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土 著 问 题

人权和土著问题

土著人民人权和基本自由情况特别报告员
鲁道夫·斯塔文哈根先生根据委员会
第 2001/57 号决议提出的报告

增 编

对危地马拉的访问* **

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* 本访问报告的内容提要以所有正式语文分发。报告本身载于内容提要的附件，仅以原文和英文分发。

** 根据大会第 53/208 B 号决议第 8 段的规定，本文件迟交是为了尽可能载入最新资料。

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内 容 提 要

本报告是根据人权委员会第 2001/57 号决议提出的，说明土著人民人权和基本自由情况特别报告员 2002 年 9 月 1 日至 11 日对危地马拉的正式访问情况。

危地马拉是一个多民族、多文化、多语言的社会，其 1,200 万居民中大约有一半是马雅、辛卡和加里富纳土著居民。在全国各个地区、特别是在农村地区，土著居民占人口的大多数。危地马拉的民族特征在很大程度上是建立在土著居民丰富多彩的文化、传统、集体价值观念、语言和宗教的基础上的。但土著人非但不能与其他居民平起平坐，而且在政治上受到排斥、在文化上受到歧视、在经济上处于社会边缘地位。

而且，人类发展和社会指数表明，马雅人、辛卡人和加里富纳人处境非常困难，他们每天都受到种族和族裔歧视，这表现为对土著人采取贬低和排斥的态度，甚至在媒体上也是如此，对土著文化的各个方面(包括其宗教和语言)进行歧视，土著人在取得发展的好处和参与政治和社会生活方面遇到各种不便。

必须在 1996 年《和平协定》的框架内审议危地马拉土著居民的人权情况，这项协定结束了长达 30 年的国内武装冲突。为了执行这项协定，政府采取了各种措施，尽管这些措施具有重大意义，但由于缺乏资金、缺乏落实这种措施的政治意愿，因此效果不佳，力度也不够。秘书长告知，这些协定的执行受到推迟。

困扰土著居民的一个根本问题是土地权的问题。得不到土地、土地纠纷得不到解决、公用树林等传统土地得不到尊重、因经济发展项目而将土著居民强行迁移、因武装冲突而失去土地等种种问题，造成了社会紧张局势加重的局面。土著妇女的处境尤其岌岌可危。

土著居民在取得司法权方面的情况也令人关切。尽管政府采取了明确的措施在全国各地、特别是在土著地区推行司法行政制度，但其覆盖率仍然不足。

土著居民抱怨，他们难以接触到法官和法院，他们的习惯权利遭到歧视，在法院缺少讲土著语言的翻译和政府辩护律师。

在土著居民优先关心的教育方面，尽管政府为提供双语和多种文化教育作出了努力，但没有足够合格的教师，其余的教育资金也不够。学校缺乏课本和其他教学材料，在土著人居住的农村地区尤其如此。入学率、特别是土著女童入学率依然低于其他儿童人口，这一事实令人不安，因为这在将来会使排斥和歧视继续下去。

特别报告员建议政府扩大活动，改善针对土著居民的政策，重申执行《和平协定》的承诺。考虑到在联合国危地马拉核查团(联危核查团)撤离之后的阶段，联合国应该与联合国人权事务高级专员办事处合作建立一个特别着重于土著居民的特派团。此外，特别报告员还建议土著居民组织和其他非政府组织、包括学术界采取措施，拟定一项共同行动纲领，以宣传、核查和鼓励作为《和平协定》的一部分的《土著居民的特征和权利协定》的执行情况。

特别报告员表示，相信政府、土著居民、国际社会和民间社会其他成员能够为在危地马拉建立一个对其最受排挤的群体更为公正的社会作出贡献。

Annex

REPORT OF THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS PEOPLE, MR. RODOLFO STAVENHAGEN, ON HIS MISSION TO GUATEMALA (1-11 SEPTEMBER 2002)

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Introduction

1. In resolution 2001/57, the Commission on Human Rights created the post of Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people with the task of receiving and exchanging information from Governments, indigenous communities and other important sources concerning the situation of fundamental rights and freedoms of indigenous people and formulating recommendations and proposals on possible measures and activities to prevent violations of those rights and freedoms. The Commission called on Governments to invite the Special Rapporteur to visit their countries.

2. Following an invitation from the Government, the Special Rapporteur visited Guatemala from 1 to 11 September 2002. The Special Rapporteur expresses appreciation to the Government of Guatemala for the invitation and the cordial welcome and cooperation he received. He also wishes to thank the Presidential Human Rights Commission (COPREDEH) for organizing his meetings with government officials. Likewise, he expresses his gratitude to the United Nations Development Programme (UNDP) - Guatemala, the United Nations Verification Mission in Guatemala (MINUGUA) and the representative of the Office of the United Nations Commissioner for Human Rights in Guatemala for his excellent work and for arranging an extensive and well-organized programme of meetings, as well as providing infrastructure and logistics for the mission.[1] He also wishes to thank the many indigenous organizations for their time and the valuable information they supplied. Lastly, he wishes to express appreciation to the Inter-American Institute of Human Rights for its cooperation, and offer his sincerest thanks to Diego Iturralde of the Institute, as well as Julian Burger, of the Indigenous People and Minority Unit in the High Commissioner's Office, for accompanying him and helping in the preparation of this report. The programme of the mission appears in annex 1.

3. The Special Rapporteur's visit to Guatemala was his first official mission to a Member State following his appointment in June 2001. Guatemala is of special interest and concern to the Special Rapporteur because of its demographic and cultural characteristics. In 1996 a wide-ranging peace agreement was signed by the Government and the armed opposition, putting an end to 36 years of bloody domestic conflict. It provided for the dispatch of a United Nations Verification Mission in Guatemala (MINUGUA) to check on implementation, but the mission is due to end its work in December 2003. MINUGUA has reported that the undertakings in the Peace Agreements relating to indigenous rights have not been completely fulfilled.

4. This report is based on information supplied by government officials, representatives of the United Nations system in the country and indigenous people's organizations, as well as other non-governmental organizations and the academic community. The Special Rapporteur paid special attention in his work to the Agreement on Identity and Rights of Indigenous People and the Comprehensive Agreement on Human Rights, which form part of the Peace Agreements and set out a framework for reconciliation, security and justice for the indigenous peoples in the country.

I. BACKGROUND

5. The present status of the indigenous peoples in Guatemala is the result of a long process of colonial subjection of the Maya people starting in the sixteenth century, which was reinforced during the liberal period in the nineteenth century, when a governing class was formed that based its power and its privileges on large rural estates and the exploitation of indigenous labour, under authoritarian and property-based regimes.

6. A number of attempts to build a fairer society were repeatedly suppressed by force. A military coup in 1954 which overthrew the democratic regime that had been in power since 1944 triggered a cycle of violence that lasted almost half a century. During the 1960s, the revolutionary movement emerged against the background of a succession of military regimes and transitory civilian governments, nourishing a domestic armed conflict which continued for over 30 years until its formal conclusion with the Peace Agreements signed in 1996.

7. According to the Commission for Historical Clarification (CEH), which was set up under the Peace Agreements:

> "The evidence for this, throughout Guatemala's history, but particularly so during the armed confrontation, lies in the fact that the violence was fundamentally directed by the State against the excluded, the poor and above all, the Mayan people, as well as against those who fought for justice and greater social equality."
>
> "The anti-democratic nature of the Guatemalan political tradition has its roots in an economic structure, which is marked by the concentration of productive wealth in the hands of a minority. This established the foundations of a system of multiple exclusions, including elements of racism, which is, in turn, the most profound manifestation of a violent and dehumanizing social system. The State gradually evolved as an instrument for the protection of this structure, guaranteeing the continuation of exclusion and injustice."
>
> "[...] Political violence was thus a direct expression of structural violence."

8. CEH concluded that the military response to the challenge posed by the guerrilla movement had been excessive, and that in that context the bulk of the country's indigenous population had been hard-hit by the violence and military repression during the long years of armed conflict. Through its investigation CEH discovered that:

> "State forces and related paramilitary groups were responsible for 93 per cent of the violations documented by CEH, including 92 per cent of the arbitrary executions and 91 per cent of forced disappearances. Victims included men, women and children of all social strata: workers, professionals, church members, politicians, peasants, students and academics; in ethnic terms, the vast majority were Mayans.
>
> "[...] The vast majority of the victims of the acts committed by the State were not combatants in guerrilla groups, but civilians.

"[...] The armed confrontation left a large number of children orphaned and abandoned, especially among the Mayan population, who saw their families destroyed and the possibility of living a normal childhood within the norms of their culture lost.

"[There was] massive and indiscriminate aggression directed against [indigenous] communities independent of their actual involvement in the guerrilla movement and with a clear indifference to their status as a non-combatant civilian population. The massacres, scorched-earth operations, forced disappearances and executions of Mayan authorities, leaders and spiritual guides were not only an attempt to destroy the social base of the guerrillas, but above all to destroy the cultural values that ensured cohesion and collective action in Mayan communities.

"[...] CEH also concludes that the undeniable existence of racism expressed repeatedly by the State as a doctrine of superiority is a basic explanatory factor for the indiscriminate nature and particular brutality with which military operations were carried out against hundreds of Mayan communities in the west and north-west of the country, especially between 1981 and 1983, when more than half the massacres and scorched-earth operations occurred.

"A high proportion of the human rights violations known to CEH and committed by the Army of security forces were perpetrated publicly and with extreme brutality, especially in the Mayan communities of the country's interior."

9. For the reasons set out above and others indicated in detail in its report, CEH concluded that genocide had been committed against the indigenous peoples of the country. The present human rights situation of the indigenous peoples of Guatemala cannot be understood without reference to this historical background.

II. HUMAN RIGHTS SITUATION OF THE INDIGENOUS PEOPLES

10. At present, indigenous people account for over half the total population of Guatemala, or some 6 million persons.[2] The Agreement on Identity and Rights of Indigenous People, signed in 1995, acknowledges that the Guatemalan nation is multi-ethnic, multicultural and multilingual in nature, and that the indigenous peoples include the Maya, Garífuna and Xinca peoples.[3] The latter make up over 75 per cent of the population in 4 of the country's 21 departments, and between half and three quarters in a further 6 departments. There are areas of high indigenous concentration and others with a mestizo majority.

11. One of the issues of greatest current concern is the close link between ethnic origin and poverty; the departments in which there is the highest concentration of indigenous people are also those which experience the greatest poverty and extreme poverty.[4] Those who are poor and destitute in Guatemala live predominantly in the rural areas, engage mainly in farming, are mostly illiterate, have school attendance levels below the national average, have no access to basic services and suffer various degrees of marginalization and social exclusion. Indigenous

women experience the lowest levels of economic and social well-being.[5] Rural poverty among indigenous people has worsened in recent years as a result of the fall in world coffee prices, one of the traditional export products most widely grown by indigenous peasants.

Indigenous people and poverty in Guatemala

- Almost 40 per cent of indigenous people live in extreme poverty and about 80 per cent are poor, according to the National Survey of Living Conditions, 2000.

- Poverty is concentrated in the south-west[6] of the country, where almost 30 per cent of the total number of poor households are to be found. Thirty-three per cent of the country's indigenous population is concentrated in the south-west. There is a high incidence of poverty in the north (Alta and Baja Verapaz) - 77 per cent of households are poor. The level is also high in the north-west[7] - nearly 75 per cent of households are poor. Seventy-five per cent of households in the north and north-west regions are indigenous.

- Thirty per cent of the indigenous population aged between 15 and 24 is illiterate.

- In some communities, illiteracy among women is as high as 90 per cent.

- Indigenous boys in the countryside complete a little over two years' schooling on average, girls a little over one year.

- Sixty-five per cent of the indigenous population has no access to a water supply network, over 80 per cent are not connected to sewerage systems and half are not connected to the electricity grid.

Source: MINUGUA, *The indigenous peoples of Guatemala: Overcoming discrimination in the framework of the Peace Agreements*, September 2001.

12. Although the Agreement on Identity and Rights lays down specific objectives and targets that the Government is committed to attain, and although President Alfonso Portillo has undertaken to give them the status of official policy, the evidence shows that the Agreement has not been fulfilled and that there are serious delays in its implementation in comparison with the original timetable agreed by the signatories, which has had to be revised because of these very delays.

13. MINUGUA has stresssed at various times that the Government's commitments regarding the indigenous peoples are those recording the greatest delays. Most of the actions envisaged to overcome discrimination are pending implementation.[8] As various observers have noted, this suggests that the change proposed in the Peace Agreements has not been addressed and that the exclusive and monocultural model persists.[9] The experience of the Special Rapporteur during his visit to Guatemala confirms this.

14. The Peace Agreements provided for constitutional reform on various issues, including recognition of the rights of the indigenous peoples. In 1999, in accordance with the Agreements, a referendum was held on these reforms, which were partially drawn up and approved by the Congress. However, the proposal was rejected by a small margin. According to a number of observers, the questions in the referendum were drafted and manipulated in such a way as to ensure that the favourable indigenous vote did not give rise to a majority.[10] The Special Rapporteur noted the feeling of disappointment and frustration among the country's indigenous organizations in this regard.

15. Discrimination against the indigenous peoples permeates society in Guatemala and is a feature of the political and economic system. Under the Agreement on Identity and Rights, one of the most urgent tasks is to eliminate legal and de facto discrimination by means of a variety of juridical and institutional measures. During the Special Rapporteur's visit to the country, the Congress adopted an amendment to the Penal Code categorizing discrimination, including discrimination on ethnic grounds, as an offence. Although strictly speaking this legislation complies with one of the stipulations of the Peace Agreements, it does not in fact constitute a law against discrimination in the broad sense, nor does it describe ethnic and racial discrimination against the indigenous peoples as a social scourge which must be eradicated. There remains a need to revise all current legislation in order to eliminate its discriminatory aspects. The MINUGUA report notes that progress made on these issues is uneven, and there have been serious delays in compliance with some of the most important commitments.[11]

16. There are various types of racial and ethnic discrimination: *legal, interpersonal, institutional* and *structural.* In Guatemala all these types still exist, some being more prominent than others. Delays in legal matters do not of course reflect a sort of legal apartheid, but rather the fact that the laws are not worded in a manner conducive to full enjoyment by the indigenous peoples of all their human rights, and the fact that domestic legislation is still not sufficiently in keeping with the principles laid down in the Peace Agreements.

17. *Interpersonal* discrimination has been extensively documented, and takes the form of attitudes of rejection and exclusion vis-à-vis indigenous people on the part of the mestizo and White population. It affects women in particular, especially when they wear traditional indigenous dress, as well as girls and boys in schools, public places and the street. The mass media also spread on an extensive scale stereotypes and prejudices which are deleterious to the image of the indigenous peoples, and these are repeated in conversions and in personal attitudes. The Peace Agreements set out a commitment to combat this persistent and pernicious form of ethnic and racial discrimination through education, social communication and creation of awareness among the public. But little progress has been made to date.

18. *Institutional* discrimination takes the form of a bias against indigenous peoples in the distribution of public expenditure and collective goods. It may be seen, inter alia, in the low socio-economic indicators applying to the indigenous population, the low level of indigenous participation in public administration and in political and governmental forums, and the fact that indigenous Guatemalans form a majority of the rank and file in the armed forces and an absolute minority among the officers. The indigenous peoples and communities benefit much less from educational and health facilities, the administration of justice, public and private investment, basic infrastructure and other services than their numbers would merit.

19. The Peace Agreements contain an undertaking to combat these inequalities, and some progress has been made. The number of justices of the peace in the indigenous areas has been increased, and a Commission on Indigenous Affairs has been formed within the Supreme Court. Other bodies set up include the Guatemalan Fund for Indigenous Development and the Office for the Defence of Indigenous Women, the latter described by the United Nations General Assembly as a positive step towards the protection of indigenous women.[12] A commission has been set up to grant official status to the indigenous languages, on the basis of the work which has been carried out by the Academy of Mayan Languages of Guatemala. A joint commission has also been created to oversee the conservation and administration of Mayan sacred places, and a law on sacred sites has been adopted. More recently a Presidential Commission to Combat Discrimination and Racism against the Indigenous Peoples in Guatemala was established.[13]

20. Despite the proliferation of commissions, committees and ombudsmen, progress in dismantling ethnic and racial discrimination at the institutional level has been slow. Underlying this situation is the *structural* discrimination against the indigenous peoples which is founded on the historical mechanisms already referred to, by means of which the indigenous peoples were excluded from access to the economic, political and institutional resources they needed in order to live on an equal footing with the remainder of the population. As long as there is no modification of the very foundation of the concentration and appropriation of the principal economic, political and symbolic resources of the country by the governing elites, which have succeeded in systematically excluding the indigenous people from nation-building, the latter will be unable to play a role as free and equal citizens. The Agreement on Identity and Rights points to a modification of this structure as the means of guaranteeing peace and human rights in a framework of democracy, but, as MINUGUA has underlined, this path is strewn with pitfalls and the goal is not yet in sight.

21. Some of the priority areas examined by the Special Rapporteur during his visit to Guatemala are described below.

III. PRIORITY ISSUES IN RELATION TO THE HUMAN RIGHTS OF THE INDIGENOUS PEOPLES

The land issue

22. Agricultural resources are distributed very unequally in Guatemala, with cultivable land highly concentrated in a few estates. Ninety-four per cent of small farms (*microfincas* and *fincas subfamiliares*) occupy 18.6 per cent of the land, while 1.5 per cent of the large farms (those covering more than one *caballería*, or roughly 45.7 hectares) account for 62.5 per cent of the total. This reinforces the socio-economic polarization of Guatemalan society.[14] According to another source, 96 per cent of producers farm 20 per cent of agricultural land, while 4 per cent of producers farm the remaining 80 per cent.[15]

23. More recent information indicates that during the more than three decades of armed conflict, the fragmentation of peasant plots into *minifundios* increased, leading to growing conflict, largely due to the displacement and resettlement of the indigenous population and the

misappropriation of communal and public land in various regions. This phenomenon was reported to be particularly acute in the area known as the Northern Transversal Strip, one of the main areas of confrontation during the armed conflict, from which many indigenous communities were displaced and where large estates were formed which are currently owned by former members of the armed forces. The Special Rapporteur has received many complaints on this matter.

24. The picture set out above is exacerbated by the fact that the laws and institutions for land titling, property registration and maintenance of the register of agricultural land are inadequate and ineffective, giving rise to a high level of legal uncertainty and many conflicts relating to boundaries and land tenure.

25. The Agreement on Identity and Rights mentions the need to guarantee the land rights of the indigenous peoples, including: regularization of the land tenure of the indigenous communities; recognition and guaranteeing of the rights of indigenous people to use and administer their land and resources; restitution of communal land and compensation for dispossession; acquisition of land for the development of the indigenous communities; and legal protection for the rights of indigenous communities (sect. IV, F). MINUGUA has pointed out that all these commitments had to be rescheduled owing to lack of compliance.[16]

Various Xinca communities in the department of Santa Rosa presented documentation to the Special Rapporteur concerning action allegedly taken by landowners with the support of local municipal authorities to dispossess them of their communal land.

The indigenous peoples from the north, east and north-east of Guatemala, meeting in El Estor, Izabal, gave the Special Rapporteur a report describing the present situation, noting that "land tenure and the conflicts arising from it constitute one of the most important current issues in the departments of Alta Verapaz, Petén, Chiquimula and Izabal, in particular because they give rise to serious social conflicts. The conflict stems not only from the shortage of land and lack of access to land for thousands of families, but, fundamentally, from the unreliability of the judicial system and the fact that it is almost impossible to authenticate, register or regularize land tenure status".

26. The situation of land and forests belonging to indigenous communities which were not regularized at the proper time is particularly critical. These areas were affected during the armed conflict by such factors as the breakdown of forms of indigenous social organization and the fact that the traditional indigenous authorities lost the ability to conserve them, regulate their use and resolve conflicts among community members and between them and third parties. In contrast, the landowners, protected by various laws and by the State authorities, took possession of indigenous land, and these and other attacks damaged and weakened the organic indigenous structure of many communities, as the CEH report has pointed out. The mechanisms used to expropriate the land of indigenous communities enjoy protection based on confused and inadequate legislation, which always results in punishment for a problem which is of social

origin. The application of the law on the granting of supplementary titles may continue to result in dispossession, and hence in conflicts between landowners and communities, and between one community and another.

27. The machinery set up so far to implement the commitments enumerated in the Agreement on Identity and Rights, such as the Land Trust Fund and the programmes for the resettlement of displaced and returning groups, has proved inadequate to the task of modifying the existing situation, and, even to the extent that it has been used, has been unable to make up the accumulated backlog, deal with new demands for land, settle disputes and rectify inequalities in land distribution. New developments have worsened the situation in recent years: the establishment of protected areas or forest reserves, and the granting of mining and forestry rights. As a rule these measures exclude the indigenous groups who have settled in or near such areas from exploiting the resources, fail to take into account their impact on the needs of the communities, make no provision to address such impacts and have been drawn up without consultation with those concerned.

28. Access to land for indigenous women is problematic. Despite the provisions of the Peace Agreements, widowed or separated women or those who have married for a second time do not succeed in gaining title to their property (communal or personal), recovering family property or acquiring new land under cooperative or other programmes. Such problems are growing in complexity, but there is no land court or other formal machinery for settling land disputes, which are increasingly heard in the criminal courts in the form of proceedings for dispossession or illegal seizure. This also leads to serious tension and conflicts between those responsible for law enforcement (the courts, the public prosecutors and the police) and the leaders of the indigenous peoples, who have traditionally played a role in regulating access to land and settling land disputes.

29. Labour relations in the rural areas have also failed to undergo substantial changes compared with the situation before the domestic armed conflict. Practices persist whereby indigenous workers are recruited and moved away to work in traditional and new plantations, as well as other ways of recruiting temporary labour at wages falling below the legal minima, without social security coverage or respect for basic rules relating to pay, security of employment or working conditions. This situation affects indigenous women and children especially severely.

30. To some extent, this lack of security in the labour sphere, particularly for women, is repeated in the new workplaces set up under the legislation on export processing zones. Representatives of groups of indigenous women informed the Special Rapporteur of the poor working conditions in such plants and said that indigenous women are victims of racist attitudes and discriminatory practices on the part of the employers or their representatives. One such practice involves a ban on wearing traditional dress in the workplace.

31. The unfair distribution of land, restrictions on access to other natural resources, the lack of jobs and the insecure working conditions combine to create a general lack of food security which particularly affects indigenous children. Some of those interviewed informed the Special Rapporteur of situations that could be described as starvation.

Access to justice

32. Article 66 of the 1985 Constitution provides that the State must recognize, respect and promote the ways of life, customs, traditions and forms of social organization of the indigenous peoples, including their community and/or indigenous practices which are respected as a form of indigenous customary law. In 1996 Guatemala ratified International Labour Organization Convention No. 169 concerning indigenous and tribal peoples in independent countries, which, under article 46 of the Constitution, takes precedence over domestic law on the subject and must therefore be applied and taken into consideration by judicial officials. Under the Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces and the Agreement on Identity and Rights of Indigenous People, which form part of the Peace Agreements, community courts of the peace were set up in 1997 with competence in criminal matters within the limits of each municipality in the departments with substantial indigenous populations - San Andrés Semetabaj, Sololá, San Rafael Petzal, Huehuetenango, San Luis, Petén, Santa María Chiquimula, Totonicapán, San Miguel Ixtahuacán and San Marcos.[17] Of the seven persons who are members of these courts,[18] none is a legal professional; they are individuals of acknowledged honour and influence put forward by the community, who reach their decisions by majority vote, after deliberation, in accordance with customary practice, fairness and the general principles of law.[19] But these community courts of the peace cannot be considered as substitutes for the traditional systems of indigenous authority; they might be regarded as alternatives to the official system, but never as Maya justice.

33. In the past 10 years the number of courts has grown three times as fast as the population of the country, so that the ratio of one court for every 33,000 inhabitants in 1990 changed to one for every 22,000 in 2000. Greatest growth was recorded in the courts of first instance, whose numbers increased from 228 to 501 during that period, so that each department currently has at least one court of first instance and each municipality has one court of the peace. The greatest increase in courts of first instance occurred in the municipalities and departments outside the capital, leading to an improvement in geographical coverage. The rise was higher in the courts handling financial matters, which grew by a factor of six, and in the family courts, which grew by a factor of three and a half. There was a doubling in the numbers of civil and criminal courts. Over the same period other institutions and machinery were established, such as the Public Institute for Criminal Defence, the School of Judicial Studies, the centres for the administration of justice and a variety of conciliation and arbitration arrangements. The Office of the Human Rights Prosecutor contains a unit for the defence of indigenous peoples, a (still small) project for indigenous people's problems and the office of the Procurator-General.[20]

34. Notwithstanding the measures described above, situations and problems persist which hinder access to justice for indigenous people. Courts are often located far from their communities, so that it is difficult and costly to travel to them. Judicial officials - a category which includes judges, assistants, procurators and the personnel of the Public Prosecutor's office and the National Civil Police - have not changed their views or behaviour, which are generally perceived and reported as contrary to the interests of indigenous people, imbued with prejudice and frequently authoritarian, lead to ill-treatment and lack of respect and may involve corruption. Judges and other judicial officials (with very few exceptions) do not speak the indigenous language of the regions in which they work, are ignorant of the traditions and customs of the indigenous peoples, and lack proper respect for the indigenous authorities. It has also been

reported that the independence of the communities was not respected during the appointment and in the work of the community justices of the peace, and that a number of solutions devised at the local level, such as the centres for the administration of justice, do not receive the budgetary support they need.

The Office for the Defence of Q'eqchi' Rights drew the Special Rapporteur's attention to four cases of human rights violations in the municipality of El Estor in the department of Izabal:

(a) Violation of the right to justice in one's own language;

(b) Denial of access to justice to an illiterate indigenous woman;

(c) Violation of ILO Convention No. 169, by operators in oil concessions in Izabal;

(d) Non-compliance with the Urban and Rural Development Councils Act to the detriment of the indigenous communities of the region.

The Office concludes that "for the Q'eqchi' Maya people in Izabal, and especially in El Estor, the denial of access to justice is a fact of life".

35. It is noteworthy that many of the situations reported to the Special Rapporteur, which have been drawn to the attention of the judicial authorities, the Public Prosecutor's Office or the National Civil Police, are examined in criminal courts in the form of offences, with the procedural and social consequences that this implies. It is reported that, as a result of this phenomenon, the justices of the peace, who are competent to hear and rule on criminal cases at first instance, have in practice expanded this sphere of competence to handle family-related, economic, civil, land, commercial and other matters, clearly on the basis of a categorization of incidents as offences rather than as cases of conflicting rights and interests. As a consequence of this practice of criminalizing social problems, the judicial officials are failing to abate tensions in society, and in many cases are exacerbating them.

ILO is engaged in a project to strengthen the legal capabilities of the indigenous peoples in Central America. In Guatemala this project has focused on violations of the collective rights of the indigenous peoples. Systematic examples include:

(a) Obstructing access to a sacred site in Sololá for Mayan spiritual guides;

(b) The transfer and restitution of land belonging to a rural teacher training school which was occupied by the army during the armed conflict. This case was settled satisfactorily 20 years later, in January 2003;

(c) Defence of Mayan communities against accusations of responsibility for lynchings and the insinuation that such incidents are characteristic of Mayan culture. Requirement that Mayan law should be applied to cases of conflict in the Q'eqchi' communities in Alta Verapaz;

(d) Legal defence of the land rights of K'iche' Maya communities in Totonicapan.

Source: ILO. *Casos sistematizados sobre violaciones a derechos colectivos de los pueblos indígenas* (Systematic violations of the collective rights of the indigenous peoples). February-May 2002.

36. A restriction which was repeatedly mentioned during the Special Rapporteur's visit concerns the use of indigenous languages in legal proceedings and other related procedures. Litigation in an indigenous language is not permitted, even when the parties speak it. The provisions which require a properly qualified interpreter to be available are not complied with, and in practice interpreters are neither trained nor recruited in sufficient numbers. This situation leads to acts which are in breach of the rules of due process, to the detriment of the indigenous persons concerned, who furthermore have no adequate defence, especially because the few public defenders in indigenous areas lack training.

37. The leaders of the organizations interviewed attach special importance to recognition of and respect for a legal system specific to the indigenous peoples themselves, forming part of the Mayan Weltanschauung and rooted in the culture of the communities. Indigenous law is substantially different from official law; it has a set of culturally appropriate procedures, it is efficient in conflict resolution and the restoration of social balance at the least cost to the parties (victims and accused) and it has its own officers clearly identified in the system of traditional indigenous authorities. Although this customary law is mentioned in the Constitution, ILO Convention No. 169 and the Agreement on Identity and Rights (sect. IV-E),[21] it is not clearly accepted or upheld in legislation or institutions; judges are not familiar with it and do not apply it, and when the traditional indigenous authorities exercise this function they often incur penalties for substitution of authority or contempt.

38. One of the phenomena which have caused most concern in the legal sphere in recent years is the persistence of lynchings and crowd violence which, according to MINUGUA, threaten the governability of the regions in which they are most frequent. Since 1996 MINUGUA has recorded 421 cases, with 817 victims and 215 deaths. In 2001 alone 75 lynchings were recorded, with 189 victims, of whom 27 died - an increase of 22 per cent over the previous year. These cases occurred in 140 out of Guatemala's 330 municipalities, the great majority of them indigenous. These human rights violations are a consequence of years of armed conflict and its aftermath, for example, the persistent culture of violence, the fact that unelected leaders linked to the former paramilitary groups known as the Civil Self-Defence Patrols[22] openly operate in the communities, the lack of efficient administration of justice, the impunity enjoyed by the perpetrators of these crimes and the destruction of the traditional machinery of authority and justice in the indigenous communities, which was replaced by militarized structures during the years of conflict. Contrary to the opinion that violence is characteristic of indigenous habits and customs (and that therefore customary law should not be given official recognition) - an opinion which has no basis in fact - it is in fact the traditional community leaders who have put forward initiatives to put an end to this scourge, such as the community anti-lynching agreements and "community dialogue". The Unit for the Modernization of the Judiciary was for some time behind the Prevention of Lynching Programme. MINUGUA has, however, pointed to the lynchings as a sign of the worsening human rights situation, and considers the State's response to be very poor.[23]

39. Mention should also be made of the continuing incidence of unsolved cases of forced disappearances, torture, extra-judicial executions of members of indigenous organizations and

communities, and threats to and harassment of investigators, activists and human rights defenders, all of which was highlighted by the Special Representative of the Secretary-General on the situation of human rights defenders during her mission to Guatemala in May 2000, and was confirmed by the Special Rapporteur during his own visit.[24]

40. The above situation is exacerbated by the lack of support for research on and the systematization of indigenous legal arrangements, the absence of this topic from curricula in higher education, and the insecure legal and economic situation in which indigenous organizations providing legal services for the indigenous peoples and communities carry out their work.

41. In conclusion, the Special Rapporteur has been informed about the systematic failure to comply with the reparation commitments set out in the Peace Agreements and indicated as part of the process of "historical clarification"; the continuing impunity with regard to many of the violations of fundamental rights during the domestic armed conflict which affected many indigenous people and communities; and the persistence of violent acts which affect indigenous people and their communities, and would seem to be clearly associated with an unresolved conflict and the perpetuation of non-formal structures of control and oppression which have not been properly eradicated.

Indigenous participation in politics

42. The exclusion of the indigenous peoples from their role as citizens has been a characteristic feature of the political structure of Guatemala since colonial times and throughout the life of the Republic. This phenomenon traditionally involved the subordination of traditional forms of organization of the communities and peoples and exercise of their authority (indigenous mayors and guilds, for example); the belated granting of the right to vote; high rates of abstentionism among indigenous voters - continuing to the present time; the absence of indigenous people in elected posts or public offices of responsibility, including military commands; and in general scant influence on the part of indigenous peoples in decision-making concerning national life. Mention must be made of the high proportion of persons of an age to vote who are not registered in the voters' lists and the non-documentation of women, refugees and internally displaced persons, which contributes to low levels of voter participation in rural areas. These conditions worsened during the years of domestic armed conflict, inter alia as a result of the implementation of a strategy to destroy the rural social fabric, harass the traditional authorities, induce inter-community and inter-ethnic confrontations, and train and maintain paramilitary control groups (Civil Self-Defence Patrols and Comisionados Militares); and other associated effects of the displacement and subsequent resettlement of the indigenous population.

43. The Agreement on identity and rights (sect. IV-D) sets out measures and proposes reforms including: the establishment of mandatory consultation mechanisms, institutional forms of participation by indigenous people in decision-making, institutions representing the indigenous peoples and guaranteed free access to public office. Other Peace Agreements contained commitments to reform the voting system, dissolve the Civil Self-Defence Patrols and reduce and limit the Army to its specific military functions.

44. As for the other matters covered by the Peace Agreements, a Bipartite Commission on reform and participation at all levels was established for these questions and worked on the preparation of broad-based constitutional reform. The electoral reforms and later the constitutional reforms of 1999, however, eventually took the form of negotiations between the political parties, at some remove from the proposals of the Bipartite Commission and the Maya movement represented in them. The constitutional reform was not approved in the referendum. The laws on decentralization and the (re-)establishment of the Development Committees - which to some extent are directed at strengthening local structures for the organization and exercise of authority - took only some of the proposals of the Bipartite Commission into account.

45. During his visit, the Special Rapporteur was repeatedly informed that although the Civil Self-Defence Patrols had been formally dissolved, they continued to operate in many indigenous regions as local power groups, that their presence hampered the restructuring of traditional forms of organization and the restoration of social peace, and that much of the antagonism currently regarded as a problem of crime and social breakdown - including a number of lynchings, of which much has been made by the mass media - is a result of the tensions generated by their presence. The Special Rapporteur was informed of various cases and conflicts bringing the traditional indigenous authorities (indigenous mayors and community assemblies) into confrontation with the national or departmental authorities for various reasons, notably those concerning control of access to community property (principally forests and water) and the handling and settlement of local conflicts. On occasion, the State authorities take action to eliminate or co-opt the indigenous authorities, as in the case of the indigenous mayor of Sololá and the community mayors of Totonicapan. The aim appears to be to deprive these traditional authorities of their force, presence and impact, in breach of Convention No. 169 and other domestic and international instruments.

46. Although some indigenous leaders view the establishment of the Development Committees as an opportunity for improving their impact on decision-making in matters that directly concern them, the Rapporteur observed in several cases that for indigenous people this participation was diminished by the lack of means to implement it (transport or technical assistance, for example). Some institutions established for the purpose of facilitating indigenous participation, such as the Office for the Defence of Indigenous Women, the Guatemalan Fund for Indigenous Development and the Academy of Mayan Languages, do not in fact have the independence granted to them by law nor do they have adequate resources.

The indigenous representatives of the department of Sololá informed the Special Rapporteur, of the following:

> *"One of the most important and invisible issues is the participation of indigenous women. [...] Women are second-rate citizens [...]. For indigenous women, access to justice is doubly difficult. Women are faced with double discrimination and are totally unprotected, while no recourse is offered to them through the system of justice. [...] The department of Sololá has the second highest rate of maternal mortality in Guatemala."*

47. Numerous Mayan organizations have emerged on the fringes of the government machinery and take action and pursue programmes and projects in areas such as intercultural education, spirituality, defence of human rights and economic and social development. As a result of their own efforts, these civil organizations have achieved high levels of participation and considerable impact on social life in Guatemala. Many of them receive support from international cooperation agencies and some are regarded by government offices as sources of opinion. On the fringes of the Commissions established under the Peace Agreements, which are currently rather lacking in momentum, no consultative machinery has been established as provided for by ILO Convention No. 169, which Guatemala has ratified. The Meeting of Indigenous Leaders, convened in June 2002 with wide-ranging participation and national representation of all indigenous ethnic and linguistic groups, decided to promote the establishment of a National Council of Indigenous Peoples. Once established, this Council could constitute a legitimate partner for dialogue with government institutions.[25]

48. Some political parties have increasingly been incorporating persons of indigenous origin in their lists of candidates for elective office. During the last two periods of democracy, the number of legislators of indigenous origin has grown, but is still small compared with the demographic and cultural importance of the indigenous peoples in Guatemala, and has not succeeded at all in representing the country's ethnic diversity. This fact has led to the creation in the National Congress of a Commission of Indigenous Affairs, which should become more active in the future.

49. The Rapporteur has noted that some posts in the Executive are held by distinguished professionals of indigenous origin, including the Minister of Culture and the Deputy Minister of Education. Some of these officials have manifested their express desire to work for full recognition of ethnic diversity and for surmounting the problems of discrimination and rejection, of which they are fully aware and which they have themselves experienced.

50. At the municipal level, taking advantage of a rule which permits the establishment of civic committees not affiliated to political parties, coalitions of social organizations, including numerous indigenous organizations, have been able to take up elective posts, as mayors or town councillors.

Intercultural and bilingual education

51. The 1985 Constitution recognizes the value of indigenous languages (art. 58) and stipulates that "in schools established in areas of predominantly indigenous population, education shall be conducted preferably in bilingual form" (art. 76). The Agreement on Identity and Rights (1995, section III) contains a broad range of measures for reviving and protecting indigenous languages and promoting their development and use, and initiating a major reform of the education system in order to consolidate bilingual and intercultural education and guarantee access to education for indigenous people. A Joint Commission - made up of government representatives and indigenous organizations - was set up in 1997 and worked systematically on planning this reform up to 2000. Although the aspects of the educational reform which were supposed to be enshrined in the Constitution have remained pending since the reform of the

Constitution was not approved in full, the Executive adopted the conclusions arising from the work of the Joint Commission as from 2001 and some of the measures are being put into effect, although only as "pilot programmes". A consultative committee attached to the Ministry of Education is monitoring this process.

52. The Special Rapporteur was informed in detail by the education authorities about progress in introducing these reforms; he also acquainted himself with the opinions of several experts, and numerous Mayan leaders and leaders of non-governmental organizations who are pursuing educational projects independently. These reports express unanimous satisfaction at the level of acceptance of the political approach which encourages bilingual intercultural education, as reflected in its steadily higher profile in the government apparatus. Various opinions exist concerning the most suitable technical and administrative solutions to the issue of Guatemala's linguistic diversity. All concur in noting the inadequacy of financial resources for carrying out the reform and in general for improving indigenous access to education. The lack of a sufficient number of well-trained bilingual teachers is repeatedly mentioned as a major difficulty.[26] The process has reached the stage of planning the macro curriculum (national) and the intermediate curriculum (ethno-linguistic regions), while micro curricula are being prepared for the local levels. A number of school texts have been revised and redrafted, and teacher training has recently begun in bilingual teacher training colleges. The civil-society organizations say that they would like consultations on these advances with the people at each level and efforts to facilitate inputs from the Mayan peoples' own institutions and experiences in education throughout the process. They say that opposition by powerful political and economic groups to this progress continues, coupled with lack of comprehension on the part of the teachers themselves and resistance by some parents of indigenous families (who agree to their children being educated exclusively in Spanish).

53. In addition to the progress mentioned, a major effort is being made by civil-society organizations to promote pilot experiments in Mayan education, generally with the support of international aid. It is also clear that, of the proposals contained in the Peace Agreements, this topic is systematically monitored by the civil-society organizations and is possibly the area in which most interaction and dialogue between them and government institutions have been achieved. By the end of the year 2000, the main aspects of this reform were the subject of consultations at the municipal, departmental and national levels, and high rates of consensus had been attained.

Under a UNESCO project aimed at mobilizing support for Mayan education (PROMEM), a proposal has been submitted on curriculum development for basic education in the areas of Mayan mathematics, Mayan values and Mayan art and aesthetics for incorporation in the educational reform.

54. As United Nations reports have noted,[27] and as the organizations participating in the National Council of Mayan Education and in the Third National Congress on Mayan Education have repeatedly said,[28] there is still no overall system of intercultural and bilingual education set out in curricula adapted to the language and the needs, values and systems of the indigenous peoples themselves and effectively reaching schools in small localities. In practice, a model of

Spanish-oriented education continues to exist. Although public investment in education has grown in the years following the signing of the Peace Agreements, with progress towards the goals set out in the Agreements, the figures for school education in predominantly indigenous rural areas show very large lags compared with regions with non-indigenous populations as regards the growth of enrolment, the increase in the drop-out rate, teacher-pupil ratios and investment in infrastructure. These areas are more critical in the case of indigenous girls and young women, becoming more so for both sexes as regards access to secondary and comprehensive education. The situation is also found in the urban areas of departments with a higher proportion of indigenous people. Generally speaking, the indicators of access to education by the indigenous, rural and female population are extremely poor. The social organizations estimate that more than half a million indigenous children of both sexes remain outside the school system, and that 42 per cent of the services are concentrated in the central region (the capital city), while the North and West regions with a higher density of indigenous population have access to barely 7 per cent and 8.76 per cent respectively. The net school attendance rate for primary education is 71 per cent for the indigenous population compared with 84 per cent for the non-indigenous population.[29]

55. In meetings with representatives of indigenous organizations during his field visits, the Special Rapporteur was repeatedly informed of the poor condition of the schools attended by indigenous children, the lack of teaching materials, and the discriminatory treatment to which they are subjected because of their difficulties in understanding and speaking Spanish correctly and their wearing of traditional indigenous costume.

56. In close connection with the problems of education, the indigenous representatives referred to the difficulties they encounter in obtaining licences for the use of radio frequencies which would allow them to develop communication projects for popular education. In the opinion of the indigenous leaders, these practices and the fact that access to frequencies has been placed under a tendering system constitute a failure to comply with the commitments of the Agreement on Identity and Rights (sect. III-H).

Indigenous spirituality and sacred places

57. As established in the Agreement on Identity and Rights (sect. III-C), the Mayan people attach high priority to their own spirituality and the right to practise it publicly and privately through teaching, worship and observance of its precepts. The Agreement on Identity and Rights demands proper respect for spiritual guides and access to the sacred places where their ceremonies are held, both those which are part of the State's archaeological heritage and others traditionally used for the purpose. A Commission composed of representatives of the Government, indigenous organizations and spiritual guides worked sporadically between 1997 and 2000 on discussing a proposed reform of article 66 of the Constitution and regulations to protect ceremonial centres in archaeological areas, the definition of sacred places and a system for their conservation. The Commission was unable to reach consensus on several points and has not continued its work. Recently, a ministerial agreement was adopted to facilitate the access of spiritual guides to their sacred places, some of which are in controlled archaeological areas.

58. The Special Rapporteur was informed that, although progress has been made as regards tolerance of indigenous rituals by society as a whole - which has meant that these practices are no longer clandestine - a series of obstacles and threats still remain which impede enjoyment of this right. In particular, it was reported repeatedly that some members of the ecclesiastical hierarchy (Catholic and Evangelical) prevent the use of traditional ceremonial places in the immediate environs of Catholic and Protestant churches; that private owners of agricultural land hamper access to sacred places located within their boundaries; that law enforcement personnel track and confiscate the collections of natural products used in indigenous ceremonies (such as forest resins and medicinal plants); and that some water collection and distribution installations in rural areas affect the sources and springs which the indigenous population consider to be places of particular spiritual importance. The conflicts arising from these tensions are handled by judicial officials as criminal matters and frequently lead to violent clashes between those involved.

59. These matters are also related to the practice of indigenous traditional medicine, safeguarded in the Agreement on Social and Economic Aspects and the Agrarian Situation (sect. II-B), which suffers from obstacles and threats of the same type.

60. The wearing of traditional indigenous dress - mainly by women - is closely bound up with spiritual practices and is a very important element of social and ethnic identity. The Constitution (art. 66) and the Agreement on Identity and Rights (sect. III-E) guarantee the right to wear such dress and provide for measures to combat the de facto discrimination arising from the exercise of this right. The Special Rapporteur was informed of several cases of non-compliance with this principle, in particular relating to access to public places (such as restaurants and discotheques), the wearing of school uniforms and the ban on wearing indigenous dress on the premises of the industries in the export processing zones.

IV. CONCLUSIONS

61. **In December 2002 news was received of the murder of a well-known indigenous leader, Mr. Antonio Pop Caal, a lawyer and Q'eqchi spiritual leader. His death underlines the climate of poor security and violence which continues to prevail in Guatemala and particularly affects the indigenous peoples. Over six years have passed since the Peace Agreements were signed and yet peace, stability and physical safety for all Guatemalan citizens are still far from being achieved. The clear message the indigenous peoples sent to the Special Rapporteur, confirmed by official sources including the United Nations and the Government, is that they continue to be marginalized, rejected and discriminated against in Guatemala today.**

62. **The Special Rapporteur was also informed of the Government's efforts to improve the situation of the indigenous peoples; he was able to meet government officials, including high-level indigenous officials, who are fully committed to the effective implementation of the Peace Agreements. Various laws have been adopted, including the Urban and Rural Development Councils Act and the Municipal Code (in which indigenous communities, indigenous mayors, consultations with indigenous communities or authorities and**

community land are given legal status), which have the potential to involve the indigenous peoples to a greater extent in Guatemalan political life. Despite this progress, however, the Special Rapporteur received a clear message, reiterated by various sources, that there is a lack of political will to implement these very necessary changes which were formally agreed in the Peace Agreements.

63. **The genocide of indigenous peoples during the armed conflict is a living memory and an open wound in Guatemalan society. This was apparent in many of the interviews conducted by the Special Rapporteur. Notwithstanding the amnesty agreements which made it possible for the Peace Agreements to be signed, many indigenous people expressed indignation at the impunity enjoyed by the perpetrators of those crimes. The Special Rapporteur was informed that some individuals associated with the worst forms of violence during the civil war continue to play important roles locally and nationally. Several non-governmental organizations noted with concern the continuing militarization and reactivation of the Civil Self-Defence Patrols, which committed massive human rights violations during the conflict.**

64. **These factors and various attacks on indigenous representatives and human rights defenders recorded by MINUGUA, by national and international human rights organizations and, more recently, by the Special Representative of the Secretary-General on the situation of human rights defenders (E/CN.4/2003/104/Add.2), point to a society whose indigenous citizens cannot be confident that the law will be applied equally and strictly to perpetrators of human rights violations.**

65. **In the Special Rapporteur's opinion, the climate of fear generated by the apparent impunity enjoyed by persons guilty of violence against indigenous leaders, the lack of confidence that the Government and the authorities will fully and fairly apply policies to improve the situation of the indigenous peoples, and the extreme and debilitating poverty suffered by the majority of the indigenous communities, are the factors shaping the lack of political will to which members of the Government and representatives of non-governmental organizations and international aid agencies have referred.**

66. **The Special Rapporteur also wishes to express concern at the imminent closing down of MINUGUA's activities at the end of 2003. The report by MINUGUA, published in September 2001, on delays in meeting the commitments of the Peace Agreements with reference to the indigenous peoples, tallies with the Special Rapporteur's observations. In November 2003 Guatemala will hold presidential elections and various indigenous people the Rapporteur has spoken to have expressed the fear that they will bring with them even more uncertainty and perhaps further diminish the relevance of the Peace Agreements as the necessary framework for national reconciliation. As has been pointed out since the start of the mission, the national press barely mentions these Agreements and public opinion practically ignores them.**

67. **In his recommendations, the Special Rapporteur addresses three major stakeholders: the Government, civil society - including the indigenous peoples - and the international community. In his opinion, the Government should renew its commitment to the Peace Agreements, provide resources and support for the implementation of the**

legislation adopted to comply with the terms of the Agreements, and guarantee the rule of law and a fair system for the application of justice. He also considers that closer cooperation is required between indigenous and non-indigenous groups and civil society in general, since the transformation of institutions in order to achieve a multicultural State is the task of all citizens. If the Office of the Human Rights Procurator is to be effective in monitoring human rights violations and in denouncing and ensuring punishment of the guilty parties, it must considerably extend the scope of its work with the indigenous communities and non-governmental organizations and with the mass media, in order to contribute to a culture which respects these universal values.

68. **The representatives of the international community have mentioned on various occasions that Guatemala has the capacity as well as the obligation to implement an effective human rights policy. The role of the United Nations in supporting Guatemala during the period following the conflict has been useful, but it cannot become a permanent presence. Government, independent and non-governmental institutions in Guatemala must take on the monitoring role performed to date by MINUGUA. To some degree, the transfer of responsibilities has made progress. The Special Rapporteur considers, however, that the United Nations should retain a presence in Guatemala and strengthen its activities in the area of the human rights of the indigenous peoples.**

V. RECOMMENDATIONS

69. **The current serious situation of the indigenous peoples of Guatemala requires urgent attention from the Government of Guatemala and the continued cooperation of the international community.**

70. **Although peace has been achieved, Guatemala remains a profoundly unequal and divided society. The Special Rapporteur recommends that the Government and civil society as a whole should promote a major national public campaign on respect for cultural diversity, with a view to achieving justice and the full participation of the indigenous peoples.**

Recommendations to the Government

Peace Agreements

71. **The Special Rapporteur recommends that the Government should carefully review the progress achieved in implementing the Peace Agreements insofar as they affect the indigenous peoples, and that it should take all appropriate measures to ensure full implementation before the end of the current administration.**

Participation

72. **The Special Rapporteur recommends that the Government should redouble its efforts to ensure the full participation of indigenous people in public affairs, and instruct the authorities to take appropriate measures to ensure that indigenous people participate at all levels of public administration. He also recommends that steps should be taken to**

facilitate indigenous participation in the Development Councils, and that the necessary information and financial support should be furnished to enable indigenous representatives to participate on an equal footing. The steps taken by the Government to decentralize the decision-making process are positive, but a redoubling of efforts is needed if they are to be genuinely effective.

Land

73. **The Special Rapporteur recognizes the fundamental importance of land for the indigenous peoples, and appeals for land of appropriate quality to be provided to returning refugees, indigenous women affected by the conflict and the communities which were illegally dispossessed of their lands during the war. He recommends the establishment of a land register identifying indigenous communal land. He further recommends that appropriate State measures should recognize and support the right of the indigenous peoples to maintain their own economic system, including subsistence agriculture. There is a need for the Government to implement to the full the Agreement on Social and Economic Aspects and the Agrarian Situation which is part of the Peace Agreements.**

Justice

74. **The Special Rapporteur calls on the Government to provide access to justice for everyone, and in particular to take measures to ensure that areas predominantly inhabited by indigenous peoples are able to benefit from access to the legal system. The Government should continue to increase the provision of judicial officials to rural areas and train judges and other judicial officials to work in multi-ethnic regions, through dialogue with the indigenous peoples. The Special Rapporteur recommends that there should be legal interpreters in all jurisdictions where indigenous peoples live in order to assist them in legal and administrative matters. In particular, efforts should be made to ensure that the judicial officials themselves at all levels are familiar with the indigenous language of the region in which they work. He also recommends that legislative measures should be taken to recognize and respect the practice of indigenous law and the indigenous legal authorities.**

75. **The Special Rapporteur urgently calls for an end to the impunity of the perpetrators of criminal acts against human rights defenders and activists and organizations of indigenous peoples. He also joins other international observers in recommending the abolition of the death penalty.**

Discrimination

76. **The Special Rapporteur recognizes that the categorization of discrimination as an offence in the Penal Code constitutes legal progress, but recommends that a specific law should also be adopted to combat ethnic, racial and gender discrimination. He urges the Government to recognize the competence of the Committee on the Elimination of Racial Discrimination. He calls on the Government to redouble its efforts to promote respect for Guatemala's various cultures, and recommends that a national campaign should be initiated to promote multiculturalism and respect for the dignity of the indigenous peoples.**

Education

77. **Education should be strengthened as a national priority. Bilingual education should be extended to all areas of the country and appropriate bilingual and intercultural teaching materials should be prepared; more teacher training colleges should also be established in order to train bilingual teachers. The Special Rapporteur recommends that the Government should draw up a realistic timetable, which must be respected, to extend educational services to all the indigenous communities, and develop affirmative educational programmes for indigenous adults.**

Health

78. **The Special Rapporteur recommends that all health services and other basic services should be made accessible as rapidly as possible to all indigenous communities, and appeals in particular for a fairer distribution of public resources to benefit rural zones and particularly indigenous areas. The current dismissive attitudes of public officials towards midwives and spiritual guides must come to an end, and a wide-ranging intercultural process must be encouraged in the health field, so as not only to achieve the targets set by international bodies, but also to restore the dignity of the indigenous peoples.**

Indigenous women

79. **Indigenous women are discriminated against at three levels: as indigenous persons, as women, and as poor people. The Special Rapporteur calls for special measures to address this discrimination, including greater political, legal and economic support to the Office for the Defence of Indigenous Women. He also recommends that the Office should initiate a national dialogue in order to identify the necessary appropriate practical measures for improving the status of indigenous women.**

Indigenous children

79. **In view of the particular vulnerability of indigenous children, especially orphans and the victims of extreme poverty, the Special Rapporteur recommends that the Government should establish appropriate programmes, in consultation with the indigenous peoples, to deal with these disadvantages, provide alternatives to street life for indigenous children and ensure that they are able to benefit from education and social services. Among the latter, priority should be given to health programmes and care for mothers.**

Spirituality

80. **In accordance with the Agreement on Identity and Rights, the Special Rapporteur recommends that the Government should comply as rapidly as possible with its provisions concerning indigenous spirituality, by recognizing indigenous religion and beliefs, ensuring indigenous access to all sacred sites (including archaeological zones), and access to communal forests for the collection of plants and other products used in religious ceremonies, without legal impediment of any kind.**

Pursuit of government activities

81. **Many problems which affect the human rights of the indigenous peoples are due to the lack or inadequacy of support and finance for State programmes which might benefit them; the Special Rapporteur therefore recommends that the Executive and Legislature should give greater priority to financing activities which benefit the indigenous peoples.**

82. **These various aspects could be handled appropriately and comprehensively in a law on the rights of indigenous peoples, which would include machinery for consultation, as the Constitution stipulates in article 70.**

The international community

83. **The Special Rapporteur recommends that the United Nations and the international community in general should continue to cooperate with the Government in the construction of a democratic and just society.**

84. **The Special Rapporteur welcomes with satisfaction the renewal of the mandate of the United Nations Verification Mission in Guatemala (General Assembly resolution 57/161). He also recommends the drafting of a special programme jointly with the Government and the indigenous peoples, which could assist in the activities of verification, information and protection and which would be implemented in cooperation with the Office of the United Nations High Commissioner for Human Rights. This programme would include training in the human rights of the indigenous communities, the facilitation of dialogue between the Government and the indigenous organizations, the reinforcement of national capacity for monitoring the commitments concerning indigenous rights agreed in the Peace Agreements, and support for establishing regional and national platforms for representative indigenous bodies.**

85. **The Special Rapporteur invites the international community to support these activities and to furnish assistance to the Office of the Human Rights Procurator, in particular for the programme for protection of the human rights of the indigenous peoples.**

86. **The Special Rapporteur has taken note of the important initiative undertaken by the Grupo Temático sobre los Temas Indígena y Multiculturalidad (Thematic Group on Indigenous and Multicultural Topics) to develop a common United Nations approach to indigenous affairs, and recommends that this inter-agency group should be maintained and strengthened and that measures should be taken to ensure the participation of the indigenous peoples.**

87. **The Special Rapporteur recommends that the United Nations system should continue to be available for collaboration with the indigenous peoples in training their own organizations, and that continued support should be provided for the establishment of the National Indigenous Council initiated in June 2002.**

Indigenous peoples

88. **The Special Rapporteur recommends that the indigenous peoples might consider developing a joint programme embodying a consensus regarding the priorities of the Maya, Xinca and Garífuna peoples, with a view to seeking the cooperation of the international community in implementing a national action plan to promote the rights of the indigenous peoples.**

89. **The Special Rapporteur recommends that the indigenous peoples should endeavour to consolidate areas for dialogue with civil society, the mestizo communities and other sectors which are also engaged in the struggle for human rights and the strengthening of democracy. He also recommends that measures should be expedited to establish a democratically constituted body to represent them in their dealings with the State in all matters of concern to them.**

Civil society

90. **The Special Rapporteur considers that the various institutions of civil society - apart from the indigenous organizations themselves - have an essential role to play in the construction of a just and democratic multicultural society. He recommends that these institutions should make coordinated efforts to establish areas and bodies where the problems of the new multicultural society can be widely debated within a framework of mutual respect for differences of approach, so that consensus on a project for a new national society can emerge.**

91. **He also recommends that these bodies should put forward draft legislation which includes and consolidates the principles and objectives of the Peace Agreements, and in particular the Agreement on Identity and Rights.**

92. **The Special Rapporteur recommends that the political parties should initiate a wide-ranging internal debate on the subject of human rights and the participation of indigenous peoples and communities in national affairs, and that they should endeavour to establish a minimum agreed platform of objectives which will lead to the strengthening of human rights and the participation of indigenous peoples and communities. In addition to including more indigenous candidates for elective posts, the political parties should include in their electoral platforms the basic points which will lead to the realization of these objectives.**

Mass media

93. **The Special Rapporteur wishes to stress the particular responsibility of the mass media in combating discrimination and racism vis-à-vis the indigenous peoples. He recommends that, in the absence of adequate legislation, the mass media should adopt measures for monitoring and self-regulation in order to eliminate all vestiges of racism and ethnic discrimination in their programmes and content, and actively promote the vision of**

a multicultural and democratic society. The State should fulfil the commitment assumed in the Indigenous Agreement to make mass media available without restrictions for indigenous communities and projects.

Academic community

94. **The Special Rapporteur recommends that universities and research institutions should make greater efforts to study the human rights situation of the indigenous peoples in all their aspects, in order to propose intelligent solutions to their problems, as well as development strategies and social and cultural policies appropriate to their needs. He also recommends that institutional policies should be developed to include the largest possible number of indigenous researchers and professionals in these projects and to foster the training of indigenous professionals in human rights.**

Notes

[1] Special thanks for André Bessieres of MINUGUA and Fredy Ochaeta of OACDH.

[2] Estimates of the size of the indigenous population vary, as there are no precise data. Interviewed by the Special Rapporteur, the country's Vice-President confirmed that the figure used officially is around 60 per cent.

[3] The Mayas are in turn divided into 21 linguistic groups, while the Garífuna are basically of African descent. The rest of the Guatemalan nation, from the ethnic standpoint, is composed of the Ladinos or mestizos and the population of European origin, or "Whites". There are no rigid boundaries between these categories.

[4] Departments of San Marcos, Totonicapán, Huehuetenango, Quiché, Alta and Baja Verapaz, Sololá, Jalapa, Jutiapa and Quetzaltenango.

[5] MINUGUA, *The indigenous peoples of Guatemala: Overcoming discrimination in the framework of the Peace Agreements*, Verification report, United Nations, September 2001.

[6] Composed of the departments of Totonicapán, Quetzaltenango, Suchitepéquez, Retalhuleu, San Marcos and Sololá.

[7] Huehuetenango and Quiché.

[8] Congress has adopted the Development Councils Act (decree No. 11-2002), the Municipal Code (decree No. 12-2002), the reform of the Penal Code to include the offence of discrimination (decree No. 57-2002) and the Non-discrimination (Dissemination) Act (decree No. 81-2002). The first two provide for greater participation by the indigenous peoples and grant recognition to their political institutions, while the latter are aimed at countering discrimination.

[9] MINUGUA, op. cit., para. 9.

[10] "The reform proposal [...] contained more than 80 questions in a complicated text. [...] With 18.5 per cent participation [...] the result of the referendum was negative. [...] The results varied markedly [...] depending on whether or not the indigenous population was in the majority. The ... campaign revealed the continuing existence of strong racial prejudices in broad sectors of the population." Ibid., para. 11.

[11] Ibid., para. 26.

[12] General Assembly resolution 54/99, para. 3.

[13] The Commission was set up on 9 October 2002 and will have the task of drawing up Government policies to eradicate racial discrimination. Its functions include those of providing advice and support to the various State institutions, as well as private institutions, in devising effective machinery to combat discrimination and racism affecting the indigenous peoples. Source: Government of Guatemala, progress report, August - 15 November 2002.

[14] United Nations Development Programme, Informe Nacional de Desarrollo Humano 2002 (National Report on Human Development, 2002), chap. VI, on access to land.

[15] MINUGUA, *Situación de los compromisos relativos a la tierra en los Acuerdos de Paz.* Verification report, 2000.

[16] MINUGUA, *The indigenous peoples of Guatemala: Overcoming discrimination in the framework of the Peace Agreements*, Verification report, United Nations, September 2001, p. 26.

[17] Congress decree No. 79-97.

[18] Under the law, these courts are composed of a presiding judge and two ordinary judges, a secretary, two officials and an assistant.

[19] Cf. *Informe sobre la evaluación de los Juzgados de Paz Comunitarios (Evaluation report on community courts of the peace)*, prepared by the Supreme Court in 1999.

[20] Cf. *Mapa de progresos en derechos humanos: Guatemala;* Inter-American Institute of Human Rights, 2002.

[21] Under the Agreement, the Government undertakes, inter alia, to encourage the legislature to develop legal standards recognizing the right of the indigenous communities to manage their internal affairs, in accordance with their customary rules.

[22] These patrols should have been totally dismantled in accordance with the Peace Agreements.

[23] MINUGUA, *Los linchamientos: un flagelo que persiste* (The persistent scourge of the lynchings), verification report, June 2002, para. 77.

[24] In October 2002, a court found guilty one of the military personnel responsible for the murder of the anthropologist Myrna Mack, who was investigating crimes committed during the war, although a further two high-ranking military officers were acquitted. Catholic bishop Monsignor Gerardi was savagely murdered in 1998 after submitting a report on crimes committed during the armed conflict; the case has still not been completely clarified, although a number of military personnel have been arrested.

[25] Article 26 of the Development Councils Act, "Consultations with the indigenous peoples", states: "Once the law regulating consultation with the indigenous peoples is promulgated, consultations with the Maya, Xinca and Garífuna peoples on development measures directed by the Executive and directly affecting these peoples may take place through their representatives on the Development Councils."

[26] According to the Ministry of Education, only 18,000 of the 80,000 teachers in public education (22.5 per cent) are speakers of an indigenous language.

[27] MINUGUA, *The indigenous peoples of Guatemala. Overcoming discrimination in the framework of the Peace Agreements*. Verification report, September 2001, United Nations Development Programme, *Informe de Desarollo Humano 2001: Guatemala: El financiamiento del Desarollo Humano* (*Human Development Report 2001: Guatemala: Financing Human Development*).

[28] Declaration of Saculen, September 2002.

[29] United Nations, *Metas del Milenio: Informe del Avance de Guatemala* (Millennium Goals: Report on progress in Guatemala).