



General Assembly

Distr.
GENERAL

A/HRC/WG.6/2/GTM/2
10 April 2008

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Working Group on the Universal Periodic Review
Second session
Geneva, 5-16 May 2008

**COMPILATION PREPARED BY THE OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS, IN ACCORDANCE WITH PARAGRAPH 15(B) OF THE
ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1**

Guatemala*

The present report is a compilation of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents. It does not contain any opinions, views or suggestions on the part of the Office of the High Commissioner for Human Rights (OHCHR) other than those contained in public reports issued by OHCHR. It follows the structure of the general guidelines adopted by the Human Rights Council. The information included herein has been systematically referenced in endnotes. The periodicity of the review for the first cycle being four years, most of the documents used as reference are dated after 1 January 2004. In the absence of recent information, the latest available reports and documents have also been taken into consideration, unless they are outdated. Since this report only compiles information contained in official United Nations documents, lack of information or focus on specific issues may be due to non-ratification of a treaty and/or to a low level of interaction or cooperation with international human rights mechanisms.

* The information and references contained in the present document have not been verified by United Nations editors prior to submission for translation.

I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations¹

<i>Core universal human rights treaties²</i>	<i>Date of ratification, accession or succession</i>	<i>Declarations /reservations</i>	<i>Recognition of specific competences of Treaty bodies</i>
ICERD	18 Jan. 1983	None	Individual complaints (art. 14): No
ICESCR	19 May 1988	None	-
ICCPR	5 May 1992	None	Inter-State complaints (art. 41): No
ICCPR-OP 1	28 Nov. 2000	Declaration ³	-
CEDAW	12 Aug. 1982	None	-
OP-CEDAW	9 May 2002	None	Inquiry procedure (arts. 8 and 9): Yes
CAT	5 Jan. 1990	None	Inter-State complaints (art. 21): No Individual complaints (art. 22): Yes Inquiry procedure (art. 20): No
CRC	6 June 1990	Declaration to art. 1	-
CRC-OP-AC	9 May 2002	Declaration to art. 3 (2) and (4)	-
CRC-OP-SC	9 May 2002	None	-
ICRMW	14 Sept. 2005		Inter-State complaints (art. 76): Yes Individual complaints (art. 77): Yes
<i>Core treaties to which Guatemala is not a party: ICCPR - OP 2, OP-CAT (signature only, 2003), CPD and CPD-OP (signature only, 2007), and CED (signature only, 2007).</i>			
<i>Other main relevant international instruments</i>		<i>Ratification, accession or succession</i>	
Convention on the Prevention and Punishment of the Crime of Genocide		Yes	
Rome Statute of the International Criminal Court		No	
Palermo Protocol ⁴		Yes	
Refugees and stateless persons ⁵		Yes	
Geneva Conventions of 12 August 1949 and Additional Protocols thereto ⁶		Yes, except Protocol III	
ILO fundamental conventions ⁷		Yes	
UNESCO Convention against Discrimination in Education		Yes	

1. The Committee against Torture (CAT) encouraged Guatemala to ratify the Rome Statute of the International Criminal Court.⁸ The High Commissioner for Human Rights welcomed the approval by Congress of the OP-CAT and urged both Congress and the Government to approve the CED, the CPD and ICCPR-OP 2.⁹ Additionally, the Committee on the Elimination of Racial Discrimination recommended that Guatemala accelerate the adoption of the bill authorizing the declaration provided for in article 14 of ICERD.¹⁰

B. Constitutional and legislative framework

2. CERD welcomed, inter alia, the promulgation of the Framework Law by which the Peace Agreements, and in particular the Agreement on Identity and Rights of Indigenous Peoples, become binding on the State.¹¹ However, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people noted that the implementation of the latter agreement is thwarted by insufficient institutional backing and budgetary allocations.¹²

C. Institutional and human rights infrastructure

3. The national human rights institution (NHRI) is the Ombudsperson and it was accredited with “A” status in 2002.¹³ The High Commissioner recognized the efforts made as regards regulation and budgetary support to implement the Act establishing the National Institute of Forensic Science and the Prisons Act.¹⁴ She also reported that the Centre for the Compilation, Analysis and Dissemination of Information on Crime was established as an analytical unit to help in crime investigation and encouraged Guatemala to continue strengthening the Department of Civil Intelligence.¹⁵ Treaty bodies also noted the establishment of bodies such as the Presidential Secretariat for Women,¹⁶ the Office for the Defence of Indigenous Women’s Rights,¹⁷ the Presidential Commission for Discrimination and Racism against Indigenous Peoples in Guatemala (CODRISA),¹⁸ and the Presidential Commission for Coordinating Executive Policy in the field of human rights (COPREDEH).¹⁹ The Committee on Economic, Social and Cultural Rights (CESCR) also noted the efforts made by Guatemala towards the implementation of the National Reparations Programme for victims of war.²⁰

D. Policy measures

4. In 2007, the High Commissioner encouraged the Government, inter alia, to devise a plan for the implementation of the revised national policy on advancement and equal opportunity for Guatemalan women and also to make progress in implementing the policy of coexistence and the elimination of racism and racial discrimination.²¹

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. Cooperation with human rights mechanisms

1. Cooperation with treaty bodies

<i>Treaty body²²</i>	<i>Latest report submitted and considered</i>	<i>Latest concluding observations</i>	<i>Follow-up response</i>	<i>Reporting status</i>
CERD	2005	Mar. 2006	Received July 2007	Twelfth and thirteenth reports due in 2008
CESCR	2002	Nov. 2003	--	Third report due in 2008
HR Committee	1999	July 2001	Received July 2003	Third report overdue since 2005
CEDAW	2004	May 2006	--	Seventh report submitted in 2007
CAT	2003	May 2006	Overdue since May 2007	Fifth report due in 2011
CRC	1998	June 2001	-	Third and fourth reports overdue since 2006
CRC-OP-AC	2006	June 2007	--	To be included in third and fourth reports to CRC
CRC-OP-SC	2006	June 2007		To be included in third and fourth reports to CRC
CMW	--	--	--	First report overdue since 2004

2. Cooperation with special procedures

<i>Standing invitation issued</i>	Yes
<i>Latest visits or mission reports</i>	Working Group on Enforced or Involuntary Disappearances (19-21 Sept. 2006); ²³ Special Rapporteur on extrajudicial, summary or arbitrary executions (21-25 Aug. 2006); ²⁴ Special Rapporteur on the right to food (26 Jan.-4 Feb. 2005); ²⁵ Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (28 June-12 July 2004); ²⁶ Special Rapporteur on violence against women (9-14 Feb. 2004); ²⁷ Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (1-11 Sept. 2002); ²⁸ Special Representative of the Secretary-General on the situation of human rights defenders (26 May-1 June 2002); ²⁹ Special Rapporteur on the independence of judges and lawyers (10-12 May 2001); ³⁰ Special Rapporteur on the independence of judges and lawyers (16-26 August 1999); ³¹ Special Rapporteur on the sale of children, child prostitution and child pornography (19-30 July 1999). ³²
<i>Visits agreed upon in principle</i>	Special Rapporteur on the human rights of migrants; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right to education
<i>Visits requested and not yet agreed upon</i>	None.
<i>Facilitation/cooperation during missions</i>	Special Rapporteur on extrajudicial, summary or arbitrary executions expressed his gratitude for the assistance offered.
<i>Follow-up to visits</i>	Special Representative of the Secretary-General on the situation of human rights defenders (follow-up to 2002 visit) (18-19 February 2008).
<i>Responses to letters of allegation and urgent appeals</i>	Between 1 January 2004 and 31 December 2007, a total of 81 communications were sent to the Government. In addition to communications sent for particular groups (e.g. children, NGOs, journalists) 140 individuals were concerned by these communications, including 22 women. During the same period, Guatemala replied to 11 communications (13 per cent).
<i>Responses to questionnaires on thematic issues³³</i>	Guatemala responded to 3 of the 12 questionnaires sent by special procedures mandate holders ³⁴ between 1 January 2004 and 31 December 2007, within the deadlines. ³⁵

3. Cooperation with the Office of the High Commissioner for Human Rights

5. In 2005, at the request of the Government, the Office of the High Commissioner for Human Rights was established in Guatemala.³⁶ Cooperation between OHCHR and Guatemala is carried out mainly through the provision of technical assistance, including to the Government, the national human rights institution, the Public Prosecutor's Office, Congress, as well as to diverse civil society organizations. OHCHR has submitted three annual reports on its activities and on the human rights situation in Guatemala (2005, 2006 and 2007). OHCHR provides assistance to State institutions by carrying out analysis on legal, institutional and implementation issues, and also by contributing to the drafting of key legislation and public policies. Other areas of OHCHR work include increasing awareness of international human rights standards, promoting further interaction with United Nations human rights protection mechanisms, providing assistance on criminal prosecution and investigation issues and facilitating dialogue between different national and international actors on issues such as transitional justice and indigenous peoples' rights.³⁷ In May 2006, the High Commissioner undertook an official visit to Guatemala.³⁸ Guatemala made a voluntary contribution to support the work of the Office in 2004³⁹ and in 2007⁴⁰ contributed to the United Nations Voluntary Fund on Indigenous Populations.

B. Implementation of international human rights obligations

1. Equality and non-discrimination

6. CERD was deeply concerned at the extent to which racism and racial discrimination against the Maya, Xinca and Garifuna peoples is entrenched within the territory of Guatemala and at the inadequacy of public policies to eliminate racial discrimination.⁴¹ This concern was echoed by the High Commissioner.⁴² CERD, while welcoming the information provided about the Office of the Human Rights Prosecutor, which investigates offences involving discrimination and racism, noted that of the 79 cases brought, only 1 resulted in conviction and sentence.⁴³ CERD recommended that Guatemala 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 Guatemala.⁴⁴

7. The persistence and pervasiveness of patriarchal attitudes and deeply rooted stereotypes regarding the roles and responsibilities of women and men in the family and society was of concern to CEDAW, as they constitute a significant impediment to the participation of women in decision-making at all levels and are a root cause of women's disadvantaged position in all spheres of life.⁴⁵ CEDAW encouraged Guatemala to ensure that a definition encompassing both direct and indirect discrimination in line with article 1 of the Convention is explicitly reflected in all appropriate legislation and to include effective sanctions and remedies for the violation of rights by public and private actors.⁴⁶ CEDAW also urged Guatemala, inter alia, to amend discriminatory provisions in the Civil, Criminal and Labour Codes so as to bring them into conformity with article 2 of the Convention.⁴⁷

8. Noting that the majority of the population are indigenous, CEDAW expressed concern about the situation of indigenous women who lack enjoyment of their human rights and are vulnerable to multiple forms of discrimination.⁴⁸ The Committee called upon Guatemala to ensure, inter alia, that indigenous women have full access to bilingual education, health services and credit facilities and can fully participate in decision-making processes.⁴⁹ While also noting the adoption of various laws and decrees, including Decree 81-2002, aimed at promoting actions towards the elimination of discrimination on grounds of race and gender among all State ministries, CEDAW expressed its concern about the lack of enforcement, coordination, effective implementation and monitoring of those laws and decrees.⁵⁰ UNICEF noted that issues of particular concern in respect of the protection of the rights of indigenous children include child abuse and trafficking, child labour, illegal adoptions as well as a gap in the access to education and health services.⁵¹ The Special Rapporteur on the situation of indigenous people recommended that Guatemala, inter alia, strengthen the educational system as a "national priority".⁵²

2. Right to life, liberty and security of the person

9. The Special Rapporteur on extrajudicial, summary or arbitrary executions, in a press statement of 25 March 2008, expressed concern that Decree 06-2008, the "Law regulating the commuting of sentence for those condemned to death", violates international human rights law and called upon the Congress not to override the Presidential veto of this decree and to commit itself instead to a law governing the right to clemency which meets the criteria spelled out by international law.⁵³

10. As reported by the Working Group on Enforced or Involuntary Disappearances in 2007, the problem of the thousands of unresolved cases of enforced disappearances remains one of the most serious issues in the country. According to the assessment of the Commission for Historic Clarification, among the 200,000 persons killed during the internal armed conflict, approximately 45,000 were forcibly disappeared.⁵⁴ The High Commissioner stated that the adoption into law of the bill establishing the National Commission to Search for Victims of Enforced and Other Forms of Disappearance would be a significant step towards ensuring the right to truth.⁵⁵

11. The Special Rapporteur on extrajudicial, summary and arbitrary executions reported, *inter alia*, that a number of violent phenomena afflict Guatemala, including social cleansing, the rapidly rising killing of women, lynching, the killing of persons for their sexual identity or orientation and the killing of human rights defenders and prison violence.⁵⁶

12. In 2006, the High Commissioner reported that the OHCHR office in Guatemala had received information on the direct involvement of State security officers in extrajudicial executions and had also noted that Guatemala has incurred indirect responsibility through the acquiescence of a number of its officers.⁵⁷ The High Commissioner stated that the direct participation of members of the police force in the extrajudicial execution of three Salvadorian members of the Central American Parliament and their driver, and the subsequent deaths of the alleged perpetrators of those killings during their detention at the high security El Boquerón prison, brought to the public eye the fact that organized structures are operating within various State institutions and committing serious human rights violations. These structures have been utilized by organized crime, drug traffickers and other powerful groups. Furthermore, the cases demonstrate that these structures carry out their activities with the help, acquiescence or tolerance of high-ranking officials in the Ministry of Interior and the National Civilian Police (PNC).⁵⁸

13. The High Commissioner further indicated that “social cleansing” was being practised, sometimes under the direct or indirect responsibility of State officials. The OHCHR office in Guatemala noted the existence of organized groups carrying out such acts, often with the support of the local authorities and help from private security agencies.⁵⁹ In 2006, the High Commissioner also stated that the upsurge in mob lynching in the interior of the country was particularly alarming.⁶⁰ CAT in 2006 also raised concerns about allegations of, *inter alia*, “social cleansing” and the killings of children as well as the “lynching of individuals”.⁶¹

14. According to the Special Representative of the Secretary-General on the situation of human rights defenders, the number and intensity of attacks against human rights defenders has increased and basically doubled in the last five years, with an average of one attack against defenders every other day. Fifty defenders were killed between July 2002 and December 2007, and 23 killings took place in the last two years.⁶² The High Commissioner in her 2006 and 2007 reports also stated that there were numerous attacks and threats against political leaders at all levels. From January to November 2007, the Office of the Human Rights Procurator (PDH) registered 64 attacks against members of political parties, resulting in 26 violent deaths.⁶³ UNICEF quoted information from the 2006 report of the NHRI, according to which there were 461 homicides of girls, boys and adolescents in Guatemala, the highest number in Latin America.⁶⁴ CEDAW was deeply concerned about the continuing and increasing cases of disappearance, rape, torture and murder of women.⁶⁵ Similar concerns were expressed by CAT⁶⁶ and the High Commissioner, who noted that the most extreme form of violence against women is femicide.⁶⁷ The High Commissioner stated that there have also been cases of State officials sexually abusing women in detention or under their authority.⁶⁸ CAT recommended that all arrested women be brought immediately before a judge, and, if so ordered, then transferred to a detention centre for women.⁶⁹

15. The High Commissioner also reported that domestic violence continued to be one of the most serious problems faced by women and that, in 2007, the judiciary registered 29,138 complaints of domestic violence.⁷⁰ CEDAW urged Guatemala, *inter alia*, to enact the pending reforms to the Criminal Code to criminalize domestic violence and to allocate the necessary resources to implement the Plan for the Prevention and Eradication of Domestic Violence and Violence against Women 2004-2014.⁷¹

16. CEDAW urged Guatemala to increase efforts to determine the causes and extent of trafficking of women and girls from its perspective as a country of origin, transit and destination and the incidence of internal trafficking.⁷² In 2001 the HR Committee was concerned about the information received on the traffic in children separated from their parents.⁷³ In 2007, UNICEF stated that it is well known that the high demand for children for adoption by foreign families has given rise to an adoption related business and to situations such as kidnapping and trafficking in boys and girls.⁷⁴ In 2007, CRC noted with great concern the high numbers of children affected by commercial sexual exploitation, estimated by Guatemala at 15,000 victims.⁷⁵ CRC recommended that Guatemala take all necessary measures to ensure child victims and witnesses of any of the crimes under the CRC-OP-SC are protected at all stages of the criminal justice process.⁷⁶

3. Administration of justice and the rule of law

17. The High Commissioner reported that overcoming obstacles to the investigation and punishment of suspected perpetrators of serious human rights violations committed during the internal armed conflict remains a challenge. She stated that in the decision on Spain's request for the arrest of a number of persons with a view to their extradition, the Constitutional Court missed a major opportunity to highlight the State's obligation to investigate, try and punish perpetrators of serious violations committed more than 25 years ago, as well as to adopt prompt measures for guaranteeing the right to justice and respond to the legitimate interest of Spain and the international community in ensuring that those crimes do not go unpunished.⁷⁷ CAT and the Working Group on Enforced or Involuntary Disappearances, among others, were also concerned about the impunity that persists regarding most of the human rights violations committed during the internal armed conflict.⁷⁸

18. According to the Special Rapporteur on extrajudicial, summary or arbitrary executions, Guatemala has a single-digit conviction rate for murder.⁷⁹ To understand the causes of this low conviction rate for murder, he referred to the need for a far larger police force, an enlargement that would be accompanied by thoroughgoing reform of existing arrangements.⁸⁰ He acknowledged that the challenges of investigations and prosecution confront three key obstacles: a problematic division of responsibility, severely limited resources and endemic corruption.⁸¹ The High Commissioner also stated that the systematic lack of criminal investigation and prosecution procedures contrasts with the high crime rate, and is a measure of the State's failure to comply with its duty to guarantee rights.⁸² She noted that the efforts of the Public Prosecutor's Office have been insufficient and incommensurate with the magnitude of the problem of impunity and that this was evident in problems such as the low level of identification of suspected perpetrators, inadequate examination and handling of evidence and of crime scenes, and serious failings in ensuring the chain of custody and in concluding initial investigations.⁸³ The High Commissioner further stated that the lack of comprehensive public policies for strengthening the PNC and the failure to develop a career structure left a gap in the upper ranks of the police force, which on occasion was filled by elements linked to organized crime, significantly affecting the State's governability. To tackle these challenges, the PNC will need to undergo a thorough restructuring process. This restructuring will

have to take into account aspects relating to organizational matters, personnel, deployment, police career structure and ethics, training and incentives, the consolidation of mechanisms for accountability, monitoring and clean-up, and the restructuring and reorienting of the criminal investigation bodies.⁸⁴ CAT also recommended, *inter alia*, that Guatemala repeal all laws which allow the army to be involved in activities of law enforcement or the prevention of ordinary crime, which should be carried out exclusively by the PNC.⁸⁵

19. The Special Representative of the Secretary-General on human rights defenders stated that the reported figure of 98 per cent of impunity for attacks against human rights defenders makes justice an empty word in Guatemala.⁸⁶ She stated that despite the establishment of specialized units within the Attorney-General's office to facilitate the investigation of attacks against defenders and the increase in the resources made available to carry out investigations, the inaction of the prosecutors in investigating cases reported by or concerning defenders is disappointing.⁸⁷ CEDAW is also deeply concerned about the engrained culture of impunity for crimes against women and urged Guatemala to take without delay all measures necessary to put an end to the murders and disappearances of women and the impunity of perpetrators.⁸⁸

20. According to the Special Rapporteur on the right to food, a serious obstacle to the right to food was the persistent impunity for violations of human rights, and the lack of equality before the law for Guatemala's people. For example, while the non-payment of salaries to workers is classified as a minor misdemeanour, social protest and land occupation are considered a crime and the full force of the law is brought down on peasants and indigenous populations.⁸⁹ The Special Rapporteur on the situation of indigenous peoples further noted that the justice system needs support to ensure that victims of human rights violations, and particularly indigenous women, find redress, and indigenous customary law needs to be recognized and incorporated in the work of the judiciary.⁹⁰

21. The High Commissioner noted that an agreement was signed in December 2006 between the Government and the United Nations to create the International Commission against Impunity in Guatemala (CICIG).⁹¹ In 2007, UNICEF noted that the CICIG will meet a special challenge in dismantling parallel crime structures operating in the country and quoted International Alert and United Nations estimates that there were at least 1.5 million illegal weapons in Guatemala.⁹²

4. Freedom of expression and right to participate in public and political life

22. In 2001, the HR Committee expressed concern that the laws in force on defamation may be used to restrict criticism of the Government or public officials and recommended legislative reform to ensure a proper balance between the protection of a person's reputation and freedom of expression.⁹³ CERD was also greatly concerned by attitudes of contempt and rejection displayed by the communication media towards indigenous peoples. It recommended, *inter alia*, that a multicultural approach be adopted in the local community and free communication media and that Guatemala ensure in particular the proper functioning of community radio stations so that they reach the largest possible number of indigenous communities.⁹⁴

23. While noting the efforts to amend the Act on Elections and Political Parties to impose a quota of 44 per cent for women's participation, CEDAW remained concerned about the underrepresentation of women, in particular indigenous women, in political and public positions at all levels.⁹⁵ CERD also noted with concern the low level of participation, especially of indigenous women, in political life, the lack of representation in Congress of the Xinca and Garifuna peoples and the absence of a specific reference to indigenous political participation in the Elections and Political Parties Act.⁹⁶

5. Right to work and to just and favourable conditions of work

24. CEDAW expressed concern, inter alia, about the violations of women's labour rights in the *maquiladora* industries, and about the excessive hours of work and discriminatory practices against pregnant women and the absence of measures to protect the rights of domestic workers. The Committee urged Guatemala to put in place effective measures to prevent and punish violations of the rights of women working in the *maquiladora* industries, to address the lack of safety and health standards in those industries and to enhance women workers' access to justice. It further urged it to establish a concrete timetable for the adoption of measures to protect the rights of domestic workers.⁹⁷ CESCR also urged Guatemala to take all necessary measures to address the persistent problem of child labour, especially in agriculture and domestic services.⁹⁸

25. CESCR was concerned about the high level of unemployment, in particular among indigenous peoples, and that the minimum wage is not sufficient to provide a decent living for workers and their families and is not always paid. It urged Guatemala to increase its efforts to combat unemployment and recommended, inter alia, that the minimum wage is increased regularly in proportion to the cost of living and that the rules regarding minimum wage are respected in practice.⁹⁹

6. Right to social security and to an adequate standard of living

26. In 2007, the High Commissioner reported that Guatemala is among the countries with the highest levels of inequality in Latin America, it has the second lowest Human Development Index in the region, and that inequality and poverty continues to be the main challenge Guatemala faces in progressing towards the realization of economic, social and cultural rights. CESCR was also deeply concerned about the uneven distribution of wealth and land and the high level of social exclusion, in particular among indigenous and rural populations.¹⁰⁰ UNICEF noted that nearly half of all children suffer from chronic malnutrition, which is one of the worst records worldwide, and there are even more alarming figures within the indigenous population.¹⁰¹ It also noted that social and economic exclusion affects a large proportion of the national population; 51 per cent live in poverty and 15.7 per cent of these live in extreme poverty. The situation is dramatically worse among children in rural areas and among indigenous children and adolescents (76 and 80 per cent, respectively, live in poverty).¹⁰² CEDAW noted that the poverty conditions of women are reflected in their high illiteracy rates, low school enrolment and completion rates, poor access to health care, including sexual and reproductive health, leading to high rates of maternal mortality, and lack of access to land and training opportunities. It was also concerned about the absence of a comprehensive strategy for rural development that addresses the structural nature of the problems rural women continue to face.¹⁰³ In 2007, the High Commissioner urged the Congress and the Government to formulate a social policy based on a human rights and gender perspective, which should include reorienting the national general budget and adopting sustained policies for combating poverty and reducing inequality. She also reiterated the need to raise taxes and review the tax collection and exemption system.¹⁰⁴

7. Right to education and to participate in the cultural life of the community

27. CERD was 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. It was also concerned at the low primary school attendance among the indigenous population, especially indigenous young women and girls. It urged Guatemala to take steps in the short and medium terms

to implement measures to reduce illiteracy, especially in rural areas and among women and girls. It also recommended that Guatemala consider increasing the number of bilingual schools, particularly in rural areas and that it pursue educational reform through culturally relevant curricula, bearing in mind the provisions of the Agreement on Identity and Rights of Indigenous Peoples.¹⁰⁵

8. Minorities and indigenous peoples

28. In 2006, CERD expressed concern, as highlighted also by UNHCR,¹⁰⁶ about 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.¹⁰⁷ In 2005, the Special Rapporteur on violence against women also referred to the problems of unequal land distribution and that the registration of landholdings continues to pose an obstacle to land rights. She stated that an estimated 2 per cent of Guatemalans own 70-75 per cent of all productive land and that the Agreement on the Identity and Rights of Indigenous Peoples component of the Peace Accords has not adequately addressed expropriation-based land reform.¹⁰⁸ In 2006, two special procedure mandate holders sent a joint communication to the Government regarding the eviction of 400 indigenous peasants from the José de la Moca coffee plantation, in the city of Senahu. According to the information received, as a consequence of the eviction, the peasants lost their only source of income and had no place to stay but beside a highway, where they only had access to contaminated water.¹⁰⁹ The Government has not replied to this communication. CAT was also concerned about reports of the use of excessive force by police officers during evictions in rural areas, which often result, *inter alia*, in the destruction of homes, and sometimes even in violent deaths.¹¹⁰

29. CERD was also 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.¹¹¹ Moreover, it noted with concern that mining licences have been granted by the Ministry of Energy and Mines to concession enterprises and regretted that indigenous peoples were not consulted or informed that the permission to exploit the subsoil of their territory had been awarded to such enterprises.¹¹² The High Commissioner reported that while the energy and mining policy adopted in October 2007 envisages consultation processes for the mining sector, comprehensive regulation is still needed through a law on consultation, in line with ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.¹¹³

III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

30. The High Commissioner stated that the end of authoritarian, repressive and violent State practices associated with the internal armed conflict have brought undeniable benefits to the country as a whole, but especially to those areas in the countryside that bore the brunt of the conflict.¹¹⁴ CAT also welcomed, *inter alia*, the fact that the practice of enforced disappearance as a State policy has ceased¹¹⁵ and the High Commissioner noted that the President's public recognition of the atrocities committed during the armed conflict and of the existence of racial discrimination in the country, constituted important steps forward.¹¹⁶

31. The High Commissioner also reported, *inter alia*, that violence and insecurity fuelled by such underlying factors as unemployment, social exclusion and non-enforcement of the law pose a major challenge to Guatemala, which committed itself to the professional development of the public security forces under the authority of the civil administration.¹¹⁷ Additionally, the High Commissioner reported that it was crucial to address the root causes of all forms of social violence, including the activities of criminal gangs.¹¹⁸

IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS

A. Pledges by the State

32. In 2006, Guatemala committed, *inter alia*, to continuing to support and strengthen its national human rights institutions and to create new ones if the need arises. Guatemala is fully committed to supporting the advancement of the rights of indigenous peoples.¹¹⁹

B. Specific recommendations for follow-up

33. In 2001, the HR Committee requested Guatemala to provide information on any action it had taken in relation to the Committee's recommendations on disappearances and extrajudicial executions and on pretrial detention.¹²⁰ In July 2003 Guatemala provided a response and, *inter alia*, admitted that there have been reports of disappearances, the *modus operandi* of which suggest the work of gangs involved in drug smuggling and common crime and that the competent authorities have launched investigations.¹²¹ In 2006, CAT requested Guatemala to provide information on its response to recommendations related to: the increase in acts of harassment and persecution experienced by human rights defenders; impunity regarding the human rights violations committed during the internal armed conflict; the numerous allegations concerning: "social cleansing" and killings of children living in the street; violent killings of women; lynching of individuals; and sexual violence against women in police stations.¹²² The follow-up report to CAT, due in May 2007, has not yet been received.¹²³ CERD requested Guatemala to submit a follow-up report on the implementation of its recommendations contained in paragraphs 13, 15 and 19 of its concluding observations.¹²⁴ The follow-up report was submitted and is scheduled to be considered in August 2008. It provides information on: classification of racial discrimination as an offence; access to justice by indigenous women; and the right of indigenous peoples to be consulted.¹²⁵

34. The Special Representative of the Secretary-General on the situation of human rights defenders, after her most recent visit, made preliminary recommendations to the Government, including: giving recognition and legitimacy to the work of human rights defenders; adopting a governmental policy for their protection; ensuring coordination among institutions responsible for the investigations of cases, particularly between the police and the Attorney-General's office; and ensuring the full collaboration of relevant institutions, in the implementation of the recommendations and findings of the Ombudsperson and the CICIG.¹²⁶

V. CAPACITY-BUILDING AND TECHNICAL ASSISTANCE

35. UNICEF and FAO provided information of their programmes and capacity-building efforts in Guatemala.¹²⁷

Notes

¹ Unless indicated otherwise, the status of ratifications of the instruments listed in the table may be found in *Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 2006* (ST/LEG/SER.E.25), supplemented by the official website of the United Nations Treaty Collection database, Office of Legal Affairs of the United Nations Secretariat, <http://untreaty.un.org/>.

² The following abbreviations have been used for this document:

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP 1	Optional Protocol to ICCPR
ICCPR-OP 2	Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
OP-CEDAW	Optional Protocol to CEDAW
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OP-CAT	Optional Protocol to CAT
CRC	Convention on the Rights of the Child
OP-CRC-AC	Optional Protocol to CRC on the involvement of children in armed conflict
OP-CRC-SC	Optional Protocol to CRC on the sale of children, child prostitution and child pornography
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CPD	Convention on the Protection of Persons with Disabilities
OP-CPD	Optional Protocol to Convention on the Protection of Persons with Disabilities
CED	Convention on the Protection of Persons from Enforced Disappearance

³ <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty7.asp>

“The Republic of Guatemala recognizes the competence of the Human Rights Committee to receive and consider communications from individuals subject to the jurisdiction of the Republic who claim to be victims of a violation by Guatemala of any of the rights set forth in the International Covenant relating to acts, omissions, situations or events occurring after the date on which the Optional Protocol entered into force for the Republic of Guatemala or to decisions resulting from acts, omissions, situations or events after that date.”

⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

⁵ 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 1954 Convention relating to the status of Stateless Persons and 1961 Convention on the Reduction of Statelessness.

⁶ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention); Geneva Convention relative to the Treatment of Prisoners of War (Third Convention); Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III). For the official status of ratifications, see Federal Department of Foreign Affairs of Switzerland, at: <http://www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html>.

⁷ International Labour Organization Convention No. 29 concerning Forced or Compulsory Labour; Convention No. 105 concerning the Abolition of Forced Labour, Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize; Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively; Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention No. 111 concerning Discrimination in Respect of Employment and Occupation; Convention No. 138 concerning Minimum Age for Admission to Employment; Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

⁸ Conclusions and recommendations of the Committee against Torture: Guatemala (CAT/C/GTM/CO/4), para. 25.

- ⁹ Report of the Office of the High Commissioner for Human Rights on the work of its office in Guatemala, Annual report 2007, A/HRC/7/38/Add.1, paras. 81 and 90.
- ¹⁰ Concluding observations of the Committee on the Elimination of Racial Discrimination: Guatemala (CERD/C/GTM/CO/11), para. 24.
- ¹¹ CERD/C/GTM/CO/11, para. 5.
- ¹² A/HRC/4/32/Add.4, para. 64.
- ¹³ For the list of national human rights institutions with accreditation status granted by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), see A/HRC/7/69, annex VIII, and A/HRC/7/70, annex I.
- ¹⁴ A/HRC/7/38/Add.1, para. 82.
- ¹⁵ A/HRC/7/38/Add.1, paras. 21 and 93.
- ¹⁶ Concluding comments of the Committee on the Elimination of Discrimination against Women: Guatemala (CEDAW/C/GUA/CO/6), paras. 4, 18 and 19.
- ¹⁷ Concluding observations of the Committee on Economic, Social and Cultural Rights: Guatemala (E/C.12/1/Add.93), para. 5; CEDAW/C/GUA/CO/6, para. 4; CERD/C/GTM/CO/11, para. 4.
- ¹⁸ CERD/C/GTM/CO/11, para. 4.
- ¹⁹ Concluding observations of the Human Rights Committee: Guatemala (CCPR/CO/72/GTM), para. 4.
- ²⁰ E/C.12/1/Add.93, para. 19.
- ²¹ A/HRC/7/38/Add.1, paras. 98 and 97.
- ²² The following abbreviations have been used for this document:
- | | |
|--------------|--|
| CERD | Committee on the Elimination of Racial Discrimination |
| CESCR | Committee on Economic, Social and Cultural Rights |
| HR Committee | Human Rights Committee |
| CEDAW | Committee on the Elimination of Discrimination against Women |
| CAT | Committee against Torture |
| CRC | Committee on the Rights of the Child |
| CMW | Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families |
- ²³ A/HRC/4/41/Add.1.
- ²⁴ A/HRC/4/20/Add.2.
- ²⁵ E/CN.4/2006/44/Add.1.
- ²⁶ E/CN.4/2005/18/Add.2.
- ²⁷ E/CN.4/2005/72/Add.3.
- ²⁸ E/CN.4/2003/90/Add.2.
- ²⁹ E/CN.4/2003/104/Add.2.
- ³⁰ E/CN.4/2002/72/Add.2.
- ³¹ E/CN.4/2000/61/Add.1.
- ³² E/CN.4/2000/73/Add.2.
- ³³ The questionnaires included in this section are those which have been reflected in an official report by a special procedure mandate holder.
- ³⁴ See (i) report of the Special Rapporteur on the right to education (A/HRC/4/29), questionnaire on the right to education of persons with disabilities sent in 2006;
- (ii) report of the Special Rapporteur on the human rights of migrants (A/HRC/4/24), questionnaire on the impact of certain laws and administrative measures on migrants sent in September 2006;

(iii) report of the Special Rapporteur on the human rights aspects of victims of trafficking in persons, especially women and children (A/HRC/4/23), questionnaire on issues related to forced marriages and trafficking in persons, sent in July 2006;

(iv) report of the Special Representative of the Secretary-General on human rights defenders (E/CN.4/2006/95 and Add.5), questionnaire on the implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms sent in June 2005;

(v) report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/6/15), questionnaire on the human rights of indigenous peoples sent in August 2007;

(vi) report of the Special Rapporteur on trafficking in persons, especially women and children (E/CN.4/2006/62) and the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2006/67), joint questionnaire on the relationship between trafficking and the demand for commercial sexual exploitation sent in July 2005;

(vii) report of the Special Rapporteur on the right to education (E/CN.4/2006/45), questionnaire on the right to education for girls sent in 2005;

(viii) report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (A/61/341), questionnaire concerning its mandate and activities sent in November 2005;

(ix) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/4/31), questionnaire on the sale of children's organs sent in July 2006;

(x) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2005/78), questionnaire on child pornography on the Internet sent in July 2004;

(xi) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2004/9), questionnaire on the prevention of child sexual exploitation sent in July 2003;

(xii) report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprise (A/HRC/4/35/Add.3), questionnaire on human rights policies and management practices.

³⁵ The questionnaire on issues related to forced marriages and trafficking in persons (A/HRC/4/23), para. 19; the questionnaire on the implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (E/CN.4/2006/95/Add.5, para. 656); and the questionnaire on human rights policies and management practices, (A/HRC/4/35/Add.3), para. 7.

³⁶ Pledges and commitments undertaken by Guatemala before the Human Rights Council, as contained in the aide-mémoire dated 1 May 2006 sent by the Permanent Mission of Guatemala to the United Nations addressed to the President of the General Assembly, available at <http://www.un.org/ga/60/elect/hrc/guatemala.pdf>.

³⁷ A/HRC/7/38/Add.1, paras. 57-79.

³⁸ See press statement issued by the HC following her official visit to Guatemala (dated 27 May 2006).

³⁹ OHCHR Annual Report 2004, p. 14 and 23.

⁴⁰ OHCHR Annual Report 2007 (forthcoming).

⁴¹ CERD/C/GTM/CO/11, para. 12.

⁴² Report of the Office of the High Commissioner for Human Rights on the work of its office in Guatemala, Annual Report 2006 (A/HRC/4/49/Add.1), para. 35.

⁴³ CERD/C/GTM/CO/11, para. 22.

⁴⁴ Ibid., para. 13.

⁴⁵ CEDAW/C/GUA/CO/6, para. 27.

⁴⁶ Ibid., para. 12.

⁴⁷ Ibid., para. 14.

⁴⁸ Ibid., para. 35.

⁴⁹ Ibid., para. 36.

⁵⁰ Ibid., para. 15.

⁵¹ UNICEF-DEMI, Situación de la niña indígena en Guatemala (Guatemala: UNICEF, 1997) p.9; 16, 30; 47;73; 77. Available at: http://www.unicef.org.gt/02infancia/documentos/mirame_situacion_nina_indigena.pdf.

⁵² A/HRC/4/32/Add.4, para. 62; and 2003 Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, E/CN.4/2003/90/Add.2, para. 77.

⁵³ Press Statement of the Special Rapporteur on extrajudicial, summary or arbitrary executions of 25 March 2008.

⁵⁴ A/HRC/4/41/Add.1, paras. 84-98.

⁵⁵ A/HRC/7/38/Add.1, para. 42.

⁵⁶ A/HRC/4/20/Add.2, Summary, p. 2.

⁵⁷ A/HRC/4/49/Add.1, para. 13.

⁵⁸ A/HRC/7/38/Add.1, para. 15.

⁵⁹ A/HRC/7/38/Add.1, para. 13.

⁶⁰ Press statement of the UN High Commissioner for Human Rights, 27 May 2006.

⁶¹ CAT/C/GTM/CO/4, para. 16 (a) and (c).

⁶² HR/08/21- Statement from the Special Representative of UN Secretary-General on situation of human rights defenders in Guatemala.

⁶³ A/HRC/4/49/Add.1, para. 41; and A/HRC/7/38/Add.1 para. 47.

⁶⁴ UNICEF, UPR Submission, p. 3.

⁶⁵ CEDAW/C/GUA/CO/6, para. 23.

⁶⁶ CAT/C/GTM/CO/4, para. 16 (b).

⁶⁷ A/HRC/4/49/Add.1, paras. 45 and 47. (See footnote 4 to quote from A/HRC/4/49/Add.1, para. 47 “This term is used in Guatemala, as defined by Mexican anthropologist Marcela Lagarde, to describe the misogynistic murder of women that goes unpunished as a result of the State’s failure to act”.)

⁶⁸ A/HRC/7/38/Add.1, para. 24.

⁶⁹ CAT/C/GTM/CO/4, para. 17.

⁷⁰ A/HRC/7/38/Add.1, para. 25.

⁷¹ CEDAW/C/GUA/CO/6, para. 26.

⁷² CEDAW/C/GUA/CO/6, para. 22.

⁷³ CCPR/CO/72/GTM, para. 15.

⁷⁴ UNICEF, UPR submission, p. 3.

⁷⁵ CRC/C/OPSC/GTM/CO/1, para. 12.

⁷⁶ CRC/C/OPSC/GTM/CO/1, para. 23.

⁷⁷ A/HRC/7/38/Add.1, para. 43.

⁷⁸ CAT/C/GTM/CO/4, para. 15; and Report of the Working Group on Enforced or Involuntary Disappearances A/HRC/4/41/Add.1, paras. 91, 93 and 95.

⁷⁹ A/HRC/4/20/Add.2, para. 42.

⁸⁰ A/HRC/4/20/Add.2, para. 44.

⁸¹ Ibid, para. 45.

- ⁸² A/HRC/7/38/Add.1, para. 29.
- ⁸³ A/HRC/7/38/Add.1, paras. 31-32.
- ⁸⁴ A/HRC/7/38/Add.1, para. 20.
- ⁸⁵ CAT/C/GTM/CO/4, para. 11.
- ⁸⁶ Press Release, 20 February 2008, Statement of the Special Representative of the Secretary-General on situation of human rights defenders on her preliminary findings of her official visit to Guatemala.
- ⁸⁷ HR/08/21- Statement from the Special Representative of UN Secretary-General on situation of human rights defenders in Guatemala.
- ⁸⁸ CEDAW/C/GUA/CO/6, paras. 23-24.
- ⁸⁹ E/CN.4/2006/44/Add.1, para. 54.
- ⁹⁰ A/HRC/4/32/Add.4, para. 64.
- ⁹¹ A/HRC/4/49/Add.1, para. 4.
- ⁹² UNICEF, UPR Submission, p. 3.
- ⁹³ CCPR/CO/72/GTM, para. 28.
- ⁹⁴ CERD/C/GTM/CO/11, para. 23.
- ⁹⁵ CEDAW/C/GUA/CO/6, para. 27.
- ⁹⁶ CERD/C/GTM/CO/11, para. 16.
- ⁹⁷ CEDAW/C/GUA/CO/6, paras. 29-30.
- ⁹⁸ E/C.12/1/Add.93, para. 38.
- ⁹⁹ E/C.12/1/Add.93, paras. 13-14 and 31-32.
- ¹⁰⁰ A/HRC/7/38/Add.1, para. 55; and E/C.12/1/Add.93, para. 24.
- ¹⁰¹ UNICEF submission to the UPR, p. 1.
- ¹⁰² UNICEF submission to the UPR, pp. 1-2.
- ¹⁰³ CEDAW/C/GUA/CO/6, para. 33.
- ¹⁰⁴ A/HRC/7/38/Add.1, para. 99.
- ¹⁰⁵ CERD/C/GTM/CO/11, para. 20.
- ¹⁰⁶ UNHCR submission to the UPR on Guatemala, p. 1, citing CERD/C/GTM/CO/11, 2006, para. 17.
- ¹⁰⁷ CERD/C/GTM/CO/11, para. 17.
- ¹⁰⁸ E/CN.4/2005/72/Add.3, para. 11.
- ¹⁰⁹ A/HRC/4/18/Add.1, paras. 26 and 27.
- ¹¹⁰ CAT/C/GTM/CO/4, para. 21.
- ¹¹¹ CERD/C/GTM/CO/11, para. 18.
- ¹¹² CERD/C/GTM/CO/11, para. 19.
- ¹¹³ A/HRC/7/38/Add.1, para. 52.
- ¹¹⁴ Press statement of the UN High Commissioner for Human Rights, 27 May 2006.
- ¹¹⁵ CAT/C/GTM/CO/4, para. 9.
- ¹¹⁶ Press statement of the UN High Commissioner for Human Rights, 27 May 2006.
- ¹¹⁷ A/HRC/7/38/Add.1, para. 18.
- ¹¹⁸ Press statement of the UN High Commissioner for Human Rights, 27 May 2006.

¹¹⁹ Guatemala's voluntary pledge submitted in support of its candidacy to the membership of the HRC, New York, May 1st 2006 accessible at: <http://www.un.org/ga/60/elect/hrc/guatemala.pdf>

¹²⁰ CCPR/CO/72/GTM, para. 31.

¹²¹ Comments by the Government of Guatemala to the concluding observations adopted by the HR Committee at its 72nd session, CCPR/CO/72/GTM/Add.1.

¹²² CAT/C/GTM/CO/4, para. 27.

¹²³ On 4th September 2007, a reminder was sent to the Government. See:
<http://www2.ohchr.org/english/bodies/cat/docs/followup/guatemala040907.pdf>

¹²⁴ CERD/C/GTM/CO/11, para. 27.

¹²⁵ See follow-up report of Guatemala to CERD's recommendations, contained in CERD/C/GTM/CO/11/Add.1.

¹²⁶ HR/08/21 - Statement from the Special Representative of UN Secretary-General on situation of human rights defenders in Guatemala

¹²⁷ UNICEF submission to the UPR on Guatemala, pp. 4-5, FAO submission to the UPR on Guatemala, p. 1.
