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Annual report of the United Nations High Commissioner for Human Rights

Addendum

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

Summary

The present report provides an overview of the human rights situation in Guatemala and the work undertaken by the Office of the United Nations High Commissioner for Human Rights in Guatemala (OHCHR-Guatemala) during 2012. OHCHR-Guatemala conducted monitoring activities and provided advisory and technical assistance to State institutions and civil society to contribute to the implementation of the country's international human rights obligations and the recommendations contained in previous reports.

A new Government took office in January 2012. The High Commissioner visited the country in March, and urged the implementation of a comprehensive human rights agenda to address important, long-standing gaps in the enjoyment of human rights, such as high levels of insecurity, impunity and poverty; malnutrition and discrimination and violence against women; as well as the situation of indigenous peoples and the discrimination they face in the political, economic, cultural and social spheres. The universal periodic review in October 2012 presented a unique opportunity to strengthen the commitment of Guatemala to the protection of human rights, in meaningful dialogue with civil society.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is reproduced in English and Spanish only.

In line with the recommendations issued during her visit, such an agenda should include a plan clearly establishing an end date for the deployment of the military in law-enforcement functions; a reform proposal for the legal framework of judicial and prosecutorial careers; strengthened mechanisms and institutions addressing social conflicts; and a national plan of action against racism and discrimination, with full participation of indigenous peoples.

Annex

[English and Spanish only]

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

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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 Guatemala for the establishment of a country office. The functions of OHCHR-Guatemala are to monitor the human rights situation and to provide technical cooperation and advice to State institutions and civil society. The agreement was extended for three years in 2008 and 2011.

II. National context

2. President Otto Pérez Molina took office on 14 January 2012. During his inaugural speech, he announced the establishment of three national covenants reflecting national priorities: security, justice and peace; fiscal policy and competitiveness; and hunger eradication. Guatemala took its seat as a non-permanent member of the Security Council and was examined for a second time under the universal periodic review in October. It also presented a proposal to the General Assembly on a new approach to combating drug trafficking.

3. The High Commissioner visited Guatemala from 11 to 15 March. She met with high-level State authorities, civil society organizations, the international community and indigenous authorities in Totonicapán. She publicly shared her observations and recommendations on impunity; insecurity and violence; indigenous peoples and the right to consultation; and human rights defenders.¹

4. The Government launched a strategy to combat corruption, and important efforts were made to implement a results-based framework. Despite this, complaints were made about the lack of transparency regarding the distribution of fertilizers, the purchase of medication and the granting of public licences and concessions. Congress eventually approved a series of legal reforms to combat corruption and illicit enrichment.

5. The Executive launched constitutional proposals for structural reforms of the justice system, the use of public funds, the operation and structure of Congress and the recognition of the rights of indigenous peoples. It later asked Congress to postpone their consideration. The merging of existing human rights institutions into a Secretariat for Human Rights and Peace was announced.

6. In August, Jorge de León Duque took office as Human Rights Ombudsman, and started a full restructuring of his Office. His election is an opportunity to renew the institution, its oversight capacity and its mandate to promote and protect human rights, and expand nationwide coverage.

7. In November, an earthquake measuring 7.2 on the Richter scale hit eight western departments, killing 44 and injuring 186, according to official data. Some 27,770 people were severely affected, and 21,800 houses damaged. The Government declared a state of public emergency and coordinated humanitarian assistance and early reconstruction.

III. Overall human rights situation

8. The High Commissioner welcomes the President's commitment to enact the essential transformations contained in the 1996 Peace Agreements. These include the

¹ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11967&LangID=E.

agenda that Guatemala needs to undertake to reach lasting peace, reconciliation and development within the framework of the rule of law and respect for human rights.

9. Violent deaths have decreased since 2010, but high rates of violence and impunity persisted, including for atrocious crimes against women and children. Twenty-eight dismembered bodies of adults and children were found throughout the country, illustrating the extreme violence typically employed by members of organized crime. The High Commissioner condemns such brutality, and calls on the State to continue to investigate and prosecute these crimes and to adopt all possible preventive measures.

10. Cooperation and coordination among the Attorney General's Office (Ministerio Público), the Ministry of the Interior and the National Civil Police (PNC) in criminal investigation and prosecution translated into important results.

11. In October, 6 indigenous people were shot dead and over 20 allegedly were injured by military personnel during a protest organized by the indigenous authorities of Totonicapán against the high cost of electricity and the proposed constitutional and educational reforms. This provoked a serious questioning of the use of the military in law-enforcement functions, motivated the revision of regulations and policies regarding its role, including Decree 40-2000,² and revealed the urgent need to consolidate the reform of the PNC. These events also showed the need for the State to continue to fulfil its duty to protect the right to life and the integrity of demonstrators while they exercise their right to protest. The High Commissioner acknowledges the establishment by the Government of a "dialogue table" with indigenous authorities, as well as the Attorney General's Office's prompt response and the collaboration of the military in the judicial investigations, resulting in the detention and indictment of nine military personnel, including a colonel, on charges of extrajudicial execution.

12. The High Commissioner acknowledges the adoption of the Tax Update Law (Decree 10-2012) and the Anti-Evasion Law II (Decree 4-2012). According to the Ministry of Finance, the Tax Update Law allowed for an increase of 0.2 per cent in the 2012 gross domestic product (GDP), and is expected to facilitate an increase of 1.2 per cent in 2013. The reform constitutes a necessary basis to increase the State's capacity to collect taxes. However, at 11.8 per cent of GDP, Guatemala continues to have one of the lowest taxation rates in Latin America.³

13. Combating chronic malnutrition became the guiding principle of social policy, through the Zero Hunger Plan. The Government moved forward in the institutionalization of social programmes, and important efforts were made to reactivate rural policy, focusing on promotion of the peasant economy. However, important challenges remain: delivery of quality services to the poorest communities, improvement of inter-institutional coordination and, above all, eliminating negative trends in the economic structure, such as land concentration and precarious working conditions, which generate exclusion and marginalization of indigenous and rural communities.

14. Social conflicts persisted during 2012. Until October, the Agrarian Affairs Secretariat had registered 1,293 cases of land conflicts involving 1,059,873 people (81 per cent indigenous), 66 per cent of which were concentrated in the Alta Verapaz, Huehuetenango, Petén and Quiché departments. According to the Agrarian Affairs Secretariat, until October 2012, 346 out of 405 conflicts had been resolved through

² Government agreement establishing participation of the military in police functions.

³ Ministry of Finance, Dictamen de aprobación del Presupuesto, p. 6.
www.minfin.gob.gt/presupaprobado/presupaprobados/files.html?folder=2013.

dialogue and mediation.⁴ During the reporting period, OHCHR-Guatemala monitored 39 social conflicts linked to land, extractive and/or monoculture projects, environmental threats and labour issues. Protests by student teachers against the reform of teacher training were particularly intense, spreading to all 86 public teacher-training schools in the country. Social conflicts tested the capacity of dialogue mechanisms, making it necessary to continue to strengthen them and ensure an intercultural approach that addressed the structural causes of conflicts to prevent resorting to the security forces as a response.

15. The incorporation of a multicultural vision is still pending in Government plans and policies. Indigenous peoples and Afro-descendants continue to suffer exclusion in the exercise of their rights in all spheres, including in access to basic services and justice, land ownership, and participation in decision-making entities and processes. Some of their leaders have been criminalized for claiming their rights. In view of the impact of economic investment projects on indigenous land, the State still faces the challenge of ensuring a development model in which indigenous peoples have the opportunity to be legitimate partners.

16. Draft laws relevant to human rights protection in the areas of security and justice, including reforms to the Statutory Law of the Attorney General's Office, *amparo* (writ of protection), impeachment, arms and ammunitions and the National Reparations Programme and the creation of a search commission for victims of enforced disappearance are still pending in Congress. So is a bill on migrants, which includes fundamental human rights principles and moves away from an approach based solely on national security.

17. Homophobic prejudices and stereotypes have marginalized lesbian, gay, bisexual, transgender and intersex persons. Such persons have also suffered physical and verbal attacks, and 12 transgender people were murdered in 2012.⁵ In addition, the right of transgender and intersex persons to identity documents is restricted and not coherent with their gender identity.

IV. Security and justice

18. The Covenant for Security, Justice and Peace, launched in May, is an opportunity for the Government to move towards a strategic approach to reduce violence and generate a culture of peace. The Task Force for Security, Justice and Peace was created to promote implementation and follow-up to the Covenant, but it does not take into account existing institutions established in the 2008 Framework Law on Security (Decree 18-2008). Its peace component should comprehensively include the rights to truth, justice, reparation and guarantees of non-repetition. The High Commissioner is concerned that reference to citizen co-responsibility in guaranteeing security could be interpreted as replacing the State's responsibility to guarantee human rights for all.

19. The High Commissioner welcomes the adoption by Congress of the law creating a criminal investigation body within the Ministry of the Interior (Decree 15-2012). This should contribute to the creation of a sustainable institutional mechanism, provided its regulations are rapidly approved. To ensure improved coordination, the National Institute of Forensic Science (INACIF) should be given full participation in the Coordinating Body for the Modernization of the Justice Sector.

⁴ Office of the Secretary for Agrarian Affairs, "Reporte estadístico de los conflictos agrarios" (2012), pp. 11 and 14. Available from http://portal.saa.gob.gt/index.php?option=com_content&view=article&id=263&Itemid=250.

⁵ Source: Organización Trans – Reinas de la Noche.

20. The ratification of the Rome Statute of the International Criminal Court is an important step towards ending impunity for serious crimes, and an acknowledgement of principles of international law—including non-admissibility of amnesties, non-application of statutes of limitations, and command responsibility—in cases of genocide, crimes against humanity and war crimes.

21. The High Commissioner welcomes the decision of the Supreme Court of Justice to commute the last death sentence, which should constitute a definite step towards abolition.

22. Three nominating commissions were established for the elections of the Human Rights Ombudsman, the Director of INACIF and the rapporteurs of the national torture prevention mechanism (NPM). Progress was made in terms of publicity during the processes, although weaknesses persisted in the latter stages, particularly a lack of discussion on each candidate based on objective criteria and justification of the commissions' final decision. Concerns were raised over the NPM selection process, which may compromise the effectiveness of the mechanism.

A. Security

23. The Government launched the National Security Policy in September, as part of the Covenant on Security, Justice and Peace. While the Policy contains some human rights elements and prevention measures, it would benefit from the incorporation of a comprehensive rights-based approach.

24. There was a notable increase in military presence nationwide, through the establishment of two brigades: one based in Petén and another in the outskirts of Guatemala City. Furthermore, the creation of two additional brigades to combat drug trafficking and organized crime has been announced. Military presence was also increased in some areas of the capital through checkpoints, and joint military-police patrols continued. The High Commissioner reiterates that deployment of the military in citizen security duties should take place only under exceptional circumstances, be limited in time and placed strictly under civilian command and control, as recognized by the Government itself. The risk relating to such deployment was exemplified by the above-mentioned Totonicapán case. The High Commissioner acknowledges subsequent efforts by the authorities to regulate military intervention (the Protocol for Inter-institutional Actions: Army Support to Civil Security Forces, created through Governmental Agreement 285-2012) noting that this regulation still needs to limit clearly the participation of the military, assign responsibilities, and establish precise criteria for intervention, following international standards.

25. The Minister of the Interior announced that 2013 would be the year of strengthening the PNC, contemplating additional measures to those already taken, such as vetting and opening a police officers academy. Nevertheless, in 2012 the police force increased only by 4.7 per cent,⁶ compared to an 11.8 per cent increase in the military. This does not appear to be compatible with the proclaimed prioritization of PNC reform, including the need for adequate working conditions.

26. Although all homicide data indicate that the homicide rate has decreased since 2010, the rates obtained from different official sources vary. At the end of October, the PNC had registered 4,185 homicides, an 11.6 per cent reduction over 2011, while INACIF⁷ had registered 4,941, reflecting a 4.94 per cent reduction. According to the PNC, 83 per cent of

⁶ PNC figures provided to OHCHR-Guatemala.

⁷ INACIF figures provided to OHCHR-Guatemala.

violent deaths were by firearms, which demonstrates the need to establish a disarmament plan and stronger arms controls.

27. Like its predecessors, the current Government resorted to exceptional measures and declared a state of siege in Santa Cruz Barillas, Huehuetenango. This followed the 1 May killing of peasant Andrés Pedro Miguel, allegedly by a private security guard. In response, some members of the community damaged a hotel and other buildings, allegedly detained a judicial official and forcibly entered the military barracks. The decree establishing the state of siege lacked a clear justification and analysis of necessity, exceptionality and proportionality. The Government withdrew the measure after 18 days.

28. On 2 May, during the state of siege, nine arbitrary and/or illegal detentions were carried out without a court order by private individuals who claimed to be victims of the events the day before. Those detained were accused of participating in the disturbances. They were not able to present their initial statement before a competent judge until over two weeks after their detention. Eight were indicted on 19 September and remain in detention, while one was released.

29. Private security agents continue to far outnumber the police force. However, none of the existing companies had completed the compulsory registration process before the General Directorate, two years after the adoption of the law on private security services (Decree 52-2010).

30. Furthermore, according to the Ministry of the Interior, over 1,000 legally established civilian security groups exist—either local security committees⁸ or local security commissions⁹. They carry out tasks ranging from community based—prevention activities to maintenance of public order. Some members perform policing functions and have even committed abuses. The High Commissioner welcomes efforts to investigate and prosecute those responsible for such abuses, for example the sentences in April 2012 against three local security commission members in Panajachel, Sololá, for injuries they inflicted when beating up alleged criminals, and the sentence in August against the former mayor and president of the local security commission in San Juan Cotzal, Quiché, for the torture, kidnapping and extrajudicial execution of Pedro Rodríguez Toma in 2009. The High Commissioner encourages the authorities to continue taking legal action against abuses by these groups and reiterates her recommendation to derogate General Order 11-99 of the PNC establishing local security committees.

B. Justice system

31. Despite persistent high levels of impunity, progress was made by the Attorney General's Office in the investigation and prosecution of serious crimes affecting the right to life. The number of indictments and convictions increased on average by 7.3 per cent in comparison to 2011; according to the Attorney General's Office, its unit responsible for investigating murders increased its rate of resolution of cases from 5 to 28 per cent between 2009 and 2012.

32. A weak professional career system persists within the judiciary and the Attorney General's Office. A proposed reform to the Law on the Judicial Career drafted by the Supreme Court of Justice with assistance from OHCHR-Guatemala has yet to be presented before Congress; it is expected to be presented in 2013. There is no progress in the separation of administrative functions from jurisdictional ones in accordance with the

⁸ Regulated by General Order 11-99 of the PNC.

⁹ Established under article 24 of the Law on Urban and Rural Development Councils (Decree 11-2002).

principle of judicial independence. Moreover, the transfers of judges ordered directly by the Supreme Court without the knowledge of the Judicial Career Council continues to undermine their independence.

33. The 2010 and 2011 legal reforms that sought to expedite penal proceedings and contribute to the effectiveness of the administration of justice, including through oral hearings and the broadening of jurisdictional competencies, have not yet had the desired impact. This is partly due to the lack of adequate resources of the institutions involved, particularly the Institute of Public Defence. To comply with the obligations established in the reforms, a proportional budgetary increase for the justice system is needed.

34. The delay in resolving labour conflicts is worrying, particularly the lack of implementation of resolutions favouring workers. The creation of a unit for the implementation and verification of reinstatement (Supreme Court Agreement 26-2012) is a step forward, but to achieve effective implementation, the unit should have nationwide coverage.

35. The justice system still has to transform its monocultural vision of justice, recognize legal pluralism, and guarantee access to justice for indigenous peoples. This includes providing free services that are culturally relevant and geographically accessible.

36. The Constitutional Court adopted crucial decisions, specifically developing the concepts of “constitutional block” and “conventionality control”, which consolidate the Court’s function to control the consistency of laws and administrative acts with international human rights standards and to facilitate the interpretation of the national legal framework in the light of international human rights law and standards.

C. Transitional justice

37. Investigation and prosecution of human rights violations committed during the internal armed conflict continued. On 12 March, a fifth person was convicted for the 1982 Dos Erres massacre; on 20 March, five people were convicted for their participation in the 1982 Plan de Sánchez massacre; and on 20 August, a former police chief was convicted for his participation in the enforced disappearance of student Edgar Sáenz Calito in 1981. Proceedings began in September regarding the rape and sexual slavery of 15 women on a military base in Izabal between 1982 and 1986. On 26 January, former Head of State Efraín Ríos Montt was charged with genocide and crimes against duties of humankind, allegedly committed in the Ixil region between 1982 and 1983. On 21 May, he was charged in connection with the Dos Erres massacre. These unprecedented steps in the quest for justice must be sustained.

38. Despite attacks and threats, “high-risk” tribunals continued working in line with the State’s international obligations to investigate, prosecute and judge those responsible for human rights violations, including intellectual authors. The security of judicial officials and other parties to the proceedings, including victims, witnesses and plaintiffs, needs to be guaranteed. The use of delay tactics by defence attorneys constituted an impediment to justice.

39. The High Commissioner reiterates the inadmissibility of amnesties in cases of serious human rights violations, and underscores that the interpretation of national legislation should be consistent with this principle. She salutes the fact that the Supreme Court reaffirmed this principle in its appeal judgment of 8 August in the Dos Erres case. It is hoped that the pending actions regarding the non-applicability of amnesties to serious crimes will be resolved in accordance with the State’s obligations under international law.

40. Exhumations began in February inside military facilities in Cobán, Alta Verapaz. By October, the remains of 466 victims, including at least 75 children, had been exhumed; many displayed possible signs of torture. This process, as well as the identification of three persons buried in a former military barrack in San Juan Comalapa, Chimaltenango, all of whom appear in entries in the “Military Diary”, is the result of efforts of civil society and the Attorney General’s Office to investigate and prosecute past human rights violations.

41. The archive of the Presidential Chief of Staff was transferred to the General Archives of Central America (AGCA). It is hoped that this will guarantee their institutional safekeeping. The High Commissioner underscores that sufficient resources must be allocated to AGCA to continue the work carried out by the Peace Archives.

42. The National Reparations Programme announced a restructuring process, aimed at improving transparency and implementation, focused on productive projects. A State policy with consistent criteria and a gender perspective should be elaborated to ensure the comprehensive implementation of all reparation measures, including cultural reparation, dignity of victims and acknowledgment by the State of the violations committed during the internal armed conflict. Special attention should be given to women victims of sexual violence.

D. Deprivation of liberty

43. In compliance with the High Commissioner’s recommendation, the regulation of the 2006 Law on the Penitentiary System (Decree 33-2006) was approved; however, it lacked some of the necessary provisions for the implementation of the law. The penitentiary system continues to face serious challenges, including overcrowding (118 per cent above capacity), which is directly linked to the excessive recourse to pretrial detention (51 per cent of all inmates).¹⁰ Several riots, including one at the maximum security prison Fraijanes II over prison conditions and the visiting regulations in November, illustrate the neglect of the penitentiary system by the authorities.

44. Detention centres operated by the PNC continued to function illegally, and inmate violence continued. In Quetzaltenango, a detainee was beaten to death by other detainees in July because he was unable to pay the jail extortion fee (*talacha*). Four police officers were subsequently indicted for homicide by omission.

45. Detention conditions for persons with mental disabilities are of particular concern. Detainees and patients share the same overcrowded space and lack appropriate medical treatment, adequate food, water and sanitation, electricity and security. Complaints were made by patients, detainees and staff of sexual, physical and psychological abuse by the PNC, which is in charge of the inmates.

46. Detention centres for minors do not guarantee adequate conditions or rehabilitation. On 15 August, 40 youths accused of planning an uprising were reportedly forced to lie on the floor in a line and beaten by the guards at “Las Gaviotas” (the Juvenile Provisional Detention Centre). OHCHR-Guatemala acknowledges the important role that judges overseeing the implementation of correctional measures play in monitoring these situations, but underscores the need to ensure that perpetrators of such crimes are prosecuted.

¹⁰ Statistics provided by the Directorate of the Penitentiary System, July 2012.

V. Human rights defenders

47. The Human Rights Unit of the Attorney General's Office had registered 282 attacks against human rights defenders through October 2012.¹¹ The Protection Unit for Human Rights Defenders (UDEFEQUA) had registered a slight decrease of 10 per cent in attacks in the same period, although it registered 15 murders during that period.

48. These attacks particularly affect the work of defenders of economic, social, cultural and environmental rights, as well as indigenous peoples' rights, as evidenced in the cases of San Rafael las Flores, Santa Rosa; Santa Cruz Barillas, Huehuetenango; and Nebaj, Quiché, all related to the exploitation of natural resources and a lack of consultation with and provision of information to the affected communities. The shooting of Yolanda Ouelí, the leader of a community group protesting against a gold mine in San José del Golfo, Guatemala, could be ascribed to this context. Indigenous women in leadership roles, such as Lolita Chávez in Santa Cruz del Quiché, are victims of prejudice through numerous acts of stigmatization and disqualification.

49. Protests by indigenous and peasant communities and social organizations, as in the land conflicts in Los Regadillos, Quiché; Santa María Xalapán, Jalapa; San Rafael Las Flores, Santa Rosa; and Santa Cruz Barillas, Huehuetenango, often resulted in the use of disproportionate criminal charges, such as those of resistance, attack, terrorism and illegal association.

50. The involvement of non-State actors in practices that could result in the vulnerability of or direct attacks against human rights defenders needs to be investigated. In October, the head of security for the Guatemalan Nickel Company was indicted for the 2009 murder of a community leader, Adolfo Ich Chamán, in Izabal.

51. Attacks against union leaders continued during 2012. In March, Luis Ovidio Ortiz, a well-known leader of the health workers' union, was shot and killed in the street along with four others. In August, Ángel Tzul, from the Palo Gordo refinery, was killed after having participated in a peaceful protest in which 35 workers claimed the reinstatement of union leaders who had been fired. No progress has been made in the resolution of these cases. OHCHR-Guatemala recognizes the efforts of the Attorney General's Office to systematize the investigations into the violent deaths of union leaders.

52. Attempts have been made in the media to discredit victims, civil society organizations, public prosecutors and judicial officers working on human rights abuses committed during the internal armed conflict. Legal actions were brought against journalists, human rights defenders and others, some deceased or immune from prosecution, alleging they were guerrilla members or accusing them of having committed crimes during the internal armed conflict.

53. The appearance of racist and violent content in the media and social networks branding defenders as terrorists and criminals increases their vulnerability. This is exacerbated by the absence of public recognition by the Government of the importance of human rights defenders' work.

54. The High Commissioner highlights the reactivation in August of the Unit for the Analysis of Attacks against Human Rights Defenders, as an important mechanism to carry out analyses on attack patterns. However, on its own, this Unit cannot replace the functions of a protection mechanism that should be put in place, and which could prepare a

¹¹ A total of 50 attacks against activists, 119 against judicial officials, 48 against journalists and 65 against trade unionists had been registered.

comprehensive risk and context analysis when deciding on granting or lifting security measures.

VI. Women's rights

A. Violence against women

55. Despite an overall decrease in violent death statistics, violence against women continued to erode Guatemalan society, as reflected by the 573 violent deaths between January and October.¹² Brutal sexual violence against women was allegedly committed by an illegal group suspected of kidnapping and sexually assaulting at least 14 women in Guatemala City. Joint efforts of the security forces and the justice system led to the dismantling of this group and the detention of 19 of its members in June. A task force against genocide was created in January.

56. The High Commissioner welcomes the results obtained by specialized tribunals against femicide and other forms of violence against women. Between January and May, 150 sentences were issued out of 424 cases filed, reducing the high rates of impunity found in other spheres of justice.¹³ Acknowledging the establishment of two more tribunals and a specialized appeals chamber, the High Commissioner encourages the judiciary to expand the national coverage of these tribunals.

57. Lack of adequate statistics from the National Information System on Violence against Women hindered an adequate analysis of the causes of such violence and the identification of possible preventive measures.

58. The Presidential Secretariat for Women and the National Coordinator for the Prevention of Domestic Violence and Violence against Women should continue to strengthen their coordination in the implementation of existing public policies as well as with civil society.

B. Sexual and reproductive rights

59. The number of child and adolescent pregnancies remained high. According to the Ministry of Health, between January and August, 38,645 adolescent pregnancies were registered, 1,865 of which were in girls under 14. Sixty per cent of the pregnant adolescents were indigenous, 70 per cent lived in poverty and 80 per cent had dropped out of school.¹⁴ According to domestic legislation, sexual intercourse with a child under 14 constitutes rape and should be reported to and investigated and prosecuted by the competent authorities. During her visit to Guatemala in August, the Special Rapporteur on the sale of children, child prostitution and child pornography expressed concern over the high number of births to child mothers due to domestic sexual abuse. The inter-institutional coordination to address this issue should be strengthened with decisive action to prevent and combat sexual violence against children and adolescents.

¹² Official statistics provided by INACIF.

¹³ Organismo Judicial, first report of the criminal courts and tribunals against the crimes of femicide and other forms of violence against women, Guatemala (2012), p. 45. Available from www.oj.gob.gt/index.php/otras-pub/doc_download/5044.

¹⁴ Secretariat against Sexual Violence, Exploitation and Trafficking in Persons (SVET), *Legal Framework on Sexual Violence* (2012).

60. Maternal mortality is a continuing challenge, as 318 cases were reported between January and October, including 27 deaths of adolescents aged between 13 and 19. The three most affected departments are those with an indigenous majority.¹⁵ The Regulations for the Law on Healthy Maternity (Governmental Decree 65-2012), once approved, will promote access to maternal and neonatal services that are culturally appropriate.

VII. Indigenous peoples

A. Racism and discrimination

61. The High Commissioner welcomes the commitment expressed by the President to strengthen indigenous institutions and to establish a policy against discrimination and racism, and calls for the adoption of concrete measures in this direction. Combating racism and discrimination and guaranteeing the right to autonomy and free determination of indigenous peoples have yet to be incorporated in the legal framework of Guatemala.

62. The lack of representation of indigenous peoples in State institutions persists, particularly at the national level; only 22 out of 158 members of Congress, 3 out of 22 governors and one third (111) of the mayors are indigenous. Indigenous women continue to be excluded from these posts. The Cabinet has only one indigenous minister—for culture and sports.

63. The Presidential Commission against Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA) and the Office for the Defence of Indigenous Women (DEMI) require additional political leverage and adequate resources to fulfil their mandates. The post of Ombudsperson for Indigenous Women has been vacant since February. The Indigenous Peoples' Unit in the Supreme Court should be strengthened and institutionalized.

64. The High Commissioner regrets that reforms to the General Telecommunications Law (Decree 94-96) were approved by Congress without discussion and participation by different sectors, did not ensure the principle of transparency in the concession and extension processes of radio frequencies, and did not regulate the ability of indigenous peoples to obtain and exploit radio frequencies as indicated by a Constitutional Court resolution.

B. Right to lands and territories

65. To avoid the risk of potentially ungovernable situations and violence, social conflicts relating to the exploitation of natural resources in or around ancestral indigenous territories require a decisive response. Such situations should be addressed from a human rights perspective, focusing on the rights of indigenous peoples to property (including collective property), to health, and to establish their own forms of development as part of their right to free determination.

66. Legislation that recognizes traditional forms of collective land tenure, possession and use by indigenous communities needs to be adopted. The January 2012 admission and subsequent hearing by the Constitutional Court of a partial unconstitutionality action against the Civil Code, as several of its articles fail to recognize the right to communal

¹⁵ For more information, see Observatory on Sexual and Reproductive Health, *Partos en niñas y adolescentes, una deuda social en Guatemala* (August 2012).

property and the principles of ancestral tenure of indigenous peoples, was important progress.

67. The right of indigenous peoples to participate in decision-making processes in the exploitation of natural resources, incorporated into domestic law following the ratification of International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries, is not guaranteed by the State. The voluntary agreement to increase royalties signed between the Government and the mining sector in May¹⁶ and the reforms to the Mining Law presented to Congress in October are not in line with the State's obligation to consult indigenous peoples. Indigenous organizations presented an unconstitutionality action against the current Mining Law.

68. Legal gaps and deficiencies in the procedures to grant licences persisted. The approval process of environmental-impact studies lacks the consultation required by international standards, and although Governmental Decree 431-2007 contemplates the realization of social-impact studies, these are not demanded by the authorities.

69. The Ministry of Energy and Mines announced an increase of 600 megawatts in the energy grid in the next five years. While this is an important initiative for providing sustainable energy resources, indigenous territories are especially affected, and indigenous people must therefore be consulted. There is an opportunity to guarantee this right in the 14 projects pending approval and to reopen a dialogue on projects already approved.

70. In addition to the 276 exploitation licences and 111 exploration licences that have already been granted and the 734 pending requests, and in line with plans and policies presented in 2012, the Ministry of Energy and Mines granted 7 exploration licenses without consultation with indigenous peoples. As the majority of those projects are located in indigenous territories, the High Commissioner calls on the State to respect all individual and collective rights of indigenous peoples in the elaboration of such policies, including the right to consultation in granting individual licences. The Government reported that it had initiated the process of drafting a law and regulation on consultation, taking into account regional good practices.

71. Indigenous communities carried out three "good-faith community consultations", and another two were carried out by multi-ethnic communities, for a total of 74 consultations undertaken since 2005, which resulted in the rejection of the exploitation of natural resources in their territories.

72. The analysis developed by the Special Rapporteur on the rights of indigenous peoples in his 2012 report to the Human Rights Council (A/HRC/21/47) provides important criteria that should be taken into account before granting licenses for exploitation of natural resources. Such criteria include the need for both the Government and the companies to take into account social and political factors in relation to projects, beyond respect for the State's duty to consult with indigenous peoples, and the realization of environmental-impact studies. This "social licence"¹⁷ is essential to build confidence for constructive and good-faith dialogue among all actors involved and to prevent possible problematic situations.

¹⁶ Governmental Agreement 105-2012 of 28 May, which includes an increase in royalties from 1 to 5 per cent for gold extractive industries, 3 per cent for nickel and 4 per cent for silver.

¹⁷ Report of the Special Rapporteur on the rights of indigenous peoples on communications, replies and follow-up (A/HRC/21/47/Add.3), para. 57.

VIII. Economic, social and cultural rights

73. The High Commissioner acknowledges that the creation of the Ministry of Social Development (MIDES) provided the legal and institutional frameworks for the Government's social programmes, in line with her previous recommendations.¹⁸ She also highlights the efforts made to improve transparency through a register of beneficiaries, transfers through the banking system, and the creation of a digital system to deliver the "Mi bolsa segura" programme. To maintain the 2011 level of coverage and address the high levels of poverty (53.71 per cent, with 13.33 per cent in extreme poverty),¹⁹ the budget allotted to MIDES, which amounted to only 2.07 per cent of the total budget and 0.31 per cent of GDP, should be progressively increased.²⁰ Until October, the "Mi bono seguro" programme had delivered assistance to 543,870 people in 262 municipalities, although the register of beneficiaries reached 746,682.²¹

74. The High Commissioner welcomes the Government's commitment to combat malnutrition through the Zero Hunger Programme, aimed at reducing chronic malnutrition by 10 per cent by 2015. The Programme gave visibility to the chronic malnutrition of children as a national problem, affecting mainly the rural indigenous population.

75. The Zero Hunger Programme focuses on immediate factors of malnutrition, but goes beyond a vision that is restricted to health, and addresses some long-term factors, such as low income, lack of basic water and sanitary infrastructure, and means of production. There has also been more inclusion of the participant bodies of the National System of Food and Nutritional Security as well as a strengthening of municipal decision-making bodies.

76. However, the programme met with financial and operational obstacles. An official study conducted with the technical assistance of the United Nations country team inter-agency working group on food indicated that the total budget needed for the implementation of the programme in the 166 prioritized municipalities would be four times higher than foreseen.²² Challenges remain regarding coordination and execution of funds by relevant ministries, particularly in the most excluded rural areas.²³

77. The rural indigenous protest march carried out between 19 and 27 March placed structural problems of rural development at the centre of the political agenda.²⁴ The President, recognizing the historic State debt to indigenous and peasant communities in promoting equitable development, initiated negotiations with protesters, opening a path towards a possible solution in four conflicts, including the one relating to the families evicted from the Polochic Valley in 2011.²⁵ No agreements were reached on general issues, such as a moratorium on the granting of mining licenses and the agrarian debt relief linked

¹⁸ Decree 1-2012 and Governmental Agreement 87-2012.

¹⁹ National Statistics Institute, National Survey on Living Conditions (ENCOVI), summary (2011), p. 10. Available from www.ine.gob.gt/np/encovi/documentos/ENCOVI_Resumen_2011.pdf.

²⁰ Law on General Budget Revenue and Expenditures for the 2012 Fiscal Year (Decree 33-2011). See www.minfin.gob.gt/presupaprobado/presupaprobados/files.html?folder=2012\Segunda%20Parte%20Detalle%20Cuantitativo.

²¹ MIDES, information provided in October 2012.

²² Secretariat for Food and Nutritional Security, Framework for the Zero Hunger Programme, *Informe de avances en la implementación de la iniciativa SUN*. The Programme budget is estimated at Q 5,027,000.

²³ Secretariat for Food and Nutritional Security, information provided in August 2012.

²⁴ For more information on the case, see National Statistics Institute, National Survey on Living Conditions (2011).

²⁵ Report of the High Commissioner for Human Rights on the activities of her office in Guatemala (A/HRC/19/21/Add.1), para. 76.

to the Land Fund programme to provide land to peasant communities. The Government later offered to absorb 75 per cent of the debt. The Presidential Commissioner for Rural Development gave strong support to the rural economy within the framework of the National Policy on Comprehensive Rural Development. As it currently devotes only 15.93 per cent of its budget to this area,²⁶ the Ministry of Agriculture, Livestock and Food should realign its financial and operational priorities to sustain this effort. Specific programmes for the 37.1 per cent of rural families who do not have access to land should be elaborated in line with the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.²⁷ To ensure a solid legal and institutional framework for the full implementation of the National Policy, Congress should adopt draft law 4084 on comprehensive rural development without delay.

A. Labour rights

78. Since 74.5 per cent of the jobs in Guatemala are considered informal employment,²⁸ in an effort to foster formal employment, the Ministry of Labour's budget was increased by 15.62 per cent. The Ministry allocated a substantive amount of the new resources to strengthen the General Labour Inspectorate by hiring 100 inspectors. Efforts were made to optimize the work of its offices through the separation of administrative from substantive functions and by expanding its inspectorate functions. Deficiencies of the Inspectorate remain in monitoring, particularly as regards agricultural workers' rights. Only 6 per cent of temporary agricultural workers earn the minimum wage (Q 2,324 per month), and 70 per cent receive less than Q 1,000 per month.²⁹ There is an important difference between the current minimum wage and the cost of the basic food basket (Q 4,668.61 per month).³⁰ Only 3 per cent of temporary agricultural workers receive a wage that is sufficient to satisfy their basic needs. The National Wages Commission announced a 5 per cent increase in the minimum wage for 2013. Legislative reforms being discussed in Congress to allow part-time employment in this sector may further undermine the right to an adequate salary.

79. The May 2012 labour dispute in four African-palm producing companies in Sayaxché, Petén illustrates the difficulties faced by agricultural workers in receiving the minimum wage, as well as the challenges for the General Labour Inspectorate to ensure respect for labour rights in the agricultural sector. Despite workers' complaints, including against the failure to comply with the minimum wage, the use of subcontractors, poor transportation and child labour, the Inspectorate faced obstacles in inspecting these companies. It was only when 14,000 workers blocked the companies' entrances that measures were taken and the management agreed to pay the minimum wage and improve working conditions. The Government set up a dialogue table with the participation of all parties. The National Commission for the Eradication of Child Labour and a roadmap for this objective were also launched.

²⁶ Decree 33-2011.

²⁷ See San Carlos University and Rafael Landívar University, *Propuesta para abordar el desarrollo rural integral de Guatemala* (2011).

²⁸ National Statistics Institute, *National Survey on Employment and Income (ENEI) 2012*, p. 11. Available from www.ine.gob.gt/np/enei/enei%202012/publicaciones/Publicacion_ENEI2012.pdf.

²⁹ Asociación de Investigación y Estudios Sociales, *Estudio de opinión público sobre trabajo decente y economía informal* (2012), p. 35.

³⁰ National Statistics Institute, information provided in July 2012.

B. Evictions

80. The adoption of a protocol on evictions by the Ministry of the Interior is a positive step. However, it is still necessary to reform articles 256 and 257 of the Penal Code on the crime of usurpation and to adopt a comprehensive protocol that is binding for the judiciary and all the institutions in the Executive involved in evictions. OHCHR-Guatemala continued to monitor violent evictions, such as the eviction of 325 people in Cahabón, Alta Verapaz, in November. The Attorney General's Office adopted a new General Instruction that places evictions as a precautionary measure which may be requested by the prosecutor and ordered by a judge before a public hearing during criminal proceedings relating to the aforementioned articles.³¹ These articles, amended in 1996, are incompatible with due-process guarantees, in particular the rights to an adequate defence and presumption of innocence.

IX. Activities of the Office of the United Nations High Commissioner for Human Rights in Guatemala

81. OHCHR-Guatemala carried out 70 monitoring missions, and met with authorities, civil society organizations, victims and their families and witnesses. The office followed up on allegations of human rights violations concerning labour rights; rights of indigenous peoples; insecurity and social conflict; deprivation of liberty; persons with disabilities; due process and judicial guarantees; access to land; violence against women; and attacks on human rights defenders, among others.

82. OHCHR-Guatemala monitored the selection of the Human Rights Ombudsman, the Director of INACIF, and the rapporteurs of the NPM, as well as judicial proceedings in emblematic cases.

83. The office was invited to witness negotiations between authorities and indigenous leaders relating to the March demonstration, and followed up other cases of social and rural conflict.

84. OHCHR-Guatemala conducted an assessment of possibilities for strengthening the institution of the Human Rights Ombudsman and its regional offices and supported the visit of the Special Rapporteur on the sale of children, child prostitution and child pornography.

85. Technical assistance was provided to Congress for reforms of anticorruption measures; legislation relating to migrants; implementation of the Rome Statute; ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; acceptance of the competence of the Committee on the Elimination of Racial Discrimination in accordance with article 14 of its governing Convention; and for the constitutional reform. Assistance was also provided to the Supreme Court for reforms to the Law on the Judicial Career, and to the Ministry of Labour on a protocol to strengthen the General Labour Inspectorate.

86. Training for the School of Judicial Trainers continued, and programmes targeting judges for children and adolescents and High-Risk Tribunals were launched. The office provided the Constitutional Court with documents on human rights standards; continued the training programme for its legal clerks, supported the thematic systematization of international human rights standards for its website, and organized a roundtable discussion with the magistrates.

³¹ General Instruction 03-2012, 8 May 2012.

87. OHCHR-Guatemala continued to build capacities in the areas of transitional justice, discrimination, women's rights, and rights of indigenous peoples for the Unit for Amparos of the Attorney General's Office. Together with civil society organizations, a curriculum was created for prosecutors in the Human Rights Unit.

88. Training was given to Ministry of Energy and Mines staff on international human rights standards and the rights of indigenous peoples.

89. Support was provided to the Presidential Secretariat for Women in the preparation of reports to the Committee on the Elimination of Discrimination against Women and to the State delegation before the Human Rights Committee. The office assisted State institutions and civil society organizations in the preparation of the first State report to the Committee on the Rights of Persons with Disabilities and the universal periodic review reports.

90. With civil society organizations, OHCHR-Guatemala organized a seminar on comprehensive protection of human rights defenders in Mexico and Central America. The office participated in the launch of the report of the Inter-American Commission on Human Rights on persons deprived of liberty; a forum on challenges to implementation of the Rome Statute; and a forum on strategic human rights litigation in Latin America. Together with the International Commission against Impunity in Guatemala, the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF), a virtual course on citizen security was launched for members of Congress.

91. Support was provided in the creation of a human rights course at San Carlos University, and workshops were carried out in Santa Cruz del Quiché for the implementation of the "Guide to the use of indicators on the right to access to justice that is culturally relevant for indigenous peoples".

92. OHCHR-Guatemala convened the Working Group on Transitional Justice, provided advice to the UNDP Transitional Justice Programme and participated in United Nations inter-agency working groups and the establishment of the Peacebuilding Fund.

93. Meetings with indigenous actors were organized to analyse the recommendations made during the High Commissioner's visit and to discuss the proposed constitutional reform. The office organized jointly with the Guatemalan independent expert of the Permanent Forum of Indigenous Peoples and UNDP four regional meetings to evaluate the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, in view of the 2014 World Conference on Indigenous Peoples.

94. Within the framework of the Maya Programme (financed by the Government of Norway), implementation of 18 strategic litigation projects continued, as did the Programme on Technical Capacity-Building in Strategic Litigation for the Human Rights of Indigenous Peoples, in collaboration with the Mariano Gálvez, San Carlos and Rafael Landívar Universities.

95. Through press releases, opinion pieces and interviews, OHCHR-Guatemala promoted public debates on relevant human rights topics. It presented and disseminated the 2011 report of the High Commissioner on the activities of her office in Guatemala and over 45,000 copies of human rights publications. An illustrated book and an audio book of the Convention on the Rights of Persons with Disabilities; the manuals *Girls and Boys have Rights* for primary school children and *Youth with Rights*, written for secondary school students, were published.

96. To promote a public debate on discrimination and racism, the office organized the itinerant photographic exhibition "Diverse Guatemala". Further, OHCHR-Guatemala supported various cultural activities, including the Seventh Theatre Exhibit for Human Rights, with the theme "For a culture of peace"; the Film Festival on Sexual Diversity, with the theme "The other banquet"; and the Third Film Festival on Memory, Truth and Justice.

X. Follow-up to recommendations

97. The High Commissioner acknowledges the ratification of the Rome Statute, the adoption of the tax laws and the creation of MIDES, in line with her previous recommendations. However, despite this progress, most of her past recommendations are still pending.

98. Ratification of 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, the recognition of the competence of the Committee on the Elimination of Racial Discrimination, and accession to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, are pending in Congress.

99. Strengthening the professional careers of judges and prosecutors is urgent. Despite progress in reducing crime rates, further measures should be in place to protect the right to life and integrity, mainly through strengthening the PNC and controlling firearms possession. Efforts should also be made to implement the recommendations on monitoring and law-enforcement mechanisms relating to labour conditions. Recommendations on justice, on the fight against racism and discrimination and on consultation with indigenous people are also pending.

XI. Recommendations

100. **In the light of the situation as observed by OHCHR-Guatemala, the High Commissioner:**

(a) Calls on the State to take effective measures to ensure the prompt implementation of all her outstanding previous recommendations;

(b) Urges the Government to present a schedule, clearly establishing an end date for the use of the military in law enforcement, with concrete measures for strengthening the police force at an accelerated rate, including an increase in the number of its members and its budget;

(c) Calls on the Government to put in place all necessary measures to ensure effective control and registration of private security companies to reverse the trend towards privatization of public security;

(d) Calls on the Supreme Court of Justice and Congress to adopt a comprehensive reform of the legal framework of the professional career in the judiciary, including reforms to the Law on the Judiciary, aimed at guaranteeing the separation of administrative and jurisdictional functions;

(e) Urges Congress to approve the reform to the Statutory Law of the Attorney General's Office, relative to the professional career, and calls on the Attorney General's Office to strengthen professional performance evaluation through the inclusion of a qualitative assessment while this process is completed;

(f) Urges the Government and Congress to promote the necessary legal reforms to reinstate the capacity of the Ministry of Labour to impose sanctions in cases where labour rights are infringed, and calls on Congress to ratify International Labour Organization Convention No. 189 concerning Decent Work for Domestic Workers;

(g) Urges the Government to strengthen the mechanism and institutions to resolve social conflicts by incorporating a human rights approach, so that they may address the root causes of such conflicts and guarantee indigenous peoples' rights;

(h) Welcomes the willingness expressed by the Government to implement a mid-term review of the implementation of universal periodic review recommendations, and urges it to guarantee the meaningful participation of civil society organizations;

(i) Urges the Government to reverse patterns of discrimination and exclusion that affect indigenous peoples by implementing a national plan of action to fight racism and discrimination, with the full participation of indigenous peoples;

(j) Calls on companies to fulfil their responsibility to respect the rights of indigenous peoples and to evaluate the possible negative impacts of their activities on those rights;

(k) Encourages the Human Rights Ombudsman to continue efforts to strengthen his Office's presence nationwide, as a key actor in helping reduce social conflicts, and in contributing to the follow-up of the recommendations by the international human rights protection mechanisms;

(l) Calls on the Government to recognize publicly, and express support for, the work of human rights defenders;

(m) Encourages the Attorney General and the judiciary to continue efforts to investigate violations committed during the armed conflict and to prosecute perpetrators, including those with command responsibility, and underscores the importance of interpreting national legislation consistently with the principle of inadmissibility of amnesties for serious human rights violations.
