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on the Elimination of All Forms  
of Racial Discrimination**

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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION

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

**Thirteenth periodic reports of States Parties due in 2008\***

**Addendum**

**GUATEMALA\*\* \*\*\***

[15 December 2008]

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\* This document contains the 12<sup>th</sup> and 13<sup>th</sup> periodic reports of Guatemala, due on 17 February 2008, submitted in one document. For the 8<sup>th</sup> to 11<sup>th</sup> periodic reports and the summary record of the meetings at which the Committee considered the report, see documents CERD/C/469/Add.1 and CERD/C/SR.1739, 1740, 1756 and 1757, respectively.

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

\*\*\* The annexes can be consulted in the files of the Secretariat.

## INTRODUCTION

Since the advent of democracy in the country and particularly since the signing of the Peace Agreements, the State of Guatemala has been involved in a process of political, economic and cultural transformation. An essential component of this process is our vision of transforming the still homogenous national State into one that represents and reflects the multicultural and multinational character of the country.

In this regard, the legal and political entities of the Guatemalan State is promoting ethnic and cultural diversity in such a way as to affirm and strengthen respect for the identity and rights of the indigenous peoples – Maya, Garifuna and Xinca – to ensure that the public administration responds by providing better services.

The main trend here is towards the adoption of new legal and political norms or the reform of the few that exist, thereby generating measures and actions on the part of the authorities to enhance the treatment of the indigenous peoples.

The prevailing political and philosophical thinking in the country concerns cultural pluralism, specifically multiculturalism and interculturalism. This points to a political and intellectual awakening regarding observance of and respect for the human and collective rights of the indigenous peoples.

This thinking has influenced the new set of legal and political norms now in place in the country concerning indigenous peoples. Likewise, it has permeated our institutions. Obeying the focus on cultural pluralism has given the State itself a certain means of political pressure to combat and eradicate discrimination and racism.

The State has taken important steps towards the recognition of inequalities and racist practices, language and attitudes that have contributed over time to generating ethnic and social discrimination, which has limited the indigenous peoples' access to economic and political opportunities. The State has made efforts, advancing and, in some cases, making mistakes, without that having become an obstacle to decision making and action.

In this connexion, the State of Guatemala, discharging the commitment undertaken when it ratified the International Convention on the Elimination of All Forms of Racial Discrimination, has prepared the present 12<sup>th</sup> and 13<sup>th</sup> report, which refers to a series of measures and actions taken by the different organs of the State in observance of and respect for the human and collective rights of the indigenous peoples. It also recognises weaknesses and challenges that we still have to overcome.

The Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA), with the help and technical advice of the Guatemala Office of the United Nations High Commissioner for Human Rights, drafted the present document, which comprises the 12th periodic report, covering the period 2005-2006, and the 13<sup>th</sup> periodic report, covering the period 2007-2008, combined in one document, in accordance with the concluding observations of the Committee on the Elimination of Racial Discrimination on the 11<sup>th</sup> periodic report (CERD/C/GTM/CO/11, para. 28).

These 12<sup>th</sup> and 13<sup>th</sup> periodic reports have been prepared according to a participatory working method devised by the Guatemala Office of the High Commissioner and applied by CODISRA to provide a full reply in co-ordination with the institutions that make up the Executive, as well as the other bodies – the Judiciary and the Legislature – of the State of Guatemala.

The drafting process began in March 2008 with an analysis and the setting of priorities, on the basis of the observations and recommendations of the CERD experts concerning the reports submitted by the State of Guatemala, as well as the recommendations of the Special Rapporteurs.

In co-ordination with the Office for the Defence of Indigenous Women's Rights (DEMI) and the indigenous organisation Observatory of the Rights of Indigenous Peoples, during the months of May, June and July 2008, CODISRA carried out a process of consultation divided into two parts: a) a joint regional consultation with indigenous organisations, civil society and State institutions; and b) an inter-ministerial consultation with bodies of the Executive, as well as authorities of the Judiciary and the Legislature. These consultations took place in thematic workshops geared to the specialty of each institution: education, health, economic, social and cultural development, access to justice, legislation, labour and employment.

These thematic workshops provided an opportunity for the exchange, analysis and systematisation by the State institutions and CODISRA of information about the main activities carried out by the institutions concerned in response to the Committee's observations and recommendations. In the case of the State institutions, stress was also laid on the need to follow up and apply the Convention in their programmes, projects and work plans. Likewise, the need was emphasised to have effective information, broken down by sex, ethnic origin and age, for the discharge of commitments made to the international bodies concerned with the human rights of indigenous peoples.

After the information gathered from the thematic workshops and from official sources and documents was systematised, in October 2008, the first draft of the 12<sup>th</sup> and 13<sup>th</sup> reports was approved by the State institutions that had taken part in the workshops and given information about themselves. The report also began to be publicised among indigenous organisations and civil society.

In this way, with the inputs provided during the process of drafting and institutional approval, this 12<sup>th</sup> and 13<sup>th</sup> report reflects the co-ordinated work and cordial collaboration of the institutions of the three entities that make up the Guatemalan State – the Executive, the Judiciary and the Legislature.

By means of this consolidated report on its compliance with the provisions of the Convention, the State of Guatemala is giving an account of the policies, programmes and actions it has adopted to eliminate all forms of discrimination against indigenous peoples. At the same time, it is fulfilling its obligation to the international community and reiterating the desire and commitment of its government to defend and protect the human and collective rights of the indigenous peoples.

The report contains a first part devoted to responding to the recommendations made to the State of Guatemala on presentation of earlier reports, as well as the most significant progress made and the most important trends with regard to each of the articles of the Convention. The second part comprises a series of annexes that complement the information provided as the articles of the Convention were studied.

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## **I. ARTICLES 1 AND 2: POLICIES AND MEASURES TO PROMOTE THE HUMAN RIGHTS OF THE INDIGENOUS PEOPLES**

### **OBSERVATIONS AND RECOMMENDATIONS OF THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION**

*Paragraph 12. The Committee is deeply concerned at the extent to which racism and racial discrimination against the Maya, Xinca and Garifuna peoples is entrenched within the territory of the State party and at the inadequacy of public policies to eliminate racial discrimination. (art. 2, para. 1, and art. 2, para. 2).*

*The Committee urges the State party to adopt the proposed policy entitled “Towards harmonious intercultural coexistence”, which is intended to eliminate racial discrimination. It likewise recommends the State party to undertake special measures as provided for in article 2.2 of the Convention in favour of indigenous peoples and persons of African descent, who have historically been subjected to discrimination. The Committee also recommends that coordination be intensified between the various bodies involved in combating racial discrimination, such as the Office for the Defence of Indigenous Women’s Rights, the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala and the Ministry of Education.*

#### **A. Policies directly geared to indigenous peoples**

##### **1. Public policy in favour of co-existence and the elimination of racism and racial discrimination (2006)**

1. This policy was promoted by the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA) and published in October 2006.
2. For its formulation it draws on four fundamental aspects of the national context: State racism, the notions of racism and discrimination as conceptual starting points, the occurrence of racism in Guatemala, and the indicators of discrimination and racism in the country (emphasising salary differences by ethnic group and by sex, as well as inequality of access to public health services).
3. It also states seven policy principles: co-existence, equality, tolerance, inclusion, pluralism, democracy and gender equity. The fundamental aim of this policy is “to implement action geared to the building of a pluralist State through the identification and elimination of the mechanisms of racism and racial discrimination”.
4. One of its essential features concerns the harmonisation of policies for the achievement of its goals, which is organised around six core policy areas, from which are derived strategic actions and goals. These core areas are: a) economic and social; b) political and legal; c) cultural; d) citizen training; e) equality of access to State services (particularly in education, health, housing and employment); f) environmental.
5. *The economic and social area.* Thirty-three strategic actions are proposed, ranging from the evaluation of progress-related policies, strategies, programmes and plans; through actions to

promote the legalisation and recognition of communal lands and resources, offer employment, increase the competitiveness of rural producers and ensure the inclusion in chains of production and management of the indigenous population, women and young people; to the assessment and reorientation of training programmes, technical, financial, administrative and commercial assistance, the harmonisation of labour legislation by identifying and eliminating salary discrimination among other things.

6. *The legal and political area.* Eighteen strategic actions are proposed which involve training aimed at generating political capacity among indigenous youth, mechanisms for compulsory consultation with the public in compliance with ILO Convention 169, the creation of the Observatory Against Racism and Discrimination, the abrogation of discriminatory laws or laws with discriminatory implications, strengthening the indigenous peoples' own institutions, establishing machinery for the implementation of international conventions and the recommendations of the different reports and rapporteurs on the subject, and devising mechanisms for the application of legislation on discrimination, among other things.

7. *The cultural area.* Eighteen strategic actions are proposed, involving recognition of the identity of the Maya, Garifuna and Xinca peoples, safeguarding the cultural and natural heritage of the indigenous peoples, making the legal system of the indigenous peoples known to society and strengthening it, recognition of the identity of the indigenous peoples as expressed in their exercise of political, cultural, economic and spiritual rights, contributing to the revitalisation of the indigenous peoples' languages and ensuring cultural relevance, among other things.

8. *The citizen training area.* Nine strategic actions are proposed, including the development of training programmes fostering respect for different cultures, the promotion of training for civil servants in subjects related to the elimination of racism and discrimination, encouraging children and young people to participate as citizens and implementing specific policies to do away with prejudice, among other things.

9. *The equality of access to State services area.* Particularly in education, health, housing, and employment, thirty-seven strategic actions are proposed, among them: encouraging recognition of the indigenous peoples' own legal system, classifying cases and experience of legal pluralism, strengthening the capacity of the Attorney General's Office to investigate and punish the offence of discrimination, proposing reforms to administrative and penal mechanisms against ethno-cultural discrimination, increasing the number of bilingual teachers, revising and adapting the laws on education in Guatemala and enhancing opportunities for collective planning of action to improve citizen security.

10. *The environmental area.* Five strategic actions are proposed: the development of studies and research into the environmental situation of the communities, a resource inventory, programmes of support for victims of natural disasters with ethno-cultural implications and programmes for enhancing the environment, among other things.

## **2. Public Agenda concerning the Indigenous Peoples as part of the Peace Agreements, 2005-2012**

11. Although not strictly recognised as a public policy, this is a basic document for the design of public policies concerning the indigenous peoples for all our institutions.

12. The initiative to bring together civil servants to plan a collective public agenda was that of the Good-Will Ambassador of the Peace Agreements and the Peace Secretariat; its aim was to reach consensus on common starting points for all State institutions, so as to work together to get away from what has historically been fragmentary, incoherent public policy pursued in a vacuum and to take organised, integrated action, as envisaged in the Peace Agreements.

13. This Agenda was drafted with the participation of officials from the public sector with responsibility for implementing commitments deriving from the Agreement on Identity and Rights of the Indigenous Peoples. It has seven general strategic core items: 1) public policies; 2) reform of the State; 3) legal framework of the State; 4) full participation at all levels; 5) public services; 6) the national budget and; 7) the struggle against discrimination and racism.

14. The priorities for each item are:

a) *Public policies*: Defining and implementing State policies, in accord with the multi-ethnic, multi-cultural and multilingual character of the Guatemalan nation, that will permit full compliance with the Peace Agreements.

b) *Reform of the State*: Transforming and strengthening the State so that in its institutions it will reflect the multi-ethnic, multi-cultural and multilingual composition of the country in such a way as to ensure the full development of the Maya, Garifuna and Xinca peoples.

c) *Legal framework of the State*: transforming and strengthening the national legal system so that it will recognise and guarantee the effective implementation of the rights of the indigenous peoples.

d) *Full participation at all levels*: Guaranteeing full participation of the Maya, Garifuna and Xinca peoples in strategic decision-making at national, regional and local levels and in the international arena.

e) *Public services*: Broadening coverage and guaranteeing access for the Maya, Garifuna and Xinca peoples to quality public services that are culturally and linguistically appropriate.

f) *National budget*: Drawing up the national budget using criteria of ethnic equity and cultural relevance to guarantee public and social investment in line with the rights of the Maya, Garifuna and Xinca peoples.

g) *The struggle against discrimination and racism*: Implementing a public policy at all levels and in all departments of the State to combat discrimination and racism in such a way as to eliminate this scourge of humanity completely. Carrying out at the national level a sustained process of awareness-raising that embraces the culture of peace and respect for diversity of cultures and promotes cultural interaction.

## **B. Policies with cultural diversity components**

15. The following sectoral policies, although not directed specifically to indigenous peoples, include components that relate to cultural diversity; prevalent among them in general are those based on multicultural and intercultural approaches.

### **1. National Housing and Human Settlements Policy (2004)**

16. Government Agreement 163-2004. Plurality of cultures and cultural interaction are an underlying theme in this policy.

### **2. Health Policy 2004-2008**

17. Among the strategic guidelines of this policy is “The satisfaction of the health needs of the Guatemalan population through the compassionate and equitable provision of quality health services without regard to culture or gender at all levels of health care”.

### **3. Environmental Education Policy of the Ministry of the Environment and Natural Resources (2004)**

18. The policy was formulated after a series of dialogues at the national level. Among the sources of the policy one may note:

a) The Agreement on Identity and Rights of the Indigenous Peoples, which states that “... in the field of science and technology reference is made to the need to promote technological innovation and the ethical principle of the preservation of the environment”.

b) The ILO Convention 169 (on Indigenous and Tribal Peoples).

i) Part I, General Policy, article 4, paragraph 1, *Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.*

ii) Part VI, Education and Means of Communication, article 27, 1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.

19. As one of its principles this policy includes interaction among cultures, which it conceives of as “the development of a pluralistic, equitable and inclusive social concept aimed at achieving the common good and the harmonious coexistence of Guatemalan society in the framework of the cultural world view of each ethnic group for the appropriate use of the environment and its natural resources”. Among its strategies, the policy defines as one of its main lines “the regionalisation of environmental education according to the ecological, ethnic and cultural context”.



**4. National Policy for the Development of Micro-, Small- and Medium-sized Enterprises (2005)**

20. This policy is a proposal of national scope that includes all sectors and types of activity and embraces all urban and rural areas of the country.

21. In planning the implementation of the policy, a systemic focus on social equity, comprehensiveness, sustainability and citizen participation must be constantly maintained. Its underlying themes must be gender equity, multiculturalism and the preservation and use of the environment.

**5. Public Policy for Youth 2005-2015**

22. One of the specific objectives is to foster recognition and awareness of the ethnic, linguistic and cultural diversity of Guatemala so as to strengthen our national identity and unity. One of the principles of the policy is that multiculturalism is an essential element in the building of a nation characterised by recognition of the existence of a diversity of peoples and cultures that together make up the nation as a whole.

**6. National Policy of Food and Nutritional Security (2005)**

23. In this policy equity is established as a guiding principle; the State must create conditions for the population to have safe and timely access to food without distinction as to gender, ethnicity, age, socio-economic status or place of residence.

**7. Public Policy for the Prevention of Sexually Transmitted Diseases – STD – and in Response to the Epidemic of Acquired Immune-Deficiency Syndrome (AIDS)(2005)**

24. Multiculturalism is one of the underlying themes of this policy. Three strategic actions are defined in connection with that theme, the first being to undertake specific studies on sexuality and the incidence and impact of STD/HIV/AIDS, broken down by Ladino or Mestizo, Maya, Garifuna or Xinca population group, for the planning and implementation of actions of socio-cultural relevance with a gender-differentiated approach.

25. The second strategic action requires community participation using the indigenous peoples' own ways of organising it, to come up with relevant preventive action and treatment that ensures respect for the language and customs of the Ladino, Mestizo, Maya, Garifuna and Xinca peoples. And finally, the third strategic action proposes equitable treatment for persons living with HIV/AIDS in full respect for their values and cultural identity.

**8. National Human Rights Education Policy 2006-2015**

26. The contents of its plan of action include the promotion of the integrity, unity, universality and specificity of human rights: civil and political rights, individual rights, cultural rights and the rights of indigenous peoples, economic and social rights, specific rights (of women, children, adolescents, the disabled) and the right to development.

27. The fourth principle stresses encouraging and developing a pluralistic, equitable and inclusive vision and conception, with the aim of achieving harmonious co-existence among the cultures in Guatemalan society, benefit for all and over-all development.

#### **9. Rural Development Policy (2006)**

28. The policy is based on a diagnosis recognising that “the Guatemalan population is of a multicultural, multi-ethnic and multilingual character”. The formulation of the Rural Development Policy, completed in September 2006, represented a constant, sustained effort on the part of public institutions, representatives of the indigenous peoples and organisations of civil society in terms of analysis, dialogue, debates and consensus-building.

29. The policy was developed in 2005 by the members of the Intersectoral Committee on Dialogue and Participation. Those members were eight government delegates, two delegates from the academic sector, eight from the political parties, six from the agricultural workers’ and indigenous sector, six from the sector of small rural producers’ organisations, two from the rural women’s sector, three from employers’ trade unions and one from the environmental sector.

30. As indicated in the Final Statement of the Committee in 2006, important progress was made, including consensus on “the main variables governing rural development, a forward-looking vision of the rural area over 25 years, the principles and approach that should govern a policy of comprehensive rural development, and strategic lines of action. It was agreed that these components should be strategically geared to achieving full citizenship for the rural population by removing injustices and forms of exclusion, mainly those that affect first and foremost the indigenous population and women; and promoting a new economic model based on equitable access to assets to make the small- and medium-sized rural economy, that of agricultural workers and of the indigenous peoples, one of the chief economic players, a process in which the State must assume the role of guide and promoter”.

31. Among the principles of this policy we find multi-culturalism, multilingualism and interaction among cultures. Among the strategies and guidelines for action there is a cultural focus whose aim is “to reduce discrimination with regard to culture, ethnicity, age or gender in the rural area in Guatemala”.

#### **10. Public Peace Culture Policy 2006-2015**

32. Among the policy guidelines figures respect for diversity which includes non-exclusion for ethnic reasons. The fifth policy guideline “Building and developing interaction among cultures” outlines twenty-two actions.

#### **11. Agrarian Policy (2007)**

33. Prepared by the Secretariat for Agrarian Affairs, this is a component of the Comprehensive Rural Development Policy, whose general aim is to transform the agrarian situation in Guatemala by promoting legal certainty regarding land ownership, possession and tenancy, access to the land and the resolution of agrarian disputes, so that in conjunction with the use of other productive assets, the living conditions of the population of rural areas can be improved and over-all rural development advanced in a multi-cultural society.

## 12. National Policies regarding Books, Reading, Writing and Libraries 2007-2014

34. This develops policy five, in support of linguistic diversity. It defines four priorities:
- a) Increasing the number of people who can read and write indigenous languages.
  - b) Encouraging the production and distribution of texts in indigenous languages.
  - c) Encouraging the publication, printing, distribution and translation of works of world and national literature in indigenous languages.
  - d) Encouraging the publication, printing, distribution and translation of works of indigenous literature in indigenous languages and Spanish.

### C. Municipal policies and agenda

35. Four Multicultural and Intercultural Municipal Public Policies have been formulated, with a gender and youth focus, that include the organisational and institutional basis for their implementation, the resource base for public policy, their legal foundation and the accords validating and legitimising them.

**Table 1**  
**Municipalities with a multicultural and intercultural public policy**

<i>Department</i>	<i>Municipality</i>
Quiché	Uspantán
Sololá	San Juan La Laguna
Huehuetenango	Santa Eulalia
Izabal	Livingston

36. Eleven municipal agenda have been developed with a multi-cultural focus, the main aim being to include the requirements and the views of the indigenous peoples of the linguistic communities present in each municipality. These agenda were presented in public forums where the signatures of the mayoral candidates publicly committing them to the agenda were obtained. At present their implementation is being pursued.

**Table 2**  
**Municipalities with prepared multicultural agenda**

<i>Department</i>	<i>Municipality</i>
Quetzaltenango	San Juan Ostuncalco
Quiché	San Juan Cotzal
Sololá	San Antonio Palopó San Andrés Semetabaj
Huehuetenango	Santa Eulalia San Juan Ixcoy
Baja Verapaz	Rabinal
Chiquimula	San Juan Ermita Jocotán Olopa Camotán

## D. Administrative action

### 1. Government agreements

37. **Government Agreement 22-2004. National languages or bilingualism:** Establishes compulsory bilingualism in national languages as the national linguistic policy, as well as the dissemination of multiculturalism and interculturalism. Both bilingualism and multi- and interculturalism must be applied to the definition of policies, the relevance of the curriculum for indigenous peoples, the modalities of bilingual education, the acquisition of a third language, as well as in multi-ethnic and multilingual classrooms and in the reorganisation of the Ministry of Education and the integration of its staff.

38. This reform also states that a quota shall be established of bilingual staff speaking Maya, Garifuna or Xinca with Spanish when the branches of the Executive are reorganised, as also when consultative and technical councils of the linguistic communities are organised.

39. **Government Agreement 126-2004. National Day to Combat Discrimination:** Established 21 March as the “National Day for the Elimination of All Forms of Racial Discrimination”. This accord was proposed by the Presidential Commission on Discrimination and Racism against the Indigenous Peoples in Guatemala (CODISRA). In essence, it establishes the week of 21 to 28 March each year as the Week of Solidarity with the Peoples Struggling against Racism and Racial Discrimination and provides that CODISRA shall be responsible for organising all the commemorative activities.

40. **Government Agreement 20-2005. Indigenous Development Fund:** Sets up the Committee for the Restructuring of the Indigenous Development Fund (FODIGUA). The initial term of office of the Committee was one year from the time when each of its representatives entered into their functions. It is made up of four government representatives and four representatives of indigenous peoples’ organisations.

41. The life of the Committee was prolonged beyond the year envisaged and consultations were held with experts and indigenous authorities to gather the needed inputs for a new institutional proposal. This was the first draft of a law for the creation of the National Institute for the Development of the Indigenous Peoples of Guatemala, which was submitted to the Executive on 17 December 2006.

42. This is the most relevant case of the current restructuring of an institution. Since indigenous organisations gave many indications to the effect that this institution was not able to fulfil the hoped-for procedures for their representation, in view of the way such representation was organised, the Vice-President’s Office put forward a planned restructuring of the institution, its objectives, representation on it and its legal framework.

43. **Government Agreement 96-2005. President’s Advisory Council on Indigenous Peoples:** The Advisory Council of the President of the Republic on Indigenous Peoples and Plurality was set up to advise the President of the Republic and the other members of the Executive in the adoption of decisions to facilitate the exercise of their rights by the indigenous peoples of the country. It makes the proposals and/or recommendations it deems appropriate in complete independence.

## 2. Ministerial agreements

### In the cultural field

44. The Ministry of Culture and Sport has published the following accords or declarations which recognise cultural symbols, as part of the cultural heritage, whether of indigenous ceremonial sites or specific cultural manifestations:

45. **Ministerial Agreement 294-2004:** Declares the ethnic drama RABINAL ACHI' part of the Intangible Cultural Heritage of the Nation. The State is committed by this agreement to recognising, respecting, protecting, preserving and supporting the annual performance of the drama, giving economic and logistical assistance. It is important to point out that this ministerial agreement served as the national legal basis enabling the Ministry to put the drama forward as a candidate to be declared by UNESCO part of the intangible heritage of mankind, which was done in November 2005.

46. **Ministerial Agreement 391-2004:** Declares the hill known as JOLOM B'AY or Cerro Candelaria with the surrounding area part of the cultural and natural heritage of the Nation, recognising its character as a sacred site in the Mayan world vision and granting custody of it to a neighbourhood board.

47. **Ministerial Agreement 414-2004:** Declares the five caves in the place called RELEB' WAKAX and the surrounding area part of the cultural and natural heritage of the Nation, recognising it also as a sacred site and granting its custody to a neighbourhood board.

48. **Ministerial Agreement 416-2004:** Declares the ceremonial centre K'IAQ part of the cultural and natural heritage of the Nation and a sacred site. Its custody is granted to a neighbourhood board and it is decided that the Sacred Sites Unit of the Ministry of Culture's Directorate General of the Cultural and Natural Heritage should request the Lands Fund to draw up a plan delimiting the area.

49. **Ministerial Agreement 447-2004:** Declares the ceremonial güipil of Santa Maria Visitacion of the Department of Solola part of the cultural heritage of the Nation. In this same declaration the State commits itself to respecting, protecting and upholding the Tz'utujil Maya culture, in order to strengthen the national identity.

50. **Ministerial Agreement 493-2005:** Declares the Mayan game of pelota part of the ancestral cultural heritage of the nation. This declaration stipulates that it is for the State, through the Directorate General of Culture and the Arts and the Directorate General of Sport and Recreation, both Directorates of the Ministry of Culture and Sport, to protect, support, respect and encourage the practice of this sport.

51. Most of the declarations concerning the cultural and natural heritage have been preceded by earlier disputes regarding rights of use and ownership and risks of damage, which in a sense sparked the process leading to the declaration. In most cases the rights of use are granted to local organisations.

52. **Ministerial Agreement 630-2005:** Declares the ceremonial centre PAN KONSUL and the surrounding area part of the cultural and natural heritage and a sacred site. Its custody is granted to a neighbourhood board and it is decided that the Sacred Sites Unit of the Ministry of Culture's Directorate General of the Cultural and Natural Heritage should request the Lands Fund to draw up a plan delimiting the area.

53. **Ministerial Agreement 170-2007:** Creates Regional Art Centres for the promotion and dissemination of different artistic forms of expression, creativity and cultural identity, to expand art at the departmental level, recognising the right of individuals and communities to their cultural identity in accordance with their values, customs and languages.

54. **Ministerial Agreement 240-2007:** Sets up the Institute for the Arts and Sciences of the Maya, Garifuna and Xinka Indigenous Peoples in order to promote, encourage and disseminate the scientific thinking and the artistic development of the Guatemalan cultures and defines the mission, vision, description and specific objectives of this Institute, how it is to be organised and the way in which its staff and structure are to be employed.

55. **Ministerial Agreement 256-2007:** Creates Community Art Academies in the country's various municipalities, thereby responding to one of the guidelines of the Ministry's National Plan for Long-term Cultural Development, which expresses the concern for a process of sustainable human development based on programmes and plans at the level of government and civil society that would reflect the inclusion of cultural diversity as a source of social enrichment. Sustainable cultural development is here understood as a global and integral process that really allows the population access to material and spiritual goods and services without exclusion on grounds of ethnic origin, gender or age group.

56. **Ministerial Agreement 211-2008:** Promulgated on 31 March 2008, it creates local development units in each department of the Republic of Guatemala, taking into account the presence of linguistic communities in more than one department to foster the cultural development of the indigenous population in Guatemala.

57. **Ministerial Agreement 385-2008:** Promulgated on 17 June 2008, it creates new Community Art Academies in various municipalities of the Republic of Guatemala, with the aim of encouraging the arts in indigenous communities.

58. **Ministerial Agreement 445-2005:** Award of title of Protector of the Nature of the Earth. The Ministry of the Environment and Natural Resources, through the Unit for Gender Equity and Multiculturalism, as part of the commemoration of the International Day of Indigenous Peoples, institutes the award of "NATIONAL RECOGNITION AS PROTECTOR OF THE NATURE OF THE EARTH" to individuals, groups or legal entities belonging to any one of the ethnic groups of the indigenous peoples of Guatemala who have distinguished themselves in an exemplary manner by their contributions to the improvement, maintenance or sustainable development of the environment.

### **In the educational field**

59. **Ministerial Agreement 1083-2004:** Mastery of the local language. It indicates that the Ministry of Education will establish a technical, objective and transparent procedure for the

recruitment, selection and hiring on a temporary basis of staff to assist the Ministry of Education in its different tasks, as far as its budget allows; it will be based on an objective system of grades, taking into account academic qualifications, work experience, cognitive skills, residence and mastery of the local language, where appropriate.

60. In this regard mastery of the local language implies that in cases where a majority of the population speak Maya, knowledge of the language must be proved by written evidence provided by the Directorate General of Bilingual Education (DIGEBI) and will be worth 10 points in addition to the grade obtained.

61. **Ministerial Agreement 35-2005:** Authorises the Basic National Curriculum for the Primary Education Level. This accord was formulated as part of the process of transforming the curriculum, which is geared towards a new vision of the country in accordance with the Educational Reform and the aspirations expressed in the Peace Agreements. In substance it aims at the promotion of bilingualism and multilingualism to foster intercultural dialogue.

62. This new curriculum is geared to ensuring that students respect, know and promote the culture and the world vision of the Garifuna, Maya and Xinca peoples and other peoples of the world. It has two central themes: 1) Multiculturalism and interculturalism and 2) Gender, ethnic and social equity.

63. One of its most important features is that the Basic National Curriculum at the fourth level requires two national languages and one international one on the part of all students in the national system of education, whether public or private. It sets as goals for its implementation coverage of the first and second year of primary by 2005; the fourth and fifth by 2006; and the fifth and sixth, to complete the primary by 2007.

64. **Ministerial Agreement 759-2005:** Revises the substance of Ministerial Agreement 930 on the wearing of indigenous costume in the official and private educational establishments of the Republic (14 November 2003).

65. This accord stipulates that non-compliance with its provisions on the part of Ministry of Education personnel will be considered as a serious misdemeanour giving rise to the penalty established in article 74, no.3 of the Civil Service Act, Decree 1748 of the Congress of the Republic and article 80, no.3 of its Regulations, Government Agreement 18-98. It also stipulates that centres of private education that contravene this provision shall be penalised in accordance with the provisions of article 81 of the Regulations of the National Education Act. Government Agreement 13-77.

66. **Ministerial Agreement 134-2007:** The Ministry of Education sets the national education standards at the pre-primary and primary levels of the national education system, which must ensure an equitable education taking national idiosyncracies into account and avoiding all forms of exclusion.

### 3. Institutional machinery

#### *Presidential Commission on Discrimination and Racism (CODISRA)*

67. In the first year (2002), CODISRA had no budgetary allocation. It was from 2003 that it was allocated a specific sum, which has been increased since that year.

**Table 3**

#### **CODISRA's budget, 2003-2008**

<i>Year</i>	<i>Amount in quetzals</i>
2003	2,500,000,00
2004	3,050,000,00
2005	4,829,788,00
2006	10,000,000,00
2007	10,000,000,00
2008	12,000,000,00

*Source:* CODISRA, Financial Directorate

68. CODISRA's budget has given priority to awareness-raising and promoting a change of mentality, so as to eliminate prejudices and stereotypes that hinder co-existence among the different peoples that inhabit the State of Guatemala in obedience to principles of respect, equity and equality. To this end CODISRA has organised dialogues, workshops, meetings, diplomas and other activities, with the participation of representatives of indigenous peoples' organisations, State institutions, civil society bodies and individuals committed to the struggle against discrimination and racism.

69. This task is performed in co-ordination with and supported by five regional offices situated in Poptun, Petén; Puerto Barrios, Izabal; Chiquimulilla, Santa Rosa; Huehuetenango and Quetzaltenango, following an annual plan of operation derived from CODISRA's mandate and the Long-Term Strategic Plan.

70. Six years on from the Government Agreement that created it (October 2002), CODISRA has witnessed gradual growth in its human, technical and operative capacity also reflected in its growing presence and influence as an institution. The year 2007 saw a changeover of commissioners, under Government Agreement 07-2007, which furthered the growing strength of the institution.

71. Among the main results achieved by CODISRA are:

- a) The formulation and publication of the Public Policy on Co-existence and the Elimination of Racism and Racial Discrimination;
- b) The consolidation of a *National Network for Co-existence* and its follow-up;
- c) The ongoing process of disseminating the policy in society;



d) The launch of a *National Campaign for Co-existence*, which pursues the process begun in 2005, using radio and television spots. In 2006 also there were radio spots in four Mayan languages, using 11 radio transmitters covering 7 departments;

e) The inclusion of actions by institutions that are part of the Social Cabinet. Specifically, the following institutions reported having included actions from the Policy in their plans of operation: the Ministry of Education, specifically the Vice-Ministry for Bilingual and Intercultural Education; the Secretariat of the First Lady's Social Works (SOSEP); the Presidential Secretariat for Women (SEPREM); the Ministry of Culture and Sport, National Fund for Peace (FONAPAZ); the Secretariat for Agrarian Affairs; the Ministry of Public Health and Social Assistance, Secretariat for Food and Nutritional Security; the Ministry of Agriculture, Livestock and Food; the Ministry of Communications, Infrastructure and Housing;

f) Diploma courses against discrimination and racism in the departments of Quetzaltenango, Jalapa, Jutiapa, Chimaltenango, Retalhuleu and Solola and in the municipalities of Livingstone and Antigua Guatemala;

g) A diploma course was started for civil servants, those responsible for justice and representatives of civil society organisations, with the aim of raising awareness among such officials and eliminating discriminatory and racist practices;

h) In co-operation with Mayan organisations (Xelju Cultural Association), the United Nations Declaration on the Rights of Indigenous Peoples has been disseminated to the representatives of the Mam and K'iche peoples;

i) Training for delegates of the Xinca community in the department of Jutiapa to expand their knowledge of customary law, this training being the first they have received to resolve legal conflicts in the region;

j) Follow-up to the strengthening of the technical and human capacity of the CODISRA staff. At first there were five persons, acting as commissioners; now the institution has 58 persons working as directors, technical directors, assistants etc.;

k) The opening in 2005 of the Regional Office in Quetzaltenango. In the first months of 2006 four more offices were opened, situated in Santa Rosa, Izabal, Petén and Huehuetenango. Each regional office has as a minimum a director, a bilingual technician and an administrative assistant.

*Follow-up to the Public Policy for Co-existence and the Elimination of Racism and Racial Discrimination*

72. This policy, promoted by CODISRA, was made public in October 2006. Various social entities and institutions were involved in identifying the needs and designing and formulating the public policy, using different methodologies. The result of this process was the draft of a study entitled "Joint formulation of a proposal for a State policy against Discrimination and Racism against Indigenous Peoples in Guatemala", while at the same time the "Diagnosis of Racism in Guatemala", a multidisciplinary research project, was carried out by the Vice-Presidency of the Republic.

73. The aim of this public policy is to contribute to the transition from a homogenous, monocultural State to pluralist State, to the end that the indigenous peoples, social and cultural groups and citizens do not suffer any kind of racial discrimination or economic or social exclusion and feel they have equal rights as citizens whatever be their culture, ethnic group or gender.

74. CODISRA has publicised the policy to more than two thousand persons nationally, among them officials of the public administration, leaders of organisations of indigenous peoples and civil society, as well as students in middle-level and higher education. By thus publicising the policy we are just beginning to make it known to the civil servants whose job it is to implement and execute it.

*National Campaign for Co-existence in Cultural Diversity*

75. The State of Guatemala, through the intermediary of CODISRA, designed a strategic plan, 2005-2025, for the elaboration and implementation of the Public Policy for Co-existence and the Elimination of Racism and Racial Discrimination. One of the chief activities undertaken in this regard is the campaign of social awareness-raising.

76. The first stage of this mass campaign was officially launched in March 2008 by radio, television and the press. This first stage lasted for three months (13 March to 13 June), the aim being to raise the awareness of young people in urban centres and students in middle-level and higher education. Underpinning the endeavour were the results of the study entitled "Types of prejudice in the Guatemalan university population with a comparative analysis of four universities", which was included in the Diagnosis of Racism in Guatemala.

77. The aims of the campaign are:

- a) To make Guatemalan society aware of the need to eliminate racism and discrimination;
- b) To generate currents of opinion and a change of attitudes towards the Xinca, Garifuna and Maya peoples for the sake of healthy social co-existence.

78. The campaign has focused on the following:

- a) Offering the Maya, Garifuna, Xinca and Ladino peoples healthy co-existence at all levels and in all areas of national life;
- b) Making visible the racial, ethnic and gender discrimination that affects indigenous peoples, especially women;
- c) Promoting aspects of indigenous peoples' cultures to ensure that their national identity is recognised and justly valued;
- d) Giving the elimination of discrimination and racism its rightful place through messages that are non-confrontational, positive, concise, clear and direct.

79. The target audience that is being addressed is:
- a) Children, young people, men and women of different socio-linguistic communities;
  - b) State institutions; civil servants;
  - c) Non-governmental organisations; leaders of civil society;
  - d) Educational bodies; students at the primary, comprehensive and higher levels;
  - e) The media; media directors and editors.

*CODISRA's co-operation agreements with other State and non-State institutions*

80. **The Indigenous Development Fund (FODIGUA).** January 2004. The objective is to strengthen inter-institutional co-operation so that the institutions charged with furthering the comprehensive development of indigenous peoples and eradicating discrimination can act jointly and achieve a national and international impact.

81. **Myrna Mack Foundation. January 2004.** The objective is to establish criteria for co-ordination and action guidelines in the execution of the project "Strategic Legal Action".

82. **Paq'uch Coalition.** June 2004. The objective is to develop joint political action, education and activities of interest for the eradication of racism and discrimination against indigenous peoples.

83. **The project entitled "Mayan Society's Human Rights and Participation in Combating Racism and Discrimination in Guatemala's Western Altiplano"**. November 2004. The objectives are: 1) To inform civil society about the work of CODISRA; 2) To keep the Commission informed of the situation of racism and discrimination in the western Altiplano of Guatemala by regular periodic reports.

84. **United Nations Educational, Scientific and Cultural Organisation (UNESCO).** June 2006. An agreement was signed to support and encourage policies and strategies to combat discrimination and racism, basically in relation to the joint drafting of proposals in the field of the education of indigenous peoples; to promote action in support of the Public Policy for Harmonious Co-existence; and to pursue and facilitate work in the areas of education, gender equality, cultural diversity and pluralism, communications and information.

85. **The Guatemalan Office of the United Nations High Commissioner for Human Rights.** April 2008. The objective is to contribute to the eradication of racism and ethnic and gender discrimination, particularly against indigenous women, by strategic, legal and political action and action through the media. The main tasks are: 1) To strengthen the Office for the Defence of Indigenous Women's Rights and CODISRA as institutions in the field of communications, advice on monitoring and legal action, investigation and analysis; 2) To exert influence on legislation, public policies and machinery for preventing and punishing racism and ethnic and gender discrimination; 3) To advise on the follow-up of cases in order to activate mechanisms

for preventing and punishing ethnic and gender discrimination; 4) To support the campaign for healthy co-existence in cultural diversity, with emphasis on the situation of indigenous women.

*Publications*

86. As part of the process of awareness-raising, dissemination and communication that CODISRA is involved in, the following publications have been issued:

- a) ILO Convention No.169 concerning Indigenous and Tribal Peoples in Independent Countries;
- b) International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- c) Guide to methodology for developing the outline of a curriculum on multiculturalism;
- d) Public Policy for Harmonious Co-existence and the Elimination of Racism;
- e) Report of the State of Guatemala to CERD, 1997-2004
- f) Recommendations of CERD to the State of Guatemala;
- g) Report of the Special Rapporteur on the situation of the human rights and fundamental freedoms of the indigenous peoples;
- h) Hands-on solidarity programmes, “Youth for Peace”;
- i) Racism, racial discrimination, xenophobia and all forms of discrimination. Report of the Special Rapporteur on Contemporary Forms of Racism.
- j) United Nations Declaration on the Rights of Indigenous Peoples;
- k) Guide to committed journalism;
- l) The outlawing of racial discrimination and the institutional route to combating it;
- m) Notes on discrimination as an offence;
- n) Building harmonious co-existence and eliminating racism.

*Handling of cases of discrimination*

87. Since 2006, the Legal Unit of CODISRA has been assisting those who bring accusations of discrimination to it and following up their cases. Previously it merely transmitted the accusations it received to the relevant institutions. See the tables in the annexes.

88. Of the cases dealt with, those concluded by an administrative resolution concern mostly acts committed by civil servants or public officials. The concrete action adopted in regard to

these cases has taken account of the administrative procedures of the institutions where the defendants work and in this way administrative penalties have been imposed such as: public apologies made in the institution by the defendants, dismissals, mutual agreements when educational establishments whether public or private have been involved, because they did not permit the indigenous students to wear indigenous costume or speak their mother tongue.

89. By way of immediate action on the part of CODISRA to eradicate discrimination or obtain the cessation of the discriminatory action against its victims, workshops or campaigns have been organised in co-ordination with the institutions concerned for the elimination of this offence.

90. Cases that have been shelved or on which the file has been closed are those where accusations of discrimination have been made to CODISRA, but during the follow-up process the victims have failed to recontact the Commission, despite many efforts to find them.

91. Cases that have been rejected or on which the Attorney-General's Office has closed the file are mainly those abandoned by the victims or defined as concerning another offence, as for example, threats, personal aggression and/or injury.

92. In the case of arbitration undertaken by the Attorney-General's Office or the Justices of the Peace, most of the victims were compensated for damages and offered a public apology on the part of the defendant.

*Office for the Defence of Indigenous Women's Rights (DEMI)*

93. To strengthen this institution, from October 2007 by Government Agreement No.442-2007 it was made a department of the Presidency of the Republic with administrative, technical and financial management functions so as to deal with the particular situations where indigenous women find themselves vulnerable, defenceless or discriminated against. Previously DEMI was a department of the Presidential Commission for Co-ordinating Executive Policy in the Field of Human Rights (COPREDEH).

94. DEMI works on defining, developing and implementing action, strategy and modalities for ensuring that the rights of indigenous women are recognised, respected, promoted and applied and on exerting its political influence on public policy and draft legislation.

95. The budget of DEMI was increased from 1,774,009.00 quetzals in 2004 to 4,555,240.00 quetzals in 2007.

96. DEMI has six regional offices situated in the departments of Huehuetenango, Quiché, Suchitepéquez, Quetzaltenango, Alta Verapaz and Petén. They are staffed by a representative of the Ombudsman (Regional Delegate), a legal and a social counsellor and linguistic assistants as required by the region.

97. At present DEMI is working in the following areas:

*Political impact*

98. As far as political impact is concerned, DEMI has exerted its influence on behalf of indigenous women in the following areas:

a) Support for public policies and/or laws in favour of indigenous women, debate, analysis of diagnoses, studies, programmes, consultations designed to assist indigenous women and peoples;

b) An institutional political agreement with the National Centre for Female Domestic Workers (CENTRACAP) to enhance its impact on the draft law on female domestic workers;

c) Participation in the revision of the proposal for a public policy on migrants, mainly insofar as it directly affects indigenous peoples;

d) Involvement, together with SEPREM, in the process of assessment and updating of the Policy for the Advancement and Development of Guatemalan Women and the Opportunities Plan 2001-2006, to highlight particular situations of vulnerability, defencelessness and discrimination against indigenous women and to provide inputs to improve their quality of life;

e) Counselling and accompaniment for indigenous women who take an active part in local, municipal and departmental development councils. DEMI also counsels women who take part in the Municipal Women's Commissions to ensure the adoption of projects of benefit to women, particularly indigenous women.

99. Work has been done on publicity, awareness-raising and training, in co-ordination with women's and indigenous peoples' organisations, in public forums and colloquiums in various departments of the country, concerning the rights of women domestic workers, the rights of indigenous women, Mayan women and public policies in the region, discrimination and racism. DEMI has done training and communication work to prevent violence against women and was involved in the National Congress of Indigenous Women in September 2006.

100. In 2007, DEMI facilitated the drafting of an Itemised Agenda for Maya, Garifuna and Xinca Women which comprises a set of intersecting strategies and action guidelines for the advancement of indigenous women in Guatemala. Women leaders and representatives of indigenous women's organisations and State institutions took part in this work. The itemised agenda includes the main proposals and requests gathered from organisations of Mayan, Garifuna and Xinca women, put forward with a view to improving their living conditions.

101. The aims of this itemised agenda are:

a) To highlight the situation of exclusion and discrimination afflicting indigenous women specifically and to foster gender equity and respect for their cultural identity so as to improve their quality of life in the public and private sphere, on the basis of State implementation of cross-cutting and subject area strategies;

b) To accord recognition and true value to the contribution of Maya, Garifuna and Xinca women to preserving culture and building peace, democracy and over-all development in our country.

102. The subject areas included in the itemised agenda to meet the specific demands of Maya, Garifuna and Xinca women are:

**Table 4**

**Subject areas of the Itemised Agenda for Maya, Garifuna and Xinca Women**

<i>SUBJECT AREA</i>	<i>STRATEGY</i>
<b>1. Economy, Labour and migration</b>	Economic policies to recognise and highlight women's work
	Productive investment.
	Programmes and projects to generate local employment.
	Legal, social and economic guarantees for women in the workplace on a footing of equality
	Guarantees of comprehensive care and protection for migrant women.
<b>2. Education from a perspective of cultural identity</b>	Integrating into the national education system the philosophy, principles and values of the indigenous peoples' culture and women's contribution
	Strengthening the Vice-Ministry for Bilingual and Intercultural Education, thanks to the participation of Maya Garifuna and Xinca women
	Access for women to all levels of training in the national education system and their continued presence therein
<b>3. General health from a perspective of cultural identity</b>	Permanent access to general health services for women, on the basis of their cultural identity
	Rehabilitation and practice of traditional medicine
	Mental health programmes for women victims of internecine armed conflict.
	Programmes to reduce maternal and infant mortality.
	Sexual and reproductive health programmes.
<b>4. Land, housing and natural resources</b>	Designing an agrarian policy incorporating cultural identity and gender equity
	Access for women to land, territory and productive financing.
	Access to individual housing on the basis of gender equity and respect for cultural identity
	A policy to ensure respect for natural resources and indigenous peoples' relationship to them

<i>SUBJECT AREA</i>	<i>STRATEGY</i>
<b>5. Political participation</b>	Creating an autonomous institute for the political training of indigenous women
.	Active political participation by women in decision-making at the local municipal, departmental and national levels
.	Effective participation by women in the formulation of public policy
.	Promoting women's participation in social auditing of State programmes and projects
<b>6. Access to justice</b>	Access to justice for women on the basis of their cultural identity
.	Recognition and respect for the specific rights of women
.	Guaranteeing the rights of indigenous women held in detention centres
.	Compensation for victims of the internal conflict, with special emphasis on women
	Encouraging the denunciation of acts of discrimination and violation of the rights of indigenous women
<b>.7. Tackling racism and violence against women</b>	Transforming models of social conduct rooted in racism and discrimination
	Preventing, punishing and eradicating all forms of violence against women.
	Guaranteeing the security of women as citizens.
<b>8. Spirituality and sacred places</b>	Fostering and implementing mechanisms for the rehabilitation, respect for and care of Maya, Garifuna and Xinca sacred places and spirituality
.	Fostering cultural identity rooted in the Maya, Garifuna and Xinca women's own world vision
<b>9. Institutional mechanisms for the protection and development of Maya, Garifuna and Xinca women</b>	Financial, technical and political strengthening of the Office for the Defence of Indigenous Women's Rights
	Strengthening the Presidential Secretariat for Women, to provide adequate care for Maya, Garifuna and Xinca women.

*Prevention-oriented training and communication*

103. DEMI works on training, promotion, publicity and awareness-raising with groups of indigenous women regarding their specific rights and means of protection in order to empower them. In 2005, a module was created entitled "Multiculturalism with a gender focus", as was the module entitled "The civil and political rights of women" in collaboration with the National Forum for Women.



104. A strategy of institutional communication was elaborated to showcase the work of DEMI, involving: 1) The design and printing of promotional material concerning the services of the institution (posters, three-page flyers, files, vinyl folders); 2) The production of 10 radio slots on the rights of indigenous women; 3) Production of 10 mini-programmes on the rights of indigenous women. This strategy has proved positive where indigenous women are concerned, since over the last two years the number of women coming to request assistance has gradually been increasing.

*Studies and reports drafted*

105. Second thematic report, “*Access by indigenous women to the official justice system (2005-2006)*”, submitted in 2007. The main aim of this report was to identify and assess the problems faced by indigenous women in seeking access to justice and the principal causes and effects of those problems.

106. *Study on domestic violence against indigenous women*. This study’s purpose was to deepen our knowledge of the causes, manifestations and consequences of the cycle of domestic violence and the factors that feed it, so as to come up with proposals and impact strategies to prevent and eradicate violence against indigenous women.

107. “*The needs and problems of indigenous women serving a sentence in detention*” (publication pending). In co-ordination with the Women’s Unit of the Institute of Public Criminal Defence, DEMI undertook a diagnosis with the aim of producing information that would lead to proposals in support of the penitentiary system and adopting measures that would contribute to improving the situation of indigenous women in the Female Guidance Centre (COF). It also aimed to define policies with an intercultural and gender focus that would promote equity and respect for these women.

*Case work*

108. DEMI has developed a model of care, counselling and comprehensive follow-up for indigenous women whose rights have been violated that offers them free social, psychological and legal services. The work concerned involves: the initial reception, counselling, accompaniment, arbitration and/or mediation, psychological support, assistance, legal and social aid for indigenous women who have been victims of violations of their fundamental rights, principally because of their gender and ethnicity. This comprehensive assistance is given in their mother tongue.

109. To this end, care models incorporating features of the indigenous peoples’ culture have been elaborated and implemented.

**Table 5**

**Number of cases dealt with by units of DEMI**

<i>Service provided</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008*</i>
Legal unit	766	455	605	563	368
Psychological Unit	40	184	0	125	
Social Unit	566	1367	902	870	569
<b>Total</b>	<b>1,372</b>	<b>2,006</b>	<b>1,507</b>	<b>1,558</b>	<b>936</b>

(\*) January-June 2008

*Social assistance*

110. In this unit the first contact takes place with the client, to find out what her problems are in order to give her care consonant with her needs. This includes procedures and action for the short-term resolution of her situation and involves an analysis of the case, accompaniment, counselling (given in all cases), a request for measures of protection from the relevant authorities and, where appropriate, mediation and arbitration or transmittal to begin legal proceedings, in which the women's ability to press charges can be enhanced.

*Psychological assistance*

111. This unit began work in mid-2004. The psychological care given is designed to be culturally relevant to indigenous women whose fundamental rights have been violated, specifically in cases of domestic violence. Basic guidelines have been used drawing on the indigenous world vision to facilitate prevention and the recognition of their cultural values and principles, thus contributing to improving their quality of life. Indigenous knowledge and skills are incorporated, as are also elements of the culture, the language and the spiritual beliefs of the indigenous peoples.

112. Psychological assistance is offered in the regions of Alta Verapaz, El Quiché, Quetzaltenango, Huehuetenango, Suchitepéquez, El Petén and Guatemala City.

*Guatemalan Indigenous Development Fund*

113. The Guatemalan Indigenous Development Fund (FODIGUA) is a decentralised national entity with a bipartite structure involving government and indigenous peoples' organisations. Geographically it covers the various linguistic regions and its aim is to support and strengthen the process of human development that is sustained and managed by the indigenous peoples themselves in their communities and organisations as part of their world vision for the improvement of their quality of life through the execution and financing of their economic, social and cultural programmes and projects.

114. The Fund was created as a technical and financial mechanism for meeting the priority needs of the indigenous peoples. Its objectives include promoting, supporting and funding projects for social development, social production, infrastructure, institution strengthening,

human resources training and soliciting national and international financial resources and technical assistance.

115. The Fund has projects to assist indigenous communities with scarce resources, which are divided into the following programmes:

116. ***Kemb'al Tz'ib programme.*** This helps children and young people in rural indigenous communities to understand and use computer programmes, strengthening their identity as they learn the symbols, the terminology and the substance of their ancestral culture.

117. This programme finances, supports and develops computer laboratories in indigenous communities, in co-ordination with centres of public education and civil organisations, with the aim of producing a sustainable impact where ethnic cultural identity among the younger generations is concerned, allowing them to recreate their culture by combining the ancient and the modern.

118. ***Ri Chak Winaq programme.*** The peoples' work. This programme offers technical and financial support to groups of men and women engaged in production in agriculture and livestock-raising and crafts. It involves the use of revolving funds, seed capital and micro credit intended as a source of sustainable income and leverage for local, regional and extra-regional commercial activities. In the long term it involves strategic productive action to raise the living standards of persons with scarce resources in rural indigenous areas through innovation and promoting innovative wealth-generating initiatives.

119. ***Utzilal Winaq programme.*** The peoples' well-being. The programme comprises projects contributing to the achievement of conditions of preventive and curative health care that translate into physical, mental and social well-being, facilitating recourse to either traditional or modern preventive and curative methods. It proposes a re-evaluation of the role of midwives who, in addition to assisting mothers in childbirth, constitute a source of ancestral knowledge and have moral authority in family and maternal counselling. The programme proposes to raise the profile of midwives, giving them good quality technical training and reinforcing and researching traditional treatments for health problems.

120. ***Uchuq'ab' Tinamit programme.*** The peoples' power. This programme promotes action to enhance indigenous peoples' strategic opportunities. Such opportunities can be found in civil society or in State institutions, as a result of human and social resource training. The programme includes political training for personnel involved in projects financed by the Fund to keep them abreast of progress in the national and international indigenous movement and to support their cultural practices, such as using their language, using the Maya calendar, wearing their costumes and keeping to their daily customs and spiritual beliefs.

**Table 6**  
**FODIGUA – Beneficiaries by programme in 2006**

<i>Programme</i>	<i>Beneficiaries</i>		
	<i>Men</i>	<i>Women</i>	<i>Total</i>
Utzilal Winaq		1,078	1,078
Ri Chak Winaq	959	701	1,660
Kemb'al Tz'ib'	2,292	2,281	4,573
Ri Uchuq'ab' Winaq	300	440	740
<b>Total</b>	<b>3,351</b>	<b>4,500</b>	<b>8,051</b>

Source: FODIGUA

**Table 7**  
**FODIGUA – Beneficiaries by programme in 2007**

<i>Programme</i>	<i>Beneficiarios</i>		
	<i>Number of projects</i>	<i>Men</i>	<i>Women</i>
Uchuq'ab' Tinamit	8	438	486
Utzilal Winaq	3	47	221
Kemb'al Tz'ib'	16	2,060	1,981
Ri Chak Winaq	21	507	910
<b>Total</b>	<b>48</b>	<b>3,052</b>	<b>3,598</b>

Source: FODIGUA

*Indigenous Inter-institutional State Co-ordinator*

121. The Indigenous Inter-institutional State Co-ordinator (CIIE) is a political body for co-ordination and consultation made up of permanent or substitute representatives of State institutions, chiefly organs of the Executive, whose mandate specifically concerns indigenous peoples. At present its structure is as follows: plenary, specific commissions, co-ordinating committee, executive secretariat.

122. As a co-ordinating body concerned with indigenous affairs it has the widest scope of any, since it is less institutionalised in formal terms, that is to say it is not a legal entity, but exists by the will of its members. Its scope is so wide because it aims to bring about a total redefinition of the way in which the State makes public policy, seeking to introduce the notions of ethnic equity and cultural identity into all institutions, not just those considered as directly responsible for indigenous matters.

123. At present it receives infrastructural support from CODISRA, as well as operational assistance for services such as lighting, water supply, telephony and messaging.

*Promotion and impact*

124. CIIE took part in various activities to publicise the work of the Co-ordinator and was active in exerting its influence on occasion.

125. With the aim of strengthening the CIIE and its links with social organisations, the Co-ordinator, with funding from the Strategic Support Project of the Offices of the President and Vice-President of the Republic, organised a lecture in February addressed principally to indigenous organisations, entitled: “*How to confront poverty and discrimination and mobilise the social and cultural capital of the indigenous peoples?*” and given by Dr. Bernardo Kliksberg.

126. Dr. Kliksberg’s message had a positive impact on the participants and contributed to making the existence of the CIIE known throughout Guatemala. The lecture was broadcast on 16 radio stations and CODISRA made a video recording of it. This event contributed to the objective of raising the Guatemalan public’s awareness of the social capital that the indigenous peoples of our country represent.

127. *Master’s degree in health services sponsored by the School of Government.* The Executive Secretariat of the CIIE took part in preparatory meetings for the establishment of a master’s degree in health services, sponsored by the School of Government, to propose the inclusion of the cultural and linguistic identity aspect of health services as a fundamental component of the master’s degree.

128. *Joint participation in the Mayanisation and Daily Life project.* In November 2007, FLACSO-CIRMA in co-ordination with the Executive Secretariat of the CIIE organised the ceremonial presentation of the documents “Mayanisation and Daily Life” and “Multicultural Ideology in Guatemalan Society”.

129. This was part of the follow-up to the dialogues that took place in 2006 with some of the members of CIIE, with the aim of pinpointing Guatemalan thinking, at a sectoral level, regarding the process of Mayanisation in Guatemala.

130. *Analytical meetings on the question of consultations with the indigenous peoples.* The Plenary of CIIE formed a special committee to analyse the question of consultations with the indigenous peoples and the committee prepared a comparative analysis of the different proposals.

131. *Analytical meetings on the question of rural development with ethnic, cultural and gender relevance.* In connexion with the debate on rural development in the Congress of the Republic, CIIE held a series of analytical meetings run by a special committee set up by the plenary of CIIE and the Executive Secretariat in order to contribute to drafting a law including the aspects of ethnicity, culture and gender.

132. CIIE has produced the following documents:

a) *How to strengthen the social fabric in a multicultural context*, for the specific use of the Committee on the Social Fabric;

- b) *CIIE Plan of Social Communication* establishes CIIE's strategy of social communication and promotion;
- c) *Are we windows on the indigenous world?*
- d) *Analytical table of common subjects*. Subjects that occur in the four round-table dialogues. This was a one-off document drafted for the use of the members of CIIE;
- e) *Guidelines and criteria for promoting ethno-cultural inclusion, gender equity and environmental sustainability in cases of natural disaster*.

**Table 8****Institutions members of CIIE, June 2008**

1. Guatemalan Academy of Mayan Languages, ALMG
2. Consultancy on Interculturalism, Secretariat of the President's Office for Executive Co-ordination, SCEP
3. Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala, CODISRA
4. Indigenous Peoples' Council, FONAPAZ
5. Academic Co-ordination of the Diploma in Indigenous Peoples' Rights and Convention 169, INAP
6. Office for the Defence of Indigenous Women's Rights, DEMI
7. Office of the Ombudsman for Indigenous Peoples, DEPI-PDH
8. Department of Indigenous Peoples, Ministry of Labour, MINTRAB
9. Central-American Deputation from the State of Guatemala, PARLACEN
10. Directorate of Mayan Forestry Management, INAB
11. Directorate of Indigenous Peoples, SEPAZ
12. General Directorate of Intercultural Bilingual Education, DIGEBI
13. General Directorate of Migration (official representative)
14. Ministry of Labour and Social Welfare, MINTRAB (official representative)
15. Bilingual Literacy Programme, CONALFA
16. National Programme of Popular, Traditional and Alternative Medicine, Ministry of Public Health and Social Assistance
17. National Compensation Programme, PNR
18. Ministry of Culture and Sport, MINCUDE (Deputy Director's Office for Cultures)
19. Deputy Director's Office, Presidential Commission on Human Rights, COPREDEH
20. Deputy Manager's Office, National Institute for Municipal Promotion, INFOM (official representative)
21. Unit for Interculturalism and Gender, DIGEF-MINEDUC
22. Unit for Co-ordination with Indigenous Peoples and Civil Society, CONAP
23. Indigenous Peoples Unit, SEGEPLAN
24. Vice-Ministry of Bilingual and Intercultural Education (official representative)
25. First Vice-Ministry for Culture and Sport (official representative)
26. Division on Multiculturalism(DMLT), Deputy Director General for the Prevention of Crime, PNC

*Institutional offices within ministries, secretariats and councils*

133. Institutions dealing with indigenous affairs are of two kinds:

- a) Units or directorates created within ministries, secretariats or councils specifically to deal with indigenous peoples;
- b) Commissions that include the issue on the agenda of bodies whose specific purpose is not dealing with indigenous affairs.

134. At present within the apparatus of the State we have the following bodies whose work concerns the human rights of indigenous peoples:

**Table 9**  
**Interculturalism**

<i>Consultancy on Interculturalism</i> Secretariat of the President's Office for Executive Co-ordination (SCEP)	Began work in July 2005 Has no founding agreement
<i>Advisory Council of the Presidency of the Republic on Indigenous Peoples and Pluralism</i>	Government Agreement 96-2005
<i>Unit for Interculturalism and Gender</i> General Directorate of Physical Education (DIGEF) Ministry of Education	Began in 2005. Initiative of the Deputy Bilingual and Intercultural Office. No founding agreement.
<i>Division on Multiculturalism</i> Deputy Director General for the Prevention of Crime National Civil Police	Government Agreement 662-2005
<i>Maya, Garifuna and Xinca Peoples Unit</i> Ministry of the Environment and Natural Resources	Ministerial Agreement 402-2004 of 9 September 2004
<i>Academic Co-ordination of the Diploma in Indigenous Peoples' Rights and Convention 169</i>	Began in 2004 as part of the education agenda. No founding agreement.
<i>Indigenous Peoples Unit</i> National Council on Protected Areas (CONAP)	Resolution ALC/15-2004 and 244/2005
<i>Ethnicity and Gender Unit</i> National Institute for Municipal Promotion (INFOM)	Being set up at present

<i>Indigenous Peoples and Interculturalism Unit</i> President's General Secretariat for Planning and Development	Began in February 2005. No founding agreement.
<i>Indigenous District Attorneys' Offices, Attorney General's Office</i> Agency for the Strengthening Of Civil Society	Founding Agreement of the Agency, no.49-2005 These offices have not yet been set up for lack of Agency resources.
<i>Indigenous Peoples' Council</i> National Peace Fund (FONAPAZ)	Government Agreement 9-2006 of the Executive Directorate
Co-ordination of follow-up to the Public Agenda on Indigenous Peoples in the Peace Agreements 2005-2012	Began in September 2005.

135. The means usually employed for the creation of such bodies are internal institutional accords, whether ministerial agreements or decisions in meetings of the authorities that are finally registered in an official document, and with such minimal support their installation can begin.

136. It is important to realise that these institutions have been characterised by low status, little or no budgetary allocation, few human resources and little capacity to produce anything binding. Nevertheless, as has been shown, they have taken progressive action to increase their budgets and to achieve greater effectiveness and influence in existing institutional affairs.

#### *Challenges for the future*

137. What is needed is follow-up and implementation within the State apparatus of the Public Policy for Co-existence and the Elimination of Racism and Discrimination, as well as appropriate monitoring and assessment.

138. To ensure progress what is lacking is budgetary allocation in terms of the action required by each of the policies as well as efforts to galvanise and raise the awareness of those responsible in the different government departments, where there is an evident failure to incorporate multiculturalism.

139. The institutions created have been volatile and prone to disappear. For example, of the total of seven institutions created to date, two have disappeared by the same means by which they were brought to birth – by decision of the higher authority of the body concerned. We need then to strengthen the institutional monitoring of the human rights of the indigenous people, as a commitment on the part of the State, with sufficient funds to make it sustainable, to have an impact and to create mandatory processes.

140. Although a variety of actions have been taken, they have not contributed in the required degree to social change or to the formation of opinion among the public or in the sectors (parliamentarians, journalists, officials in the system of justice) that would be committed and active in its recognition of the cultural diversity of the country, with the aim of eradicating discrimination and racism.



## II. ARTICLE 3: MEASURES TO ELIMINATE APARTHEID

141. As explained in earlier reports, the State of Guatemala has legislation that guarantees to all its inhabitants, regardless of religion, sex, race, language, opinion, ethnic origin or social group, full equality of rights.

142. The Political Constitution of the Republic establishes the right of equality: “In Guatemala all human beings are free and equal in dignity and rights. Men and women, whatever their civil status, have equal opportunities and responsibilities. No one may be subjected to servitude or any other condition that diminishes their dignity. Human beings must preserve brotherly conduct with one another.”

143. The Constitution of the Republic also recognises the different cultures and peoples existing in the State of Guatemala (article 66): “Guatemala is made up of diverse ethnic groups among them the indigenous groups of Mayan ancestry. The State recognises, respects and promotes their lifestyles, customs, traditions, forms of social organisation, the wearing of indigenous costume by men and women, languages and dialects”.

144. On 2 May 2005, by Legislative Decree No.39-2005, the State of Guatemala acceded to the International Convention on the Suppression and Punishment of the Crime of Apartheid.

## III. ARTICLE 4: MEASURES AGAINST INCITEMENT TO DISCRIMINATION

### OBSERVATIONS AND RECOMMENDATIONS OF THE COMMITTEE

*Paragraph 13. While the Committee recognises that the classification of discrimination as an offence under article 202 bis of the Criminal Code constitutes legal progress, it regrets that there is no domestic legislation that specifically prohibits and provides sanctions for racial discrimination (art.4(a)).*

*The Committee recommends that the State party adopt specific legislation classifying as a punishable act any dissemination of ideas based on notions of superiority or racial hatred, incitement to racial discrimination, and violent acts directed against indigenous peoples and persons of African descent in the State party.*

*Paragraph 16. The Committee notes with concern the low level of participation, especially by indigenous women, in political life and in particular the lack of representation in Congress of the Xinca and Garifuna peoples. The Committee is likewise concerned by the absence of any specific reference to indigenous political participation in the Elections and Political Parties Act (art.5(c)).*

*The Committee, bearing in mind paragraph 4 (d) of its general recommendation 23, recommends that the State party redouble its efforts to ensure the full participation of indigenous peoples, especially indigenous women, in public affairs and that it take effective measures to ensure that all indigenous peoples, particularly the Xinca and Garifuna, participate at all levels. It also urges that the Elections and Political Parties Act be amended with a view to promoting the political participation of all indigenous peoples.*

**Paragraph 23.** *The Committee is greatly concerned by attitudes of contempt and rejection displayed by the communications media towards indigenous peoples. The Committee also wishes to express its concern at the fact that community radio stations have a broadcasting range of less than 1 kilometre, thus restricting the enjoyment of this medium by indigenous communities (art.7).*

*The Committee recommends that the State party take appropriate measures to combat racial prejudice that can lead to racial discrimination in the media. It also recommends that a multicultural approach be adopted in the local, community and free communication media, in terms of their content and supervisory structures, and ensure in particular the proper functioning of community radio stations so that they reach the largest possible number of indigenous communities.*

**Paragraph 24.** *The Committee recommends that the State party accelerate adoption of the bill authorising the Government to recognise the competence of the Committee by means of the declaration provided for in article 14 of the Convention.*

**Paragraph 25.** *The Committee recommends that the State party take account of the relevant parts of the Durban Declaration and Programme of Action when incorporating the Convention, particularly articles 2 to 7, into its domestic law. It also recommends that, in its next periodic report, the State party provide information on measures it has taken to give effect to the Durban Declaration and Programme of Action at the national level, particularly the preparation and implementation of the national plan of action.*

#### **A. Legislative measures in force**

145. **Decree 41-2005. Cadastral Information Registry Act.** Adopted on 15 June 2005, entered into force on 20 August 2005. By this law, the State of Guatemala is complying with its commitment under the Agreement on Socio-Economic Aspects and the Agrarian Situation to promote changes to the law enabling it to establish a decentralised system of land registration that would be open to many users, efficient, financially sustainable, easy to update and of binding force.

146. This law is the legal framework that regulates land registration and the institution responsible for promoting and developing it, in the context of the quest for solutions to agrarian problems and the establishment of sound bases for legal security of land tenure.

147. The Cadastral Information Registry of Guatemala (RIC) has been set up as an autonomous service body, a legal entity with its own capital and resources. It acts in co-ordination with the General Property Registry, without prejudice to its own attributes.

148. **Decree 32-2005. Food and Nutritional Security System Act.** Entered into force in April 2005. This law creates the National Council for Food and Nutritional Security (CONSAN), which is the governing body for the National System of Food and Nutritional Security.

149. **Decree 52-2005. Framework Law for the Peace Agreements.** Adopted in August 2005, this law obliges the State to comply with the Peace Agreements, in particular the Global Agreement on Human Rights and the Identity and Rights of the Indigenous Peoples. It renders

binding the State's commitment to apply the precepts of the Constitution in conformity with article 4 on liberty and equality.

### **B. Pending bills and reforms required**

150. There are areas where there is still room for improvement, some of which are covered in bills before the Congress of the Republic. These initiatives, some of them matters of consensus between indigenous peoples' organisations and State institutions, and proposals from different bodies, have many of them already been shelved, are about to be shelved or are awaiting debate in the plenary of the Congress of the Republic.

151. One aspect to be considered is what the Organic Law of the Congress of the Republic states in its article 45: "if a legislative session comes to an end without a given bill having been the subject of a ruling by the relevant committee, except if a deputy to the Congress of the Republic in the new Legislature coming into office calls for a ruling within 60 days from that entry into office, the bill shall be considered rejected and the file shall be closed."

152. **Initiative 3808. Moratorium on Prospection and Mining.** In May 2008, bill 3808 concerning a moratorium on open-face metal prospection, exploration and mining was tabled in the Plenary of the Congress of the Republic of Guatemala. It is now with the Energy Committee of the Congress of the Republic for decision.

153. **Initiative 3835. Bill on the Sacred Sites of the Indigenous Peoples.** Tabled on 17 June 2008. The National Peace Agreements Commission has ruled favourably. The Committees on Indigenous Affairs, Peace and Demining and Legislation and Constitutional Matters will have to rule on the initiative within a time limit of 45 days from the moment when it is received by the committee in question.

154. **Initiative to revise the Mining Act.** The constant conflicts generated by mining for metals and the rejection of this activity by more than 350,000 persons in the west of the country have made clear that there is a need to change the legal framework under which mining companies can operate in Guatemala.

155. The Congressional Committees on Energy and the Economy will submit draft amendments to the Mining Act to the different sectors of society for their opinions, proposals and questions for subsequent debate among those sectors prior to a ruling.

156. The debate has taken as its starting point the proposal made in 2007 by the High Level Multisectoral Commission, which was composed of the Catholic Church, the Ministry of Energy and Mines (MEM) and environmental organisations. Among other points, the Commission proposed to take into account popular consultations, the protection of the environment, social problems, and the royalties received by the country.

157. **Initiative for a framework law on rural development.** In July 2008, the Committee on the Vision of the Country Plan and the Committee on Decentralisation and Development gave a favourable ruling on the framework law on rural development of the Vision of the Country Plan, even though this is only one of the proposals in existence.

158. The proposal which has been debated in the Congress of the Republic derives from the Vision of the Country Plan, which is an agreement signed by the political parties in October 2006 to establish strategies in the fields of education, health, security and rural development up to 2020.

159. ***Initiative for an agrarian law.*** Through the intermediary of the Framework Law for the Peace Agreements, Decree 52-2005 of the Congress of the Republic, a reform of the legal framework governing agriculture and institutional development in rural areas is called for to put an end to the lack of protection from eviction that people living in rural areas, especially indigenous peoples, have suffered and to permit the full integration of the rural and indigenous population into the national economy, as well as to regulate land use in an efficient and ecologically sustainable way in accordance with development needs.

160. To prepare the draft bill and the establishment of agrarian tribunals, the Judiciary began consensus discussions with sectors of Guatemalan society to define the substance of an agrarian law. Sectors interested in the subject were invited to form a preparatory committee whose purpose would be to support the Supreme Court of Justice in the drafting of agrarian legislation, taking into consideration the experience accumulated among representatives of society. Various organisations of indigenous peoples and civil society concerned by the subject took part in this project, as did departments of the Executive and representatives of the different chambers of the private sector. The international community also gave its support through the United Nations Development Programme (UNDP).

161. This initiative has not been taken up again in the Congress of the Republic.

### **C. Initiatives pending from the Committee's recommendations**

162. ***The classification of discrimination as an offence.*** In Guatemalan legislation there is no legal framework covering racial discrimination as required by the international instruments we have ratified.

163. ***Bill for recognition of the competence of the Committee on the Elimination of Racial Discrimination.*** The aim is to ensure there is compliance with article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, amending the bill if need be, and promoting its adoption and implementation as soon as possible with the participation of the indigenous peoples.

164. ***Initiative 3467. Law regulating domestic work.*** The aim is to regulate labour in individual homes by means of a law governing domestic work. It is needed to remedy the absence of legislation on behalf of female domestic workers. At present domestic work is not subject to any rules on a minimum wage, working hours or contracts. The Congress considered this in plenary on 25 March 2006 and rulings from the Committees on Labour, Legislation and Resolutions, and Social Welfare and Social Security are pending.

165. ***Initiative 3566. Law regulating sexual harassment.*** This seeks to establish regulations for sexual harassment, understood as any sexual conduct without consent. In addition to legislating to bring our domestic laws into harmony with international instruments on women's rights where sexual harassment is concerned, the initiative seeks compliance with the Peace

Accord on Identity and Rights of Indigenous Peoples. The Congress of the Republic considered this in plenary on 27 November 2006. Not having been adopted however, it awaits rulings from the Committees on Legislation and Resolutions, on Women and on Human Rights.

166. **Initiative 3684. Law on consultation with indigenous peoples.** This proposal received a favourable ruling from the Congressional Committee on Indigenous Communities and was considered in a first reading by the plenary of the Congress on 25 September 2007.

167. The initiative establishes appropriate procedures and, by determining the juridical impact of consultations on administrative and legislative decisions that affect indigenous peoples, regulates the establishment of such consultations.

168. **Bill stipulating the adoption of the law on the dissemination and promotion of non-discrimination.**

169. **Initiative to reform the Elections and Political Parties Act.** The purpose is to grant a quota for the effective participation of indigenous peoples and women.

170. **Bill on community communications media.** In December 2007, the organisations taking part in the National Committee on Community Communications Media endorsed proposed legislation to enhance access by the Maya, Garifuna and Xinca peoples to radio broadcasting.

171. Representatives of community radio, officials of the State and of the Programme for Legislation and the Right to Communicate of the World Association of Community Radio – Latin America and the Caribbean (AMARC-ALC) took part in drafting the proposal.

172. As a result of these meetings, it was agreed to convene the National Committee for Dialogue, so that the public and private sectors together with civil society organisations could agree on a bill. The Committee was formed in July 2005, coinciding with a visit to Guatemala by Eduardo Bertoni, the then Rapporteur on Freedom of Expression of the Inter-American Commission on Human Rights. The main purpose of this committee was “to analyse and draft proposals on the need to reform the regulation of the radio spectrum so as to incorporate democratic criteria that would ensure equality of opportunity for access for all sectors and non-discriminatory use of radio frequencies as an underpinning for free expression by all Guatemalans”.

173. AMARC proposed to invite the sectors taking part in the Committee to draft a bill. However, the State and the Chamber ceased to attend the sessions from July 2006. Business leaders expressed their view that any legal provisions should be negotiated directly in Congress.

174. Despite the obstacles posed by the non-participation of public and private sectors, the Committee continued its work which culminated in 2008 with the drafting of a bill. The latter contains a definition of what constitutes a community medium of communication, the instauration of the Community Communications Media Service, the establishment of reserved frequencies for the use of non-profit organisations and communities and an open public competition as a means of accessing the frequencies.

175. It is important to point out that this bill has support not only from the national co-ordinators who took part in the Committee. Its contents have been approved by more representative national organisations of indigenous peoples, such as the National Indigenous and Rural Co-ordinator (CONIC), the Committee for Rural Unity (CUC), the National Co-ordinator for the Widows of Guatemala (CONAVIGUA) and Mojomayas or the Maya Waqib Kej Platform for Co-ordination and Convergence, among others. Human rights organisations and the School of Communications Science of San Carlos University of Guatemala should also be added.

#### **IV. ARTICLE 5: EQUAL ENJOYMENT OF RIGHTS**

##### **A. Political rights**

*Paragraph 16. The Committee notes with concern the low level of participation, especially by indigenous women, in political life and in particular the lack of representation in Congress of the Xinca and Garifuna peoples. The Committee is likewise concerned by the absence of any specific reference to indigenous political participation in the Elections and Political Parties Act (art.5(c)).*

*The Committee, bearing in mind paragraph 4 (d) of its general recommendation 23, recommends that the State party redouble its efforts to ensure the full participation of indigenous peoples, especially indigenous women, in public affairs and that it take effective measures to ensure that all indigenous peoples, particularly the Xinca and Garifuna, participate at all levels. It also urges that the Elections and Political Parties Act be amended with a view to promoting the political participation of all indigenous peoples.*

##### **1. Political circumstances**

176. The political atmosphere in the country was affected by the general elections for the presidency of the Republic, deputies to the Congress and mayors. This democratic and popular plebiscite took place in September 2007.

177. The elections of 2007 had several new features resulting from the reforms to the Elections and Political Parties Act that were adopted in 2004 and 2006. The most relevant of these concerned the opening of additional polling stations in isolated areas of the country where the inhabitants are mainly of indigenous extraction. This made a difference in the number of people turning out to vote, since in previous elections they had had to travel for hours to cast their votes.

178. In this context it is important to highlight the participation of the first indigenous woman candidate for the presidency of the Republic, Dr. Rigoberta Menchu. Apart from Dr. Menchu, none of the other candidates for the presidency was of indigenous origin and there was only one indigenous candidate for the vice-presidency.

179. The new President-elect, Engineer Alvaro Colom, took office on 14 January 2008, with the endorsement of the different peoples who make up the State of Guatemala and with a vision of unity for the country through harmony and the elimination of discrimination.

## 2. The Executive

180. The Executive is made up of thirteen Ministries of State, among which two posts are held by a woman and a man of indigenous extraction. Two indigenous women also occupy the posts of vice-minister.

181. In accordance with Guatemalan legislation, the governors of departments are appointed by the President of the Republic. At present, as a result of the 2007 elections, two indigenous men and three indigenous women have been appointed as governors.

## 3. Participation in the Legislature

**Table 10**

### **Indigenous deputies in the Congress of the Republic**

<i>Terms of office</i>	<i>Female deputies</i>		<i>Male deputies</i>		<i>Total</i>
	<i>Indigenous</i>	<i>Non indigenous</i>	<i>Indigenous</i>	<i>Non indigenous</i>	
2008-2012	4	15	11	128	158
2003-2008	1	18	14	125	158

182. Of the 46 working committees of the Legislature, three are chaired by indigenous deputies: the Committee on Indigenous Communities, the Special Committee on the Supervision of Health Purchases and the Special Committee on Food Security.

## 4. Participation at the municipal level

183. As a result of the general elections held in September 2007, of the 332 mayors in the country, 129 are now indigenous which represents an increase in the numbers attained in the 2003 elections, when there were 123 indigenous mayors and mayoresses.

184. Indigenous participation in the recent elections of 2007 has been reflected at the level of local officers, where, according to the Guatemalan Association of Indigenous Mayors and Authorities (AGAAI), “little by little the political parties have come to respect and rely on the leadership and potential of the indigenous peoples”.

**Table 11**  
**Mayoral offices occupied by indigenous persons**

<i>Department</i>	<i>Number of Municipalities</i>	<i>Mayoral offices occupied by indigenous persons</i>	
		<i>Men</i>	<i>Women</i>
Guatemala	17	3	1
Alta Verapaz	16	8	
Chimaltenango	16	8	
Escuintla	13	3	
Sololá	19	17	
Totonicapán	8	8	
Quetzaltenango	24	14	
Suchitepéquez	20	2	
San Marcos	29	14	
Huehuetenango	31	22	
Quiché	21	14	
Petén	12	4	
Izabal	5	2	
Sacatepéquez	16	6	1
Baja Verapaz	8	2	
<b>Total</b>		<b>127</b>	<b>2</b>

## 5. Participation in the system of Development Councils

185. The 1996 Peace Agreements and the trilogy of laws on decentralisation (the Decentralisation Act, the Urban and Rural Development Councils Act and the Municipal Code) determine responsibility in the municipalities for the simultaneous processes of decentralisation of the State and the economic development of the country. In fact the General Decentralisation Act stipulates that the municipalities are the main bodies to which competence is delegated as part of the decentralisation by the Executive, whether individually, in association or in support of legally organised communities (article 6 of the regulations of the Act).

186. The system of Development Councils has five levels: the community, the municipal, the departmental, the regional and the national. The Development Councils Act (Decree 11-2002) assigns to them the objective of organising and co-ordinating public administration through the formulation of development policies, budgetary plans and programmes and by encouraging inter-institutional co-ordination both public and private. Although this Act does not establish quotas, it is innovative in that it stipulates participation by representatives of the Mayan, Garifuna and Xinca peoples:

a) *National Urban and Rural Development Council (CONADUR)*. Participation by four representatives of the Maya, one of the Xinca and one of the Garifuna;



b) *Regional Urban and Rural Development Councils (COREDURs)*. One representative of each of the indigenous peoples living in the region:

c) *Departmental Development Councils (CODEDES)*. One representative of each of the indigenous peoples living in the department.

187. Among the functions of the Councils is the promotion of policies to encourage active and effective participation by indigenous peoples in decision-making at the national, regional, departmental, municipal and community levels, as well as working to raise the awareness of communities regarding gender equity and the identity and rights of the indigenous peoples.

188. The high number of COCODEs is especially relevant for the participation of indigenous mayors, authorities and communities, since they are bodies formed from the whole community, in the General Assembly, where citizens can participate as individuals or as representatives of organised groups or sectors. Thus the COCODEs today represent a real opportunity for the population of numerous communities, historically isolated from the rest, to join in decision-making at a local level.

189. The following table shows the progress made in setting up COMUDEs in municipalities where a majority of the population is indigenous or rural, in each department of the country. The results demonstrate that, as it has been created, the System of Development Councils has effectively incorporated the Maya, Garifuna and Xinca populations, as well as the rural population of the country.

**Table 12**  
**Progress in the installation of COMUDEs in municipalities with an indigenous and rural majority.**

<i>Departments</i>	<i>Number of municipalities</i>	<i>Municipal profile</i>		<i>COMUDEs installed</i>			<i>%</i>
		<i>Number</i>	<i>%</i>	<i>Municipalities with indigenous majority</i>		<i>%</i>	
				<i>Yes</i>	<i>No</i>		
Huehuetenango	31	21	68	77.3	27	4	87
Sololá	19	19	100	51.2	13	6	68
Quiché	21	19	90	76.3	18	3	88
Quetzaltenango	24	17	71	44.8	SD	SD	SD
Alta Verapaz	16	16	100	79	7	9	44
Chimaltenango	16	14	45	51.2	5	11	31
Suchitepéquez	20	9	45	58.9	16	4	80
Sacatepéquez	16	8	50	15.8	13	3	93
Totonicapán	8	8	100	64.2	6	2	75
San Marcos	29	7	24	78.2	9	20	31

<i>Departments</i>	<i>Number of municipalities</i>	<i>Municipal profile</i>		<i>COMUDEs installed</i>			<i>%</i>
		<i>Number</i>	<i>%</i>	<i>Yes</i>	<i>No</i>	<i>Yes</i>	
Baja Verapaz	8	5	63	72.7	7	1	88
Guatemala	17	4	24	14	1	16	6
Petén	12	3	25	69.9	3	9	25
Izabal	5	2	40	71.2	5	0	100
Chiquimula	11	1	9	74	10	1	91
Jalapa	7	1	14.2	68.4	7	0	100
Retalhuleu	9	1	11.1	63.7	8	1	89
El Progreso	8	0	0	63.9	6	2	75
Zacapa	10	0	0	61.1	1	9	10
Santa Rosa	14	0	0	65.1	6	8	43
Jutiapa	17	0	0	72.8	11	6	92
Escuintla	13	0	0	52.3	13	0	100
<b>Total for the country</b>	<b>331</b>	<b>155</b>	<b>47</b>	<b>48.6</b>	<b>192</b>	<b>139</b>	<b>58</b>

Table 13

## Departments most backward in installing COMUDEs

<i>Departments</i>	<i>Regional FNM</i>	<i>Municipalities pending</i>	
		<i>Total</i>	<i>%</i>
Quetzaltenango	II	15	63
San Marcos		20	69
Guatemala	IV	16	94
Chimaltenango		11	69
Zacapa	V	9	90
Petén	VII	9	75

## 6. Strengthening of local power

190. The Programme for Decentralisation and Municipal Strengthening of the Presidential Executive Co-ordinator's Secretariat is developing the work of municipalities and their political impact and, through the Programme for Democratic Municipalities, work is being done on the following aspects.

191. The development of 11 municipal agenda with a multicultural focus. Four multicultural and intercultural municipal public policies have been formulated with a gender and youth focus, which include the organisational and institutional foundations for their implementation, as well as the necessary resources, the legal underpinning and the documents validating and legitimising them.

192. To strengthen the Indigenous Councils working at the local (COCODES) and municipal level (COMUDES) incentives have been given for indigenous participation and representation by the strengthening of 15 of their own organisations that have an impact in 31 municipalities.

**Table 14**

**Indigenous organisations with which work has been done to strengthen local and municipal Indigenous Councils**

<i>Organisation</i>	<i>Region</i>	<i>Municipal coverage</i>	<i>Municipalities</i>
Indigenous mayor	Sololá	Solola (head)	1
Mayan Indigenous Council Ch'orti'	Chiquimula	Jocotán Olopa Camotán San Juan Ermita San Jacinto	5
Xinca indigenous Community	Santa Rosa	Jutiapa (head)	1
Council of communal mayors 48 cantons	Totonicapán	Totonicapán (head)	1
Indigenous Auxiliary	Quiché	San Andrés Sajacabaja	1
Indigenous mayor	Quiché	Sayabaj	1
Indigenous mayor	Quiché	Uspantán	1
Parliament Q'anjo'bal, Chuj Akateko	Huehuetenango	Santa Eulalia San Pedro Solomá San Mateo Ixtatán Barillas San Juan Ixcoy San Sebastián Coatán San Miguel Acatán San Rafael la Independencia	8
Movement Pop Bil	Quetzaltenango	San Martín Sacatepéquez Olintepeque Salcajá San Miguel Siguila Cantel San Francisco La Unión	6
Council del Pueblo Maya de Baja Verapaz	Verapaces	Rabinal Cubulco Purulhá San Miguel Chicaj Salamá San Jerónimo	6
<b>Total</b>			<b>31</b>

193. As for the strengthening of the indigenous peoples' own organisations, help has been given in workshops and three national encounters with indigenous authorities to inform them in their own language of the need for interaction and co-ordination with the authorities of their community and municipality.

194. To contribute to democratising political, economic, social and cultural participation with the aim of achieving unity in diversity among the four peoples who make up the State of Guatemala, the final touches are being put to a consultation with 750 indigenous authorities at the national level to strengthen the representation of the National Council of Mayan, Garifuna and Xinca Elders through the intermediary of 100 national delegates.

195. To enhance the training and representation of indigenous peoples, four regional meetings and one national one have been held with the present indigenous representatives in the Development Councils at the departmental (CODEDE) and national levels.

196. Priority attention has been given to 72 municipalities with a majority indigenous population, with training and technical assistance being given to the municipal authorities, thus creating greater awareness of how important is the participation of indigenous peoples. Handbooks and sets of rules with a multicultural and intercultural focus have also been produced.

## **7. Challenges for the future**

197. In this area of political participation the State of Guatemala cannot report any great progress as concerns the representation and participation of indigenous peoples in decision-making in public life at the national or municipal level.

198. In accordance with the recommendations of the Committee on the Elimination of Racial Discrimination, it is crucial to encourage measures of affirmative action to ensure that the indigenous peoples, in particular indigenous women, have political representation, amending, for that purpose, the Elections and Political Parties Act. It is likewise essential to continue systematic programmes of training and empowerment for indigenous organisations and to achieve progress in transforming and even punishing racist and discriminatory attitudes that militate against full participation by the indigenous peoples in decision-making.

199. We need to support radical changes to the Elections and Political Parties Act to generate real participation by the indigenous peoples within the State, above all at strategic levels of decision-making. This may be understood as implying temporary quotas for political participation by women and indigenous peoples.

200. The work of correcting the inequalities in the local Development Councils has taken off in all regions and departments of the country. However, the low level of participation by representatives of the indigenous peoples, and their effective participation in COCODEs and COMUDEs, requires us to review our strategies for sensitising the population in the communities and municipalities to discrimination in local decision-making and creating political will among them to overcome it.

## B. Economic, social and cultural rights

### 1. The right to work

201. A picture of the labour market can be seen in the following table.

**Table 15**

#### Aspects of the labour market for the population of 10 years and over according to selected distribution criteria

<i>Selected criteria</i>	<i>Population employed</i>	<i>Unemployed</i>	<i>Visible under-employed</i>	<i>Economically active population</i>	<i>Economically inactive population</i>	<i>Rate of patent unemployment</i>	<i>Rate of visible underemployment</i>
Sex							
Men	61.9	50.5	60.0	61.7	25.3	1.5	14.9
Women	38.1	49.5	40.0	38.3	74.7	2.4	16.1
Area							
Urban	51.7	75.3	53.6	52.1	49.0	2.6	15.8
Rural	48.3	24.7	46.4	47.9	51.0	0.9	14.9
Ethnic group							
Indigenous	39.3	17.3	30.8	38.9	34.6	0.8	12.2
Non-indigenous	60.7	82.7	69.2	61.1	65.4	2.5	17.4
Occupation type							
Employees	36.9	-	34.8	36.9	-	-	-
Day labourers	8.9	-	11.3	8.9	-	-	-
Domestic workers	3.2	-	3.3	3.2	-	-	-
Employers	3.5	-	1.9	3.5	-	-	-
Self-employed	28.6	-	30.8	28.6	-	-	-
Unremunerated	18.8	-	18.0	18.8	-	-	-
Economic activity							
Agriculture	33.2	-	32.3	33.2	-	-	-
Industry	22.8	-	23.0	22.8	-	-	-
Trade and services	44.0	-	44.7	44.0	-	-	-
Economic sector							
Informal	71.2	-	74.2	71.2	-	-	-
Formal	28.8	-	25.8	28.8	-	-	-
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Source: National Statistics Institute (INE). National Survey of Living Conditions (ENCOVI) 2006.

202. The indigenous peoples in the majority have a subsistence economy, growing basic cereals sown in small lots. To obtain a monetary income many emigrate, most often to work as occasional labourers.

203. A growing phenomenon in the country is the recruitment of workers of indigenous origin in assembly plants, where it has been alleged that working conditions are precarious for health and safety.

204. The Ministry of Labour and Social Welfare (MPTS) has a programme to promote and monitor the implementation of workers' rights to health, safety and social assistance which includes several projects, among them one concerning assistance to the indigenous peoples.

205. These projects describe a shared responsibility for improving working conditions by eliminating discrimination on grounds of sex, age, ethnicity, culture, or disability. One of the specific activities of the Indigenous Peoples Unit is to promote the dissemination of ILO Convention 169. The project defines women and indigenous peoples as being among the target population of vulnerable workers.

206. As part of the 2006 training programme, the IVth Diploma Course in the Rights of the Indigenous Peoples and ILO Convention 169 was held with 55 civil servants taking part. The diploma of the Kaqchikel language, pursuant to the National Languages Act, was awarded to the workers of the MPTS.

#### *Workers in assembly plants*

207. As a result of the situation of labour rights violations in assembly plants in the country, at the urging of the Assembly Plant Co-ordinating Body<sup>1</sup> in 2004 the Assembly Plant Labour Disputes Prevention Body was established.

208. An Inspectors' Unit was set up by the MPTS, being assigned specifically to deal with cases of allegations by assembly plant workers (including harassment) in the department of Guatemala, but also dealing with cases of mass lay-offs of men and women. This unit comes under the General Inspectorate of Labour (IGT), which is the body entrusted with safeguarding workers' rights.

209. Obtaining ratification of ILO Convention 155 by the Government of Guatemala was chosen as a priority of the Labour Disputes Prevention Body's strategic plan. That convention has not yet been ratified and, given that working conditions, especially in the assembly plants, are regularly shown to be precarious, social organisations in Guatemala continue to press for ratification.

#### *Eradication of child labour*

210. By Government Agreement 250-2006, the Ministry of Labour and Social Welfare established regulations for the implementation of ILO Convention 182 concerning the

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<sup>1</sup> The Assembly Plant Co-ordinating Body comprises organisations of the civil society: CALDH, AMES and CEADEL.

Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. These regulations pinpoint and prohibit work that may harm the health, safety or morals of persons under the age of eighteen and define the kinds of work considered as the worst forms of child labour, as well as those that for persons under eighteen are considered dangerous or unhealthy and liable to cause serious harm to their physical or mental health or over-all development or even their death, even if the activity is not in itself necessarily unhealthy or dangerous.

211. Ministerial Agreement 24-2005 set up the Technical Committee for the Eradication of Child Labour performed by adolescents. In November 2007 a campaign was launched to reduce and eradicate child labour pursuant to Convention 182. The campaign was diffused by the different communications media (radio, television and the press) in the principal Mayan languages.

212. The Adolescent Workers Protection Unit is carrying out a project for the prevention of domestic child labour in indigenous populations in the municipality of Comitancillo, department of San Marco, that is helping 110 children. They are given support for education, thus encouraging them to stay in school, preventing migration and, thereby, trafficking in children. They are also given nutritional supplements and are provided with Mayan clothing (güipils, sashes, lengths of cloth and shoes). Remedial teaching is given where they have greatest difficulty. They also get sports equipment for activities that enhance their cultural education.

213. In this field, a pilot plan for vocational training for adolescent workers has been implemented which served as the foundation for the Centre for Work and Education for adolescent workers. In 2006, 4,442 adolescents of indigenous origin were given guidance about their rights and duties in the workplace.

#### *Proposed legislative reforms for domestic workers*

214. Initiative 3467, at present before the Congress, proposes a law specifically protecting domestic workers. It aims to regulate paid domestic labour in terms of the length of the working day, salary, social security, overtime, time off for study, pre- and post-maternity leave and payment of an incentive bonus. A ruling is pending.

#### *Trade unions*

215. According to the registers of the MTPS, there are 1,820 authorised trade unions, of which only 540 are active, meaning that they rotate their governing boards, hold assemblies and periodically issue communications.

216. During the first six months of 2008, 34 trade unions were approved, a larger number than in earlier periods. Almost all are groups in the departments of the interior of the country involved in agrarian or municipal activities.

217. The State authorities at present in office intend to speed up procedures, since it is important to have a trained and professional trade-union movement that contributes to the development of the country's economy.

*General Inspectorate of Labour (IGT)*

218. The General Inspectorate of Labour of the MTPS is the body charged with protecting workers and acts a mediator in disputes. When differences of opinion cannot be reconciled, the intervention of a judicial labour body is required.

219. To pursue all the cases received in the country, the IGT has 280 inspectors, 80 of whom are involved in administrative work, which reduces their ability to carry out inspections (two per day).

*Challenges for the future*

220. The General Inspectorate, as the guiding body for the protection of workers' rights needs enhanced technical, human and budgetary resources to respond to the many allegations it receives and to meet its obligations, mainly in monitoring the protection of indigenous rural workers, especially where migrant workers are concerned or indigenous smallholders working on the high plateau in the centre, west and north west of Guatemala.

**2. Right to decent housing**

*Paragraph 17. The Committee is highly concerned at indigenous peoples' lack of access to land, the lack of respect shown for their traditional lands, such as community forests, and the problems in relation to the restitution of lands to indigenous peoples displaced as a result of armed conflict or economic development plans (art. 5, subpara. (d) (v)).*

*Bearing in mind its general recommendation 23 on the rights of indigenous peoples, in particular paragraph 5 thereof, the Committee calls upon the State party to take steps to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands and territories. In cases where they have been deprived of their lands and territories traditionally owned, or such lands and territories have been otherwise used without their free and informed consent, the Committee recommends that the State party take steps to return those lands and territories. The Committee also urges it to ensure the effective implementation of the national land register law so that indigenous community lands can be identified and demarcated.*

221. In urban areas access to the land is largely confined to access to one's living quarters, in contrast to rural areas where land is used as a means of production as well as a place to live. According to the National Statistics Institute's estimates for 2004, in urban areas housing tenancy in its different forms<sup>2</sup> is 77.4% in the hands of men and 22.6% in those of women; while in the rural areas the percentages are 84.2% and 15.8% respectively.

222. Because growth in the housing deficit in Guatemala is accelerating, in February 2004 the Ministry of Infrastructure, Communications and Housing (MICIVI) initiated a review, reordering and updating of the National Housing and Human Settlements Policy (PNVAH), promulgated on 6 July 2004, that was based on principles of social equity, comprehensiveness, sustainable development and citizen participation.

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<sup>2</sup> The types of housing tenancy considered by INE are: ownership, rental, loan and others.



223. This policy lays down guidelines for the formulation of housing plans, programmes and projects in a manner that accords and is integrated with the socio-economic situation of the country. Its goal is to facilitate the organisation of urban areas, improve poor housing conditions and guarantee access to suitable housing for Guatemalan families, with priority for low-income sectors. It has established guidelines for human settlement development, land administration, property development, the production and management of urbanisation and housing projects, housing finance, and the participation of organisations of civil society in improving the quality of life. An important feature of the policy is that it has been taken as a model for the rest of the countries of Central America.

224. Together with the policy, the strategy to be pursued for reducing the housing deficit over the next 20 years is being implemented. This determines how much to invest each year to reduce that deficit and how to approach a breakdown of the housing demand into the different socio-economic sectors. The deficit has been estimated at 1,021,592 units, of which 410,097 represent a quantitative deficit and 611,495 a qualitative one.

225. In October 2004 the National Housing Commission (CONAVI) was set up as an advisory body to the Vice-Ministry for Housing with membership drawn from builders, settlers, civil society, financial agents and authoritative public entities. The aim of the Commission is to assist and complement efforts to reduce the housing deficit in the country.

226. Through FOGUAVI the State is endeavouring to improve housing conditions and provide housing for families in situations of poverty or extreme poverty by a system of direct subsidy that enables the population to acquire, build or improve their housing. This works through a system of integrated financing that combines a prior input by the beneficiary, the subsidy granted by the State and loan provided by a financial body.

227. Basically the direct subsidy programme covers financing for the following: a) acquisition of new housing; b) acquisition of commercially urbanised lots; c) improvements and independent construction; d) regularisation of land ownership; e) progressive lots.

228. In the period 2004-2006 53,087 subsidies were approved for all programmes, of which 37,311 came under the regular programme and 15,087 were for reconstruction following tropical storm Stan. The investment was 781.1 million quetzals.

229. The National Housing Strategy 2008-2011 was launched with the aim of building 200 thousand housing units. For this the model of the "House of Hope" was presented. FOGUAVI will have an allocation of 350 million quetzals to cover subsidies to be granted for housing solutions. A novel feature of this process will be the active participation of individuals in the community, allowing them to build or improve their houses. Model housing has been planned to suit the geographical area where it will be built. The main areas of focus will be the departments of Guatemala, Alta Verapaz, San Marcos, Huehuetenango and Solola.

### **3. Access and right to the land**

#### *Land Fund (FONTIERRA)*

230. The Land Fund has as its intercultural and gender-focused mission to provide financing to rural dwellers without land or with insufficient land, whether in organisations or as individuals, for the purchase or lease of land, production projects or technical assistance. Its task is also to regularise the legal situation of those in possession of State lands and to re-adjudicate those lands distributed in an irregular manner.

231. The programmes whereby the greatest service has been done the rural and indigenous population are: the Land Access Programme and the Land Ownership Regularisation Programme.

#### *Land Access Programme*

232. Under this programme credit is granted for the purchase or lease of a farm, whether collectively or individually, to indigenous or rural persons without land or with insufficient land.

233. As part of this programme those applicants who qualify are granted credits for land purchase, as well as subsidies for working capital, debt payment and food aid. They receive technical assistance for three years to allow them to develop production projects that will generate income for them with the aim of improving their living conditions.

234. In the period from 2004 to March 2008, 1,673 families received direct benefit, in the form of 24 farms, of which 18 were adjudicated to indigenous groups, 3 to Ladino groups and 3 to mixed Ladino/indigenous groups.

#### *Special cases of uprooted populations*

235. Pursuant to article 47 of the Land Fund Act, priority attention was given to the population uprooted as a result of the internal armed conflict.

236. The consolidation of demobilised and uprooted communities adds up to 46 cases, of which 32 are ongoing and represent 70%. Of these, 17 are in the initial stage and equal 37% of the total; 4 are in the intermediary stage and represent 24%; and 11 are in the final stage and represent 24%. Fourteen cases have already been concluded, with the deeds handed over, and they constitute 30% of the total.

#### *Land Tenancy Regularisation Programme*

237. The aim of this programme is to enable beneficiaries of the programmes deriving from the relevant laws, once they have complied with the legal requirements, to formalise the adjudication and become the owners of the lands they have acquired. In the period from 2004 to 2007 the Land Regularisation Programme expedited the adjudication of lands at little cost and on soft terms. It also provided notarial services for drawing up deeds (individual and collective) at no cost to the beneficiaries. Likewise, by means of Technical and Administrative Co-operation

Agreements with non-governmental bodies, monitoring and counselling is provided for beneficiaries so that their families can maintain themselves and amortise the debt incurred.

238. Adding up the situations regularised and the lands acquired during the period indicated, we find that 10,362 women have benefited, either individually or as part of a community, and 2,429 individual deeds and 168 community ones have been handed out concerning a little more than 206 thousand hectares, in which they were engaged in different forms of production.

239. During the first six months of 2008, thanks to the Land Tenancy Regularisation Programme, ownership of 16,970 hectares of land in the possession of 1,788 families was legalised. The families were resident in 36 communities situated in 10 departments of the country. Each of these groups benefited from the application of the new price list, approved by the Governing Board of FONTIERRA, whereby the value of the adjudicated land is reduced and, consequently, the tax payments also.

#### *Follow-up after allocation of farms*

240. In 2004 consultations were held with those beneficiaries who had received farms. Visits to the farms revealed the manifest necessity of involving women in the productive work of the farm with the aim of strengthening their legal and economic management of the property. Since their demands and their fears concern getting access to credit and the production and marketing of crafts, they need to be able to count on accompaniment and training to enable them to make a profit.

241. The perception of roles, functions and competence is associated in the minds of most teams with an area of specific concern to women. Discussion made it possible to clarify the fact that generating and fostering opportunities on a footing of equality between men and women, indigenous and non-indigenous, is an institutional responsibility that is defined in the legal framework.

242. From this study it was possible to see that, since available land is scarce, community groups often tend to move to areas other than those of their origins. This affects women particularly, since in an unknown environment that calls for other skills and knowledge they find that their hereditary knowledge, developed in a totally different economic, social, cultural and productive situation, is wasted.

#### *Unit for Rural Women*

243. The fundamental task of this unit has been to elaborate a policy of gender equity, which began implementation in 2004. Work was done on three basic aspects: a) making a reality of the full exercise of ownership and co-ownership by women and men of the farms allocated; b) including aspects of gender equity in the formulation of productive development plans for the farms; c) seeking ways of guaranteeing women's participation in decision-making in community organisations in order to exercise their rights to legal certainty in land access, use and tenancy.

244. Thanks to these initiatives it was possible to contribute to developing and enhancing women's involvement in community organisations, by having them participate in setting up or

strengthening productive units on the farms acquired, for example, and action could more easily be adopted to take account of their demands and socio-cultural priorities.

*Challenges for the future*

245. Both FOGUAVI and FONTIERRA need to be reformed so as to have a clearer focus on what concerns the legal empowerment of indigenous peoples, to overcome their weaknesses, to strengthen their social and natural capital and the technical and economic side of subsidy allocation. Access to such subsidies should be limited to them, so that the real beneficiaries are the poor and the extremely poor and not intermediaries, such as housing construction companies, large landowners and those who can accumulate savings.

246. We need to promote the empowerment of the poor and the extremely poor among the indigenous peoples so that they can know, exercise and ensure the application of their property rights under the indigenous system and relate them to the rights the official legal system lays down.

*Land disputes*

247. For the indigenous peoples, and especially the Mayan people, the land is a part of their very existence; each person belongs to the land and is at one with the environment in which he or she was born (mother earth). For that reason they care for the earth and protect it, not considering it only as something to be exploited, nor believing themselves the only owners. The land is a part of their very being, that has a spiritual connection with the whole of nature, and thus when they are deprived of the land they seek ways to continue to survive and to claim back their legitimate tenancy and property.

248. The situation of poverty and extreme poverty caused by the non-payment of salaries and poor working conditions is compounded by the land problem, rooted in the present inequality in its distribution. This injustice has led to actions linked to “land disputes”.

*Secretariat for Agrarian Affairs*

249. It is through the Secretariat for Agrarian Affairs (SAA) of the Presidency of the Republic that the necessary activities are co-ordinated for compliance with the Executive’s commitments regarding agrarian affairs, as reflected in the Peace Agreements, the Government’s policies and the Constitution of the Republic. The actions to permit comprehensive attention to the agrarian question are identified and the conflicts arising out of land ownership, possession and tenancy are dealt with.

*Follow-up and support in land disputes*

250. The procedure used by the Secretariat for Agrarian Affairs to identify land disputes is to classify them by type in the following manner:

a) A dispute about rights, the kind of conflict that arises when two or more persons simultaneously claim ownership or possession of the same piece of land;

- b) A dispute about territorial limits, which includes conflict arising from a failure to establish communal, municipal or departmental boundaries;
- c) A dispute about regularisation, the principal cause of such conflict being possession that has not been legalised;
- d) A dispute about occupation, among which cases are those where persons or communities seize hold of land that is registered as being the property of another, whether the State, an individual or a legal entity; when this occurs it is defined in accordance with criminal legislation as the crime of usurpation and by derivation those who occupy the land are called “usurpers”;
- e) A question of prevention, preventive measures being taken to avert a conflict, an invasion for example, by opening up a dialogue.

251. The different methods of conflict resolution (MARC) used when dealing with cases are as follows:

- a) Mediation. Assisted negotiation or mediation is the intervention in a dispute of an acceptable, impartial and neutral third party who does not decide on the substance of the issue, but helps the parties to the dispute voluntarily to reach their own mutually acceptable agreement;
- b) Arbitration. This is chosen when efforts to resolve a conflict by conciliation have been exhausted, but resort to judicial proceedings is not desired. Its legal foundation is Decree 67-95 of the Congress of the Republic;
- c) Free legal aid. The purpose of this service, instituted by the Under-Secretariat for Conflict Resolution of the SAA, is to give cost-free assistance, in terms of legal accompaniment and legal representation in judicial proceedings arising out of land disputes to groups and communities that lack resources and request such assistance. The service involves guiding and acting on behalf of such groups in courts of jurisdiction, providing notarial services and giving counselling on administrative matters. There is a team of lawyers and notaries who assist the 14 regional offices and delegations the institution has set up to help clients. Counselling is usually provided as the processes of conciliation and mediation are concluding, which does not exclude such services being offered while those processes are under way. Such services are offered to whoever asks for them, whether that person is defendant or plaintiff in the cases being dealt with by SAA;
- d) Inter-institutional committees for dialogue. In these, conflicts are dealt with with the assistance of indigenous and rural organisations. Such committees may come into being as a result of commitments assumed by the Government of Guatemala in response to demands from rural and indigenous organisations and civil society and they are the place where State institutions expedite and respond to such demands. The most important work of such committees has been done at levels where the case has been rendered manageable as a result of prompt and ongoing attention to the specific demands of the organisations and the communities they support. The SAA is responsible for inter-institutional co-ordination with the aim of expediting treatment of cases in other institutions.

252. Up to November 2007, the following committees had been formed:

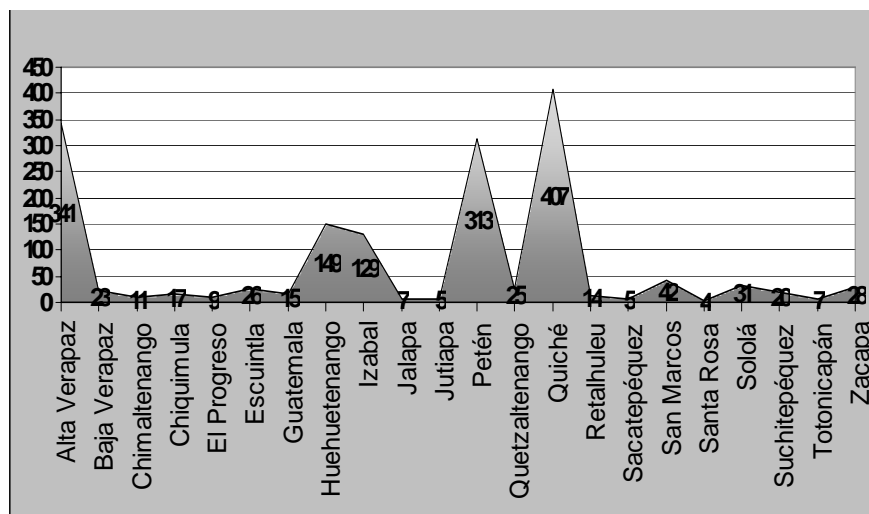
- a) The Agrarian Platform;
- b) The Association of Peasants United with Society (ACUS);
- c) Indigenous Defence of Verapaces;
- d) Committee on the problems of the Sierra de las Minas biosphere;
- e) Committee on cases of conflict in the municipality of Estor;
- f) Committee on land disputes in the southern region of Petén;
- g) High-Level Committee on the case of the indigenous community of Santa Maria Xalapan;
- h) Committee on cases of conflict in the Sayaxché municipality;
- i) Committee on case of conflict in the Livingstone municipality.

253. Agrarian institutions play an important role, since they seek to create a more just society. The aim is to reach a peaceful solution of the various agrarian disputes occurring in the countryside in connection with land tenancy, use, possession, redistribution and exploitation and with the water and irrigation system. They attempt to channel such conflicts towards a realistic solution while pursuing the social and economic development of the State and thus allowing peace to prevail.

254. According to an analysis carried out by the SAA, the situation of agrarian conflict in Guatemala up to March 2008 looked like this:

**Table 16**

**Agrarian conflict - Total cases under consideration, by department**

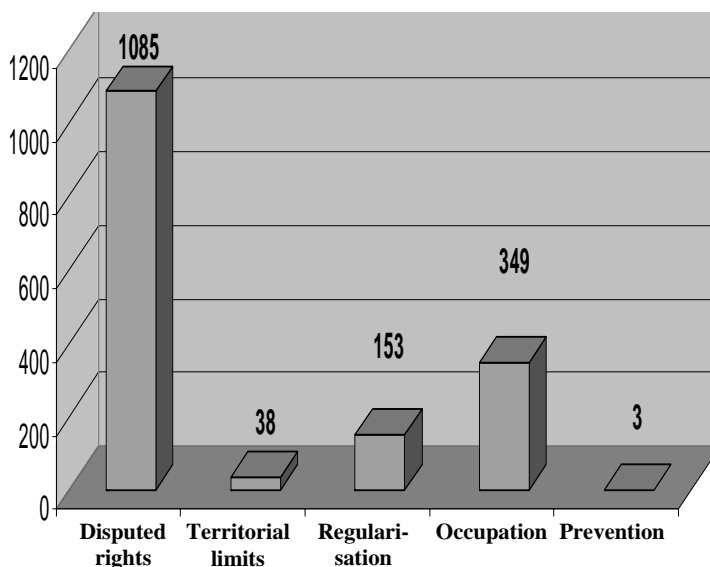


**Table 17**  
**Classification of agrarian disputes, to March 2008**

<i>Classification</i>	<i>Cases under consideration</i>
Rights	1,085
Territorial limits	38
Regularisation	153
Occupation	349
Prevention	3
<b>Total</b>	<b>1,628</b>

255. Of the 1,628 cases under consideration, 236 are in protected areas. There are 159,573 families who are parties to a dispute and 90,519 families who are opposing parties. There is a total of 1,040,136 persons parties to a dispute and 698,115 opposing.

**Table 18**  
**Cases of disputes under consideration, according to their classification (1628 cases)**



256. In view of the number of cases under consideration and the number of families and persons involved in agrarian disputes, it is possible to affirm that the bond with the land felt by the indigenous communities, who represent the majority of the rural population and those engaged in agriculture, as the source of their identity is a crucial element in our national context and one that must be taken into account when tackling agrarian conflict. That bond, which inspires their

vision of the world, is expressed precisely in work on the land and so this is a sector of the population that demands access to the land not just because it is a source of livelihood but because it expresses their culture, that is, the relationship the indigenous peoples have with the land and their understanding of land holding and the exploitation of natural resources as reflected in the indigenous world vision.

257. For most rural and indigenous communities, Mother Earth has profound significance as the centre of their being, their society and their world vision. Their invocations to the Heart of the Sky or the Heart of the Earth are not just empty words, but part of the basic culture that has been built up over generations that have made the earth their principal material and spiritual resource, around which their social life continues to revolve.

258. Bearing the problem of agrarian conflict in mind and with the aim of finding legal and social means of resolving land disputes, in April 2008 the President of the State of Guatemala signed the Framework Agreement setting up the National Rural Development Commission. This body will have 600 million quetzals to launch agricultural programmes in the province. The State of Guatemala considers it of the highest importance for the policies produced by that body to have the consent of indigenous, rural and environmentally-friendly organisations, as well as of research centres.

#### *Agrarian Arbitration Centre*

259. The Agrarian Arbitration Centre was set up in July 2007 under the Secretariat for Agrarian Affairs. It will establish a means of arbitration when two landowners are ready and willing to negotiate a dispute.

#### *Challenges for the future*

260. Through the Framework Agreement for the National Rural Development Commission we need to obtain the legal and social mechanisms for the resolution of agrarian disputes as well as launching agricultural programmes in the rural areas and coming up with policies that win the support of indigenous, rural and environmentally-friendly organisations.

261. The Attorney-General's Office needs to receive legal and technical support and information from the land registry, whenever it so requests, so that within the time frame of a given ongoing investigation it can decide whether or not to call for the legal proceedings it is contemplating, in the relevant court. The aim would be to avoid evictions that might be improper but that might take place in the absence of the above-mentioned support, as well as cases brought against the indigenous and rural people who cannot prove their rights to land on which their forefathers lived for hundreds of years, and thus eradicate injustice.

262. The violence associated with evictions is considered contrary to the basic principles established by the international community concerning the use of force and firearms, which state that: "although evictions may be justified in some circumstances, they should only be carried out as a last resort and with: a) a genuine opportunity to consult with the persons affected; b) sufficient and reasonable notice to all the persons affected in advance of the date set for the eviction; c) provision, within a reasonable time frame, of information concerning the planned evictions and, where relevant, the uses to which the lands or housing are to be put; d) the



presence of government officials or their representatives during the eviction, especially when it affects groups of people; e) the precise identification of all the persons who are to carry out the eviction; f) avoidance of evictions during bad weather or at night, unless the affected persons give their consent; g) the offer of legal recourse; and h) the offer of legal aid wherever possible to persons who need to seek redress through the courts.

#### **4. Compensation to victims of the internal armed conflict**

263. In July 2004, the State of Guatemala set up the National Compensation Commission (CNR) for the purpose of co-ordinating the National Compensation Programme (PNR). By that means the State would comply with its humanitarian duty to repair the injury caused to the civilian victims of human rights violations and crimes of *lèse-humanité* committed during the internal armed conflict. The CNR is the highest body for the political and strategic direction of the PNR.

264. The PNR was set up to carry out the recommendations of the Guatemalan Commission for Historical Clarification, among which was the recommendation to care for the civilian victims of the internal armed conflict, 83% of whom were Mayan.

265. The Programme's mission is to indemnify, assist, rehabilitate and restore the dignity of the civilian victims of the internal armed conflict, with the strategic aim of contributing over the medium and long term to repairing the social fabric of the Nation and permitting the exercise of full citizenship in the multicultural context of Guatemala. To this end a set of compensatory operations, both individual and collective, of tangible and intangible benefit, have been designed for each of the following measures of compensation:

- a) Material restitution: of lands, housing and productive investment;
- b) Economic compensation: economic indemnification, grants, health services;
- c) Cultural compensation for the victims;
- d) Restoration of dignity: recall of history, exhumations, inhumations;
- e) Psycho-social reparations.

266. The measures of individual or collective, tangible or intangible compensation to be applied must take account of the five institutional principles, which are also cross-sectional strategies:

- a) Principle of multiculturalism and interculturalism;
- b) Principle of gender equity;
- c) Principle of environmental sustainability;
- d) Principle of democratic participation;
- e) Principle of Maya Kem integrality.

#### *Psychosocial reparations*

267. Psychosocial assistance has been offered when exhumations are performed and in family, group or community interventions, with resort to groups for reflection and self-help groups.

*Economic compensation*

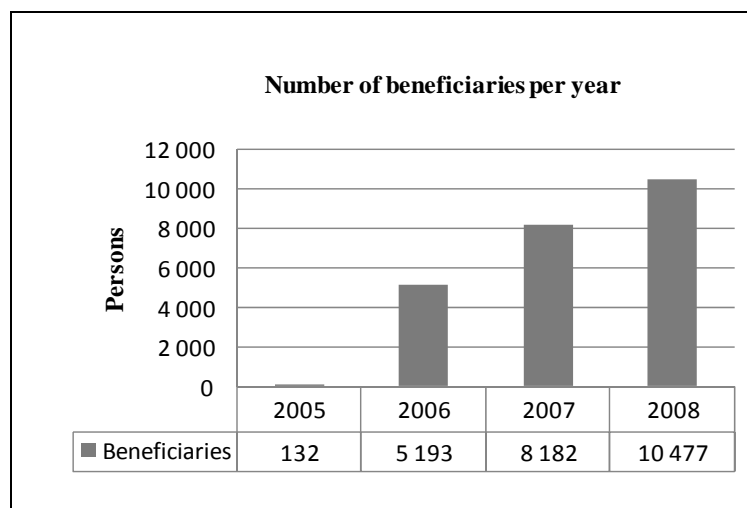
268. There are three components of economic compensation measures: economic indemnification, grants and health services. At present only economic indemnities have been provided.

269. Economic indemnification consists in providing monetary aid to the civilian victims or the families of victims of the armed conflict.

270. In April 2008 the National Compensation Programme released 23,829 million quetzals to benefit 1,251 victims who had survived the conflict in the departments of Nebaj, Quiché and Chimaltenango. The State has for its part considered compensation not just as an economic contribution, but as recognition by the State of the acts committed by the security forces over 36 years. In addition to economic compensation, there will be access to grants for children, housing, priority for collective compensation, production projects and everything entailed in comprehensive compensation.

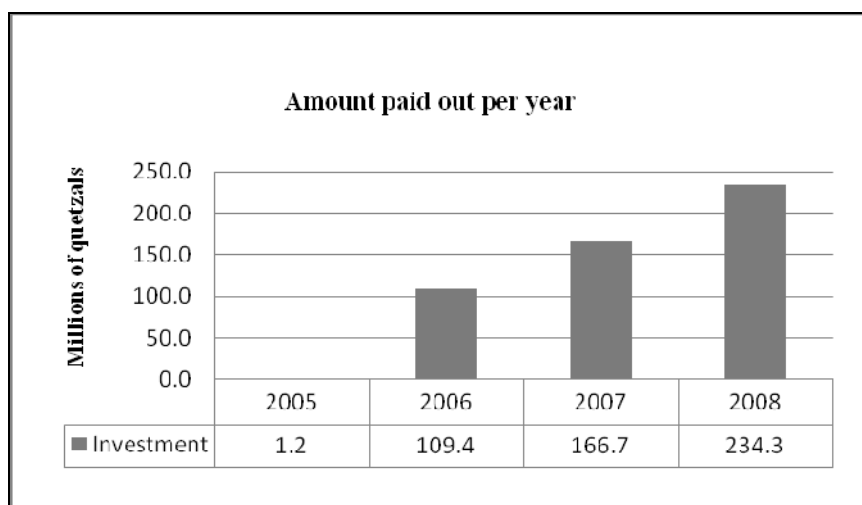
271. In 2008 the PNR hopes to make a state contribution to some 10,477 families victims of the internal armed conflict.

272. The families of the victims will receive between \$2,665 and \$3,200, depending on whether the person they are claiming for died or disappeared. For this, the PNR has an annual budget of 300 million quetzals (some 40 million dollars). In recent years payments have fallen behind and there is a waiting list of some 25,000 families whose cases have to be examined. From January to August 2008, the State made 2,000 payments to families.

**Table 19****Beneficiaries of economic indemnification**

This graph shows peaks of productivity from 2005 to 2008, represented in numbers of beneficiaries. As can be seen in the graph, economic indemnification in terms of productivity maintained production flows and there was a 21.90% increase over those reported in 2007, which confirms the growing efficiency of the process for the production chain planned for 2008.

**Table 20**  
**Amount paid out per year**



The above graph represents the amounts paid out by the PNR as investment and compares the years from 2005 to 2008. It can be seen that investment in 2008 increased by 40% over the previous year.

## **5. Mining and hydroelectric concessions and consultation with indigenous peoples**

### **OBSERVATIONS AND RECOMMENDATIONS OF THE COMMITTEE**

*Paragraph 19. The Committee notes with concern that mining licences have been granted by the Ministry of Energy and Mines to concession enterprises and regrets that indigenous peoples were not consulted or informed that the permission to exploit the subsoil of their territory had been awarded to such enterprises. The Committee likewise expresses its concern at the draft legislation on consultative procedures which, if adopted, would infringe indigenous peoples' right to participate in decisions affecting them. (art. 5, subpara. (d) (v)).*

*The Committee recommends that when taking decisions having a direct bearing on the rights and interests of indigenous peoples the State party endeavour to obtain their informed consent, as stipulated in paragraph 4 (d) of its general recommendation 23. The Committee also recommends that before adopting the draft legislation on consultative procedures, the State party include a clause referring to the right of indigenous peoples to be consulted whenever legislative or administrative measures are contemplated that may affect them with a view to securing their consent to such measures.*

#### *Process of granting mining licences*

273. Mining licences are granted pursuant to the mining and environmental laws in force in the country after environmental impact studies have allowed approval, so as to make rational use of

resources and preserve the environment while safeguarding the health and security of the Guatemalan population.

274. An applicant for a mining licence must fulfil a series of formal requirements as stipulated in article 41 of the Mining Act, Decree 48-97 of the Congress of the Republic. The award process is as follows:

- a) The Department of Mining Rights, Mine Registry Section, checks that there is no overlap with previous licences or applications, that the area concerned does contain the minerals to be mined and that the amount is consistent with the time requested for exploitation;
- b) Once the foregoing formalities have been completed, the Control Unit of the Department of Mining Supervision is consulted to ensure that the company has no outstanding debts or unfilled technical requirements for other licences it may have applied for;
- c) That process completed, the file is sent to the Legal Department to issue a ruling and then the whole file goes to the Attorney General of the Nation for approval;
- d) After the above, a check is made to see that the company has presented its environmental impact study to the Ministry of the Environment and Natural Resources and duly received its endorsement;
- e) All these requirements having been met, a resolution granting the licence is issued.

**Table 21**

**Licences in force and applications pending**

	<i>Recognisance</i>	<i>Exploration</i>	<i>Exploitation</i>	<i>Total</i>
<b>Licences in force</b>				
Construction materials	0	5	88	93
Metallic	1	111	25	137
Non-metallic	0	26	137	163
<b>Total</b>	<b>1</b>	<b>142</b>	<b>250</b>	<b>393</b>
<b>Applications pending</b>				
Construction materials	0	77	111	188
Metallic	5	95	11	111
Non-metallic	0	30	30	60
<b>Total</b>	<b>5</b>	<b>202</b>	<b>152</b>	<b>359</b>

As of 12 June 2008

Source: Ministry of Energy and Mines

*Consultation of indigenous peoples/communities for granting mining or hydroelectric plant construction licences*

275. The method various communities have favoured in the face of action to grant licences has been to hold “community consultations” as provided for in the Municipal Code.

276. Such consultations have taken place in various municipalities in five departments. Two of those departments – San Marcos and Huehuetenango – are alike in having high indigenous population density. Each of the municipalities in which consultations have been held has rejected mining activity, hydroelectric installations or oil prospection.

**Table 22**  
**Consultations recorded**

<i>Place</i>	<i>Date</i>	<i>Concession</i>
<b>Zacapa</b>		
Río Hondo	3 July 2005	Hydroelectricity
<b>Guatemala</b>		
San Juan Sacatepéquez	13 May 2007	Mining
<b>Quiché</b>		
Ixcán	30 April 2007	Oil extraction and Hydroelectricity
<b>San Marcos</b>		
Sipacapa	18 June 2005	Mining
Comitancillo	14-18 May 2005	Mining
Concepción Tutuapa	13 February 2007	Mining
Ixchiguán	13 June 2007	Mining
Tajumulco	27 Novembre 2006	
Sinibal	18 April 2008	Mining
<b>Huehuetenango</b>		
Colotenango	25 July 2006	Mining
San Juan Atitán	25 July 2006	Mining
Todos Santos Cuchumatán	25 July 2006	Mining
Concepción Huista	25 July 2006	Mining
Santiago Chimaltenango	27 July 2006	Mining
Santa Eulalia	30 August 2006	Mining
San Pedro Necta	30 March 2007	Mining
San Antonio Huista	12 May 2007	Mining
Santa Cruz Barillas	23 June 2007	Mining
San Miguel Acatán	1st December 2007	
San Juan Ixcoy	13 May 2008	Mining
<b>Totonicapán</b>		
Momostenango	20 April 2006	

*Monitoring of environmental impact of mining*

277. In accordance with the powers invested under the Mining Act in the General Directorate of Mining of the Ministry of Energy and Mines, routine inspections are carried out at all mining concerns to ensure they do not affect or cause harm to the environment. In the particular case of Marlin I, the gold mine in the department of San Marcos, a permanent delegation is on the spot 24 hours a day, every day of the year, to monitor all aspects relating to the environment, mining safety and the exportation of gold and silver (gilded metal) bars.

*Reform of the Mining Act*

278. By a sentence of 8 May 2007, File No. 1779-2005, the Constitutional Court decided that the right of communities and neighbouring groups promoted by municipalities to be consulted is in accordance with the Constitution, from the moment of their convening until the final result. It considers that this is a fresh step towards participatory democracy in Guatemala. It also ruled that the results are not binding. And so the Constitutional Court urges the Congress of the Republic to undertake a reform of the law in order to regulate consultations. At present, draft amendments to the Mining Act are being debated; among them is a chapter on consultations before the award of licences to mine, aimed at making them binding.

279. The Congressional Committees on Energy and the Economy will submit the draft amendments to sectors of society for views, proposals and questions, so that the various sectors can debate among themselves before a decision is made.

280. The debate has taken as its starting point the proposal made in 2006 by the High-Level Multisectoral Commission, which comprised the Catholic Church, the Ministry of Energy and Mines (MEM) and environmental organisations. Among other things, the Commission proposed that account be taken of consultations with the people, the protection of the environment, social problems, and the royalties received by the country.

*Follow-up of allegations of harm caused by mining and hydroelectric companies*

281. Historically, situations of social and environmental concern have been experienced in connection with energy and mining projects. They have made the development of such projects difficult because of the natural or systematic resistance of communities in the area affected by the projects due to various factors, such as an absence of social outreach to the communities, disinformation, a lack of care on the part of the institutions concerned and the absence of agreements between the parties. Such situations deserve to be analysed to identify the specific type of support needed and above all to take concrete action to improve the public sector's plans for assistance both to the communities and to private energy and mining enterprises.

282. With regard to hydroelectric plants, no specific complaints of harm have been received during construction, but there is opposition to their being built in the first place. The argument is that this kind of project is harmful to the environment, that it does not benefit the neighbouring populations and that the projects merely take control of the water resources.

283. Complaints about mining are constantly coming in from communities, especially about quarrying for building materials and about illegal miners. All complaints are investigated immediately and fines and other sanctions are applied wherever necessary.

284. In view of the foregoing, the State of Guatemala, through its Ministry of Energy and Mines, created the Vice-Ministry for Sustainable Development, which aims to support all initiatives available to it to stimulate the development of the energy supply on the basis of renewable sources of energy and of responsible mining, seeking meanwhile to ensure that such exploitation is carried out mainly by the private sector under present market conditions and in a quest for sustainable development.

285. The chief functions of the Vice-Ministry for Sustainable Development are:

- a) Rendering projects in the Ministry's areas of interest acceptable to society;
- b) Acting as liaison between the communities and the energy and/or mining project developer;
- c) Assisting conflict resolution;
- d) Acting as inter-institutional liaison between MEM and the other Ministries of State with regard to the environment, society and production;
- e) Acting as inter-institutional liaison for channelling resources for the development of production projects of benefit to communities affected by MEM's concerns.

286. Conferences and forums have been held for the country's different communities, with a view to calming the population's anxieties about mining while at the same time informing them of the benefits mining may bring to the municipalities and departments in which it takes place. Staff have also been delegated to approach the communities and inform them of the advantages and disadvantages of hydroelectric projects and the benefits that can be obtained therefrom. The following action has been taken:

- a) Dialogues with communities;
- b) Presentations to communities;
- c) Dialogues with and presentations to municipal authorities
- d) Dialogues with and presentations to organisations in opposition;
- e) Round tables for dialogue, to reach agreement among local, municipal and government authorities;
- f) Local radio talks;
- g) Announcements on radio and in the press;
- h) Distribution of leaflets and information.

**Table 23****Meetings held, 2006 and 2007**

<i>Date</i>	<i>Place</i>	
27 Jan.06	Chimaltenango	8 <sup>th</sup> PAF-MAYA regional meeting
23 Mar.06	Mariscos, Izabal	AMASURLI
07 Apr.06	Chiquimula	Governor and MARN
16 Jun.06	Jocotan, Chiquimula	Human Rights Auxiliary
20 Jul.06	Chichicastenango, Quiché	Agrarian Affairs Sec.
08 Sep.06	Morales, Izabal	Rep. of 20 communities
24 Oct.06	Santa Cruz, Quiché	Social pastoral
29 Nov.06	Guatemala	Chief of Staff, Defence
12 Jan.07	Momostenango, Totonicapan	Communities
21 Mar.07	Tactic, Alta Verapaz	Stoppage of water sources
04 May 07	Tactic, Alta Verapaz	Follow-up stoppage problem
04 May 07	Chiquimula	COCODE gold project, El Pato and others
07 Jun.07	Cubulco, Baja Verapaz	COMUDE, mining problems
08 Jun.07	San Juan Sacatepéquez	COMUDE, cement factory problem
03 Jul.07	Tactic, Alta Verapaz	Check stoppage problema
22 Aug.07	Estor, Izabal	El Bongo community problem
20 Sep.07	Camotan, Chiquimula	Mining and hydroelectric Problems
03 Oct.07	El Estor, Izabal	Support Eurosolar project
19 Nov.07	Zacapa	

287. In 2004 the Office of the Human Rights Procurator (PDH) began its intervention in matters related to the mineral exploration and exploitation being carried out in indigenous communities. The chief motives guiding this state organ for the protection of the human rights of indigenous peoples in its intervention are: a) respect for the integrity of indigenous peoples – prior consultation, participation, ethno-cultural impact studies, benefit for development, and compensation for damages; b) a sound legal foundation for the development being promoted in indigenous communities; c) manageability, whenever non-compliance with the people's human rights as a whole has led to multiple disturbances and protests.

288. In 2006, PDH made an analysis of appropriate ways of consulting the indigenous peoples, holding in that connection three pre-congress meetings and the First Guatemalan Congress on Appropriate Forms of Consultation with the Indigenous Peoples. More than 700 indigenous communities attended that congress.

289. These events served two basic purposes: a) to encourage citizens to participate in the discussion of matters affecting their community; b) to motivate them to debate subjects identified



as being of most concern. It was possible then to stress that consultation, for indigenous peoples, goes beyond expressing a positive or negative opinion or accepting or rejecting a given project or initiative.

#### *Challenges for the future*

290. An analysis and a wide-ranging discussion of the initiative for a law on consulting the indigenous peoples, with broad participation, are needed.

291. The consultation process is linked to a series of actions that go beyond informing the population about an initiative, programme or project, publicising it and making it known to them. It is a matter of giving them a deep understanding of the significance of the project, so that duly informed in advance, the population can freely give its consent.

292. In the field of the human and collective rights of the indigenous peoples there are new rules that may be conceived of as representing new standards, such as respect for their integrity, prior study of ethnic and cultural impact and consultation and participation.

293. Consideration must be given to the fact that environmental impact must not be confined to purely material aspects, but should include all those immaterial concerns that affect the lives of the indigenous peoples living in the vicinity of the project.

294. The free exercise of the right to free enterprise and freedom of industry does not entail setting aside the fundamental rights of indigenous men and women. The legal regime does not imply simple compliance with administrative requirements, but full observance of human rights as a pillar of a democratic State.

295. It is important for the State institutions concerned to offer timely information about administrative acts to the population and especially to the indigenous peoples when their interests may be harmed.

## **6. Access to health**

### *Situation of the health services*

296. The results of the National Survey of Living Conditions (ENCOVI), 2006, show whether care is given publicly or privately and the demand for basic health services of all persons in a household, by area, sex and ethnic group:

Table 24

## Demand for and access to health services

Characteristics		Area			Sex		Ethnic group	
		Total	Urban	Rural	Male	Female	Indigenous	Non-indigenous
Demand for health services	Requesting	51.0	57.5	44.1	49.1	52.3	42.5	55.4
	Not requesting	49.0	42.5	55.9	50.1	47.7	57.5	44.6
Care Establishment	Public	43.2	36.0	53.0	43.6	42.9	49.6	40.7
	Private	56.8	64.0	47.0	56.4	57.1	50.4	59.3
<b>National total</b>		<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Source: National Statistics Institute, INE. ECOVI 2006.

297. Health services for the population are provided principally in three ways: through the intermediary of the Ministry of Health and Social Welfare (MSPAS), the Guatemalan Institute for Social Security (IGSS) and the private sector. The first of these covers 70% of the population, the second 8.2%.

298. MSPAS is the organ governing health in Guatemala and leads in all procedures defined in the health policies of the Government, as well as working actively with the different entities concerned.

299. Over the period 2004-2008, the priorities for health were set out in the Outline of the National Health Plan, which includes among its policies satisfying the health needs of the Guatemalan population by offering compassionate, equitable, quality health care with an intercultural and gender focus at all levels of care.

300. From 2008, with the change of government, changes occurred in health priorities, although those whose content was aimed at indigenous peoples were maintained. The Health Ministry's policy no.3 is: "To promote and enhance action to guarantee the accessibility of medicines. To recognise the use and practice of alternative and traditional medicine". Among the strategic guidelines we find: "Promote, regulate and guarantee the use of phytotherapy and encourage the development of alternative and traditional medicine, as well as its institutionalisation". Moreover, among the strategic guidelines for co-ordination with all the organs of the Ministry, we find: "To implement a model of comprehensive care and management that will guarantee that equitable, decentralised care with cultural and gender relevance continues to be given at all three levels.

301. There are three levels at which MSPAS provides services reflecting their respective complexity.

302. The **first level** comprises the institutional services: health posts and centres of primary health care. This includes care given thanks to the hiring of non-governmental administrators and health providers, which has allowed us to extend the coverage of the indigenous peoples, which was considered seriously behindhand. The services provided at the first level are

considered as a basic basket of health care, which includes 26 services, 8 for women, 8 for children, 6 for emergencies and common diseases and 4 for the environment.

303. Services at the **second level** are provided by the following institutions: the Health Centre and the Comprehensive Mother and Child Care Centres (CAIMI); 24-hour Care Centres (CAP) and the Centre for Medical Emergencies (CUM).

304. The **third level** comprises services provided by district, departmental, regional and national hospitals.

305. The country's health care capacity has not varied significantly over the last 15 years, except for the increase in care provided by first-level, non-institutional services. The second- and third-level public infrastructure has not changed substantially. In the last year three comprehensive mother and child care centres were set up in priority municipalities of Huehuetenango (Cuilco), San Marcos (Ixchiguan) and Izabal (El Estor).

306. Health care to the population has been expanded in 2008 and the Ministry of Public Health and Social Welfare has increased the human resources and equipment in 45 municipalities given priority by the Government of Guatemala, renovating their infrastructure and providing them with ambulances. The timetable for out-patient appointments at the hospitals has been expanded. To date we can show the following achievements:

- a) 89 health centres in 10 departments have had corrective maintenance (renovation);
- b) 1,556 persons (medical personnel, paramedics and operatives) have been recruited to enhance the provision of health services. Priority has been given to recruitment of persons from the locality or neighbouring regions, whenever available;
- c) Provision of 40 ambulances, which have been sent to health centres in the municipalities given priority by the Government;
- d) Expansion of consulting hours in 192 health centres. This refers to 45 24-hour health care centres and 152 health posts with weekend opening hours;
- e) In the month of August, 1,810,743 health service patients were seen. There has been an increase of 14% over the previous year, with a total of 220,503 consultations more up to August 2008 countrywide.

307. In the field of preventive health care it is planned to invest by remittances in 45 priority municipalities to create 24-hour health centres and Monday-to-Friday health posts. With the help of a loan from the World Bank we shall modify the services network to benefit those municipalities with the most health problems. Out of 10 planned for 2008, eight are in areas of indigenous population.

### ***Reform of the health sector***

308. In recent years, reform of the sector has led to improvement in access to health services for the indigenous population which has been neglected for many years. There was a 66% increase

from 1990 to 2004. The principal strategy of MSPAS for providing basic services and increasing coverage is the Comprehensive Health Care System (SIAS), chiefly at the first level, which provides services to the population with emphasis on women, children and environmental risk. In 50% of the departments with a high proportion of indigenous population at least 30% of the people are covered by SIAS, in an effort to reduce the existing inequalities in infrastructure and human resource distribution.

309. The Department of Health Promotion and Education, which comes under the General Directorate of the Comprehensive Health Care System (DGSIAS), whose functions are closely linked to the participation of all those involved in health work at all levels, was strengthened in the five-year period 2000-2005 through joint action with municipal governments whereby COMUDES and COCODES were trained and local development plans at the municipal level were drawn up with various local health personnel and specific components such as food and nutritional security. Extended coverage and the reproductive health programme have encouraged the creation of local committees for emergency care for mothers and newborns. Their main function is to plan for and deal with maternal emergencies in the community under the leadership of trained midwives.

310. The National Plan for Healthy Schools is another effort that has had an impact nationwide. Its action is planned jointly with the education authorities.

311. To ensure co-ordination with indigenous, non-governmental and civil-society organisations, so that an indigenous focus can be incorporated into health services, local organisations such as Health Service Providers (PSS), which are not governmental but part of civil society, are recruited through the Programme to Extend Coverage. Guidelines and supervision are the work of the MSPAS Programme. All departments in the country, except Zacapa and El Progreso, have such arrangements. In areas where MSPAS is not present, there are 84 agreements signed with non-governmental organisations for 435 jurisdictions.

312. Other work done in this field is the establishment of: a) the Networks of Responsible Fatherhood and Motherhood; b) the National Committee for Healthy Motherhood; and c) the National Mental Health Network.

#### *Access to health care in one's own language*

313. It is up to DGSIAS to guarantee access for all the population without any distinction or restriction. At present there are places where service providers speak the local language, but not everywhere, because there are no specific rules on the question.

314. Access is being guaranteed at present by the recruitment of staff who speak the language of the region or by reliance on the help of translators. Extending coverage by incorporating community personnel into basic health care teams also helps.

**Table 25**  
**Ministry of Health and Social Welfare staff**

<i>Basic health team</i>	<i>Year</i>			
	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>
<b>MA/EA</b>	356	373	409	448
<b>FI</b>	385	262	415	538
<b>Mother and newborn nursing auxiliary</b>	0	0	64	80
<b>FC</b>	2,114	2,885	4,175	4,822
<b>VS</b>	29,226	24,374	25,470	24,436
<b>CT</b>	9,881	8,630	10,527	11,011
<b>Educator</b>	0	0	266	310
<b>Total</b>	<b>41,962</b>	<b>36,524</b>	<b>41,326</b>	<b>41,645</b>

315. Of such staff, only the mother and newborn auxiliaries in areas of major maternal mortality (Huehuetenango, Alta Verapaz, Quiché, Totonicapán, Chimaltenango, Solola and Baja Verapaz) are 100% indigenous.

316. There is no specific register indicating the ethnic group of the personnel; however, it may be stated that, since 95% of the areas are rural, community personnel such as community facilitators, health patrols and traditional midwives are, in the majority, community residents and so belong to the ethnic group of the region.

**Table 26**  
**Numbers of staff assigned to health services**

<i>Staff category</i>	<i>Number</i>
<b>Institutional</b>	23,376
<b>Extension of cover</b>	12,445
<b>Total</b>	<b>35,376</b>

### *Mortality rate*

317. The data base of the National Statistics Institute indicates that the proportion of deaths attributable to transmissible diseases has declined from 76% to 62% of all deaths registered; in contrast, deaths from cardiovascular illnesses have increased by 61% and those from tumours by 100% in the same period. In 2004, the majority of the 53% of deaths from tuberculosis occurred in the indigenous population group, the mortality rate being 1.85 per 100,000 inhabitants, whereas the non-indigenous group had a rate of 1.36 per 100,000. Another of the transmissible diseases that show differences according to ethnic group is AIDS, for which 62% of cases occurred in the non-indigenous group, a rate of 2.28 per 100,000, while in the indigenous group

it was 1.64 per 100,000. The non-indigenous population had a greater number of deaths from this cause – 57% of the total – and a rate of 42 per 100,000, whereas in the indigenous population that rate was 37 per 100,000. The average rate of mortality from external causes is 37 per 100,000, being greater in the non-indigenous group.

Table 27

## Mortality rate, Guatemala 1990-2005

	<i>General (rate per 1,000 inhab.) (1)</i>	<i>Maternal (2)</i>	<i>TB (total deaths) (3)</i>	<i>AIDS (total deaths) (3)</i>	<i>Malaria (total deaths) (3)</i>	<i>Diseases of the circulation (total deaths) (3)</i>	<i>Malignant neoplastic diseases (total deaths) (3)</i>	<i>External causes (total deaths) (3)</i>
Period								
1990-1994	8.01	219	722	29	784	32,035	15,210	37,853
1995-1999	6.89	190	521	1,021	472	40,330	22,502	41,877
2000-2005	6.09	153	402	2,678	239	46,875	28,843	45,583
Sex								
Men	6.4		218	515	15	4,972	2,905	8,101
Women	4.5		118	169	13	4,815	3,449	1,753
Geographical area								
Urban	N/D	N/D	N/D	N/D	N/D	N/D	N/D	N/D
Rural	N/D	N/D	N/D	N/D	N/D	N/D	N/D	N/D
Ethnic group								
Indigenous	4.1	211	106	94	10	2,115	1,489	2,010
Non- indigenous	2.4	70	91	152	11	2,803	1,753	2,578
<b>Total</b>			<b>197</b>	<b>246</b>	<b>21</b>	<b>4,918</b>	<b>3,242</b>	<b>4,588</b>
% indigenous			53.81	38.21	47.62	43.01	45.93	43.81

Sources: (1) Calculated from INE mortality data and INE population projections.

(2) Report on the base line of maternal mortality for 2000, Guatemala, MSPAS.

(3) Calculated from INE data; refers to annual average number of mortalities. For sex and ethnic group, the same source refers to 2004 (latest available data).

### *Department of Personal Health Care Programmes Regulation*

318. The Department of Personal Health Care Programmes Regulation (DRPAP) is responsible for elaborating, issuing, updating and periodically adjusting the rules for the various programmes of health promotion, preventive medicine, recovery and rehabilitation for children, women, adolescents, adults and the elderly. Chief among the programmes DRPAP regulates are:

*Programme of Traditional, Popular and Alternative Medicine*

319. The work of the Traditional, Popular and Alternative Medicine Programme (PNMPTA) is to formulate and promote policies, rules, strategies and guidelines for the fair evaluation and recognition of and respect for the knowledge, resources, methods and practices of popular traditional and alternative medicine. With the participation of society and programmes to train and raise the awareness of the human resources, conditions can be created for linkage and complementarity between the official health system and alternative models of holistic care. PNMPTA encourages the inclusion of social, spiritual, psychological and biological elements in the care offered by the health services, endeavouring to ensure that these services are culturally accessible, appropriate, well adapted and accepted.

320. For the elaboration of rules for this programme, research has been done on the following:

- a) Definition of the features that are accessible to the population and accepted by them, so as to improve the health services on offer and satisfy the users. Carried out by the Rex we Association;
- b) Enhancing mother and newborn care at the second level; strengthening the maternal homes strategy. Carried out by independent consultants;
- c) A diagnostic study of craft centres in Guatemalan departments;
- d) A proposed strategy for hospitals to be accessible and adapted to different cultures. Carried out by independent consultants.

321. As part of the inclusion of rules for care, promotion and prevention at the first and second care levels which feature aspects of phytotherapy and respect for the value of traditional medicine of the Traditional Medicine Programme, the following have been produced:

- a) A National Vademecum of Medicinal Plants. Produced by the Chemistry and Pharmacy School of the University of San Carlos in Guatemala;
- b) *Getting to know traditional medicine in Guatemala*. Produced by the Pies de Occidente Association, the Integrated Totonicapan Association, ASECSA and CCAM;
- c) Development:
  - i) Awareness-raising modules – *Getting to know traditional medicine in Guatemala* and the Vademecum;
  - ii) A methodology for training modules to help in the recovery, fair evaluation and study of the methods and practices of traditional medicine and the quest for strategies for linking it to the official health system networks.

322. Among the local strategies MSPAS is developing through the National Programme of Popular, Traditional and Alternative Medicine are:

- a) Herbaria;

- b) Health services with a traditional doctor and a doctor of Western medicine;
- c) Services that include intercultural aspects.

322. The State health system is linked with traditional indigenous medicine through:

- a) Exchanges with traditional therapists, joint emergency plans with the community for the recognition of danger signs in mothers and newborns;
- b) The formation of community networks for the care and feeding of children, using counselling of cultural relevance;
- c) In childbirth, the value of midwives' work is acknowledged, they are recognised and invited to maintain ongoing contact with the health services. In addition, depending on the pathology, patients may be referred to practitioners of popular traditional medicine;
- d) The creation of culturally adapted health service strategies.

*National HIV-AIDS Prevention Programme*

324. In this programme care is given to persons of both sexes and all ethnic groups living with HIV-AIDS. Up to the date of the present report, 10,745 cases of AIDS had been notified. Of those, 3,248 were women and 7,497 were men, 77% of cases being from the non-indigenous population and 18% from the indigenous population.

325. For the Ministry of Health and Social Welfare, HIV and AIDS are infections it is compulsory to report. The National Epidemics Centre (CNE) has to be notified of them. The Centre reports that the following population groups are affected: non-indigenous 75%, Maya 22%, Garifuna 0.8%, Xinka 0.05%, unidentified 1.6%.

326. Under the National Programme for the Prevention and Control of Sexually Transmitted Diseases, HIV and AIDS, 3,063 persons have been treated; with the support of the Global Fund, another 3,110 and by the Guatemalan Institute for Social Security, 2,293. The resulting total is 8,466 persons treated.

327. Persons with HIV-AIDS are offered services at the following nine comprehensive care centres:

- a) Roosevelt Hospital clinics for infectious diseases;
- b) San Juan de Dios Hospital, Luis Angel Garcia family Clinic;
- c) Marco Antonio Foundation, Yaloc Clinic;
- d) San José Hospice, Sacatepéquez;
- e) Coatepeque Hospital;
- f) Japan-Guatemala Friendship Hospital, Puerto Barrios;



- g) Children's Hospital, Puerto Barrios;
- h) Rodolfo Robles Hospital, Quetzaltenango;
- i) Western Regional Hospital, Quetzaltenango.

328. Decree 638-2005 produced the Public Policy on the Prevention of Sexually Transmitted Diseases (STD) and the Response to the AIDS Epidemic. Among the objectives of the policy are the following:

329. *Multiculturalism*. The aim is to take a multicultural approach in the various forms of action included in the policy, bearing in mind the social, cultural and linguistic characteristics of the peoples who make up Guatemala, with a view to respecting human rights. Some of the strategic activities are:

- a) Carrying out specific studies on sexuality and the incidence and impact of STD, HIV and AIDS, broken down by population – Ladino, mixed race, Maya, Garifuna, Xinca – for the purpose of planning and implementing action of social and cultural relevance and with a gender-differentiated focus;
- b) Encouraging community participation on the basis of the indigenous peoples' own forms of organisation to come up with relevant methods of prevention and care that ensure respect for the language and customs of the Maya, Garifuna and Xinca peoples;
- c) Ensuring the fair treatment of persons living with HIV and AIDS in full respect for their values and cultural identity.

330. *Gender*. The aim is to enhance the over-all treatment of STD, HIV and AIDS, taking a multidisciplinary, intersectoral, multicultural, gender-differentiated approach in respect for human rights. Some of the strategic activities are:

- a) Improving the diagnosis and treatment of STD and promoting scientifically approved preventive measures;
- b) Strengthening the National Public Health Laboratory and the national network of laboratories working on STD, HIV and AIDS;
- c) Elaborating and/or revising standardised rules and norms for the clinical treatment of infection by HIV, AIDS or other STD in accordance with the international recommendations in force.

#### *Mental Health Programme (PSM)*

331. The National Mental Health Policy, which intersects with an approach to mental health that embraces gender, ethnicity, culture and human rights, constitutes the platform on which the enjoyment of civil and political, social and economic, cultural and environmental rights is brought together to uphold a state of complete physical, psychological, social and cultural well-being.

332. Through its Mental Health Programme MSPAS has refined the technical means for ensuring mental health.

333. *The Protocol for mental health care in populations that have suffered human rights violations and political violence during the internal armed conflict and the Operational Guide to the Protocol on Political Violence.* This instrument is of assistance in strengthening the human resources, both in institutions and within the health system network, that will make possible comprehensive treatment offering, free of charge, compassionate, quality, specialised services that reflect the particular needs of the population, in order to contribute to the psychosocial recovery of all those who were directly or indirectly affected by the internal armed conflict. There is a chapter in the Protocol on how to deal with cases of women who suffered sexual violence during the internal armed conflict.

334. *Comprehensive Plan Stressing Mental Health.* In response to the ruling of the Inter-American Human Rights Court on human rights violations in the village of Plan de Sanchez, Rabinal, Baja Verapaz, during the internal armed conflict, 41,500 inhabitants of the municipal health district of the above-named municipality are receiving benefits. The Plan was also implemented as part of the Government's outstretched-hand policy guaranteeing psychosocial care for the population of Dos Erres, whereby a condemnation for human rights violation was averted and 60,000 inhabitants of the municipal district of La Libertad, south-western Petén, Sayaxché were benefited.

335. Psychologists have been recruited for the municipal health districts situated in Rabinal, Baja Verapaz, and La Libertad, Petén, as part of the implementation of the Comprehensive Care Model Stressing Mental Health, in response to the ruling of the Inter-American Human Rights Court.

336. These technical aids form part of the theoretical foundation being laid jointly with the policy of the National Compensation Programme to develop the Comprehensive Compensation Model with local human resources and psychologists and psychiatrists of the MSPAS countrywide network, with emphasis on the regions most affected by the internal armed conflict.

337. *Protocol for the care of victims of violence and how to tackle domestic violence.* These technical tools underpin the approach to the violence suffered by women in its physical, psychological and legal aspects. They are translated into practical terms via methodological training guides, as well as international methodologies for men and women dealing with cases of violence, especially against women, at the different levels of health care, with the aim of eliminating discrimination along the path trodden by women who are victims of physical, psychological, sexual or parental violence or violation of their fundamental human rights.

338. The PSM is part of the National Mental Health Network, which is made up of governmental organisations and civil-society bodies and aims to unite efforts to produce an impact on populations in the field of mental health, with a gender and ethnic focus.

339. In the Master's degree course in Social Psychology and Political Violence at the San Carlos University of Guatemala a co-ordination segment has been included to enhance the technical capacity of mental health personnel in comprehensive treatment.

*Indigenous women's access to health care*

340. In 2007 there were 324 deaths in childbirth, of which 55% were those of indigenous women and 45% non-indigenous, over-all maternal mortality being 113 deaths per 100,000.

341. Among the chief causes are: haemorrhage 59%, sepsis 20%, hypertension 12%, embolism 3%, abortion 3%, and non-specified 3%. From a social point of view, these causes are related to poor access by reason of geographical distance from health services, economic and social factors, ignorance of the danger signals, difficulties with decision-making and the shortcomings that constitute the fourth risk factor for childbirth (la cuarta demora).

342. In the departments with a majority indigenous population – Totonicapan 98.3% indigenous, Solola 96.4%, Alta Verapaz 92.8% and El Quiché 88.8% - health service coverage is approximately 98%. For the health care of indigenous women Nursing Auxiliaries have been trained and recruited, with specialist training in maternal and infant care. At present they have been placed in 108 jurisdictions with majority indigenous population to care for pregnant women, women in childbirth and in the post-natal period, as well as women's ailments generally.

343. After the base line of maternal mortality for the year 2000, the National Plan for Maternal Mortality Reduction was prepared in response to the problems encountered. Vigilance regarding maternal mortality has been enhanced and committees to analyse maternal deaths have been set up. At the same time, the Strategy for Comprehensive Treatment of Childhood Diseases and Comprehensive Treatment for Women and Children in the Community (AIEPI-AINM-C) is being implemented. Likewise departmental plans are emerging for the reduction of maternal mortality in co-ordination with SEGEPLAN. There is support from external co-operation for the reduction of maternal mortality in areas where it is above the national average (10 health districts).

*Preventive health care*

344. Investment in nutrition and preventive health care, as in health services generally, in an effort to ensure fairer access to them for indigenous peoples, has been increased through the following:

- a) Mother and Child Health Project 2008-2010. The nutrition component in extended coverage has received 56 million quetzals;
- b) 2006-onwards: nutritionists are being incorporated in 10 health areas;
- c) 2006-2015: Strategy for the reduction of chronic malnutrition;
- d) 2008-2009: Interim plan for the reduction of chronic malnutrition;
- e) 2005-2006: Programme – Nutrition Alert for Victims of Tropical Storm Stan;
- f) 2004-2007: Implementation of health services initiative – Friends of Breast-Feeding;
- g) 2006-2008: Project for nutritional care for adolescents;

- h) 2004-2008: Implementation of hospital care for acute malnutrition.

*Training for health-care personnel*

345. As a means of improving the health status of communities, the following have been instated:

- a) Diploma course in rules for health care at the first and second levels;
- b) Diploma course in food security and nutrition;
- c) Alliances with APRECOR, a community-based pilot project to prevent cardiovascular disease in Mixco municipality.

346. The following measures have been instated to facilitate training:

a) Participation in community development by means of community organisation using the community health team composed of: community facilitators, health patrols, traditional midwives, emergency committees and other community therapists. In concrete terms, the participation is the voluntary work done in co-ordination with the technical team and COCODES to meet primary health care needs using the established protocol, community assemblies, lecture-room presentations of situations, activation of emergency committees, management and negotiation for the transport of inputs (cereals, equipment, furniture etc.);

- b) IECs appropriate to the indigenous group;

- c) Methodological training guides geared to the educational level of the provider;

d) Raising the awareness of traditional medicine (self-teaching module) among institutional technical personnel in 10 health area jurisdictions in the departments of Alta Verapaz, El Quiché (Ixil area), Totonicapan, Jalapa and Suchitepéquez;

e) Publicising the MSPAS Vademecum of Traditional Medicine in the pilot jurisdictions of the health areas mentioned above;

f) Social organisation and mobilisation in which Mayan, Garifuna and Xinca groups participate, for example, in Responsible Fatherhood and Motherhood Networks or Emergency Community Committees.

347. In addition, among the programmes developed by the Guatemalan Indigenous Development Fund (FODIGUA) is one called Utzilal Winaq (comprehensive health). Ten projects are included in this programme with a total allocation of 1,899,647 quetzals and by September 2007 nine of these had been assessed and tested. The Comprehensive Health Programme is preventive in nature and based on co-ordination with midwives from the communities themselves with a view to making the work done with groups of women, men and children effective and efficient. The programme is geared to poor communities comprising indigenous persons in the departments of Totonicapan, Chimaltenango, Baja Verapaz,

Quetzaltenango and Quiché. To date the beneficiaries of this programme number 1,078 women, especially midwives.

*Challenges for the future*

348. Recognition of the existence of an indigenous health system provided by its own specialists and establishing a means of co-ordination between the two systems for the benefit of the rural population.

349. Developing and organising a comprehensive training plan at all the MSPAS levels (staff in charge of health services) to provide a health service that is culturally relevant and gender focused as well as intercultural so that we may implement an equitable and supportive health system, mainly in the communities of the interior to encourage the indigenous population to trust the service provided by the health system.

350. Systematically continuing training and awareness-raising at the three MSPAS health system levels regarding the intercultural focus of health care.

351. Revision, amendment and approval of the Popular and Traditional Health System Act (Initiative 3289).

352. The design and development of appropriate, well-adapted norms that are culturally accepted and specific to the cultural regions of the country.

353. Balancing MSPAS budgetary allocations to devote greater resources to primary health care, prevention and health promotion services.

## V. ARTICLE 6: ACCESS TO OFFICIAL JUSTICE

### OBSERVATIONS AND RECOMMENDATIONS OF THE COMMITTEE

*Paragraph 14. While the Committee notes the progress that has been made in preventing racial discrimination in the administration of justice in respect of indigenous peoples, it reiterates its concern at the problems experienced by indigenous peoples in gaining access to the justice system, particularly because the indigenous legal system is not recognized and applied and because of the lack of interpreters and bilingual counsel available for court proceedings. (art. 5, subpara. (a)).*

*The Committee reminds the State party of its General Recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system (para. 5 (e)), which calls on the State party to ensure respect for, and recognition of the traditional systems of justice of indigenous peoples, in conformity with international human rights law. The Committee also recommends that the State party guarantee the right of indigenous peoples to the use of interpreters and bilingual counsel in court proceedings.*

*Paragraph 18. The Committee is concerned by reports of obstructions to the use of traditional sacred sites by indigenous peoples and conflicts arising from these tensions being*

*handled by judicial officers as criminal matters. It has also been reported that a Commission examining a constitutional provision on sacred sites has been discontinued. (art. 5, subpara.(d)(vi))*

*The Committee requests the State party to examine the possibility of an alternative to criminal proceedings in handling these conflicts and urges it to ensure unobstructed enjoyment of this cultural right of the indigenous peoples.*

*Paragraph 21. While the Committee welcomes the information provided on the structure, composition and competence of the Ombudsman for Indigenous Peoples of the Office of the Human Rights Procurator (Defensoría de los Pueblos Indígenas de la Procuraduría de los Derechos Humanos), it regrets that no information has been provided on the results of the cases filed before this body.(art. 6).*

*The Committee recommends that the State party provide information on the results from the 28 complaints of racial discrimination that have been submitted including whether the victims have received due compensation.*

*Paragraph 22. While the Committee welcomes the information provided by the delegation on statistics relating to cases brought before the Office of the Human Rights Prosecutor (Fiscalía de Derechos Humanos), which investigates offences involving discrimination and racism, it nevertheless notes that of the 79 cases brought, only 1 resulted in conviction and sentence. (art. 6).*

*The Committee requests the State party to include in its next periodic report explanations as to why a sentence was handed down in only 1 out of 79 cases. The Committee would also appreciate statistical information on the complaints brought before the Office of the Human Rights Prosecutor, the proceedings initiated and the outcomes of cases involving racial or ethnic discrimination as well as specific examples of such cases. The Committee would also like to know whether the victims received just and adequate reparation for any material and moral damage suffered as a result of racial discrimination.*

354. For the indigenous peoples access to justice has been a problem from the socio-linguistic point of view, since the administration of justice takes place in Spanish. This has not favoured respect for the multicultural and multilingual State or strengthened it. In view of this situation, the various instances of the justice system have taken action to facilitate access to justice for the non-Spanish speaking population.

355. Because pluralism is largely unrecognised by the justice system in Guatemala, there has been an increase in the number of indigenous and non-governmental organisations that offer defence, guidance and counselling and accompany indigenous persons in the course of their law suits in the courts. These organisations also help in the solution of community disputes and personal cases by fostering the application of Mayan law or alternative means of justice. We should mention the Mayan Procurator's Office, Indigenous Legal Defence and the Wajxaq'ib'No'j Procurator's Office.

### **A. Public Criminal Defence Institute**

356. The Public Criminal Defence Institute (IDPP) has set up 14 indigenous procurators' offices nationwide, each of which has an indigenous defence lawyer, an interpreter and an indigenous assistant, thus guaranteeing a culturally relevant service in the following departments and/or municipalities.

- a) Chiquimula;
- b) San Cristobal, Ixchiguan, San Marcos;
- c) Nebaj, Quiché;
- d) Santa Cruz del Quiché;
- e) Salama, Baja Verapaz;
- f) Coban, Alta Verapaz;
- g) Chimaltenango;
- h) Quetzaltenango;
- i) Mazatenango;
- j) Solola;
- k) Totonicapan;
- l) Santa Eulalia, Huehuetenango;
- m) Puerto Barrios;
- n) San Benito, Petén.

357. By means of these Indigenous Procurators' Offices the indigenous population receives direct assistance with public defence.

358. The indigenous defence lawyers take up cases with cultural relevance in the official system and by reaching out to the communities enable the indigenous authorities to apply their own law to resolve disputes within their communities. In this connection, six workshops were held in 2007 to allow lawyers from the IDPP and indigenous authorities to exchange their experience.

359. For the treatment of cases with cultural relevance and to accumulate successful experience in the application of international rules in the solution of some court proceedings, the intercultural facilitators have compiled a list of model cases. They have gathered 12 cases (from both systems) which in a way document the progress in incorporating cultural relevance into the official system.

**Table 28****Number of officials working in the IDPP**

<i>Men</i>		<i>Women</i>	
<i>Indigenous</i>	<i>Non-indigenous</i>	<i>Indigenous</i>	<i>Non-indigenous</i>
35	496	12	422

360. Personnel of indigenous origin occupy the following posts: 14 defence lawyers (male and female), 14 assistants to the defence, 14 interpreters and 4 technical administrators. (See tables in the annex.)

*IDPP strategies for co-ordination, awareness-raising and training*

361. The Co-ordinator of the Indigenous Procurators' Offices has ensured the development of co-ordination, awareness-raising and training from a viewpoint that includes the rights of the indigenous peoples within the system of justice. The following should be highlighted:

- a) The training of indigenous students from the regions of Quetzaltenango and Coban Alta Verapaz. As a result, eight of these students have passed the private stage of the Legal and Social Sciences degree course;
- b) The compilation of a data bank of Mayan, Garifuna and Xinca students in recent years with approved study plans for a law degree course in the country's various faculties. The documented information is classified by linguistic group (ethnic group and/or linguistic community), sex and age, among other variables. The register contains 201 students from the following groups: 12 Achi, 2 Awakateko, 1 Chuj, 3 Garifuna, 8 Ixil, 56 Kaqchikel, 65 K'iche', 3 Mam, 4 Poqomam, 3 Pocomchi', 6 Q'anjob'al, 24 Q'eqchi', 1 Sakapulteko, 8 Tz'utujil and 5 Xinca;
- c) Strengthening the means of co-ordination between IDPP's training units, the Attorney General's Office and the Judiciary. This has made it possible to compile and organise at the national level the cases with cultural relevance solved through the official justice system and by indigenous authorities;
- d) Training 35 agents of justice, among them judges, public prosecutors and public defence lawyers, in the application of cultural expertise to the justice system by the diploma course "Legal, intercultural and human rights pluralism in Guatemala";
- e) A second stage of training solely for public defence lawyers on the staff and indigenous defence lawyers, to enhance their training in the application of cultural expertise as a tool for the effective defence of indigenous peoples. Forty-one IDPP defence lawyers took part;
- f) Preparation of a guide to cultural expertise and its application to the justice system, which is used by IDPP's Training Unit to give continuity to the training process on the model of justice used by the Institute;



g) Design and preparation of a module for awareness-raising, “The Indigenous Peoples’ Own Law”, which has already been considered in preparing IDPP’s curriculum as part of the institutional training corresponding to the degree course system;

h) To date four awareness-raising workshops on the intercultural theme have been held in co-ordination with IDPP’s Organisational Development Unit, providing training for public defence lawyers and administrative and technical personnel;

i) With the Co-ordinators of IDPP’s Focus on Gender and Care of Victims of Domestic Violence courses of action have been conceived and worked out to include cultural relevance with a gender focus and from the indigenous women’s perspective in IDPP’s work, in accordance with the Institute’s policy of weaving interculturalism into all its work;

j) Initiatives have been encouraged for backing up the indigenous authorities as valid and legitimate interlocutors in the process of building legal pluralism; this furthermore assists the repair of the social fabric of the communities in the north-east. Training has taken place as part of the ongoing strengthening of indigenous authorities in the north-west and north-east regions so that they may become familiar with the official system and the application of their own law and international regulations to indigenous peoples;

k) Non-governmental organisations have been recruited to put this strategy into practice and to date the following linguistic regions have been affected: Pancala (18 communities), El Bongo (19 communities), Lo de En Medio (9 communities), the Garifuna of Puerto Barrios and Livingston, 41 cantons of Totonicapan, as well as communities of Campur (Cahabon and Lanquin), Cubilgüitz (micro-regions of Coban), Santa Cruz Verapaz, Tactic, San Cristobal, all groups of Alta Verapaz, and Tamahu, Salama, San Miguel, Chicaj and Rabinal (Cubulco) Baja Verapaz; and in the west, Santa Cruz el Quiché, Chiché, Zacualpa, Chichicastenango, Santa Lucia La Reforma and Cantel. It is important to highlight the participation of indigenous women in this work. To guarantee that the action taken by the NGOs that have been recruited is complied with, inspection visits have been undertaken as part of a system set up by the facilitators of both regions, checking full compliance with the aims the NGO has committed itself to. As a result of this work during the present year 2,298 indigenous authorities and leaders have been trained;

l) In tandem with the training just referred to, short workshops have been held in the Chorti region in the indigenous authorities’ and leaders’ own communities. Sixty-eight participants have been trained and satisfactory results have been obtained as regards their strengthening;

m) Two regional meetings were held in 2006 with 106 indigenous authorities and leaders participating and in 2007 the following meetings took place:

- i) A national-level meeting with 102 indigenous authorities and leaders; in addition activities were co-ordinated with other agents of the justice sector and NGOs;
- ii) A second meeting held in Santa Cruz Verapaz, Alta Verapaz, with 72 indigenous authorities and leaders from the north-east region participating;

- ii) An exchange of information with indigenous authorities in the west who possess broad experience and a stronger organisational structure;

This series of meetings has created a lasting opportunity to exchange experience about the application of indigenous law and how the communities themselves can implement it;

- n) In the same vein and to complement the work of strengthening, the strategy is to continue holding regional meetings with indigenous authorities and leaders to keep producing opportunities for dialogue;

o) Thanks to the Co-ordinator of Indigenous Public Prosecutors' Offices joint co-ordinated work has been begun and stepped up with the following institutions among others: i) in the justice sector: the Attorney General's Office, the Judiciary and the Ministry of the Interior; ii) National Commission for Follow-up and Support for the Strengthening of Justice (CNSAFJ); iii) National Commission to Support the Judiciary's Sub-programme against Lynching; iv) Office for the Defence of Indigenous Women's Rights (DEMI); v) Presidential Commission on Discrimination and Racism (CODISRA); vi) Regional Investigations Centre for Central America; vii) the Bar Association and the Notaries' Association; viii) Soros Foundation; ix) Chichicastenango Community Development Association (ASDECO); x) Legal and Social Service (SERJUS).

## **B. The Judiciary**

### **1. Bilingual staff**

362. The Judiciary has gradually been appointing bilingual staff to the courts in the municipalities with the greatest indigenous population density with a view to having trained human resources to facilitate access to justice.

363. In the recruitment of staff mainly for a given jurisdictional area, the policy of selecting and recruiting bilingual persons speaking the language of the location of the jurisdictional body in which they will serve is encouraged. The selection process for such appointments uses the job description corresponding to each post, from judge down to court maintenance officer. A list is annexed with the names of the persons, the posts they occupy, the court where they work and the dominant language there.

364. The Judiciary has 389 bilingual officials (Spanish/Mayan language) throughout the national territory (308 men, 81 women), to be found in courts situated in municipalities of majority indigenous population.

365. Included among them are 65 Official I/Interpreter posts (20 women, 45 men), distributed over the departments of Alta Verapaz, Chimaltenango, Chiquimula, El Quiché, Huehuetenango, Quetzaltenango, Sacatepéquez, San Marcos, Solola, Suchitepéquez and Totonicapán.

## **2. Community magistrates' courts**

366. In 1997, an effort to create a symbiosis between the two systems – the customary indigenous and the national legal system – the first community magistrates' courts were set up, staffed by indigenous persons from the same community who speak the predominant regional language.

367. These courts were placed in Santa Maria Chiquimula Totonicapan, San Andrés Semetabaj, Solola; San Miguel Ixtahuacan, San Marcos; San Rafael Petzal Huehuetenango and San Luis, Petén, the localities chosen being areas where the armed conflict was most intense and the indigenous population density highest. The magistrate's court is a collegial body made up of three judges with an administrative staff of one secretary, four officials and a duty officer, plus a person for cleaning and general building maintenance.

368. In the places where these courts have been located no incidents of lynching have occurred and in general the peace has been maintained. Even though their competence is solely in the criminal branch, as provided by the Code of Criminal Procedure (art.552 bis), in view of their legitimacy these authorities are in practice consulted on family matters and in common civil cases, as explained in the latest evaluation and inspection carried out by magistrates of the Supreme Court and the body responsible for the general supervision of courts.

369. The Modernisation Unit of the Judiciary has carried out research with the aim of improving the quality of justice by incorporating local customs and traditions and facilitating access to justice for indigenous communities. The social and juridical evaluation has been completed and improvements are now being proposed on the basis of its conclusions.

## **3. Indigenous Affairs Commission**

370. The Supreme Court has set up a Commission for Indigenous Affairs among whose various objectives is to analyse all aspects of the administration of indigenous justice, which involves examining the operation and the assessment of the community magistrates' courts.

371. The Commission also aims to provide all the courts in the multiethnic areas of the country with the appropriate interpreters and, especially, to see to the gradual appointment of persons who speak the dominant language of the community.

## **4. Promotion of mediation**

372. Although we are fully aware that mediation is not all that indigenous law consists of, it is relevant to note the work that has been done in the area of conflict resolution by alternative means, since this has become a way of unburdening the courts, giving the population in general and the indigenous communities in particular greater access and simplifying the administration of justice.

373. A valuable resource for the Judiciary's mediation centres is the fact that, when mediators are selected, efforts are made to recruit persons native to the community familiar with its world vision, its values and principles and its traditional means of conflict resolution. Since the

mediators have this knowledge they have been able in the mediation process to adopt customary local ways of resolving disputes. To date there are 73 mediation centres.

## **5. Training of judicial officers**

374. The Institutional Training Unit of the Judiciary (UCI) constantly holds seminars, courses and workshops on multiculturalism, in general for judges and auxiliaries of the justice system, to strengthen respect for the ethnic diversity of the country, multiculturalism and multilingualism and to prevent discrimination.

375. When the judges leave the UCI, they commit themselves to promoting the same values they have received and teaching them to the auxiliary personnel in their jurisdictions, thus producing a multiplier effect in the communities where they serve.

376. UCI has established and has found inter-institutional support, mainly from CODISRA and from NGOs such as the Mayan Legal Defence Office and the Indigenous Legal Defence Office, which have co-operated in the holding of several workshops and seminars to raise the social awareness of the agents of justice, as well as community leaders, so that they may use dialogue in their quest for solutions to their disputes and that a culture of conciliation may prevail.

377. In addition the UCI has ongoing academic activities addressed specifically to the judges and staff of the community courts and the judges and staff of the common courts located in the indigenous areas of the country. They are also directed to the staff of courts of first instance and appeal courts.

## **6. Other action within the Judiciary to eradicate violence and discrimination**

378. Unit for Women and Gender Analysis. Together with the creation of new units to help in eliminating discrimination and racism, especially against women, this Unit was set up by Agreement No.67-2006 of the Presidency of the Judiciary and the Supreme Court of Justice on 3 October 2006.

379. Bilingual University Student Data Bank. Drawing on a survey of bilingual students studying in university law faculties it has been possible to start building a data bank of university students who speak an indigenous language. The main idea is to pinpoint where they live and determine which of them would be interested in working for the Judiciary in that region.

380. Indigenous Affairs Section in the Library of the Judiciary. This section has been created to allow reference books to be consulted more quickly and more easily.

381. Administrative penalties imposed on the staff by the Discipline Unit of Human Resources Management for cases of racial discrimination. For example, the case of Official I of the Chimaltenango Court of Criminal Jurisdiction against co-workers. It was decided to suspend those responsible from their work for 15 days. Case 135-2006.

382. In the period 1999 to 2007 the Modernisation Unit carried out the sub-programmes to prevent lynching that had been established in the Education Unit of the Department of Social Communication of the Judiciary. To date, 1,183 activities to promote prevention (workshops, forums, meetings etc.) have taken place and 84,721 community leaders have been trained, among

them spiritual guides, teachers, deputy mayors, women's groups, governing boards of committees and associations.

383. One of the committees that make up the Supreme Court of Justice (Committee VI) monitors the rights of the indigenous population and is considering implementing a project for an Indigenous Legal System for which it needs every kind of political, administrative and financial support.

### **C. The Attorney General's Office**

384. Between the years 2005 and 2007, as a result of the Programme to Strengthen Civil Society-Indigenous Public Prosecutors' Offices, whose aim is to offer scientific and technical support to public prosecutors in the field of the indigenous peoples' human rights and expertise, the following were achieved:

- a) Exerting an influence on the collective mindset to bring it to accept non-discrimination and the rights of the indigenous peoples;
- b) Obtaining the necessary didactic tools for training the staff of the Attorney General's Office;
- c) Publications, manuals and modules for periodic training to be carried out by the Training Unit (UNICAP);
- d) Strategies for awareness-raising and communication and training for personnel specialising in discrimination and the rights of the indigenous peoples;
- e) A collection of documents was made, comprising 703 texts, for the UNICAP library on subjects related to gender, indigenous rights and indigenous law;
- f) First Specialised Diploma Course in the Definition of Discrimination as an Offence. Sixty persons took this course, including public prosecutors, prosecuting agents and auxiliaries. This course earns academic credits from the Faculty of Legal and Social Sciences of the University of San Carlos in Guatemala and the Legal Research Institute of the National University of Mexico;
- g) Diploma course in indigenous legal interpretation and translation, given to Attorney General's Office interpreters (15), members of civil society and indigenous organisations concerned with justice. This course has been endorsed by the Faculty of Legal and Social Sciences of the University of San Carlos.

385. The following internal regulations have been issued by the Attorney General of the Republic:

- a) *General Instruction 09-2007*. Issued on 20 November 2007 to ensure due attention to the criminal prosecution of the offence of discrimination;
- b) *General Instruction 01-2005*. To ensure that the criterion of equal opportunity, contained in article 25 bis of the Code of Criminal Procedure, is applied, attorneys are hereby

instructed when seeking to remedy an injury “to select a remedy that takes account of the customs and traditions of the indigenous communities”;

c) *General Instruction 10-2005*. Attorneys are hereby instructed that, in cases where the indigenous or local authorities do not agree on the form of constraint to be applied and the accused is a member of a Mayan, Garifuna or Xinca community, priority shall be given to the request for house arrest in that community under the supervision of a local authority or institution, which shall regularly report to the relevant court.

386. The bodies charged with the criminal prosecution of the offence of discrimination are the district and municipal attorneys, except when the offence has been committed against a human-rights activist, in which case it is the Office of the Attorney for Human Rights, or when the offence has been committed by a civil servant, in which case it is the Office of the Attorney for Administrative Offences which follows up the accusation.

387. At the present time, pursuant to the Victimology Policy of the Attorney General’s Office, services and support are offered to the victims of offences in the Offices for the Care of Victims. There is also support from organisations that are part of the network of local origin for providing support and checking up on victims when it is considered necessary. At present there are 33 such locally derived networks, some municipal, some departmental, the District Attorneys and those in charge of the Attorney General’s Offices for the Care of Victims being responsible for their operation.

388. In regard to the 79 cases reported to CERD in our previous State report, it is important to point out that by virtue of the nature of the offence, progress in the investigation is dependent on whatever input the victim can provide. Since in some cases this input is minimal or, after having made the accusation, the victim does not bring any evidence to the investigation, criminal prosecution is rendered difficult. For this reason some of those cases are still under investigation and others have found different procedural solutions.

**Table 29**

**Attorney General’s Office - Number of interpreters**

<i>Men</i>		<i>Women</i>		<i>Language</i>
<i>Indigenous</i>	<i>Non-indigenous</i>	<i>Indígenas</i>	<i>No indígenas</i>	
13		5		Q’eqchi
				Poqonchi
				Achi
				K’iché
				Kaqchikel
				Mam
				Kakchiquel-Quiché
				Garífuna
				Q’anjobal
				Mam

## 1. National Civil Police

389. To ensure that membership in the police force is balanced and egalitarian and includes persons belonging to the different peoples that make up Guatemalan society, so that they may influence the adaptation of the police services to the socio-cultural needs and demands of all the communities, the National Civil Police(PNC) has a Division for Multiculturalism (DMLT) which comes under the Deputy Directorate for the Prevention of Crime. The predecessor of the DMLT was the Office for Multiculturalism, which was set up by PNC General Order 01-2003; in 2005, by virtue of Government Agreement 662-2005, this became the Division for Multiculturalism of the Deputy Directorate for the Prevention of Crime.

390. DMLT has a headquarters and three branch offices in the departments with the largest indigenous population: Quetzaltenango, Quiché and Alta Verapaz. Its work is defined as being internal or external.

391. Its *internal tasks* relate to the training and sensitisation of police staff to ensure they are aware of, recognise and respect the multicultural nature of Guatemala; also to adapting the profile of entrants to the Basic Course for PNC Agents to take account of the psychometric characteristics of the indigenous population. For example, changes have been made to the profile to establish that the required height for women is 1.45 metres and for men 1.55 metres.

392. Thanks to internal action on behalf of PNC personnel, 1,587 national civil police agents have thus been trained in 35 courses; they come from the departments of Guatemala, Antigua, Chimaltenango, Alta and Baja Verapaz, Quiché, Solola, Quetzaltenango, Totonicapan and Huehuetenango.

393. There are three principal *external tasks*:

- a) Encouraging indigenous persons to become members of the PNC;
- b) Encouraging communities to participate in and organise the prevention of crime from a multicultural perspective, that is to say, encouraging citizen participation that respects the traditional forms of social organisation of each community and is adapted to them;
- c) Using the official languages when carrying out police duties.

394. As part of the work of sensitisation (external action addressed to the population), from January 2005 to March 2008, 357 outreach actions were undertaken in education centres at the primary, secondary and comprehensive levels in the departments of Quetzaltenango, Quiché and Alta Verapaz, in which 55,885 pupils took part.

395. The Division has made three proposals to appoint police agents who identify themselves as indigenous to the appropriate language area. It has also prepared the plans entitled “Knowledge and recognition of Mayan law” and “Bilingual translators in the National Civil Police”, with a view to mitigating acts of discrimination.

396. A data base of community leaders (most of them elders of their locality) who undertake to resolve disputes has been formed in the departments of Quetzaltenango, Quiché and Alta

Verapaz. The Division has prepared a plan of action to contribute to knowledge and recognition of how Mayan law is applied. With the help of the Office of the Defence of Mayan Rights a copy has been obtained of the handbook “Notions of Mayan Law”, a basic tool for the implementation of this plan.

397. Support is given through the Division for community media to publicise invitations to take the basic course for agents in the languages of the region.

## **2. Office for the Defence of Indigenous Peoples’ Rights and Office of the Human Rights Procurator**

398. The work done by the Office for the Defence of Indigenous Peoples’ Rights (DPI) follows six courses of action:

- a) Support for education with emphasis on indigenous subjects;
- b) Support within the institution for the field of attorneys’ work and for departmental auxiliaries in specific cases where allegations have been made by members of indigenous peoples in relation to collective rights; in that regard it expresses opinions or refers the cases that constitute violations of indigenous rights;
- c) Mediation, guidance, verification, prevention and accompaniment in cases where indigenous peoples and acts committed by individuals or particular institutions are concerned;
- d) Ongoing communication and interaction with indigenous peoples’ organisations;
- e) Impact on the formulation of distinct policies and action to help indigenous peoples;
- f) Investigation of relevant situations and cases involving indigenous peoples;
- g) Direct attention to those cases that require counselling, accompaniment and guidance for indigenous clients, but where the nature of the case is such that it does not constitute a violation of rights or the commission of a crime.

399. In 2006 the post of Iomb’*e* k’amalb’*e* of human rights was created. The k’amalb’*e* of human rights works with the Human Rights Procurator and is an honourable person recognised in his community for his leadership and his efforts in defence of human rights. At present there are 39, situated in remote municipalities of the departments of Huehuetenango, San Marcos, Solola, Chimaltenango and El Quiché. The point of this way of working is for the State institutions to be able thereby to reach into those places where, by reason of the distance, violations of the human rights of indigenous peoples are not brought to light.

400. To strengthen their capacity and presence in action and the means to prevent violations of the collective rights of the indigenous peoples, four meetings for intercultural dialogue have been held in the administrative centres of the departments of Huehuetenango, Chimaltenango, El Quiché and Alta Verapaz.



### **3. Promotion and dissemination**

401. The DPI works to promote and disseminate indigenous rights, tackling mainly the themes of: exclusion and discrimination, the implementation of indigenous law, the right to be consulted, the identity and the rights of indigenous peoples. Its conferences and its development of specific themes have been geared to fathers of families, university students, leaders, local and community authorities, indigenous women's groups, middle-level school pupils, representatives of municipal development councils, officials of public institutions, judges, prosecutors, officials and secretaries, barristers, human rights advocates et al.

402. In 2004, the Office of the Human Rights Procurator (PDH) began its intervention in matters related to mining that was being carried out in indigenous communities without consulting them, for the use and exploitation of the natural resources, mining of metals and oil extraction. Work was encouraged to approximate the indigenous peoples' own methods of consultation and for this, three pre-congressional meetings and a Guatemalan Congress were held, attended by more than 700 indigenous peoples' communities. The conclusions can be found in the annex.

### **4. Work of the Procurator and defence of indigenous rights**

403. As Procurator and in defence of indigenous rights, DPI was involved in 775 cases in 2004, mainly regarding the vulnerability of persons of indigenous origin where the enjoyment of their full rights and liberties is concerned – 414 cases; the right not to suffer discrimination by reason of one's race or ethnic origin – 80 cases; the right to decide on one's development – 36 cases; as well as the right to property and possession of communal and private lands – 36 cases; the right to one's own institutions – 28 cases; and the right to the protection of one's ancestral and natural heritage – 25 cases.

404. The right not to suffer discrimination for reasons of race or ethnic origin is manifested in different ways. In that regard, in 2004 the Human Rights Procurator censured and condemned as acts of racial discrimination and also as attacks on the indigenous peoples' right to equality and identity the following cases:

a) A man of indigenous origin was denied entry to the premises of the business called El Zaguan on the pretext that he was badly dressed, when he was wearing indigenous costume. The case was censured by the Human Rights Procurator as an act that violated equality and identity;

b) A woman of indigenous origin was denied entry to a business called La Biblioteca in Guatemala City because she was indigenous and wearing indigenous costume. In his decision the Procurator declared: I. That there had been a violation of the human right of the person affected to dignity, equality and identity. II. That there were reasonable indications pointing to the general manager of the place as responsible, as well as the employees who did not permit her to enter. III. That he publicly censured the owners of the business for permitting discriminatory acts on the premises and therefore ordered that such acts which violate a person's inalienable rights should cease. IV. That he ordered the case to be transmitted to the Office of the Special Attorney for crimes committed against members of human-rights or indigenous-rights groups in civil society and non-governmental organisations.

405. In 2005, DPI intervened directly in 284 cases. The rights most frequently violated are: the right to full rights and freedoms, 84 cases, the equivalent of 29.58% of the total cases considered; the right to property and possession of land, 27 cases or 9.5%; the right to cultural identity, 22 cases, 7.75%; the right not to suffer discrimination by reason of race or ethnic origin, 13 cases, 4.58%; the right to participate in the benefits of programmes and the exploitation of resources in lands occupied by indigenous peoples, 10 cases, 3.52%; the right to non-discriminatory treatment in the workplace, 10 cases, 3.52%; the right to apply indigenous customary law, also 10 cases, 3.52%; and the right to practise one's ancestral religion, 6 cases, 2.11%.

406. The cases reported do not represent all that happens in the real life of indigenous peoples; in a poll carried out by human-rights defenders and activists in the Department of Solola, for example, the conclusion was that barely 10-15% of real cases are recorded, the other 85% not being reported to any institution.

407. In 2006, DPI intervened in 198 cases, of which 48 were cases of racial discrimination. It must be pointed out that, when indigenous persons make complaints or request advice or assistance, the issues they raise reflect diverse forms of discrimination and disrespect for their rights. (A table of the cases considered by DPI in 2007 is included as an annex.)

## **5. Research and publications**

408. The following research and publications should be mentioned:

a) A Brief Catalogue of the Collective and Individual Rights of the Indigenous Peoples of Guatemala that are Legally and Legitimately Protected (2004). This sums up selected legal themes broken down into sections for greater ease of application;

b) Resolutions of the Human Rights Procurator for the Protection of the Indigenous Peoples (2004). This comprises 11 resolutions of the Procurator selected and grouped under five headings: racism, spirituality and the indigenous peoples, use of indigenous costume, social organisation, and political participation;

c) Role of interpreters in the centres for the administration of justice in Alta Verapaz (2004). This is a study of the main factors affecting the work of interpreters;

d) Manual of the Defence of the Human Rights of the Indigenous Peoples, preliminary version (2004). This material aims to assist the defence of human rights, providing legal and technical information from defending lawyers, auxiliaries and officials;

e) ILO notebooks: Systematisation of Indigenous and Collective Rights. Material that contributes to an analysis of concepts and means for implementing these rights;

f) Printing of posters about women and identity, carrying the message: "For a Guatemala with its own identity, united in diversity" (2007);

g) Printing of posters about the collective rights of the indigenous peoples (2007);

h) Printing of posters with the Mayan calendar (year 5,123) and messages alluding to the subject (2007).

## **6. Challenges for the future**

409. In the field of criminality, the State is complying with the minimum parameters of the value system of the Constitution and the relevant international instruments. However, if we are to embrace the pluralist and multicultural characteristics of the Guatemalan nation, much remains to be done to ensure their due implementation in other areas such as labour and agrarian affairs.

410. It is essential to reach a consensus on the Agrarian Act and on setting up agrarian courts.

411. The Attorney General's Office needs to be provided with an appropriate infrastructure to guarantee its effective prosecution of the offence of discrimination. To date there is no installed capacity to allow it to tackle discrimination and racism in the way a prosecuting body should.

412. The State system of justice has created and expanded instances of a legal nature with a certain degree of cultural relevance in the communities with a majority indigenous population. However, such bodies cannot be considered as replacements for the indigenous peoples' own systems of traditional authority or for the justice meted out by the indigenous peoples. For that reason progress is still needed to render the systems of justice, that of the State and that of the indigenous peoples, complementary in obedience to criteria of juridical pluralism.

413. In the field of justice, rules have been elaborated that incorporate the dispute settlement mechanisms of the indigenous peoples. Nevertheless, there is still no law that recognises both the indigenous system of justice and the institutions proper to it, and the capacity of the indigenous authorities to take decisions that are legal. For that reason, we still need specific legislation on the matter.

414. In a multicultural country like Guatemala, debate about the right of the indigenous peoples – to have their own rules applied to the solution of disputes by their own authorities – should not be engaged on the basis of the Roman-law concepts of “custom or customary law” or in terms of mere folklore. In a national framework such as that of Guatemala it is necessary to begin by defining custom or customary law as a system – indigenous law – to be recognised as such, with effective action being taken for its protection, encouragement and promotion.

**VI. ARTICLE 7: TEACHING, EDUCATION, CULTURE  
AND INFORMATION TO COMBAT PREJUDICE THAT MAY LEAD  
TO RACIAL DISCRIMINATION**

**OBSERVATIONS AND RECOMMENDATIONS OF THE EXPERTS OF THE COMMITTEE**

*Paragraph 20. The Committee is concerned by the high illiteracy rate that exists within the indigenous population, especially in rural areas, where 65 per cent of indigenous women are illiterate. The Committee is also concerned at the low primary school attendance among the indigenous population, especially indigenous young women and girls. (art. 5, subpara. (e) (v)).*

*The Committee urges the State party to take steps in the short and medium terms to implement measures to reduce illiteracy, especially in rural areas and among women and girls. The Committee recommends that the State party consider increasing the number of bilingual schools, particularly in rural areas. In this connection the Committee recommends that the State party pursue educational reform through culturally relevant curricula, bearing in mind the provisions of the Agreement on Identity and Rights of Indigenous Peoples.*

415. The national Survey of Living Conditions (ENCOVI), 2006, establishes the level of education of women of child-bearing age by area and ethnic group. The result indicates that 33.3% of women in rural areas have had no education (they cannot read or write), as compared to 11.1% of women in urban areas, that 39.8% have not completed primary school (six grades) and only 0.1% have completed higher education.

**Table 30**  
**Grants awarded**

<i>Characteristics</i>		<i>Total</i>	<i>Area</i>		<i>Ethnic group</i>	
			<i>Urban</i>	<i>Rural</i>	<i>Indigenous</i>	<i>Non-indigenous</i>
Can read and write	Yes	78.1	88.9	66.7	62.0	87,6
	No	21.9	11.1	33.3	38.0	12,4
Schooling	None	23.0	12.3	34.4	38.8	13,7
	Primary incomplete	32.3	25.1	39.8	36.3	29,9
	Primary complete	16.4	18.3	14.4	11.3	19,3
	Secondary incomplete	14.3	20.3	8.1	8.6	17,7
	Secondary complete	9.5	15.8	3.0	3.7	13,0
	Higher incomplete	2.9	5.5	0.3	1.1	4,0
	Higher complete	1.5	2.8	0.1	0.1	2,3
<b>National total</b>		<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>

*Source:* National Statistics Institute (INE)

416. The reorientation of education from bicultural to intercultural bilingual education began in 1995 in Guatemala. To date, about 2,000 schools are affected in 18 indigenous communities: 17 Mayan ones and 1 Garifuna. The purpose of intercultural bilingual education is to develop the linguistic competence of indigenous children in two languages and in more than one of two cultures.

417. The Ministry of Education (MINEDUC) is the institution that has the most programmes with components geared to indigenous peoples. There is the programme of activities common to the mother-tongue programme (L1) and the second-language programme (L2), the programme of pre-primary education, the programme of primary education and the literacy programme. The programme of activities shared by L1 and L2 has among its projects one entitled Direction and Co-ordination of Bilingual Education, which covers all the projects of this programme.

418. The Pre-primary Education Programme also has among its projects a pre-primary bilingual one, geared to Maya-speaking infants in urban and rural areas, with a view to preventing drop-outs, absenteeism and repeating classes at the primary level. Among the actions taken, bilingual teachers have been hired and funds transferred to community organisations to provide those teachers with teaching materials.

419. The Primary Education Programme also has a bilingual primary project, with sub-programmes entitled Monolingual Primary and Bilingual Primary. As at the pre-primary level, the aim is to keep children in primary school and here too bilingual teachers have been hired and funds transferred to community organisations to provide the children with the materials they need.

420. The number of schools, pupils and teachers has increased since then, but has not yet reached a level of coverage corresponding to the proportion of indigenous population in the country.

## **A. Primary education**

### **1. Educational reform**

421. Drafting a national curriculum for primary education took several years. It was put into effect from 2005. The document speaks of “the development of multicultural education with an intercultural focus to ensure that all Guatemalans recognise the ethnic, linguistic and cultural wealth of the country. It is based on recognition of the fact that it is in their own language that students develop the ways of thinking that will lead them to build up knowledge”.

422. Given the legal foundation for intercultural bilingual education, the educational reform was designed with the following objective: the establishment of a multicultural, intercultural and multilingual education system, in a regionalised and decentralised form, adapted to its linguistic, cultural, economic and environmental foundations.

423. The reform aims to achieve this objective by strengthening the identity of each people and linguistic community, promoting unity in diversity and incremental multiculturalism. It recognises the need to make Guatemalan society aware of the importance of intercultural and multicultural education, linking the school to the community and giving mother-tongue teaching an official

status in the system. It likewise highlights how urgent it is to broaden the coverage of multicultural bilingual education, concentrating on the rural sector and indigenous communities and creating official institutes to train bilingual teachers. In other words, it is orienting the system towards the construction of a bilingual society that will produce a relevant form of quality education.

## 2. Programme of grants for girls in rural areas

424. By the Programme of Grants for Girls in Rural Areas, MINEDUC aims to increase the enrolment of girls in rural schools, concentrating on those populations and communities that have the lowest indicators of educational coverage and the highest of primary-level drop-outs. The target population is that of girls between 7 and 12 years enrolled in the first four grades of primary school.

425. Economic assistance of 300 quetzals per year is given to rural families who enrol their daughters in the official schools of the locality. Priority is given to populations where grants are received pursuant to the Educational Backwardness Indicator (IRE) for girls.

426. The IRE was prepared on the basis of an analysis of the situation of education in the country, taking into account indicators provided by the 2000 Population Census, such as the enrolment of girls, how much schooling their mothers had received, the degree of overcrowding (how many people sleep in one room) and the rates of drop out or abandonment of schooling. Using these indicators, populations were ranked with a view to distributing grants. Grants are awarded in 18 of the country's 22 departments, chiefly in the five with the greatest indigenous population: 66% are awarded in Quiché, Alta Verapaz, Huehuetenango, San Marcos and Petén.

427. In the period since the programme began it has been possible to reduce the gap in enrolment between boys and girls. In 1994, when 69% of the school-age population were receiving education, 63% of those enrolled were boys compared to 37% girls. In 2005, when coverage had attained 93.5%, the enrolment of girls was 48.5% of the total enrolment.

**Table 31**

### Grants awarded

<i>Department</i>	<i>Population (7-12 years)</i>	<i>Number enrolled (7- 12 years)</i>	<i>Net rate of coverage</i>	<i>Primary-level grants awarded</i>	<i>Grants to rural girls</i>
Alta Verapaz	166,284	125,944	75.74	17,616	11,119
Huehuetenango	173,320	150,992	87.12	20,456	9,084
Quiché	142,578	125,125	87.76	26,322	11,284
Petén	83,696	78,406	93.68	12,568	8,041
San Marcos	156,518	153,079	97.80	19,290	8,789
Suman				96,252	48,317
<b>Total grants</b>				<b>139,999</b>	<b>73,333</b>
% in these departments				68.75%	65.89%

Source: MINEDUC, August 2007.

## **B. Middle-level education**

428. The outline of the Education Policy for 2005-2008 highlights the fact that monolingual, bilingual and intercultural education is to be universal and it must be of good quality, equitable and relevant.

429. It also points out that interculturalism permeates each of the areas, processes and results proposed in the plan. However, it does not specify how bilingual and intercultural education are effectively to be provided for this cycle.

## **C. Bilingual and intercultural education**

430. Government Agreement 22-2004 stipulates for the General Directorate of Bilingual and Intercultural Education (DIGEBI) of MINEDUC that, as a national policy on language, bilingualism is to become widespread and national languages are to be compulsory, priority being given to the mother tongue, with the second language being another national one and the third a foreign one. The teaching and practice of multiculturalism and interculturalism in the classroom in the Maya, Garifuna, Xinca and/or Spanish languages is to be compulsory.

431. MINEDUC has 12 Normal Schools that are bilingual and intercultural and where bilingual teachers are trained to be able to give classes in other languages of the country. The chief aim of bilingual intercultural education is to develop the cognitive and socio-affective skills of those being educated, particularly indigenous persons, to render them capable of competent interaction in multicultural contexts, using their (indigenous) mother tongue and/or their second language. The curriculum of bilingual education has among its basic features that of fostering a dialogue among the cultures of different areas and giving pride of place to the mother tongue, together with the second language, as both the medium of instruction and its subject.

432. MINEDUC has revitalised bilingual intercultural education (EBI): 1, 844 bilingual teaching posts have been created; 432 bilingual posts have been opened to competitive examination; 293,300 self-teaching guides and teaching modules have been set in context in four majority Mayan languages and distributed in two majority languages (Mam and K'iche') in 1,170 EBI schools; and 1.7 million texts and primary guides have been reproduced in Mayan languages (K'iche', Kaqchikel, Mam and Q'eqchi') covering the subjects communication and languages, mathematics and Spanish as a second language.

433. Training in the use of the active methodology has been given to 2,400 teachers. To guarantee that bilingual education is actually practised in the classroom, 5,474 bilingual teachers have been given technical pedagogical back-up and visits were made to 2,737 schools on four occasions in 2006.

434. MINEDUC's Vice-Ministry for Bilingual Intercultural Education and CODISRA have designed and prepared a "Methodological Guide for the Development of the Themes of Multiculturalism, Interculturalism, Equity and Values in the Curriculum" for teachers on the job, printing 6,000 copies and distributing them to the schools involved in the project.

435. The reform of the curriculum includes intercultural education for all and EBI for the indigenous population. The debate on putting together a new proposal for education took

several years, as it was difficult for the parties involved to adapt to the new variables of linguistic and cultural diversity.

436. The results of the most recent national examinations show the positive effects of bilingual education on the efforts of children in primary schools when one compares the results obtained by indigenous pupils in bilingual schools with those achieved by their peers in exclusively Spanish-speaking schools. That is why MINEDUC launched a plan to revitalise bilingual education in the country in April 2005.

437. The production of textbooks in indigenous languages gives clear proof of one of the major difficulties hindering bilingual education in Guatemala. Although there has been a switch to explicit advocacy of intercultural approaches in education and State bilingual education has purportedly moved on from a transitional stage to one of maintenance and development, generally speaking national curricula and even bilingual school textbooks continue to take western culture as the necessary reference.

438. An attempt has been made to include bilingual education in national level teacher-training institutions to raise the teachers' critical awareness of the nature and implications of a multi-ethnic society.

439. With regard to the initial training of teachers, 18 of approximately 80 public teacher-training centres offer specialised courses in bilingual education, although as yet not all the national indigenous languages are covered.

440. The 6% of the budget allocated to EBI for the indigenous population, which according to the eleventh population census represents 42% of the country, is not sufficient to provide quality coverage of the educational needs.

441. The financing in accordance with the budgetary allocations for education is broken down as follows: a) a percentage of the budget relative to GDP, as agreed in the Peace Agreements, complied with 100%; b) a percentage of the budget allocated for the work of the administrative bodies, EBI coverage and quality, in the amount indicated in the table below:

**Table 32**

*Figures in quetzals*

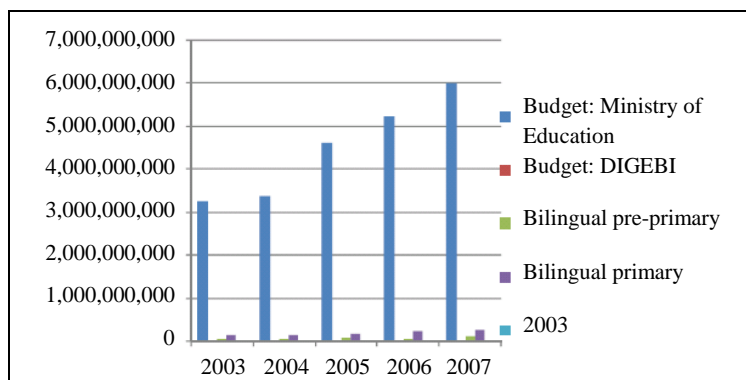
<i>Year</i>	<i>Amount (percentage)</i>	<i>Total</i>
2007	410,321,488 (6.83)	6,000,018,468
2006	330,178,102 (6.32)	5,217,410,830
2005	264,863,441 (17.41)	4,612,335,455
2004	233,624,056 (14.5)	3,386,725,007.68
2003	222,166,260 (14.65)	3,255,482,637

*Source:* Ministry of Finance. National budget.



**Table 33**

**Budget in quetzals allocated to the Ministry of Education, 2003-2007**



**D. Challenges for the future**

442. The Mayan-speaking populations have begun to see bilingual education not just as a method of learning or teaching, but as an opportunity to reinforce their cultural and linguistic identity. In other words it is coming to constitute a form of linguistic-cultural and political rehabilitation.

443. Although it is true that there has been progress in various fields of bilingual education, there is still much to be done, especially with regard to promoting and using the two languages (mother tongue and second language) in the classroom.

444. The national budget and especially the education-sector budget need to reflect sustained support for the work of bilingual education and investment in it.

445. In highly complex multi-ethnic societies like Guatemala, EBI has to transcend the present coverage of indigenous territories and communities to involve the whole of national society, as an educational tool capable of assisting the construction of unity in diversity, life in democracy and a culture of peace.

446. The Educational Reform must become law. It is proposed that it be analysed by the congressional sub-committees on education, finance, and indigenous peoples and that the preliminary draft of the Education Reform Act become public policy; that the Consultative Commission on Educational Reform take a more pro-active role in adopting guiding decisions as the Education Authority; and that the law be reformulated and become technically the National Education Act, since the present law, while in force, is not operative, because it lacks a regulation to ensure its application.

### E. Literacy training

447. The evolution of illiteracy can be seen from the following table:

**Table 34**  
**Evolution of illiteracy from 1996 to 2006**

<i>Year</i>	<i>Total population</i>	<i>15 years and over</i>	<i>Illiterate</i>	<i>% of illiteracy</i>
1994	9,774,512	5,377,937	2,083,951	38.75
1995	10,003,739	5,504,057	2,061,820	37.46
1996	10,235,994	5,631,844	2,038,728	36.20
1997	10,471,235	5,761,273	1,985,335	34.46
1998	10,712,516	5,894,026	1,926,168	32.68
1999	10,962,888	6,031,781	1,862,011	30.87
2000	11,225,403	6,278,187	1,988,302	31.67
2001	11,503,653	6,445,106	1,956,734	30.36
2002	11,791,136	6,487,175	1,901,797	29.32
2003	12,087,014	6,811,267	1,872,492	27.49
2004	12,390,451	7,009,208	1,842,166	26.28
2005	12,700,611	7,216,172	1,817,596	25.19
2006	13,018,759	7,433,003	1,781,725	23.97

*Source:* Data obtained from statistical report prepared by the Computing Centre, Statistics Section, CONALFA 2007.

#### *National Literacy Committee*

448. In March 2004, the National Literacy Committee (CONALFA) took over the guiding role in achieving literacy. The National Comprehensive Literacy Strategy for the period 2004-2008 geared its activity chiefly to meeting the detailed needs of its macro components, which are: 1) the initial stage of literacy teaching; 2) the post-literacy stage, in which it runs programmes both in Spanish and in 17 Mayan languages.

449. Among the strategies implemented to achieve the goal of reducing the illiteracy rate, CONALFA has reinforced the decentralised action carried out in each departmental co-ordination office for literacy (CODA). In these bodies inter-institutional co-ordination is planned and carried out to achieve the indicators of effectiveness and efficiency.

450. There are organisations at the departmental and municipal level and an average of 9,450 communities are at present involved. Spanish is used, as well as 17 Mayan languages, among the latter the main coverage being given to the majority languages: K'iché, Kakchiquel, Mam and Q'eqchi.

451. Among CONALFA's initiatives at present are comprehensive methodologies for literacy teaching that are considered important chiefly for the different teaching methods applied both in

Spanish and in the Mayan languages of the places where the programmes are being run. In this way the remotest rural communities have been brought in and a system of permanent supervision has been installed. The teaching strategy includes programmes that respect beliefs and forms of cultural and religious expression, as well as promoting action in favour of women.

452. **“Bi-alfa”**. This methodology highlights the value of learning in one’s mother tongue and in a second language. In 2006, literacy training in Spanish and Mam was given in five municipalities of the department of Huehuetenango. This teaching method revolves around five themes: production, the environment, gender, community organisation, and human rights.

**Table 35**

**Areas where the “bi-alfa” methodology is being applied**

	<i>Language</i>	<i>Region</i>
01	K'iche	Quetzaltenango, Totonicapán y Sololá
02	Q'eqchi	Alta Verapaz, Izabal y Quiché (Ixcán)
03	Kaqchikel	Chimaltenango, Sololá y Guatemala
04	Mam	Huehuetenango y San Marcos
05	Q'anjobal	Huehuetenango
06	Poqomchi	Alta Verapaz

453. **“Take my hand”**. This teaching method is addressed to mothers of children attending formal school at the beginners’ level. The substance of the teaching includes activities concerning nutrition, hygiene, motor skills, communication and acquiring good habits; the mothers in their turn encourage their little children to learn new things.

454. The methodology has been implemented in groups of rural communities where there is a majority indigenous population in the departments of Suchitepéquez, Totonicapán and Quetzaltenango. The literacy teachers in charge of those groups receive teaching materials for their work with the mothers and their children.

455. **“Comprehensive literacy training in the family”**. Here the children teach their mothers to read and write and when learning takes place in the home it conduces to better communication within the family.

456. **“Comprehensive literacy training for work (AIT)”**. This takes place in co-ordination with NGOs which have projects relating to training in a branch of labour activity, for example, livestock-raising, weaving, embroidery or dressmaking.

457. **“Computer-oriented literacy training”**. This takes place chiefly in post-literacy groups where the majority of the participants are young people between 15 and 24 years of age.

## F. Fostering culture

### OBSERVATIONS AND RECOMMENDATIONS OF THE COMMITTEE

***Paragraph 18. The Committee is concerned by reports of obstructions to the use of traditional sacred sites by indigenous peoples and conflicts arising from these tensions being handled by judicial officers as criminal matters. It has also been reported that a Commission examining a constitutional provision on sacred sites has been discontinued. (art. 5, subpara.(d)(vi))***

***The Committee requests the State party to examine the possibility of an alternative to criminal proceedings in handling these conflicts and urges it to ensure unobstructed enjoyment of this cultural right of the indigenous peoples.***

#### *Ministry of Culture and Sport*

458. The Ministry for Culture and Sport (MICUDE) is the body directing cultural development in Guatemala. With its long-term vision and policies it assists the consolidation of this significant contribution to the Guatemalan economy.

459. The State of Guatemala, through MICUDE and its subsidiary bodies, decentralised institutions like the Academy of Mayan Languages, the Guatemalan Indigenous Development Fund (FODIGUA) and the National Peace Fund (FONAPAZ), among others, has launched programmes to support creative endeavour and social communication, as well as the protection and conservation of our cultural heritage, mindful of the decisive advantages that such support brings to the cultural sector as a whole.

#### *Department for the Promotion and Encouragement of Socio-cultural Research*

460. The purpose of this department of MICUDE is to organise and carry out research aimed at identifying the true socio-cultural situation and the features of the local communities of our country. It endeavours to promote an awareness of its cultural diversity through research and by carrying out socio-cultural studies.

461. Among the socio-cultural investigation it has done are the following:

- a) Ten published monographs on the ethnography of the departments of Zacapa, Huehuetenango and Chimaltenango;
- b) Ethnographic research in 10 municipalities of three Guatemalan departments;
  - i) Chimaltenango: San Juan Comalapa, Acatenango, Tecpan Guatemala;
  - ii Huehuetenango: Chiantla, Santa Ana Huistla, La Democracia;
  - ii ) Zacapa: Estanzuela, Cabanas, Rio Hondo;
- c) Investigation into the linguistic wealth of the Tz'utujil area;

d) Proposal for reform: the teaching of the Mayan language as a second language in the primary grades for the Guatemalan Ladino population;

e) Cultural CD-ROM of Guatemala, Culture and Arts section, which contains descriptions and sets of cultural CD-ROMs of Guatemala with a methodology and bibliography; focus on lexicography, photography, theory and culture.

*Unit for the Promotion of Ethnic and Gender Equity*

462. One of the purposes of this unit is to foster ethnic and gender equity in all political, technical and administrative procedures, as in access to the services provided by the Ministry, and to assist the efforts of other public bodies and civil society to implement the legal directives and the commitments assumed by the Government in the Peace Agreements, as in the international conventions ratified by the State of Guatemala.

463. Among its activities should be highlighted:

a) The First Central American Encounter between Indigenous and Afro-American Writers, 2005. This meeting provided a favourable opportunity to boost discussion and recognition of the literature written by indigenous and Afro-American women, as an essential step towards the eradication of ethnic and gender discrimination in the publishing world;

b) The encouragement of indigenous writers between the ages of 8 and 18, with a view to advancing the development of Guatemalan indigenous literature.

*Unit for Sacred Sites*

464. Among the cultural policies to emerge from the National Policy Congress on Culture and Sport was the Culture of Peace and Sustainable Human Development Policy which will guide action to consolidate a culture of peace on a foundation of activities and values built by Guatemalan society in recognition of its multicultural nature. The aim is to form relationships by facing and overcoming difficulties and to generate development with a vision of the future.

465. The policy of protecting and conserving our cultural and natural heritage conceives of the cultural heritage as being the entirety of material and immaterial evidence of the different cultures of the country. For that reason, we have intensified the work of gathering together, safeguarding, restoring and disseminating the heritage that consists in the various forms of traditional cultural expression, monuments, visual and plastic arts and set design.

466. In addition, as one of the strategies for protecting and conserving our cultural and natural heritage we encourage the local populations to take part in the work of research, rescuing and restoring our cultural and natural heritage to its function in society. In the case of the sites that are considered sacred, a harmonious balance between their spiritual function and respectful tourist visits will assist in restoring them to their living place in society.

467. Among the tasks performed by the unit are the following:

- a) Proposing alternative solutions for the problems hindering the free exercise of Mayan spiritual activities in the places or sites under the jurisdiction of MICUDE;
- b) Making an inventory of sacred places or sites under the jurisdiction of MICUDE where Mayan ceremonies take place;
- c) Putting forward proposals and supporting studies to make known the deep meaning and content of Mayan spirituality;
- d) Co-ordinating national and international institutions for the purpose of fostering and achieving understanding and tolerance of an age-old practice that has been rejected by other foreign religions;
- e) Training the staff responsible for the administration of all the sacred archaeological sites under the jurisdiction of MICUDE in terms of the Mayan world vision and spirituality;
- f) Assisting Mayan spiritual guides and persons engaging in spiritual worship with regard to how best to go about the conservation, protection and maintenance of the sacred archaeological sites at the national level;
- g) Attending to the requests of persons, both individuals and legal entities, regarding aspects of the Mayan world vision and spirituality.

468. Complaints have been received by the Office of the Human Rights Procurator (PDH) from Mayan spiritual guides to the effect that they have not been allowed to enter ceremonial sites or have been required to pay an entry fee, or that areas have been assigned to them that are not appropriate for holding ceremonies. After investigation by PDH, this conduct was declared injurious and contrary to the orders of the administrative authorities of the sites in question and the cases were referred to MICUDE.

469. To protect the religious and spiritual practices peculiar to the Mayan peoples, MICUDE has adopted favourable measures, building, for example, 23 alternative altars in 8 archaeological sites in the country, a move that was co-ordinated with and supported by Mayan spiritual guides and the Sacred Sites Unit. Likewise the staff responsible for the administration of all the sacred archaeological sites under the jurisdiction of MICUDE have received training concerning Ministerial Agreement 425-2005 regulating exemptions from entrance fees to archaeological parks and ceremonial centres for spiritual guides and those accompanying them.

Table 36

**Application form for a Mayan spiritual guide's identity card**

<b>Full names and surnames</b> _____
<b>Present address</b> _____
<b>Telephone</b> _____ <b>e-mail</b> _____
<b>Spiritual guide's specialisation</b> _____
<b>Names of two persons who can give references regarding his/her work as a Mayan spiritual guide.</b>
<b>1) Name:</b> _____
<b>Address :</b> _____ <b>Telephone:</b> _____
<b>2) Name:</b> _____
<b>Address :</b> _____ <b>Telephone:</b> _____
<b>Attach two recent passport-size photographs</b>
<b>Photocopy of neighbourhood identity card</b>
<b>Letter of recommendation from his/her master or from a spiritual guide entitled to issue such a letter.</b>

470. Likewise CODISRA and DEMI have implemented and are implementing communication strategies to combat racial prejudice and foster intra-national and intra-cultural understanding, tolerance and friendship among the different groups that form the State of Guatemala. These measures and actions have been described in the section on institutional means of combating racism, articles 1 and 2 of the Convention, in the present report.

**G. National System of Statistics**

**OBSERVATIONS AND RECOMMENDATIONS OF THE COMMITTEE**

***Paragraph 11. The Committee is concerned that the statistics in the State party's report on the country's indigenous peoples are incomplete and that the State party does not keep statistics relating to the population of African descent. The Committee recalls that such information is necessary to assess how the Convention is implemented in respect of these groups.***

471. Among the observations CERD, like other treaty bodies, has made about the reports submitted by the State of Guatemala is that the documents reflect a succession of measures taken

and plans adopted etc., but do not reproduce the statistical data that would give an idea of the impact those actions have had.

472. The sectoral statistics have not been integrated into a unified system and that is one of the aims of the National Statistics System (SEN). The various ministries and governmental bodies have heterogeneous systems for data collection. The quality and the orientation of the sectoral statistics depend on what priority has been assigned and the needs of the institution concerned. The administrative records are dispersed and do not obey homogenous criteria. Although progress has been made in the internal systematisation of the records of some bodies, components allowing data to be broken down by ethnic group have not, with some exceptions, been incorporated.

473. This may in the past have been due to a convergence of several factors, among them the following:

a) The majority of our public offices have only recently been computerised. Prior to that it was more difficult to keep records;

b) Too little supervision or monitoring of the efforts of civil servants through feedback from the impact of public action.

474. Following up on this national need, CODISRA has pinpointed the absence of a comprehensive information system that would reveal the situation of the indigenous peoples, mainly according to their linguistic community, in terms of the principal aspects of the Policy for a Harmonious Intercultural Co-existence, as well as the commitments undertaken by the State of Guatemala regarding the human rights of the indigenous peoples.

475. On that basis, in co-ordination with the governing body for official statistics, the National Statistics Institute (INE), we are devising indicators with an ethnic cultural focus, including the different linguistic communities at the national level, that can systematically be applied in the organs of State.

476. At present the INE is strengthening the Technical Office of Statistics on Gender and Indigenous Peoples to form the Co-ordinating Office of Statistics on Gender and Indigenous Peoples, as part of SEN. The establishment of this co-ordinating office will improve the forthcoming population, housing and livestock censuses, to be taken in coming years, as well as administrative surveys and records, by including variables on indigenous peoples.

#### *Challenges for the future*

477. Progress in the work of producing disaggregated data of ethno-cultural relevance, including the linguistic community of the population, does not often occur in the civil service.

478. Although there has been no noteworthy advance in this regard, CODISRA is leading the process in conjunction with INE to improve the accuracy and quality of the records of ethnicity in vital statistics and other continuous data for the design and monitoring of strategies and policies.



479. It is crucial that professionals, technicians and politicians understand and can use the indicators to monitor and check up on the efficacy and efficiency of policies to achieve their goals and their capacity to reach the target group.

480. The use of statistics and indicators of ethnic and cultural relevance, including the linguistic community, could be encouraged by requiring their use by all organs of the State:

- a) In devising their policies and programmes;
- b) In requesting funds from the public budget for the execution of policies and programmes;
- c) In their management assessment reports (policy monitoring and evaluation);
- d) In the periodic assessments of the work of their staff.

#### **H. Dissemination and promotion of the rights of the indigenous peoples to combat prejudice that may lead to racial discrimination**

481. CODISRA has given the national press a “Guide to Committed Journalism: the journalist’s road to action”, with a view to having the media take up the struggle against racism and discrimination. The guide incorporates:

- a) The definition of discrimination as an offence;
- b) A summary of the legal rules prohibiting racist attitudes;
- c) Information about institutions specialising in the subject;
- d) The steps journalists can take to tackle the issue, among them studying the reality of the phenomenon, reviewing the role of the media in a multicultural society, dismantling prejudices and stereotypes, creating inclusive institutional policies, establishing ways of reporting that recognise the value of diversity and writing, speaking, filming and surfing in an inclusive manner.

482. Furthermore, CODISRA is waging a campaign to raise social awareness that it launched officially in March 2008. The information concerning this campaign is to be found in the section on institutional mechanisms.

483. DEMI is working to train groups of indigenous women, promoting and disseminating knowledge of their specific rights to make the women more aware of those rights, as well as of the means of protection that can empower them. It has also devised the strategy of institutional communication that has been amply described in the section on institutional mechanisms.

484. Research has been done and a report published, a study in five volumes entitled “Diagnosis of Racism in Guatemala. The study is a synthesis of the theory of racism and ethnic discrimination and recalls the history of Guatemala since colonial times. It describes racist practices in society (in terms of prejudices, stereotypes and discrimination) and also indicates, with a statistical analysis, the costs of racism for the country (more than 6,000 quetzals per year).

In the field of communications it is innovative in making a substantive analysis of racism in the print media. This research has served as the basis for public policy to foster co-existence and the elimination of racism and racial discrimination.

485. In addition to incorporating the theme of gender, ethnic and social equity in the primary education curricula, the Ministry of Education launched a national campaign to sensitise and educate people about living together in mutual respect. This has led to the creation of opportunities for participation, counselling and guidance.

486. Through the Directorate for Quality, Updating and Educational Development (DICADE) and the General Directorate for Bilingual Intercultural Education (DIGEBI), the Ministry of Education prepares materials that exclude cultural and gender stereotypes. In order to make the Peace Agreements better known and implemented and to promote recognition and respect for the indigenous peoples of the country, the subjects of seminars for graduating students have focused on: inter-culturalism, in 2004; competitiveness, in 2005; and youth leadership and the culture of peace, in 2006.

487. The Departmental Directorate for Education in Izabal and the Afro-Caribbean Wadimalu Garifuna Research Centre have prepared and presented a document entitled Basic Users' Guide to Garifuna Culture, with the aim of familiarising teachers of social studies and other related disciplines with the basic content of the Garifuna culture, its traditions, costumes, language and other features.

488. The National Institute for Public Administration (INAP) has since 2004 included indigenous peoples and gender in the subject matter of the diploma course it runs on social management and, in 2005, it included human rights and public policies also.

489. Through its Centres for the Promotion of Sport, MICUDE has fostered training in the values inherent in the collective co-existence involved in sports disciplines, respect, fair play and responsibility, directed chiefly to the country's young people. It also promotes cultural events both in educational establishments and in communities.

490. The National Commission on Youth (CONJUVE) and CODISRA have promoted activities geared to Mayan, Garifuna and Xinca youth and young people in general and taken action to sensitise young people against discrimination and racism, through the Permanent Youth Forum to Combat Discrimination and Racism and Youth Encounter.

491. In 2004-2005, MSPAS developed a diploma course focused on ethnicity and gender to enhance the efforts made to provide quality health care especially to indigenous women.

492. MSPAS trains men and community leaders and works with them on promoting and publicising information on health, because of the demand to involve men in everything to do with reproductive health and responsible paternity.

493. Through its Human Rights Unit, the National Civil Police Force works on raising awareness about human rights, indigenous peoples' rights, interculturalism and the human rights of women.

494. The Judiciary has training programmes run by its School of Judicial Studies and through the Modernisation of the Judiciary, with emphasis on human rights and customary law, addressed to judges and administrative personnel.

*The Guatemalan Academy of Mayan Languages*

495. The Guatemalan Academy of Mayan Languages (ALMG) has adapted the Braille system to the Mayan languages. This work was the result of follow-up to the workshop entitled Adaptation of the Braille system to the Mayan Languages: Challenges and Prospects for Special Education in Guatemala.

496. The Academy has set up a centre for instruction in the K'iche' language for workers and officials in Santa Cruz del Quiché, to enable them to provide better service to the population.

497. The Academy has issued a technical linguistic ruling on the correct name of the hill and sacred site called Ikitiw or Iq Utiw, in the municipality of San Lucas Toliman, declaring it a Natural and Cultural Park, thus averting the dispute that was under way regarding the hill, which had been invaded by the Wider World Evangelical Church.

498. The Academy promotes the spread of knowledge of the Achi language and researches, plans and executes cultural projects in the department of Baja Verapaz to make known the traditions and the way words are pronounced and written, since this differs from village to village, as well as broadcasting radio programmes and teaching a diploma course in cultural linguistics.

499. The Academy is supporting the project to standardise the transcription of the Poqoman language, so that the population that speaks it has a grammatical tool to facilitate understanding and interaction among the communities that speak dialects of the Poqoman language. Since this language has a series of dialectal variants, an attempt is being made to unify the way it is written and read.

500. The Academy is publicising the Mayan Languages Act, since this is urgently needed if institutions are to be aware of the rules and apply them, so that discrimination against indigenous peoples can be prevented.

501. A joint project has been launched by the University of San Carlos in Guatemala (USAC) and MICUDE, with the support of UNESCO, to set up a Maya television channel, so that the Mayan communities can have their own communication medium that carries discussion of their culture, views and world vision.

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