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QUESTIONS AUTOCHTONES

Lettre datée du 7 mars 2003, adressée au secrétariat de la Commission
des droits de l'homme par la Mission permanente du Guatemala
auprès de l'Office des Nations Unies à Genève

J'ai l'honneur de vous faire tenir ci-joint les observations supplémentaires* du Gouvernement guatémaltèque concernant le rapport que M. Rodolfo Stavenhagen a consacré à sa visite au Guatemala; je vous serais reconnaissante de bien vouloir les faire distribuer comme document officiel de la cinquante-neuvième session de la Commission des droits de l'homme.

La présente communication vient s'ajouter à celle que nous vous avons adressée le 13 février 2003 (note 127/DH/2003 M-11) pour demander que les observations initiales du Gouvernement guatémaltèque soient publiées comme document officiel de la Commission.

La Chargée d'affaires par intérim
(Signé) Carla **Rodríguez Mancía**

* Les observations supplémentaires sont reproduites telles quelles, en anglais et en espagnol uniquement.

Annex

MEMORANDUM

To: Mr. Rodolfo Stavenhagen
Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

From: Edgar Gutiérrez
Minister for Foreign Affairs of Guatemala

Date: 3 March 2003

Concerns: Comments on the Special Rapporteur's report on his mission to Guatemala

1. This is a report which is comprehensive and balanced but also critical and to the point. At the same time, it provides a series of useful recommendations for the various political and social sectors in Guatemala. It emphatically calls attention to the deplorable social and economic conditions in which the majority of the indigenous peoples in Guatemala live and the depredations wrought by the armed conflict in the country. In short, it puts the question of racism and discrimination into perspective as a structural and historical defect within Guatemala which has prevented development with social justice. Some specific observations to be taken into account follow:

2. Executive summary. Paragraph 5 paints a picture of dispossession and injustice which, while fairly accurate, is nevertheless not exclusive to the indigenous peoples. It also reflects the situation of the impoverished mestizo peoples.

3. In paragraph 8 of this section, the Special Rapporteur recommends that measures should be taken to develop a joint programme of action in order to give impetus to the Agreement on the Identity and Rights of Indigenous Peoples. In my view, it would be a very good idea to use the Intersectoral Panel for Dialogue on Indigenous Peoples, which has been promoted by the United Nations system, the Organization of American States and the Government of Guatemala, in accordance with the mandate of the Consultative Group of February 2002, as an opportunity for organizing this joint effort.

4. Introduction, paragraph 3. In fact the United Nations Human Rights Verification Mission in Guatemala (MINUGUA) was established before the Agreement on a Firm and Lasting Peace was signed. It was set up in 1994 to monitor the Comprehensive Agreement on Human Rights. In September 2002, President Alfonso Portillo, addressing the United Nations General Assembly, requested the extension of MINUGUA with a more specific mandate from December 2003 to December 2004, in order to tide over the transition to the next government.

5. Background and context, paragraph 6. Guatemalans have long been divided over whether the revolutionary insurrection led to the military dictatorships, or whether the latter were

the forms of government required by a system of political exclusion. I suggest that this topic should be handled with extreme care.

6. The situation of the human rights of the indigenous peoples, paragraph 13. In the May 1999 referendum, the constitutional reforms were defeated by large majority (nearly three quarters of the vote), although it is true that overall participation was poor - barely more than 18 per cent of registered voters.

7. Paragraph 14. The revision of existing legislation which retains discriminatory aspects could be a recommendation to be submitted to the Presidential Commission to Combat Racism and Discrimination.

8. Priority human rights concerns of the indigenous peoples, paragraph 23. In recent years work has been under way to build the necessary institutional, technical and practical capacity in Guatemala so that it can set up a national land register, enabling ownership to be regulated and placed on a firm legal foundation. The needs mentioned in the following paragraphs 24 and 25 are precisely related to the development of such a register. How this instrument is employed will help determine whether current issues relating to the ownership of productive land are resolved peacefully or lead to conflicts, even to violence.

9. Paragraph 26. It is difficult to accept that the National Land Fund (FONATIERRA) and other programmes for the resettlement of displaced populations will really do anything to change the structural situation. A study of the documents which established it and the machinery for the acquisition of land - with no provision for the creation of a land market - gives some idea of its true scope. Although at the time it relieved some of the pressure on the land and provided an emergency response to resettlement, today these mechanisms have been exhausted and have naturally been bypassed. The peasant movements of recent months are no longer placing so much emphasis on the need to strengthen the National Land Fund and are calling instead for arrangements for the expropriation, confiscation and mass purchase of mortgaged land, reflecting greater pressure in the rural sector and a potentially unmanageable situation.

10. Paragraph 27. No agrarian jurisdiction or any other alternative arrangement exists for the settlement of disputes. In 2001, however, President Portillo established the Presidential Dispute Settlement Unit (UPRECO), which played a pertinent role, particularly in 2002, in resolving both historical and newly emerging conflicts without necessarily taking them all the way to the traditional mechanisms of criminal justice. I suggest that lessons should be drawn from the experience of UPRECO.

11. Paragraph 28. Working conditions in rural areas continue to be very difficult for the workers. It is important to note, inter alia, the efforts to raise the minimum wage (overall increase of 38 per cent over the last three years) and to strengthen the capabilities of the Ministry of Labour, and the labour reform which permits workers to go on strike during harvest-time. These are incipient efforts which have developed no further and done nothing to reverse the conditions described in the report, but it should be noted that such efforts represent a major shortcoming in the labour agenda, which has been largely ignored in the last few decades.

12. Paragraph 36. In mestizo society, violence in the indigenous communities and peoples is perceived as part of the culture. Very recent studies on violence exist, however, one of them by the National Economic Research Centre (2001), which statistically demonstrate the contrary. At the same time, the influence of the introduction of cruel forms of punishment during the 1980s, in the communities most affected by the armed conflict, should not be underestimated.

13. In the same paragraph, on the subject of lynching, MINUGUA has recognized the positive role of the PNC agents who speak the languages of the indigenous communities and whose intervention has been essential in averting the perpetration of acts of violence against alleged offenders.

14. Paragraph 42. The three legislative instruments comprising the basic reform of the State - Development Councils Act, reforms to the Municipal Code and the Decentralization Act - were adopted as part of the peace-building process. It was the Equal Representation Commission on Reform and Participation which submitted them to the President of the Republic, and ensured their submission to Congress and their qualified majority adoption. It is important to stress that these acts introduced the notion of "indigenous peoples" into domestic legislation for the first time and accepted their traditional authorities in State systems.

15. Paragraph 44. The Guatemalan Fund for Indigenous Development (FODIGUA) also suffered from excessive politicization; its principles and objectives were adulterated and it became beset with administrative irregularities. Over the last year a number of government departments have given impetus to a process of institutional reform with indigenous leaders and organizations, which has successfully reviewed and restored a number of its initial goals.

16. Paragraph 45. Although it is at the embryonic stage, the Presidential Commission to Combat Racism and Discrimination is designed as a mechanism for consultation and promotion of public policies with the indigenous peoples.

17. Paragraph 48. The indigenous mayors also have the influential Guatemalan Association of Indigenous Mayors (AGAI), a body which goes beyond party, ideological or regional affiliations.

18. Paragraph 52. It would be very important for the Special Rapporteur's report [to explain? - tr.] why the resistance of some indigenous parents to the promotion of bilingual education is "understandable".

19. Paragraph 54. During the 1996-2000 Government, there was an excessive amount of tendering for radio frequencies, in breach of the Agreement on the Identity and Rights of Indigenous Peoples (AIDPI). In the last three years there has only been one tender for radio frequencies. The President, in a government agreement, made available to indigenous peoples and social and cultural associations the radio frequencies held by the State which were not being used. This agreement allows free access for 25 years. The reform of the General Telecommunications Act, which introduces a chapter on community radio stations and guarantees their continued operation, is, at the Government's request, being studied by the Commission to Follow up the Implementation of the Peace Agreements.

20. Conclusion, paragraph 60. The issue of political will is also associated with that of empowerment of the indigenous communities.

21. Recommendations, paragraph 60. Guatemala indeed continues to be a deeply unequal and divided society. No allusion is made, however, to the social agenda of recent years, which undertook to launch a public debate on the causes of this social injustice - a low tax burden, an unsustainable land-tenure system, fragile labour relations, etc.

22. The Government's recommendations are in fact recommendations to the State since they involve aspects of justice and legislation as well as others. The recommendations are furthermore very relevant.

23. Footnotes, note 7. There were in fact 52 questions in the referendum.
Note 19. A Roman Catholic priest is also in prison as a result of the Gerardi case.
