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**ДОКЛАД ВЕРХОВНОГО КОМИССАРА ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ
НАЦИЙ ПО ПРАВАМ ЧЕЛОВЕКА И ПОСЛЕДУЮЩАЯ ДЕЯТЕЛЬНОСТЬ
В СВЯЗИ СО ВСЕМИРНОЙ КОНФЕРЕНЦИЕЙ ПО ПРАВАМ ЧЕЛОВЕКА**

**Доклад Верховного комиссара Организации Объединенных Наций по правам
человека по вопросу о положении в области прав человека в Гватемале* ****

Резюме

20 сентября 2005 года вступило в силу Соглашение между Управлением Верховного комиссара Организации Объединенных Наций по правам человека и правительством Республики Гватемалы об открытии отделения в Гватемале. В рамках этого Соглашения Отделение Верховного комиссара должно осуществлять наблюдение за положением в области прав человека в Гватемале в целях оказания государственным учреждениям консультативной помощи в разработке и осуществлении политики, программ и мер, направленных на поощрение и защиту прав человека, и информировать Комиссию Организации Объединенных Наций по правам человека о деятельности Отделения Верховного комиссара. В докладе сформулированы также замечания и рекомендации,

* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, который содержится в приложении, распространяется только на языке оригинала и на английском языке.

** Настоящий документ был представлен с опозданием в связи с необходимостью отражения в нем обновленной информации.

которые, по мнению Верховного комиссара, способствовали бы активизации деятельности по поощрению и защите прав человека в Гватемале.

С завершением вооруженного конфликта и подписанием мирных соглашений был положен конец продолжавшимся на протяжении десятилетий систематическим нарушениям прав человека со стороны государства¹. В последние годы на смену политическому насилию со стороны государства пришло насилие социальное. Верховный комиссар Организации Объединенных Наций по правам человека с обеспокоенностью отмечает неспособность государства предотвращать, расследовать акты насилия и принимать меры для наказания виновных, а также проводить государственную политику, направленную на сокращение масштабов нищеты, дискриминации и неравенства возможностей.

С учетом короткого срока, прошедшего с момента открытия Отделения Верховного комиссара в Гватемале, настоящий доклад представляет собой первое описание положения в области прав человека в Гватемале. Верховный комиссар предлагает вниманию трех ветвей государственной власти и организаций, представляющих гражданское общество, 24 рекомендации на основе этого первого анализа положения дел в Гватемале и исходя из твердой убежденности в том, что их выполнение будет способствовать существенному улучшению положения в области прав человека. Эти рекомендации сгруппированы в следующие семь разделов: предупреждение и защита; правовое государство и безнаказанность; правосудие в переходный период; социально-экономическая политика; равенство и недискриминация; поощрение культуры прав человека; консультативные услуги и техническое сотрудничество со стороны Отделения Верховного комиссара в Гватемале.

Annex

Report of the High Commissioner for Human Rights and follow-up to the World Conference on Human Rights

CONTENTS

	<i>Paragraphs</i>	<i>Page.</i>
I. INTRODUCTION	1 - 2	4
II. ACTIVITIES OF THE OFFICE	3 - 5	4
III. OBSERVATIONS ON THE SITUATION OF HUMAN RIGHTS	6 - 78	5
A. Violence	6 - 9	5
1. Juvenile gangs (maras)	10 - 12	5
2. Violence in prisons	13 - 17	6
3. Violence against women	18 - 22	7
B. Rule of law and impunity	23 - 25	7
1. National Civilian Police	26 - 31	8
2. Public Prosecutor's Office	32 - 36	9
3. Independence of the system of justice	37 - 43	10
4. Transitional justice	44 - 52	11
C. Poverty and economic, social and cultural rights	53 - 63	12
D. Equality and non-discrimination	64 - 69	14
1. Right to identity of indigenous peoples	70 - 74	15
2. Social participation	75 - 78	17
IV. RECOMMENDATIONS	79 - 102	17
A. Prevention and protection	79 - 83	17
B. Rule of law and impunity	84 - 85	18
C. Transitional justice	86 - 88	19
D. Economic and social policy	89 - 90	19
E. Equality and non-discrimination	91 - 97	20
F. Promotion of a culture of human rights	98 - 100	21
G. Technical cooperation and advisory services of the Office of the High Commissioner in Guatemala	101 - 102	21

I. INTRODUCTION

1. On 10 January 2005 the Agreement between the Office of the United Nations High Commissioner for Human Rights 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. By mutual agreement 20 September 2005 was established as the opening date for the Office of the United Nations High Commissioner for Human Rights in Guatemala. In the context of this Agreement and in accordance with General Assembly resolution 48/141 of 20 December 1993, the Office of the High Commissioner in Guatemala is to observe the situation of human rights to advise State institutions in the formulation and implementation of policies, programmes and measures to promote and protect human rights.

2. Pursuant to the Agreement, the High Commissioner is to submit an annual report on the activities of her Office to the Commission on Human Rights under agenda item 4. In the report the High Commissioner is to formulate the observations and recommendations she considers conducive to the strengthening of the promotion and protection of human rights.

II. ACTIVITIES OF THE OFFICE

3. Given the recent establishment of the Office of the High Commissioner in Guatemala, activities have focused on making contact at the political level with government authorities, representatives of civil society organizations and members of the international community. At the technical level, contacts have been initiated with national counterparts, and various sources of documentation have been consulted to produce a first analysis of the situation of human rights in the country. In particular, account has been taken of the recommendations of the Special Rapporteurs who have visited Guatemala recently. The Office formulated its strategy for 2006 on the basis of all these inputs.

4. In consultation with the Office of the Human Rights Procurator and other national institutions entrusted with the defence of human rights, account was taken of a small number of individual and group reports of violations of the right to security of person, due process and labour rights.

5. The Office of the High Commissioner is cooperating with the United Nations on two technical assistance projects for national human rights institutions and the National Civilian Police. The contribution by the Office of the High Commissioner relates to institutional strengthening of the Office of the Human Rights Procurator with regard to the protection of human rights at the departmental level and advisory services on issues relating to transitional

justice, and the incorporation of a human rights focus in the institutional policies of the National Civilian Police. In the context of these projects the Office of the High Commissioner, with the Presidential Commission on Discrimination and Racism, the National Commission on the Strengthening of the Justice System, and the Office of Multiculturalism of the National Civilian Police, is also focusing on the protection of the rights of indigenous peoples.

III. OBSERVATIONS ON THE SITUATION OF HUMAN RIGHTS

A. Violence

6. Violence, arising from various causes such as organized crime, common crime, gangs of youths and illegal, clandestine security bodies and units, has become a national priority owing to its effects on public security and the creation of a state of public alarm.²

7. Among other effects, violence has resulted in an increase in the number of homicides. According to the National Civilian Police, 2005 was the most violent in recent years in terms of the right to life, with 5,338 recorded cases of homicide.

8. The complexity of the phenomenon of violence in Guatemala is further compounded by the inadequacies of information and analysis systems and the limited capacity of the National Civilian Police and the Public Prosecutor's Office to investigate and clear up offences.

9. The legislative agenda for security issues, including the Arms and Munitions Act, the Private Security and Investigation Companies Act, the Public Order Act and the Organized Crime Act, has still not been implemented. One important advance was the adoption in November 2005 of the Act on the Department of Civilian Intelligence, institutionalizing the department. Nevertheless, no budgetary provision for the department has been made in 2006.

1. Juvenile gangs (*maras*)

10. The phenomenon of gangs of youths (*maras*) is at the forefront of the social agenda, but the absence of any reliable analysis makes it difficult to assess its real impact on the security situation, and there is a marked tendency in society and on the part of some authorities to attribute all acts of violence to such gangs.

11. The Guatemala Studies Centre has recorded widespread criminal prosecution of young gang members (*mareros*) without due process or investigation of the offences allegedly committed by them.³ The characteristic tattoos worn by gang members and other irrelevant

aspects of their outward appearance seem to result in criminal prosecution. The dissemination of such stereotypes by the media carries with it the risk of stigmatizing young people.

12. At the end of 2004 the United Nations Verification Mission in Guatemala (MINUGUA) stressed the need for policies on crime prevention and comprehensive individual security.⁴ For its part the Office of the Human Rights Procurator said that government strategy towards the juvenile gangs should be to resolve the socio-economic, political and cultural problems that prevent access to opportunities in employment, education, sports, spirituality and other domains.⁵ In a similar vein, in 2005 the Presidential Human Rights Commission (COPREDEH) introduced a national policy on the prevention of juvenile violence, the first of a series of government policies focusing on the security of the citizen which include the rehabilitation of persons who break the law.

2. Violence in prisons

13. The High Commissioner expresses her profound concern at the violence in the prison system, especially the events of August and September 2005, which resulted in the violent deaths of several prisoners and some teenagers in youth centres. The State, through its failure to provide the necessary security and prevent violence on the part of prisoners and corruption among prison staff, has failed to discharge its human rights obligations.

14. These developments are the culmination of a process of a loss of State control in detention centres. As a result, the State acknowledges that the system is falling apart, and in a state of crisis.

15. A number of studies testify to the neglect of prisons over the years. The Inter-American Commission on Human Rights has drawn attention to the subhuman nature of conditions in prisons, which are even worse for prisoners who are members of juvenile gangs.⁶ The Commission also stated that the failure to tackle such problems will lead to more violence.

16. An initiative on prison legislation reflecting agreement between State bodies and civil society is now before Congress; it should be adopted as a matter of urgency.

17. The High Commissioner welcomes the measures taken by the new Director of the Department of Prisons to improve conditions and security in prisons, including the appeal for civil society, the international community, prison personnel and prisoners themselves to participate in these efforts. The policy of rehabilitation being undertaken in conjunction with COPREDEH is anticipated with interest as a strategy for reducing the level of crime.

3. Violence against women

18. There is widespread violence against women in Guatemalan society, and within the family it is generally seen as a minor problem falling within the private domain.⁷ The impunity enjoyed by the aggressors generates fear among victims and a lack of confidence in State protection machinery.

19. In 2005, according to the National Civilian Police, 518 women were killed. The statistics also show that many of these homicides involved aggravating circumstances, such as rape⁸ and strangulation.

20. According to the report of the Special Rapporteur on violence against women, its causes and consequences, the main problem facing the State is its limited capacity to provide legal, judicial and institutional protection for women.

21. With regard to judicial and institutional protection, the Women's Section of the Public Prosecutor's Office is responsible for the investigation and conduct of prosecutions in connection with offences against women, but according to information from this Section there were only 106 convictions in the 13,709 cases reported in 2005.⁹

22. In addition to the Women's Section there exist other institutions, such as the Presidential Office for Women, the Office for the Defence of Indigenous Women, the offices of the National Civilian Police on gender equity and victim support, and the recently established Women's Homicide Unit. Poor institutional coordination and the lack of resources to implement its programmes, such as the National Plan for the Prevention and Eradication of Domestic Violence and Violence against Women (PLANOVI 2004-2014), represent some of the main problems.

B. Rule of law and impunity

23. The High Commissioner expresses her disquiet at the continuing culture of impunity in the country, which means that not only serious violations of human rights committed during the internal armed conflict remain under investigation and without punishment, so do many present-day violations and offences. Impunity has been repeatedly identified by international, regional and national human rights mechanisms and organizations as one of the principal threats to the free exercise of human rights, development, democracy and the rule of law.

24. The inadequacies of the system of justice are both cause and effect of the impunity extant across the range of crime, from minor to serious. This impunity is reflected in the inability of the public authorities to discharge their duty to guarantee rights and the effective protection of the

law through the efficient investigation, trial and punishment of the perpetrators and instigators of illegal acts, with the result that organized, violent crime has assumed international proportions.

25. Although it is important to mention the good example offered by some judges, prosecutors and police officers, the inadequate official response to the presence and activity of criminal gangs means that the principal reaction is almost entirely on the part of civil society, with the denunciation of the phenomenon by individuals, non-governmental organizations, human rights defenders, journalists and trade unionists. The threat of organized crime, which influences and/or permeates key sectors of public institutions, thus has an impact on society as a whole, since it is society, rather than the State, that confronts it.

1. National Civilian Police

26. The peace accords provided for the establishment of the National Civilian Police to reorient internal security policies in a democratic society and to counter the authoritarian, militaristic tendencies inherited from the past. MINUGUA noted the strengthening of the National Civilian Police as a central duty of the State, and drew attention to the need to strengthen the National Civilian Police Criminal Investigation Service, Office of Professional Responsibility and Academy.

27. The National Civilian Police has a strength, including those not on active duty, of 20,186, that is, 1.58 police officers for every thousand inhabitants. This figure is far below the international average.¹⁰

28. Thus far public confidence in the National Civilian Police has been no higher.¹¹ The Criminal Investigation Service is the most heavily criticized police body, since its limited budget, poor coordination with the Public Prosecutor's Office and inadequate deployment throughout the country - 75 police officers in 15 out of a total of 22 departments - mean that it cannot respond adequately to crime levels. Although there are plans to train a further 200 officers, this will not be enough to allow it to discharge its functions effectively.

29. Technical shortcomings in terms of criminal investigation may result in torture and ill-treatment, as documented by MINUGUA, the Office of the Human Rights Procurator and civil society organizations. In 2005 there was the case of an inspector and an officer in the National Civilian Police convicted by the Chiquimula Serious Crimes Court for the extrajudicial execution of a person who died on 25 October 2005 as a result of the ill-treatment suffered while in their custody.

30. The Inter-American Commission on Human Rights, the Human Rights Procurator and MINUGUA have noted the involvement of members of the National Civilian Police in organized crime, drug trafficking, trafficking in persons, irregular units and clandestine forces and “social cleansing”.¹² The arrest in November 2005 of two senior officers and another official in the United States of America from the Drugs Analysis and Information Service for the export of drugs to the United States is a reflection of the ongoing threat of corruption and the infiltration of the police by organized crime.¹³

31. The Commission for Historical Clarification drew attention to the need to purge and take action against officers in the National Civilian Police who had been involved in illegal acts in violation of human rights. According to the Inter-American Commission on Human Rights, in 2004 the Government stated that it had begun to implement a plan to purge the police force. Although in 2005 763 police officers¹⁴ were dismissed, these measures are still inadequate.

2. Public Prosecutor’s Office

32. The Constitution confers on the Public Prosecutor’s Office authority to investigate offences against public policy and to undertake criminal prosecution before the courts. However, most criminal acts reported are either not investigated or are not investigated properly.

33. According to the Public Prosecutor’s Office, there are insufficient staff to investigate and prosecute cases. From January to November 2005 the office received reports of 2,016 cases of offences against life, so that each prosecutor investigated approximately 200 on average.

34. Technical and organizational shortcomings have been identified in the office, including an absence of or inadequate criminal investigation techniques, a lack of coordination with other bodies in the system of justice, and defective systems for training, oversight and staff discipline.¹⁵ One factor negatively affecting the quality of investigations is the absence of a career path that would allow officials with the Public Prosecutor’s Office to develop their skills.

35. Special mention should be made of the revitalization of the criminal prosecution policy plan of the Public Prosecutor’s Office, comprising a strategy to tackle the various problems over a five-year time frame,¹⁶ and which was taken up again in 2005 following recurrent requests from civil society.

36. The budget for the Public Prosecutor’s Office has increased only minimally over the past two years, whereas crime rates are not falling and most investigations make little progress. While resources have been inadequate to fund internal reform and extend coverage, the High Commissioner notes with concern that the office is not discharging its function impartially,

as is apparent from the unequal approach in the investigation of such high-profile cases as the Nueva Linda agricultural estate and the Chixoy dam.

3. Independence of the system of justice

37. Various criminal groups are attempting to infiltrate and make use of State institutions in order to prevent progress in criminal proceedings, especially in cases involving corruption, serious human rights violations, organized crime or drug trafficking.¹⁷

38. According to the Public Prosecutor's Office, the work of officials in the system of justice has been impeded by an increase in threats and intimidation. Most complaints come from the interior of the country, and relate to ordinary crimes, drug trafficking and personal situations.

39. In order to investigate and prosecute such attacks and threats, the Office of the Special Prosecutor for Human Rights was established in 2005, with four specialized units: (a) a unit dealing with offences against human rights activists; (b) offences against justice officials; (c) offences against reporters and trade unionists; and (d) "special cases" and past human rights violations. In 2005 the Office received 129 complaints of threats against justice officials, of which 118 are under investigation with only one conviction handed down. Over the same period six justice officials, including judges, prosecutors and auxiliary staff were murdered.

40. With regard to protection measures, provision has been made in the budget for the hiring of private security services for the judiciary. Magistrates and prosecutors are not covered by the programme and rely on the National Civilian Police, through the Protection and Security Service. The inadequate protection offered by this service as well as poor institutional coordination led COPREDEH to put forward protection policies and plans, including the creation of an elite unit to protect judges, lawyers, prosecutors, human rights defenders, witnesses and victims of offences.

41. According to figures from the National Human Rights Movement, attacks on human rights defenders have increased. The main victims are members of organizations of agricultural workers, trade unions, and development and environmental organizations, engaged for the most part in the defence of economic, social and cultural rights. The situation has worsened since there has been little progress in prevention, or in the investigation and punishment of those responsible.

42. On 4 April 2003 the Government formally requested the assistance of the United Nations Secretary-General in connection with the establishment and functioning of the Commission for the Investigation of Illegal Groups and Clandestine Security Organizations (CICIACS), with a

view to providing assistance in the investigation and break-up of illegal groups presumed responsible for threats and attacks on human rights defenders, justice officials, journalists and witnesses.

43. On 7 January 2004 the Government signed an agreement with the United Nations for the establishment of the Commission. In the light of an advisory opinion by the Constitutional Court on the constitutionality of some of the provisions of the agreement, it was withdrawn from Congress. Nevertheless the Government has acknowledged the need to set up such machinery through its submission in December 2005 to the Secretary-General of an amended draft agreement. The establishment of the Commission as conceived has the potential to allow the State to effectively discharge its international human rights obligations and its commitments under the peace accords.

4. Transitional justice

44. The Commission for Historical Clarification has recorded 669 massacres, 23,671 arbitrary executions and 6,169 enforced disappearances¹⁸ as having occurred during the internal armed conflict. Thus far very few of those responsible have been brought to trial.

45. The Ministry of Defence has systematically declined to declassify the information needed for these crimes¹⁹ to be investigated, arguing that they involve national security questions. A legislative draft on public access to information is pending in the legislature. A government order was adopted in 2005, but it cannot serve as a substitute for a legal provision in either content or scope.

46. The High Commissioner notes with concern attempts in the legislature to restore military jurisdiction over ordinary offences. Such an extension of jurisdiction would violate the principle of equality before the law and judicial protection of human rights, and might lead to military personnel alleged to have committed crimes during the armed conflict benefiting from impunity.

47. The recent discovery in the files of the National Police of information on the period of the armed confrontation is important for the clarification of human rights violations. The files are under the custody of the Human Rights Procurator pending a decree on formal custody by the State.

48. The Government has no policy whereby crimes perpetrated during the armed conflict are routinely investigated, and has not submitted a bill on exhumation, as recommended by the Commission for Historical Clarification. Thus far initiatives on legal proceedings concerning exhumations and forensic anthropology have come from civil society. In a positive

development, on 12 December 2005 the Attorney-General issued general guidelines on the application of the procedural manual for forensic/anthropological investigations.

49. The submission to Congress of a bill on the establishment of the National Institute of Forensic Science is a significant response to the need for the establishment of a coordinated and efficient criminal investigation system that would allow both past and present criminal acts to be clarified.

50. With regard to the recommendations on the dignification and remembrance of victims, the pardon ordered by the President of the Republic in February 2004 has historical symbolism and importance. This position by the State is also reflected in the accepting of international responsibility in nine cases submitted to the Inter-American Court of Human Rights through amicable settlements in which the State has undertaken to make a public apology, pay financial compensation, investigate the crimes and restore the dignity of the victims.

51. The establishment of the National Compensation Programme in 2003, funded at the rate of 300 million quetzales a year over 10 years, also follows a recommendation of the Commission for Historical Clarification. On 15 December a new institutional arrangement for implementation of the programme was announced. The High Commissioner trusts that this will expedite implementation.

52. The High Commissioner welcomes the fact that, following a period of years in which little progress was made, COPREDEH is promoting a national plan to locate persons who disappeared during the internal armed conflict 2005-2015, which, with the participation of civil society, comprises measures responding to the interests and needs of victims and their family members.

C. Poverty and economic, social and cultural rights

53. The High Commissioner is concerned at the high levels of poverty and inequality which prevent broad segments of the Guatemalan population from enjoying economic, social and cultural rights. Poverty affects 57 per cent of the population, of which 21 per cent is extremely poor. Although the country generates 30 per cent of the wealth of Central America,²⁰ there is an unequal distribution of assets - land, capital, education and technology -²¹ such that it is one of the most unequal countries in the world.²²

54. Socio-economic indicators show deficiencies in the enjoyment of economic, social and cultural rights. In education, primary school enrolment stands at 92.3 per cent, although only 65.1 per cent of students complete sixth grade. Of the population over 15 years of age, 31 per cent is illiterate. The under-five mortality rate is 59 per 1,000 live births. The

chronic malnutrition rate is 49.3 per cent. The maternal mortality rate is 153 per 100,000 live births, and 75.4 per cent of the working population works in the informal sector. A breakdown of these indicators reveals the major disparities affecting particularly vulnerable groups such as the rural population, indigenous people and women. For example, 71.9 per cent of the indigenous population is poor, 48 per cent is illiterate, chronic malnutrition affects 69.5 per cent, and there is a maternal mortality rate of 211 per 100,000.

55. With the exception of the deterioration in terms of poverty over the past five years, there has been modest progress in attainment of the Millennium Development Goals. Even so, levels of coverage, access and quality in terms of nutrition and health remain among the lowest in Latin America. The Government, in its second report on the Millennium Goals, has acknowledged the difficulty of attaining some of the goals established by 2015.

56. In general Guatemala has established a comprehensive regulatory framework guaranteeing economic, social and cultural rights, but the legislation is not adequately implemented. The High Commissioner wishes to emphasize that States have an obligation not only to progressively realize such rights but also to respect and protect them, as clearly established by the Committee on Economic, Social and Cultural Rights.²³ Accordingly, in addition to setting public policy, the State should regulate social relations, mediate in conflicts of interest and oversee the coverage and quality of public and private social services.

57. In response to the socio-economic situation, the Government has promoted public policies based on principles of cultural exchange and equality of men and women targeting the most vulnerable groups, including the rural population and indigenous peoples.²⁴ However, budget allocations under these policies are not high enough to allow the real needs of the population to be met.

58. With regard to the protection of economic, social and cultural rights, the Committee has clearly affirmed that the right to effective remedies must embrace administrative as well as judicial remedies; it has concluded that such remedies must be accessible, affordable, timely and effective.²⁵ While regulations on administrative policy exist, in general the ministerial offices concerned lack authority. In education, for example, the current system of inspections means that each centre is visited twice a year on average, with rural centres being the least visited.²⁶ Given that indigenous children in rural areas are more exposed to child labour in agricultural and domestic work,²⁷ inspections can shed light on and tackle some of the causes of school dropout.

59. With regard to labour matters, the State retains a commitment under the peace accords to monitor compliance with the labour rights of women, agricultural workers, domestic workers, minors, the elderly and the disabled. The deficiencies of the Labour Inspectorate,²⁸ essentially

budgetary, mean that many cases of failure to comply with labour regulations are not investigated. In 2004 some 4,478 inspections were carried out, of which only 26 were in the agricultural sector. This statistic shows the low frequency of inspections in rural areas, where continuing violations of labour rights reportedly occur.

60. By a decision of the Supreme Court in August 2004, the Labour Inspectorate lost its power to impose sanctions as it was trespassing on the authority of the Labour Court. According to specialists in labour law, the judgement represents a reversal in efforts to combat the impunity in the workplace that prevails in labour relations.

61. On occasion public officials are not fully aware of the protective role of the State with regard to economic, social and cultural rights. A first step in building awareness was the adoption in 2004 of the executive ethical standards and the establishment of the Commission on Transparency and Corruption. Another priority is reform of the Civil Service Act.

62. The full development of the role of the State in respecting, protecting and progressively realizing economic, social and cultural rights can only be attained through the appropriate allocation of financial resources. Social expenditure remains inadequate.

63. The peace accords identified fiscal policy as the key tool in discharging constitutional obligations, including socio-economic and cultural development. The 2000 fiscal agreement was adopted after a process of broad consensus and discussion. As indicated by the Economic Commission for Latin America and the Caribbean (ECLAC)²⁹ and the World Bank,³⁰ there is a need to rework the agreement so as to secure a tax increase that would bolster public income and allow for higher social expenditure. The High Commissioner adds that reactivation of the agreement is important in terms of strengthening institutions and government policies.

D. Equality and non-discrimination

64. The High Commissioner expresses her concern at the deep-seatedness of racism and racial discrimination against the Maya, Xinca and Garífuna populations. She is also concerned by the political and social discrimination against women stemming from the prevailing patriarchal culture and the context of poverty and social marginalization. She is particularly concerned by the dual discrimination against indigenous women, reflected in rejection of their costumes, their limited access to education and basic public services, and the lack of opportunities in the workplace and of access to land.

65. Racial discrimination is a multidimensional phenomenon with an impact in the legal, interpersonal, institutional and structural domains. Accordingly the Special Rapporteur on

contemporary forms of racism, racial discrimination, xenophobia and related forms of intolerance, recommended that the State should adopt an integrated approach in efforts to combat racism and racial discrimination.

66. With regard to the legal framework, certain laws are not in full accordance with the commitment established under the peace accords or the provisions of International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, or of other international instruments on the rights of indigenous peoples. Recognition by the State of the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals is pending.

67. A 2002 reform of the Criminal Code defined discrimination as an offence, and provided that discrimination on the basis of language, culture or ethnicity constituted an aggravating factor. To date there has been one conviction. A further 49 cases are under investigation by the Public Prosecutor's Office and a judgement is pending in six others. The general nature of the law makes it difficult to categorize acts as falling under the criminal definition of racial discrimination, in view of which the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people recommended the adoption of a comprehensive law to combat ethnic, racial and gender-based discrimination.

68. Racial discrimination in interpersonal relations is the most difficult offence to prove in administrative or legal proceedings. Attitudes, both on the part of those who discriminate as well as those who are discriminated against, have been internalized to such an extent that they have become a way of thinking.³¹ The fact that the population considers racial discrimination as something normal explains why the number of cases recorded by human rights institutions does not reflect the true extent of the phenomenon.

69. Notwithstanding the deep-seated nature of racial discrimination in society, the High Commissioner notes that the State has still not undertaken mass awareness-raising campaigns at the national level. There is an urgent need for a national plan to combat racism and discrimination based on the Durban Programme of Action and incorporating the education system and the media as allies.

1. Right to identity of indigenous peoples

70. The legacy of discrimination and racism has impeded recognition and enjoyment of the identity and collective rights of indigenous peoples. One indication is that the Agreement on Identity and Rights of Indigenous Peoples has the lowest rate of compliance.³² Equally, few

administrative, legal or political measures have been taken to implement ILO Convention No. 169.

71. Although the current Government has formulated policies and adopted a programme for indigenous peoples based on the principle of multiculturalism,³³ the enjoyment of identity remains defective³⁴ with regard to such rights as recognition of their forms of social organization and system of administration of justice, land ownership and exercise of spirituality. In terms of access to justice, security, education and health, indigenous peoples are confronted still with a government Administration that is unreceptive to the idea of providing services of cultural relevance or in their own language.³⁵

72. Notwithstanding the adoption of the National Languages Act aimed at promoting the bilingual provision of public services at the community level, the Human Rights Procurator reports that some government officials do not allow consumers to use their language, on the pretext that they understand Spanish.³⁶

73. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related forms of intolerance, and the Inter-American Commission on Human Rights note that there has still not been any express acknowledgement of indigenous rights and that the system of justice remains monistic and not pluralist. In addition, the State has an obligation to guarantee access to justice by indigenous people with regard to their own cultural identity. To this end community peace courts, administration of justice centres and new court facilities have been set up in areas with a heavy concentration of indigenous people, although problems with geographical and financial accessibility remain. Equally there are shortcomings at the level of language in terms of the number of bilingual justice officials.³⁷

74. With regard to demands for land by indigenous communities, it is important to note adoption of the Land Register Act, recognizing collective registration of ownership of communal lands by indigenous peoples. Another important aspect of the Act is recognition of access to sacred places for ceremonial use where such places have been identified as privately owned. The High Commissioner emphasizes the need to establish agrarian courts and tribunals to find solutions to the problems that arise in connection with the registration of land. Further, there is a need for regulations to govern the functioning of such organs

2. Social participation

75. One important advance in participation by traditionally excluded populations and groups such as indigenous peoples and women is represented by the laws on participation and decentralization and their gradual implementation, through the development councils, in the design and definition of local development strategies.

76. No information was obtained indicating the effective level of participation by the rural and indigenous population groups most affected by poverty, but there are reports of various obstacles to their participation, both bureaucratic and cost-related, among others. The ability of such groups to participate and put forward proposals remains low, owing to poor educational levels, illiteracy and poverty. Further, the lack of access to information on many subjects makes decision-making difficult. As a result, planning is reduced to isolated projects not part of any long-term development approach.

77. To ensure an appropriate level of participation and representation by indigenous communities in the system of development councils, the State has an obligation to respect and guarantee indigenous peoples' own forms of social organization, which are constitutionally recognized, and to facilitate access to information and provide training and skills enhancement.

78. ILO Convention No. 169 establishes that indigenous peoples have a right of consultation with regard to all legislative or administrative measures that may have a direct impact on them. The Human Rights Procurator has, since 2004, recorded reports of violations of this right in various departments where mining activities are being carried out.³⁸ The High Commissioner notes that consultation measures have not yet been brought into line with ILO Convention No. 169. Its non-application may result in procedural defects in decision-making on issues that affect indigenous peoples, imperilling relations between government authorities and indigenous peoples.

IV. RECOMMENDATIONS

A. Prevention and protection

79. **The High Commissioner urges Congress and the Government to gradually increase the tax level over the next three years to above the 12 per cent target established in the peace accords. A substantial increase, comparable to the Central American average of approximately 16 per cent, would allow the State to better discharge its function of respecting, protecting and progressively realizing human rights, especially in areas with the most vulnerable and disadvantaged population.**

80. The High Commissioner urges the Government to guarantee the life, physical integrity and security of persons. To this end it urges the promotion of comprehensive government policies on the security of the citizen, with a preventive focus. The High Commissioner requests the allocation of adequate resources for implementation of the national policy on the prevention of juvenile violence. The Office also urges Congress to approve the programme on security agreed but not yet implemented and to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

81. The High Commissioner urges Congress to approve the draft legislation on the prison system agreed with civil society. The Government is encouraged to provide the prison system with the necessary financial and technical resources to discharge its duty to oversee prisons, prevent acts of violence and act against corruption among officials. The High Commissioner encourages the Ministry of the Interior to formulate rehabilitation and social reintegration programmes for prisoners.

82. The High Commissioner urges the Government to provide financial and technical resources to fund the policies of protection and prevention of violence against women and to strengthen the capacity of the judiciary, the National Civilian Police and the Public Prosecutor's Office to prosecute, investigate and punish those responsible. It also urges the promotion of increased institutional coordination in all these domains.

83. The High Commissioner calls upon the Government and the system of justice to establish effective, sustainable programmes covering the interior of the country to protect the life and personal integrity of human rights defenders, trade unionists, journalists, justice officials and witnesses.

B. Rule of law and impunity

84. The High Commissioner encourages the Government and Congress to provide institutions comprising the system of justice with the financial, human and technical resources needed to extend their coverage throughout the country. The High Commissioner encourages the development of the capacity to investigate, prosecute and punish through recruitment and training, and the establishment of professional career paths. The High Commissioner encourages the system of justice to act in accordance with due process and the principle of equality before the law, and not confine itself to minor crime. Congress is encouraged to adopt the bill on the establishment of the National Institute of Forensic Science.

85. The High Commissioner urges the President of the Republic and State authorities to act at the highest political level and with the participation of civil society to expedite the establishment of the Commission for the Investigation of Illegal Groups and Clandestine Security Organizations and trusts that the Commission, as it was conceived, will contribute to upholding the rule of law.

C. Transitional justice

86. The High Commissioner urges the Government and Congress to approve the law on public access to information and to formalize State custody of the recently discovered police and military files. It is recommended that the Office of the Human Rights Procurator and the Public Prosecutor's Office be provided with technical resources to investigate the information contained in the files, and to identify and prosecute possible human rights violators. The Public Prosecutor's Office is urged to formulate a policy of routine investigation of serious human rights violations perpetrated during the armed conflict.

87. The High Commissioner urges the Government to continue to support the compensation programme, with the inclusion of civil society, so as to guarantee that the victims, family members and communities affected benefit without discrimination.

88. The High Commissioner urges the Government to accelerate implementation of a national plan to locate disappeared persons, and provide sufficient resources for its implementation.

D. Economic and social policy

89. The High Commissioner urges the Government to allocate the financial, human and technical resources needed for the implementation of socio-economic policy and to create sectoral monitoring systems to ensure that existing resources are targeted towards the most vulnerable and disadvantaged groups.

90. The High Commissioner urges the Government to review and promote administrative regulation of the social sector in accordance with its commitments and human rights standards. There is a need to strengthen the capacity of administrative mediation, oversight and penalization machinery to ensure that it has more impact in rural areas and in cases of discrimination. The Government is urged to conduct awareness-raising and training programmes for its officials regarding their obligations to protect and promote economic, social and cultural rights.

E. Equality and non-discrimination

91. The High Commissioner urges the Government and Congress to review national legislation to bring it into line with international human rights commitments on discrimination, ILO Convention No. 169 and the commitments still pending under the peace accords. The Government is urged to make a declaration recognizing the competence of the Committee on the Elimination of Racial Discrimination pursuant to article 14 of the Convention. It is also urged to formulate a comprehensive law to counter ethnic, racial and gender-based discrimination.

92. The High Commissioner suggests that the Government adopt an integrated approach in its efforts to counter racism and racial discrimination through a national programme based on the Durban Programme of Action. It is recommended that the Government conduct national campaigns focusing on protection mechanisms. The High Commissioner calls upon the media and the education system to combat prejudices that lead to discrimination and to promote understanding, tolerance and respect for diversity.

93. The High Commissioner urges the Government to strengthen the capacity of public administration in the community sphere to provide culturally relevant public services in indigenous languages. The Government is requested to raise the awareness of officials regarding their responsibilities as public servants in multicultural environments.

94. The High Commissioner urges the Government and the judiciary to recognize indigenous peoples' own forms of constitutionally recognized social organization. The Government is requested to guarantee access to indigenous people, and particularly women, without discrimination to the system of justice, and to overcome linguistic, geographical and financial barriers.

95. The High Commissioner urges the Government and the judiciary to guarantee the legal security of the lands and sacred places of indigenous communities, to approve regulations on the operation of agrarian tribunals, to provide them with financial resources so as to guarantee their establishment throughout the country, and to train judges and auxiliary staff in the justice system.

96. The High Commissioner urges the Government to eliminate the barriers impeding social participation by the most disadvantaged. The High Commissioner urges the institution of practices of transparency, inclusion and accountability in public administration so as to make available the information needed for decision-making.

The Government is urged to promote conditions that will improve the capacity of disadvantaged groups (rural women and indigenous peoples) to put forward proposals by providing technical advisory services.

97. The High Commissioner urges the Government and Congress to overhaul mechanisms for the consultation of indigenous peoples in accordance with ILO Convention No. 169 and to incorporate such mechanisms in government policies and legislation and administrative proceedings affecting the identity or development of indigenous peoples.

F. Promotion of a culture of human rights

98. The High Commissioner encourages the Government and human rights organizations to continue the institutionalization of forums for dialogue, at both the national and local levels, so as to attain a higher level of respect and mutual understanding with regard to the promotion and protection of human rights.

99. The High Commissioner encourages the Government to consult broad sectors of society with regard to the proposed national human rights plan, and to incorporate a comprehensive focus based on gender and indigenous peoples. She also encourages the Government to formulate a national human rights education plan. The High Commissioner requests the Government and Congress to reform the existing Civil Service Act and to establish a professional civil service career path.

100. The High Commissioner urges the Government and Congress to provide the Office of the Human Rights Procurator with sufficient resources for it to be able to develop its technical capacity to promote, protect and disseminate human rights.

G. Technical cooperation and advisory services of the Office of the High Commissioner in Guatemala

101. The High Commissioner urges the Government to implement the recommendations of international human rights bodies in a coherent and effective manner, including those contained in this report, and the commitments assumed under the peace accords.

102. The High Commissioner invites government departments and organs and civil society organizations to benefit fully from the technical cooperation and advisory services of her Office in Guatemala. She also invites the international community to provide the necessary financial and/or technical support so that the various State institutions, non-governmental

organizations and the Office of the High Commissioner may make an effective contribution to the implementation of these recommendations.

NOTES

- ¹ United Nations Verification Mission in Guatemala (MINUGUA), “Informe de Cierre. Asesoría de Derechos Humanos”, 2004, pp. 21 and 26-30.
- ² Ninth report of the Secretary-General on the United Nations Verification Mission in Guatemala, 30 August 2004, para. 4.
- ³ Guatemala Studies Centre, “Las Maras ... ¿Amenazas a la Seguridad?”, October 2005.
- ⁴ MINUGUA, “Informe de Cierre. Asesoría de Fortalecimiento del Poder Civil (AFPC)”, 15 November 2004, paras. 121 and 164.
- ⁵ Office of the Human Rights Procurator, “Las maras y el enfoque de Seguridad Democrática: Tendencias actuales y análisis prospectivo”, October 2005, pp. 35-39, 79.
- ⁶ Inter-American Commission on Human Rights, press release 32/05, 16 August 2005.
- ⁷ Institute of Comparative Studies in Criminal and Social Science, “Violencia contra las mujeres. Tratamiento por parte de la justicia penal de Guatemala”, 2005, p. 22.
- ⁸ National Civilian Police report, “Muertes violentas de mujeres durante el 2004”, p. 26.
- ⁹ Women’s Section, “Sentencias Condenatorias. Fiscalía de la Mujer y Unidad de Niñez y Adolescencia Víctima”.
- ¹⁰ Countries with low crime rates have a recommended average of four police officers per thousand inhabitants.
- ¹¹ MINUGUA, “Informe Final (AFPC)”, November 2004, para. 131.
- ¹² National Civilian Police, “Muertes Violentas de Niñez, Adolescencia y Juventud”, 2004, pp. 37-38, 53; Inter-American Commission on Human Rights, “Justicia e Inclusión Social”, 2003, para. 144; MINUGUA, “Informe Final (AFPC)”, November 2004, para. 130.
- ¹³ A further three officers from the same unit were subsequently arrested in Guatemala.
- ¹⁴ Ministry of the Interior, Information Bulletin No. 4, December 2005, p. 3.
- ¹⁵ Susie Kemp, Criminal prosecution of international offences in Guatemala, observations and recommendations arising from the technical support programme of the Centre for Human Rights Legal Action, April 2005.
- ¹⁶ Public Prosecutor’s Office, Criminal Prosecution Policy Plan, May 2005, p. 5.

- ¹⁷ Myrna Mack Foundation, “El Poder Oculto”, 2003, pp. 41-44.
- ¹⁸ Commission for Historical Clarification report, vol. V, chap. 4, Conclusions.
- ¹⁹ Judgement of the Inter-American Court, *Myrna Mack Chang v. Guatemala*, 25 November 2003, pp. 80 and 81, No. 134.90.
- ²⁰ Association for Economic, Social and Cultural Human Rights in Guatemala (DESCGUA) report 2005, p. 12.
- ²¹ Economic Commission for Latin America and the Caribbean (ECLAC): Report of the Presiding Officers of the Regional Conference on Women in Latin America and the Caribbean on Central America, 2005, p. 9.
- ²² World Bank, *Poverty in Guatemala*, 2004, p. 3.
- ²³ Committee on Economic, Social and Cultural Rights, general comment No. 12, paras. 14 and 15.
- ²⁴ Second progress report by Guatemala on Millennium Goals, September 2005, p. 1.
- ²⁵ Committee on Economic, Social and Cultural Rights, general comment No. 9, on the domestic application of the Covenant, para. 9.
- ²⁶ National Economic Research Centre, “Resultados de la auditoría social a los servicios de apoyo del Ministerio de Educación”, 2005, pp. 19 and 31.
- ²⁷ Economic and Social Council, *Official Records 2004, Supplement No. 2*. Concluding observations of the Committee on Economic, Social and Cultural Rights on the Republic of Guatemala, paras. 412 and 437.
- ²⁸ Ibid.
- ²⁹ ECLAC, “Hacia el logro de las MDM en América Latina y Caribe”, 2005, pp. 296 and 303.
- ³⁰ World Bank, *Poverty in Guatemala*, 2002, p. 14.
- ³¹ Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA), report submitted to the Office of Planning and Programming (SEGEPLAN), Human Rights Procurator, Office of the Ombudsman for Indigenous Peoples, 1 December 2005.
- ³² MINUGUA, “Informe sobre avance del Cronograma del implementación”, p. 10.
- ³³ Millennium goals, “Segundo informe de avance de Guatemala, versión preliminar y resumida”, p. 1.

³⁴ Inter-American Commission on Human Rights, *Annual Report*, 2004, chap. IV, pp. 101 and 102.

³⁵ Peace Secretariat (SEPAZ), “Agenda Pública hacia los pueblos indígenas en el Marco de los Acuerdos de Paz”, 2005, p. 13.

³⁶ Office of the Human Rights Procurator, “Informe al Relator Especial sobre formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia”, July 2004, p. 32.

³⁷ Inter-American Commission on Human Rights, “Informe de Seguimiento” (OEA/Ser.L/V/II.122 Doc.5/rev.123), February 2005, p. 9.

³⁸ Human Rights Procurator, “La Actividad Minera y los Derechos Humanos en Guatemala”, May 2005, pp. 4, 5, 8 and 37.
