



## 人权理事会

### 第十三届会议

#### 议程项目 2

联合国人权事务高级专员的年度报告和

联合国人权事务高级专员办事处及

秘书长的报告

## 联合国人权事务高级专员关于其危地马拉办事处 活动情况的报告\* \*\*

### 内容提要

本报告记述危地马拉人权状况的几个重要方面和联合国人权事务高级专员办事处(人权高专办)2009年的活动。2005年1月10日人权高专办与危地马拉共和国之间达成授权协议,该授权又于2008年9月19日延长三年。人权高专办危地马拉办事处在此授权下继续监测人权状况,并向国家机构和民间社会提供咨询和技术援助服务,以准备落实高级专员上次提交人权理事会的报告中所载的各项建议(A/HRC/10/31/Add.1)。

在报告所涉期间,危地马拉经历了政治不稳定、社会动荡和持续加剧的暴力和不安全。人权高专办危地马拉办事处对安全局势及其对人权的影响、在打击有罪不罚现象方面遇到的挑战以及加强法治和消除歧视和贫困等方面都给予了密切关注。本报告讨论一些极为令人关注的人权问题,如不安全和生命权问题、法治问题、暴力侵害妇女、袭击人权捍卫者、有罪不罚、种族主义和歧视、与过渡时期司法有关的问题,以及经济、社会和文化权利的状况。

\* 本报告迟交以反映最新资料。

\*\* 本报告的内容提要以各正式语文分发。报告正文附在内容提要之后,仅以英文和西班牙文分发。

报告还就人权高专办危地马拉办事处 2009 年的活动作了概述。尤其是办事处向国家的不同机构(如议会、总统人权委员会、内务部、检察官办公室、对土著人民的歧视和种族主义问题总统委员会、保护土著妇女办公室、国家赔偿方案和人权检察官办公室)提供了技术援助和建议,协助民间社会与条约机构和特别程序互动并落实其建议的后续工作。报告对落实高级专员此前向人权理事会提交的各次报告中所提建议的落实情况进行了评价。

高级专员敦促危地马拉政府彻底落实去年提出的各项建议,同时提出一套旨在加强法律框架的新建议,以保护人权、在不安全局势中保护生命权、巩固法治和打击有罪不罚现象、有效保护土著人民权利和妇女权利、促进享有经济、社会和文化权利,并确保有效地搜集、整理和使用有关人权的资料和统计数据。

## Annex

### Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala

#### Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–3	4
II. National context.....	4–10	4
III. Human rights situation.....	11–64	5
A. Insecurity.....	11–20	5
B. Violence against women.....	21–24	7
C. Situation of human rights defenders.....	25–27	7
D. Rule of law and impunity.....	28–40	8
E. Deprivation of liberty.....	41–45	10
F. Transitional justice.....	46–50	11
G. Combating racism and discrimination.....	51–54	12
H. Economic, social and cultural rights.....	55–64	12
IV. Activities of the Office of the High Commissioner for Human Rights in Guatemala.....	65–84	14
A. Activities of the office of Guatemala.....	65–82	14
B. Follow-up to recommendations made in previous reports of the High Commissioner on the human rights situation in Guatemala.....	83–84	17
V. Recommendations.....	85–101	17
A. Legal framework.....	86	17
B. The right to life and security.....	87–88	17
C. Rule of law and impunity.....	89–93	18
D. Indigenous peoples.....	94–95	18
E. Women’s rights.....	96	19
F. Economic, social and cultural rights.....	97–99	19
G. Information and statistics.....	100	19
H. Technical cooperation and advisory services.....	101	19

## I. Introduction

1. On 10 January 2005, the Office of the United Nations High Commissioner for Human Rights (OHCHR) signed an agreement with the Government of the Republic of Guatemala on the establishment of an OHCHR office in Guatemala. OHCHR-Guatemala officially started its work on 20 September 2005. On 19 September 2008, its mandate was extended for three years.
2. Under the agreement, and in accordance with General Assembly resolution 48/141 of 20 December 1993, the mandate of OHCHR-Guatemala is to monitor the situation of human rights in order to advise State institutions and civil society.
3. The present report provides an overview of the human rights situation in Guatemala, focusing on several key issues. It also describes the work carried out by OHCHR-Guatemala in accordance with its mandate, including information on the advisory services and technical cooperation provided to assist implementation of the recommendations contained in the High Commissioner's reports for 2005, 2006, 2007 and 2008.

## II. National context

4. In 2009, Guatemala faced significant challenges which put its political stability and the response capacity of the State to the test.
5. In April, confronted with persistent levels of violence and widespread impunity, the heads of the three branches of the State signed the National Agreement for the Advancement of Security and Justice. Supported by civil society organizations, the private sector, church representatives, academia, the Human Rights Procurator and representatives of the international community, the Agreement contains 101 commitments that could serve as the basis for a national strategy to overcome the challenges faced in these sectors.
6. The murder of lawyer Rodrigo Rosenberg, in May 2009, triggered a political crisis that led to massive demonstrations for and against the Government, as high-level Government officials were accused of involvement in the murder.<sup>1</sup> It also brought together vast sectors of society against rampant impunity. The social mobilization against impunity facilitated the approval by Congress of the Law on Nominating Commissions, which served as the basis for the election of judges of the Supreme Court of Justice and Courts of Appeal.
7. In July, Congress ratified a two-year extension of the mandate of the International Commission against Impunity in Guatemala (CICIG) that was previously agreed to between the Government and the Secretary-General of the United Nations.
8. Public security continued to be affected by persistent instability at its highest levels. In January, a new Minister of the Interior took office, but resigned six months later. His successor became the fourth Minister of the Interior under the current administration.
9. The persistence of social conflicts throughout the year highlighted the urgent need to establish a comprehensive State policy that fully guarantees individual and collective rights, particularly those of indigenous peoples, especially in relation to the exploitation of natural resources.

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<sup>1</sup> According to the conclusions of the investigation carried out by the International Commission against Impunity in Guatemala (CICIG) and the Public Prosecutor's Office, Rodrigo Rosenberg planned his own death, with the complicity of relatives.

10. Guatemala, the largest economy of Central America, was affected by the world financial crisis, with consequences such as a reduced collection of indirect taxes on imports, and a 10 per cent lower income from international remittances. This has aggravated the already low level of funds collected through taxes. In this context, the Government was unable to gather the support needed in Congress to approve a tax modernization plan enabling the State to ensure the necessary resources to fulfil its obligations. Neither was it able to secure approval for the draft budget for 2010, and therefore the revenue and expenditure budget will remain the same in 2010 as it was in 2009. The State needs to secure the necessary funds to ensure the population is able to enjoy basic human rights. An open and participatory dialogue among all social sectors over tax reform is deemed necessary.

### III. Human rights situation

#### A. Insecurity

11. While the critical situation of insecurity persists, State institutions remain fragile and are unable to assume their role in preventing and reacting to the violence. Security is provided in great part by private companies over which there is minimum or no State control, and abuses are committed by illegal armed groups that assume security functions.

12. The National Civilian Police (NCP) reported that there were 6,498 violent deaths in 2009, compared to 6,244 in 2008. A total of 720 of the victims were women and 510 were children. The rate of homicides remained above 48 per 100,000 inhabitants, with a high percentage of deaths by firearm (83 per cent), which reveals the urgent need to ensure effective control over the ownership, possession and use of such weapons.

13. The National Commission of the Judiciary in Support of the Educational Subprogramme for the Prevention of Lynchings reported 119 cases of lynching with a total of 325 victims and 47 deaths, which included the death of two women and an adolescent. These figures show a dramatic increase compared to 2008, when 56 occurrences resulted in 22 deaths. The office notes with concern the recurrence of these practices radically opposed to human rights, which amount to extrajudicial executions when perpetrated with the participation, acquiescence or tolerance of State officials. In the case of the lynching and death of police officer Pedro Rodríguez Toma in San Juan Cotzal, Quiché, in November 2009, the office received information which indicates acquiescence and instigation by some municipal authorities as well as tolerance on the part of members of the security forces.

14. NCP remains unable to address the significant challenges posed by the alarming insecurity. An insufficient number of active officials (22,092 active police officers, equivalent to one police officer per 619 inhabitants,<sup>2</sup> and 5,002 vacant posts during most of the year<sup>3</sup>), added to frequent changes and dismissals within the Ministry of the Interior, affected the functioning of the police. In August, two months after taking office, 11 high-ranking officials of NCP, including the Director-General, the Deputy Director and the Operations and Investigations Deputy Directors were dismissed and subsequently prosecuted for their presumed participation in criminal activities.

<sup>2</sup> Based on a total population of 13,667,000 (United Nations Development Programme, *Informe de desarrollo humano para América Central 2009–2010* (Human Development Report for Central America 2009–2010), UNDP, Colombia, 2009, p. 432).

<sup>3</sup> On 24 November, 2,161 new police officers graduated. In December 2009, the National Civilian Police (NCP) registered 1,866 vacant posts.

15. In April, a Government resolution (97-2009) restructuring NCP entered into force. This resolution curtailed the functioning and administrative independence of several police departments, including the police academy, deviating from the consensus reached among civil society, international actors and former authorities of the Ministry of the Interior and NCP on the need to raise the status of the General Inspectorate and to strengthen professional training for police.

16. In an effort to professionalize the police an additional police academy was established in San Juan Sacatepéquez. Nevertheless significant challenges persist, including the continuation of internal vetting processes, and obtaining tangible improvements in police facilities and adequate wages for police officers. In this regard, action protocols, coordinated with judicial authorities, should be implemented, and indicators to assess the efficiency of police operations developed.

17. With regard to private security, the Ministry of the Interior has recorded a total of 147 private security companies operating in Guatemala, representing 35,892 registered security officers and 32,723 firearms.<sup>4</sup> The United Nations Development Programme (UNDP) estimates that the number of private agents in Guatemala would amount to 106,700, the highest in Central America.<sup>5</sup> This implies that a large part of the public security role has been yielded, de facto, to private entities over which there is neither effective control nor an adequate legal framework to regulate their operations and to ensure their complementarity and subordination to civilian public security forces.

18. In several regions, the army continued to carry out preventive patrolling despite this being the exclusive role of NCP. This practice contradicts the principle of division of responsibilities and the civilian nature of the public security forces, as set forth in the National Security System Framework Law. In one of these cases, monitored by the office, a military patrol killed a peasant in a checkpoint in Alta Verapaz in May, allegedly as a result of inappropriate and disproportionate use of firearms. Two army officers are being investigated for this act.

19. Through its prevention unit, NCP sought to increase trust in the institution and generate civil support both at the school and community levels, through the promotion of local security committees. The number of local security committees increased from 677 in 2008 to 1,029 in 2009.<sup>6</sup> Although encouraging preventive efforts, the office observed with concern that some local security committees have assumed public security functions. General Order 11-99 of NCP, which established these committees, sets forth broad and ambiguous provisions which do not allow for adequate control of their actions. The State has the obligation to adopt effective measures to prevent these committees from taking on public security functions, particularly by reforming standards and laws and avoiding practices that allow or delegate to citizens the exercise of such role.

20. The office also received information regarding groups of armed civilians that operate in municipalities such as Villanueva and San Juan Sacatepéquez (Department of Guatemala); San Martín Jilotepeque (Department of Chimaltenango), and San Juan Cotzal (Department of Quiché). In the latter, the office observed that a group of armed civilians, under the guise of local security committees and with the participation of municipal authorities, carried out surveillance activities, illegal detentions and interrogations; operated checkpoints and surveillance posts; and carried out intimidating actions and other acts

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<sup>4</sup> Source: NCP.

<sup>5</sup> United Nations Development Programme, *Informe de desarrollo humano para América Central 2009–2010*, p. 240.

<sup>6</sup> Source: NCP.

threatening the physical integrity of persons. Urgent effective measures have yet to be taken to dismantle these groups.

## **B. Violence against women**

21. According to NCP, the number of violent deaths of women amounted to 720 in 2009. Women's bodies were found with evident signs of mutilation, sexual violence and other forms of ill-treatment, indicating that the attacks were gender-based. Of the 30,873 complaints of violence against women filed in 2009, only 0.7 per cent led to prosecution and 0.2 per cent (70 cases) to sentences.<sup>7</sup> The number of domestic violence complaints increased from 37,358 cases in 2008 to 48,437 in 2009. A total of 89 per cent of victims were women, and 63 per cent of them were assaulted by their live-in partners.<sup>8</sup> In 2009, 38,756 protective measures were granted.<sup>9</sup>

22. Since the adoption of the Law against Femicide and Other Forms of Violence against Women 19 months ago, the number of complaints has increased significantly. However, the State's capacity to respond has neither been proportionate nor effective enough in terms of investigation, sanction and reparation. Of the 166 complaints of femicide in 2009, only 11 cases were prosecuted and 10 sentences were dictated in the application of the recent Law.<sup>10</sup>

23. Although a larger number of public officials received training, the programmes lacked technical and practical components related to the new laws on violence against women. In some cases indications of discriminatory interpretation and enforcement of these new provisions were noted. The lack of effective inter-institutional coordination and duplication of actions coexisted with the absence of specific, homogeneous and specialized instructions on femicide and violence against women. The establishment of a specialized justice system as well as the implementation of the National Information System on Violence against Women are still pending.

24. In February, Congress passed a law on sexual violence, exploitation and trafficking in persons (Decree 9-2009), introducing sanctions and preventive measures. This constitutes a major achievement which shows the will to adequately define and criminalize sexual violence and trafficking in persons, filling legal voids and amending existing norms in compliance with the main international human rights standards. Furthermore, it sets up a legal framework that includes specific sanctions for the sale of children, for child pornography, and for irregular adoptions. Such measures are in line with recommendations by the Committee for the Elimination of Discrimination against Women and the Committee on the Rights of the Child, as well as OHCHR.

## **C. Situation of human rights defenders**

25. The Human Rights Section of the Public Prosecutor's Office and the civil society-run Protection Unit for Human Rights Defenders noted an increase in the reported number of threats and attacks against human rights defenders during 2009, registering 346 and 343

<sup>7</sup> *Source:* Computerized Case Control System of the Public Prosecutor's Office (SICOMP) (January-December 2009).

<sup>8</sup> *Source:* Judiciary (January-December 2009 – partial data based on information processed by the Judiciary on 21 January 2010).

<sup>9</sup> In the application of the Law for the Prevention, Sanction and Eradication of Domestic Violence and the Law against Femicide and Other Forms of Violence against Women.

<sup>10</sup> *Source:* SICOMP (January-December 2009).

cases, respectively. According to the Public Prosecutor's Office, the cases included 167 attacks against justice operators, 87 against activists, 51 against trade unionists and 41 against journalists. The Protection Unit denounced 16 homicides among the attacks.

26. In addition to recorded attacks against defenders working on justice and the right to truth, as well as on women's and juvenile's rights, OHCHR-Guatemala received reports of intimidation, excessive use of force and arbitrary use of criminal proceedings against defenders upholding collective, environmental, economic, social and cultural rights in the context of social unrest related to large-scale industrial projects in the area of natural resource extraction, such as those carried out in the departments of Alta Verapaz, Huehuetenango, Izabal, Quiché, San Marcos and Zacapa. The limited progress achieved in criminal prosecutions in such cases, the lack of effective protective measures, and the presence of organized crime groups in vast areas of the countryside increase the vulnerability of those who defend and promote human rights.

27. The Body for the Analysis of Attacks against Human Rights Defenders has generated trust among its participants and advances in inter-institutional coordination. Created in 2007 and led by the Ministry of the Interior, the Board is a multi-institutional body aimed at identifying threats and responding to attacks against human rights defenders. Nevertheless, adequate measures should be taken by the State to strengthen the systematization, organization and coordination of preventive and other measures to ensure the protection of human rights defenders as well as sustainable and effective institutional support. It is also necessary to increase awareness among State officials, civil society and public opinion on the crucial role that human rights defenders play in safeguarding democracy and the rule of law.

## **D. Rule of law and impunity**

### **1. General situation**

28. In order to comply with its human rights obligations under international law, the Government should address several challenges, such as endemic structural deficiencies, including the overall weakness of public institutions, insufficient budgets and resources, and the prevalence of individual interests over public interest. Other major challenges include the frequent changes of officials that have prevented effective continuity of policies, programmes, trainings and all institutional processes; the centralization of most public functions in the capital; as well as the lack of institutional ownership of development programmes and the absence of a systematic evaluation of their impact. To address these challenges, the authorities should be fully aware of their public role as duty bearers and human rights warrantors, and Congress should promote legal reforms leading to the effective implementation of a professional career for public servants which would ensure adequate selection, professional competency and stability of tenure.

29. Regarding criminal justice, while some changes have led to an increase in the number of complaints and to expediting some investigations, the actions undertaken by the justice system institutions still do not correspond to the needs given the context of generalized violence and high levels of impunity. In this context, improving the justice system involves strict observance of rights and guarantees, which are not an obstacle for efficient investigation and prosecution but an essential component of the rule of law that strengthens the fight against impunity, protects institutional legitimacy and provides trust in State institutions.

30. The Law on Access to Public Information, which entered into force in April 2009, must be acknowledged as a positive step forward that could become a useful tool both for

civil society and the authorities in the urgent task to achieve transparency and strengthen internal controls and State accountability.

## **2. The Public Prosecutor's Office and criminal investigations**

31. The Public Prosecutor's Office carried out actions aimed at strengthening in particular its Special Investigation Methods Unit and district prosecutor's offices. It also made progress in the investigation of some high-impact cases against illegal organizations, including those where CICIG is the joint complainant.

32. While the career system for prosecutors continues to lack a complete and adequate set of norms, progress in the performance assessment system was noted. Consistent and effective implementation is expected with the application of the necessary qualitative technical assessment criteria. The disciplinary regime should be harmonized with international standards, in order to avoid arbitrariness and guarantee effective accountability.

33. The absence of an adequate criminal prosecution policy for past and present human rights violations, of adequate protocols to investigate them and of a regulation that clarifies the structure, operation and competence of the Human Rights Section of the Public Prosecutor's Office are challenges that were not overcome during 2009.

34. The police's criminal investigation structure was partially reorganized by absorbing police officers from other units who had experience in this issue. Furthermore, a separate unit for crimes against life, with 105 investigators, was created in October. However, the Special Criminal Investigation Division of the National Civilian Police (DEIC) had insufficient geographic coverage<sup>11</sup> and 400 positions remained vacant at the end of the year. In addition to work overload, training continues to be limited and procedure manuals and protocols are lacking.

35. The lack of operational inter-institutional coordination in investigation tasks by the Special Criminal Investigation Division, the General Directorate of Civilian Intelligence, the Public Prosecutor's Office and the National Forensic Science Institute at times results in the duplication of functions, the contamination of crime scenes, and presents significant deficiencies both in the collection and the chain of custody of evidence, as well as in meeting procedural deadlines. This all negatively affects the quality of judicial proceedings. The use of technical-scientific experts for criminal investigation is still limited and should be extended in order for proceedings not to be solely based on testimonial evidence.

## **3. Judiciary and justice sector**

36. The approval of the Law on Nominating Commissions is a significant step forward to institutionalize processes for the selection of public officials, particularly regarding the justice system, based on principles of transparency, objectiveness, adequacy, publicity and participation. Nonetheless, inconsistencies were noted in the initial application of the law, such as in the election process of the Director of the Public Criminal Defence Institute. Future processes, particularly the one to select the Public Prosecutor, should fully comply with international principles and standards, as contemplated in the Law.

37. With regard to the election of judges to the Supreme Court of Justice and to the Courts of Appeal, the implementation of the Law on Nominating Commissions contributed to ensuring greater access to information about the process and to achieving noteworthy participation and monitoring by several social sectors and the media. However, deficiencies

<sup>11</sup> A total of 600 investigators for 15 of the 22 departments (NCP).

persisted particularly at the final short-listing stage by the Commissions and at election by Congress, especially with regard to the full application of objective criteria in the discussion and assessment of every candidate, in accordance with international standards. Furthermore, the process did not ensure equitable elections in terms of gender and ethnic diversity.

38. Legislation in force concerning the system that regulates the selection, disciplinary regime, performance evaluation, transfers and promotion of judges and justice clerks and assistants still does not ensure the application of objective criteria, which leads to discretionary decisions, hence affecting the independence of the Judiciary. It is essential to make progress towards a comprehensive reform of the legal and regulatory framework of the judicial and civil service career, particularly in the Law governing the Judiciary, with the participation of relevant officials and civil society representatives.

39. Despite the fact that new courts were opened in 2009, access to justice remains limited due to the insufficient geographic coverage of the justice system, which still does not fully respond to the needs of the population. Backlogs persist at alarming levels<sup>12</sup> and free legal counselling is still lacking in non-criminal areas, particularly for women victims of violence and for indigenous peoples.

40. A legal framework to strengthen the Coordinating Body of the Justice Sector and provide it with stability is still needed in order to ensure permanent and coordinated analysis and monitoring of the main problems of the sector, as well as to develop policies, plans and programmes with the participation of the National Forensic Science Institute.

## **E. Deprivation of liberty**

41. The State continues to face difficulties to exert effective control on detention centres under the General Prison System Directorate and detention places run by NCP. According to information received by OHCHR, criminal networks continue operating from and within some detention centres, and corruption and insufficient resources have substantially limited the impact of measures aimed at regaining control over those places, such as searches, transfers of detainees and the installation of devices to block mobile phones.

42. The office noted that some detainees exercise control over others and carry out disciplinary functions, at times with the knowledge and acquiescence of the detention centre authorities, contravening international standards. In the context of such abuses, violent acts led to deaths in at least two cases: Mario Martínez Santos died in April while detained in Quetzaltenango, and in August, Alonso Domingo Pérez died while detained in Huehuetenango, both while in NCP custody.

43. In 2009, 20 deaths in custody were officially reported.<sup>13</sup> According to international law, the State is responsible for preventing and investigating the death of detainees, as well as for identifying, prosecuting, trying and sanctioning all those responsible, including public officials, for their participation in, or support, acquiescence or tolerance of such acts.

44. In the context of criminal prosecutions for torture and cruel, inhuman or degrading treatment or punishment, the inadequate definition of these crimes in the Penal Code and inaccurate classification of complaints, as well as the lack of access to prompt, confidential

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<sup>12</sup> Judgement was passed in 7 per cent of the total number of cases sent to the Judiciary between January to September 2009 (*Source*: Judiciary).

<sup>13</sup> *Source*: General Prison System Directorate (DGSP). This figure includes only deaths in places of detention run by the Directorate and does not include the deaths in NCP custody.

and reliable complaint mechanisms, have limited the recording of cases and the victims' right to an effective remedy.

45. The State must guarantee that all persons deprived of liberty are detained in legally established detention centres. However, 1,127 persons are held under NCP authority<sup>14</sup> in places that fall outside any kind of regulatory framework and are therefore illegal. Conditions in such places regularly fail to meet minimum international standards. They are overcrowded and unsanitary, and lack adequate medical care, institutional work opportunities and education programmes. The separation of accused and convicted persons is not always guaranteed. Conditions for women are particularly alarming. Regulation of the Prison System Law consistent with international standards and its implementation are still pending.

## F. Transitional justice

46. The recognition by the Constitutional Court of enforced disappearance as a continuing or permanent crime, in accordance with international standards, in July 2009 was reflected by the Court of Chimaltenango (Tribunal de Sentencia) in its first conviction for this crime one month later. This is in line with the High Commissioner's recommendation in the *amicus curiae* brief presented in 2008.<sup>15</sup>

47. In December 2009, the Court of Chiquimula handed down another conviction for the crime of enforced disappearance in Guatemala. The perpetrators, including an army colonel and three military commissioners,<sup>16</sup> were sentenced to 53 years of imprisonment each. This is the first conviction for this crime against a member of the army. In addition, the Court decided to reclassify the offence of kidnapping as a crime of enforced disappearance, and called on the Public Prosecutor's Office to investigate the chain of command, including the role of the former Ministry of Defence and the former Chief of the Combined Armed Forces, as well as other members of the army that carried out activities in the military base in Zacapa in 1981. All these decisions are valuable tools to bring to justice all enforced disappearance cases that have yet to be tried.

48. The digitalization of almost 9.5 million documents and the delivery of 25,617 pages of information requested from the Historic Archives of the National Police, mainly by the Public Prosecutor's Office,<sup>17</sup> have provided a valuable source for truth and memory and an effective documentary basis for the criminal investigation of serious human rights violations committed in the internal armed conflict.

49. Two years after the Constitutional Court dismissed the request of the National Court of Spain to provisionally detain for extradition purposes several persons accused of genocide and crimes against humanity, progress in domestic justice has not yet been noted. This situation compromises Guatemala's international responsibility under the principle *aut dedere aut judicare*.

50. With regard to reparations, the delivery of 888 houses, financial compensation to 3,725 persons, 30 actions of symbolic reparations and Government statements in favour of victims are positive steps to repair violations committed during the internal armed conflict.

<sup>14</sup> Source: DGSP.

<sup>15</sup> On 25 August 2008, OHCHR presented an *amicus curiae* brief to the Constitutional Court of Guatemala in the case against a former military commissioner (see footnote 16) for the forced disappearance of a number of residents of the Choatulum village between 1981 and 1984.

<sup>16</sup> Military commissioners were civilian army collaborators.

<sup>17</sup> Source: Historic Archives of the National Police.

However, it is still necessary to advance on the adoption of adequate legislation to strengthen and bring sustainability to State policies in terms of reparations. Such legislation should ensure continuity, inter-institutional coordination and the full inclusion of international standards, including those related to gender and non-discrimination.

## **G. Combating racism and discrimination**

51. In the context of the 2009 Durban Review Conference, Guatemala renewed its commitment against racism and racial discrimination and reviewed achievements and challenges. This exercise revealed gaps, such as the limited implementation of the 2006 Public Policy for Coexistence and the Elimination of Racism and Racial Discrimination as well as the lack of decisive measures to strengthen the indigenous institutions created as a result of the Peace Agreements.

52. The limited number of complaints and convictions regarding discrimination is a matter of concern. According to the Public Prosecutor's Office, of the 412 complaints filed between 2002 and 2009, only 4 led to convictions. Nevertheless an important step forward was taken with the conviction of civil servants for discriminatory expressions against Cándida González Chipir, former Vice-Minister of Labour and Social Protection.

53. Attacks and threats against lawyers from the Office for the Defence of Indigenous Women (DEMI) were reported during 2009. In one such case a female lawyer in Quetzaltenango dealing with several cases of violence against indigenous women was the victim of an attack that caused her serious injuries in September. The State should urgently adopt measures to ensure effective investigation and prosecution of such violations, and ensure protection to all persons who defend the rights of indigenous women.

54. Recognition of the competence of the Committee on the Elimination of Racial Discrimination to consider individual communications and the criminalization of racism are still absent from the legislative agenda, although progress was made with regard to favourable opinions on the bills on sacred places and the indigenous peoples consultation, a legal requirement prior to discussion in Congress in 2010.

## **H. Economic, social and cultural rights**

### **1. General situation**

55. The enjoyment of economic, social and cultural rights in Guatemala is a major challenge. The UNDP *Human Development Report 2009*<sup>18</sup> ranks the country 122nd among 182 countries. The country also ranks 76th among the 135 countries for which the Human Poverty Index was calculated. Over 50.9 per cent of the population is poor and 15 per cent is extremely poor. Based on data available prior to the food crisis, the Food and Agriculture Organization of the United Nations estimated the number of undernourished at 2.1 million. According to 2007 data, the school enrolment rate reaches 95 per cent at the primary level and 36.4 per cent at the secondary level. Guatemala is also one of the most unequal countries in Latin America, with a GINI coefficient of 53.7 and with important trends of discrimination, particularly against indigenous peoples. About 74.8 per cent of indigenous peoples are poor (compared with 36.2 per cent of the rest of the population).

56. The increase in social expenditure in 2009 is a positive sign, particularly the investment in cash transfer programmes, which is the main Government mechanism for

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<sup>18</sup> [http://hdrstats.undp.org/en/countries/data\\_sheets/cty\\_ds\\_GTM.html](http://hdrstats.undp.org/en/countries/data_sheets/cty_ds_GTM.html).

poverty reduction. Although initial measures have been taken, progressive mainstreaming of human rights principles, in particular publicity, transparency and accountability, into these social programmes is paramount. Strategies should be put in place to ensure that progress in social policies such as free education and health services achieve the intended outcomes. These strategies should be met with an adequate budget and sufficient resources to extend the coverage and quality of these services as needed, particularly in the light of the demand created by the cash transfer programme.

57. Efforts should be intensified to establish database systems which include updated, reliable, public, timely, transparent and disaggregated statistical data, in order to improve the quality of decision-making processes. The establishment of the Office for Cross-cutting Coordination of Statistics on Gender and Indigenous Peoples is a step forward in this regard. It is also important to consolidate and improve the mapping on poverty, in order to use more detailed and accurate information, thus increasing the impact of the cash transfer programme. A lack of consolidation of programmes to ensure the enjoyment of economic, social and cultural rights would be a regression tantamount to a violation of international human rights obligations.

## **2. The right to food**

58. The realization of the right to food involves overcoming historic and structural challenges. In 2009, Guatemala again faced a food crisis caused by climate and economic phenomena resulting in harvest losses and higher basic grain prices. According to the Government, this crisis affected an estimated 2.5 million people, particularly in the “dry corridor”,<sup>19</sup> including an undetermined loss of lives of children due to acute malnutrition. This crisis has particularly affected agricultural workers and the poorest part of the population, increasing their vulnerability.

59. In September 2009, the Government declared a “State of Calamity”, thus facilitating the mobilization of national and international funds to address the crisis. Among other actions, the Government distributed food aid and established the Food Security Coordinating Mechanism to improve coordination among institutions, civil society and international cooperation. The inadequate assessment of the available information hindered the State’s ability to react to the early signals of such crisis and delayed its response.

60. Given the cyclical nature of food crises in Guatemala, systematic monitoring of the situation by the State is required to develop preventive measures as well as prompt and efficient mitigating measures in case of crises. The provisions that established mandatory notification on acute malnutrition cases in hospitals and the manual for epidemiological malnutrition are positive steps towards more active monitoring. The adoption of a structural and sustainable rural development strategy could improve the impact of State efforts to prevent and address food crises.

61. The current crisis is expected to continue over several months in 2010, rendering the conditions of the dry corridor more serious and widespread, which requires an adequate response by the State.

## **3. The right to education**

62. In 2009 the Government established free primary education for all, a principle of the right to education recognized in domestic law. The office considers free education as an important step in the realization of this right. To break the circle of poverty, it is necessary

<sup>19</sup> The departments of Baja Verapaz, Chiquimula, El Progreso, Izabal, Jalapa, Jutiapa, the south of Quiché and Zacapa.

to make progress in improving the quality of education and in the coverage of secondary education. The office received information related to unlawful charges for enrolment fees and for school activities. An initial positive development is the adequate functioning of administrative complaint mechanisms that ensured that parents did not pay undue charges.

#### 4. The right to health

63. During 2009, the Ministry of Public Health and Social Welfare suffered several budgetary cuts, and the 2009–2010 budget remains insufficient. Additionally, human and hospital resources continue to be unequally distributed, with concentration in urban areas. According to UNDP, the Department of Guatemala has one physician for 384 citizens while the department of Quiché has one physician for 11,948 people.<sup>20</sup> According to a report of the Instituto Centroamericano de Estudios Fiscales and the Center for Economic and Social Rights,<sup>21</sup> the poorest departments with the lowest human development indices are those with fewer resources.

64. In order for the State to fulfil its basic obligation to ensure the availability of and access to the health system without discrimination, in particular for the vulnerable or marginalized groups, a strategic and operational plan, as well as adequate resources are needed. The office acknowledges the creation of the Indigenous Health Care and Intercultural Unit in Guatemala as a step towards recognizing the cultural dimension of the right to health.

## IV. Activities of the Office of the High Commissioner for Human Rights in Guatemala

### A. Activities of the office in Guatemala

65. During the period under review, OHCHR-Guatemala carried out 40 missions to the 22 departments of the country and recorded 155 complaints of human rights violations. During these visits, the office held meetings with authorities and representatives of civil society. On this basis, OHCHR was able to adjust its advisory and technical cooperation services and to provide support to victims and witnesses. In addition, the office provided advice to civil society organizations and national institutions.

66. The office provided the United Nations Special Rapporteur on the independence of judges and lawyers with support during his visit in January and, in coordination with the Resident Coordinator's Office, supported two follow-up missions in May and July. It also supported the visit of the Special Rapporteur on the right to food in September. The office provided technical assistance to the Presidential Commission on Human Rights (COPREDEH) in the periodic reporting to treaty bodies, particularly to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), the Committee on Economic, Social and Cultural Rights and the Human Rights Committee. It also gave technical advice in the drafting and dissemination of NGO alternative reports presented to CMW, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women. The concluding observations of the latter were presented in 15 dissemination activities. Regarding the Durban Review Conference,

<sup>20</sup> United Nations Development Programme. *El Sistema de Salud en Guatemala ¿hacia dónde vamos ?*, vol. 9: Síntesis (Guatemala, 2008), p. 87.

<sup>21</sup> *¿Derechos o privilegios ? El compromiso fiscal con la salud, la educación y la alimentación en Guatemala* (Guatemala, 2009), chap. 3, "La salud con rostro excluyente" .

the office provided technical assistance to the Ministry of Foreign Affairs, the Congressional Committee on Women, DEMI and the Presidential Commission on Discrimination and Racism against Indigenous Peoples (CODISRA). It also supported DEMI and CODISRA participation in the Permanent Forum on Indigenous Issues.

67. Regarding the implementation of the Convention on the Rights of Persons with Disabilities, the office provided technical assistance to the National Council for Persons with Disabilities (CONADI) and the Office of the Human Rights Procurator to produce the public version of the Convention in text, audio and Braille. The office also participated in the joint action plan for dissemination of the Convention, which included four workshops with State institutions and indigenous leaders from the Kaqchiquel, Mam, Queqchí and Quiché communities. It also supported the Second National Congress on Disability held in November 2009.

68. In order to promote the implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the office provided technical assistance in the drafting process of the law for the establishment of a national prevention mechanism, in which several State institutions and civil society organizations participated.

69. In order to assist in the harmonization of national legislation with international standards, the office provided the following with technical assistance: the Parliamentary Commission for Women, to reform the Law to Prevent, Eradicate and Punish Domestic Violence, and on the Elections and Political Party Law and the Labour Code; the Legislation and Constitutional Points Committee of the Congress, on an opinion about the legal initiative on Sexual Violence, Exploitation and Trafficking of Persons; and Congress' Migrants Committee, in the reform process of the Migration Law. The office also provided the Special Committee for Amendments to the Justice Sector with technical advice regarding the Law on Nominating Commissions, and provided assistance to develop legal initiatives and regulations promoted by State institutions and civil society organizations, such as the reform to the Organic Charter of the Public Prosecutor's Office and regulations to the Prison System Law.

70. The office provided technical assistance to the NCP Gender Equity Division, including workshops on women's rights for police women in seven police districts. To follow up on the implementation of legislation on violence against women, the office participated in the Multi-sector Committee for the Life and Security of Women, composed of members of Congress, the Public Prosecutor's Office, the Judiciary, the Institute of Public Criminal Defense, the National Commission on Domestic Violence and Violence Against Women, the Presidential Secretariat for Women, the Office for the Defence of Indigenous Women and civil society organizations.

71. OHCHR-Guatemala continued to provide advice to the Body for the Analysis of Attacks against Human Rights Defenders and monitored trends and patterns on the human rights situation, working with social organizations, the Human Rights Procurator, the Ministry of the Interior, COPREDEH, the Public Prosecutor's Office, donors, and the so-called filter group of European Union delegations, in charge of monitoring the situation of human rights defenders.

72. The office started a series of capacity-building activities focused on international standards applicable to the administration of justice, addressed to the School of Judicial Trainers and the judicial clerks of the Constitutional Court. This will continue during 2010.

73. The office provided technical assistance to the Public Prosecutor's Office in the drafting of an internal instruction for the investigation of serious human rights violations and a regulation for its Human Rights Office.

74. Jointly with the Social Studies and Research Association (ASIES), the office disseminated the recommendations contained in the OHCHR-ASIES study on a human rights-based approach to indigenous people's access to justice: perspectives from indigenous law and from the official justice system, particularly to representatives of the Judiciary. Discussions were held with indigenous authorities of Quiché and with civil society organizations on indicators aimed at monitoring institutional measures in that matter.

75. With funding from the German Federal Government, the office continued to implement the project entitled "Contributing to the eradication of racism and ethnic and gender discrimination, particularly against indigenous women", jointly with CODISRA and DEMI. Among other planned activities, the office supported the design and launching of the second phase of the National Campaign for Coexistence in Cultural Diversity entitled: "Indigenous women have rights; we demand that they be met". This campaign included nine regional meetings and media actions. The office also supported the strengthening of DEMI and CODISRA legal units through training programmes on strategic litigation in cases of discrimination, workshops with female indigenous leaders aimed at promoting a culture of filing complaints against human rights violations and round tables with justice operators. It also provided technical assistance to update and operate CODISRA and DEMI complaint databases.

76. The office provided technical assistance to UNDP in the creation and definition of the programme to support transitional justice, which will be implemented between 2010 and 2014.

77. The office, the Government of Norway and the United Nations System in Guatemala signed an agreement for the establishment of the "Maya Programme", and implemented its first phase, the "Technical Training Programme for Strategic Human Rights Litigation for Indigenous Peoples' Rights" with 33 students, 8 professors from the participating universities (San Carlos and Rafael Landívar), and representatives of 12 indigenous organizations.

78. Training was provided to judges, prosecutors, police officers and civil society organizations on international human rights standards, including independence of the judiciary, enforced disappearances, serious human rights violations, juvenile criminal justice, access to justice, prevention of torture, discrimination and violence against women, access to information, arbitrary interference with private life, the human rights-based approach and economic, social and cultural rights.

79. The office conducted training programmes and working meetings with COPREDEH, the Office of the Human Rights Procurator and the National Human Development Report team at UNDP on human rights indicators.

80. Regarding the process of the Common Country Assessment and United Nations Development Assistance Framework (CCA/UNDAF), the office provided technical support in the definition of strategic lines and the inclusion of a human rights-based approach. It also led the Inter-Agency Working Group on Human Rights, Governance, Security and Justice.

81. The office continued to facilitate dialogue between donors and United Nations agencies in the Indigenous Peoples and Transition Justice working groups. It also participated in Inter-Agency Working Group on Gender and the Advancement of Women (GIGAM) meetings, together with the United Nations Development Fund for Women and the United Nations Population Fund, and supported the regional launch of the Secretary-General's campaign to end violence against women in November 2009.

82. Finally, the office provided information on the situation of human rights through press conferences, press releases, interviews, public forums and through the annual report of the High Commissioner. It also developed and disseminated publications, audio-visual and

interactive materials, distributing more than 21,000 copies to State institutions and a wide range of civil society organizations. It also provided information to different audiences through its Documentation Centre.

## **B. Follow-up to recommendations made in previous reports of the High Commissioner on the human rights situation in Guatemala**

83. In her previous report to the tenth session of the Human Rights Council (A/HRC/10/31/Add.1), the High Commissioner issued 15 recommendations to the Government, the Congress, the Judiciary, the Public Prosecutor's Office and civil society organizations, related to the following themes: the legal framework for the protection of human rights; the right to life and security; the rule of law and impunity; indigenous peoples' rights; women's rights; and economic, social and cultural rights. OHCHR-Guatemala has assisted in the implementation of these recommendations.

84. The High Commissioner calls on the relevant counterparts in Guatemala to implement the pending recommendations submitted in her predecessor's reports (2005 to 2007) and in her 2008 report to the Human Rights Council, in a coordinated, consistent and effective manner. She also calls on the Government to implement the recommendations which emanated from the universal periodic review of Guatemala by the Human Rights Council in May 2008, and invites civil society to participate in following up and monitoring those recommendations.

## **V. Recommendations**

85. **Based on the progress made in 2009 and remaining challenges in the promotion and protection of human rights in Guatemala, the High Commissioner makes the following recommendations.**

### **A. Legal framework**

86. **The High Commissioner urges Congress and the Government to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute of the International Criminal Court. She also urges the Government to recognize the competence of the Committee on the Elimination of Racial Discrimination and to adhere to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.**

### **B. The right to life and security**

87. **The High Commissioner calls on the Government to urgently undertake the necessary measures to ensure that the National Civilian Police efficiently assumes its public security role and to ensure that no private citizen or entity assumes those roles, and urges Congress to adopt a legal framework to ensure the effective control and registration of private security companies, their activities, personnel and use of firearms.**

88. **The High Commissioner urges the Ministry of the Interior to strengthen the police career through effective recruitment and specialized training programmes, and**

to improve working conditions for the police force. She also encourages the continuation of a fair and transparent vetting process and the further development of indicators to assess the effectiveness of police operations.

### **C. Rule of law and impunity**

89. The High Commissioner calls on the Supreme Court of Justice to integrate in its strategic and operational plan for the next five years policy directions and monitoring indicators to ensure access to justice based on the principles of non-discrimination, transparency, celerity, independence and impartiality, as well as on multicultural and linguistic sensitivity.

90. The High Commissioner urges the Public Prosecutor's Office, the Ministry of the Interior, the National Civil Police and the National Forensic Science Institute to develop a standing inter-institutional operational coordination mechanism for criminal investigations, and calls on the Prosecutor's Office to approve the necessary internal norms to strengthen the structure, operation and competence of its Section on Human Rights.

91. The High Commissioner calls on the relevant institutions in the justice system to strengthen their efforts to investigate human rights violations committed during the internal armed conflict and to prosecute and sanction those responsible for ordering and perpetrating such acts.

92. The High Commissioner encourages the Government and Congress to adopt standards to regulate the establishment and operation of all places of detention in conformity with international standards, and urges the adoption of measures to ensure humane detention conditions for every person deprived of liberty, including special measures for women, in line with international standards, including the Standard Minimum Rules for the Treatment of Prisoners.

93. The High Commissioner urges the State to urgently adopt specific measures concerning the legal, administrative and judicial sectors, and to strengthen and expand participatory dialogue and agreements with the Government in 2009, as mechanisms to prevent and redress serious social tensions, particularly in areas such as agriculture and natural resource exploitation, in conformity with international human rights standards.

### **D. Indigenous peoples**

94. The High Commissioner urges the State to intensify its efforts to strengthen political, technical and budgetary support to State entities working on indigenous issues, and also calls on the Government to establish effective monitoring systems to assess progress in the implementation of Guatemala's international commitments related to the rights of indigenous peoples and to the elimination of racism and racial discrimination.

95. The High Commissioner encourages the State to address the issue of impunity in cases of racism and discrimination in a comprehensive and effective manner, and urges the Government to undertake renewed efforts at the inter-institutional level, with the participation of indigenous peoples, to go beyond a monocultural vision of justice. This should be achieved through respect for the rights of indigenous peoples, consideration of existing initiatives and by ensuring a coherent public policy relating to access to justice for indigenous peoples.

## **E. Women's rights**

96. The High Commissioner urges the Judiciary: (a) to prioritize the implementation of the specialized system of justice on violence against women, according to the needs of each region, and to establish homogeneous protocols in terms of prevention, investigation and interpretation of its legal framework; (b) to build the capacity of public servants to address women's rights; and (c) to allocate sufficient material and human resources to ensure the enforcement of the Law against Femicide and Other Forms of Violence against Women.

## **F. Economic, social and cultural rights**

97. The High Commissioner reiterates her call on the Government and Congress to promote a comprehensive and progressive tax reform, expanding the tax base and improving collection. In order to achieve this reform, consensus by and participation of all sectors of the society must be ensured.

98. The High Commissioner encourages the State to consolidate its actions aimed at ensuring free education, by allocating an adequate institutional and operational budget and ensuring effective accountability and administrative complaints mechanisms accessible to users.

99. The High Commissioner urges the State to take timely and preventive action in order to comply with its minimum and immediate obligation of realizing the right to food, especially for the most vulnerable. Political will needs to be translated into concrete measures of a humanitarian and long-term nature in order to break this cycle.

## **G. Information and statistics**

100. The High Commissioner urges the Government to intensify its efforts to improve human rights statistical information systems, particularly on economic, social and cultural rights, on violence against women and on ethnic discrimination. Reliable databases providing disaggregated, updated, timely and transparent data are essential to enable the Government to adopt preventive and protective measures which respond to situations of emergency and allow the strengthening of the design, implementation and monitoring of policies, plans and programmes aimed at the effective realization of these rights.

## **H. Technical cooperation and advisory services**

101. The High Commissioner invites State institutions, as well as civil society organizations, to fully benefit from the advice and technical cooperation of her office in Guatemala, and also invites the international community to provide the necessary technical and financial support for the various State institutions, NGOs and OHCHR to make an effective contribution to the implementation of these recommendations.