



General Assembly

Distr.
GENERAL

A/HRC/WG.6/2/GTM/3
2 April 2008

ENGLISH
Original: ENGLISH/SPANISH

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

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

Guatemala*

The present report is a summary of 20 stakeholders' submissions¹ to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions on the part of the Office of the High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The periodicity of the review for the first cycle being four years, the information reflected in this report mainly relates to events that occurred after 1 January 2004.

* The present document was not edited before being sent to the United Nations translation services.

I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations

1. Amnesty International (AI) stated that Guatemala has not adhered to the Rome Statute of the International Criminal Court.² It also recommended that Guatemala ratify the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.³

B. Constitutional and legislative framework

2. Joint Submission 1 (JS1) emphasized that one decade after the signature of the Peace Accords in Guatemala, the objectives set out therein had not yet been fully achieved. Despite the adoption of important legislation such as the Judicial Service Act, the Act on the Comprehensive Protection of Children and Young Persons, and the Prisons Act, and the ratification of International Labour Organization (ILO) Convention No. 169, these measures have not resulted in the effective protection of human rights through the justice and security systems.⁴ The World Organization Against Torture (OMCT) stated that the independence of the powers remains fragile, impunity prevails, corruption at governmental level pollutes and the army reportedly keeps an active presence in police activities.⁵

C. Policy measures

3. JS1 mentioned that the lack of continuity in public policy, insufficient political will to give it momentum and the limited scope of some initiatives have brought the peace agenda to a standstill. Implementation of the commitments contained in the Comprehensive Agreement on Human Rights, the Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in Democratic Society, the Agreement on Identity and Rights of Indigenous Peoples, the Agreement for the Resettlement of Uprooted Populations and the Socio-economic Agreement has been limited because their founding spirit has been lost. This is the case despite the support provided by the United Nations Verification Mission in Guatemala for 11 years and the presence of the Office of the United Nations High Commissioner for Human Rights⁶ since 2005.

4. The Centre for Economic and Social Rights and the Instituto Centroamericano de Estudios Fiscales (CESR & ICEFI) mentioned that over the last decade, successive Guatemalan governments have put in place a number of initiatives aimed at tackling malnutrition, child and infant mortality, maternal mortality and lack of access to primary education. These have been framed within the context of the implementation of the 1996 Peace Accords and have also been prompted by international efforts to achieve compliance with the Millennium Development Goals. Despite modest progress in some areas, the ineffectiveness of government policies to date can in large part be attributed to the woefully inadequate investment of resources to health, education and other areas of social spending (totalling less than 8 per cent of GDP).⁷

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

1. Non-discrimination and equality

6. According to Cultural Survival (CS), legislation aimed at eliminating discrimination has been ineffective in the face of widespread discriminatory social attitudes. CS added that racism and racial discrimination, as the Government of Guatemala recognizes, are still pervasive among Ladinos and the media.⁸ COHRE mentioned that as a result of centuries of endemic racial discrimination against

indigenous and non-Ladino peoples, the lack of access to civil, political, social, economic, and cultural rights in Guatemala predominantly affects these groups, especially those who are poor and/or live in rural areas. While class may play a role in social exclusion of the poor, rural and indigenous, racial discrimination is at its roots. Domestic laws do not offer effective protection against discrimination.⁹ CS highlighted that low-profile cases of discrimination are almost not investigated at all. During 2006, of the 79 cases brought before the Office of the Human Rights Prosecutor (Fiscalía de Derechos Humanos) which investigates offences involving discrimination and racism, only 1 has resulted in conviction. To combat this pattern, the Government established a Racism and Discrimination Court, increased the number of tribunals authorized to hear discrimination suits, and created a National Compensation Programme to compensate victims of human rights violations stemming from the civil war. However, geographic remoteness, burdensome procedural requirements, and inadequate resources within the courts impede many indigenous people from accessing these remedies.¹⁰

7. According to the Centre on Housing Rights and Evictions (COHRE), discrimination against women in Guatemala is particularly troubling, rural and indigenous women being the most affected. Indigenous women, because of their ethnic origin and sex, suffer twice over from discrimination. De facto and de jure discrimination has led to persisting high levels of poverty among women, who are subjected to discrimination in access to land and access to basic public services, including water in addition to the absence of statistical information related to the situation of indigenous women. Indigenous women, specifically, face rejection of their traditional dress, the denial of access to education, health care and the lack of job opportunities.¹¹

8. The Latin American and Caribbean Committee for the Defence of Women's Rights noted that while progress has been achieved from a legal standpoint (Civil Code reform relating to matrimonial regime; Labour Code reform; decriminalization of adultery; the Act on the Prevention, Punishment and Eradication of Violence against Women; and the Act on the Dignification and Full Advancement of Women, inter alia), existing legislation should be revised to eliminate gender disparities. The Latin American Committee for the Defence of Women's Rights stressed the need to introduce positive measures (quotas) at all levels of public administration and elected office.¹² AI mentioned that discriminatory statutes such as Article 180 of the Criminal Code, which stipulates that it is an offence to have sexual relations with a minor if the woman is "honest" ("una mujer honesta") remain in force.¹³

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

9. JS1 stated that there has been a sharp increase in the number of offences against human life in Guatemala. According to figures provided by the National Civil Police, there were 3,230 homicides in 2001 and 5,781 in 2007, an 82 per cent increase.¹⁴ Human Rights Watch (HRW) indicated, also based on PNC statistics, that 2006 saw the highest number of murders reported in the last 10 years (5,885 people).¹⁵ CS highlighted that Guatemala's homicide rate is one of the highest in the world and has risen steadily since 2001.¹⁶

10. According to HRW, the country continues to face high levels of violence associated with electoral politics. The September 2007, presidential, congressional, and municipal elections and the November run-off presidential election were preceded by a wave of violence against political candidates and members of political parties. HRW quoted a report from the Guatemalan Human Rights Ombudsman's Office stating that in 2007 it reported 55 attacks and threats against political candidates and members of political parties, resulting in 26 deaths.¹⁷ According to JS1, another

form of violation of the right to life is lynching. Since January 1996, a total of 741 cases have been reported, with 1,438 victims, of which 318 died; and since 1997, there have been 26 convictions for lynching.¹⁸

11. JS1 drew attention to the fact that the death penalty still exists in Guatemala. There are currently 19 persons sentenced to death, who, as a result of harsh conditions of confinement and the length of time spent on death row - on average 6 to 10 years - live in extremely precarious conditions of detention. Since 2000 there has been a de facto moratorium, following the derogation of the pardon by the Congress of the Republic.¹⁹

12. OMCT stated that after the signing of the peace agreements in 1996, torture has persisted as one of the most serious human rights violations in Guatemala. In the post-conflict era this practice continued as a means to obtain information about alleged criminal activities.²⁰ The Human Rights Prosecutor noted that 349 deaths occurred as a result of torture during the first 10 months of 2007.²¹

13. Joint Submission 2 (JS2) emphasized that children account for 49.98 per cent of the Guatemalan population and that, like the rest of the population, they face systematic violations of their right to life and not to be subjected to torture and cruel or degrading treatment.²² According to the Human Rights Prosecutor, 395 cases of violent deaths of children were reported in 2006, and 417 cases (343 boys and 74 girls) were reported in 2007.²³ *Asociación Casa Alianza Guatemala* further stated that Guatemala is the Central American country with the highest number of violent deaths among young persons.²⁴

14. The circumstances surrounding the deaths suggest that some are part of the so-called “social cleansing” process.²⁵ According to *Asociación Casa Alianza Guatemala*, there is circumstantial evidence to suggest the involvement of members of the security forces in extrajudicial killings of Guatemalan children and young persons.²⁶ OMCT stated that executions are frequently perpetrated against *maras* (youth gang) members, including children. Moreover, executions are often accompanied by torture, intensifying the cruelty of the act. The authorities do nothing to stop those killings and do not investigate them but justify them as “revenge between gangs”.²⁷ JS2 observed that young persons, predominantly male, join the *maras* at an early age (11 or 12). Gang membership facilitates access by young persons to firearms, and they eventually become involved in criminal activity such as extortion, drug trafficking and abuse, assault and murder.²⁸ Also victims of this “social cleansing” are those deemed socially undesirable.²⁹ HRW mentioned a case in December 2006 where one transgender woman was murdered and another was critically wounded, when gunned down on the street in the centre of Guatemala City by men wearing police uniforms and riding police motorcycles. HRW quotes information from a local NGO working on LGBT rights stating that there have been no prosecutions in any of these cases to date.³⁰

15. OMCT stated that an enormous number of youth and children live in the streets of Guatemala.³¹ OMCT added that the State has not been able to apply the Law for the Integral Protection of Childhood and Youth (decreto 27-2003) properly and completely because action plans to protect childhood have not been formulated yet, and because of the insufficiency of funds.³²

16. *Asociación Casa Alianza Guatemala* stressed the fact that violence against children and young persons usually takes the form of child abuse (both in and outside the home), abandonment, sexual abuse and, especially, violent deaths. *Asociación Casa Alianza Guatemala* considers that about 7 out of every 10 children or young persons in Guatemala suffer or will suffer some form of abuse. Abandonment affects both boys and girls, particularly children under 5 years of age, who account for more than half of abandoned children. This may be attributable to legal adoptions,

which have become a lucrative business that is expected to be controlled through the new Adoption Act and the ratification of the Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption.³³

17. According to the Global Initiative to End All Corporal Punishment of Children (GIEACPC), corporal punishment is lawful in the home. There is no explicit prohibition of corporal punishment either in schools or in alternative care settings. In the penal system, corporal punishment is unlawful as a sentence for crime, but there is no explicit prohibition of its use as a disciplinary measure in penal institutions.³⁴

18. According to official figures by Peace Brigades International,³⁵ the level of violence against women is of particular concern, with more than 3,081 women murdered in the last 10 years. The Society for Threatened Peoples (STP) mentioned that, since 2000, homicides against women in Guatemala are increasing considerably each year. Their murderers have been encouraged by the failure of the prosecution to bring them to court and the high probability to remain unpunished.³⁶ AI added that the bodies of many female victims show signs of sexual violence, torture and exceptional brutality, including mutilation. Moreover, there is an additional element of gender-based discrimination. AI has collected evidence of a gender bias in the initial investigatory stage, such as dismissing victims because of their attire or status, and focusing on the sexual history of the victim.³⁷ Peace Brigades International mentioned that most of the victims are young women, and poor.³⁸ STP noted that amongst the victims is a considerable number of women of Maya descent, yet there is no data material that indicates indigenous status.³⁹ The Latin American and Caribbean Committee for the Defence of Women's Rights added that the issue of the murder of women has not been addressed properly by the State and that it is necessary to develop and implement truly viable and effective mechanisms to combat this scourge.⁴⁰

19. STP noted that the penal code does not recognize violence against women in the family, including marital rape, and sexual harassment as a criminal offence.⁴¹ HRW noted that the law prohibits domestic abuse but does not provide prison sentences for cases of domestic abuse.⁴² OMCT noted that intra-family violence remains considered a private matter and not a public concern and that a majority of victims do not report violence.⁴³ The Human Rights Prosecutor pointed out that although violence affects the family as a whole, its victims are usually women. Forms of assault are severe blows, cuts, knife and stab wounds.⁴⁴ The Latin American and Caribbean Committee for the Defence of Women's Rights recommended that the National Coordinating Office for the Prevention of Domestic Violence and Violence against Women should be strengthened with an appropriate budget and political role.⁴⁵

20. According to Human Rights First (HRF & FL), attacks against human rights defenders in Guatemala are alarmingly frequent. Almost 300 attacks against human rights defenders were documented in 2006 alone, and from 2000 to 2006 the number increased almost sixfold. Human rights defenders at particular risk are those upholding economic, social and cultural rights and those seeking accountability for past mass atrocities. According to HRF & FL illegal and clandestine armed groups are responsible for a large number of threats and attacks against human rights defenders. They are involved in organized crime, drug trafficking and violence and allegedly have extensive links with the State and public institutions.⁴⁶ JS1 emphasized that the State has been unable to provide effective protection for human rights defenders. In 2002, a unit was set up within the Office of the Public Prosecutor to investigate these crimes, but no perpetrators have been prosecuted in the last three years.⁴⁷ HRF & FL recommended that the Government implement the Public Policy for Prevention and Protection of Human Rights Defenders finalized in 2007 by the Presidential Human Rights Commission.⁴⁸ HRW stated that others involved in human rights

prosecutions are also routinely threatened or attacked, including justice officials, forensic experts, plaintiffs, and witnesses. Journalists, labour activists, and others who have denounced abuses by the authorities are also subject to violence and intimidation.⁴⁹ According to COHRE, there is also cause for concern over the practice of criminalizing social movements, labour and land protests by poor and indigenous groups.⁵⁰

21. According to JS1, Guatemala adopted the Prison System Act in 2006. Despite this new standard-setting framework, serious problems remain. The main problems include the failure to separate convicted persons from pretrial detainees, overcrowding, inadequate basic services, the absence of rehabilitation programmes and acts of extreme violence in prisons (there were 9 killings in prisons in 2007, and 18 in 2006).⁵¹ OMCT added that there are dangerous conditions of confinement as well as degrading treatment for persons deprived of their liberty. These conditions result primarily from population growth, deteriorating detention conditions, corruption of prison agents, abuses by discipline and order committees, budgetary abandonment by the State, increased conflict between rival groups and social cleansing within the prisons.⁵²

3. Administration of justice and the rule of law

22. The International Commission of Jurists drew attention to serious deficiencies in the justice administration system, particularly with regard to effectiveness and impartiality. The efforts and major economic investment made to strengthen the system have failed to produce the expected results. A negative image and distrust of the justice system continues to prevail in society. The process for the appointment of judges, magistrates, the Attorney-General and officials of the Public Prosecutor's Office and other justice officials is not sufficiently transparent and well publicized. The State of Guatemala still fails to provide access to the justice system for indigenous peoples, particularly indigenous women.⁵³

23. According to Human Rights Advocates (HRA) the explanation of the persistence of human rights problems in Guatemala is the almost total impunity that exists for violations of established law, especially of grave crimes that also constitute violations of human rights. This impunity extends from the complete unwillingness and/or inability of the Office of the Prosecutor (Ministerio Público) to carry out serious and credible investigations into cases involving either past international crimes like genocide, torture, massacres and widespread enforced disappearances during the pre-1996 period, or to seriously and credibly investigate current crimes that evidence patterns and practices, like those involving the killings of over 2,500 women in the last six years. While the lower courts have been at times willing to investigate and to act according to law, the country's highest courts, especially the Constitutional Court, have continually acted to promote a climate of impunity. Of particular concern is the Constitutional Court's ruling of December 2007 denying the jurisdiction of the Spanish courts over high-level military and police officials for genocide, torture and related crimes.⁵⁴ HRA stated that under these circumstances the Guatemalan Government is now in violation of its international obligations under conventional and customary law either to prosecute these defendants or to extradite them to a State that will do so.⁵⁵ AI noted that this ruling is yet another example of the endemic impunity for grave violations of human rights in Guatemala.⁵⁶

24. HRW highlighted that impunity remains a chronic problem with common crimes. It quoted estimates by the Guatemalan Human Rights Ombudsman's Office stating that convictions are only obtained in approximately 6 per cent of all criminal cases and that the conviction rate drops to less than 3 per cent in cases involving murders of women and children.⁵⁷ In November 2007, the then Vice-President of Guatemala reported to AI that approximately 1 per cent of killings resulted in a

successful prosecution (obtaining a conviction).⁵⁸ The Human Rights Prosecutor stated that the Office of the Public Prosecutor - the body responsible for criminal prosecution - has received a 59.6 per cent budget increase since 2003 but that its effectiveness has not improved. In 2006, its effectiveness was 2.63 per cent, which suggests that there is 97.37 per cent rate of impunity for offences against human life.⁵⁹

25. JS1 pointed out that genocide, enforced disappearance and serious human rights violations committed during the internal armed conflict remain unpunished. Although some convictions have been handed down against paramilitaries and in the case of Myrna Mack, the few trials in progress continue to be subject to delaying tactics, with the complicity of the justice system. The genocide case against Efraín Ríos Montt and his General Staff, which began seven years ago, has been adjourned following the submission of two amparo applications by the defence. Ríos Montt opposes the submission of military documents dating back to 1981-1983 and is trying to prevent the current judge from further hearing the case.⁶⁰

26. Cases of crimes against humanity and genocide currently lodged with the Public Prosecutor's Office in Guatemala City have encountered many obstacles, according to AI, including the Government's refusal to release 25-year-old military documents that allegedly prove the command responsibility of former officers accused of crimes under international law.⁶¹ According to HRW the July 2005 discovery of approximately 70 to 80 million documents of the disbanded National Police could play a key role in the prosecution of those who committed human rights violations during the conflict. HRW noted that there is no legal framework in place to ensure adequate long-term management and to regulate public access to these files.⁶² The International Commission of Jurists noted that the National Reconciliation Act has not been enforced adequately by the State and that the remedy of amparo is being used unlawfully or abusively to obstruct the trials of persons accused of committing serious human rights violations.⁶³ The Commission recommended that the State strictly enforce the National Reconciliation Act, which explicitly excludes amnesty for the perpetrators of genocide and crimes against humanity.⁶⁴ According to the Commission, after almost three years in operation, the Office of the Special Prosecutor for Human Rights has failed to deliver the expected results.⁶⁵

27. HRW noted that Guatemalans seeking accountability for human rights abuses face daunting obstacles. The prosecutors and investigators who handle these cases receive grossly inadequate training and resources. The army and other State institutions fail to cooperate fully with investigations into abuses committed by current or former members. The police does not provide adequate protection to judges, prosecutors, and witnesses involved in politically sensitive cases. Of the 626 massacres documented by the truth commission, only two cases have been successfully prosecuted in the Guatemalan courts.⁶⁶ Joint Submission 3 (JS3) stated that victims and their families have generally been denied truth, justice and reparation, although it should be recognized that some cases have been resolved or are currently being clarified and redressed through the organs of the inter-American system for the protection of human rights.⁶⁷

28. HRF & FL indicated that the newly created International Commission against Impunity in Guatemala (CICIG) has the potential to end the culture of impunity. However, in order for CICIG to successfully consolidate the rule of law, the Guatemalan State must fully cooperate with it in investigations and prosecutions, witness protection, and implementing policy recommendations. HRF & FL also recommended that the State ensure that accusations of the commission of mass atrocities during Guatemala's internal armed conflict are promptly investigated by the Attorney-General's office (Ministerio Público).⁶⁸

4. Right to privacy, marriage and family life

29. HRW mentioned that in 2007 Guatemalan legislators proposed a bill that would bar single parents as well as same-sex couples from the definition of “family”, and which threatens the legal status of children conceived through reproductive technologies. The “Integral Protection for Marriage and Family Act” would declare that the nearly 40 per cent of Guatemalan families that are not nuclear - consisting of father, mother, and children - are not families at all. A congressional vote on the bill remains pending.⁶⁹

5. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life

30. With respect to freedom of expression, according to JS1, the adoption of legislation promoting access to information and governing State secrecy is still pending, and no progress has been made regarding legislation and State policies to democratize the public sphere. Moreover, harassment of local radio stations, which experience difficulties in operating legally, persists, as does the phenomenon of concentration of media ownership.⁷⁰

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

31. According to the International Trade Union Confederation, in Guatemala, exercising the right to form and join trade unions jeopardizes not only the right to employment but also the right to life. Anti-union discrimination takes various forms. To the extremes of murder, attempted murder and imprisonment must be added the dismissal of workers who seek to form unions, bargain collectively or engage in union activities; the circulation of blacklists of union leaders and members; and the temporary closure of plants. Intimidation of union members by employers has reduced union membership to barely 3 per cent of the workforce.⁷¹ JS1 noted that underemployed, informal-sector workers account for 75 per cent of the economically active population, and that working conditions in the formal sector have deteriorated.⁷²

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

32. The Human Rights Prosecutor stated that the overall socio-economic situation reveals a serious failure to guarantee economic and social rights, including the right to a healthy environment. The social indicators have not achieved the targets set out in the peace agreements and further delay the achievement of the Millennium Development Goals. Despite moderate economic growth, Guatemala has the worst social indicators on the continent.⁷³ JS1 noted that the proportion of the population living in poverty increased in absolute terms from 6.4 million in 2000 to 6.6 million in 2006, while the population living in extreme poverty increased from 1.8 million to 2.0 million, mainly among the indigenous and rural populations.⁷⁴

33. Regarding the right to food, CESR & ICEFI stated that one in two children under 5 in Guatemala is chronically malnourished. At 49.3 per cent, Guatemala’s rate of child stunting (an indicator of chronic malnutrition measured in terms of low height for age) is the highest in Latin America. Chronic malnutrition is far higher among indigenous children, 70 per cent of whom are chronically malnourished. The gap between Guatemala and its Central American neighbours is now far wider than it was several decades ago.⁷⁵

34. Regarding the right to health, CESR & ICEFI mentioned that according to the latest available survey data, the infant mortality rate in Guatemala is 38 deaths per 1,000 live births. This is the highest rate of any country in Central America. Ethnic and urban/rural disparities are marked. The

child mortality rate among indigenous children is more than 30 per cent higher than among the non-indigenous. The infant mortality rate is 37 per cent higher among the rural population than among the urban.⁷⁶ CESR & ICEFI quoted recent UNICEF data stating that Guatemala has, together with another country, the worst maternal mortality rate in all of Latin America at 290 deaths per 100,000 live births. Indigenous women face a grossly disproportionate risk of dying as a result of pregnancy or childbirth.⁷⁷

35. The Latin American and Caribbean Committee for the Defence of Women's Rights noted that the issues of women's sexual and reproductive rights, population policies, family planning and reproductive health are among those on which it has been most difficult to reach consensus regarding women's needs and requirements, since they are still taboo. These policies and programmes have encountered constant setbacks in terms of development, resources and coverage.⁷⁸ CESR & ICEFI mentioned that Guatemala has the highest fertility rate in Latin America and the second to lowest rate of contraceptive use in Latin America with only 43 per cent of married women aged 15-49 using contraceptives.⁷⁹

36. The Human Rights Prosecutor stated that access to health services is not guaranteed, and that 42.5 per cent of hospitals in the national health system do not have supplies of medicine and medical equipment and lack sufficient technical and medical staff.⁸⁰ CESR & ICEFI mentioned that despite some success in extending immunization and prenatal services in rural areas, the human and material resources provided to the extension coverage programme have been inadequate to overcome the formidable economic, geographical and cultural barriers which hinder access to necessary services and have fuelled persistently high levels of maternal and child mortality in Guatemala.⁸¹

37. Regarding the right to housing, AI observed that conflicts over land between rural communities (mostly indigenous) and owners (mostly Ladino or European descent) remain a critical issue in Guatemala.⁸² COHRE indicated that there is little to no recognition of indigenous land ownership, especially of a communal and collective nature.⁸³ AI remains deeply concerned at the way land disputes between indigenous and poor communities and wealthy landowners are resolved. Rural communities face a justice system which is in practice fundamentally weighted in favour of the landowners.⁸⁴ COHRE noted that disputes over land ownership most often result in forced evictions of indigenous communities who claim ownership of the same land as a more powerful company or individual. The latter entities are often able to buy armed force to effectuate the eviction.⁸⁵ The Human Rights Prosecutor drew attention to the highly unequal distribution of land in Guatemala: in 2000, 1.5 per cent of the population occupied almost two thirds of the land.⁸⁶

38. COHRE observed that the right to access safe drinking water is currently being violated in Guatemala by the inaccessibility of potable drinking water across the country. Over 65 per cent of the rural population lack access to an improved source of fresh water or sanitation.⁸⁷

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

39. CESR & ICEFI stated that with a 94.6 per cent rate in 2004, Guatemala presents a poorer primary net enrolment rate than the regional average. In contrast to most other countries in the region, in Guatemala the enrolment rate is 4 per cent higher for boys. Rates for primary completion are markedly lower than the regional average at 70 per cent. Around a third of 12-year-old children in Guatemala do not finish primary school.⁸⁸ The Human Rights Prosecutor stated that in order to maintain, improve and advance access to education, it is necessary to significantly increase expenditure on education, by at least 4 per cent of GDP in the short term, with a view to attaining the international target of 6 per cent of GDP.⁸⁹

9. Minorities and indigenous peoples

40. CS noted that since the 1996 Peace Accords ended the Guatemalan civil war, the country has made strides to legally recognize the rights of its indigenous peoples and has criminalized racial discrimination. However, political exclusion, discrimination, and economic marginalization of indigenous peoples still regularly occur due to the lack of resources and political will to stop them. Precarious land tenure, delays in land restitution, disproportionately extreme poverty, and geographical remoteness result in indigenous Guatemalans having less access to health care, clean water, and security, and lower living standards than the country's Ladino population. Many crimes against indigenous peoples are not investigated or go unpunished; by comparison, indigenous leaders are frequently attacked or prosecuted for defending their claims to their lands. CS recommends that the Government energetically address discrimination and take steps to secure land rights and economic equality for its indigenous peoples.⁹⁰

41. COHRE added that indigenous communities continue to be threatened with forced evictions and displacement as a result of the impact of planned or implemented mega-development projects, such as dams and mining, without due legal process of consultation, participation and information.⁹¹ SPT mentioned that peaceful protests of Maya peasants trying to protect their livelihood were met with violence and the criminalization of the indigenous communities.⁹² COHRE highlighted that in granting mining and other natural resource exploitation licences to concession enterprises without consulting or informing indigenous and non-indigenous Guatemalans, the Government is in clear breach of its obligations under ILO Convention No. 169, and is in disaccord with the recommendations of CERD.⁹³

42. CS stated that cultural rights are formally protected under Guatemala's constitution, which recognizes indigenous rights to culture, language, dress, customs, and social organization. However, the Government has failed to implement the relevant legislation. It also has ignored the educational needs of indigenous children by failing to introduce bilingual education. Recently, there has been an increasing use of indigenous languages on public interest community radio stations, which provide many indigenous Guatemalans with their only access to news. Although these community radio stations were guaranteed by the Peace Accords, the Government has not legislated to protect legitimate volunteer community radio stations from bandwidth encroachment by other stations and from prosecutorial crackdowns during politically sensitive moments.⁹⁴

10. Migrants, refugees and asylum-seekers

43. The Human Rights Prosecutor noted that in the context of permanent economic crisis, Guatemala is the country of origin, destination and transit for large migration flows. The great majority of these men and women of all ages suffer violations of their rights, which take the form of abuse of power, extortion, bribery, harassment, and physical, sexual and verbal abuse.⁹⁵

11. Internally displaced persons

44. The Internal Displacement Monitoring Centre of the Norwegian Refugee Council (IDMC) highlighted that as of October 2007, the number of internally displaced people (IDPs) in Guatemala is not known. A total of 250,000 is still frequently cited for the remaining number of IDPs, based on a survey carried out in 1997 by the United Nations and two commissions with members from the affected refugee and IDP communities. The dispersed IDPs have been largely unrecognized as such and are very difficult to identify. The National Reparations Programme, which is mandated to

compensate victims of the conflict, including displaced people, had as of October 2007 not established a list of victims and had disbursed only 40 per cent of its allocation due to the lack of criteria on who to identify as an eligible victim.⁹⁶

III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

45. JS1 noted progress in the establishment of new institutions: the Office of the Public Prosecutor - the body responsible for criminal prosecution; the Public Criminal Defence Institute; the National Civil Police; and the National Forensic Science Institute. Moreover, coverage of the judiciary has been extended to all municipalities.⁹⁷ JS3 described the creation and operationalization of the International Commission against Impunity in Guatemala, the Department of Civilian Intelligence and the National Forensic Science Institute, inter alia, as positive developments, all of which should strengthen State institutions responsible for combating impunity.⁹⁸ AI considered the creation of an office for the analysis of attacks against human rights defenders within the Ministry of the Interior a positive contribution.⁹⁹ *Asociación Casa Alianza Guatemala* described the ratification of the Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption and the drafting of the Adoption Act as considerable achievements.¹⁰⁰

46. IDMC mentioned that in May 2006 the Government convened a “national dialogue” to revive the commitments of the peace accord on poverty reduction, redistribution of land, health and indigenous issues. In addition, the Government has publicly recognized the State’s responsibility for atrocities committed during the conflict and apologized to the victims.¹⁰¹

IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS

N/A

V. CAPACITY BUILDING AND TECHNICAL ASSISTANCE

N/A

Notes

¹ The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org. (One asterisk denotes a non-governmental organization in consultative status with the Economic and Social Council. Two asterisks denote a national human rights institution with “A” status.)

Civil Society

ACAG: Asociación Casa Alianza Guatemala, UPR Submission, January 2008, Guatemala City, Guatemala.

AI: Amnesty International*, UPR Submission, January 2008, London, United Kingdom.

CESR & ICEFI: Centre for Economic and Social Rights* and Instituto Centroamericano de Estudios Fiscales, Joint UPR Submission, January 2008, Brooklyn, United States & Guatemala City, Guatemala.

CLADEM: Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer*, UPR Submission, January 2008, Guatemala City, Guatemala.

COHRE: Centre on Housing Rights and Evictions*, UPR Submission, January 2008, Geneva, Switzerland.

CS: Cultural Survival*, UPR Submission, January 2008, United States.

GIEACPC: Global Initiative to End All Corporal Punishment of Children, UPR Submission, January 2008, London, United Kingdom.

HRA: Human Rights Advocates*, UPR Submission, January 2008, Berkeley, United States.

HRF & FL: Human Rights First* and Front Line*, Joint UPR Submission, January 2008, New York, United States and Dublin, Ireland.

HRW: Human Rights Watch*, UPR Submission, January 2008, New York, United States.

ICJ: International Commission of Jurists*, UPR Submission, January 2008, Geneva, Switzerland.

IDMC: Internal Displacement Monitoring Centre of the Norwegian Refugee Council*, UPR Submission, January 2008, Geneva, Switzerland.

ITUC: International Trade Union Confederation*, UPR Submission, January 2008, Brussels, Belgium.

JS1: Joint UPR Submission by Centro para la Acción Legal en Derechos Humanos (CALDH), Centro Internacional de Investigaciones en Derechos Humanos (CIIDH), Grupo de Apoyo Mutuo (GAM), Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG), Oficina de Derechos Humanos de Guatemala (ODHAG), Asociación Seguridad en Democracia (SEDEM), Unidad de Protección de Defensores y Defensoras de Derechos Humanos (UDEFEFUGA) and Centro CIVITAS, January 2008, Guatemala City, Guatemala.

JS2: Joint UPR Submission by Oficina de Solidaridad Internacional (Hermanos Maristas), Conferencia de Religiosas y Religiosos de Guatemala (CONFREGUA), Save the Children* Guatemala and Franciscans International*, January 2008, Guatemala City, Guatemala and Geneva, Switzerland.

JS3: Joint UPR Submission by Universidad de San Carlos de Guatemala, Universidad Rafael Landívar, Conferencia Episcopal de Guatemala, Comunidad Judía de Guatemala, Confederación de Cooperativas de Guatemala, Unión General de Trabajadores de Guatemala, Central General de Trabajadores de Guatemala, Foro Maya, Convergencia Cívico-Política de Mujeres, Asociación Nacional de Organizaciones No Gubernamentales de los Recursos Naturales y el Medio Ambiente/Unión Mundial para la Naturaleza, Asociación de Investigación y Estudios Sociales, Fundación Myrna Mack, Madres Angustiadas, Asociación de Familiares y Amigos contra la Delincuencia y el Secuestro y Grupo de Apoyo Muto, January 2008, Guatemala City, Guatemala.

OMCT: World Organisation Against Torture*, UPR Submission, January 2008, Geneva, Switzerland.

PBI: Peace Brigades International, UPR Submission, January 2008, Madrid, Spain.

STP: Society for Threatened Peoples, UPR Submission, January 2008, Göttingen, Germany.

National Human Rights Institution(s)

PDH: Procurador de los Derechos Humanos, UPR Submission, January 2008, Guatemala City, Guatemala.**

² Amnesty International, p. 2.

³ Amnesty International, p. 5.

⁴ Joint Submission 1, p. 1.

⁵ World Organisation Against Torture, p. 1.

⁶ Joint Submission 1, p. 1.

⁷ Centre for Economic and Social Rights and Instituto Centroamericano de Estudios Fiscales, p. 7.

⁸ Cultural Survival, p. 3.

⁹ Centre on Housing Rights and Evictions, p. 5.

¹⁰ Cultural Survival, p. 3.

¹¹ Centre on Housing Rights and Evictions, p. 12.

¹² Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer, p. 3.

¹³ Amnesty International, p. 1.

¹⁴ Joint Submission 1, p. 2.

¹⁵ Human Rights Watch, p. 3.

¹⁶ Cultural Survival, p. 2.

- 17 Human Rights Watch, p. 4.
- 18 Joint Submission 1, p. 3. See also Human Rights Watch, p. 3.
- 19 Joint Submission 1, p. 3.
- 20 World Organisation Against Torture, p. 1.
- 21 Procurador de los Derechos Humanos, p. 2.
- 22 Joint Submission 2, p. 1.
- 23 Procurador de los Derechos Humanos, p. 3.
- 24 Asociación Casa Alianza Guatemala, p. 2.
- 25 Procurador de los Derechos Humanos, p. 3.
- 26 Asociación Casa Alianza Guatemala, p. 2.
- 27 World Organisation Against Torture, p. 1.
- 28 Joint Submission 2, p. 3.
- 29 Amnesty International, p. 3.
- 30 Human Rights Watch, p. 5.
- 31 World Organisation Against Torture, p. 2.
- 32 World Organisation Against Torture, p. 1.
- 33 Asociación Casa Alianza Guatemala, pp. 2-3.
- 34 Global Initiative to End All Corporal Punishment of Children, p. 2.
- 35 Peace Brigades International, p. 2.
- 36 Society for Threatened Peoples, p. 1.
- 37 Amnesty International, p. 4.
- 38 Peace Brigades International, p. 2.
- 39 Society for Threatened Peoples, p. 1.
- 40 Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer, p. 4.
- 41 Society for Threatened Peoples, p. 1.
- 42 Human Rights Watch, p. 5.
- 43 World Organisation Against Torture, p. 2.
- 44 Procurador de los Derechos Humanos, p. 3.
- 45 Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer, p. 4.
- 46 Human Rights First and Front Line, p. 1.
- 47 Joint Submission 1, p. 4.
- 48 Human Rights First and Front Line, p. 5.
- 49 Human Rights Watch, p. 4.
- 50 Centre on Housing Rights and Evictions, p. 9.
- 51 Joint Submission 1, p. 3. See also World Organisation Against Torture, p. 2.
- 52 World Organisation Against Torture, p. 2.
- 53 International Commission of Jurists, pp. 5-6.
- 54 Human Rights Advocates, p. 1. See also Human Rights First and Front Line, p. 5 and Human Rights Watch, p. 2.

- ⁵⁵ Human Rights Advocates, p. 2.
- ⁵⁶ Amnesty International, p. 1.
- ⁵⁷ Human Rights Watch, p. 3.
- ⁵⁸ Amnesty International, p. 3.
- ⁵⁹ Procurador de los Derechos Humanos, p. 3.
- ⁶⁰ Joint Submission 1, p. 4.
- ⁶¹ Amnesty International, p. 1.
- ⁶² Human Rights Watch, p. 3.
- ⁶³ International Commission of Jurists, pp. 2-3.
- ⁶⁴ International Commission of Jurists, p. 6.
- ⁶⁵ International Commission of Jurists, p. 4.
- ⁶⁶ Human Rights Watch, p. 1.
- ⁶⁷ Joint Submission 3, p. 2. See also International Commission of Jurists, p. 2.
- ⁶⁸ Human Rights First and Front Line, p. 1.
- ⁶⁹ Human Rights Watch, p. 6.
- ⁷⁰ Joint Submission 1, p. 4.
- ⁷¹ International Trade Union Confederation, p. 2.
- ⁷² Joint Submission 1, p. 2.
- ⁷³ Procurador de los Derechos Humanos, p. 5. See also Centre for Economic and Social Rights and Instituto Centroamericano de Estudios Fiscales, p. 2.
- ⁷⁴ Joint Submission 1, p. 2.
- ⁷⁵ Centre for Economic and Social Rights and Instituto Centroamericano de Estudios Fiscales, p. 2.
- ⁷⁶ Centre for Economic and Social Rights* and Instituto Centroamericano de Estudios Fiscales, p. 3.
- ⁷⁷ Centre for Economic and Social Rights and Instituto Centroamericano de Estudios Fiscales, p. 3.
- ⁷⁸ Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer, p. 2.
- ⁷⁹ Centre for Economic and Social Rights and Instituto Centroamericano de Estudios Fiscales, p. 4.
- ⁸⁰ Procurador de los Derechos Humanos, p. 6.
- ⁸¹ Centre for Economic and Social Rights and Instituto Centroamericano de Estudios Fiscales, p. 6.
- ⁸² Amnesty International, p. 2.
- ⁸³ Centre on Housing Rights and Evictions, p. 8.
- ⁸⁴ Amnesty International, p. 4.
- ⁸⁵ Centre on Housing Rights and Evictions, p. 6.
- ⁸⁶ Peace Brigades International, p. 2.
- ⁸⁷ Centre on Housing Rights and Evictions, p. 11.
- ⁸⁸ Centre for Economic and Social Rights and Instituto Centroamericano de Estudios Fiscales, pp. 4-5.
- ⁸⁹ Procurador de los Derechos Humanos, p. 5.
- ⁹⁰ Cultural Survival, p. 1.
- ⁹¹ Centre on Housing Rights and Evictions, p. 4.
- ⁹² Society for Threatened Peoples, p. 2.

⁹² Asociación Casa Alianza Guatemala, p. 2.

⁹³ Centre on Housing Rights and Evictions, p. 10.

⁹⁴ Cultural Survival, p. 5.

⁹⁵ Procurador de los Derechos Humanos, p. 5.

⁹⁶ Internal Displacement Monitoring Centre of the Norwegian Refugee Council, p. 1.

⁹⁷ World Organisation Against Torture, p. 1.

⁹⁸ Joint Submission 3, p. 3.

⁹⁹ Amnesty International, pp. 4-5.

¹⁰⁰ Asociación Casa Alianza Guatemala, p. 3.

¹⁰¹ Internal Displacement Monitoring Centre of the Norwegian Refugee Council, p. 2.
