

CENTRE ON  
HOUSING RIGHTS  
AND EVICTIONS



**COHRE Submission  
Universal Periodic Review  
Guatemala**

**Annex I**

**Summary of Relevant Information Derived from the  
Reports of Treaty Bodies and Special Procedures**

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## 1. Introduction

The Republic of Guatemala is under international and domestic obligations to ensure that all people in Guatemala may fully and equally enjoy their social, economic and cultural rights. Guatemala is not meeting these obligations as there exist various human rights violations committed by, or with the acquiescence of, the Republic of Guatemala. This fact has been noted with concern by numerous treaty bodies, including the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of all Forms of Racial Discrimination (CERD), the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW), the Committee Against Torture (CAT), the Committee on the Rights of the Child (CRC), and the Human Rights Committee (HRC); by Special Rapporteurs on the Right to Food; on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance; on the Situation of Human Rights and Fundamental Freedoms of Indigenous People; as well as by the Office of the High Commissioner of Human Rights (OHCHR) in Guatemala. The Republic of Guatemala itself recognized in its Report to the Committee on the Elimination of Racial Discrimination in 2005 that there is severe social exclusion based on more than 500 years of inequality, and that this impacts rural people, especially indigenous populations, in the areas of housing, health, education, access to land and natural resources, and secured land tenure.<sup>1</sup> The annual report of the OHCHR office in Guatemala denounced “serious shortcomings [in meeting human rights targets, especially] in the area of housing.”<sup>2</sup>

COHRE is particularly concerned about the following violations: a) ***racial discrimination against indigenous peoples***; b) ***historical and current expropriation of land from indigenous communities*** resulting in unequal land distribution; c) ***forced evictions*** of indigenous and/or non-*ladino* people by State agents, including the use of excessive force during evictions; d) ***insufficient legal framework to protect land rights***; e) ***granting of mining licenses*** by the Ministry of Energy and Mines to concession enterprises ***without consulting or informing indigenous and non-indigenous Guatemalans***; f) ***lack of adequate housing***, and g) ***discrimination against women***.

COHRE would urge that Council highlight these human rights issues during its review.

## 2. Racial Discrimination against Indigenous Peoples

*“Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.”<sup>3</sup>*

Racial discrimination is widely condemned by international instruments to which the Government of Guatemala is party. Non-discrimination in housing is required by the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Article 5(e)(iii), which provides that

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin,

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<sup>1</sup> See generally *Reports Submitted by States parties under Article 9 of the Convention on the Elimination of all Forms of Racial Discrimination, Eleventh periodic report of States parties due in 2004*, U.N. Doc. CERD/C/469/Add.1 (2005).

<sup>2</sup> *Report of the Office of the High Commissioner for Human Rights on the work of its office in Guatemala*, para. 52, A/HRC/4/49/Add.1 (12 Feb. 2007).

<sup>3</sup> Human Rights Committee, *General Comment No. 18: Non-discrimination* (Thirty-seventh session, 1989), para. 1.

to equality before the law, notably in the enjoyment of the following rights: [...] The right to housing.

Under ICERD, Article 3, “States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.” The International Covenant on Civil and Political Rights (CCPR) Article 2(1) similarly provides that

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant [including the right to freedom from interference with one’s home, art. 17], without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

As a result of centuries of long-term, systemic racism 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.<sup>4</sup> While class may play a role in social exclusion of the poor, rural and indigenous, racial discrimination is at its roots.<sup>5</sup> As the Government of Guatemala itself recognized when listing the challenges ahead,

efforts must be made to end the dominance over indigenous peoples which has made use of such models as assimilation, standardization, integration, segregation, folklorism and alienation, the ultimate aim of which is to maintain economic, political, sociocultural and spiritual control over indigenous peoples. Over the course of history, this had led to discrimination and racism and to the formation of an ethnocentric State.”<sup>6</sup>

Many forced evictions are carried out against poor and/or rural indigenous communities by economically and socially powerful, non-indigenous, individuals and companies.<sup>7</sup> Because indigenous legal systems are not generally recognized by the central government,<sup>8</sup> and much land

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<sup>4</sup> See, e.g., *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 20 (reporting that “[d]espite the proliferation of commissions, committees and ombudsmen, progress in dismantling ethnic and racial discrimination at the institutional level has been slow. Underlying this situation is the *structural* discrimination against the indigenous peoples which is founded on the historical mechanisms already referred to, by means of which the indigenous peoples were excluded from access to the economic, political and institutional resources they needed in order to live on an equal footing with the remainder of the population.”); see also *id.* at para. 5 (explaining that “[t]he present status of the indigenous peoples in Guatemala is the result of a long process of colonial subjection of the Maya people starting in the sixteenth century, which was reinforced during the liberal period in the nineteenth century, when a governing class was formed that based its power and its privileges on large rural estates and the exploitation of indigenous labour, under authoritarian and property-based regimes.”).

<sup>5</sup> See, e.g., *id.* at para. 7 (“The anti-democratic nature of the Guatemalan political tradition has its roots in an economic structure, which is marked by the concentration of productive wealth in the hands of a minority. This established the foundations of a system of multiple exclusions, including elements of racism, which is, in turn, the most profound manifestation of a violent and dehumanizing social system. The State gradually evolved as an instrument for the protection of this structure, guaranteeing the continuation of exclusion and injustice.”).

<sup>6</sup> *Reports Submitted by States parties under Article 9 of the Convention on the Elimination of all Forms of Racial Discrimination, Eleventh periodic report of States parties due in 2004*, U.N. Doc. CERD/C/469/Add.1 (2005), para. 117.

<sup>7</sup> See, e.g., Amnesty International, *Guatemala: Land of Injustice?*, AI Index: AMR 34/003/2006; see also *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 23 (citing for example the Northern Transversal Strip, “one of the main areas of confrontation during the armed conflict, from which many indigenous communities were displaced and where large estates were formed which are currently owned by former members of the armed forces.”)

<sup>8</sup> *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Guatemala*, U.N. Doc. CERD/C/GTM/CO/11 (2006), para. 14 (“While the Committee notes the progress that has been made in preventing racial discrimination in the administration of justice in respect of indigenous peoples, it reiterates its

has been and continues to be expropriated from indigenous peoples, the legal titles to most land are considered to belong to the *ladino* or foreign claimant, not the indigenous claimant, if a dispute arises.<sup>9</sup> Consequently, any indigenous persons who then occupy the disputed land are considered by the government as squatters to be evicted.<sup>10</sup>

Access to public services is equally difficult for indigenous groups. The Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance found that:

the inadequacy of public services (education, health and justice in particular) in areas inhabited by these communities and the absence of genuine bilingualism are objective demonstrations of the lack of social and cultural integration of these peoples and communities. Thus, indicators of health, education and housing for these peoples and communities remain lower than for the rest of the population.<sup>11</sup>

Further, the domestic laws do not offer effective protection against discrimination.<sup>12</sup> In practice, the government has applied criminal law sanctions to human rights defenders and others undertaking legitimate protest, while it has consistently protected private property interests rigorously (for further discussion of this issue, see below, section 5: *Insufficient legal framework to protect land rights*).<sup>13</sup> Finally, indigenous peoples continue to be excluded from public decision-making on matters that directly affect their communities, such as mining and other large “development” projects (see below, section 6: *Violation of the right to participate in public decision-making*).

### **3. Expropriation of land from indigenous communities by third parties causing unequal land distribution and multiple claims to land**

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concern at the problems experienced by indigenous peoples in gaining access to the justice system, particularly because the indigenous legal system is not recognized and applied and because of the lack of interpreters and bilingual counsel available for court proceedings. (art. 5, subpara. (a)).”

<sup>9</sup> See, e.g. *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc.

E/CN.4/2006/44/Add.1 (2006), para. 11 (“the Ixil community in Antigua Xonka [who are] occupying land they believe was expropriated from them reportedly issued legal proceedings in a local court but live under constant threat from the landowner who repeatedly sends private police squads to forcibly evict them and burn their crops, animals and makeshift shelters... They argue that none of the Ixil lands have been legally regularized or recognized, which allows *finceros* (estate owners) to keep taking more land from them. Although the Peace Accords set out a framework for regularization of indigenous lands and rights, lack of political will has left these issues unresolved.”).

<sup>10</sup> *Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance: Visit to Guatemala*, U.N. Doc. E/CN.4/2005/18/Add.2 (2005), para. 33 (finding that “the problems over land illustrate the discrimination from which these people suffer. An example would be the violence used in ‘clearing’ the Nueva Linda estate, a huge property occupied by a group of landless peasants; this ‘clearing’ led to more than nine deaths, and does not seem to have been dealt with seriously by the Government or the justice system, despite several damning reports”).

<sup>11</sup> *Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance: Visit to Guatemala*, U.N. Doc. E/CN.4/2005/18/Add.2 (2005), p. 2.

<sup>12</sup> *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Guatemala*, U.N. Doc. CERD/C/GTM/CO/11 (2006), para. 13 (stating that “while the Committee recognizes that the classification of discrimination as an offence under article 202 bis of the Criminal Code constitutes legal progress, it regrets that there is no domestic legislation that specifically prohibits and provides sanctions for racial discrimination (art. 4, subpara. (a))”).

<sup>13</sup> See, e.g., *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 26.

Historical expropriation of land from indigenous peoples by original European colonizers, then foreign businesses, including the United Fruit Company and various mining companies, as well as smaller private plantation landholders, has led to a vastly unequal distribution of land ownership.<sup>14</sup> This historical expropriation of land was “exacerbated during the conflict, and continues today.”<sup>15</sup>

As a result of the history of land expropriation by powerful landowners, there are often multiple claims to the same land.<sup>16</sup> As the Special Rapporteur on the Right to Food noted, “land occupations increase as communities desperately search for ways of feeding themselves” and “occupations occur mostly when landowners have violated labour rights, or where land ownership is disputed.”<sup>17</sup> These confrontations “arising over the ownership of property, in the course of which indigenous peoples have been detained and threatened” are of “special concern” to CERD.<sup>18</sup>

CERD reported that “despite the Government's efforts, the problems of allocation of land and/or compensation continue, especially with respect to the return of lands to the indigenous peoples after the end of the armed conflict.”<sup>19</sup> On his visit in 2005, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance was told by Xinka representatives that the situation in their villages of Yupiltepeque, Jumaytepeque, and Guazacopán requires “urgent attention,” as they have been threatened with the expropriation of their land by the municipal authorities.<sup>20</sup>

#### 4. Forced evictions of indigenous peoples

The obligation of States to refrain from, and protect against, forced evictions from home(s) and land arises mainly from the International Covenant on Economic, Social and Cultural Rights (CESCR). Article 11(1) of the CESCR explicitly recognizes the right to adequate housing, and Article 11(1), as interpreted in General Comment No. 4 and General Comment No. 7 of the UN Committee on Economic, Social and Cultural Rights, also prescribes legal protection against forced eviction. The term “forced evictions” is defined by *General Comment No. 7 on Forced Evictions* as: “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”<sup>21</sup> General Comment No. 7 indicates that “the State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions.” It further states that “evictions

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<sup>14</sup> See, e.g., *id.* at para. 5 (“[t]he present status of the indigenous peoples in Guatemala is the result of a long process of colonial subjection of the Maya people starting in the sixteenth century, which was reinforced during the liberal period in the nineteenth century, when a governing class was formed that based its power and its privileges on large rural estates and the exploitation of indigenous labour, under authoritarian and property-based regimes.”).

<sup>15</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1 (2006), para. 49 (giving as an example La Perla farm, where it is alleged that during the conflict, the landowner extended his farm into the 2,200 hectares that are recorded in the local property register as belonging to two indigenous communities (Sotzil and Iloom), with the help of the army and paramilitary).

<sup>16</sup> *Id.* at para. 11.

<sup>17</sup> *Id.*

<sup>18</sup> *Annual Report of the Committee on the Elimination of Racial Discrimination to the General Assembly* (Fifty-second session, 1997), U.N. Doc. A/52/18 (1997), para. 81 (“Principle subjects of concern”).

<sup>19</sup> *Id.*

<sup>20</sup> *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance: Mission to Guatemala*, para. 42, U.N. Doc. E/CN.4/2005/18/Add.2 (2005).

<sup>21</sup> CESCR, *General Comment 7, The Right to Adequate Housing (art. 11 of the Covenant): Forced Evictions* (Sixteenth session, 1997), U.N. Doc. E/1998/23, annex IV, 113 (1997).

should not result in individuals being rendered homeless or vulnerable to the violation of other human rights.”

The disputes over land ownership described above in section 3 most often result in forced evictions of indigenous communities who claim ownership of the same land as a more powerful company or individual, who is able to buy the armed force to effectuate the eviction.<sup>22</sup> In all of these cases, the Government of Guatemala has either provided military and/or police forces, or has acquiesced when third parties hire private police squads.<sup>23</sup>

NGOs reported 40 forced evictions in the first six months of 2004, affecting 1,500 families.<sup>24</sup> As of 2006, an Ixil indigenous community of 270 families in Antigua Xonka live under “constant threat from the landowner who repeatedly sends private police squads to forcibly evict them...”<sup>25</sup>

Not only are people forcibly evicted from their homes with the complicity of the State, but they are evicted violently, with excessive force. The Report of the Special Rapporteur on the Right to Food details how army, para-military, or private police squads burned crops, animals and shelters,<sup>26</sup> used tear gas, as well as performed extrajudicial executions of dissenting residents.<sup>27</sup> The Special Rapporteur notes that of more than 31<sup>28</sup> evictions that occurred in the first six months of 2004, over half of them were violent.<sup>29</sup> In the case of *Nueva Linda* farm (Champerico, Retalhuleu), the Special Rapporteur reports that “while some officials were negotiating a peaceful evacuation with the representatives of 22 communities who occupied the land three years ago, the Civil National Police intervened violently, leaving 9 dead, over 40 injured and 13 detained, as well as ... the communities’ crops and homes [destroyed].”<sup>30</sup> The Special Rapporteur also highlighted another case at *El Magney* farm (Fraijanes), where it is alleged that 86 peasant families have been forcibly evicted from their land by the police and army

on several occasions over the last two years, with their crops and irrigation systems destroyed, despite the recognition that they own the land in a Governmental Agreement dated 7 April 2003, and a Constitutional Court decision date 4 May 2004.<sup>31</sup>

The Committee against Torture (CAT), too, has expressed its concern “about reports of the use of excessive force by police officers during evictions in rural areas, which often result in the destruction of homes and other personal belongings, and sometimes even in violent deaths. (arts. 6, 10, 12 and 13).”<sup>32</sup> CAT recommended that Guatemala “adopt effective measures to prevent

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<sup>22</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1(2006), para. 11.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at para. 12 (citing COS (Colectivo de Organizaciones Sociales), ‘Balance de la Paz 2004,’ *Otra Guatemala es Posible: Acuerdos de Paz, Unidad y lucha de las organizaciones sociales*, Guatemala, 2004).

<sup>25</sup> *Id.* at para. 11.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at para. 12.

<sup>28</sup> This is the figure according to Amnesty International, 2005, *infra* at note 29.

<sup>29</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1(2006), para. 48 (citing Amnesty International, *Memorandum to the Government of Guatemala: Amnesty International’s concern regarding the current human rights situation*, AMR 34/014/2005).

<sup>30</sup> *Id.* (citing FIAN, *The Human Right to Food in Guatemala*, Oct. 2004; Colectivo de Organizaciones Sociales, *Acuerdos de Paz*, Unidad y lucha de las organizaciones sociales, 2004).

<sup>31</sup> *Id.* (citing Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo (PIDhDD), FIAN Brazil, *El Derecho Humano a la Alimentación en América Latina*, 2004; FIAN, *The Human Right to Food in Guatemala*, October 2004).

<sup>32</sup> *Conclusions and Recommendations of the Committee against Torture: Guatemala*, para. 21, U.N. Doc. CAT/C/GTM/CO/4 (2006).

the use of excessive force during evictions, provide specific training on evictions for police officers, and ensure that complaints concerning forced evictions are thoroughly investigated and that those responsible are brought to trial.”<sup>33</sup>

As a result of such frequent and violent evictions, rural and indigenous populations have no security of tenure, and they are often subjected to severe physical and/or mental pain or suffering, putting the State in violation of Article 11(1) of the CESCR, as elaborated by the Committee in General Comment No. 7, as well as the Convention against Torture.

## 5. Insufficient legal framework to protect land rights

*“In a country with such a history of land conflicts and expropriations, the continued lack of an effective catastro (land registry system), of an agrarian code, of the legal recognition of indigenous forms of land ownership and administration and of an agrarian jurisdiction to resolve land disputes is totally inadequate.”<sup>34</sup>*

### 5.1 No recognition of indigenous land ownership

Recalling that land ownership is highly concentrated, with 2 percent of the population owning up to 75 per cent of agricultural land,<sup>35</sup> and that 47 “huge” plantations take up over 3,700 hectares, while 90 per cent of subsistence farmers survive on less than one hectare,<sup>36</sup> it is particularly troubling that elite landholders are more likely to be found to have “legal” title to land in dispute as a result of non-recognition of indigenous authorities and legal systems by Guatemalan State authorities.<sup>37</sup> This has been recorded by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, who was informed of

various cases and conflicts bringing the traditional indigenous authorities (indigenous mayors and community assemblies) into confrontation with the national or departmental authorities for various reasons, notably those concerning control of access to community property (principally forests and water) and the handling and settlement of local conflicts. On occasion, the State authorities take action to eliminate or co-opt the indigenous authorities, as in the case of the indigenous mayor of Sololá and the community mayors of Totonicapán. The aim appears to be to deprive these traditional authorities of their force, presence and impact, in breach of Convention No. 169 and other domestic and international instruments.<sup>38</sup>

While Guatemala recently adopted the Land Register Act, which recognizes collective registration of ownership of communal lands by indigenous peoples,<sup>39</sup> there is still a *de facto* problem getting indigenous lands to be legally regularized or recognized. For example, the Ixil community in Antigua Xonka occupying land they believe was expropriated from them reportedly

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<sup>33</sup> *Id.*

<sup>34</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1 (2006), para. 28.

<sup>35</sup> *Id.* at para. 7 (data from INE and MAGA, IV Censo nacional agropecuario 2003, características generales de las fincas generales y productoras y productores agropecuarios (Tomo I), January 2004.).

<sup>36</sup> *Id.*

<sup>37</sup> *Supra* note 8.

<sup>38</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 45 (emphasis added).

<sup>39</sup> *Report of the High Commissioner for Human Rights on the Situation of Human Rights in Guatemala*, U.N. Doc. E/CN.4/2006/10/Add.1 (2006), para. 74.

issued legal proceedings in a local court but live under constant threat from the landowner who repeatedly sends private police squads to forcibly evict them and burn their crops, animals and makeshift shelters...They argue that none of the Ixil lands have been legally regularized or recognized, which allows *finceros* (estate owners) to keep taking more land from them. Although the Peace Accords set out a framework for regularization of indigenous lands and rights, lack of political will has left these issues unresolved.<sup>40</sup>

Indeed, this type of problem is “exacerbated by the fact that the laws and institutions for land titling, property registration and maintenance of the register of agricultural land are inadequate and ineffective, giving rise to a high level of legal uncertainty and many conflicts relating to boundaries and land tenure.”<sup>41</sup> CERD called upon the State party to

take steps to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands and territories. In cases where they have been deprived of their lands and territories traditionally owned, or such lands and territories have been otherwise used without their free and informed consent, the Committee recommends that the State party take steps to return those lands and territories. The Committee also urges [Guatemala] to ensure the effective implementation of the national land register law so that indigenous community lands can be identified and demarcated.<sup>42</sup>

COHRE would thus urge the Council to continue to pressure the Republic of Guatemala to take further measures to ensure recognition of indigenous land rights.

## 5.2 Lack of equality before the law: criminalization of social protest

There is also cause for concern over the practise of criminalizing labour and land protests by poor and indigenous groups, while treating large landowners’ refusals to pay workers as less serious violations.<sup>43</sup> Amnesty International was cited by the Special Rapporteur on the Right to Food as having noted that “a particular characteristic of agrarian disputes in Guatemala is that the full weight of the law and judicial system is often levied in order to enforce evictions, but not to issues relating to labour rights of rural works or land tenure of rural communities.”<sup>44</sup> Indeed,

many of the situations reported to the Special Rapporteur [on the Situation of Human Rights and Fundamental Freedoms of Indigenous People], which have been drawn to the attention of the judicial authorities, the Public Prosecutor’s Office or the National Civil Police, are examined in criminal courts in the form of offences, with the procedural and social consequences that this implies.<sup>45</sup>

The Special Rapporteur was concerned that,

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<sup>40</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1 (2006), para. 11.

<sup>41</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 24.

<sup>42</sup> *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Guatemala*, U.N. Doc. CERD/C/GTM/CO/11 (2006), para. 17.

<sup>43</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1 (2006), para. 54; *see also Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 26.

<sup>44</sup> *Id.* at para. 12 (citing Amnesty International, Memorandum to the Government of Guatemala: Amnesty International’s concern regarding the current human rights situation, AMR 34/014/2005).

<sup>45</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 35.

as a result of this phenomenon, the justices of the peace, who are competent to hear and rule on criminal cases at first instance, have in practice expanded this sphere of competence to handle family-related, economic, civil, land, commercial and other matters, clearly on the basis of a categorization of incidents as offences rather than as cases of conflicting rights and interests. As a consequence of this practice of criminalizing social problems, the judicial officials are failing to abate tensions in society, and in many cases are exacerbating them.<sup>46</sup>

### 5.3 Lack of agrarian regulations, courts, and tribunals to settle land and resource ownership disputes

Numerous treaty body reports highlighted the need for agrarian courts and tribunals to settle land disputes.<sup>47</sup> The Special Rapporteur on the Right to Food advised that

... an Agrarian Code to regulate the access, use and tenure of land should be elaborated, which recognizes indigenous forms of land ownership[...].The establishment of an agrarian jurisdiction for the resolution of land conflicts should become the first priority of the Government, and must be given adequate funding and a mandate to enforce law against land-grabbing. The draft water legislation should contain provisions setting out institutional responsibility, establishing an institution for the resolution of conflicts and providing redress for victims of violations of the right to water. The Law on Mining should be amended to ensure protection of the rights of indigenous people over their natural resources, as provided by ILO Convention No. 169, and the mining policy should be reviewed to bring it into accordance with human rights law ...<sup>48</sup>

The High Commissioner, too, emphasized the need to establish agrarian courts and tribunals “to find solutions to the problems that arise in connection with the registration of land.”<sup>49</sup> She further advised that there is a “need for regulations to govern the functioning of such organs.”<sup>50</sup> Similarly, the Human Rights Committee

regrets that it has not been possible to adopt legislation designed to guarantee the full enjoyment of all rights of [members of indigenous communities] under the Covenant, including the restitution of communal lands, the elimination of discrimination in employment and education and participation in other areas of the life of society.<sup>51</sup>

The Committee recommended that Guatemala adopt such legislation, and “also ensure that the implementation of this legislation improves the situation of members of indigenous communities in practice and not only on paper.”<sup>52</sup>

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<sup>46</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003); para. 35; see also *id* at para. 26.

<sup>47</sup> See, e.g., *Report of the High Commissioner for Human Rights on the Situation of Human Rights in Guatemala*, U.N. Doc. E/CN.4/2006/10/Add.1 (2006), para. 74.

<sup>48</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1 (2006), para. 58(f).

<sup>49</sup> *Report of the High Commissioner for Human Rights on the Situation of Human Rights in Guatemala*, U.N. Doc. E/CN.4/2006/10/Add.1(2006), para. 74.

<sup>50</sup> *Id.*

<sup>51</sup> *Concluding Observations of the Human Rights Committee : Guatemala*, U.N. Doc. CCPR/CO/72/GTM (2001), para. 29.

<sup>52</sup> *Id.*

## 6. Violation of the right to participate in public decision-making

*“The exclusion of the indigenous peoples from their role as citizens has been a characteristic feature of the political structure of Guatemala since colonial times and throughout the life of the Republic.”<sup>53</sup>*

The right of all people to participation in public decision-making is enumerated in various human rights instruments. The International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) ensures the rights of indigenous peoples to natural resources on their lands are specially safeguarded, including their right to participate in the use, management and conservation of these resources, and their right to be consulted and to assess any exploitation of resources on the land they own or possess.<sup>54</sup> Further, CESCR General Comment No. 4 on the Right to Adequate Housing states that “the full enjoyment of other rights - [including] the right to participate in public decision-making - is indispensable if the right to adequate housing is to be realized and maintained by all groups in society.”<sup>55</sup> Finally, CERD General Comment No. 23 on Indigenous Peoples calls upon States parties to “ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.”<sup>56</sup> The Committee especially called upon States parties to

recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.<sup>57</sup>

Recently, the Guatemalan government has granted mining and forestry rights to concession enterprises, while failing to consult the affected groups prior to making the grants.<sup>58</sup> This has both excluded indigenous groups in the areas from exploiting these resources, and ignored the impact on these groups.<sup>59</sup> The Government of Guatemala is aware of the gravity of these actions: By its own estimation,

the granting of mining licenses by the Ministry of Energy and Mines to concession enterprises is causing the Government serious problems. Such activities are considered a grave violation of the rights of thousands of indigenous and non-indigenous Guatemalans, who were not duly consulted

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<sup>53</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Mission to Guatemala*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 42 (reporting that “[t]his phenomenon traditionally involved the subordination of traditional forms of organization of the communities and peoples and exercise of their authority (indigenous mayors and guilds, for example); the belated granting of the right to vote; high rates of abstentionism among indigenous voters - continuing to the present time; the absence of indigenous people in elected posts or public offices of responsibility, including military commands; and in general scant influence on the part of indigenous peoples in decision-making concerning national life.”).

<sup>54</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1 (2006), para. 23.

<sup>55</sup> CESCR, *General Comment 4, The Right To Adequate Housing* (Sixth Session, 1991), U.N. Doc. E/1992/23, annex III, 114 (1991), para. 9.

<sup>56</sup> Committee on the Elimination of Racial Discrimination (CERD), *General Comment No. 23: Indigenous Peoples* (Fifty-first session, 1997), U.N. Doc. A/52/18, annex V, para. 4(d).

<sup>57</sup> CERD, *General Comment No. 23: Indigenous Peoples* (Fifty-first session, 1997), U.N. Doc. A/52/18, annex V, para. 5.

<sup>58</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Mission to Guatemala*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 27.

<sup>59</sup> *Id.*

and informed that the subsoil of their territory would be licensed to mining companies. It should be emphasized that most of the population in 9 of the 16 departments affected is indigenous and that various small groups (Chuj, Sipakapense, Chorti, Mam, Kaqchikel) will be faced with ethnocide if mining projects are not handled appropriately.<sup>60</sup>

In granting mining and other natural resource exploitation licenses to concession enterprises without consulting or informing indigenous and non-indigenous Guatemalans, the Government of Guatemala is in clear breach of its obligations under ILO Convention No. 169, and is in disaccord with the recommendations of CERD.

## 7. Lack of Adequate Housing

### 7.1 Habitability

The right to adequate housing was recognized in the 1948 Universal Declaration on Human Rights and is entrenched in a number of international human rights instruments, including the CDESCR. Article 11(1) of the CDESCR states that:

States parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and for his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States parties will take appropriate steps to ensure the realization of this right....

Article 27(3) of the Convention on the Rights of the Child similarly ensures the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Habitability is one aspect of the right to adequate housing, as interpreted in *General Comment No. 4* by the Committee on Economic, Social and Cultural Rights.<sup>61</sup> A habitable shelter is one “providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well.”<sup>62</sup>

As reported by the Committee on Economic, Social and Cultural Rights in its *Concluding Observations on Guatemala* in 2003, poverty and extreme poverty, paired with a high level of social exclusion, in particular among indigenous and rural populations, “hinder the full enjoyment of economic, social and cultural rights,” including in the areas of land ownership and housing.<sup>63</sup> On his visit to the legalized slum, Bethania, Guatemala City in 2005, the Special Rapporteur on the Right to Food found that “people were living in overcrowded shacks of tin and plastic, without sanitation, and where doctors in the local health centre estimated that at least 20 per cent of the children were suffering from malnourishment and more from diarrhoea, skin, and fungal diseases.”<sup>64</sup>

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<sup>60</sup> *Reports Submitted by States parties under Article 9 of the Convention on the Elimination of all Forms of Racial Discrimination, Eleventh periodic report of States parties due in 2004*, U.N. Doc. CERD/C/469/Add.1 (2005), para. 31.

<sup>61</sup> CDESCR, *General Comment No. 4, The Right To Adequate Housing* (Sixth Session, 1991), U.N. Doc. E/1992/23, annex III, 114 (1991), para. 8.

<sup>62</sup> *Id.* at para. 8(d).

<sup>63</sup> *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Guatemala*, U.N. Doc. E/C.12/1/Add.93 (2003), paras. 24, 29.

<sup>64</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1 (2006), para. 13.

Many children in Guatemala are left to live in the streets. In its Concluding Observations, the Committee on the Rights of the Child expressed its concern

at the significant number of children living in the streets and notes that assistance to these children is provided mainly by non-governmental organizations. In light of article 6 of the Convention, serious concern is expressed at allegations of rape, ill-treatment and torture, including murder for the purpose of “social cleansing”, of children living in the streets.<sup>65</sup>

The Committee recommended that the State party “expedite the adoption of a National Plan for the Care of Street Children and ensure that children living in the streets are provided with nutrition, clothing, housing, health care and educational opportunities, including vocational and life-skills training, in order to support their full development.”<sup>66</sup>

Guatemala’s allowance of these situations is a clear violation of the right to habitability as part of the right to adequate housing (integral to an adequate standard of living secured in Article 11(1) of the CESCR), and of Article 27(3) of the CRC.

## 7.2 Access to Water

The right to water is commonly recognized as a human right in international law. Implicit or explicit references to water are contained in the CESCR, CEDAW, and the CRC.<sup>67</sup> The right to water in the CESCR has been derived from the rights of everyone to an adequate standard of living (CESCR Article 11(1)) and to the enjoyment of the highest attainable standard of physical and mental health (CESCR Article 12).<sup>68</sup> While not binding, General Comment 15 on the Right to Water (Arts. 11 and 12 of the CESCR) provides important elaboration on the implied right to water in the binding CESCR. Specifically, it provides that the right to water “include[s] the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies.”<sup>69</sup> The right to water is also found in the right to “availability of services, materials, facilities and infrastructure,”<sup>70</sup> which is related to the right to adequate housing as a component of the right to an adequate standard of living.<sup>71</sup> According to CESCR General Comment No. 4,

an adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;<sup>72</sup>

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<sup>65</sup> *Concluding Observations of the Committee on the Rights of the Child*, U.N. Doc. CRC/C/15/Add.154 (2001), para. 54.

<sup>66</sup> *Id.* at para. 55.

<sup>67</sup> See CEDAW, Art. 14, para. 2 (h); see also CRC, Art. 24, para. 2 (c).

<sup>68</sup> See CESCR, *General Comment No. 15, The Right to Water* (Twenty-ninth session, 2002), U.N. Doc. E/C.12/2002/11 (2002), para. 3; see also CESCR, *General Comment No. 6 on The Economic, Social And Cultural Rights of Older Persons* (Thirteenth session, 1995), in U.N. Doc. E/1996/22 (1996), paras. 5 and 32; *General Comment No. 14, The Right to the Highest Attainable Standard of Health* (Twenty-second session, 2000), E/C.12/2000/4 (2000), paras. 11, 12 (a), (b) and (d), 15, 34, 36, 40, 43 and 51; and CESCR, *General Comment No. 4: The Right to Adequate Housing* (Sixth session, 1991), U.N. Doc. E/1992/23, annex III (1991), para. 8 (b).

<sup>69</sup> *Id.* at para. 10.

<sup>70</sup> CESCR, *General Comment No. 4, The Right To Adequate Housing* (Sixth Session, 1991), U.N. Doc. E/1992/23, annex III, 114 (1991), para. 8(b).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* (emphasis added).

Further, CEDAW, Article 14, paragraph 2, provides that States parties shall ensure to women the right to “enjoy adequate living conditions, particularly in relation to [...] water supply.” Article 24, paragraph 2, of the CRC requires States parties to combat disease and malnutrition “through the provision of adequate nutritious foods and clean drinking-water.”

The right to availability of services in Guatemala is currently being violated by the inaccessibility of potable drinking water across the country. The Special Rapporteur on the Right to Food observed that “access to water is problematic in urban areas, especially in illegal slums.”<sup>73</sup> He also reported that access was “particularly [problematic] in rural areas.”<sup>74</sup> Over 65 per cent of the rural population lack access to an improved source of fresh water or sanitation.<sup>75</sup> Indigenous peoples, especially children and women, are among those who are most affected by the denial of access to basic public services (water and electricity) as result of race and gender discrimination.<sup>76</sup> The Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People further noted that “over 80 per cent [of the indigenous rural population] are not connected to sewerage systems and half are not connected to the electricity grid.”<sup>77</sup> Additionally, while municipalities are formally responsible for providing water, only 4 per cent of the 331 municipalities treat the water they provide.<sup>78</sup>

Among his recommendations, the Special Rapporteur on the Right to Food strongly suggested that the draft water legislation “contain provisions setting out institutional responsibility, establishing an institution for the resolution of conflicts and providing redress for victims of violations of the right to water.”<sup>79</sup>

## 8. Discrimination Against Women

The human rights situation of women in Guatemala is particularly troubling, with rural and indigenous women the most affected.<sup>80</sup> Indigenous women, “because of their ethnic origin and sex, suffer twice over from discrimination.”<sup>81</sup> Various U.N. representatives have found over the past ten years that women face inequality in most spheres of life. *De facto* and *de jure*

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<sup>73</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1(2006), para. 14.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Report of Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance: Mission to Guatemala*, U.N. Doc. E/CN.4/2005/18/Add.2 (2005), para. 11 (citing MINUGUA, *Los Pueblos indígenas de Guatemala: la superación de la discriminación en el marco de los Acuerdos de paz*, Ciudad de Guatemala, Sept. 2001, p. 11 (Original note 19)).

<sup>77</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Mission to Guatemala*, para. 11, U.N. Doc. E/CN.4/2003/90/Add.2 (2003) (original source: MINUGUA, *The indigenous peoples of Guatemala: Overcoming discrimination in the framework of the Peace Agreements*, September 2001).

<sup>78</sup> *Id.* (citing Government of Guatemala, *Política Nacional de Seguridad Alimentaria y Nutricional*, 2004, p. 11).

<sup>79</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1 (2006), para. 58(f).

<sup>80</sup> See, e.g., *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Guatemala*, U.N. Doc. CEDAW/C/GUA/CO/6 (2006), para. 35: “Noting that the majority of the Guatemalan population are indigenous peoples, the Committee expresses concern about the situation of indigenous women, who lack enjoyment of their human rights and are vulnerable to multiple forms of discrimination.”

<sup>81</sup> *Report of Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance: Mission to Guatemala*, U.N. Doc. E/CN.4/2005/18/Add.2 (2005), para. 11 (citing MINUGUA, *Los Pueblos indígenas de Guatemala: la superación de la discriminación en el marco de los Acuerdos de paz*, Ciudad de Guatemala, Sept. 2001, p. 11 (Original note 19)).

discrimination has led to persisting high levels of poverty among women;<sup>82</sup> discrimination against women in access to land;<sup>83</sup> lack of response to land-related claims;<sup>84</sup> failure of provision of land of adequate quality to indigenous women affected by the conflict;<sup>85</sup> denial of access to basic public services, including water;<sup>86</sup> and an absence of statistical information related to the situation of indigenous women.<sup>87</sup> Indigenous women, specifically, also face rejection of their traditional dress, the denial of access to education, health care and basic public services (water and electricity) and the lack of job opportunities and access to land.<sup>88</sup> The Committee on Economic, Social and Cultural Rights in 2003 observed with concern that “the de facto inequality between women and men [...] is perpetuated by traditional prejudices and social conditions, in spite of an important number of legal instruments adopted by the State party.”<sup>89</sup>

## 8.1 Persistent high levels of poverty among women

The Committee on the Elimination of Discrimination against Women expressed its concern about the “persistent high levels of poverty among women [in Guatemala], particularly among women living in rural areas, and their lack of access to basic social services.”<sup>90</sup> Poverty and inability to access other human rights are inextricable; the Committee noted this:

The poverty conditions of women [in Guatemala] 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.<sup>91</sup>

The Committee was “concerned about the absence of a comprehensive strategy for rural development that addresses the structural nature of the problems rural women continue to face,”<sup>92</sup> and it urged Guatemala “to ensure that all poverty eradication policies and programmes integrate a gender perspective and explicitly address the structural nature and various dimensions of poverty faced by women, in particular women living in rural areas.”<sup>93</sup> COHRE highlights that the Committee recommended Guatemala “strengthen its efforts to implement nationwide

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<sup>82</sup> *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Guatemala*, U.N. Doc. CEDAW/C/GUA/CO/6 (2006), para. 33.

<sup>83</sup> *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Guatemala*, U.N. Doc. E/C.12/1/Add.93 (2003), para. 30.

<sup>84</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), p. 2 (“Executive Summary”).

<sup>85</sup> *Id.* at para. 73 (“Conclusions”).

<sup>86</sup> *Report of Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance: Mission to Guatemala*, U.N. Doc. E/CN.4/2005/18/Add.2 (2005), para. 11 (citing MINUGUA, *Los Pueblos indígenas de Guatemala: la superación de la discriminación en el marco de los Acuerdos de paz*, Ciudad de Guatemala, Sept. 2001, p. 11 (Original note 19)).

<sup>87</sup> *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Guatemala*, U.N. Doc. CEDAW/C/GUA/CO/6 (2006), para. 35.

<sup>88</sup> *Report of Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance: Mission to Guatemala*, U.N. Doc. E/CN.4/2005/18/Add.2 (2005), para. 11 (citing MINUGUA, *Los Pueblos indígenas de Guatemala: la superación de la discriminación en el marco de los Acuerdos de paz*, Ciudad de Guatemala, Sept. 2001, p. 11 (Original note 19)).

<sup>89</sup> *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Guatemala*, U.N. Doc. E/C.12/1/Add.93 (2003), para. 12.

<sup>90</sup> *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Guatemala*, U.N. Doc. CEDAW/C/GUA/CO/6 (2006), para. 33.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 34.

effective health and educational programmes, including programmes in the areas of functional literacy, enterprise development, skills training and microfinance, as a means of poverty alleviation, and adopt measures to ensure women's equal access to land."<sup>94</sup>

## 8.2 Discrimination against women in access to land

Whether as a result or a cause of poverty, indigenous and rural women face discrimination in access to land and productive resources. The Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People found in 2006 that:

access to land for indigenous women is problematic. Despite the provisions of the Peace Agreements, widowed or separated women or those who have married for a second time do not succeed in gaining title to their property (communal or personal), recovering family property or acquiring new land under cooperative or other programmes.<sup>95</sup>

Similarly, the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People found that indigenous people in general, and indigenous women in particular, face land discrimination:

One of the fundamental problems affecting the indigenous peoples relates to the right to land. The lack of access to land, the lack of response to land-related claims, lack of respect for traditional places such as communal forests, forced resettlement of indigenous peoples as a result of economic development projects, and problems stemming from loss of land caused by the armed conflict, create a situation of rising social tensions. The situation faced by indigenous women is especially insecure.<sup>96</sup>

The Special Rapporteur on the Right to Food advised that "pervasive discrimination against women, particularly indigenous women, must be addressed, and the rights of women must be recognized, including in the access to and ownership of productive resources."<sup>97</sup>

## 8.3 Lack of response to land-related claims

The general problem with a lack of land courts or other formal "machinery for settling land disputes" affects women as well, although for different reasons.<sup>98</sup> The "growing complexity" of problems gaining land titles, recovering family property, or acquiring new land experienced by widowed, separated, or remarried women leaves many without hope of resolution of disputes, which are "increasingly heard in the criminal courts in the form of proceedings for dispossession or illegal seizure."<sup>99</sup>

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<sup>94</sup> *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Guatemala*, U.N. Doc. CEDAW/C/GUA/CO/6 (2006), para. 34 (emphasis added).

<sup>95</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 28.

<sup>96</sup> *Id.* at p. 2 ("Executive Summary") (emphasis added).

<sup>97</sup> *Report of the Special Rapporteur on the Right to Food, Addendum*, Mission to Guatemala, U.N. Doc. E/CN.4/2006/44/Add.1 (2006), para. 58(e).

<sup>98</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 28.

<sup>99</sup> *Id.*

#### **8.4 Failure to provide land of adequate quality to indigenous women affected by the conflict**

The Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People recognized the “fundamental importance of land for the indigenous peoples, and appeals for land of appropriate quality to be provided to returning refugees, indigenous women affected by the conflict and the communities which were illegally dispossessed of their lands during the war.”<sup>100</sup> To this end, he recommended the establishment of a land register identifying indigenous communal land. He further recommended that

appropriate State measures should recognize and support the right of the indigenous peoples to maintain their own economic system, including subsistence agriculture. There is a need for the Government to implement to the full the Agreement on Social and Economic Aspects and the Agrarian Situation which is part of the Peace Agreements.<sup>101</sup>

#### **8.5 Denial of access to basic public services, including water**

As stressed by the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, discrimination against indigenous women and children typically results in, *inter alia*, denial of access to basic public services, including water and electricity.<sup>102</sup>

#### **8.6 Absence of statistical information related to the situation of indigenous women**

The Committee on the Elimination of Discrimination against Women was also concerned about “the absence of statistical information related to the situation of indigenous women.”<sup>103</sup> Many treaty bodies have noted the importance of data collection for monitoring the progress of social improvement programs, and the failure of the Government to collect such data impedes the ability of the Republic of Guatemala and of the U.N. bodies to “ensure that indigenous women have full access to bilingual education, health services and credit facilities and can fully participate in decision-making processes.”<sup>104</sup> CEDAW thus requested the State party to include “information and data on the situation of indigenous women and on the impact of measures taken to overcome the multiple discrimination against them in its next periodic report.”

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<sup>100</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 73 (“Conclusions”) (emphasis added).

<sup>101</sup> *Id.*

<sup>102</sup> *Report of Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance: Mission to Guatemala*, U.N. Doc. E/CN.4/2005/18/Add.2 (2005), para. 11 (citing MINUGUA, *Los Pueblos indígenas de Guatemala: la superación de la discriminación en el marco de los Acuerdos de paz*, Ciudad de Guatemala, Sept. 2001, p. 11 (Original note 19)).

<sup>103</sup> *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Guatemala*, U.N. Doc. CEDAW/C/GUA/CO/6 (2006), para. 35.

<sup>104</sup> *Id.* at para. 36.