ОРГАНИЗАЦИЯ ОБЪЕДИНЕННЫХ НАЦИЙ **E**

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Право на питание

Доклад Специального докладчика по вопросу о праве на питание Жана Зиглера

Добавление

МИССИЯ В ГВАТЕМАЛУ*

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Резюме

Специальный докладчик по вопросу о праве на питание имеет честь препроводить Комиссии по правам человека настоящий доклад о результатах его официальной миссии в Гватемалу, которая состоялась с 26 января по 4 февраля 2005 года.

Поводом для этой миссии послужило отмеченное в последнее время повышение уровня острой недостаточности питания в Гватемале. По сравнению с другими странами Латинской Америки в Гватемале чрезвычайно высок уровень хронического недоедания среди детей и крайней нищеты, особенно в общинах коренного населения, что главным образом обусловлено тем фактом, что на протяжении длительного исторического периода они подвергались социальному отчуждению и жили в условиях вопиющего неравенства.

Избрание в 2004 году нынешнего правительства положило начало новому процессу, при этом в Гватемале впервые были разработаны программы, одной из приоритетных задач которых является борьба с голодом и недоеданием. Большое впечатление на Специального докладчика произвело создание национального "Фронта против голода" и действенных правовых и политических рамок, обеспечивающих признание права на питание. Он также всячески поддерживает усилия, которые правительство предпринимает на международном уровне, в частности в сентябре 2005 года в стране проходила Конференция стран Латинской Америки по вопросам искоренения голода (La Conferencia Latinoamericana Sobre el Hambre Crónica).

Специальный докладчик надеется, что меры, принимаемые правительством, позволят обратить вспять наметившуюся в последнее время тенденцию к ухудшению положения в области осуществления права на питание, о которой свидетельствует отмеченное в период 2000-2002 годов увеличение уровня недоедания, поскольку в ином случае Гватемала не сможет обеспечить выполнение сформулированной в Декларации тысячелетия цели 1, которая заключается в ликвидации крайней нищеты и голода и предусматривает, что доля населения, имеющего доход менее 1 доллара в день, должна быть сокращена за период 1990-2015 годов вдвое. Проблема голода и недоедания, которая приобрела в Гватемале широкие масштабы, не является лишь вопросом наличия продуктов питания, поскольку имеющиеся в Гватемале земли теоретически могут обеспечить продовольствием все население. Она скорее обусловлена неравенством в области распределения продуктивных ресурсов в этой стране. Гватемала по-прежнему является одной из стран, где распределение ресурсов является одним из самых несправедливых в мире, где существует вопиющее неравенство в области владения землей и богатством и где в результате применявшейся на протяжении длительного

исторического периода практики социального отчуждения коренные народы остались без прав на землю и труд и подвергаются широкомасштабной расовой дискриминации.

Соглашение о прочном и стабильном мире (мирные соглашения), которое было подписано в 1996 году, ознаменовало официальное окончание жестокой гражданской войны и было призвано положить конец давней практике отчуждения, дискриминации и неравенства. Однако ввиду противодействия со стороны некоторых могущественных групп создать основу для глубоких политических, экономических, социальных и культурных преобразований весьма трудно. Несмотря на достигнутый в последнее время большой прогресс, вопрос о земле по-прежнему является источником серьезных социальных разногласий, а отсутствие эффективной системы регистрации земель (кадастра), свода земельных законов и юридического признания различных форм собственности коренных народов на землю, равно как и проблемы с проведением реформы системы прогрессивного налогообложения, представляют собой серьезные препятствия на пути осуществления права на питание. Серьезным препятствием также является дискриминация коренных народов и женщин, особенно в том, что касается прав в сфере труда. Специальный докладчик весьма озабочен нарушениями права на питание, в том числе случаями принудительного выселения, продолжающейся практикой экспроприации земель коренных народов, нарушениями трудовых прав, случаями преследования и привлечения к уголовной ответственности за участие в мирных демонстрациях протеста и атмосферой безнаказанности, в которой совершаются эти нарушения. В связи с расширением масштабов либерализации торговли он обеспокоен тем, что Центральноамериканское соглашение о свободной торговле (ЦАССТ) приведет к расширению масштабов голода и нищеты среди наиболее уязвимых групп населения.

В заключение Специальный докладчик признает весьма важный прогресс, достигнутый в последнее время благодаря принятию нового закона и политики в целях обеспечения безопасности в области продовольствия и питания, а также специальных мер по решению проблемы голода, и предлагает вниманию правительства ряд рекомендаций относительно того, каким образом улучшить положение в деле осуществления права на питание.

Annex

REPORT OF THE SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD, JEAN ZIEGLER, ON HIS MISSION TO GUATEMALA (26 January-4 February 2005)

CONTENTS

Introduction

1. The Special Rapporteur on the right to food visited Guatemala from 26 January to 4 February 2005. He expresses his great appreciation to the Government of Guatemala for welcoming his mission and engaging in open and frank discussions on the right to food. In particular, he would like to thank Lars Pira, Ambassador of Guatemala to the United Nations in Geneva, for facilitating the mission. He also expresses gratitude to the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Guatemala, particularly Jane Werngreen and Alfonso Barragues, to the United Nations Country Team, especially Juan Pablo Corlazzoli, Resident Coordinator and Laura Clementi, Representative of the Food and Agriculture Organization of the United Nations (FAO).

2. During his visit, the Special Rapporteur had the honour to be received by Vice-President Eduardo Stein Barillas, Secretary for Food and Nutrition Security Andrés Botrán, and President of the Presidential Commission for the Coordination of Human Rights Policies (COPREDEH) Frank La Rue, as well as by the Minister and Deputy Minister for Foreign Affairs, the Minister of Agriculture and senior staff of the Ministries for Food Security, Health, Labour, Planning, Finance and Foreign Affairs. He welcomed the documentation provided to him by the Government with respect to the FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security on the Right to Food. He had the honour to be received by the wife of the President, Wendy W. de Berger and her Secretariat of Social Programmes and held meetings with senior members of the Secretariat of Social Welfare, the Women's Presidential Secretariat and the Defender of Indigenous Women. He appreciated meeting with Sergio Morales, the Ombudsman and the members of the Commission on the Strengthening of Justice. He was honoured to be received by Nobel prize winner Rigoberta Menchu. He is particularly grateful to Tom Koenigs, former head of the United Nations Verification Mission in Guatemala (MINUGUA), for his very valuable insights and to the Ambassador of Switzerland, Urs Stemmler, for his very kind hospitality.

3. During the visit, the Special Rapporteur appreciated meetings with a wide range of civil society representatives. He appreciated participating in the "National Forum on Right to Food as a Challenge to National Policy", an opportunity to catalyse greater action, and would thank FAO, FIAN and the Platform of Human Rights for organizing the meetings. He would like to thank Álvaro Ramazzini, Bishop of San Marcos and the Pastoral de la Tierra for organizing a number of local forums to hear testimonies of different communities. The Special Rapporteur visited rural and urban areas, including Nebaj, Quiché, Chichicastenango, San Marcos, Chiquimula, Chor'ti and Zacapa and the Zone 18 and Zone 7 of Guatemala City.

4. Guatemala is a beautiful and wonderfully diverse country. Much of its terrain is mountainous and volcanic, with forested highlands in the west, fertile lowland coasts, and the tropical forest of the Petén. With a population of 12 million people, Guatemala is a multi-ethnic society, speaking 24 languages (Spanish, 21 Mayan languages, Xinca and Garifuna) amongst different ethno-linguistic groups of which the largest are the K'iché, the Kaqchiqel, the Man and the Q'eqchi. It has been a contested point, but it is now agreed that indigenous peoples make up more than half of Guatemala's population (63 per cent).[1] The majority of the population live in rural areas (54 per cent), but Guatemala is becoming increasingly urbanized (46 per cent). Guatemala's economy is still largely based on exports of coffee and sugar, with agriculture

providing work to at least 36 per cent of the population, although *maquila* (large factories producing finished goods for export) activities, extractive mining industries, energy, commerce, and services, including tourism, have become important economic sectors. Guatemala is not a poor country, but it is one of the countries with the most inequitable distributions of wealth in the world, and the majority of its population is poor and hungry, particularly indigenous peoples.

5. After a 36-year civil war in which more than 200,000 women, children and men were brutally killed or "disappeared", Guatemala returned to peace with the Peace Accords of 1996 and a vision for a more inclusive future built on the respect of human rights and social justice. However, progress in implementation has been slow, and although the human rights situation has improved, violations of the right to food persist, particularly with persistent agrarian conflict. Poverty is widespread, and Guatemala has the highest level of malnutrition in Latin America, concentrated amongst the indigenous peoples. However, the election of a new Government dedicated to the respect of democratic principles in 2004 has brought signs of hope, with public commitments to human rights and to make the fight against hunger a priority.

I. HUNGER AND FOOD INSECURITY IN GUATEMALA

A. Hunger and food insecurity

6. Chronic child malnutrition is more than twice as high in Guatemala than in most countries of Latin America and among the highest in the world (only higher in Yemen and Bangladesh).[2] Today, half of Guatemalan children under the age of five are stunted,[3] far more indigenous (70 per cent) than non-indigenous (36 per cent).[4] Acute malnutrition is concentrated in the poorest regions, particularly the northeast,[5] although in the wake of recent crises, including the collapse in world coffee prices and localized droughts in 2001, acute malnutrition levels have increased in the east, south coast and the west, and there has even been the reappearance of kwashiorkor.[6] More than 15,000 Guatemalan children under the age of five die every year.[7]

7. Widespread hunger and malnutrition in Guatemala is not simply a question of the availability of food, as Guatemala's land could theoretically feed the whole population. It is more related to inequities in the distribution of resources and people's access to food. The distribution of wealth in Guatemala is one of the most inequitable of all the countries in the world, and the concentration of wealth is extreme - 5.6 per cent of the richest households control 50 per cent of total income.[8] Economic growth has not reduced inequality, with the benefits of growth accruing mainly to the rich.[9] Land ownership is highly concentrated, with 2 per cent of the population owning up to 70-75 per cent of agricultural land. According to non-governmental organizations (NGOs), 47 huge plantations take up over 3,700 hectares, with vast tracts of land remaining uncultivated, while 90 per cent of small farmers survive on less than 1 hectare.[10] Such extreme inequality means that the majority of Guatemalans are excluded from development, with hunger and exclusion contributing to crime and social conflict. During the visit of the Special Rapporteur, a 15-year-old boy was killed on 24 January 2005 for stealing a fruit from Finca El Corozo, and four peasants were killed when they went looking for the child.[11]

8. Two thirds of Guatemala's people are too poor to feed themselves adequately - in more than 60 per cent of Guatemalan homes, spending on food does not meet minimum daily dietary requirements.[12] According to Government statistics, one third of Guatemalan families cannot afford even half a minimal food basket (2,172 calories per person per day).[13] The statutory

minimum wage is not set in relation to food costs and purchases only 56 per cent of the food basket. Food prices have increased faster than the minimum wage[14] and the price of tortillas, Guatemala's basic staple food, increased by 66 per cent over 2004.[15] More than half the population (56 per cent) live in poverty,[16] mostly in rural areas in the north and northwest regions, the Department of San Marcos, and the southwest region.[17] Extreme poverty is highly concentrated amongst the indigenous peoples (70 per cent), particularly the Mam and the Q'echi, reflecting serious discrimination against indigenous populations.[18]

9. The hungry and malnourished are predominantly indigenous people and poor peasant farmers or agricultural workers living in rural areas.[19] Poor subsistence farmers lack access to sufficient, good quality land and survive on *microfincas* (smallholdings) of less than one hectare of unproductive land, while farmers told the Special Rapporteur they would need 25 hectares of fertile land to feed their families adequately. Hunger and malnutrition levels are closely linked to the quantity of land held - children of families possessing less than 2 *manzanas* of land (6,987 m^2 = 1 *manzana*) are 3.2 times more likely to be malnourished than families possessing more than 5 *manzanas*.[20] On average, indigenous households hold 0.25 *manzanas* per person, whereas non-indigenous households have 1.5 *manzanas*, six times more land.[21] Many *campesinos* (peasant farmers) earn extra income as temporary agricultural workers during harvest on the coffee, sugar and fruit *fincas* (estate farms), but this still is insufficient to meet their nutrition needs.[22] Permanent workers on the *fincas*, often tied into a *colono* system (under which landowners provide subsistence plots in exchange for labour), also work for extremely low wages. The statutory minimum wage has risen in recent years, but many landowners have shifted to payment per task instead of per day to minimize the impact. Landowners often avoid paying legal entitlements by dismissing workers repeatedly to keep them on non-permanent contract status,[23] and often dismiss workers that negotiate for better conditions.[24] Persistent discrimination against indigenous peoples is reflected in an extremely high wage gap between indigenous and non-indigenous workers. Gender discrimination is also pervasive, and it is reported that many landowners do not even pay women or children for their work - they are considered husband's "helpers".[25] Women suffer multiple discrimination - as women, as poor, as rural residents and as indigenous,[26] - and rarely own land or other assets. Child labour also remains common in Guatemala, with around half a million children working in coffee and sugar plantations. Migrants are also particularly vulnerable to poverty and hunger.

10. After the recent collapse in world coffee prices, many landowners did not pay salaries to their workers, leaving many in extreme poverty. Agricultural workers on large *fincas* provided testimonies that they had not been paid for work already undertaken, and that the response to their claims was violent repression and forced eviction from the estates where they had lived all their lives. Church organizations, such as that led by Álvaro Ramazzini, Bishop of San Marcos, help families to survive by providing food donations and help workers to bring cases to local courts, although workers rarely win, and even when they do, legal orders are reportedly rarely enforced. Although the previous Government instituted a "Policy Plan Concerning the Coffee Crisis and the Agrarian Conflict" (2002), and pledged US$ 100 million to coffee plantation owners, safety net programmes for the workers were not fully implemented.[27] Renting or leasing of land was encouraged, but farmers spoke of the semi-feudal nature of leasing agreements, requiring that half the harvest be given back to the landowner.

11. Land occupations increase as communities desperately search for ways of feeding themselves. Occupations occur mostly when landowners have violated labour rights, or where

land ownership is disputed. There are often multiple claims to the same land, following a history of land expropriation by powerful landowners. The Special Rapporteur visited an Ixil indigenous community of 270 families in Antigua Xonka, occupying land they believe was expropriated from them. They 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 always return however, having nowhere else to go. 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.

12. The response of the Government to increasing land occupations has been forceful. NGOs reported 40 forced evictions in the first six months of 2004, affecting 1,500 families,[28] over half of which allegedly involved the use of extrajudicial executions, excessive force and the burning of crops and homes. The Special Rapporteur recognizes the role of the authorities in protecting property, but the use of disproportionate force that places property rights of large landowners above the right to food and the right to life is of serious concern. As Amnesty International noted:

> "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 workers or land tenure of rural communities."[29]

13. In urban areas, hunger and malnutrition is closely linked to rural landlessness. Many of the urban hungry live in the *colonias* (legalized slums) or *asentamientos* (illegal slums) on the outskirts of Guatemala's cities. Unemployment levels are high and most people survive in the informal sector, mostly in petty trading. About 40 per cent of people are unemployed, underemployed or employed in non-paying jobs.[30] Human rights violations are common with poor working conditions, and wages insufficient to feed a family. Widespread violations of worker's rights are reported in the *maquila* factories that employ mainly young women at very low wages, although some *maquilas* are closing to move to even lower-wage countries. In Guatemala City, the Special Rapporteur visited Bethania, a legalized slum where 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. Many think that the high rates of criminality, violence and murder in Guatemala City are closely linked to extreme poverty and social exclusion. With few employment opportunities, young people join gangs involved in narcotics trafficking and terrorizing of the settlements, and even the bravest health workers can only work for a few hours a day in the morning when gangs are not present.

14. Access to water is problematic in urban areas, especially in illegal slums, but particularly in rural areas. Over 65 per cent of the rural population lack access to an improved source of fresh water, or sanitation. Municipalities are responsible for water, but only 4 per cent of the 331 municipalities treat the water they provide.[31] Access to water is also highly unequal - according to NGOs, if gold mining is established in San Marcos, it would require 70,000 litres of water per hour for processing, which would reduce the river and springs on which many local residents depend. Risks of water contamination from open-pit cyanide leaching are also extremely high, particularly in the absence of a sound regulatory framework for water policy.

B. A history of social conflict

15. Guatemala's long history of economic inequality, exclusion of indigenous peoples and social conflict, largely explain the country's hunger and food insecurity today.

Inequities in the land regime

16. Guatemala has one of the most unequal land distributions in the world, given a long history of land expropriation from indigenous people.[32] Land expropriation started with the Spanish Conquest, but accelerated in the 1800s with the growth of coffee production. At that time, *ejidos* (communally-held indigenous lands) were nationalized or privatized into individual holdings, with the aim of consolidating the land into large *fincas* for commercialized coffee production. As the best coffee is cultivated at altitudes of between 800-1,500 m, many indigenous people were forced to relocate to steeper, less fertile ground for subsistence farming.[33] Lowlands were also expropriated for the growing of fruit - in the 1940s, the American-owned United Fruit Company owned 42 per cent of Guatemala's land. The pattern of land concentration was briefly interrupted in 1944 during the governments of Juan José Arévalo and Colonel Jacobo Arbenz Guzman, but a military coup in 1954 ended land redistribution and land was consolidated even further. Land concentration and growing landlessness contributed to Guatemala's ensuing 36-year civil war (see below), yet the war exacerbated the situation as the military and landowners forcibly controlled more land. Today, land remains highly concentrated, and many historical claims of indigenous communities and even claims of refugees and people displaced by the conflict are still not resolved.

Lack of labour rights

17. During the 1800s, forced labour of indigenous peoples supported the growth of the coffee plantations.[34] Land policies were deliberately designed to create cheap labour forces by reducing the land available for indigenous people's own subsistence activities.[35] Under the *Mandamiento* forced labour system for example, indigenous villages were forced to provide work crews of 60 people for 15 to 30 days to coffee plantations, and to provide free labour to build roads. Forced labour laws remained in place until the mid-twentieth century, with modern labour rights only established in the 1980s, although still not always enforced. The semi-feudal *colono* system persists in many regions today. Today, almost 70 per cent of employment is outside the formal sector and legal protection and workers faced limits on unionization. The statutory legal minimum wage is set so low that it does not cover the cost of a minimum food basket.

Discrimination against indigenous peoples

18. Racial discrimination between the indigenous and *ladino* (of mostly mixed Maya-Spanish ancestry) populations persists in Guatemala. Although many of the legal institutions have been overturned, de facto discrimination persists, reinforcing discrimination in employment and ownership of resources, a key cause of concentration of hunger and malnutrition amongst indigenous peoples. The Peace Accords focused on fighting discrimination and recognizing the rights of indigenous peoples. However many organizations report that these are the least accomplished parts of the Accords.[36] The Special Rapporteur was shocked to see that even today many restaurants and bars will not serve people wearing indigenous dress. He was

honoured to meet the well-known indigenous leader, Rigoberta Menchu who has remarkably brought, and won, Guatemala's first case on racial discrimination, which is a sign of progress.

Armed conflict

19. Guatemala's terrible 36-year conflict (1960-1996) erupted into a full-scale civil war in the 1980s, largely as a result of the social conflict generated by extreme inequality and social exclusion. Indigenous peoples and rural peasants became the targets of a repressive counterinsurgency effort by the military that "reached genocidal proportions in the early 1980s, executing scorched earth warfare tactics, mandatory paramilitary civilian self-defence patrols (PACs), forced resettlement camps, and the militarization of the entire administrative apparatus of the country".[37] During the conflict, more than 200,000 women, men and children were brutally killed or "disappeared" and a million people were displaced from their homes and lands. Over 600 villages were completely destroyed and most of their residents massacred.[38]

The 1996 Peace Accords: framework for a more equitable future

20. With the Peace Accords that formally ended the war in 1996, a central aim was reverse historical exclusion, discrimination and inequality. The 13 Accords provided a framework for deep political, economic, social and cultural change.[39] The "Accord on Socio-economic Issues and the Agrarian Situation", laid out plans to increase social spending, improve access to education, health, public services, and land, to establish mechanisms to resolve agrarian conflicts and develop a rural development policy. These measures were to be financed by important tax reforms to raise government revenues from 8 to 12 per cent of GDP. The "Accord on the Identity and Rights of Indigenous Peoples" proposed the recognition of Guatemala as a multi-ethnic, multicultural and multilingual nation, and identified specific measures for overcoming historical exclusion and exploitation, including measures on land rights, the regularization of land tenure of indigenous communities, the restitution of expropriated communal land and legal protection of the rights of indigenous peoples. However, the rejection of constitutional reforms in a referendum in 1999 slowed progress in turning these political commitments into reality, and the lack of political will has left many of the broader issues unresolved. According to MINUGUA, progress on the fulfilment of the Peace Accords has been slow, partial and insufficient, and has faced much resistance from powerful groups.

II. LEGAL FRAMEWORK FOR THE RIGHT TO FOOD IN GUATEMALA

A. International obligations

21. Guatemala has an obligation to the right to food under the International Covenant on Economic, Social and Cultural Rights (art. 11). It is also party to other international instruments relevant to the right to adequate food, including the International Covenant on Civil and Political Rights (art. 6), the Convention on the Rights of the Child (arts. 24 and 27), the Convention on the Elimination of All Forms of Discrimination against Women (arts. 12 and 14), the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5), and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador") (art. 12).

22. Under the commitment to the right to food, Guatemala has the obligation to respect, protect and fulfil the right to food, without discrimination. The obligation to respect means that the Government should not take actions that arbitrarily deprive people of their right to food. The obligation to protect means that the Government should adopt and enforce appropriate laws to prevent third parties, including powerful people and corporations, from violating the right to food. Finally, the obligation to fulfil (facilitate and provide) means that the Government should take positive actions to identify vulnerable groups and implement policies to ensure their access to adequate food and water by facilitating their ability to feed themselves. As a last resort, the Government is required to provide adequate food and water to those who cannot feed themselves, for reasons beyond their own control. The right to food includes access to drinking water and to the means to buy, exchange or produce food, i.e. a sufficient wage, land, credits, seeds and irrigation water necessary for subsistence agricultural production. Non-discrimination, participation, accountability, access to justice and access to information must be ensured at all times of the implementation of the right to food.

23. Guatemala is party to the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169). Under this Convention, the Government is required to respect indigenous peoples' rights to land and territories (arts. 13 to 17), including their collective aspects. These articles also require that indigenous peoples are not displaced from their lands, and that their rights 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.

B. Domestic constitutional and legislative framework

24. Guatemala also has a national constitutional obligation towards the right to food, specifically for vulnerable groups of children and elderly people. Guatemala's progressive 1985 Constitution (revised in 1993) includes the protection of economic, social and cultural rights without discrimination (arts. 50 and 51). The Constitution requires the Government to establish an effective national food system (art. 99), ensure social assistance for all (art. 94), and adopt a national framework law on water (art. 127). The Constitution also protects the rights of indigenous peoples, including access to land and the right to maintain traditional forms of land administration (arts. 66 to 69). The right to property can be limited, if the State lawfully decides to expropriate private properties for public interest or social benefit (art. 40). The Constitution enshrines the right to work, freedom of association and the right to form and join trade unions, and equality between men and women (arts. 93 to 106). Under the Constitution, international human rights treaties take precedence over domestic law (art. 46). They must therefore be applied and taken into consideration by all organs of the Government - executive, legislative and the judiciary.

25. Guatemala's current legislative framework includes laws and government regulations that are important for the right to food. The current Government has drafted an important new law on the national system for food and nutritional security, which entered into force on 2 May 2005. This recognizes the Government's international obligations towards the right to food and defines the right to food as:

> "The right of every person to have physical, economic and social access at all times to food of adequate quantity and quality, in accordance with cultural preferences, preferably of national origin, and biologically adequate, in order to sustain a healthy and productive life." (Art. 1.)

26. This also recognizes the obligations of the Government to respect, protect and fulfil the right to food, and prohibits de jure and de facto discrimination in access to food and to the means to obtain food. Any such discrimination constitutes a violation of the law, which provides an excellent basis for the justiciability of the right to food. In the application of this law by the judiciary, violations should also include any violation of the obligations to respect, to protect and to fulfil the right to food.

27. A number of important laws have emerged out of the Peace Accords. The Law on Social Development (2001), the Urban and Rural Development Councils Act (2002), the Municipal Code (2002) and the General Law on Decentralization (2002) are important new laws that try to ensure more participation and effective decentralization. They give greater autonomy to Guatemala's 331 municipalities, allowing more participation of indigenous communities in departmental development councils and municipal administrative bodies. The Special Rapporteur saw a positive example of decentralization during his visit to the country, when he met with representatives of the Mesa de desarrollo y seguridad alimentaria del area Ch'orti, a coordinating body for the development and food security of four important municipalities - Jocotan, Camotan, Olopa and San Juan Ermita - in which 190,000 people are living. In ensuring participation and access to information, these municipalities have made considerable progress in the fight against hunger and malnutrition.

28. Despite important recent legislative progress, including substantial improvements of the Labour Code and the adoption of the Law on Land Registry, the national legal framework still remains inadequate on several important issues related to the right to food, including access to land and land tenure, water and mining. In a country with such a history of land conflicts and expropriations, the continued lack of an effective *cadastro* (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. All required under the Peace Accords, these elements are essential for the effective protection of the right to food in the country. The absence of any water law, despite being a constitutional commitment, is also of great concern. The Law on Mining is also of concern to the Special Rapporteur, as it does not provide adequate protection for the rights of indigenous communities over their natural resources, including their rights to be consulted in accordance with the ILO Convention No. 169. Finally, de jure discrimination against women remains institutionalized in article 139 of the Labour Code, which describes rural women as "helpers" of the male agricultural workers, rather than as workers entitled to receive their own salary, which has serious implications for women's right to food.

C. Access to justice and human rights institutions

29. The right to food is a legal obligation, and any person or group of persons victim of a violation of the right to food should have access to effective remedies, including judicial, to claim this right.

30. Guatemala has a complex legal system, which includes customary law and community courts in indigenous peoples' areas, and State law and courts at the municipal, departmental and national levels (court of appeal and the Supreme Court). The Constitutional Court also has a special mandate to protect and enforce the Constitution. The Constitution guarantees free access to justice (art. 29) and victims of a violation of a fundamental right can use the procedure of *amparo* (right to due process) to claim their rights before the Supreme Court and the Constitutional Court. In practice, however, access to justice for victims of violations of the right to food is limited by several factors. These include the non-application of international human rights treaties and conventions by the judiciary, the lack of adequate protective national legislation, especially on land, water and mining, corruption and the lack of enforcement of existing legislation, administrative measures and judicial decisions, especially on labour. Indigenous peoples have particular difficulties in access to justice, given discrimination, the lack of legal interpreters, and the non-recognition of customary law and indigenous legal authorities. All these elements result in de facto impunity for violations of human rights (see E/CN.4/2003/104/Add.2, paragraph 63 of the report of the Special Representative of the Secretary-General on the situation of human rights defenders). Repeated threats against the judiciary and human rights defenders, including the Office of the Ombudsman, indigenous leaders, trade unionists, religious officials and journalists also persist, with more than 150 threats or attacks against human rights defenders reported from January 2004 to February 2005.[40]

31. Important progress has been made however in the strengthening of the Office of the Human Rights Ombudsman, currently headed by the courageous and outspoken Ombudsman, Sergio Fernando Morales Alvarado. His mandate includes the right to food, as it includes the promotion and protection of all human rights recognized in the Constitution and in international treaties ratified by Guatemala. In spite of serious budget limitations and threats and attacks against his staff and offices, the Human Rights Ombudsman is doing an impressive job in protecting vulnerable groups and individuals through mediation, conciliation, quasi-judicial decisions and legal assistance, as well as recording violations. A special section currently deals with economic, social and cultural rights and another thematic section is working on land and other issues related to the right to food. As the new Law on the National System for Food and Nutritional Security (in article 15. j) also gives the Ombudsman an important mandate to monitor the Government's fulfilment of its obligations to respect, protect and fulfil the right to food, a special unit on the right to food should be established within the Office to deal with this issue, provided with adequate human and financial resources.

32. The Presidential Commission, for the coordination of human rights policies COPREDEH, headed by the well-respected Frank La Rue, also now plays an important role in improving respect for human rights, as does the Congress's Human Rights Commission. These institutions were decisive in the recognition of the right to food in the elaboration of the new Law on the National System for Food and Nutritional Security, and have worked closely with the Secretary for Food and Nutrition Security Andrés Botrán. Within COPREDEH, the Defender's Office for Indigenous Women provides mediation, conflict resolution and legal services for indigenous women. Another State institution, the Office of the Public Prosecutor, could have a more important role in the protection of the right to food, if the mandate of its Special Prosecutor for Crimes against Human Rights Defenders could include the right to food.

III. POLICY FRAMEWORK FOR THE RIGHT TO FOOD

A. Government policies and institutions

33. The Special Rapporteur was impressed by the recent awakening of public awareness of hunger and malnutrition in Guatemala. This is largely due to the current Government which, on election in 2004, declared the elimination of hunger to be one of its highest priorities. At the time of the visit of the Special Rapporteur, a potentially powerful new legal and policy framework was being put in place for the realization of the right to food. The Secretary for Food and Nutrition Security was appointed to lead the *Frente Nacional Contra el Hambre* (National Front Against Hunger), and the President's wife, Wendy de Berger has also joined to bring the fight against hunger, focusing on the *Creciendo Bien* programme. Other programmes designed to address food insecurity include the Programme for the Reduction of Chronic Malnutrition (Programa de Reducción a la Desnutrición Crónica), which aims to halve the level of child malnutrition over the next 10 years, as well as programmes such as *Guate Solidaria, Guate Crece* and *Guate Compite.*

34. A new policy framework, the 2004 "National Policy on Food and Nutrition Security", explicitly recognizes Guatemala's obligation to realize the right to adequate food and nutrition. It sees food *availability* as problematic because of the increasing dependence on food imports and a fall in the production of basic staple foods. However, it recognizes that *access* to food is the key problem, given falling incomes, unemployment and low wages. Poor sanitation and lack of education, also affects food *utilization* especially amongst women. To improve food availability, the framework promotes greater local production of staple foods, and to improve access to food, it proposes income-generation opportunities, setting up food assistance programmes, and revising the statutory minimum wage.[41] It also requires improvements in budget allocations for food and nutrition security, although these are not specified. The Special Rapporteur was concerned that while the policy fully recognizes the right to food, it does not explicitly recognize the different obligations of the Government to respect, protect and fulfil the right to food (as laid out in the 2005 Law). He was also concerned that the policy does not address the structural causes of hunger and inequality, is not situated within the framework of the Peace Accords and does not address the complex issues of land, labour and fiscal reform.

35. The institutional framework has been strengthened with the creation of CONASAN (the National Council on Food and Nutrition Security), to promote programmes on food and nutrition security, and with the creation of SESAN (the Secretariat for Food and Nutrition Security) which is responsible for coordinating all the programmes and initiating concrete activities. The hunger early warning system SINASAN (National System for Food and Nutrition Security), monitors and evaluates the impact of food security programmes and provides an early warning to identify potential crisis situations. The Special Rapporteur was encouraged that under the 2005 law, CONASAN would also have a responsibility to respond to the recommendations of the Human Rights Ombudsman in relation to the right to food.

36. A draft document outlining a framework for a national strategic plan for food and nutrition security has been elaborated by the National Front Against Hunger. The plan, which will be finalized in 2006 with broad-based participation, will set out key objectives, benchmarks and impact indicators and a long-term budget, as well as outlining the responsibilities of the different ministries. However, progress will be narrowly focused on malnutrition statistics, but not

statistics on undernourishment and poverty which are also important, and the plan does not fully address the structural problems of land reform, labour rights, and non-discrimination in employment and education.

37. Within the framework of the Peace Accords, some progress was made on the question of land with the establishment of CONTIERRA, an organization for mediating land disputes, but the lack of funding and institutional instability has meant that of the 909 cases that have come before the agency, very few have been resolved.[42] A land fund, FONTIERRA, was also created for market-based redistribution, providing credit for land purchases, and has redistributed 76,493 hectares to 15,996 families. However, this is far below demand of up to 300,000 rural families, and it continues to receive less than its mandated budgetary allocation. It is now generally agreed that FONTIERRA did not work effectively. Gender discrimination has also meant that only 11 per cent of the land credits have been granted to women.[43] The Government has established the legal framework for the *cadastro* (land registry), which will serve to clarify the disarray of existing land titles and multiple claims to the same land, as a result of historical expropriations. Many large landowners claim landholdings much greater than they have in official title, some having extended landholdings by force, and others having understated landholdings to avoid payment of land tax. However resistance from powerful landowners who do not want their boundaries formally delineated, as well as some resistance from indigenous communities (after a history of massacres) continues to slow the creation of the land registry. A crucial test for a future land registry will be how it mediates multiple claims to land, particularly avoiding formalizing ownership of land obtained via corruption or coercion. Some military and landowners continue to occupy land that was taken during the war, and there has been no adequate resolution of land claims of the many refugees and people displaced, nor has there been restitution of expropriated lands to indigenous people. As pointed out in the report of the Secretary-General on MINUGUA to the fifty-ninth session of the General Assembly, there has been little progress in "creating an agrarian legal code, reviewing the status of idle lands and lands illegally acquired during the armed conflict: and establishing legal security for land held communally by indigenous groups" (A/59/307, para. 54).

38. The Ministry of Labour is responsible for the implementation of workers' rights, but often fails to enforce the *Código de Trabajo* and the minimum wage, given strong resistance from big business interests.[44] Workers are often afraid of reprisals if they claim their rights, given the lack of State protection against abuses by *patrones* (proprietors). Combating gender discrimination is the responsibility of the Foro de la Mujer, the Defensoria de la Mujer Indigena and the Secretaria Presidencial de la Mujer, established in response to the Peace Accords. However, women still face discrimination in relation to wages and land ownership, and often do not even have identity documents.[45]

39. Some progress on discrimination against indigenous peoples has been made with the establishment of the *Consejo Asesor sobre Pueblos Indigenas*, but its budget has remained very low. The Presidential Commission has stated that discrimination remains pervasive and aims at "the maintenance of economic, political, sociocultural and spiritual control over the indigenous peoples".[46] Little progress has been made on the recognition of indigenous law, of indigenous rights to land and their rights over the use and administration of natural resources on their territories,[47] with the justice system failing to resolve the claims of communities and individuals, but rather criminalizing social conflicts over land and the use of natural resources.[48]

40. In terms of responsibility for water policy, the Special Rapporteur was concerned that this did not seem to be a priority. There is no Ministry for Water, but responsibility is delegated to municipalities. Although a Commissioner on Water was appointed in 2004, there is still no national law on water, although such a law was envisaged in the 1985 Constitution, as the draft law was criticized by civil society and withdrawn from Congress. There is no national policy on drinking water and irrigation, despite the fact that 55 per cent of the rural population still has no access to drinking water.

41. Access to health centres for the treatment of malnutrition and related diseases also remains problematic, although the Special Rapporteur was impressed to meet with Cuban doctors in the health centres, where vaccination and care is offered free of charge, and learned that approximately 700 Cuban doctors staff over 100 public health centres, mostly in the highlands and vulnerable urban communities, while over 600 Guatemalans are studying medicine on scholarship at Cuban universities.

B. United Nations specialized agencies

42. The mandate of MINUGUA, which oversaw the peace process under the astute guidance of Tom Koenigs, ended in 2004. Today, the United Nations system is represented through its specialized agencies, including the United Nations Development Programme (UNDP), FAO and the World Food Programme (WFP). Issues of malnutrition, food security and agriculture are high on the agenda of the United Nations agencies. The United Nations 2004 Common Country Assessment for Guatemala and United Nations Development Assistance Framework process adopts a strong rights-based approach to the situation in Guatemala. It is particularly concerned about the lack of fulfilment of the Peace Accords, persistent impunity, lack of access to justice and the lack of real progress in economic, social and cultural rights, as well as women's rights and indigenous rights. OHCHR in Guatemala has taken up and very effectively promoted the issue of the right to food, and the United Nations country team, especially WFP, United Nations Children's Fund and the World Health Organization have worked closely with the Government to promote the new legal and policy framework, as well as implementing programmes linked to food and nutrition security.

C. Non-governmental organizations and associations

43. Guatemala has a strong and vibrant civil society, made up of social movements and NGOs fighting for human rights, including the right to food. The key concern of most of the organizations with which the Special Rapporteur met, is the intensification of the rise in forced evictions and the criminalization of peasant protests. They have recorded 30 forced evictions with no due process since the beginning of 2005, with a disproportionate use of force that has resulted in at least 30 deaths. Many were particularly concerned about the general criminalization of the peasant movement and human rights defenders, seeing a rise in the arrest and detention of peasant leaders. Many organizations also called for better participation and for prior, informed consent on development policies and exploitation of indigenous lands for mining concessions. They denounce exclusionary development where local populations receive no benefit from the exploitation of Guatemala's natural resources. Bishop Alvaro Ramazzini, for example, has called for 50 per cent of the profits of gold mining to be returned to Guatemala, arguing that Guatemala's gold revenue should be spent on social services for the local indigenous populations. Many organizations were concerned that current Government

programmes to fight hunger tended to be assistencialist and did not address the root of the problem. They see the model of export-orientated agriculture based on coffee and non-traditional exports as threatening traditional food security, and were concerned that the negative impacts of liberalization would be intensified with the passing of the Central American Free Trade Agreement (CAFTA).

IV. MAIN FINDINGS AND CONCERNS

A. Progressive realization of the right to food

44. Under the right to adequate food, the Government of Guatemala is required to ensure the progressive realization of the right to food over time, to the maximum of its available resources.

45. The Special Rapporteur welcomes the positive progress made in reducing poverty and malnutrition over the 1990s.[49] However, the Special Rapporteur was concerned that these gains appear to have been made mostly amongst the better off, with a widening gap between rich and poor.[50] He was also concerned by signs of regression since 1998, with both chronic malnutrition increasing (from 46.4 to 49.3 per cent between 1998 and 2002[51]) and the levels of extreme poverty rising (from 15.7 to 21.5 per cent between 2000 and 2002), particularly in rural areas.[52] FAO statistics suggest a serious increase in levels of undernourishment, from 16 to 24 per cent between 1990/1992 and 2000/2002.[53] Broader social indicators are also deteriorating, with Guatemala falling from rank 117 to 121 on the UNDP Human Development Index between 1999 and 2004. The Special Rapporteur believes that this amounts to a regression in the realization of the right to food.

46. The Special Rapporteur was concerned that Guatemala is not using the maximum available resources to fight hunger. Despite commitments in the Peace Accords to raise social spending to 12 per cent of the expenditure as a percentage of GDP, Guatemala still has one of the lowest levels of social spending in Latin America, with less than 5 per cent of the budget spent on social services, and only 1.5 per cent on health and nutrition.[54] As MINUGUA has reported "One of the main limitations has been the chronic lack of Government funds, linked to the refusal by economic elites to pay higher taxes to finance an expansion in State services benefiting primarily the poor".[55] The current tax system is regressive, imposed largely through consumption taxes such as VAT which is charged even on basic food staples. The "Fiscal Pact" signed in 2000 brought hope, but has not been realized.

B. Violations of the right to food

47. Under its commitment to the right to food, the Government undertakes obligations to respect, protect and fulfil the right to food, without discrimination, but the Special Rapporteur was concerned by reports of persistent violations of the right to food, some examples of which are outlined below.

Forced evictions by State agents

48. It is reported that more than 31 evictions occurred in the first six months of 2004, over half of which were violent.[56] In the case of the *Nueva Linda* farm (Champerico, Retalhuleu), it is alleged that on 31 August 2004, 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 destruction of the communities' crops and houses.[57] In another case recorded at *El Maguey* farm (Fraijanes), it is alleged that a group of 86 peasant families has been forcibly evicted from their land by the police and the army on several occasions over the last two years, with their crops and irrigations system destroyed, despite the recognition that they own the land in a Governmental Agreement dated 7 April 2003 and a Constitutional Court decision dated 4 May 2004.[58]

Expropriation of land of indigenous communities by third parties

49. The historical expropriation of land from indigenous communities was exacerbated during the conflict and continues today. Even with CONTIERRA supervision and local records of land ownership, the right to land of indigenous communities is consistently violated. In one case at *La Perla* farm (Quiché), it is alleged that the landowner extended his farm, under the repression of the army and paramilitary during the conflict, into the 2,200 hectares that are recorded in the local property registry as belonging to two indigenous communities (Sotzil and Ilom). Despite being recognized by CONTIERRA, the situation of the indigenous families has not improved and their land tenure remains insecure.[59] As well as living under constant threat of violent eviction, they lack access to adequate food, water, health and education.

Impunity for violation of labour rights

50. Violations of labour rights in the Labour Code by powerful *patrones* persist with impunity. During his visit, the Special Rapporteur met with hundreds of agricultural workers on large estates, including *San Geronimo*, *La Doble Cota*, *Carolina*, *Alabama Grande* and *Las Delicias* farms, who were waiting for an administrative or judicial decision that will require employers to pay unpaid wages. The workers were living a precarious existence that threatens their right to food. In one case, at the *Nueva Florencia* farm (Colomba, Quetzaltenango), it is alleged that in 1997, immediately after having founded a union, 32 male and female workers were dismissed from the Nueva Florencia farm, without compensation. After seven years of legal proceedings, and despite two final decisions of the Constitutional Court in 2000 and 2003 ordering the reincorporation of the workers and the reimbursement of their unpaid salaries, the workers and their families are still without work.[60]

Exclusionary development and repression of peaceful protest

51. Demonstrations against exclusionary development are often met with violent repression that can amount to violations of the right to food. For example, in the long-standing, unresolved conflict over the construction of the Chixoy Dam, it is alleged that between 1980 and 1982, 440 persons of the Rio Negro community were brutally murdered and indigenous communities were forcibly evicted, their land, crops and housing destroyed for the dam construction. After persistent peaceful protests, an agreement was finally reached on 8 September 2004 between the Government, the Human Rights Ombudsman and the electricity company to negotiate compensation for indigenous communities and to provide the remaining community living near the dam with free running water and electricity. However, this agreement was suddenly voided when the electricity corporation presented a formal complaint against members of the dam-affected communities for participating in the protest, calling this an "activity against

national security". In another example, the army and police were also used against indigenous populations during a blockade of trailers carrying milling cylinders for Glamis Gold's Marlin mine in the western department of San Marcos, and led to the killing of Raul Castro Bocel and Miguel Tzorín Tuy on 11 January 2005. Indigenous communities allege that the Government granted a mining licence to the corporation for the exploitation of a gold mine on their land without seeking their free and informed consent, and are concerned that their right to water and right to food will be violated by the open-pit cyanide leaching process of the gold mining that will poison drinking and irrigation water. During demonstrations against CAFTA in March 2004, the army and the police employed tear gas, water cannons and rubber bullets, causing at least one death (Juan Lopez Velásquez on 14 March 2005[61]).

C. Obstacles to the realization of the right to food

52. In terms of per capita income, Guatemala is a comparatively rich country and the persistence and level of chronic hunger is absurd. The Special Rapporteur believes that there are a number of key obstacles to the realization of the right to food in Guatemala.

53. The first is Guatemala's model of exclusionary development that has concentrated wealth and power in the hands of a small elite. This persists today, given the continued resistance of powerful groups to structural change envisaged in the Peace Accords, particularly in relation to key structural issues of land, labour, non-discrimination and fiscal reform. The failure to resolve the land question, including "land-grabbing" during the war and the historical inequities of land ownership, as well as the failure to resolve the issues of the cadastre, individual and collective land titles, restitution and redistribution of land will continue to be a serious obstacle to the right to food. Market-based land reform does not appear to be adequate to redress extreme inequality and the unjust, historical expropriation of the land. The Special Rapporteur was concerned by a perception amongst the elite that the indigenous people are "stupid" for claiming their land. Discrimination against indigenous peoples and against women, reflected for example in inadequate labour rights, also continue to be serious obstacles.

54. A second serious obstacle to the right to food is persistent impunity for violations of human rights, and the lack of equality before the law for Guatemala's people, evident in the unequal protection of land and labour rights of peasants, in discrimination against indigenous peoples and in the criminalization of social protest. For example, while the non-payment of salaries to workers is classed as a minor misdemeanour, social protest and land occupation is considered a crime and the full force of the law is brought down on peasants and indigenous populations. There remains a tendency to privilege the interests of the economic elite over those of the majority of people, as seen in the policy of forced evictions which put a higher priority on defending private property than on defending the right to life and the right to food.

55. The model of export-orientated agriculture has long been an obstacle to the realization of the right to adequate food. Guatemala provides a clear example of how agricultural modernization has created greater hunger and poverty, as peasants have been pushed off their land to make way for large-scale plantations. Today, liberalization is devastating the remaining peasants[62] and the production of basic staple foods has been hit by competition from cheap imports. Since 1990, the production of basic grains has declined nationally, while imports of staple commodities have increased by 170 per cent over the same period.[63] Only 20 per cent of food is now locally produced. While powerful interests in Guatemala may benefit from

export-orientation and trade liberalization, the poor are finding it increasingly difficult to subsist, particularly in a context of lack of alternative employment. The Special Rapporteur believes that further free trade agreements, such as CAFTA, are likely to exacerbate the loss of livelihoods and increase food insecurity for indigenous and peasant communities. One study of the possible future impacts of CAFTA, suggests that while its impacts might be positive for urban areas, they will likely be negative for rural households.[64] While there is a transition period envisaged for rice and beans (15-18 years), there are concerns that yellow maize will displace the production of white maize.

56. While the Special Rapporteur was impressed by the efforts of the current Government to fight hunger, he was concerned by the lack of continuity between administrations, given the limited four-year term of each Government. While each new Government spends time and resources on new strategies and new laws, little time is left for concrete implementation. The Special Rapporteur therefore hopes that all the policies and laws being put in place in relation to hunger and poverty will be maintained and implemented by the next administration. The current Government is establishing long-term programmes, and aims to raise social awareness of hunger, so that the people will ensure the continuity of the programmes.

V. CONCLUSIONS AND RECOMMENDATIONS

57. **The Special Rapporteur is very encouraged by the commitment of the current Government towards making the right to food a priority. However, he remains concerned that child malnutrition is so high and more than 60 per cent of Guatemalans survive with an income that does not cover their basic food needs, preventing them from exercising their right to food. The Special Rapporteur therefore urges the full implementation of the new legal and policy framework to fully realize the right to food of all Guatemalans, including indigenous peoples. He believes that this should be implemented within the framework of the Peace Accords, promoting social justice, equity, participation and respect for human rights.**

58. **The Special Rapporteur also makes the following specific recommendations:**

(a) Given the situation of hunger and extreme poverty, the realization of the right to food must become an urgent priority in Guatemala. Any violation of the right to food should be considered to be fully justiciable under the new Law on the National System for Food and Nutrition Security. In the application of this law by the judiciary, violations should be understood to include both de jure and de facto discrimination in access to food and to the means to obtain food, as well as violations of the specific obligations to respect, to protect and to fulfil the right to food;

(b) The right to land of indigenous communities must be recognized, and communities should be protected from the forcible expropriation of their lands. Any evictions that take place should be conducted in accordance with human rights law. Impunity for violations of the right to food must be challenged, and all Guatemalans should be treated equally before the law. Legitimate peaceful protest should be permitted without repression. The detention and killing of peasant leaders and human rights defenders should be stopped. The Government should adopt a policy to decriminalize social and land conflicts and provide training and tools to the security forces, the

Ombudsman and the judiciary to deal with those conflicts within a framework that respects the right to food. The right to property should not be placed above the right to life and the right to food;

(c) The commitments under the Peace Accords toward land rights, labour rights, and fiscal reform should be fully implemented to promote a more inclusive society based on human rights and social justice. Land rights, labour rights and non-discrimination must be fully respected;

(d) Racial discrimination against indigenous communities is not acceptable and must be urgently addressed through a broad national campaign. "Land-grabbing" of indigenous lands, as in the *La Perla* case, must be stopped;

(e) 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. The Labour Code should be amended to eliminate discrimination against rural women;

(f) The Law on Land Registry should be implemented without delay and an Agrarian Code to regulate the access, use and tenure of land should be elaborated, which recognizes indigenous forms of land ownership and respects the right to food. 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;

(g) A special unit, with adequate human and financial resources, should be established within the Office of the Human Rights Ombudsman to monitor the realization of the right to food and the obligations of the State to respect, protect and fulfil the right to food, as required by the new Law on the National System for Food and Nutritional Security. Better funding and protection should also be accorded to the human rights institutions, including the Office of the Defender of Indigenous Women of the Presidential Commission for the Coordination of Human Rights Policies (COPREDEH);

(h) Workers' rights should be respected, including the right of association, and the national minimum wage should be increased to cover the basic food basket;

(i) Participation of indigenous peoples should be included in the institutional and policy framework for the fight against hunger, as it is already in the Commission on Food Security;

(j) To overcome hunger and malnutrition, which are predominantly prevalent in rural areas, a comprehensive rural development strategy should be agreed with all social sectors and put in place. The model of exclusionary development and export-orientated

agriculture that has created and is deepening extreme inequality in the ownership of resources must be reversed with a comprehensive strategy that directly improves food security and access to resources, through the implementation of agrarian reform and the promotion of investment in small-scale peasant agriculture;

(k) The "National Policy on Food and Nutrition Security" should be revised to ensure that it reflects the obligations of the State to respect, protect, and fulfil the right to food. Due consideration should be given to Committee on Economic, Social and Cultural Rights general comment No. 12 on the right to adequate food and the FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security;

(l) It should be ensured that the obligations of the Central American Free Trade Agreement (CAFTA) are consistent with Guatemala's human rights obligations. A full study on the potential impacts of CAFTA should be carried out, and safety nets should be established prior to measures being implemented, to protect the national production of staple foods (including maize and beans) and the right to food of rural communities that are likely to be negatively affected, otherwise free trade will bring greater hunger;

(m) The progressive realization of the right to food should be monitored as part of the Government's national policy. Indicators should include not only statistics on malnutrition, but also statistics on undernourishment, poverty and inequality and should be linked to the Millennium Development Goals. Implementation of policies and programmes on food and nutrition should address the structural causes of hunger and poverty, and should take care not to create aid dependency or "clientelistic" relations;

(n) Finally, the Special Rapporteur recognizes the important progress that is being made by the current Government in its fight against hunger and malnutrition. The Special Rapporteur is particularly supportive of the Government of Guatemala's efforts to catalyze action at the international and regional levels, including through the Latin America Conference on Chronic Hunger within the context of the Millennium Development Goals that was held on 11 and 12 September 2005 and which launched a new campaign for Hunger-free Latin America by 2020.

Notes

[1] Comision para Esclarecimiento Historico, *Guatemala: Memoria de Silencio*, Washington DC: American Association for the Advancement of Science, 1999.

[2] World Bank, *Guatemala: Poverty in Guatemala*, Report of the Poverty Reduction and Economic Management Unit, February 2003, p. 83.

[3] United Nations System 2003 *Situacion de la Seguridad Alimentaria y Nutricional de Guatemala*, Group for Food and Nutrition Security, Guatemala, September 2003, p. iii.

[4] Government of Guatemala, *Política Nacional de Seguridad Alimentaria y Nutricional*, 2004, p. 8.

[5] MFEWS, Special Report, MFEWS Food Security Overview, December 2004, Guatemala Component p. 13.

[6] United Nations System *Situacion de la Seguridad Alimentaria y Nutricional de Guatemala*, Group for Food and Nutrition Security, Guatemala, September 2003, p. iii.

[7] INE System 2003.

[8] United Nations 2003, p. 14.

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