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Report of the Working Group on the Universal Periodic Review

Guatemala *

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Introduction

The Working Group on the Universal Periodic Review (UPR), established in accordance with Human Rights Council resolution 5/1 of 18 June 2007, held its second session from 5 to 19 May 2008. The review of Guatemala was held at the 4th meeting on 6 May 2008. The delegation of Guatemala was headed by H.E. Mr. Lars Henrik Pira, Vice-Minister of Foreign Affairs, and composed of 17 members, see annex below. At its 9th meeting held on 9 May 2008, the Working Group adopted the present report on Guatemala.

On 28 February 2008, the Human Rights Council selected the following group of rapporteurs (troika) to facilitate the review of Guatemala: Brazil, Gabon, and Slovenia.

In accordance with paragraph 15 of the annex to resolution 5/1, the following documents were issued for the review of Guatemala:

(a) A national report submitted in accordance with paragraph 15 (a) (A/HRC/WG.6/2/GTM/1);

(b) A compilation prepared by the Office of the High Commissioner for Human Rights (OHCHR), in accordance with paragraph 15

(b) (A/HRC/WG.6/2/GTM/2);

(c) A summary prepared by OHCHR, in accordance with paragraph 15 (c) (A/HRC/WG.6/2/GTM/3).

A list of questions prepared in advance by Canada, Denmark, Germany, Ireland, the Netherlands, Sweden and the United Kingdom of Great Britain and Northern Ireland was transmitted to Guatemala through the troika. These questions are available on the extranet of the UPR.

I. Summary of the proceedings of the review process

A. Presentation by the State under review

At the 4th meeting, on 6 May 2008, Mr. Lars Henrik Pira, Vice-Minister of Foreign Affairs of Guatemala, introduced the national report and explained that the UPR process allowed different divisions in the executive, judicial and legislative branches to embark on a joint reflection on human rights, in the present administration's first year in office.

The Government recognized the complexity of the problems the country faces, including the process of consolidation of the country's democracy, the legacy of internal armed conflict, an increase in common and organized crime, drug trafficking and other socio-economic problems that also affect various countries of the region.

Guided by the Peace Accords as the consensus reached by different sectors of society on how to construct a more just, equal and participative nation, the Government vowed to continue giving priority to human rights in the exercise of public function, with the involvement and participation of all national actors.

In the area of civil and political rights, the Government highlighted efforts to provide citizen security, combat impunity, and strengthen the rule of law by strengthening the justice sector, identified by the Government as one of the main weaknesses of the State. On judicial reform, the Government has provided human rights training to judges, established five justice administration centres in remote areas, created mobile and duty courts to facilitate access to justice for persons with scarce resources and those inhabiting rural areas.

The Government also noted the creation of the Unit on Trafficking of Persons in the Public Prosecutor's Office, the institutional strengthening of other specialized sections and advances in human rights made in the Office, such as a new Policy Plan on Penal Prosecution and Victimology, and a General Instruction including directives for the treatment of crimes against sexual liberty. The Public Prosecutor's Office will assist in the implementation of laws like the Law against Organized Delinquency.

The Interior Ministry has continued with the equipment, professionalization and training of the National Civil Police, along with a process of internal vetting, to achieve institutional efficiency and eradicate corruption and infiltration of organized crime and drug trafficking into State structures. The Government highlighted the Inter-institutional Coordinator for the Strengthening of the Justice System, an organ composed of the Judicial Organ, the Public Prosecutor's Office, the Institute for Public Penal Defence and the Interior Ministry, which coordinates efforts and promotes actions to achieve efficiency, transparency and credibility in the administration of justice. The Government also hoped that the International Commission against Impunity in Guatemala (CICIG) sponsored by the United Nations would contribute to the above-mentioned efforts, by investigating the actions, structures and functioning of illegal and clandestine groups, and advising the State on how to dismantle them. The CICIG is already working with the Public Prosecutor's Office and other national bodies on this. Recently enacted laws, creating the National Institute of Forensic Sciences (INACIF), the Penitentiary System Law, the Framework Law of the National Security System, and the Law on Femicide and other Forms of Violence against Women, were cited as legislative milestones in the protection of human rights.

An Analysis Unit on Attacks against Human Rights Defenders, within the Interior Ministry, has been created to deal with allegations and coordinate an effective response with the Public Prosecutor's Office and other organs.

The Government is pursuing with Congress the ratification of the International Convention on the Protection of All Persons from Enforced Disappearance, and a law that would establish a National Commission to Find the Disappeared.

The Ministry for Foreign Affairs has also created a department on human and indigenous rights to follow up on international commitments assumed by the State, as well as high-level commissions on indigenous rights, and on human rights. The Government highlighted the Presidential Commission against Discrimination and Racism against Indigenous Peoples (CODISRA) and the Institute for the Defence of Indigenous Women (DEMI). It is promoting the creation of a Presidential Secretariat on Indigenous Peoples to pursue public policies, plans, programmes and projects in this area. It is also seeking approval from Congress to recognize the competence of the Committee on the Elimination of Racial Discrimination (article 14).

The National Policy and Plan of Action on Disabilities was approved by decree, with the purpose of: preventing factors which could cause disabilities; provide rehabilitation services; facilitate access to education, training and employment; provide comfortable and safe access to physical spaces, transportation and information sources, recreation, sports and culture, and other activities. The Government has also initiated a process for Congress to approve the Convention on the Rights of Persons with Disabilities.

As rising international gas and food prices have reduced the capacity of the most vulnerable groups to access daily staples, the Government has established a Solidarity Programme to face the Economic and Social Emergency, investing US\$195 million on: the production of grains; social development programmes; projects to facilitate access to land; conditioned transfers, a funding programme to reduce school desertion, chronic malnutrition, and child labour; a housing programme; and a programme to support small and medium enterprises. Guatemala has co-sponsored a petition to hold a special session on the world food crisis on 23 May 2008.

The Government created an Inter-Institutional Commission on Social Cohesion, composed of the Education, and Social Assistance

and Public Health Ministries, as well as the Secretariats on Food Security and Social Works, which will now coordinate all social investment programmes. The Commission has already introduced water and basic sanitation to the 45 poorest municipalities. It gives special attention to schools, health centres, hospital networks, the development of housing and road infrastructure, as well as providing microcredit to women and fertilizer to small farmers, inter alia.

The Government highlighted programmes to build new community homes, prevent maternal and infant HIV/AIDS, ensure food security for children and expectant mothers, made possible by providing additional resources to the Social Wellbeing Secretariat (a 200 per cent budget increment).

The Government also highlighted the celebration of the *Encuentro Nacional por la Primera Infancia* (a national initiative on infancy) and the establishment of an Inter-Institutional Commission on Transparency and against Corruption, headed by the Vice-President, to ensure its efforts to advance economic, social and cultural rights are not hampered by corruption.

Following the adoption in 2005 of the Framework Law on the Peace Agreements, the State has adopted a policy of public recognition of the grave human rights violations committed during the armed conflict. Through the National Reparations Programme, the Government has provided moral and economic reparation to victims of the conflict and their families. Responding to cases before the Inter-American Human Rights System, the State has honoured the memory of victims, publicly requesting forgiveness. The present administration has proposed to Congress an initiative to create a National Law on Reparations. The President also announced his intention to open military archives to assist in clarifying the past.

The Government thanked the United Nations system, and in particular, OHCHR and its Office in Guatemala, and called for the strengthening of technical and financial assistance.

In response to written questions, Ms. del Valle, President of COPREDEH, made additional comments. In relation to attacks on human rights defenders, a body has been created and a process developed to deal with such offences in coordination with the OHCHR and organizations of human rights defenders. On cases of enforced disappearance, Guatemala has established a special unit on human rights in the Prosecutor's office. The Government has also been working on reforms of the criminal code, particularly on torture and enforced disappearances. It has ratified the Optional Protocol to the Convention against Torture. A policy relating to gender violence and sexual violence is being developed to deal around the clock with these cases. On deaths of women and extrajudicial killings, the delegation cited the law on femicide mentioned above and noted that in Guatemala, there is a duty to mainstream gender and human rights in policy. Prosecution of human rights abuses is being strengthened and victim protection programs are being introduced, free of charge. The civil national police and criminal investigations are being strengthened by improving scene of crime procedures and public prosecution proceedings. The Government is establishing bodies to examine DNA and ballistic and other evidence.

The delegation underscored the strengthening of institutions and funding for indigenous development and the recent establishment of the Professional Secretariat and a unit of defence for indigenous women, as well as having indigenous public defenders and the use of Mayan interpreters within the court system. Consideration is being given to setting up an indigenous ombudsman. Their rights are being enhanced through bilingual education, a standing dialogue forum for agrarian conflicts, the establishment of a land identification system and an Ombudsman on agrarian affairs. The Government is consulting with indigenous people on issues relating to

sacred lands, on which a law has already been implemented. The suspension of mining exploitation pending determination of whether it is harmful is underway.

On other matters, Guatemala has criminalized the offence of discrimination within the Criminal Code and complaints can be submitted to the Commission of Human Rights. The Government is looking at a law relating to clemency put forth by the president of the republic. The death penalty is under a moratorium and the 26 people condemned to death cannot be executed due to the processes involved with the Organization of American States.

B. Interactive dialogue and responses by the State under review

During the ensuing interactive dialogue, statements were made by 44 delegations. Many delegations highlighted Guatemala's openness and cooperation with the Human Rights Council, the OHCHR Office in Guatemala and with various human rights mechanisms, including its open invitation to special procedures mandate holders.

Algeria noted Guatemala's support of a special session of the Human Rights Council on the food crisis, which reflects Guatemala's commitment to the right to food. It further noted Guatemala's active role in promoting the rights of indigenous peoples. It noted that the Peace Agreements, including the Agreement on the Identity and Rights of Indigenous Peoples, have become binding on the State, and asked how the international community can assist Guatemala in implementing them. It commended Guatemala on putting an end to violent and repressive practices, and noted the benefits of the process toward democratization, recommending that the Council establish a subsidiary mechanism to review appropriate human rights responses for exit strategies from crisis situations. Algeria recommended that Guatemala continue to provide support to national human rights institutions and create new ones, if the need arises.

Mexico noted the Government's commitment in the area of human rights and the prevention of juvenile violence. It requested more details on the structure and mandate of the CICIG and on its strategy to achieve its objectives, particularly as concerns combating groups that operate outside of the law. It recommended that, within the limits of its abilities, Guatemala advance toward the adoption of the national human rights policy and the NHRAP; that it recognize the competence of CERD; and that it ratify the Rome Statute of the International Criminal Court, the International Convention on the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities. It also recommended that Guatemala amend the Criminal Code to bring it in line with international human rights norms, in relation to racial discrimination and gender issues.

India noted that the national human rights institution of Guatemala, the Ombudsman, enjoys “A” status with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) and asked the delegation to share the recent experience of this institution, asking also whether measures were taken to further enhance its effectiveness. India also sought information on the Presidential Secretariat for Women and the Office for the Defence of Indigenous Women’s Rights.

Slovenia stated, *inter alia*, that it appreciated the efforts made by Guatemala for national reconciliation and development following the long period of armed conflict, and that the socio-economic situation was making these efforts all the more difficult. It referred to concerns expressed by CERD and UNHCR about indigenous peoples’ rights including their lack of access to land, the lack of respect for their traditional lands, the concern of CERD about reports of obstructions to the use of traditional sacred sites by indigenous peoples and the concern expressed by CEDAW about the situation of indigenous women who are vulnerable to various forms of discrimination. Slovenia made four recommendations. Firstly, that Guatemala follows up on the relevant recommendations made by CERD and other human rights bodies and mechanisms towards enhancing *de jure* and *de*

facto equal protection of indigenous peoples including the Maya, Xinka and Garifuna peoples. Secondly, that Guatemala follow up on the CEDAW recommendation to ensure that indigenous women have full access to bilingual education, health services and credit facilities and to fully participate in decision-making processes. Thirdly, that Guatemala ensure that a gender perspective is fully integrated in the next stages of the review, including the outcome of the UPR process. Fourthly, it recommended that Guatemala put an end to impunity for reported attacks against members of marginalized communities, including on the grounds of sexual orientation and gender identity, and put in operation awareness-raising efforts in that respect, targeted particularly at law enforcement officials and the judiciary.

Colombia appreciated the national report, which reflected the significant commitments towards the enjoyment of human rights and the consolidation of democracy made by Guatemala and how it had managed to overcome a long armed conflict and to achieve peace. It welcomed the renewal of the mandate of the Office of OHCHR in Guatemala and asked whether it was planned to expand and diversify assistance received in the framework of the OHCHR Office.

Chile welcomed the decision of the Government to renew the mandate of the OHCHR Office in Guatemala. It noted with interest the information in the report concerning the incorporation of international human rights standards in domestic legislation. Regarding public security, which was highlighted as one of the main challenges in the report, Chile requested information on the effects of police vetting and of measures taken to forbid the practice of torture. It also asked for more information on the CICIG and how it functions. It also asked about the sensitization campaigns to combat racial discrimination mentioned in the report. Referring to the analysis of the extent of the implementation of recommendations of the treaty bodies conducted jointly by the Government and OHCHR, Chile recommended that the results of this assessment be reflected in the work of the Guatemalan authorities in the future in order to achieve the effective realization of human rights in the country.

Portugal welcomed that Guatemala is party to the most important international human rights treaties and many complaints mechanisms with the exception of CERD, and asked if there was an internal timetable for approval of the competence of CERD. It also recommended that Guatemala ratify the Rome Statute of the International Criminal Court at the earliest possibility while commending the CICIG. It welcomed the law on femicide and violence against women and “groundbreaking” provisions that the prohibition against using family planning methods could be considered sexual violence, but asked about practical steps to ensure application of this law. It asked about measures taken to ensure investigation of violence against human rights defenders and recommended that the coordination between the police and the Office of the Attorney General in the investigations of violence against human rights defenders be increased. It also reiterated the recommendation of the Special Representative of the Secretary-General on the situation of human rights defenders for Guatemala to develop a national policy for the protection of human rights defenders.

Canada commended the President’s recognition of atrocities during the armed conflict and the existence of racial discrimination. It noted the situation of indigenous peoples, particularly women in Guatemala and recommended measures to ensure the full enjoyment of all human rights by members of indigenous communities. Canada referred to reports on human rights violations of human rights defenders and a lack of systematic criminal investigation and prosecution procedures. Canada recommended that Guatemala adopt effective measures to prevent and protect human rights defenders from violence and that it ensure the prompt, thorough and effective investigation and appropriate punishment of such and ensure that human rights defenders operate in an enabling environment. Canada recommended that Guatemala take measures to address impunity and investigate and prosecute cases of enforced disappearances and torture and that it ratify the Rome Statute of the ICC. It drew attention to the serious human rights problems facing women and

recommended that Guatemala take measures to fully implement the new law on femicide and ensure that the physical security of women is protected by implementing CEDAW recommendations.

Luxembourg noted legislative reforms bringing the definition of trafficking in line with provisions of the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and against Smuggling of Migrants by Land, Sea and Air. It noted commercial adoption and sexual exploitation for commercial purposes, in particular of indigenous and “rural” women and children, and comments made by CEDAW, UNICEF and the Committee on the Rights of the Child that Guatemala remains a country of origin, transit and destination. Luxembourg welcomed policies to protect those particularly vulnerable, and asked about additional efforts to determine the causes and scope of trafficking of women and girls, including internal trafficking. It asked the delegation to share a first assessment of the impact on the ground, of the national anti-trafficking policy and of the plan of action for 2007-2017.

Malaysia congratulated the Government for having put an end to 36 years of armed conflict with the signing of the Agreement on a Firm and Lasting Peace in 1996, saying it allowed for enhancement of political stability and socio-economic development, including in human rights. For countries that have faced long periods of internal armed conflict, Guatemala’s experience and the work of the United Nations Peace Mission in Guatemala in 2004 was hailed as an example of best practice. Malaysia commended CICIG and called for information on gains made and the role of the commission vis-à-vis the national legal system.

Cuba congratulated the delegation of Guatemala on the national report and noted that its human rights priorities concerned rural development, education, health, the security of citizens, and indigenous peoples. Cuba recommended that Guatemala continue its efforts to combat impunity and continue to expand its programmes to promote social justice and economic, social and cultural rights.

Brazil praised Guatemala's cooperation with international and regional human rights systems. It asked about the main steps taken in the fulfilment of the rights of the child, on access to justice for indigenous peoples and the implementation of Guatemala's international commitments against torture. Brazil also requested information on efforts to address the death penalty and on the achievements of CICIG. Brazil recommended that Guatemala continue its efforts in respect of the Optional Protocol to CAT.

Venezuela noted with interest the Presidential Commission against Discrimination and Racism Against Indigenous Peoples, the Institute for the Defence of Indigenous Women and the forthcoming creation of a department on human rights and indigenous rights within the Ministry for Foreign Affairs, and requested additional information on the functions of these as well as on other policies and plans with regard to the rights of indigenous peoples.

Austria noted Guatemala's active participation in the Council and its voluntary commitment to renew cooperation with the OHCHR for another three years and welcomed CICIG, asking about measures to ensure the implementation of its mandate. It also recommended the adoption of domestic measures to ensure the effective implementation of the Commission's mandate on the ground, necessary to remove any obstacles for serious international investigations. Austria sought information on protecting the rights of human rights defenders and recommended that particular attention be paid to the effective implementation of victims' assistance and protection programmes in the fight against impunity. It asked if action plans existed to implement the Law for the Integral Protection of Childhood and Youth and for information on prohibition of corporal punishment and recommended that corporal punishment in the home and family be explicitly prohibited.

The Russian Federation noted that civil society had not been involved in preparing the national report. It cited OHCHR reports stating that only 1 per cent of killings were solved and asked why. It also noted that every second child under five suffers from chronic malnutrition and requested information on steps taken to remedy this situation.

El Salvador asked about the input of civil society in the follow-up to the review. It also noted the high levels of violence and requested information on the social impacts of the project conducted by the Ministry of Education, in the framework of the Peace Agreements, to promote a culture of peace in Guatemalan society, especially among young people, and recommended that this project, which El Salvador considered a good practice, be continued and strengthened. It expressed concern about the situation of transit migrants, especially women and children, whose human rights are systematically violated as confirmed by the Special Rapporteur on the human rights of migrants, and asked what measures the authorities were taking to prevent such abuses.

Ireland cited the reported 98 per cent impunity rate for attacks on human rights defenders and recommended that Guatemala combat impunity for such attacks, by effectively investigating all allegations and by prosecuting those responsible. It also recommended that Guatemala develop a comprehensive Government policy for the protection of human rights defenders, taking into account the views of civil society and also including the views delineated by the Presidential Commission on Human Rights in 2007.

China appreciated the approval of national policies and plans, including the policy on the prevention of youth violence, the public policy on racism and racial discrimination, and the national policy on the promotion of equal opportunities of women. It also noted legislative measures adopted to criminalize violence against women, including definitions of domestic violence and sexual harassment. China referred to NGO and treaty body concerns with discrimination against indigenous peoples and requested information on the main challenges Guatemala faced in combating discrimination against indigenous women, including in employment, education and health services. It also asked what further measures were planned to address child labour, trafficking, illegal adoption and ill-treatment of indigenous children.

The Czech Republic asked about specific measures to ensure protection against violence for human rights defenders and people under attack because of their sexual orientation and gender identity. It asked about measures to strengthen the investigative capacity of police and the independent functioning of the judiciary to eliminate impunity. The Czech Republic recommended the adoption of further measures to end impunity for attacks against human rights defenders and against persons because of their sexual orientation or gender identity. It recommended that the measures include specific education and awareness raising programmes for law enforcement, judicial and other authorities, which focus, inter alia, on protection of enjoyment of human rights by persons of minority sexual orientation and gender identity.

The Netherlands recognized that Guatemala faced a number of human rights challenges and asked about the impact of new human rights institutions on impunity and on corruption as a source of human rights abuses. The Netherlands recommended that the creation of new human rights units be part of an integral plan for the justice and security sector and the aim of such a plan should be guaranteeing overall respect for human rights. The Netherlands also asked about steps taken to operationalize and implement the national plan of action for human rights which was presented in December 2007. The Netherlands recommended that Guatemala ratify the Rome Statute at its earliest convenience.

France recommended that Guatemala ratify the Rome Statute of the ICC. On the issue of impunity, it noted that many crimes are neither investigated nor prosecuted, and that the levels of violence remain high, and asked about practical steps to improve the effectiveness of the judiciary

and the police. Noting that Guatemala has signed the Convention and is a member of the "Group of Friends of the Convention" France recommended that Guatemala ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

Azerbaijan noted that Guatemala was still living with the consequences of internal armed conflict and commended the determination of the Government to heal the wounds, particularly through CICIG, on efforts to accelerate the democratization process, legal reforms

on human trafficking and racial discrimination, and on the establishment of a special commission to search for those who disappeared during the conflict. It also commended the effectiveness of OHCHR in the country. Azerbaijan pointed out poverty, unemployment, organized crime, malnutrition among children and a high infant mortality rate as obstacles. It encouraged Guatemala to strengthen efforts to effectively secure the rights of indigenous peoples. Information was sought on: (i) practical implementation of the National Reparation Programme for victims of war; (ii) measures to address low school attendance in rural regions and among indigenous communities, and (iii) a response to CEDAW recommendations to bring the provisions of the civil, criminal and labour codes in conformity with the Convention.

Germany asked the Government about its views on the achievements of the OHCHR Office in Guatemala and of any necessary improvements in cooperation between the Office and the institutions of Guatemala. It also cited the report of Special Representative of the Secretary-General on human rights defenders and asked if Guatemala had put into practice or intended to take up any of her recommendations. Germany cited figures in United Nations reports on the existence of more than 1.5 million illegal weapons in Guatemala, commented that the right to life was threatened by their existence, and asked what programmes existed to collect them so that femicide and homicide could be reduced.

Regarding impunity, Peru asked about the ongoing measures taken to judge those responsible for past human rights violations. It also asked when the Government planned to accede to and ratify the Rome Statute. Noting that despite the law on quotas, women continue to be underrepresented in political life, in particular indigenous women, and requested information on how the legal framework is being translated into practice in this regard.

Following the dialogue, the President of COPREDEH stated that the delegation would reply to most questions raised but also provide further information later. Guatemala has a system to monitor and follow up on the recommendations of international and national human rights bodies and a number of the recommendations of the Special Representative of the Secretary-General on the situation of human rights defenders have been implemented. The Government is working on a national plan of action and it will be implemented in each of its units. However, the delegation clarified that Guatemala has not yet received her report.

Concerning CICIG, the mandate was to conduct independent investigations and to collaborate with the State on dismantling illegal bodies and clandestine security organisations. In this regard, agreements have been drafted to strengthen the national justice system. The delegation added that CICIG provides technical expertise and support to strengthen Guatemala's national system, and also cited the creation of various mechanisms for better evaluation and coordination of the specific impact of human rights awareness within governmental units.

On torture, Guatemala emphasized the role of and actions taken by the *Procuraduría* of Human Rights to deal with allegations of torture.

On the protection of children and corporal punishment, Guatemala noted that the national law for the integral protection of children and youth, which prohibits all mistreatment, is in accordance with the Convention on the Rights of the Child which Guatemala ratified in 2002. Guatemala has also developed a plan of action for the protection against commercial sexual

exploitation, a special unit for the prevention of trafficking in persons, particularly children. The offence is criminalized and training for officials, an awareness campaign and a special prosecutor's office have been put in place. Corporal punishment in all areas is denounced, sanctioned and punished.

Concerning racial and gender discrimination, Guatemala mentioned the coordination among State bodies to raise awareness on such issues. The Office for the Defence of Indigenous Women acts to protect indigenous women from discrimination and is also charged with promoting the defence of their human rights. The delegation highlighted the increasing number of indigenous women participating in Congress, as provincial governors and vice-ministers. The directorate for human rights and for indigenous affairs of the Ministry of Foreign Affairs implements international policies in Guatemala in this area and promotes a proactive role of the country at the international level. Guatemala emphasized that a law on femicide was recently adopted and an inter-institutional commission is dedicated to this subject. National policies and practices are being strengthened with the support of the Presidential Commission on Women which put forward an initiative for the complete protection of women and also a programme, based on the Beijing Platform, to give more opportunities to women to participate in culture, politics and education.

On access to justice, the Government reiterated the creation of mobile courts and other initiatives.

In response to comments on the non-participation of civil society in the drafting of the national report, Guatemala noted that civil society provided its own report to OHCHR and a mechanism was set up to publicize their recommendations together with those of the States.

The delegation stated that renewal of the OHCHR in Guatemala's mandate and enhancement of the work of the Office would be discussed based on the positive assessment of cooperation and technical assistance in the field of human rights.

Moreover, Guatemala mentioned efforts to improve tax collection and raise awareness among Guatemalans of their responsibility to participate in financing human rights activities.

South Africa sought clarification on how the Government was addressing the persistence of deeply rooted patriarchal attitudes and the success of policies on this issue. It asked what programmes were in place and about the high illiteracy rate of the indigenous population. It noted that Guatemala has some of the highest levels of inequality in Latin America and continued to face challenges in the eradication of poverty and the progressive realization of economic, social and cultural rights. South Africa recommended the acceleration of the poverty alleviation programmes with a view to addressing the uneven distribution of wealth, access to health and the high level of social exclusion of indigenous peoples and people of African descent. It also recommended that Guatemala accelerate adoption of the Bill authorizing the declaration provided for in article 14 of ICERD and that specific legislation be enacted

to provide appropriate remedies for victims of racial discrimination, in particular, relating to the dissemination of ideas based on notions of racial superiority, racial hatred, incitement to racial discrimination and violent acts targeting indigenous peoples and people of African descent in Guatemala.

The United States of America asked what concrete measures, in addition to CICIG were being taken and what financial, technical and personnel resources were allocated to combating impunity and fortifying the rule of law, including within the judiciary, police, prosecution and other government organs. It recommended that the Government ensure that it allocates and provides all necessary financial, technical and personnel resources to combat impunity and lack of respect for the rule of law, including to combat corruption and impunity within the Government's institutions. It cited as a serious impediment the killings, threats and abuses of judges, court officials, prosecutors, witnesses, human rights NGOs and the general public, and asked what concrete

measures were taken to address this problem and provide security to these vulnerable persons. The United States of America recommended that, to combat impunity, the Government take all necessary steps to provide for and ensure the personal security of human rights defenders, witnesses, court officials, prosecutors and others who are subject to threats and other abuses connected with their efforts to support human rights and democracy.

Denmark noted that Guatemala faced serious problems with social exclusion, extreme poverty, unreasonable work conditions and the high illiteracy rate. It also expressed concern on indigenous peoples' rights and the economic social and cultural conditions and discrimination affecting them worst. Denmark recommended that Guatemala look at further measures to ensure the protection of its citizens' economic, social and cultural rights. It also recommended that Guatemala pay particular attention to ensuring the protection of indigenous peoples' rights. In that context, the Government must ensure the right of indigenous peoples to be heard before their traditional lands are exploited.

Finland acknowledged Guatemala's commitments to protect and promote the rights of indigenous peoples. As CERD noted in March 2006, discrimination against indigenous people continued, inter alia, in access to justice, in the media's display of contemptuous attitudes and rejection. It asked about recent and concrete measures taken on indigenous peoples' rights and recommended that Guatemala strengthen its efforts to fully implement the concluding observations adopted by CERD, as well as other relevant concluding observations adopted by other treaty bodies.

Australia congratulated Guatemala, inter alia, on its promotion of indigenous peoples' rights internationally. Australia noted with concern reports by the Special Representative of the Secretary-General that the number and intensity of attacks against human rights defenders had increased significantly, and referred to the reports of the Special Rapporteur on extrajudicial, summary and arbitrary executions that a number of violent phenomena afflict Guatemala, including the killing of women and persons for their sexual identity or orientation. Australia recommended that the Government ensure that reports of killings, threats, attacks and acts of intimidation against human rights defenders are thoroughly and promptly investigated and those responsible brought to justice. It also recommended to the Government to ensure the effective and independent investigations into all reports of torture and extrajudicial executions by members of the security forces.

Ukraine expressed concern at reports of increasing acts of harassment and persecution of human rights defenders and at impunity for such acts, asked about measures taken to prevent attacks against human rights defenders, and recommended that the Government adopt effective measures to strengthen and guarantee the independence of the Unit for the protection of human rights defenders within the Presidential Commission for Human Rights, and to protect human rights defenders from any further violence.

Switzerland highlighted that impunity remains a persistent problem, and that 98 per cent of crimes remain unpunished. It welcomed CICIG and asked if it was operational, how it cooperated with the Office of the Prosecutor and what was expected from it. It noted that certain crimes committed during the conflict such as genocide, torture and enforced disappearances, have still not been fully investigated. It recommended that better police protection be afforded to judges, investigators and witnesses. Noting that the situation of indigenous peoples, and in particular women and children, remains a source of concern and asking about measures envisaged to improve it, Switzerland recommended that Guatemala commit itself to improving the situation of indigenous children, in particular as concerns ill-treatment, trafficking, child labour, illegal adoptions and difficulty in accessing schools and health-care services and that Guatemala take all necessary measures to reduce illiteracy rates, in particular among women. It further recommended that a law be developed that would criminalize discrimination based on social origin, racial hatred and acts of violence against indigenous; that the national human rights commission commit itself fully to the

improvement of indigenous rights; and that Guatemala take all necessary measures to fight against femicide and the lynching and killings of persons based on their sexual orientation. Noting the vulnerable situation of human rights defenders, it recommended that Guatemala develop a draft law guaranteeing the protection of human rights defenders.

Nicaragua commended Guatemala on the report, which was the product of a national consultation involving all actors. It noted the important steps taken by Guatemala to consolidate peace following the long internal armed conflict, and acknowledged the progress made in strengthening institutions and the legal framework. Nicaragua welcomed the renewal of the mandate of the OHCHR office in Guatemala and recommended the continuation of education in the field of human rights.

The Philippines appreciated the work to overcome the effects of past internal conflict. It asked if the Government had assessed the positive impact of its institutions on the human rights situation on the ground. The Philippines also stated that Guatemala's vast experience in international cooperation on human rights issues would be helpful for other developing countries, thus, the Philippines recommended that Guatemala share its experiences and best practices in this field. The Philippines also expressed interest in further government efforts including expectations for international cooperation, with respect to eliminating violence against women and reform of the police force. The Philippines expressed the hope that the Government would enhance support to national efforts to prevent the re-establishment of the death penalty.

Tunisia commended Guatemala on its consolidation of the process of democratization, in particular on the free, transparent and

democratic elections of January 2008, which reflected the commitment to further promote social peace and development. It also welcomed reforms aimed at aligning domestic legislation with international standards, efforts to consolidate the national human rights legal framework, the ongoing consultations on submitting to Congress the Convention on the Rights of Persons with Disabilities and the International Convention for the Protection of All Persons from Enforced Disappearance, and measures to improve the lives of indigenous peoples.

The United Kingdom of Great Britain and Northern Ireland welcomed Guatemala's commitment to strengthen its national human rights institutions and support the advancement of the rights of indigenous peoples. It would like to see rapid progress in these fields. It noted the Special Representative of the Secretary-General's report and sought information on Guatemala's work to tackle impunity. The United Kingdom recommended that the Government take additional steps to combat the impunity which has contributed to the rise in femicide and the attacks on human rights defenders. Social and gender inequality were sources of concern and it recommended that Guatemala implement all the measures agreed in the 1996 Peace Accords to combat discrimination and promote inclusion. The United Kingdom recognized Guatemala's good cooperation with treaty bodies and urged further cooperation through the submission of the follow-up response to the Committee against Torture. It was pleased with CICIG and hoped Guatemala will continue to tackle all forms of corruption with vigour. It welcomed the decision to maintain the de facto moratorium of the death penalty but recommended that Guatemala abolish the death penalty in its entirety. Finally, it recommended that civil society be fully involved in work to follow up this session.

Japan commended Guatemala for cooperating with the CICIG and strongly encouraged the Government to obtain support from the CICIG and enhance judicial power so as to solve the issue of impunity. Japan commented that it was essential to further advance the police force's capacity for peace maintenance and recommended in that regard an increase in the number of police officers, in conjunction with capacity development of the Public Prosecutor's Office. Japan, while expressing its understanding that financial consequences had to be taken into account when considering strengthening judicial power, stated that further enhancement was required and

recommended that the establishment of such an environment, where a judge can make a fair and appropriate decision without intimidation, was vital. Japan commented on a report that street children, especially resulting from domestic violence, were being recruited by gangs and participating in activities such as stealing, prostitution, sale of drugs, and asked about prospects for addressing the issues through the eradication of poverty, education, the promotion of the rights of the child, and especially the improvement of the rights to education and to life.

The Republic of Korea welcomed the creation of an Ombudsman, a Presidential Secretariat for Women and a Presidential Commission for Coordinating Executive Policy in the Field of Human Rights, and efforts to raise rights awareness among law enforcement officers and other relevant institutions. It asked if there were programmes for the general public, including in schools. It cited the creation of the Historical Clarification Commission and the National Reparations Programme as significant steps forward in addressing the consequences of years of conflict. It asked for information on: (i) concrete actions taken to implement the National Reparations Programme; (ii) the adoption of the bill establishing the National Commission to Search for Victims of Enforced and Other Forms of Disappearance; (iii) measures taken to address the concerns of CEDAW about impunity for crimes against women and the impact of such measures. The Republic of Korea encouraged the Government to explore, together with the OHCHR and other entities, the best manner to promote and protect the rights of one of the most vulnerable sectors of the population, namely indigenous peoples, and welcomed the new Government's priorities in rural development, education and health, and indigenous peoples.

Ecuador noted measures taken to combat impunity and racial discrimination, promote indigenous rights, and incorporate international human rights norms in domestic legislation, as well as efforts to develop a legal framework in compliance with the provisions of the international instruments. It requested information on how Guatemala addresses the flow of transit migrants and what best practices it has identified in this regard from a human rights perspective.

Italy appreciated, inter alia, that Guatemala voted in favour of a moratorium on the death penalty in the General Assembly and the President's strong stance against its reintroduction, and recommended that Guatemala maintain and strengthen the moratorium currently in force with a view to abolishing the death penalty. Italy welcomed Guatemala's intention to ratify the Rome Statute and recommended that Guatemala do so as soon as possible, representing a clear signal of its commitment to combat impunity. Italy asked what measures had been taken to combat youth gangs, the so-called "maras" and to support civil society initiatives to help young people emerge from "mara" culture. Italy recalled obstacles to the implementation of economic, social and cultural rights and expressed concern at the high level of social exclusion affecting children in rural areas and the high rate of illiteracy. Italy asked about the status and implementation of policies and plans to combat poverty and inequality.

Bangladesh said Guatemala had demonstrated its willingness to cooperate with international mechanisms and cited the High Commissioner's recognition of the benefits of a transition to democracy at the end of a long authoritarian regime. While lack of resources meant the situation was not ideal, the Government was committed to improving it. It called for stronger administration of justice and the rule of law. It asked about measures in this regard. Bangladesh also cited CERD comments on the high illiteracy rate in the indigenous population and asked about measures to address this.

Uruguay commended Guatemala on the efforts to create and strengthen institutions to promote and protect human rights. Referring to challenges the country faces, it wanted to know what policies and measures are currently being implemented to address malnutrition and the chronic malnutrition which particularly affects children.

The Dominican Republic noted efforts to re-establish an institutional legal framework in accordance with the Peace Agreement. Referring to the ongoing activities with regard to the training of judges and judicial officers and the creation of mobile courts, it asked whether there were plans to extend the establishment of mobile courts to rural areas, which would allow access by low-income populations living in isolated areas, and encouraged the Government to continue these good practices.

Jordan commended the ongoing efforts to reverse the negative impact of the past conflict and to improve human rights in Guatemala and its fruitful cooperation with OHCHR, including its intention to extend this cooperation. It expressed hope that the Government will continue its efforts, including through strengthening its cooperation with stakeholders and responding to the recommendations of relevant human rights mechanisms. It asked what steps the Government had taken to better implement the Framework Law, particularly the Agreement on Identity and Rights of Indigenous People. It recommended that the Government take the necessary measures to ensure the effective participation of indigenous peoples in public and political life, including through implementation of the relevant recommendations of human rights treaty bodies and special procedures.

Norway drew attention, *inter alia*, to the number and intensity of attacks against human rights defenders as reported by the Special Representative of the Secretary-General and asked about further steps to ensure a reduction in the attacks on human rights defenders and to bring the perpetrators of such attacks to justice, and recommended that such steps be taken. Norway also referred to the recommendations of CERD regarding community radio stations reaching the largest possible number of indigenous communities. It recommended reform of the law on radio communication in order to guarantee the proper and free functioning of local radios.

Guatemala responded to questions concerning its national programme for compensation for the victims of the internal conflict. It has restructured the State budget to allow for comprehensive compensation in financial, cultural, legal and psychosocial terms. There is also an internal system to establish a national registry of victims.

Concerning budgetary allocation in the field of human rights, Guatemala has increased the budget for the *Procuraduría* for Human Rights by 46.78 per cent and allocated other resources for the Presidential Commission for Human Rights, the Defenders Office for Indigenous Women, the National Compensation Programme, the National Institute for Forensic Science and for the Secretariat for Indigenous Affairs.

On the subject of children living and working on the street and their possible exploitation by “maras” or youth gangs, Guatemala has a plan to protect children at risk and prevent them from becoming street children. An institutional unit offers programmes for economic assistance for education and fellowships for young people. Likewise, a national policy on prevention of violence is carried out at the municipal level.

Regarding migrants and foreigners, Guatemala was working on a policy which includes the creation of accommodation centres for migrants bearing in mind their human rights. Human rights are also considered in cases of deportation. On this issue, Guatemala is keen to present its initial report to the Committee on Migrant Workers.

Regarding the protection of human rights defenders and of members of the judiciary, action is taken through international mechanisms, mainly from the Inter-American and the United Nations systems. At the national level, protection for these persons is provided by the civil national police and through measures discussed above.

Concerning the subject of justice, peace judges exist at municipal levels. The five justice centres are regional, which are part of a process of decentralization of the administration of justice.

In order to combat impunity, a project is in place to strengthen the legal system, as well as a commission for transparency against corruption. There are also cooperative agreements between the CICIG and the Ministry of the Interior and intensive work is underway to include a human rights component in the police training programme.

Addressing questions on the prevalence of weapons, the delegation cited legislation before Congress on the control of firearms. The number of weapons seized has increased over the years.

Concerning illiteracy and access to education of indigenous peoples, there is a programme of literacy at the national, municipal and community levels, for bilingual education and fellowships for children from rural areas. The Ministry of Education, in coordination with the Presidential Commission for Human Rights, is trying to make human rights education a mandatory subject. There also is a draft law aimed at guaranteeing better access for indigenous peoples and communities to the media, including community radios and television. A television channel on Mayan cultures is being introduced.

Regarding food security and malnutrition, Guatemala cited a law on food and nutritional security which provides for a National Food Security Council working in coordination with the central Government, the *Procuraduría* and civil society. It also recalled the existence of the Inter-Institutional Commission on Social Cohesion, as mentioned earlier.

In conclusion, Guatemala reaffirmed its Government’s priority to make human rights a cross-cutting pillar in all its activities, its policy of an open invitation to all monitoring mechanisms in the area of human rights and the policy of full knowledge of the truth. Guatemala also reaffirmed the invitation to the OHCHR to extend the term of the Office in Guatemala for a further period, following the invaluable cooperation and contribution to the country.

II. Conclusions and/OR recommendations

In the course of the discussion, the following recommendations were made to Guatemala:

Ratify the Rome Statute of the International Criminal Court (Mexico, Portugal, Canada, the Netherlands, France, Italy), the International Convention on the Protection of All Persons from Enforced Disappearance (Mexico, France), the Convention on the Protection of Persons with Disabilities and its Optional Protocol (Mexico), and accept article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (Mexico, South Africa), as well as continue its efforts in respect of the Optional Protocol of the Convention against Torture (Brazil).

Continue to provide support to national human rights institutions and create new ones, if the need arises (Algeria).

Full commitment of the national human rights commission to the improvement of indigenous rights (Switzerland).

Promote the approval of the national policy and action plan for human rights (Mexico).

Reflect the results of the evaluation exercise on the implementation of recommendations of the treaty bodies conducted jointly by the Government and OHCHR in the work of the Guatemalan authorities in the future in order to achieve the effective realization of human rights in the country (Chile).

Continue human rights education to all Guatemalans, in order for this generation and future generations to leave behind forever the culture of violence inherited from years of internal armed conflict (Nicaragua).

Strengthen its efforts to fully implement the concluding observations adopted by CERD, as well as other relevant concluding observations adopted by other treaty bodies (Finland) and follow up the CERD and other human rights bodies and mechanisms' relevant recommendations towards enhancing de jure and de facto equal protection of indigenous peoples, including the Maya, Xinca and Garifuna peoples (Slovenia).

Implement all the measures agreed in the 1996 Peace Accords to combat discrimination and promote inclusion (United Kingdom).

Consider harmonizing Guatemala's civil and penal codes with international human rights norms, in relation to racial discrimination and gender issues (Mexico).

Enact specific legislation to provide appropriate remedies for victims of racial discrimination, in particular, relating to the dissemination of ideas based on notions of racial superiority, racial hatred, incitement to racial discrimination and violent acts targeting indigenous peoples and People of African Descent in Guatemala (South Africa).

Develop a law criminalizing discrimination based on social origin, racial hatred and acts of violence against indigenous (Switzerland).

Take measures to ensure the full enjoyment of all human rights by members of indigenous communities (Canada) and ensure the protection of indigenous peoples' rights and ensure the right of indigenous peoples to be heard before traditional indigenous land is being exploited (Denmark).

Commit to improving the situation of indigenous children, in particular as concerns ill-treatment, trafficking, child labour, illegal adoptions and difficulty in accessing schools and health-care services (Switzerland).

Maintain and strengthen the moratorium currently in force with a view to abolishing the death penalty (Italy) and abolish the death penalty (United Kingdom).

Implement fully the new law on femicide and ensure that the physical security of women is protected by implementing CEDAW recommendations (Canada) and follow up the CEDAW recommendation to Guatemala to ensure that indigenous women have full access to bilingual education, health services and credit facilities and to fully participate in decision making processes (Slovenia).

Take all the necessary measures to fight against femicide and the lynching and killings of persons based on their sexual orientation (Switzerland).

Prohibit explicitly corporal punishment in the home and family (Austria).

Adopt effective measures to strengthen and guarantee the independence of the Unit for the protection of human rights defenders within the Presidential Commission for Human Rights, and to protect human rights defenders from any further violence (Ukraine).

Increase coordination between the police and the Office of the Attorney General in investigation of violence against human rights defenders and develop a national policy for the protection of human rights defenders (Portugal).

Develop a draft law guaranteeing the protection of human rights defenders (Switzerland).

Take steps to ensure a reduction in the attacks on human rights defenders and to bring the perpetrators of such attacks to justice (Norway) and adopt effective measures to prevent and protect human rights defenders from violence and ensure the prompt, thorough and effective investigation and

appropriate punishment of such acts and ensure that human rights defenders operate in an enabling environment (Canada).

Ensure that reports of killings, threats, attacks and acts of intimidation against human rights defenders are thoroughly and promptly investigated and those responsible brought to justice (Australia) and combat impunity for attacks on human rights defenders, by effectively investigating allegations and by prosecuting those responsible and that Guatemala develop Government policy for the protection of human rights defenders, taking into account the views of civil society and also including the views delineated by the Presidential Commission on Human Rights in 2007 (Ireland).

Take additional steps to combat the impunity which has contributed to the rise in femicide and the attacks on human rights defenders (United Kingdom).

Ensure that new human rights units are part of an integral plan for the justice and security sector (Netherlands).

Increase the number of police officers, in conjunction with capacity development of the Public Prosecutor's Office (Japan).

Establish an environment where a judge can make a fair and appropriate decision without intimidation (Japan).

Ensure effective and independent investigations into all reports of torture and extrajudicial executions by members of the security forces (Australia).

Take measures to address impunity and investigate and prosecute cases of enforced disappearances and torture (Canada).

Ensure the effective implementation of the International Commission against Impunity's mandate on the ground as necessary to remove any obstacles for serious international investigations and pay particular attention to the effective implementation of victims' assistance and protection programmes in the fight against impunity (Austria).

Provide for and ensure the personal security of human rights defenders, witnesses, court officials, prosecutors and others who are subject to threats and other abuses connected with their efforts to support human rights and democracy, to combat impunity (United States of America).

Provide better police protection to judges, investigators and witnesses (Switzerland)

Obtain support from the CICIG and enhance judicial power to solve the issue of impunity (Japan).

Allocate and provide all necessary financial, technical and personnel resources to combat impunity and lack of respect for the rule of law, including to combat corruption and impunity within the government's institutions (United States of America).

Continue its efforts in the fight against impunity in favour of the security of citizens (Cuba).

Put an end to impunity for reported attacks against members of marginalized communities, including on the grounds of sexual orientation and gender identity, as well as to put in operation awareness-raising efforts in that respect, targeted particularly at law enforcement officials and the judiciary (Slovenia).

Adopt further measures to end impunity for attacks against human rights defenders and against persons because of their sexual orientation or gender identity, including specific education and awareness raising programmes for law enforcement, judicial and other authorities, which focus, inter alia, on protection of enjoyment of human rights by persons of minority sexual orientation and gender identity (Czech Republic).

Take the necessary measures to ensure the effective participation of indigenous peoples in the public and political life, including through implementation of the relevant recommendations of human rights treaty bodies and special procedures (Jordan).

Reform the law on radio communication in order to guarantee the proper and free functioning of local radios (Norway).

Accelerate the poverty alleviation programmes with a view to addressing the uneven distribution of wealth, access to health and the high level of social exclusion of indigenous peoples and People of African Descent (South Africa).

Ensure the protection of its citizens' economic, social and cultural rights (Denmark) and continue to expand its programmes of social justice in promoting economic, social and cultural rights, in particular health programmes where Cuba also commits itself to continue and deepen the extent of its cooperation (Cuba).

Reduce illiteracy rates, in particular among women (Switzerland).

Consider as a good practice, to be continued and strengthened, the project conducted by the Ministry of Education, in the framework of the Peace Agreements, to promote a culture of peace in Guatemalan society, especially among young people (El Salvador).

Fully involve civil society in the work to follow up this session (United Kingdom) and ensure that a gender perspective is fully integrated in the next stages of the review, including the outcome of the UPR process (Slovenia).

90. The response of Guatemala to these recommendations will be included in the outcome report adopted by the Human Rights Council at its eighth session.

91. All conclusions and/or recommendations contained in the present report reflect the position of the submitting State(s) and /or the State under review thereon. They should not be construed as endorsed by the Working Group as a whole.

Annex

Composition of the delegation

The delegation of Guatemala was headed by H.E. Mr. Lars Henrik Pira, Vice-Minister of Foreign Affairs and composed of 17 members:

H.E. Mr. Carlos Ramiro Martínez, Ambassador, Permanent Representative of Guatemala to the United Nations and other International Organizations in Geneva.

Mr. Carlos Ovidio Rodas Sim, Government Fourth Vice-Minister

Mr. Franck La Rue Lewy, Human Rights Counselor at the ministry of Foreign Affairs

Ms. Angela Chávez Bietti, Minister Counselor

Ms. Stéphanie Hochstetter, Minister Counselor

Mr. Carlos Enrique Bautista Godínez, Member of Congress, President of the Human Rights Commission of the National Congress

Ms. Delia Emilia Back de Monte, Member of Congress, President of the National Congress Commission for the Woman

Ms. Ruth del Valle Cobar, President of the Presidential Commission on the Executive Policy concerning Human Rights matters.

Ms. Sulmi Barrios, First Secretary, Permanent Mission of Guatemala to the United Nations and other International Organizations in Geneva.

Ms. Ingrid Martínez, First Secretary, Permanent Mission of Guatemala to the United Nations and other International Organizations in Geneva.

Ms. Soledad Urruela, Second Secretary, Permanent Mission of Guatemala to the United Nations and other International Organizations in Geneva.

Ms. Elizabeth Valdés, Third Secretary, Permanent Mission of Guatemala to the United Nations and other International Organizations in Geneva.

Ms. María de los Angeles Briz, Coordinator of the Study and Analysis Unit of the Presidential Commission on the Executive Policy concerning Human Rights matters.

Mr. César Dávila, Financial and Administrative Director of the Secretariat for Peace.

Mr. Mauricio Zarazúa Herrera, Chief, National Attorney General Unit of Human Rights and International Affairs.

Mr. Hans Aarón Noriega Salazar, Technical Coordinator in charge of the Coordination Secretariat of the Public Ministry.

Mr. Remberto Leonel Ruiz Barrientos, Director General of the Public Penal Defense Institute.
