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大会 2006 年 3 月 15 日题为“人权理事会”的  
第 60/251 号决议的执行情况

联合国人权事务高级专员的报告和  
世界人权会议后续行动

增 编

联合国人权事务高级专员办事处关于其  
危地马拉办事处工作的报告 \* \*\*

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\* 本报告的内容提要以所有正式语文分发。报告载于附件，以原文和英文分发。

\*\* 本文件迟交是为了载入最新资料。

## 内 容 提 要

本报告叙述了联合国人权事务高级专员办事处危地马拉办事处根据联合国人权事务高级专员办事处与危地马拉共和国政府 2005 年 1 月 10 日达成的协议在 2006 年期间开展的工作。危地马拉办事处继续监督那里的人权状况，并向国家机构提供咨询服务和技术援助，以促进执行其前一份报告(E/CN.4/2006/10/Add.1)中所载建议。

危地马拉办事处是在社会动荡，暴力持续和普遍不安全的背景，以及 2007 年大选运动的前景下开展其工作的。办事处尤其密切关注妨碍充分享有生命权的动荡局势，要求该国必须加强预防措施以及对威胁和侵犯这一权利的行为的调查和惩治。办事处还认真监测公共治安局势及其对人权的影响，消除有罪不罚和加强法治努力面临的持续挑战，执行《国家赔偿方案》的进展和困难，土著人民的处境，不断加剧的政治暴力气氛，以及对妇女的暴力、社会和文化权利和人权维护者的情况。

随着危地马拉办事处在 2006 年期间的加强，它已有可能搜集关于危地马拉人权状况的更详尽资料，便利了向国家机构和民间社会组织提供咨询服务和技术合作。办事处向各国家机构提供了技术咨询，包括议会、总统人权委员会、检察官办公室、狱政局、国家赔偿方案和人权检察官办公室。它还协助民间社会与条约监测机构和特别程序互动，并发表其建议，监测执行情况。

高级专员促请危地马拉继续执行 2005 年向其提出的建议，并进一步提出 18 项建议，这些建议涉及与保护人权、公共治安、法治和消除有罪不罚的努力有关的法律框架，土著人民的处境，政治权利，对妇女的暴力，经济、社会和文化权利，人权维护者，在人权领域的公共政策，以及人权高专办危地马拉办事处提供的技术合作和咨询服务。

**Annex**

**REPORT OF THE OFFICE OF THE UNITED NATIONS  
HIGH COMMISSIONER FOR HUMAN RIGHTS ON  
THE WORK OF ITS OFFICE IN GUATEMALA**

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## I. INTRODUCTION

1. On 10 January 2005 the Agreement between the Office of the United Nations High Commissioner for Human Rights and the Government of the Republic of Guatemala on the establishment of an office in Guatemala was signed. The Agreement was approved by Congress on 31 May, ratified by the President on 23 June and officially communicated in writing to the High Commissioner on 16 September. The OHCHR office in Guatemala officially started its work on 20 September 2005.
2. Under the Agreement and in accordance with General Assembly resolution 48/141 of 20 December 1993, the OHCHR office in Guatemala is to observe the situation of human rights in order to advise State institutions and civil society.
3. This report aims to provide an overview of the work carried out in 2006 by the office in Guatemala in accordance with its mandate. It contains comments on the current human rights situation and information on the advisory services and technical cooperation provided to assist implementation of the recommendations contained in the report for 2005.

## II. NATIONAL CONTEXT

4. The Government of Guatemala sought election to the Human Rights Council and, having been elected, made voluntary commitments to promote human rights. It also contested a seat on the Security Council, but this was ultimately given to Panama. In December the agreement between the Government of Guatemala and the United Nations to create the International Commission against Impunity in Guatemala (CICIG) was signed. Importantly, legislation was passed to consolidate human rights protection in Guatemala, as had been recommended, and there were other positive developments in respect of reparations for the victims of violations and the promotion of human rights within society.
5. The year was marked by social tension, including strikes by trainee teachers and by doctors. Other conflicts centred on the granting of licences for the exploitation of natural resources and the ratification of the free trade agreement with the United States of America.
6. The problems of violence and security continued to be a source of concern for Guatemalan society in 2006. To deal with the situation, the Government involved the armed forces in public security operations.
7. The election campaign started early and was accompanied by increased political violence. There were splits in a number of political groupings and new alliances were formed, which affected elections to the executive committee of Congress and resulted in a failure to approve the 2007 budget, so that the 2006 budget remained in force.
8. Investigations into violations during the armed conflict, and in particular the presence of a commission of enquiry from the High Court of Spain, showed that there are continuing divisions within society.
9. The High Commissioner visited Guatemala in May and met the President and senior government officials, representatives of legislative and judicial bodies, representatives of civil

society and victims of human rights violations. She also visited Rabinal (Baja Verapaz) , where she had the opportunity to speak with victims of the armed conflict and see the progress and problems of the National Compensation Programme on the ground.

10. Visits were also made to Guatemala by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Philip Alston, and the Working Group on Enforced or Involuntary Disappearances. These visits were facilitated by Guatemala's open invitation to the extra-conventional mechanisms of the United Nations, and the High Commissioner congratulates the Government on its policy in this regard.

### III. SITUATIONS OF PARTICULAR CONCERN

#### A. Right to life

11. The State of Guatemala continues to show ineffectiveness in protecting and guaranteeing fundamental rights, in particular the right to life. In 2006 the number of violent deaths continued to increase, rising to 5,885,<sup>1</sup> exceeding the 5,338 killings in 2005 and the highest number in the last 10 years.

12. The inadequate protection of the right to life is a matter for concern. Although no precise data exist that would make it possible to confirm whether there has been an increase in the number of extrajudicial executions or cases of "social cleansing" ,<sup>2</sup> the large number of unresolved violent deaths is enough to show that Guatemala has encountered serious difficulties in safeguarding the right to life and effectively combating impunity.

13. The OHCHR office in Guatemala has received information on the direct involvement of State security officers in extrajudicial executions and it has also noted that the State has incurred indirect responsibility through the acquiescence of a number of its officers. Impunity has created a climate in which the perpetrators of extrajudicial executions could feel sufficiently confident to step up their activities, which has increased people's feeling of vulnerability.

14. The office noted the appearance of corpses bearing signs of torture and subsequent execution. There are similarities in *modus operandi* as well as in the profile of the victims (generally young people from deprived areas of the capital) that would seem to indicate the practice of "social cleansing".

15. In the majority of cases, administrative or criminal investigations have thrown no light on the events or on the organizations responsible. Lack of information makes it impossible to establish the true magnitude of the problem.

16. The High Commissioner acknowledges the efforts of the Government of Guatemala to promote the right to life and other human rights. At the same time, she calls for reinforcement of

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<sup>1</sup> According to the National Civil Police.

<sup>2</sup> This is the term used in the national press for extrajudicial executions of individuals with a police or criminal record, whose deaths are not investigated.

the State institutions that safeguard these rights, in particular the institutions of the justice administration system, to enable them to effectively safeguard these rights and freedoms. The State's efforts must be directed towards the prevention, investigation and punishment - as an inherent legal obligation - not only of the violations committed by its own officers but also of those arising in the context of, for example, organized crime or drug trafficking.

## **B. Public security**

17. Faced with persistently high levels of violence, the State has still not managed to draw up a public security policy consistent with human rights.

18. The grave public security situation presents a considerable challenge to the National Civil Police (PNC). Notwithstanding the efficacy of the Government's attempts to purge the force and strengthen the disciplinary system, the institution suffers from serious problems such as violent deaths among police officers (according to official sources, 60 deaths as at 19 December), a poor civil intelligence system, insufficient officers, especially investigators, and low pay.

19. Increasing the PNC budget would not only enhance the status of the police in terms of remuneration and expedite the upgrading of vehicles, weapons, communications and infrastructure, but would also make it possible to improve the work of the institution and recruit more officers, maintaining the multi-ethnic composition of the force and encouraging more women to join. It is also important to improve initial and in-service education. The most crucial subjects to be covered if the institution is to be able to meet these challenges include dealing with lynchings, domestic violence and juvenile crime.

20. Although the peace agreements and their framework legislation provide for the strengthening of the PNC and the redefinition of the Army's role in a democratic society, the policies implemented have tended to do the opposite, strengthening the Army at the expense of the police, without any tangible results in terms of public security or reduced violence.

21. Government Decision No. 178-2004 reduced the Army to 15,500 troops. However, the Decision was amended in 2006 and it became instead a mobilization plan. In March 2006 the Public Security Special Reserve Corps was established to perform public security tasks. The Corps comprises some 3,000 ex-members of the military, which represents an effective 20 per cent increase in the size of the Army.

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

### **1. Justice and impunity**

22. The justice system has continued with its modernization and reform programme.

23. Rota criminal courts were introduced in the capital (courts of the peace and courts of first instance operating round the clock); and the Supreme Court abrogated the decision by which the serious crimes courts were established and redistributed all serious crimes cases among the country's criminal trial courts. The Public Prosecutor's Office continued its efforts to implement its Plan for Criminal Policy. The adoption of a general instruction to combat trafficking in persons, including illegal adoptions, was another positive step. In addition, a strategic sectoral

plan for criminal justice reform for the period 2006 to 2010 was prepared by the Coordinating Authority for the Modernization of the Justice Sector, which establishes action lines and outcome indicators for measuring impact in strategic areas such as access to justice and transparency.

24. Despite these efforts, impunity continues to undermine the credibility of the justice system and is the main obstacle to the effective enjoyment of human rights. Criminal investigation capacity is still inadequate and does not give sufficient importance to the use of forensic evidence. So the establishment of the National Institute of Forensic Science is an important step. The programme for the protection of witnesses and parties to judicial proceedings does not have the resources or the proper legal framework to operate efficiently, which discourages people from cooperating with the justice system.

25. The justice system is still too weak to confront organized crime and its powerful components, so the recent decision establishing the International Commission against Impunity in Guatemala to assist the authorities in their efforts is one of some importance.

26. Although the institutions of justice - in particular the judiciary and the Public Prosecutor's Office - have extended their geographical coverage, geographical inaccessibility is a barrier that prevents many individuals from exercising their rights. This applies particularly to non-criminal matters and the effective right to a second hearing. As to linguistic accessibility, no global policy has yet been adopted. Judicial institutions have tried in various ways to obtain the services of legal interpreters and translators, but provision remains inadequate. In terms of cultural accessibility, institutions have been slow to include intercultural awareness in in-service training for justice system officials, and the use of cultural expert testimony<sup>3</sup> is still rare. Elimination of discrimination in the justice sector is another area where more work is needed - measures taken thus far have been isolated or sporadic.

27. Accountability has not yet taken root in the institutional culture of the justice sector. Although some institutions have strengthened their performance evaluation systems and their disciplinary and dismissal procedures, many acts demonstrating negligence or even criminal responsibility have gone unpunished. In many cases people have no access to information on the progress of disciplinary proceedings or any right of appeal against the decisions made in such proceedings. Greater efforts must be made to increase transparency in the justice sector, and institutions must show a genuine willingness to allow more effective social review. The High Commissioner appreciates the serious monitoring efforts made by civil society institutions and organizations in the area of justice administration.

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<sup>3</sup> Cultural expert testimony is scientific evidence of an anthropological nature that is used to establish whether or not the behaviour of a person belonging to a specific cultural group is normal for the group or regarded as an offence.

## 2. Transitional justice

28. The Office of the Special Prosecutor for Human Rights attached to the Public Prosecutor's Office, which investigates most cases of human rights violations related to the internal armed conflict, carried out various actions to improve its investigative work, including training officials in forensic anthropological investigation procedures and reviewing the handling of the cases before it. However, no significant progress has been made in the identification and prosecution of perpetrators.

29. One case of enforced disappearance was brought to trial in which enforced disappearance was recognized as a continuing offence, but the decision was appealed. The Special Investigations Unit of the Office of the Human Rights Procurator made progress with identification and prosecution in a case of enforced disappearance from the time of the armed conflict. However, the Appeal Court upheld an application from the accused for exoneration under the National Reconciliation Act. The High Commissioner is concerned at the broad interpretation given to this Act, which goes against the spirit of the Act and the legal framework for human rights in force in Guatemala. One positive development was that, in the case being pursued by the High Court of Spain against former officials of various governments during the internal armed conflict, the ordinary courts complied with the High Court's judicial requests, which led to the arrest of two of the accused with a view to extradition. The Constitutional Court then ordered the court dealing with the extradition request to review the scope of the universal jurisdiction invoked by the High Court ; the High Commissioner is concerned at attempts to restrict Guatemala's duty of cooperation in judicial matters relating to the punishment of serious human rights violations.

30. Obstructive applications for *amparo* are still delaying cases of transitional justice. In this connection, bill No. 3319 on the reform of *amparo* is still pending before Congress. Another negative factor is the refusal of the Ministry of Defence to provide information on cases of human rights violations during the internal armed conflict, on the grounds that it is a State secret. In this connection the issuance of Government Decision No. 535-2006 on access to information held by public authorities is a positive step, though the decree does not address the issue of State secrets. Bill No. 3165 on access to public information is still pending before Congress. There have been attempts in certain sectors to revive draft legislation aimed at extending the jurisdiction of military courts to ordinary offences.

31. In May 2006 the Presidential Human Rights Commission (COPREDEH) , the Office of the Human Rights Procurator, the Public Prosecutor's Office and two Congressional committees, the Human Rights Committee and the Peace and Demining Committee, agreed to work together to set up a national commission to search for victims of enforced disappearance. A preparatory committee was subsequently set up which, on the basis of a proposal from the Office of the Human Rights Procurator and civil society organizations, drafted a preliminary bill to establish such a commission. Entitled "Bill establishing the National Commission to Search for Victims of Enforced and Other Forms of Disappearance" , it was submitted as a draft law by the chairs of the Human Rights Committee and the Peace and Demining Committee to the Legislation Department of Congress on 14 December 2006. The Presidential Human Rights Commission (COPREDEH) also urged the adoption of a government decision on the issue, and a bill to

establish the legal concept of absence by reason of enforced disappearance is awaiting presentation to Congress.

32. The National Compensation Programme continued its administrative restructuring, which is almost complete. The implementation of this programme represents a considerable challenge for the State owing to its complex nature and the scale of the task of providing full reparation to victims. The achievements of the Programme include operational redeployment in regional bureaux, training of staff hired to process reparation applications and special measures of financial compensation in various departments of the country. The Programme directors also show real political commitment to the Programme, despite financial constraints. However, little progress was observed in the implementation of non-financial measures of reparation or in the creation of a national register of victims. Following a period of strained relations between the Programme and victims' representatives an agreement was reached in November 2006 (the third in one year) providing for, inter alia : improved social communication strategies and programme transparency ; bi-monthly progress reports ; a comprehensive vision and policy for the Programme ; progress with the national register of victims ; speedier execution of the programme budget ; and the establishment of a facilitation body. The High Commissioner welcomes this agreement and urges that it be implemented in a climate of cooperation.

### **3. States of alert**

33. In 2006 the Government proclaimed four states of alert, which are a form of state of emergency. The grounds for these proclamations, including "sustained climate of social confrontation" , "breaches of the peace and of State security" and "breaches of the peace and of State security constituting threats to the security of the residents of municipalities" are not the kind of emergency provided for under article 4 of the International Covenant on Civil and Political Rights or article 27 of the American Convention on Human Rights (Pact of San Jose, Costa Rica). The state of emergency imposed is one whose legality is not determined in advance by Congress and is based on the 1965 Public Order Act, which predates the 1985 Constitution and is awaiting amendment. The Government's reports on these states of emergency do not show that the measures taken were those strictly required by the exigencies of the situation or that they were proportionate with the aims they were intended to achieve.

34. The use of force and firearms by law-enforcement officials must be exceptional and is not justified by states of emergency. Operations which envisage the use of lethal weapons must be carefully planned and any deaths that occur, as happened at the Pavón prison on 25 September 2006 during the state of alert proclaimed in the municipality of Fraijanes, must be investigated promptly, thoroughly and impartially.

## **D. Situation of the indigenous peoples**

### **1. Discrimination against the indigenous peoples**

35. Despite the Government's efforts to combat the problem, discrimination against the indigenous peoples continues in its various forms. In 2006 the Presidential Commission on Discrimination and Racism (CODISRA) registered 63 cases of discrimination, 22 of which were investigated by the Public Prosecutor's Office. The fact that racism remains entrenched at all levels of society is a cause for concern. The main areas in which shortcomings continue to be

noted include : social and political participation ; strategies to improve the allocation of public expenditure ; access to justice ; and the design of development policy, especially in health and education. In November, the Vice-President published a study on the cost of racism which estimated that, in 2003, racism was responsible for losses in the amount of US\$ 855 million, or 3 per cent of GDP. This is an example of the structural impact of racism and discrimination.

36. Noteworthy among the positive actions undertaken by the Government are national public awareness and information campaigns launched by government institutions, in particular CODISRA, COPREDEH and the Office for the Defence of Indigenous Women (DEMI). Provision has also been made for the gradual recruitment of 300 indigenous people to civil service posts. According to the Peace Secretariat, 151 have so far been recruited, 97 men and 54 women, mostly to middle management. The High Commissioner hopes that this policy will continue and that it will improve the proportion of indigenous people in the civil service. In addition, the policy on co-existence and the elimination of racism and racial discrimination presented in November 2006 proposes to increase and restructure investment and public spending, promote access to production, finance and credit, expand the scope and quality of basic services and strengthen the institutional framework for the elimination of discrimination and racism. Another important development is the establishment of five regional offices of CODISRA, which cover 24 linguistic communities.

37. With regard to the criminal prosecution of racial discrimination, only one case out of 79 reported by the State to the Committee on the Elimination of Racial Discrimination was settled in court during 2006, and the punitive damages awarded to the victim have not yet been paid. In another racial discrimination case, the judiciary's Disciplinary Affairs Unit ordered the temporary suspension of five judiciary staff as a disciplinary measure. The Public Prosecutor's Office intends to establish a special Anti-Discrimination office, to be staffed with a special prosecutor and four assistant prosecutors to handle cases at the national level. In-service training in investigating the offence of discrimination should be provided to all staff of the Public Prosecutor's Office.

38. Specific legislation to combat racial discrimination has still not been enacted, and Guatemala has still not recognized the competence of the Committee on the Elimination of Racial Discrimination to consider individual complaints.

## **2. Recognition of legal pluralism**

39. Although the Constitution of Guatemala and the 1989 ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) recognize the indigenous peoples' legal system, there are still conflicting views on the issue in the national debate, with some refusing to recognize the system and others suggesting it should be seen as another method of alternative dispute resolution or incorporated into the formal legal system. The effective implementation of legal pluralism is therefore necessary.

## **E. Political rights**

40. It is worrying to note that there has been a sharp increase in political violence, which impairs the full enjoyment of political rights, including social participation in decision-making.

41. During the year there were numerous attacks and threats against political leaders at all levels. The Unidad Revolucionaria Nacional Guatemalteca (URNG) reported attacks on 19 of its leaders, and the Unidad Nacional de la Esperanza (UNE) · 14. Several political leaders have met violent deaths, including the governor of Sololá and leading members of the Partido Patriota, Encuentro por Guatemala and UNE. This violence bears all the signs of the involvement of organized crime and the drugs trade, as well as of internal power struggles.

42. So long as these acts remain unpunished, people are not encouraged to exercise their right to political participation, and this weakens the mechanisms of democratic participation in Guatemala.

43. The climate of violence and the part played by non-State actors in restricting political rights and participation pose new challenges to a State whose capacity to fight corruption, enforce regulations and control its political parties, as well as to investigate acts of political violence, has proved insufficient. It is therefore essential to strengthen the institutions responsible for guaranteeing political participation, especially the Supreme Electoral Tribunal.

44. In view of the general elections to be held in September 2007, the High Commissioner calls attention to the inadequacy of safeguards allowing the free exercise of political rights. The current situation sends disturbing signals both to those who wish to participate in politics and to those who hold elected office.

#### **F. Violence against women**

45. The High Commissioner notes with concern that violence against women has increased in quantity and intensity, in both the private and the public spheres. From 1 January to 31 October 2006, for example, the Office of the Special Prosecutor for Women of the Public Prosecutor's Office received more than 8,000 complaints of sexual assault in the department of Guatemala City alone, while the National Civil Police (PNC) registered 582 violent deaths of women in 2006, most of them non-indigenous women in urban areas, representing an increase from 2005 (519 cases).

46. The Act on the Prevention, Punishment and Elimination of Domestic Violence (Decree No. 97-96) facilitates access to justice by simplifying complaints procedures, but complaints may be made only to seek application of protection measures for victims and the Act fails to prescribe criminal sanctions for perpetrators. Given this situation, the Committee on the Elimination of Discrimination against Women recommended to Guatemala that it should, *inter alia*, define domestic violence and sexual abuse as criminal offences.

47. The most extreme form of violence against women is femicide.<sup>4</sup> The Guatemalan State's most noteworthy action in this area has been to set up, in March 2006, the Commission to Combat Femicide to research and document the problem and, as a first step, to map its extent.

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<sup>4</sup> This term is used in Guatemala, as defined by Mexican anthropologist Marcela Lagarde, to describe the misogynistic murder of women that goes unpunished as a result of the State's systematic failure to act.

The Commission is coordinated by the Presidential Office for Women and comprises representatives of the three branches of government. It is worrying to note that, despite the problem's magnitude and very adverse effects on Guatemalan society, there are no reliable, uniform statistical data disaggregated by gender, age and social status.

48. The High Commissioner believes that the elimination of violence against women should be addressed by the State as a matter of priority at the legislative, judicial and policy levels.

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

### **1. Analysis of the budget from a human rights perspective**

49. The High Commissioner analysed the current General Budget of Revenue and Expenditure of the State of Guatemala from a human rights perspective in order to evaluate the extent to which the State is complying with its international obligations to take steps to promote, realize and protect economic, social and cultural rights, especially those of the most vulnerable persons or groups.

50. The critical mass of resources allocated by the Government to the realization of economic, social and cultural rights is low in international terms, as can be seen from expenditures on education and health in the 2006 budget (2.8 per cent and 1.5 per cent of GDP respectively). There are areas of human rights where there are major deficiencies and an extreme shortage of resources, which means the gaps in the realization of human rights are in danger of widening - or not narrowing - year after year. Thus there are budget entries on the right to non-discrimination for the equivalent of 0.009 per cent of GDP for 2006, as well as allocations of less than 1 per cent of GDP for promoting and protecting women's rights, cultural rights, the right to work and the right to social security.

51. The Millennium Development Goals are included in the national budget merely as a reference. Only in the case of education is it possible to see a direct link between the Goals and the programmes carried out by the relevant ministry. In the other sectors, such as child chronic malnutrition, no such link can be found.

52. By including certain human rights targets, the peace accords favoured an initial increase in social spending in the years following signature in 1996. However, these targets have not been met every year with, particularly, serious shortcomings in the area of housing.

53. The budget of the Guatemalan State is very small in comparison to the country's human rights needs because the State's tax revenue is so low. The fact that the tax burden is less than 11 per cent of GDP severely limits the scope of publicly funded programmes for the advancement of human rights. Social programmes are the first to be cut back to make up for shortfalls in State resources.

54. Some positive changes planned for 2007 risk being abandoned as a result of the failure to approve the 2007 budget. This could represent a setback in the area of economic, social and cultural rights. Moreover, no measures have been introduced to increase the tax burden.

## **2. Right to work and trade union rights**

55. On 12 June the Government announced ratification of the 1999 ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182) and issued a government decision prohibiting the worst forms of labour for children under the age of 18 and establishing administrative sanctions for offenders. The decision will enable inspectors from the Ministry of Labour and Social Security to monitor the presence of minors in mines, plantations and rural villages. Nevertheless, there are still too few inspectors authorized to monitor child labour standards.

56. As indicated in the High Commissioner's 2005 report, a decision of the Constitutional Court in August 2004 divested the Labour Inspectorate of its power to punish breaches of labour law, giving rise to a dispute between the labour inspectors and the courts over how to enforce sanctions for labour offences. Since that time, proceedings for offences brought by the Ministry of Labour and Social Security have not been able to resolve disputes over labour rights.

### **H. Human rights defenders**

57. According to the Human Rights Defenders Protection Unit of the National Human Rights Movement, up to 31 October 2006 there were 226 attacks against human rights defenders, exceeding the number of attacks in 2005 (224). The attacks take the form of threats and abductions, hit-lists, surveillance and criminal accusations against human rights defenders, as well as break-ins at the headquarters of organizations working with victims, especially victims of the internal armed conflict. In 2006 the Inter-American Commission on Human Rights ordered five protective measures, compared with six in 2005 and eight in 2004. Although the figures are indicative of a slight reduction, it should be noted that eight applications for protective measures filed this year are still pending.

58. The visit of a rogatory commission of the National High Court of Spain, which is investigating several former civil servants for human rights violations perpetrated during the armed conflict, exacerbated tensions between human rights defenders and groups close to the soldiers involved. This polarization reached a critical pitch on 26 June, when the Guatemalan Military Veterans Association put out a paid advertisement threatening the human rights organizations.

59. Complaints of threats and attacks on human rights defenders have scarcely been investigated. This fuels the perception that there is inadequate political will to protect defenders. Consequently, the High Commissioner stresses the need to strengthen policy on protection of human rights defenders in accordance with the Declaration adopted by the General Assembly in 1998.

#### **IV. WORK OF THE OFFICE AND FOLLOW-UP TO RECOMMENDATIONS**

##### **A. Work of the office**

60. In 2006 the office in Guatemala was strengthened through the recruitment of new staff, which made it possible to step up the field presence considerably. Over the course of the year 42 observer missions were carried out in the 22 departments of Guatemala, accounting for a total of 109 days in the field. Of the 148 complaints received, 139 were selected for follow-up because they concerned human rights violations.

61. These visits enabled the office to establish direct contact with the authorities and with members of civil society at the local level, as well as to gather information needed to analyse trends in the human rights situation. Such analysis is used to orient the technical cooperation and advisory services provided to State and civil society.

62. By means of press releases, speeches, opinion articles and interviews, the office has helped to generate debate on such topics of national importance as transitional justice and past crimes, extrajudicial killings, forced disappearances, torture, impunity, the rights of the indigenous peoples, violence against women and discrimination. In addition, a documentation centre was set up which organized a series of human rights workshops for students from Guatemala's three main universities. The centre also belongs to the National Library Network and has more than 400 publications on human rights that are available to the public.

63. The office provided follow-up and technical advice to NGOs, in particular on the penitentiary system and the International Criminal Court. It also advised civil society organizations in preparing alternative reports relating to the Optional Protocols to the Convention on the Rights of the Child, thereby strengthening the capacities of civil society to interact with the treaty bodies. In conjunction with the World Organization against Torture (OMCT), the office followed up the concluding observations of the Committee against Torture in coordination with civil society organizations and national institutions. Together with the Association for the Prevention of Torture (APT), the Torture Victim Rehabilitation and Investigation Centre (RCT) and COPREDEH, the office in Guatemala organized activities to promote the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for civil society, Congress and national institutions.

64. The office concluded an agreement with the Office of the Human Rights Procurator, to broaden cooperation between the two institutions. Among other things, it provided technical advice in analysing the education reform from a human rights perspective.

65. The office concluded an agreement with COPREDEH to provide it with technical assistance and advice in preparing Guatemala's third periodic report to the Human Rights Committee and its initial report to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. This year, reports submitted by Guatemala were examined by the Committee against Torture, the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women. In addition, Guatemala submitted reports under the two Optional Protocols to the Convention on the Rights of the Child.

66. The office concluded an agreement with Congress and, in particular, worked with its executive committee and its Human Rights, Foreign Affairs, the Interior and Judiciary Reform Committees on topics related to the security and human rights agendas. The office reported on the alignment of five bills with international treaties, three of which were promulgated.

67. The office provided technical advice to the Prisons Department on initiating implementation of the recently adopted Prisons Act.

68. The office provided advice to a preparatory committee of State institutions and representatives of civil society in preparing a bill establishing a national commission to search for victims of enforced and other forms of disappearance. As a result, principles of international law were incorporated in the bill, notably the principle of victims' right to truth, justice and effective reparation. The bill was submitted to the Legislative Department of Congress by the chairs of the Human Rights Committee and the Peace and Demining Committee on 14 December 2006. All that remains is for Congress to enact it in order to implement the High Commissioner's recommendation.

69. The office provided technical assistance to the National Compensation Programme (PNR) in revising a preliminary bill on declarations of "missing by reason of forced disappearance", which is awaiting presentation to Congress. It also advised PNR on a legislative framework for individual documentation on a strategy for implementing the Special Provisional Act on Individual Documentation. In addition, it provided advice on specific topics related to the restructuring of the Programme.

70. The office has identified several areas for cooperation with the Public Prosecutor's Office with a view to extending its reinforcement activities. Priority areas are the Office of the Special Prosecutor for Human Rights and improving investigation. Advisory services were provided in drafting a general instruction on the criminal prosecution of offences related to illegal adoptions, which was adopted as General Instruction No. 13-2006 on 8 December 2006.

71. Together with the Office of the Human Rights Procurator and the Organization of American States (OAS), legal advice was provided to the working group convened by the congressional Committee on Indigenous Communities to consolidate the four existing proposals for legislation on consultation with the indigenous peoples into a single bill.

72. The office advised the Office for the Defence of Indigenous Women on drafting the second thematic report on indigenous women's access to justice, which is currently awaiting publication. It is hoped that the report will serve as an important tool in preventing the exclusion of indigenous women. Assistance was provided to the Presidential Commission on Discrimination and Racism (CODISRA) in sketching out an anti-discrimination campaign to be launched in January 2007.

## **B. Public policy**

73. At the end of 2005 the Government of Guatemala presented its national human rights policy. Among other things, the document envisages a comprehensive human rights plan worked out with civil society, and the formal establishment of the Inter-institutional Human Rights Forum for coordinating the implementation of public policy. While some of the activities

under the national human rights policy have already begun, it has not been adopted by government decree in the Council of Ministers as expressly stipulated in the document in order to guarantee its validity and implementation. The absence of such a framework has impeded the formal establishment of the Inter-institutional Forum and the elaboration of the comprehensive human rights plan, both of which are fundamental commitments of the policy. Although no government decree has been issued, the Inter-institutional Forum held several meetings in 2006.

74. No substantial progress has been made on implementation of the National Human Rights Education Policy, also presented in 2005, since the institutions responsible for its implementation have not been working together.

75. As far as the 2005 recommendation is concerned, the High Commissioner considers these policies to be a good start in the formulation of a national plan of action for the promotion and protection of human rights along the lines of the 1993 Vienna Declaration and Programme of Action : a plan that favours participation and clearly defines specific objectives and measures, rights to be prioritized and vulnerable groups ; a budget that guarantees sustainability ; and a methodology for monitoring and evaluation containing a time frame, indicators and implementation parameters ; without prejudice to coordination with other development plans and poverty-reduction strategies as required.

76. In 2001, the National Policy for the Advancement and Development of Guatemalan Women : Equal Opportunity Plan 2001-2006 was submitted, but the breadth of its objectives and constraints on resources have hindered implementation. During the course of this year, in addition to coordination and follow-up of actions under the Policy and the Plan, the Presidential Secretariat for Women has been conducting an external evaluation, to be completed in 2007. The High Commissioner hopes that this evaluation will provide an objective assessment of the coverage of the Policy so that a start can be made on a participatory process that guarantees its viability and efficacy.

77. With regard to the prevention of violence against women, the National Plan for the Prevention of Domestic Violence and Violence against Women 2004-2014 was approved in 2004. The High Commissioner considers that this national plan would benefit from a larger allocation of financial resources for implementation.

78. In November 2006, the Executive presented a policy on coexistence and the elimination of racism and racial discrimination, which represents a positive advance in the fight against racism and discrimination, in that it endeavours to generate an integrated approach to action on the Government's various policies, especially those with a direct impact in this area such as agricultural policy and policy on full rural development and decentralization.

### **C. Follow-up to recommendations**

79. In her previous report, the High Commissioner formulated a series of recommendations to the Government, Congress and the judiciary, as well as to civil society organizations, on the following topics : prevention and protection, rule of law and impunity, economic and social policy, equality and non-discrimination, promotion of a culture of human rights, and the advisory services and technical cooperation of the OHCHR office in Guatemala. The office has been supporting and monitoring implementation of the recommendations.

80. The High Commissioner welcomes the approval by Congress of the Organized Crime Act (Decree No. 21-2006), the Act establishing the National Institute of Forensic Science (Decree No. 32-2006) and the Prisons Act (Decree No. 33-2006), as recommended. These Acts strengthen the legal framework of the fight against crime and can be seen as a step forward with regard to security and justice, although some aspects of the Organized Crime Act impair human rights, such as exemption of undercover agents and controlled deliveries from judicial supervision. The High Commissioner would, however, like to point out that it is important to take the necessary steps in terms of regulation, budget and institutional support to ensure implementation of these laws. A failure by Congress to approve the budget for 2007 would seriously affect their implementation, as happened with the Department of Civil Intelligence, which was created in November 2005 but did not receive any budget allocations in 2006.

81. The High Commissioner also calls attention to the fact that other draft legislation on security and justice, notably laws on private security firms, weapons and munitions, access to information, and civil intelligence, has not been passed.

82. The High Commissioner observes that the State of Guatemala has yet to recognize the competence of the Committee on the Elimination of Racial Discrimination under article 14 of the International Convention on the Elimination of Racial Discrimination, and of the Committee for the Protection of the Rights of All Migrant Workers and Members of Their Families, under article 77 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The High Commissioner notes that ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, recommended in the previous report and in the concluding observations of the Committee against Torture, is still pending before Congress.

83. With regard to the recommendation to establish effective programmes for the protection of human rights defenders, although there has been an increase in the number of staff in the COPREDEH Human Rights Defenders Protection Unit and work is under way to enhance the range of protection measures with the help of civil society and the competent national institutions, more needs to be done to strengthen the mechanisms for the protection of human rights defenders and make them more effective. COPREDEH is urged to continue to promote opportunities for ongoing dialogue with human rights defenders.

## V. RECOMMENDATIONS

**84. The High Commissioner urges the State to take coordinated, consistent and effective action to implement all the recommendations made in the OHCHR report for 2005.**

### **A. Legislative framework for the protection of human rights**

**85. The High Commissioner urges Congress and the Government to refine the legislative framework for the protection of human rights, taking the necessary steps to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the agreement creating the International Commission against Impunity in Guatemala (CICIG) and the Rome Statute of the**

**International Criminal Court, and to recognize the competence of the Committee on the Elimination of Racial Discrimination and of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.**

### **B. Public security**

86. **The High Commissioner encourages the Government to provide the National Civil Police (PNC) with the human and financial resources required for it to extend its geographical coverage and continue with personnel training and career development, including specific human rights training, and with enhancement of its civil intelligence and criminal investigation capacity. She also urges PNC to develop efficient performance evaluation and accountability mechanisms.**

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

87. **The High Commissioner urges the Public Prosecutor's Office to continue to implement its Plan for Criminal Policy, redouble its efforts to strengthen criminal investigation capacity and improve coordination with other security and justice institutions. These efforts are needed in order to combat organized crime and to break up illegal groups and clandestine security organizations. It is also a matter of priority to strengthen the programme for the protection of witnesses and parties to judicial proceedings.**

88. **The High Commissioner encourages the institutions of justice to implement the strategy for access to justice envisaged in the strategic plan of the Coordinating Authority for the modernization of the Justice Sector, prioritizing the strengthening of free legal aid and victim support, in-service training in the indigenous languages and culture, and effective provision for interpretation and translation in indigenous languages and for cultural expert testimony.**

89. **The High Commissioner urges courts to limit exoneration from liability under the National Reconciliation Act and to recognize the permanent nature of forced disappearance.**

90. **The High Commissioner urges the Government to pursue its efforts to implement the National Compensation Programme. It is encouraged to strengthen the legal and operational framework of the Programme so as to ensure its sustainability and financial independence, and the transparency and participatory nature of implementation, taking a comprehensive approach to reparation. Congress is urged to approve the Act establishing a national commission to search for victims of enforced and other forms of disappearance, and to pass legislation establishing the legal concept of absence by reason of forced disappearance.**

91. **The High Commissioner encourages the Government and Congress to take all necessary steps to effectively implement the Act establishing the National Institute of Forensic Science (INACIF) and the Prisons Act, providing them with institutional support, and an adequate budget allocation, and approving their respective regulations.**

92. **The High Commissioner urges Congress to approve pending draft legislation on security and justice, including the laws on access to information, on private security companies and on weapons and munitions, and the amendments to the Amparo, Habeas Corpus and Constitutionality Act, and to amend the Public Order Act.**

#### **D. Indigenous peoples**

93. **The High Commissioner urges the Government to implement its policy on the elimination of racism and racial discrimination. She also urges Congress to allocate adequate financial resources to the policy and to pass a specific law against racial discrimination. She urges the Public Prosecutor's Office to press on with the investigation and punishment of complaints of racial discrimination.**

94. **The High Commissioner encourages Congress to move ahead with the adoption of a general code of procedure that recognizes legal pluralism and to amend the Judiciary Act to bring it into line with article 66 of the Constitution and ILO Convention No. 169.**

#### **E. Political rights**

95. **The High Commissioner urges the strengthening of the oversight role of the Supreme Electoral Tribunal, especially in the context of the forthcoming elections. She also calls on State institutions to guarantee the full exercise of political rights, joining forces to prevent, investigate and punish political violence.**

#### **F. Violence against women**

96. **The High Commissioner urges the State to prioritize efforts to eliminate violence against women, in terms of legislation, public policy and the administration of justice. She recommends that Congress should define domestic violence and sexual assault as offences and allocate resources for implementing the National Plan for the Prevention of Domestic Violence and Violence against Women 2004-2014.**

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

97. **The High Commissioner recommends that the Government of Guatemala should reorient resource allocation in the general budget from a human rights perspective and give priority to immediate action for the realization of economic, social and cultural rights. Special attention should be paid to critical areas that fall well short of the Millennium Development Goals, such as malnutrition, mother and child mortality, gender, health and education. In this connection there is a need to raise taxes and review the tax collection and allowances system.**

98. **The High Commissioner recommends that the Guatemalan State should create a flexible and effective mechanism giving labour inspectors proper powers of enforcement in terms of investigation and punishment.**

## **H. Human rights defenders**

99. **The High Commissioner encourages the Government to strengthen protection measures for human rights defenders by working out a new set of protection measures with civil society and creating a body to coordinate the national institutions responsible for guaranteeing protection.**

### **I. Public policy in the area of human rights**

100. **The High Commissioner encourages the Government to adopt and effectively implement its human rights policies by elaborating action plans that focus on participation, define objectives and specific measures and identify priority rights and vulnerable groups, and providing them with a budget that will guarantee their sustainability, and a follow-up and evaluation mechanism complete with time frames, indicators and implementation parameters.**

### **J. Technical cooperation and advisory services of the OHCHR office in Guatemala**

101. **The High Commissioner invites the branches and organs of the State and civil society organizations to avail themselves fully of the advisory services and technical cooperation provided the OHCHR office in Guatemala. She also invites the international community to provide the technical and financial support required for the various State institutions, NGOs and the Office of the United Nations High Commissioner for Human Rights to make an effective contribution to the implementation of these recommendations.**

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