice"[7] were positive developments. In order to be effective, these measures must be accompanied by a policy for facilitating indigenous peoples' access to justice in order to fill the current gaps, particularly for indigenous women, who continue to be victims of discrimination and lack access to justice.[8]

39. The office, together with the Social Studies and Research Association (ASIES), conducted a study in the department of Quiché, which showed that access to justice is seriously conditioned by numerous factors. In areas where the population is predominantly indigenous, the justice system carries out the responsibilities formally assigned to it but, generally speaking, fails to resolve the conflicts affecting those areas.

40. Efforts towards effective juridical pluralism remain unfocused and, in some cases, are contradictory. In this situation, the application of indigenous law presents advantages in terms of geographical and linguistic accessibility and a sense of cultural relevance, thus fostering redress and solutions to the satisfaction of both sides in the dispute.

3. Transitional justice

41. Some progress has been made under the National Compensation Programme (PNR), including the establishment of the National Register of Victims, the financial compensation paid to 8,187 victims and the criteria drawn up to implement other measures to help restore the dignity and bring about the psychosocial rehabilitation of victims. However, the State still needs to take measures commensurate with the integral and interrelated nature of its obligations for guaranteeing the rights to truth, justice and full reparation.[9]

42. The adoption of the law supporting the PNR would raise its status to that of an autonomous institution, guaranteeing its independence and sustainability. Likewise, the adoption into law of the bill establishing the National Commission to Search for Victims of Enforced and Other Forms of Disappearance would be a significant step towards ensuring the right to truth.[10]

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[6] Seven mediation centres were set up: Panzós; Tactic; San Cristóbal Verapaz; San Miguel Petapa; Sololá; Santa Lucía Cotzumalguapa; and Malacatán.

[7] National Commission on the Strengthening of the Justice System.

[8] Office for the Defence of Indigenous Women (DEMI), *El Acceso de las Mujeres Indígenas al Sistema de Justicia Oficial de Guatemala*, 2007.

[9] The Commission for Historical Clarification (CEH) estimated in 1999 that the internal armed conflict had claimed more than 200,000 victims.

[10] In 1999, CEH registered 6,159 cases of enforced disappearance and estimated that there might be as many as 40,000 victims of disappearances.

43. Overcoming the obstacles to the investigation and punishment of suspected perpetrators of serious violations committed during the internal armed conflict remains a challenge. In the decision on Spain's request for the arrest of a number of persons with a view to their extradition, the Constitutional Court missed a prime opportunity to highlight the State's obligation to investigate, try and punish perpetrators of serious violations committed more than 25 years ago, as well as to adopt prompt measures for guaranteeing the right to justice and respond to the legitimate interest of Spain and the international community in ensuring that those crimes do not go unpunished.

C. Political rights

44. In 2007, a reform of the Elections and Political Parties Act was introduced, which led to the decentralization of polling stations, and a 54.39 per cent increase in the number of such stations in comparison with the 2003 elections. This measure brought polling centres closer to the people, thus facilitating the exercise of their right to vote, particularly in rural areas.

45. As regards the participation of women, although there were more women candidates standing for elective public office, and the number of Congress women rose from 14 to 19, at the municipal level, the number of women elected as mayor dropped from 8 to 7. This reflects the difficulty women face in participating in politics and the lack of special State measures to help reverse this situation.

46. Both rounds of voting revealed deficiencies and cases of dual registration in the electoral roll, reflecting weaknesses in the municipal identity card system and leading to violent incidents in various parts of the country. The creation of a new single identity document and a national civil register could help prevent such duplicate entries and irregular registrations.

47. This year has been marked by acts of violence linked to the political unrest. From January to November 2007, the Office of the Human Rights Procurator (PDH) registered 64 attacks against members of political parties, resulting in 26 violent deaths. Many of the acts of political violence were a reflection of an overall situation of insecurity and impunity.

48. One of the factors accounting for the increase in political violence was the growing presence of organized crime and drug traffickers aiming to increase their power at the local level and operate with greater impunity.

D. Combating racism and racial discrimination

49. The Government continued to promote actions to combat racism and discrimination against indigenous peoples. It made efforts to implement the public policy on coexistence and the elimination of racism and racial discrimination, and both the Presidential Commission on Discrimination and Racism (CODISRA) and the Office for the Defence of Indigenous Women (DEMI) are carrying out various measures to foster respect for the rights of indigenous peoples. The current activities need to be reinforced by adequate budget allocations and cross-cutting goals applied throughout the public administration, so as to combat legal, interpersonal, institutional and structural discrimination more effectively.

50. With regard to the prosecution and punishment of the offence of discrimination, in spite of general instruction 9-2007 issued by the Public Prosecutor's Office, no decision was handed down in 2007 on any of the 70 complaints received that year. Most of the complaints were directed against individuals. Also, no effective disciplinary sanctions have been taken to address the discriminatory behaviour observed among State officials.

1. Right of consultation under ILO Convention No. 169

51. There is a noticeable lack of consultation of indigenous peoples, whether in relation to mining or to other natural resource exploration activities. On 30 November, the International Labour Organization (ILO) recommended that the Government of Guatemala should hold prior consultations with indigenous peoples in these areas, and called for the adoption of an appropriate law and regulations in that respect.[11] In a judgement of 8 May 2007, the Constitutional Court stated that, even though the results of consultations may reflect the views of the community, they cannot be held to constitute decisions on matters that are not within the competence of the authorities organizing such consultations or the communities. The Court also urged Congress to draw up legislation on consultations and ruled that the Executive must create mechanisms for fair compensation where mining activities are conducted, through community development measures.

52. The energy and mining policy adopted in October 2007[12] envisages consultation processes for the mining sector. Nevertheless, comprehensive regulation is still needed through a law on consultation, in line with the 1989 ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169).

E. Economic, social and cultural rights

53. In the context of economic, social and cultural rights, Guatemala has a legal obligation to satisfy minimum requirements, to perform obligations of an immediate nature, and to take measures to ensure the progressive achievement of such rights. Furthermore, the Millennium Development Goals (MDGs) reflect a crucial commitment to enable Guatemala to meet the fundamental social, economic and environmental targets by 2015, complementing the State's performance of its international legal obligations.

54. Halfway towards the 2015 deadline, Guatemala is still a long way from achieving the MDGs, especially as regards eradicating extreme poverty and reducing the maternal mortality and child malnutrition rates. Progress towards these goals has not been evenly paced or equal for all groups; progress has been slowest among the rural and indigenous population, especially women and children.

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[11] Report of the committee set up to examine the representation alleging non-observance by Guatemala of ILO Convention No. 169, made by the Federation of Country and City Workers (FTCC) in 2005.

[12] Government decision No. 481-2007.

55. Guatemala is among the countries with the highest levels of inequality in Latin America,[13] and it has the second lowest human development index in the region.[14] This situation of inequality and poverty continues to be the main challenge the State faces in progressing towards the realization of economic, social and cultural rights. Moreover, a limited budget has continued to hinder the State's ability to fulfil its obligation of using the maximum available resources to progressively ensure the full enjoyment of these rights.

56. Achieving the MDGs and progressing towards guaranteeing economic, social and cultural rights require the strengthening of existing social policies, through actions to improve their effectiveness while ensuring their sustainability. Sustained economic growth is needed, within the framework of a national development strategy which includes improved redistribution of income and a significant increase in social spending. In order for Guatemala to achieve this, the office reiterates the need for a tax policy that would broaden the tax base and improve tax collection.

III. WORK OF THE OFFICE

57. In the course of 2007, the office in Guatemala carried out 70 observation missions in the 22 departments of Guatemala, accounting for a total of 115 days in the field. Of the 184 complaints received, 110 were selected for follow-up because they concerned human rights violations. The office also carried out 1,513 meetings and interviews with authorities and representatives of civil society to supplement its observation of the human rights situation. These efforts enabled the office to gather information needed to analyse trends in the human rights situation and focus technical cooperation and advisory services and provide support to victims and witnesses, facilitating cooperation between them and the authorities. The office provided advice to civil society organizations and national institutions in various cases, such as helping reunite a child with his parents after they had been tricked into giving him up for illegal adoption.

58. The office made presentations on its annual report for 2006 in Quetzaltenango, Cobán and Chiquimula, to representatives of State institutions, civil society and the press, with the aim of making its analysis of the human rights situation and the work it is carrying out better known.

59. In furtherance of its mandate on public information, the office continued its efforts at media dissemination through press conferences and releases, feature articles, interviews and publications. The main subjects addressed were the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, the report of the Working Group on Enforced or Involuntary Disappearances, transitional justice, human rights and elections, the rights of indigenous peoples, racial and gender discrimination, the rights of persons with disabilities, and the right to food. In addition, educational conferences and activities were organized for teachers and students. Information was provided to different publics through a documentation centre which has a collection of more than 2,300 works on human rights.

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[13] 0.57 Gini coefficient.

[14] UNDP, *Human Development Report 2007/2008*.

60. The office continued to work with the executive committee and various commissions of Congress such as the commissions on human rights, foreign affairs, internal affairs, and justice. Further to the recommendations, it gave priority to work on: ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment; establishment of the International Commission against Impunity in Guatemala (CICIG); the Rome Statute of the International Criminal Court; and recognition of the competence of the Committee on the Elimination of Racial Discrimination and of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. To that end relevant strategies were formulated which served as a basis for drawing up documents on harmonization of efforts and for conducting seminars and coordinating efforts, first and foremost with governmental and non-governmental entities. This enabled the office to make a significant contribution towards Congress's approval of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and recognition of the competence of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and of the International Commission against Impunity in Guatemala (CICIG), pursuant to the recommendation concerning a stronger role for the international human rights legal framework.

61. The office promoted the legislative initiatives recommended in the 2006 report, providing technical assistance as requested by the legislature. It organized analytical seminars and submitted reports on the harmonization of national legislation with international treaties, in relation to various proposals on legal matters linked to the rights of women, in coordination with the United Nations Development Fund for Women (UNIFEM) and the United Nations Population Fund (UNFPA). The office provided advice to the Human Rights Commission on the creation of CICIG, as approved by Decree 35-2007 and other pending legislation. It helped draw up the legislative initiative for the National Compensation Programme (PNR) and the initiative to set up a National Commission to Search for Victims of Enforced Disappearance.

62. Within Congress, the office worked with a number of non-governmental organizations and institutions on a case-by-case basis, and with such bodies as the consortium of NGOs working with Congress, the committee of persons deprived of their liberty, the coordinating committee for support to reform of the penitentiary system, the network against the death penalty and the Guatemalan coalition in support of the International Criminal Court.

63. The office continued to provide assistance and advice to the Presidential Human Rights Commission (COPREDEH) in preparing Guatemala's third periodic report to the Human Rights Committee, its initial report to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, its special report to the Committee against Torture and its special report to the Committee on the Elimination of Racial Discrimination. To this end, it formulated and helped set up methodologies to strengthen the processes of drafting and dissemination of reports, and produced tools for the compilation and assessment of data following the guidelines, general comments and concluding observations of treaty bodies. The office also provided advice on the preparation and subsequent revision of draft reports and on how to systematize that process.

64. The office, together with COPREDEH, completed an analysis of the extent of Guatemala's compliance with the 348 concluding observations addressed to it by the six treaty bodies and, in

order to identify which actions have yet to be implemented, grouped those observations together under six subject headings: legislation, public policy, institutional framework, awareness-raising, budgetary matters and statistics. These efforts, in addition to serving to promote and disseminate the observations of the treaty bodies, will prove particularly useful in helping to advance the human rights agenda among the new government authorities.

65. The office organized seminars for civil society organizations, such as a national round table on migration, for the purpose of preparing an alternative report to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. The office conducted a series of workshops for Sobrevivientes - an organization which handles cases of violence and discrimination against women - on the procedure for submitting individual communications to the Committee on the Elimination of Discrimination against Women. It also organized numerous training workshops for NGOs addressing matters relating to persons with disabilities, migrants, indigenous persons or women's rights, on the functioning and importance of the treaty bodies and the special procedures. Through these activities, organizations are confirming the value of these mechanisms, as an alternative or complement to the inter-American system for the protection of human rights.

66. The office held a number of meetings for human rights organizations on measures for the protection of human rights defenders, the cataloguing of such measures and the sharing of experiences, for example on cooperative prevention and protection measures among State entities. The office provided advice to human rights defenders and assisted them in dealing with the threats they received, facilitating communication with the authorities.

67. The office concluded an agreement with the Presidential Secretariat for Women (SEPREM), under which it provided technical assistance to help Guatemala prepare its seventh periodic report to the Committee on the Elimination of Discrimination against Women and follow up on the Committee's recommendations. The office organized various workshops on the Convention on the Elimination of All Forms of Discrimination against Women for SEPREM headquarters and regional staff and participated in the signing of comprehensive women's security agreements at the municipal level in various departments of Guatemala. To help prepare the seventh report to the Committee, thematic workshops were organized to analyse data with institutions under the three branches of national government. These workshops not only facilitated the gathering of information, but also helped institutions to take the treaty body recommendations on board.

68. The office organized a workshop for representatives of the Presidential Human Rights Commission (COPREDEH), the Ministry of Foreign Affairs, the Presidential Commission on Discrimination and Racism (CODISRA), the Presidential Secretariat for Women (SEPREM) and other national institutions on a methodology and guidelines relating to the universal periodic review of the Human Rights Council. A similar workshop was organized for NGOs, focusing on procedure and on the participation and impact of NGOs. This information and methodology will enable better use to be made of this new universal mechanism.

69. Under its agreement with the Office of the Human Rights Procurator (PDH), the OHCHR office provided technical assistance for the incorporation of human rights into the education reform, in line with the Plan of Action and World Programme for Human Rights Education.

Work on the institutional development of the PDH unit on international mechanisms and instruments has begun with regard to direct communications with the treaty bodies and advisory services to civil society organizations on alternative reports. The office, together with the PDH and other institutions such as the National Network for Support to Disabled Persons (CONADI), COPREDEH and the Ministry of Foreign Affairs, conducted various seminars to raise awareness and promote ratification of the new Convention on the Rights of Persons with Disabilities. The advisory services that the office provided on this new international treaty have triggered significant involvement from the institutions, which should facilitate the ensuing legislative process.

70. The office conducted a workshop for the Office of the Human Rights Procurator (PDH) on the role of national human rights institutions in preparing information for use in the universal periodic review process. Lastly, together with the Special Investigations Unit of the PDH, it undertook an investigation into enforced disappearances. These activities brought the work of the PDH closer in line with United Nations protection mechanisms and have facilitated enhanced coordination for 2008.

71. The OHCHR office in Guatemala provided technical advice to the Prisons Department on the process of implementing the Prisons Act, especially as regards regulations.

72. On the basis of a letter of understanding signed with the Public Prosecutor's Office, the OHCHR office provided advisory services on the general instruction relating to the offence of discrimination. It conducted a study on the protection of witnesses and parties to judicial proceedings and, on the basis of an extensive assessment, proposed legislative, institutional and operational reforms. The office also trained a group of prosecutors on how to investigate and prosecute cases of enforced disappearance.

73. The office continued to provide technical assistance to the National Compensation Programme (PNR) on subjects such as mechanisms for compensation and existing international standards and principles relating to the right to redress, and furnished examples of comparative experience in the implementation of compensation programmes.

74. Together with the Social Studies and Research Association (ASIES), the office prepared a study on "Access by indigenous peoples to justice: perspectives in indigenous law and official justice". This study is meant to help correct shortcomings in access to official justice and respect for indigenous law. In other institutions of the justice sector, the office undertook a study on human rights trends under the Constitutional Court.

75. Work was conducted on the institutional strengthening of the Office for the Defence of Indigenous Women (DEMI) through various actions relating to justice and violence against indigenous women in the context of investigations, the handling of cases, communication and dissemination of information. The office provided assistance to women's organizations and indigenous authorities in processes relating to participation, and basic training on human rights.

76. With technical assistance from the office, DEMI presented its second thematic report, on "Access by indigenous women to the justice administration system in Guatemala". The conclusions of that report shed light on the challenges indigenous women face in accessing

justice when they have been victims of violence, stemming from ethnolinguistic and cultural diversity. The report brings to light the socio-economic exclusion of women, and identifies strategic guidelines for helping to achieve equal access to justice administration in this multicultural State.

77. In a joint effort with the Mexico office, a regional seminar on violence against indigenous women in Guatemala and Mexico was held, with participation by indigenous women who have been victims of violence. This seminar was organized with the help of DEMI, the Political Association of Maya Women MOLOJ and the Pop Noj educational programme.

78. The office helped the Presidential Commission on Discrimination and Racism (CODISRA) to design a pilot awareness-raising campaign on racial discrimination, which received media coverage.

79. The office organized workshops on incorporating a human rights perspective into development programmes, for officials of United Nations agencies, programmes and funds in Guatemala. These workshops will help to incorporate that perspective in joint programming of the United Nations in the country and in such activities as the new development analysis and programming cycle in 2008.

A. Follow-up to recommendations

80. In her previous report, the High Commissioner formulated 17 recommendations to the Government, Congress and the judiciary, as well as to civil society organizations, on the following topics: legal framework for human rights protection, public safety, the rule of law and combating impunity, indigenous peoples, political rights, violence against women, economic, social and cultural rights, human rights defenders, public policy relating to human rights, and advisory services and technical cooperation of the OHCHR office in Guatemala. The office has been supporting and monitoring implementation of the recommendations.

81. The High Commissioner welcomes the approval by Congress of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Decree No. 53-2007), and encourages its prompt implementation by the State. The High Commissioner also welcomes the adoption of the Act establishing the Commission against Impunity in Guatemala (CICIG), and trusts that the justice administration institutions will provide it with adequate support and collaboration. The High Commissioner welcomes recognition of the competence of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, in accordance with article 77 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Government Decision 384-2007).

82. The High Commissioner recognizes the efforts made, as regards regulation and institutional and budgetary support, to implement the Act establishing the National Institute of Forensic Science (INACIF) and the Prisons Act.

83. The High Commissioner notes that the Congress of Guatemala has yet to recognize the competence of the Committee on the Elimination of Racial Discrimination under article 14 of the

International Convention on the Elimination of Racial Discrimination. The High Commissioner further notes that ratification of the Rome Statute of the International Criminal Court is still pending before Congress.

84. The High Commissioner draws attention to the fact that various pieces of draft legislation on security and justice, notably laws on access to information, private security firms, weapons and munitions, have not been passed; amendments to the Legal Protection, Habeas Corpus and Constitutionality Act and to the Public Order Act are also pending.

85. The High Commissioner welcomes the efforts being made to implement the National Compensation Programme (PNR), especially as regards compensation to victims, but notes that non-financial measures to ensure full redress have yet to be implemented. She continues to urge that the legislative and operational framework for this programme should be strengthened.

86. With regard to the recommendation to establish effective programmes for the protection of human rights defenders, the High Commissioner acknowledges the efforts made by the Presidential Human Rights Commission (COPREDEH), the Ministry of the Interior and civil society organizations to agree on a proposal for cataloguing measures and creating a mechanism for the protection of human rights defenders, and encourages them to continue those efforts.

87. The High Commissioner welcomes the process of evaluating and updating the National Policy for the Advancement and Development of Guatemalan Women and the Equal Opportunity Plan 2001-2006 led by the Presidential Secretariat for Women (SEPREM) and the Office for the Defence of Indigenous Women (DEMI), in coordination with the Women's National Forum. This evaluation revealed that progress had been made, but also brought to light the major challenges that remain to reinforcing the impact of the Policy, especially as regards incorporating an ethnocultural perspective on a cross-cutting basis and strengthening the Policy and Plan. The evaluation led to the presentation, in December, of the National Policy for the Advancement and Comprehensive Development of Women for the period 2008-2023, under Government Decision No. 570-2007.

88. The High Commissioner welcomes the introduction of a national plan of action for the promotion and protection of human rights, as a contribution to the human rights agenda. On that basis, the new authorities will be faced with the challenge of more clearly identifying objectives, actions and goals, specifying the responsibilities of each institution involved, and of fostering the sustainability of the plan and establishing evaluation indicators and implementation timetables.

IV. RECOMMENDATIONS

89. **The High Commissioner urges the State to take coordinated, consistent and effective action to implement all the recommendations made in the OHCHR reports for 2005 and 2006.**

A. Legislative framework

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

91. **The High Commissioner urges Congress to adopt legislation on security and justice and adopt a law on the National Compensation Programme (PNR) and full reparation, a law governing the consultation procedure in accordance with ILO Convention No. 169, and an amendment to the law on migration in accordance with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.**

B. Right to life and security

92. **The High Commissioner urges the Government to undertake comprehensive efforts for a thorough restructuring of the National Civil Police (PNC). She calls on the Government to intensify its clean-up efforts and substantially strengthen internal and external control mechanisms and to ensure a police career structure with the means to assess shortcomings in ability and integrity. The High Commissioner urges the authorities to conduct public campaigns to restore the image of and rebuild trust in the police, starting with implementation of a model based on crime prevention and investigation, transparency, defence of citizens' rights and respect for human rights.**

93. **The High Commissioner encourages the State party to continue strengthening the Department of Civil Intelligence (DIGICI), and improve the data and statistics systems which are helpful in drawing up prevention policies.**

C. Rule of law and impunity

94. **The High Commissioner urges the Public Prosecutor's Office and the National Civil Police (PNC) to apply technical criteria for every step in the investigation process, as well as effective operational mechanisms for coordination, including inter-institutional analyses of patterns of criminal conduct and development of a comprehensive procedure for criminal investigation and prosecution.**

95. **The High Commissioner calls upon judicial institutions to take the measures needed to conduct effective internal controls, particularly as regards the disciplinary and performance evaluation mechanisms, and to ensure the accountability of judicial officials, including high-ranking officials.**

96. **The High Commissioner urges the judiciary and the other judicial institutions to develop and implement, in consultation with indigenous peoples, a sectoral policy for access to justice which incorporates the elements of language, geography and cultural relevance, while also responding to the need to overcome juridical monism.**

D. Indigenous peoples

97. **The High Commissioner urges the State to adopt the appropriate legislative, judicial and administrative measures to give effect to the rights recognized under the United Nations Declaration on the Rights of Indigenous Peoples and urges the Government to make progress in implementing the policy on coexistence and the elimination of racism and racial discrimination.**

E. Women's rights

98. **The High Commissioner encourages the Government to apply the updated national policy on advancement and equal opportunity for Guatemalan women by devising a plan for its implementation. The Government is urged to continue strengthening the Presidential Secretariat for Women (SEPREM), the Office for the Defence of Indigenous Women (DEMI), and the National Coordinating Office for the Prevention of Domestic Violence and Violence against Women (CONAPREVI). Also, the High Commissioner urges Congress to give priority to reforms aimed at eliminating discrimination and combating violence, particularly the amendments to the Civil Code to equalize the marriage age for men and women, to the Labour Code to ensure adequate protection of women working as domestics in private homes, and to the section of the Criminal Code relating to sexual offences, as well as the criminalization of domestic violence and sexual abuse, the need for which has already been reiterated.**

F. Economic, social and cultural rights

99. **The High Commissioner urges Congress and the Government to formulate a social policy based on a human rights and gender perspective, which should include reorienting the national general budget and adopting sustained policies for combating poverty and reducing inequality. She also reiterates the need to raise taxes and review the tax collection and exemption system.**

100. **The High Commissioner urges the Government to strengthen technical capacity for statistical analyses, from a human rights, ethnicity and gender perspective, to help create indicators for evaluating progress made in realizing both civil and political rights and economic, social and cultural rights.**

G. Technical cooperation and advisory services of the OHCHR office in Guatemala

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