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the Elimination  
of all Forms of  
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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 9 OF THE CONVENTION**

**Eleventh periodic report of States parties due in 2004**

**Addendum**

**GUATEMALA\* \*\***

[18 March 2005]

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\* This document contains the eighth to eleventh periodic reports of Guatemala, due on 17 February 1990, 2000, 2002 and 2004, respectively, submitted in one document. For the seventh periodic report and the summary record of the meetings at which the Committee considered the report, see document CERD/C/292/Add.1 and *Official Records of the General Assembly, Fifty-second Session, Supplement No. 18 (A/52/18)*, paras. 63-99.

\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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## **Introduction**

1. This report was drafted by the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala with the participation of the three branches of Government of Guatemala and in consultation with indigenous organizations representing civil society. Pursuant to article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, Guatemala hereby submits to the members of the Committee on the Elimination of Racial Discrimination the eighth, ninth, tenth and eleventh periodic reports of Guatemala, covering the period 1997-2004.
2. The report contains information on the situation of racial discrimination and reviews the legal and institutional measures adopted by the branches of Government to prevent, punish and eliminate racial discrimination in Guatemala.
3. The report describes the current context of racial discrimination, particularly discrimination against indigenous peoples, pursuant to the Convention and the Committee's recommendations concerning Guatemala's seventh periodic report submitted in 1996. The end of the report sets out conclusions and challenges.

## **I. BACKGROUND INFORMATION**

4. The eleventh national population census and the sixth national housing census, conducted in 2002, collected the following information.

### **Ethnic origin**

5. Of the population surveyed, 39.3 per cent claimed to be Mayan, 60 per cent Ladino and 0.2 per cent Xinca and Garifuna. The Xinca and Maya peoples live mainly in rural areas, while the Garifuna live in urban areas. Some 55.7 per cent of the total Ladino population live in urban areas. The right of individuals to identify themselves as indigenous or non-indigenous was respected.

### **Mayan population**

6. According to the information provided on ethnic origin, 39 per cent of the total population belong to one of the 22 Mayan linguistic communities. The four main linguistic communities in Guatemala are the Kiche (28.8 per cent), the Q'eqchi (19.3 per cent), the Kaqchikel (18.9 per cent) and the Mam (14 per cent).

### **Mayan population in urban and rural areas**

7. Some 68.3 per cent of the Mayan population live in rural areas and 31.7 per cent in urban areas.

### **Mother tongue**

8. Of the main languages spoken in Guatemala, the mother tongue of 68.9 per cent of the population aged 3 years and over was Spanish; of 8.7 per cent, Kiche; of 7 per cent, Q'eqchi; of 4.6 per cent, Mam; of 4.3 per cent, Kaqchikel; and of 1.4 per cent, Kanjobal.

### **Second language**

9. The 2002 census showed that the situation as regards the second language spoken by the population aged 3 years and over, in addition to their mother tongue, is as follows: 78.8 per cent are monolingual and 21.2 per cent speak at least two languages. Of the total monolingual population, 51.6 per cent live in rural areas.

10. Moreover, 43.6 per cent of the Mayan population are monolingual; whereas 54.5 per cent also speak at least Spanish. Of this population, 65.8 per cent live in rural areas.

### **Literacy**

11. The literacy of the population aged 7 and over increased by 51.1 per cent during the period 1994-2002, with a greater increase among women than men (55.7 and 47 per cent, respectively). According to the 2002 census, one in three women and one in four men is illiterate.

12. Of the population aged between 15 and 64, 71.5 per cent are literate and 28.5 per cent are illiterate. Of the total number of illiterates (1,708,522), 36.8 per cent (629,493) are men and 61.2 per cent (1,079,029) are women. During the period 1994-2002, there was a 49 per cent increase in the number of literates in the population aged between 15 and 64; the increase was greater among women than among men (55 and 45 per cent, respectively). Approximately one in every three women and one in every five men is illiterate.

### **Level of education in rural areas**

13. According to the 2002 census, 48.2 per cent of people in urban areas have completed some level of primary education, 27.1 per cent have attended secondary school, and 7 per cent have university studies. Ten per cent have attended pre-school and 16.7 per cent have had no formal education.

### **Enrolment rates**

14. Approximately one in three of the population aged 7 and over attends an educational establishment. The percentage of school enrolment among males was 55.1 per cent according to the 1994 census and 51.8 per cent according to the 2002 census, whereas among females it was 44.9 per cent and 48.2 per cent, respectively.

## **II. SITUATION OF DISCRIMINATION AGAINST INDIGENOUS PEOPLE IN GUATEMALA**

15. The crisis in Guatemala does not only involve a failure to observe civil and political rights but also the continuous violation of social, economic and cultural rights; to that end, in 1999, agreement was reached on a new time frame for complying with pending commitments from the peace agreements, with emphasis on the need to counteract discriminatory social policies, economic inequality and the exclusion of the indigenous population.

16. While the Government is trying to find ways of honouring its commitments to peace, it recognizes that, without the support of the population and international organizations in resolving its difficulties, it will not make any progress. Guatemala recognizes that many of those commitments have not been met; this shows how complicated any discussion of the situation of the Maya, Xinca and Garifuna peoples is, since the problem is long-standing and racial and ethnic discrimination is a daily occurrence. Guatemala is making efforts to eliminate this social phenomenon, which seriously damages its social, political and economic relations.

17. Racism and racial discrimination are manifested through attitudes of disdain and rejection towards indigenous people, including in the media, prejudice against various aspects of indigenous peoples' culture, such as their spirituality and the use of their language and, in general, their disadvantaged position with regard to access to the benefits of development and socio-political participation. Guatemala is seeking long-term solutions to eliminate the root cause of a problem that has adversely affected everyone.

18. For reasons that date back more than five centuries, the Government has taken steps to counteract the exclusion suffered by the rural population, and mainly the indigenous population, which has not had access to health, education or housing; this affects thousands of poor families and their opportunities for integrated development. Malnutrition, diarrhoeal and respiratory diseases among the rural and urban populations are indicators of that inequality. The opportunities for recreation, sport and culture are minimal for the vast majority of the population; there are very few facilities, infrastructures and programmes or State resources for their development and support; this poses an immediate challenge for the State and Government of Guatemala.

19. One of the policies pursued by the Government to improve Guatemala's deteriorated human rights situation involves the establishment of mechanisms to improve those areas most affected by the current deadlock, identified in three aspects of the peace agreements. Wide-ranging ethnic discrimination and profound social and economic inequalities still exist in Guatemala. Some State bodies are showing their concern by bringing greater transparency to internal processes involving the rethinking and restructuring of policies towards indigenous peoples, and the adoption of measures to combat discrimination and racism.

20. In 1996, Guatemala ratified International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, and it is endeavouring to establish mechanisms to incorporate the system for the administration of indigenous justice. Indigenous law is practised by the communities of the Maya, Xinca and Garifuna peoples, who have laws, recognized authorities and mechanisms that serve to prevent, handle and settle disputes. It is clear that these communities feel that they belong to the Guatemalan nation; nevertheless, that sense of belonging is jeopardized by their exclusion from the State structure and justice system.

21. Efforts are being made to recognize the right of the indigenous peoples to apply their own system of justice, and to promote measures to ensure that its decisions and methods of settling conflicts are observed. This has been facilitated by programmes and projects that have received most of their technical, financial and political support from international cooperation.

22. The judiciary has provided the following information on bilingual judges in Guatemala: Alta Verapaz - seven justices of the peace; Baja Verapaz - five justices of the peace; Chimaltenango - four justices of the peace; Chiquimula - none; El Progreso - one justice of the peace; Quiché - nine justices of the peace; Escuintla - none; Guatemala - three judges (one justice of the peace for civil matters, one deputy examining magistrate and one oral judge of the second trial court); Huehuetenango - two justices of the peace; Izabal - one criminal trial court judge; Jalapa - the presiding judge of the fifth chamber of the Court of Appeal; Quetzaltenango - three justices of the peace; Retalhuleu - two justices of the peace; Santa Rosa - none; Sololá - nine justices of the peace, four community judges, one criminal trial court judge and one judge of the court of first instance dealing with labour, social security and family matters; Suchitepéquez - one justice of the peace; Totonicapán - five justices of the peace, three community judges and one criminal trial court judge; El Petén - none; Sacatepéquez - two justices of the peace; and San Marcos - none.

23. The judiciary has organized training courses that incorporate the gender perspective. It upholds the rights of petition and action for both men and women, placing emphasis on the rights of women. Women are one of Guatemala's vulnerable groups with the greatest difficulties in gaining access to justice, to the extent that some women are subjected to discrimination and violence by judicial officials, who deny them access to justice.

24. The competent authority in Quetzaltenango has found that, in 18 of the department's 24 municipalities, there are neither bilingual judges nor interpreters; three municipalities have bilingual judges but no interpreters, and another three municipalities have interpreters but no bilingual judges. In 27 of the 29 municipalities of the department of San Marcos, there are no bilingual judges or interpreters; in one municipality there is a bilingual judge but no interpreters, and in another there is an interpreter but the judge is monolingual. In Retalhuleu, there are no bilingual judges or interpreters in any of the nine municipalities. In two of the eight municipalities in Totonicapán, there are no bilingual judges or interpreters; in four municipalities there are bilingual judges but no interpreters, and in two municipalities there are bilingual interpreters and judges. There are also reports of complaints of discrimination and violations of legal guarantees, which shows that there is obstruction of justice.

25. In some areas, restrictions on the use of indigenous languages in judicial or related proceedings are being lifted. However, there is still no litigation in indigenous languages, even when the parties speak the same indigenous language. In some localities, the provisions concerning the mandatory presence of a suitably qualified interpreter are being ignored, and in practice too few interpreters are being trained or hired. This gives rise to violations of the right to due process, which adversely affects the indigenous population, and the State is aware of the need to deal with the problem.

26. In this regard, the Government is seeking ways of providing access to justice in order to overcome the high levels of discrimination, to ensure that all citizens exercise their rights on an equal basis, and to improve the effectiveness of the justice system by strengthening institutions and their development within the framework of democracy and the rule of law. The aim of these measures is to step up efforts to combat the high levels of impunity and insecurity and to find ways of restoring governance. An effective justice system is the best means of improving public safety while ensuring respect for human rights.

27. Some government institutions have made efforts to observe customary law in legal proceedings by providing interpreters and allowing the parties to use their native language, in accordance with the provisions of the Agreement on Identity and Rights of Indigenous Peoples.
28. Another aspect of the peace agreements is dialogue and negotiations to resolve the fundamental problem of providing agricultural workers with land as a necessary condition for the economic and social development of rural areas. The land dispute has been a historical problem, and, despite attempts at a settlement, it has deteriorated to such an extent that the State is seeking ways of reducing the number of small landholdings (*minifundios*) and large agricultural estates (*latifundios*), which has led to the occupation of farms and subsequent evictions, and is making efforts to find solutions to the problem.
29. The Government recognizes that evictions have adverse effects on the development of communities, and leave mainly indigenous families and agricultural workers destitute and impoverished. More than 2,002 families are registered as being landless, and thousands of workers without jobs and employment benefits have migrated. The Government intends to study the causes of the dispute over agricultural land and to show the political will to respect the rights of families who have sought legal alternatives to gain possession of land.
30. Accordingly, the Government is rising to the challenge by introducing schemes to help overcome poverty and extreme poverty, discrimination and social and political marginalization, which have hindered and distorted Guatemala's social, economic and political development.
31. The granting of mining licences by the Ministry of Energy and Mines to concession enterprises is causing the Government serious problems. Such activities are considered a grave violation of the rights of thousands of indigenous and non-indigenous Guatemalans, who were not duly consulted and informed that the subsoil of their territory would be licensed to mining companies. It should be emphasized that most of the population in 9 of the 16 departments affected is indigenous and that various small groups (Chuj, Sipakapense, Chorti, Mam, Kaqchikel) will be faced with ethnocide if the mining projects are not handled appropriately. The Government is therefore carrying out awareness-raising campaigns through the institutions responsible for monitoring the probity of the process.
32. Pursuant to article 67 of the Constitution of Guatemala, the State recognizes the ethnic and cultural pre-existence of the indigenous peoples, guarantees the possession and development of the communal lands traditionally occupied by them and regulates the handing over of other lands suitable and adequate for human development. Likewise, under ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, the State is obliged to consult indigenous peoples when their resources are exploited, with a view to ascertaining whether their interests would be prejudiced, and in any event ensure that they receive fair compensation for any damage they might sustain. The Government regrets that some regulations were not properly implemented prior to the signing of the mining concessions.
33. The State respects the right of persons who consider themselves affected by mining concessions to hold peaceful demonstrations. It encourages the dissemination of relevant information to such persons, and is seeking ways of solving the problem.

34. With regard to the political participation of indigenous peoples, the State recognizes that political parties have not ensured the equitable representation of indigenous leaders in the internal structure of political parties, thereby arousing the discontent of social movements that demand to be allowed to exercise their political rights, which has not been possible because of exclusion, racism and discrimination.

35. The Government is concerned about the situation, since the nature, organization, vision and restricted membership of political parties have a clear connotation of exclusion and discrimination against representatives of the indigenous peoples, which promotes attitudes that exclude such peoples from certain types of participation: indigenous peoples are allowed to exercise their right to vote but rarely their right to be elected.

36. Thus, over the past two decades the membership of the Congress has not reflected Guatemala's ethnic and socio-political composition, particularly with regard to women. Similarly, appointments to State agencies are made in token fashion and in many cases do not represent the just aspirations of Guatemala's indigenous peoples. This situation must also be taken into account in order to resolve the extremely difficult situation of the indigenous peoples.

37. The Government is making efforts to combat exclusion, discrimination and racism, which it considers to be three manifestations of the same social phenomenon. At the political level, exclusion, discrimination and racism continue to have a fundamental effect on the participation of indigenous peoples. The democracy enjoyed by more than 12 million people deliberately excludes indigenous peoples, women and young people, and political parties are no exception.

38. According to official information concerning participation of indigenous peoples in elected offices, there are still no Xinca or Garifuna holding seats in Congress. Although the participation of indigenous peoples in electoral processes is beginning to become apparent, in practice such participation is not equitable and, as a result, they do not hold decision-making posts at the different levels of political power in Guatemala.

39. Since the signing of the peace agreements, life for the indigenous peoples and women has gradually changed. However, the peace agreements call for stronger and broader citizen participation, with the State promoting conditions conducive to this process. Nevertheless, the participation of indigenous people, and indigenous women in particular, in government institutions remains limited. This perpetuates a situation in which women and ethnic minorities, who constitute the majority of the population, are treated as minorities and are subjected to social discrimination and particular oppression.

40. In politics, indigenous women are putting forward proposals to promote peace. The success of the mobilization and establishment of various civic committees at the municipal level is due to the greater participation of women in politics following the signing of the peace agreements.

41. Significant progress has been made in the most recent general election of 2003 with respect to the legislature. Of the total of 158 deputies that make up the legislature, 15 are indigenous, 15 are women and 1 is an indigenous woman. Of the 331 municipalities, 105 have indigenous mayors; there are 8 women mayors and 1 indigenous woman mayor.



42. Guatemala is currently confronted with difficult situations involving violence, intolerance and social exclusion. These situations can be overcome only through the concerted efforts of civil society and the economic and political sectors in order to ensure that priority is accorded to social problems of common concern. Likewise, active and positive citizen participation are required to create an intercultural and democratic nation, which through peace-building seeks its own development, recognizes diversity and promotes a culture of respect for the human rights of all Guatemalans.

### **III. IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION**

#### **Article 1**

43. Minimum basic legislation and institutions that offer new forms of coexistence among the various elements of Guatemalan society already exist. However, it should be noted that most of the legislation is not applied in practice, as indicated in the background information.

44. A forum has been set up by government officials who, owing to their indigenous origin or intercultural outlook, cooperate in measures to eliminate racism and discrimination in the institutions where they work, through an indigenous inter-agency coordinating committee.

#### **Article 2**

45. Guatemala's public institutions are making efforts to comply with this article. At present, the Ministry of Labour and Social Welfare has a team of six officials to restructure the Office of Social Welfare in order to mainstream the theme of the rights of indigenous peoples into all activities of the Ministry and other government ministries through its main offices and departments. Proposals on measures and policies to be adopted by the Ministry have been put forward by the Department of Indigenous Peoples and are centred on awareness-raising and the promotion of indigenous rights among public officials.

46. The Office of the Ombudsman for Indigenous Peoples attached to the Office of the Human Rights Procurator keeps a record of human rights violations against indigenous persons by public officials and employees and private entities. Although it has issued decisions, no action has been taken by the justice system to make use of the legal mechanisms that punish racism and racial discrimination.

47. Public institutions and ethnic units, departments and sections have been opened so that professional staff are available to give advice on such matters. Such efforts are necessary to ensure that all these bodies receive proper funding, which most of them do not yet have.

#### **Article 3**

48. Efforts are being made to set up special multicultural bureaux, as in the case of the policy changes made by the National Civil Police with a view to strengthening its multi-ethnic composition. The curriculum of the National Civil Police now includes such topics as

multiculturalism and the International Convention on the Elimination of All Forms of Racial Discrimination. In addition, district police chiefs and commissioners are receiving training in institutional commitments with a multi-ethnic theme. In addition, a Mayan police squad is being trained to handle conflicts.

49. The Office of the Human Rights Procurator has a team of educators and promoters whose training programmes include the prevention of discrimination.

50. The Presidential Secretariat for Women, the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala and the Ministry of Education are taking measures to remove texts and illustrations that encourage racial discrimination from primary school textbooks. That institution is also stepping up coordination activities in support of the National Policy against Discrimination and Racism in Guatemala.

51. As has already been mentioned, discrimination is classified as an offence under article 202 bis of the Criminal Code.

52. The National Public Administration Institute promotes academic development that enables public officials and leaders of civil society to obtain degrees in multicultural and pluricultural studies. This helps to improve the effectiveness of State services in eliminating preferential treatment for certain sectors of society.

#### **Article 4**

53. The legislature and its deputies are prepared to engage in a dialogue to consider the possibility of issuing guidelines to eliminate direct and indirect discrimination that could be incorporated into existing laws so that the principle of equality is upheld in all Guatemalan legislation.

54. In Guatemala, racial discrimination has been classified as an offence, and mechanisms have been established to ensure equal treatment and to launch an educational campaign against discrimination. The Government has promulgated the Act on Enhancement of the Status and Comprehensive Advancement of Women, which gives female indigenous students the option of continuing to wear indigenous dress at school. The Social Development Act seeks to eliminate practices of racial and gender discrimination. The Municipal Code and the Development Councils Act have been amended and the Decentralization Act has been issued.

55. At the administrative level, the Ministry of Education has drawn up Ministerial Agreement No. 930-2003, under which all public and private educational establishments must promote and respect the use of indigenous dress by students, teachers, technical and administrative staff in teaching, civic, social, ceremonial and other activities, without restriction. Consequently, any conduct or action that restricts this right is prohibited, and intercultural bilingual education is being more widely introduced in the national curriculum through Government Agreement No. 22-04.

## Article 5

56. Measures are being taken to institutionalize B'elej' B'atz Day (women's day in the Mayan calendar) and to adopt a law that would classify sexual harassment as an offence, with harsher penalties when the victims are indigenous women.

57. There is an executive secretariat for the elimination of child labour and the protection of young persons and a coordinating group against the commercial sexual exploitation of children and young persons. The main purpose of this institution is to ensure that the national policy for the promotion and advancement of Guatemalan women is taken into account in the various instruments that are being drafted or amended.

58. The Presidential Secretariat for Women has put forward an initiative to promote legal reforms to eliminate child labour and discrimination against women in employment, principally women domestic workers; such reforms would protect the rights of women from all sociocultural groups.

59. The Department of Indigenous Peoples under the Ministry of Labour and Social Welfare, in coordination with the General Labour Inspectorate, will appoint special inspectors for indigenous workers to report violations of indigenous people's labour rights.

60. The Guatemalan Fund for Indigenous Development promotes, as part of the administrative measures that have been adopted, the individual rights of indigenous peoples and their equality before the law.

61. With regard to the right to vote and to stand for election, which is a constitutional principle, indigenous participation is increasing, although it is hampered by political parties that place restrictions on the election of indigenous leaders to decision-making posts. At present, only 102 of Guatemala's 331 mayors and only 15 of its 158 deputies are indigenous.

62. As for women, there are only 15 female deputies, and only 1 is indigenous. At municipal level, 8 of the 331 mayors are women and only 1 is indigenous. Moreover, of the more than 3,000 posts of councillor and syndic, only 154 are held by women, and only 34 of them are held by indigenous women.

63. The Ministry of Culture ensures the unrestricted access of the *Aj Q'ijab* (Mayan spiritual guides or priests) to ceremonial centres under the Ministry's jurisdiction. There are programmes to promote the right to freedom of thought, conscience and religion; in particular, the different manifestations of indigenous spirituality are encouraged. These training programmes are coordinated with the National Public Administration Institute.

64. In the area of health and social welfare, there are special programmes for women and children. These programmes, which target the poorest segments of the population (mainly the indigenous population), include the Reproductive Health Programme and the Acute Malnutrition Programme. Each programme provides a food supplement to families. There is also an epidemiological surveillance programme that places emphasis on gender equality.

Other projects relate to maternal and neonatal care, which are essential for improving the health of women and children. Protracted Relief and Recovery Operation projects deal with nutritional health, whose aim is to prevent and eliminate malnutrition.

65. There are 14 social funds, of which 3, by the very nature and objectives of their programmes and projects, have an impact on the eradication of poverty in rural areas with large indigenous populations, since they eliminate discrimination and promote development and self-sufficiency. These are the Social Investment Fund, the National Peace Fund and the Guatemalan Fund for Indigenous Development. However, the Government recognizes that it is experiencing difficulties in coordinating a comprehensive policy that addresses the needs of the indigenous population.

66. As part of its activities to promote citizen participation, Guatemala encourages people to organize themselves into associations, foundations or committees established in accordance with the law. For this reason, the Municipal Code as amended by Legislative Decree No. 12-2002 recognizes the Guatemalan Association of Indigenous Mayors and Authorities; article 119 of the Code establishes a special commission for calculating transfers of funds from the central Government to the municipalities. Furthermore, a special chapter has been introduced that recognizes the indigenous authorities as a traditional indigenous organization and ensures respect for their social participation in matters of development, in keeping with the norms and procedures of indigenous communities.

#### **Article 6**

67. One of the institutions set up by Guatemala under the Constitution that is responsible for monitoring human rights is the Office of the Human Rights Procurator. This important institution includes the Office of the Ombudsman for Indigenous Peoples, which has a team of indigenous professionals to deal with problems in this area.

68. The Office of the Human Rights Prosecutor, which is part of the Public Prosecutor's Office, is specifically entrusted with investigating offences involving discrimination and racism. However, according to the Office of the Human Rights Prosecutor, all prosecutors' offices in Guatemala have jurisdiction to investigate complaints of offences involving discrimination. The Office of the Human Rights Prosecutor is empowered to take legal action against the perpetrators of an offence involving discrimination or any other offence committed against individuals, human rights activists, indigenous leaders or others.

69. The ethnic unit attached to the Office of the Criminal Public Defender is another body that helps to guarantee protection of citizens' rights in this area.

70. At present, the Office of the Prosecutor for Offences Committed against Human Rights Activists has jurisdiction at the national level. It also has an outreach programme for the indigenous population that makes use of special interpreters, of which there are still very few. There are psychological support services for members of the indigenous population who have been victims of crimes, as well as measures to encourage persons to come forward and admit that they have been victims.

71. The Indigenous Law Commission, which is part of the judiciary, has provided the following information on judges in Guatemala who speak indigenous languages: Alta Verapaz - seven justices of the peace; Baja Verapaz - five justices of the peace; Chimaltenango - four justices of the peace; El Progreso - one justice of the peace; Quiché - nine justices of the peace; Guatemala - three judges (one justice of the peace for civil matters, one deputy examining magistrate and one oral judge of the second trial court); Huehuetenango - two justices of the peace; Izabal - one criminal trial court judge; Jalapa - the presiding judge of the fifth chamber of the Court of Appeal; Quetzaltenango - three justices of the peace; Retalhuleu - two justices of the peace; Santa Rosa - none; Sololá - nine justices of the peace, four community judges, one criminal trial court judge and one judge of the court of first instance dealing with labour, social security and family matters; Suchitepéquez - one justice of the peace; Totonicapán - five justices of the peace, three community judges, one criminal trial court judge; and Sacatepéquez - two justices of the peace. The departments of San Marcos, Santa Rosa, El Petén, Chiquimula and Escuintla still have work to do in this area.

### Article 7

72. The Department of Culture and Arts under the Ministry of Culture and Sport has introduced a project entitled “Mutual Understanding of, and Mutual Respect for Cultures”. National policies relating to culture and sport are drawn up in participatory fashion and their guiding principles are the culture of peace and sustainable human development in the context of the recognition of multiculturalism and the promotion of interculturalism.

73. The Ministry of Education has endeavoured to establish special bodies to help monitor bilingual intercultural education, and the Department of Intercultural Bilingual Education and the Vice-Ministry of Intercultural Bilingual Education are active in this area. The Ministry has promoted the creation of bilingual posts and the introduction of intercultural bilingual teacher training colleges in order to ensure that intercultural bilingual education in Guatemala becomes a reality.

74. The Agreement on Identity and Rights of Indigenous Peoples recommends a sweeping educational reform with culturally relevant curricula; this task, which is still pending, is incumbent on the bodies established for that purpose, such as the Advisory Commission for National Educational Reform.

75. Aware of the illiteracy rate in rural areas, particularly among indigenous peoples, and of the efforts of the Ministry of Education to promote education, Guatemala has appointed 18,000 indigenous teachers out of a total of 81,000 teachers in the whole education system, with a view to improving bilingual education in rural areas. The Government recognizes that action must be taken in the short and medium term to implement measures to reduce illiteracy. It is worth noting that three quarters of a million children between the ages of 5 and 12 speak Mayan.

76. For many reasons, principally Guatemala's current economic situation, it has not been possible to increase significantly the budget of the Department of Intercultural Bilingual Education. Priorities in other areas are more important and of national scope; however, account is being taken of the Department's steadily increasing financial requirements for carrying out its

activities. Half of the indigenous population, but only 20 per cent of the non-indigenous population, is illiterate; women are the worst affected, particularly indigenous women in rural areas where 7 in every 10 women are illiterate.

77. Aware of the great challenges in the sphere of education, Guatemala is taking steps to address major shortcomings, given that there are currently 7,832 schools in departments with indigenous populations and only 1,869 of them provide bilingual education.

#### **IV. IMPLEMENTATION OF SUGGESTIONS AND RECOMMENDATIONS CONCERNING GUATEMALA'S SEVENTH PERIODIC REPORT\***

##### **Paragraph 86**

78. The Government of Guatemala is promoting the peace commitments, the most noteworthy of which is the strengthening of civilian power in a democratic society, which includes the demilitarization of society and public institutions. In this connection, significant progress has been made in dismantling military bases, which have been converted into teaching centres - primary schools and basic and technical training institutes. The purification, professionalization and strengthening of the National Civil Police is continuing.

79. The Presidential General Staff has been dissolved and responsibility for the protection of the President and the Vice-President has been transferred to the Secretariat for Administrative Affairs and Security, a civilian entity, thereby promoting the development of a new national defence policy.

##### **Paragraph 87**

80. Guatemala ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries in 1996 and, in the spirit of that Convention and the peace agreements, particularly the Agreement on Identity and Rights of Indigenous Peoples, it established the Office for the Defence of Indigenous Women's Rights, which is attached to the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights. The Guatemalan Fund for Indigenous Development was established as a bipartite entity incorporating representatives of the State and indigenous peoples. Various offices, departments and units have been set up in State institutions to deal with ethnic matters. The Multicultural Bureau in the National Civil Police was established by General Order 003-2003. Although the Presidential Commission on Discrimination and Racism against Indigenous Peoples was established relatively recently, it has registered 28 complaints relating to racial discrimination and its effects and has referred them to the competent authorities. A national television channel has been made available for the exclusive use of the indigenous peoples through the Guatemalan Academy of Mayan Languages, and the Vice-Ministry of Intercultural Bilingual Education has been set up in

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\* *Official Records of the General Assembly, Fifty-second Session, Supplement No. 18 (A/52/18), paras. 86-99.*

the Ministry of Education. Other noteworthy developments include the establishment of various bodies within the different ministries in order to ensure that priority is accorded to the human rights of women and indigenous peoples.

81. With regard to specific cases brought to the attention of and registered by the Office of the Human Rights Procurator through the Office of the Ombudsman for Indigenous Peoples, 71 cases have been followed up. In 2002, 98 per cent of all cases submitted to the Office of the Ombudsman were dealt with, and requests were made for the opening of 16 cases. For reasons of territorial jurisdiction, some cases were referred to local offices, and others to the prosecution department. As for cases handled by the Office of the Ombudsman for Indigenous Peoples in 2003, of a total of 136 cases, most violations concerned fundamental rights and freedoms, the right to property and to own land, the right not to be subjected to discrimination on the grounds of race or ethnic origin and the right to protection against ethnocide, which includes exhumations, threats to indigenous leaders and the violent death of Mayan spiritual guides, known as *Aj Q'ijab*.

82. There were only three cases in which criminal legislation sanctioning discrimination was applied: one in the town of Quetzaltenango and two in Guatemala City. Although the case in Quetzaltenango was unsuccessful, the Human Rights Procurator issued the following ruling (ref. exp. ord. Quetz. 01-2003): "There was a violation of Ms. María Olimpia López López' right to equality in that she was subjected to discrimination for wearing indigenous dress"; the Public Prosecutor's Office was notified of the ruling by the entity handling the case under No. 305-2003. Lastly, it should be noted that there are basically four things the indigenous people are not allowed: exercise their own spirituality, speak their own language in public places, wear indigenous dress in public places and be in public places.

83. The Public Prosecutor's Office has registered only one case of the offence of discrimination, the victim of which was Ms. Rigoberta Menchú. The case is still in the investigation stage and alternative measures have been applied to the perpetrators. The next stage will be a public oral hearing before the competent body.

84. In its brief existence, the Presidential Commission on Discrimination and Racism against Indigenous Peoples has registered and documented 28 complaints relating to racial discrimination and its effects, which have been referred to the competent authorities for criminal prosecution.

### **Paragraph 88**

85. In this connection, it should be noted that article 202 bis of the Criminal Code was amended by Legislative Decree No. 57-02. The amendment classifies discrimination as an offence, although it allows for the application of alternative measures as part of due process so that cases can be investigated and formal charges brought subsequently during a public oral hearing.

86. The amendment to article 20, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, adopted at the Eighth Meeting of States Parties, was approved by Legislative Decree No. 67-97.

87. The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women was approved by Legislative Decree No. 59-01.

88. The recognition of indigenous languages as national languages was approved by Legislative Decree No. 19-2003.

89. Another important development was the adoption of the Education against Discrimination Act by Legislative Decree No. 81-2002.

### **Paragraph 89**

90. Within the Public Prosecutor's Office, the Office of the Special Prosecutor No. 2 was established by Agreement No. 11-2002 of 24 May 2002. Its function is to investigate offences committed against human rights activists or members of non-governmental organizations. The Office of the Special Prosecutor is specifically entrusted with investigating offences involving discrimination. However, all prosecutor's offices in Guatemala are competent to investigate complaints of offences involving discrimination.

### **Paragraph 90**

91. In an effort to follow up this recommendation, Guatemala, with the participation of various sectors of civil society and State institutions, is considering the establishment of a commission for the investigation of illegal groups and clandestine security forces. Progress has been made in the establishment of a special prosecutor's office to investigate matters relating to illegal groups and clandestine security forces.

### **Paragraph 91**

92. Guatemala recognizes with great concern that the current Elections and Political Parties Act does not allow for the democratization of political parties and the participation of new political organizations. In order to ensure that existing political organizations are more inclusive, some amendments have been introduced to the Act; however, the specific inclusion of the political participation of indigenous peoples is still pending.

93. The results of the 2003 general election provide the following information on political participation and access to public office: only 15 of the 158 deputies to the Congress of the Republic are indigenous, and 105 of the 331 municipalities have indigenous mayors. Clearly, much remains to be done in this area.

94. Considerable efforts have been made to amend the Urban and Rural Development Councils Act with a view to ensuring the greater involvement of the population and its communities in development planning. Amendments have also been made to special chapter IV of the Municipal Code where, for the first time in national legislation, indigenous municipalities are recognized as the traditional form of organization of indigenous peoples and the State undertakes to promote and respect them in accordance with their own forms of political and administrative organization.



95. The Decentralization (Framework) Act has also been promulgated. Like the two acts mentioned above, the Decentralization Act seeks greater involvement and representation of indigenous communities in decision-making as well as the recognition of the multi-ethnic, pluricultural and multilingual nature of Guatemala.

### **Paragraph 92**

96. In this connection, the Joint National Land Commission, the Presidential Office for Legal Assistance and Dispute Settlement in Land Matters and the Land Fund have been established to resolve this problem through specific procedures laid down in the peace agreements. The solutions must be based on dialogue and negotiation, since this is a basic need for agricultural workers, most of whom are indigenous, and a prerequisite for the economic and social development of rural areas. The land dispute has a long history and, despite attempts at a settlement, the problem has worsened. The State is currently seeking ways of reducing the number of small landholdings and large agricultural estates, which have recently led to the occupation of farms and extremely violent evictions, that have affected rural indigenous families. Efforts are being made to find solutions to the problem.

97. The Joint National Land Commission is composed of representatives of indigenous and agricultural workers' organizations and government and landowners' organizations. Pursuant to the peace agreements, these organizations are drafting a national land register bill that will be considered in the coming months by the National Legislative Assembly.

98. It should be pointed out that some farms are being occupied in order to demand payment for labour services. Guatemala recognizes that evictions have an adverse effect on the development of communities, and leave mainly indigenous people and agricultural workers destitute and impoverished. They become victims of persecution, and their leaders are threatened. Land tenure would therefore facilitate the start of a process to overcome the poverty, extreme poverty, discrimination and social and political marginalization that have hindered and distorted Guatemala's social, economic and political development.

### **Paragraph 93**

99. In this connection, the Ministry of Labour and Social Welfare, through its Department of Indigenous Peoples, is taking steps to comply with ILO Convention No. 169. It has begun to consider coordination mechanisms and strategies with the other State bodies that are affected by the implementation of the Convention. The initiative is hampered by a shortage of funds, a situation that affects other government bodies that deal with indigenous matters.

100. According to the Department of Indigenous Peoples, the most urgent tasks to be carried out to ensure compliance with ILO Convention No. 169 are:

- Formulation and adoption of policies by State institutions involved in the implementation of the Convention;

- Allocation of a specific budget to each State body affected by the Convention so that it can carry out its activities effectively;
- Involvement of indigenous organizations in the implementation of the Convention.

#### **Paragraph 94**

101. To this end, the Ministry of Education has drawn up Ministerial Agreement No. 930-2003, which states that “All public and private educational establishments must promote and respect the use of indigenous dress by students, teachers and technical and administrative staff in teaching, civic, social, ceremonial and other activities, without restriction.” Consequently, any conduct or action that restricts that right is prohibited.

102. Government Agreement No. 526-2003 establishes the Third Vice-Ministry of Intercultural Bilingual Education.

103. Government Agreement No. 22-04 provides for the general application of intercultural bilingual education at the national level.

104. Guatemala has established the Department of Intercultural Bilingual Education, which led to the establishment of departmental offices for intercultural bilingual education, the creation of bilingual posts, the development of culturally relevant curricula, and the establishment of intercultural bilingual teacher training colleges.

#### **Paragraph 95**

105. The Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala was established for the purpose of advising the Government on such matters, proposing and implementing public policies and drafting reports for international bodies, such as the Committee on the Elimination of Racial Discrimination.

106. The Office of the Human Rights Procurator of Guatemala has an international instruments and mechanisms unit, which follows up the recommendations of international committees that consider Guatemala’s periodic reports on the human rights situation in Guatemala. It should be mentioned that the Office provided useful information that is contained in this report, and its staff made commendable efforts to obtain such information.

#### **Paragraph 96**

107. We regret to inform the Committee that, owing to Guatemala’s economic problems, this recommendation has not been properly implemented, given the limited human resources available and the costs involved. We nevertheless recognize and appreciate the work that non-governmental organizations have carried out in this area with the support of international cooperation and, recently, the advice and support of the Office of the High Commissioner for Human Rights in Guatemala, and the efforts of the Office of the Human Rights Procurator.

### **Paragraph 98**

108. In this connection, we reiterate our thanks to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Doudou Diène, for their official visits to Guatemala in 2003 and 2004, respectively.

109. Guatemala welcomes the signing of the agreement between the Government of Guatemala and the Office of High Commissioner for Human Rights on 11 January 2005 at United Nations Headquarters in New York. Under the agreement, the Office of the High Commissioner will open an office in Guatemala that will provide advice in the area of human rights.

### **Paragraph 99**

110. All of the Committee's recommendations and suggestions were taken into consideration. Guatemala hopes that the contents of this report will meet with the Committee's satisfaction.

## **V. CONCLUSIONS**

111. There is interest and a clear willingness on the part of the State, through the current Government of Guatemala, the constitutional mandate, ordinary legislation and the commitment to international human rights bodies, to make Guatemala a multi-ethnic, pluricultural and multilingual nation.

112. There are institutions and teams of specialists in State bodies to implement the various initiatives to eradicate attitudes of discrimination that persist in all sectors of society.

113. Without the support of the entire population and international organizations in resolving the difficulties encountered in meeting the population's needs, many commitments remain unfulfilled. This means that any discussion of the situation of the Maya, Xinca and Garifuna peoples is extremely difficult, because it is a long-standing problem where racial and ethnic discrimination are encountered on a daily basis. For this reason, Guatemala is deeply committed to seeking ways of eliminating such practices, which cause serious harm to social and political relations in Guatemala.

114. Attitudes of disdain and rejection towards indigenous people are still evident in different sectors: in some media there is prejudice against various aspects of their culture, such as their spirituality and the use of their language. In general, indigenous people are at a disadvantage with regard to access to the benefits of development and socio-political participation. As mentioned earlier, it is primarily for these reasons that the Government of Guatemala is seeking long-term solutions to eliminate a problem that has adversely affected everyone.

115. Mechanisms that provide access to justice are essential for overcoming the high levels of discrimination and facilitating the exercise by indigenous peoples of their basic rights. The effectiveness of the justice system, through the strengthening of institutions and their development within the framework of democracy and the rule of law, is the objective of

proposals to combat the high levels of impunity and insecurity and to find ways of restoring governance. Although an effective justice system is the best way of improving public safety while ensuring respect for human rights, it is still not enough.

116. The State institutions established to deal with indigenous matters do not have budgets that enable them to operate efficiently and to meet the needs of the population concerned.

## **VI. CHALLENGES**

117. Efforts must be made to end the dominance over indigenous peoples which has made use of such models as assimilation, standardization, integration, segregation, folklorism and alienation, the ultimate aim of which is to maintain economic, political, sociocultural and spiritual control over indigenous peoples. Over the course of history, this had led to discrimination and racism and to the formation of an ethnocentric State.

118. Indigenous peoples' full enjoyment of Guatemala's system of justice must be recognized and respected. Measures must be taken to ensure that decisions of the justice system and its methods of settling disputes are observed.

119. All legislation and international instruments that promote respect for the human rights of indigenous peoples must be disseminated. This is the area where the least progress has been made in implementing the Agreement on Identity and Rights of Indigenous Peoples.

120. Action must be taken to enable the State to overcome the current situation of violence, authoritarianism, intolerance and social exclusion. This will require a concerted effort on the part of all sectors of society to create an intercultural and democratic nation, a nation that seeks its own development through peace-building, recognizes diversity and promotes a culture of respect for the human rights of all Guatemalans.

121. The necessary budgets must be allocated to all institutions that deal with indigenous matters, which will enable them to implement all the legislation and measures mentioned in this report.

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