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QUESTIONS AUTOCHTONES

Lettre datée du 13 février 2003, adressée au secrétariat de la Commission des droits de l'homme par la Chargée d'affaires par intérim du Guatemala auprès de l'Office des Nations Unies à Genève

J'ai l'honneur de vous faire tenir ci-inclus* les commentaires et observations du Gouvernement guatémaltèque concernant le rapport du Rapporteur spécial sur la situation des droits de l'homme et des libertés fondamentales des populations autochtones, présenté conformément à la résolution 2001/57 de la Commission des droits de l'homme. Je vous serais reconnaissant de les faire distribuer en tant que document officiel de la cinquante-neuvième session de la Commission des droits de l'homme.

La Chargée d'affaires par intérim
(*Signé*) Carla **Rodríguez Mancía**

* L'annexe est reproduite uniquement dans la langue où elle a été reçue et en anglais.

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Annex

COMMENTS AND OBSERVATIONS OF THE GOVERNMENT OF GUATEMALA ON THE REPORT BY THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS PEOPLE, SUBMITTED PURSUANT TO COMMISSION ON HUMAN RIGHTS RESOLUTION 2001/57

Introduction

1. These comments and observations are submitted following the Government's review and analysis of a draft of the report to be submitted by Mr. Rodolfo Stavenhagen pursuant to Commission on Human Rights resolution 2001/57.

2. The Special Rapporteur's report contains some points that were examined during his visit to Guatemala from 1 to 11 September 2002 at the invitation of the Government.

3. The Government is taking a new approach to the promotion and protection of fundamental guarantees, and finds the work of the international human rights bodies, and especially that of special rapporteurs, extremely useful in providing an objective viewpoint that complements the necessary stocktaking of State action in various fields. This approach is behind the invitation to various rapporteurs to observe the human rights situation in the country at first hand.

4. After the signing of the Peace Agreements, a long-term process was set in motion in Guatemala, despite all the existing constraints, with a view to overcoming the material and social conditions that led to a political and military confrontation lasting 36 years. All this implies undertaking profound changes to society, the lasting effects of which it will only be possible to evaluate in the medium and long term.

5. The Government welcomes the work done by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, as contained in the above-mentioned report, and urges him to continue studying the situation of indigenous peoples in Guatemala. Nevertheless, the Government does not agree with everything in the report and is therefore making some detailed comments in the hope that they will be taken into account in the Special Rapporteur's final report.

6. For its part, the Guatemalan Government, through the mechanisms described below, will study and analyse each of the Special Rapporteur's recommendations with a view to refining and eventually implementing them insofar as its means permit.

7. The Guatemalan Government reiterates its commitment to implementing the Peace Agreements, since they involve overcoming many of the structural problems in Guatemalan society, including the situation of indigenous peoples.

8. These comments and observations are organized as follows: (i) comments on the recommendations in the report, including the arrangements the Government will make to bring the report's contents and recommendations to the attention of the various government and State officials, as well as interested parties from civil society; and (ii) an analysis of the main points of the Special Rapporteur's report, in which the Government refers to and criticizes specific paragraphs of the report and in which it also outlines the continuous efforts it is making to

improve the situation of indigenous peoples, with a view to giving the Special Rapporteur a fuller picture.

I. THE GUATEMALAN GOVERNMENT'S RESPONSE TO THE SPECIAL RAPPORTEUR'S RECOMMENDATIONS

9. Proof of willingness: the Government is ready and willing to study carefully each of the Special Rapporteur's recommendations in order to determine which ones are applicable to the national situation, which ones depend on far more complex and deep-rooted processes and which ones depend on the outcome of the peace process itself. Likewise, the Guatemalan Government expresses its readiness to step up its ceaseless efforts to improve matters in respect of indigenous peoples' rights.

10. Before describing the methodology followed by the Government in responding to the Special Rapporteur's recommendations, it should be pointed out that the Commission to Follow up the Implementation of the Peace Agreements, which includes representatives of several institutions, including the United Nations Human Rights Verification Mission in Guatemala (MINUGUA), and which aims to assess progress in complying with the Peace Agreements, discussed and agreed to a new timetable for the Peace Agreements, including the Agreement on Identity and Rights of Indigenous Peoples. The Government believes that the problems at the heart of the issue of indigenous peoples' rights are of a historical and structural nature. It is no simple matter to overcome these problems. It is a complex and difficult process and it is already under way, the first major step being the Government's acceptance that all national projects should take as their starting point the multicultural, multi-ethnic and multilingual nature of the country and should foster unity in diversity, and diversity in unity.

11. Levels of response: the Guatemalan Government, through the Presidential Human Rights Commission (COPREDEH), realizes the importance of bringing the Special Rapporteur's recommendations to the attention of public officials and authorities as a matter of priority, so that they can be considered by the appropriate body and the points raised in the report can be addressed. For this purpose, it is proposed: (a) to present the recommendations to the Cabinet, which consists of the President, the Vice-President, ministers, secretaries of State and presidential commissioners; (b) to present and circulate them to the public officials directly concerned, by virtue of either their position or their duties, with indigenous issues; (c) to present them to the inter-agency forum that brings together the government officials responsible for evaluating and following up human rights issues in all State bodies. The intention is to have the recommendations studied and analysed at all levels, as well as to set up follow-up mechanisms to evaluate each of them.

II. ANALYSIS OF THE HUMAN RIGHTS SITUATION OF INDIGENOUS PEOPLES

12. One of the Peace Agreements signed by the Government and the Unidad Revolucionaria Nacional Guatemalteca on 29 December 1996 is the Agreement on Identity and Rights of Indigenous Peoples, which recognizes the multi-ethnic, multicultural and multilingual nature of the Guatemalan nation. This is clearly highlighted in the Special Rapporteur's report.

13. The Peace Agreements lay the foundations for Guatemala's "social pact", which was drawn up following the promulgation of the 1985 Constitution. The Constitution provides protection for ethnic groups, confirming that "the State of Guatemala shall recognize, respect and promote the way of life, customs, traditions, forms of social organization and the wearing of indigenous dress for the purpose of safeguarding the factors that help preserve their identity,

which is understood as the combination of elements that define them and that, at the same time, allow them to recognize themselves as such".[1]

14. There are now a number of legal texts which build on the spirit of the Peace Agreements and, in particular, on the Indigenous and Tribal Peoples Convention (No. 169) of the International Labour Organization (ILO), and which place the emphasis on giving greater power to local communities through the new Municipal Code. One innovation in article 2 of the Code, on the nature of the municipality, is the definition of the neighbourhood as multi-ethnic, multicultural and multilingual, thus giving effect to the Agreement on Identity and Rights of Indigenous Peoples. Another article of the Municipal Code worth mentioning is article 8, on municipal arrangements, which talks of "the authority exercised on behalf of the inhabitants, by both the Municipal Council and the *traditional authorities of the communities in its district ...*" (art. 8 (c), emphasis added) and "the municipal legal system and *local customary law*" (art. 8 (f), emphasis added). It is extremely important to mention the profound changes to the legislation governing municipalities, as set out in article 20 of the new Municipal Code, on communities of indigenous peoples: "Communities of indigenous peoples are a form of natural social cohesion and as such are entitled to recognition of their legal personality. They must register with the registry office in the relevant municipality, giving details of their internal organization and administration, which is determined by their own rules, values and procedures and by their respective traditional authorities as recognized and respected by the State in accordance with the provisions of the Constitution and the law." These aspects come up time and again in the new law, showing once again the vigour with which the State has formulated a policy that recognizes the underprivileged, the excluded and the forgotten, who nevertheless constitute the wealth of the Guatemalan nation.

15. The Special Rapporteur states that "the departments with the highest density of indigenous people are also the ones where there is the greatest poverty and extreme poverty". This is supported by the statistical data provided in the Special Rapporteur's report, but needs some explanation. Historically speaking, the indigenous population was dispossessed of its land throughout the Spanish colonial period. The distribution of land by the Spaniards and the distribution of indigenous labour was a process that lasted over 300 years. After the period of independence, the economic groups formed in the colony maintained a feudal-type agricultural system consisting mostly of large estates and smallholdings. The liberal reforms of 1871 intensified the process of dispossession, sharing the Indians' communal lands among Ladinos and Ladino groups. During the revolution (1944-1954), efforts were made to reverse this process by means of agrarian reform, which was intended to give peasants and indigenous people land and better living conditions with the support of the State. However, these efforts were blocked by the conservative groups and oligarchs who dominated the economy and who used the State to exercise control and repress certain sectors of society. Oligarchic groups in Guatemala have preserved a pre-capitalist agrarian system that depends on a plentiful and cheap workforce, making it difficult to raise living standards in the countryside. In all these periods, socio-economic changes were blocked, to the point where, in 1954, all progressive reforms were abolished, with support from foreign Governments. Democracy is in its infancy in our country, dating back to the transition that got under way in 1985. The whole organizational scenario described above clearly reflects the position of certain groups that still retain their economic power and use it to dominate through their employers' organizations. The Guatemalan Government, through the Peace Agreements, is now trying to increase the tax burden to pay for the social services (education, health, housing, security and so on) provided for in constitutional legislation. The Peace Agreements call for a 12 per cent increase in the tax burden.[2] This task

has been taken on by the current Government, whose fiscal policy has raised the tax burden to 10.6 per cent of GDP, coming close to the goal set in the Agreements.[3] A higher tax burden is vital if the State is to produce the social and economic balance needed to eradicate poverty in Guatemala, particularly in the countryside, where most indigenous people live. It should be pointed out that the State has faced a major obstacle in implementing these fiscal measures, in that employers in the agricultural economic sector have opposed the social and economic changes both politically and through the courts in a bid to retain their historical privileges, showing how little they are aware of the importance of revenue from taxes. As well as the fiscal policy noted above, a poverty-reduction strategy for 2001 has been implemented, which includes an urgent call to make the strategy official policy. The fight against poverty and inequality is thus the Government's central task.[4] Not only does the Government make no attempt to conceal the existence of poverty and extreme poverty, but it has also devised a strategy against it, which is in itself a significant change that ought to be fully appreciated.

16. The assertion in the Special Rapporteur's report that the questions in the referendum held in 1999 were devised and loaded in such a way as to prevent the indigenous "yes" vote from achieving a majority is a biased and groundless interpretation. The referendum was an attempt by the State to ensure the feasibility of the constitutional reforms proposed by Congress. The required constitutional procedure was followed,[5] but the Guatemalan people, in exercise of their sovereignty and in accordance with the constitutional procedure for referendums, did not support the reforms. This was not due to any political intervention by the State but to the cultural and sociological features of Guatemalan society, which was probably not ready at the time to accept this new vision of the State. The claims in the Special Rapporteur's report are politically groundless: the outcome can be explained by a sociocultural analysis.

17. Discrimination is a sociological and cultural phenomenon that cannot be eliminated simply by changing the law or by an effort of political will. That is why the present Government is relying on educational reform, which includes aspects of multiculturalism and multilingualism that will be described in more detail below, to change people's thinking. Moreover, the definition of the offence of discrimination contained in our criminal legislation today has a technical feature that is different from the one pointed out in the Special Rapporteur's report. Guatemalan society is not characterized only by discriminatory behaviour of an ethnic and racial type, but also by other types, such as social, economic or gender-based discrimination; the definition of the offence is therefore broader, in keeping with the spirit of the Universal Declaration of Human Rights.

III. PRIORITY ISSUES WITH RESPECT TO THE HUMAN RIGHTS OF INDIGENOUS PEOPLES

A. Land issue

18. The situation facing indigenous communities in the past has been referred to above. The talk about indigenous peoples' land rights, including the legalization of land title, the return of communal land and compensation for dispossession, can be easily summed up: in Guatemala, these things would mean a revolution. Therefore, on the basis of the commitments entered into in the Peace Agreements, State agencies have been set up whose main function is to contribute to the legalization of the occupation of land by the peasants in Guatemala, who are mostly indigenous people. In addition, in order to comply with a number of the commitments contained in ILO Convention No. 169, five institutions have been set up specially to come up with solutions, namely:

19.1 The National Land Fund (FONATIERRA), which was set up in 1997 under the Agreement on Identity and Rights of Indigenous Peoples. The Fund replaced all the previous funds that financed land purchases. It provides credit to finance the purchase and renting of land and also to finance the development and implementation of production projects. The figures up to August 2002 are as follows:

National Land Fund budget (in quetzales)[6]

Allocated 2002	270 000 000
Loans	93 512
Subsidies	65 380 400
Operational costs [a]	111 107 600

[a] It should be borne in mind that "operational costs" include pre-feasibility studies, legal costs (registration of land), provision for building work (sub-projects) and payments for technical assistance to the 148 farms handed over.

Loans granted for access to land

	1998–1999	2000	2001	2002	1997 to date
Loans granted	30	45	59	15	149
No. of beneficiary families	2 405	2 583	5 754	1 623	12 365
Area (hectares)	12 450.60	12 276.11	26 793.26	5 332.31	61 852.20
Loans (in quetzales)	82 570 794.90	64 170 620.31	222 312 905.50	62 421 530.00	431 475 850.72
Subsidies (in quetzales)	23 625 000.00	42 006 174.80	110 680 986.00	33 407 088.00	209 719 248.80

Progress in legalizing land title

Year	No. of beneficiary families	Hectares
2000	5 150	77 022.00
2001	6 959	106 264.28
2002	2 437[a]	17 708.60
Total	14 546	200 994.88

[a] Up to the end of the first fortnight in August 2002.

According to the above tables, which give figures up to August 2002, 149 requests for finance have been approved, benefiting 12,365 families and covering an area of land amounting to 61,852.28 hectares. Financial assistance is indicated under two headings: "Loans", totalling 431,475,850.72 quetzales, and "Subsidies", totalling 209,719,248.80 quetzales.

19.2 Another important State institution in this area is the Presidential Office for Legal Assistance and Dispute Settlement in Land Matters (CONTIERRA), which facilitates and supports the conciliatory or legal settlement of disputes over land possession or ownership, provides free guidance to parties who cannot afford legal advice and makes suggestions for

compensation or restitution to peasants, communities, the State or municipalities in cases where they have been dispossessed of land for reasons beyond their control. Over 1,300 disputes had been brought to its attention by June 2002.

19.3 The Joint Commission on Land Rights, which was established by the Peace Agreements, was officially set up in July 1997. Its task is to promote, draft and propose institutional procedures and regulations to fulfil the commitments on issues relating to indigenous communities' land. The Commission submitted the land trust fund bill and drafted a land registry bill. It is currently working on the drafts of a bill on legalizing land title and another on the establishment of agrarian courts. One aspect of the Commission's work that should be highlighted is its practice of consulting indigenous peoples. Consultations are held and input sought in compliance with the provisions of ILO Convention No. 169 regarding consultations, which are carried out directly by the Joint Commission.

19.4 Lastly, in the course of 2002 the Office of Agricultural Affairs was set up with the aim of promoting solutions to the various problems and directly financing the purchase of land to solve the problem of the takeover of farms in various parts of the country. For this purpose, it is on the point of buying about 4,000 hectares of land from the Bandegua banana plantation, which would secure 10,000 direct jobs. The Office also submitted to Congress bills on legalizing land title, on the establishment of the Agricultural Authority, on idle land and on communal land. The adoption of this legal framework will mark the beginning of a new phase in the agricultural history of the country, which will yield results in the medium to long term.

19.5 The Presidential Dispute-Settlement Unit, established by Government Order No. 172-2001, has contributed to settlements in two seminal cases concerning land tenure, the case of Cimientos, Quiché, and the case of military zone No. 20 in Quiché, which benefited a total of 238 families. In both cases, an amicable agreement was reached and the affected community's right to the land was vindicated. Financial compensation was also paid, without neglecting to treat the victims with dignity.

B. Access to justice

20. Direct implementation of ILO Convention No. 169 is also assured through the Public Prosecutor's Office, specifically deputy prosecutors, deputy mayors and municipal mayors. This consists in direct training in implementation of Convention No. 169 in strategic areas of application of the "second chance" procedure, which allows conflicts to be resolved without criminal punishment, based on the following requirements: (a) the person charged should have provided compensation for the injury; (b) there should be an agreement with the injured party with guarantees for its fulfilment; (c) community custom and usage should be respected; (d) general principles of law and equity should be applied; and (e) neither constitutional guarantees nor international human rights instruments should be violated. The procedure also provides that if the individual does not have the means to provide compensation for the injury, he or she can engage in community service, in an activity to be designated by the judge, for 10 to 15 hours a week over a year. The legal machinery of the "second chance" and the conciliation and mediation[7] mechanisms constitute an approach and elements that are in consonance with article 8 of the Convention. The following chart of incidents involving indigenous mayors and deputy mayors reflects effective progress in recognition of customary law.[8]

Figure 1[9]

Types of problem

Land
Defamation

Crop damage
Succession
Labour
Threats
Theft
Fraud
Family
Communal property (graph)
Private property
Homicide
Attempted homicide
Boundary markets
Sexism
Inter-community
Community
Assault while intoxicated
Assault
Dishonesty

This chart shows the various problems encountered by indigenous deputy mayors and municipal mayors in applying second chance procedures in the context of custom and usage under indigenous customary law. It reflects the view of Rodolfo Stavenhagen.

Figure 2
Settlement of problems

Compensatory damages
Compliance with agreements
Fulfilment of commitments
Conciliation
Mutual benefit
Mutual compensation
Mutual respect
Apology (graph)
Conflict prevention
Assumption of responsibility
Property compensation
Community work
Commitments
Community projects
Acknowledgement of mistake
Behavioural change

This chart shows the ways in which the problems typical of communities have been resolved, using the existing legal structure, in consonance with ILO Convention No. 169. The solutions are the result of the work of the office for the implementation of ILO Convention No. 169, which has conducted various workshops in the Verapaces and in the west of the country, where most of the population is indigenous. A modest effort by the State has resulted in

significant progress; over the medium and long term indigenous customary law will assume greater importance and legitimacy vis-à-vis the State, bodies responsible for the system of justice, and indigenous authorities, as provided for in ILO Convention No. 169, article 1 (2): "Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply". As a result various activities are being undertaken to encourage indigenous groups in Guatemala to reclaim their ancestral heritage, long neglected in the States structure, but recognized as a State policy to be pursued under the Agreement on Identity and Rights of Indigenous Peoples.

21. It should be noted that the Supreme Court has embraced multi-ethnic nation-building by creating a special commission to deal with indigenous issues, pursuant to recommendations by the ILO Committee of Experts. Thus, the hiring of staff in accordance with criteria of multiculturalism and multilingualism has begun in regions with the greatest concentration of indigenous inhabitants (see figure 3). This new approach will, over the medium and long term, result in an expedited system of justice. Improvement in the delivery of justice is also related to the institutionalization of the provision of interpretation. One example is the case of Rax Cucul, a Q'eqchi'Maya, who had been condemned to death; the sentence was set aside on the ground that he had not received a fair trial since he did not speak Spanish. In addition, community courts have been established as conciliation and arbitration bodies, based on custom and usage.

Figure 3
Ethnic breakdown of Supreme Court officials,
August 2002
Judges, officials and bilingual process servers

(graph)

Verapaces
Chimaltenango
Quiché
Guatemala
Huehuetenango
Quetzaltenango
Sacatepéquez
San Marcos
Sololá
Totonicapán

Figure 4
Breakdown by language of Supreme Court interpreters
Indigenous Languages Interpretation Service

(graph)

Mam
Ach'i'
Kaqchikel
K'ichee'
Tz'utujiil
Ixhil
Poqomam
Garifuna

Uspanteko
Q'eqchi'

With these initiatives the Supreme Court is moving towards consolidating a system of justice that accommodates the Guatemalan indigenous community's emerging view of the world, taking into account the fact that 22 languages are spoken in a very small area in Guatemala, which makes implementation of such policies even more difficult. Despite the difficulties, a linguistic map is now available, based on lengthy anthropological research, which has led to the production of various volumes on different dialects. This initiative was essential for the purpose of decentralizing education and health on an ethno-linguistic basis, as provided for in the Peace Agreements.

22. Through the School of Judicial Studies a series of courses on indigenous issues has been initiated; these include a course on multiculturalism and rights of indigenous peoples, with cooperation by the Office of the High Commissioner for Human Rights. To date some 336 legal officials in 11 departments have been trained.

D. Political participation by members of indigenous groups

23. Pursuant to ILO Convention No. 169 the Government has implemented the following measures to allow political participation by the various indigenous peoples of Guatemala:

(a) The Decentralization Act (Decree No. 14-2002), which provides (art. 5, para. 4) for "respect for ethnic diversity, multiculturalism and multilingualism in Guatemala" and (art. 5, para. 7) "countering and eradicating social exclusion, discrimination and poverty". The Presidential Commission on Reform and Decentralization of the State has been entrusted with implementing the principles set forth in the Act, and is currently promoting a series of activities throughout the country to raise awareness of new modalities of participation;

(b) Another basic act relating to consolidation and respect for the various indigenous peoples is the Urban and Rural Development Councils Act (Decree No. 11-2002). Article 1 (Nature) provides that "the system of development councils is the principal mechanism for participation by the Maya, Xinca and Garífuna and non-indigenous populations in public management of the process of democratic development planning, taking into account the principles of national unity, ethnic diversity, multiculturalism and multilingualism in the Guatemalan nation". In its preamble the Act reformulates the vision of a single society as a society in which four peoples live together: non-indigenous, Mayas, Xincas and Garífunas. This represents a 180-degree change from the view prior to the signing of the Peace Agreements and offers a definitive structure for the new vision of the nation, as reflected in legal texts to give effect to the Agreements. The Act provides for direct participation by various peoples in formulating their own plans, in compliance with article 7 of the Convention: "The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly";

(c) The Municipal Code.

24. In the context of strengthening the authority of indigenous communities, the Government has established the Office for the Defence of Indigenous Women's Rights, under COPREDEH, providing space in regional offices of COPREDEH for the time being in the departments of

Huehuetenango, Quetzaltenango, Coban and Petén to allow a regional presence to be established. This expansion has had a direct impact, in terms of coverage provided by the Office, for indigenous women seeking support or legal advice when their rights have been violated. The many achievements of the Office include the fact that a growing scholarship programme has resulted in the award of degrees in legal and social sciences to 30 indigenous leaders, who can have a multiplier effect in strengthening services for indigenous women. Several of these students received commendations for their academic attainments.

25. It is important to add that these new offices were opened with the support of the Government of Sweden and the United Nations Development Programme, the aim being to promote awareness and implementation of women's rights in the context of a democratic society and implementation of the Agreement on Identity and Rights of Indigenous Peoples.

E. Multicultural and bilingual education

26. The Agreement on Identity and Rights of Indigenous Peoples embodies the principles which led to the creation of the Joint Educational Reform Commission. The Agreement states that: "The educational system is one of the most important vehicles for the transmittal and development of cultural values and knowledge. It must be responsive to the cultural and linguistic diversity of Guatemala, recognizing and strengthening the cultural identity of indigenous peoples, the values and educational systems of the Maya and other indigenous peoples, and the need to afford access to formal and non-formal education and to include the educational concepts of indigenous peoples in national school curricula."

27. The Commission's fundamental contribution has been to establish four cross-cutting approaches: life in a democracy, culture of peace and human rights; unity in diversity; science and technology; and comprehensive sustainable development. Each approach refers to one aspect of the overall development of the human being: civic conduct; attitudes that promote harmonious inter-ethnic relations; the dissemination and generation of knowledge; and the promotion of sensible production practices allowing exploitation of natural resources and improvement in standards of living without risking the present or compromising the future for later generations. Under these policies bilingual infants teacher training colleges have been set up, and the syllabus for school and vocational studies amended to incorporate bilingual education programmes in Mayan languages. This reflects the multicultural and multilingual nature of Guatemalan society.

28. The activities undertaken are based on proposals by the Joint Commission and reflected in the National Education Plan 2000-2004, in which emphasis is placed on nationwide consultation on educational reform. The aims of reform include promotion of respect for multiculturalism and gender equality. A second component is the national literacy programme, which aims to reduce the rate of illiteracy to 20 per cent over four years, thereby benefiting 1.92 million people (1.2 million illiterates and 720,000 post-illiterates). The programme includes participation by various sectors of society and coordination between the Ministry of Education and the National Literacy Committee (CONALFA), as well as pilot experiments in bilingual literacy. Progress has been made in the programme of school scholarships for girls in rural areas; 72,000 girls from poor families have received scholarships. The programme has had a positive social impact, and has been reinforced by 119,000 peace scholarships for boys and girls.

29. In 2001, 315,000 children, in 3,424 communities, went through the national programme for educational self-management (PRONADE). The aim of educational reform and promotion of

literacy is to ensure three years of primary education for all children between the ages of 7 and 12, most of whom are indigenous.

30. The active methodology training programme covers 5,217 teachers in 3,074 schools. The Ministry of Education is seeking to promote the acquisition and updating of professional teaching skills among the 70,000 teachers in service so as to raise the quality of education. Intercultural bilingual education is being undertaken from first to third grade in 20 per cent of schools in 18 linguistic communities. A total of 785,000 textbooks have been printed and distributed in 18 Mayan languages. Teacher training manuals on reading and writing have been prepared in 12 Mayan languages. In addition, the formulation of linguistic policies for the country (international language, Spanish and indigenous languages) has begun, as has the mainstreaming of multiculturalism and interculturalism in the curriculum, as well as the incorporation of human rights as a cross-cutting approach to curriculum reform in the context of the educational reform devised by the Joint Commission. The Ministry of Culture is continuing training for teachers and bilingual cultural instructors, as well as the development of educational programmes with an intercultural focus. Efforts are also continuing to promote the use of Mayan languages.

31. The Social Investment Fund (FIS) and the National Peace Fund (FONAPAZ) have continued their programme of classroom construction and equipping community schools and libraries as well as various capital projects to strengthen education and health infrastructure. FONAPAZ has promoted the design of a programme of ongoing education and training for work, as well as respect for and the indivisibility of the political, social and cultural rights of indigenous peoples, together with the reintegration of displaced persons.

32. All of the above is part of the development and consolidation of reform so as to consolidate, on the basis of the broadest participation by and representation of society, the various activities being undertaken in each area of education policy with a view to building a multi-ethnic, multicultural and multilingual nation. This is true of the most recent book for teacher training, Desarrollo Humano y Pacto Fiscal, put out by the Ministry of Education and endorsed by various universities in the country, which has a new approach in terms of teaching methodology. The book has, however, been severely criticized by the more conservative circles in the country, which see it as fomenting social confrontation. In fact it challenges the system, and if we start from the basis that training and education are the pillars of generations to come, change must be effected through tolerance if we are to achieve the desired objectives.

33. With regard to disseminating the rights of indigenous peoples, a video has been prepared focusing on the rights of indigenous peoples and the cultural benefit to the country of the existence of such thousand-year-old cultures. The aim of the video is to provide a methodological tool to improve awareness in society of the rights of indigenous peoples.

34. Further, two books, Racismo y Discriminación and Educación e Interculturalidad, currently being printed, will be distributed to State educational institutions and non-governmental organizations engaged in training.

35. Activities undertaken by the Government include consideration and approval, in consultation with civil society, of a government human rights policy containing a separate component on the rights of indigenous peoples as one of a series of vulnerable groups meriting special attention from the Government. The policy has been conceived in the context of State policy as a whole. The COPREDEH authorities apprised the Special Rapporteur of the content of the policy during his visit to the country.

36. The policy includes a human rights action plan to give practical effect to its objectives. The plan is supported by the High Commissioner for Human Rights.

Conclusions

37. The Government of Guatemala considers that while the Special Rapporteur's report contains many elements that reflect the reality of the situation of the rights of indigenous peoples as well as recommendations intended to improve that situation, it does not constitute in itself a fair assessment of the Government's efforts.

38. There is no recognition of the fact that the Peace Agreements and, in particular, the Agreement on Identity and Rights of Indigenous Peoples, constitute a first step in a lengthy process aimed at generating the will to modify social, political, legal and economic structures so as to permit the building of a just, supportive and humane society in the context of a multi-ethnic, multicultural and multilingual nation.

39. Efforts are under way that the Special Rapporteur should take into account, as indicated in this report, in particular legislative reform initiatives (Municipal Code, Decentralization Act, Development Councils Act and criminalization of discrimination). These efforts should be duly appreciated.

40. The Government of Guatemala invites the Special Rapporteur to take note of the observations, comments and information in this government report on the points at issue so that they can be considered with a view to their inclusion in his final report.

Notes

[1] *Constitución Política de la República de Guatemala y su Interpretación por la Corte de Constitucionalidad* (Guatemala, 2002), p. 62.

[2] Agreement on Social and Economic Aspects and the Agrarian Situation.

[3] "The positive result of increasing the tax yield reflects the higher tax burden, which has increased substantially, bearing in mind that there was a net increase in this indicator from 9.5 per cent of gross domestic product (GDP) in 2000 to 10.6 per cent in 2002. This higher yield in 2002 was the direct result of the reform pursued by the executive since 2000. The positive effects of the legal reforms approved by Congress in 2001 can be observed principally in revenue from tax on income (income tax (ISR), the Commercial and Agricultural Business Tax (IEMA)) and value added tax (VAT)" (p. 58 of the President's third report to Congress).

[4] Ibid., p. 102.

[5] See Constitution (arts. 278-281).

[6] Figures from the "Human Rights Report 2002" of the Ministry of Labour and Social Security.

[7] Legal mechanisms provided for in the Code of Criminal Procedure (arts. 25, 25 bis, 25 ter and 25 quater).

[8] Rodolfo Stavenhagen, in Introducción al Derecho Indígena, is of the view with regard to so-called indigenous customary law that in essence the legal or juridical considerations in societies that are ordered on the basis of customary law comprise: (1) legal provisions governing

actions by the State; (2) maintenance of internal order; (3) definition of the rights and obligations of members of society; (4) regulation of access to and distribution of scarce resources (for example: water, land, forestry products); (5) regulation of transmission and exchange of goods and services; (6) definition and classification of offences, a distinction generally being drawn between offences against other individuals and offences against the community or the public good; (7) punishment of criminal behaviour by individuals; (8) management, control and settlement of conflicts and disputes; and (9) definition of responsibilities and functions of public authorities. This list does not include all possible elements of customary law; the elements included may be divided between those establishing norms and rules, and those defining rights, offences and punishment

[9] Figures 1-4 are related; reproduced from the "Human Rights Report 2002" of the Ministry of Labour and Social Security.