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**INTÉGRATION DES DROITS FONDAMENTAUX DES FEMMES ET DE  
L'APPROCHE SEXOSPÉCIFIQUE: VIOLENCE CONTRE LES FEMMES**

**Rapport de la Rapporteuse spéciale sur la violence contre les femmes,  
ses causes et ses conséquences, Yakin Ertürk**

**Additif\***

**Mission au Guatemala\*\***

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\* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé, et il est distribué dans la langue originale seulement.

\*\* La soumission tardive de ce document s'explique par le souci d'y faire figurer des renseignements aussi à jour que possible.

## Résumé

Le présent rapport contient mes observations en tant que Rapporteuse spéciale sur la violence contre les femmes, ses causes et ses conséquences, à la suite de la mission que j'ai entreprise au Guatemala du 9 au 14 février 2004. Il met l'accent sur le caractère multiple de la discrimination à l'égard des femmes qui expose ces dernières à différentes formes de violence. Il fait le bilan des progrès réalisés et des difficultés rencontrées dans la lutte contre la violence à l'égard des femmes et met l'accent sur les principales mesures et initiatives qui s'imposent pour promouvoir et protéger les droits des femmes et mettre un terme à la violence contre les femmes.

Les accords de paix signés en 1996, qui ont mis fin à 36 ans de guerre civile au Guatemala, contenaient des dispositions spécifiquement conçues pour protéger les droits des femmes et des populations autochtones. Pourtant, les carences de l'application des accords de paix ont empêché les femmes et les populations autochtones de bénéficier de ces dispositions et ont contribué à instaurer un climat d'insécurité et de violence qui continue de caractériser la société guatémaltèque. Les problèmes de l'exclusion et des inégalités socioéconomiques, qui avaient déclenché la guerre civile, ne sont toujours pas résolus et font que les femmes, en particulier celles qui sont d'origine autochtone, restent vulnérables à la violence en raison de la discrimination aggravée qu'elles subissent du fait de leur sexe, de leur appartenance ethnique et de leur classe sociale.

Les auteurs d'actes de violence contre les femmes agissent en toute impunité, puisque aucune enquête n'est faite et qu'ils ne sont ni poursuivis ni sanctionnés. L'absence d'état de droit encourage la poursuite de tels actes, y compris le meurtre, le viol, la violence conjugale, le harcèlement sexuel et l'exploitation sexuelle à des fins commerciales. Les forces de sécurité comme la justice ne prennent pas les mesures nécessaires et n'ont pas su, en particulier, résoudre plusieurs affaires récentes dans lesquelles des femmes ont été sauvagement assassinées.

Compte tenu des problèmes qui restent à régler, je formule les recommandations ci-après:

Je demande au Gouvernement guatémaltèque de prendre des mesures dans cinq grands domaines: i) mettre fin à l'impunité concernant la violence contre les femmes par une réforme de la législation, des organes d'enquête et du système judiciaire; ii) offrir des services de protection et d'appui aux femmes qui sont victimes d'actes de violence ou risquent de le devenir; iii) créer une base de connaissances et d'informations tenant compte des sexospécificités; iv) renforcer les infrastructures institutionnelles; v) promouvoir les programmes de formation et de sensibilisation et les programmes opérationnels.

Je demande aux groupes de la société civile d'agir ensemble pour faire pression sur le Gouvernement afin qu'il enquête sur les affaires de violence contre les femmes et en poursuive les auteurs, et de faire preuve de respect et de solidarité en manifestant leur tolérance pour les différentes appartenances ethniques et origines sociales. Les groupes de la société civile devraient aussi s'employer à informer la population guatémaltèque en ce qui concerne les droits fondamentaux des femmes, l'accès aux soins de santé et les services de conseil proposés aux femmes victimes de violences.

J'engage instamment la communauté internationale à donner la priorité aux programmes et aux projets qui promeuvent les droits des femmes, en prêtant une attention particulière aux femmes autochtones, et à encourager la participation des femmes à tous les niveaux.

**Annex**

**REPORT OF THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN, ITS  
CAUSES AND CONSEQUENCES, YAKIN ERTÜRK, ON HER MISSION TO  
GUATEMALA (9-14 february 2004)**

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## **Introduction**

1. At the invitation of the Government, in response to my request, I visited Guatemala from 9 to 14 February 2004. The request was partly related to allegations I had received of an emerging pattern of murders of women in the Central American region and impunity for perpetrators of these crimes.<sup>1</sup> I wish to take this opportunity to thank the Government of Guatemala for inviting me to visit the country and the enthusiasm with which it facilitated my work. Its invitation and response to the mission at the highest level of the State are indicative of its will to address the issue of violence against women.

2. I had extensive consultations with and received information from governmental authorities, members of the judiciary and the police, members of parliament, as well as representatives of human rights and women's organizations, academics, survivors of violence, families of victims and staff of United Nations agencies. I held meetings with officials and women's groups in Guatemala City and in the Departments of Chimaltenango, Sololá, Panajachel and Quetzaltenango. I also visited the Santa Teresa pre-trial detention centre for women in Guatemala City. A select list of interlocutors is in the annex.

3. This report is not a substitute for official inquiries. Its scope is limited to the mandate entrusted to me and makes reference to the general human rights situation to the extent that it can contribute to the understanding of the causes and consequences of violence against women in Guatemala and the identification of areas of intervention towards its elimination. Guatemala has assumed a range of obligations for the protection of women's rights derived from international instruments such as the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, as well as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará). The Constitution provides for the protection of civil and political rights as well as social, economic and cultural rights, particularly those of indigenous peoples, and that international treaties and conventions ratified by Guatemala in the field of human rights take precedence over domestic law.

4. However, I will explore below how the absence of justice, impunity for criminal acts, socio-economic disparities, including class, gender and ethnic inequalities, along with the grievances emanating from the atrocities of the war - particularly for indigenous women - continue to undermine the positive legal framework. President Oscar Berger Perdomo, who took office on 14 January 2004, indicated in his inaugural speech that he would strictly adhere to the 1996 Peace Accords. He assured me that he is committed to taking the necessary steps to address violence against women.

## **I. POLITICAL, SOCIAL AND ECONOMIC CONTEXT OF VIOLENCE**

5. The current concerns regarding the prevalence of violence against women are connected to the conflict and its roots in the history of inequality, poverty and exclusion. A comprehensive historical analysis is not within the terms of reference of this report; however, in addressing violence against women it is necessary to reflect on the legacy of the conflict and the basic tenets of the success and failure of the implementation of the Peace Accords.<sup>2</sup> The United Nations Verification Mission in Guatemala (MINUGUA) has worked with the Government to implement

the Accords and establish a democratic system; however, despite the efforts of the international community and years of technical cooperation the situation remains fragile. The political will to press for the reforms outlined in the Peace Accords has not been forthcoming. Moreover, the parallel structures of power and interest groups<sup>3</sup> continue to pose an obstacle to progress towards a just society. The human rights situation is poor and the rule of law remains an aspiration.

#### **A. Women in conflict and in peace**

6. In December 2004, Guatemala celebrated the eighth anniversary of the Peace Accords that brought the country's 36-year armed conflict to an official close. The Commission for Historical Clarification (Comisión para el Esclarecimiento Histórico, CEH) estimated in its 1999 report that some 200,000 Guatemalans had either been killed or disappeared, the vast majority during the first half of the 1980s. The CEH blamed security forces for 93 per cent of these crimes. It concluded that women and girls had been raped and in some cases gang raped during massacres of the Mayan population. Soldiers reportedly committed other acts of extreme cruelty against women, such as removing foetuses from pregnant women.<sup>4</sup> Survivors still suffer trauma and health complications as a result of wartime violence. The conflict has left many women single parents, and families of the disappeared still search for their loved ones. All of these concerns need to be addressed through inclusive national action to push forward reconciliation and to break the cycle of violence.<sup>5</sup>

7. Although women were participants in the opposition forces, the Unidad Revolucionaria Nacional Guatemalteca (URNG), during the civil war and comprised roughly 15 per cent of the officially demobilized forces, gender equality and women's rights were not on the agenda of the guerrilla movement. However, the Peace Accords adopted a progressive approach for the rethinking of women's role in society. Signed six years after the Salvadoran Accords, it benefited from: (i) lessons learned from the El Salvador experience; (ii) the impact of the United Nations conferences of the 1990s, which created a momentum around women's rights; and (iii) the involvement of civil society, including women's groups, which, by that time, had already developed gender awareness. As a result, there were a number of significant provisions on women's rights in the Accords, including: protection of families headed by women; rights of indigenous peoples with particular focus on indigenous women; and commitment to the principle of positive discrimination to increase women's participation in the public sphere.<sup>6</sup>

8. Unfortunately, commitments have not been translated into action. The weak and fragmented nature of the URNG<sup>7</sup> left the opposition group with little power to influence national policies and actions. Similarly, the National Advancement Party (Partido de Avance Nacional, PAN) and the Guatemalan Republican Front (Frente Republicano Guatemalteco, FRG) Governments could not deliver the political backing needed for the Accords. The failure of the 1999 referendum for constitutional reform was also a major setback in this regard. Therefore, despite the victories at the negotiating table, the achievement of an inclusive society remains encumbered, thus leaving the Guatemalan society troubled and divided with a sense of fatigue. This situation undermines the efforts to establish a common agenda among women.

9. As MINUGUA stated in 2003, “seven years after the end of the armed conflict, Guatemala has reached a crucial turning point. Despite hopeful advances just after the signing of the peace agreements, the country is now moving in the wrong direction with regard to human rights issues. Momentum for the reform of crucial institutions, principally the police, the Public Prosecutor and the courts, has stalled at a time when changes have not fully taken root, and modernization efforts are starved of budgetary resources and political support” (A/58/566, annex, para. 22).<sup>8</sup> On the other hand, military influence in State affairs continues as evidenced by the 85 per cent increase in the 2001 military budget.

10. Furthermore, I was informed that violence perpetrated with impunity by clandestine security groups linked to organized crime has heightened security concerns, due in particular to its alarming resemblance to counter-insurgency activities. Moreover, the expansion of trafficking in drugs and persons, organized crime and gangs in the last few years has increased the use of drugs and the proliferation of firearms, which have further contributed to the violence and atmosphere of societal insecurity.<sup>9</sup>

### **B. Socio-economic disparities**

11. The problems of unequal land distribution and income disparity that relegated the majority of the indigenous peoples<sup>10</sup> to unproductive farmland and poverty before the war are unresolved. While the Rural Development Bank, designed to finance small-scale agriculture, is a successful response to the land issue, registration of landholdings continues to pose an obstacle to land rights. An estimated 2 per cent of Guatemalans own 70-75 per cent of all productive land, which leaves the poorest groups, namely the indigenous peoples, without sufficient resources.<sup>11</sup> Of the small farmers in Guatemala, 77 per cent do not own the land they work; 60 per cent of them are of Mayan descent.<sup>12</sup> The indigenous rural women (64 per cent of all indigenous women) are predominantly unpaid family workers with little or no independent access to land, credit and other productive resources.<sup>13</sup> Thus, the Agreement on the Identity and Rights of Indigenous Peoples component of the Peace Accords has not adequately addressed expropriation-based land reform.

12. According to *Human Development Report 2004*, Guatemala ranks 121 in the human development index (HDI). With the exception of Brazil, in 1997 Guatemala had the highest Gini coefficient of inequality (59.6) among middle-income countries.<sup>14</sup> Today, the poorest 20 per cent of the population shares 2.6 per cent of the income and the richest 20 per cent earns 64.1 per cent.<sup>15</sup> According to the World Bank, 75 per cent of Guatemalans live below the poverty line and 81 per cent of the indigenous population is reportedly extremely poor. The estimated per capita earned income of women in 2002 was US\$ 2,007 and US\$ 6,092 for men,<sup>16</sup> and Guatemala’s rank in gender-related development (GDI) was 98, with a value of 0.635.

13. Public spending on social services such as education and health, although increased since 1990, is insufficient, at 1.7 per cent and 2.3 per cent of the gross domestic product (GDP), respectively. Most services do not reach the majority of the population, particularly in rural areas. For example, I was informed that only 30 per cent of births take place in medical facilities, implying that the lives of the vast majority of women and infants are at risk. This situation also leads to a low level of registration of female babies at birth in rural areas, which results in “marginalized citizenship”.<sup>17</sup>

### **C. Ethnic composition and indigenous women**

14. Guatemalan society is multi-ethnic, multicultural and multilingual in nature, and the indigenous peoples include the Maya, Garífuna and Xinca peoples.<sup>18</sup> The core highland departments of Guatemala are areas of high indigenous concentration; therefore, the majority of the country's rural population is comprised of indigenous people (65 per cent of the total).

15. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people stated that indigenous women experience discrimination at three levels: as indigenous persons, poor people, and women. To this three-layered system of discrimination, I would add discrimination as rural inhabitants. He called for special measures to address this discrimination, including greater political, legal, and economic support to the Office for the Defence of Indigenous Women (Defensoría de la Mujer Indígena). He also recommended that the Office initiate a national dialogue to identify the necessary measures for improving the status of indigenous women (E/CN.4/2003/90/Add.2, para. 79). I fully support his recommendations, which are essential for the improvement of the situation.

16. Language is a primary cause of exclusion for indigenous women.<sup>19</sup> Owing to different prescribed gender roles, boys have greater opportunities than girls to be connected to the Spanish-speaking world, which also gives boys a better chance of accessing education. Unlike boys, who are able to leave the village to seek opportunities elsewhere, girls have little connection to life outside of the village and, therefore, have little or no exposure to the Spanish language. This not only deprives them of access to opportunities in wider society, but also creates obstacles to seeking protection from gender-based abuse within their own communities. During my visit I heard numerous first-hand testimonies from female indigenous survivors of domestic violence who reported that they were not able to access any State protection or services.

17. The combined third and fourth periodic reports of Guatemala to the Committee on the Elimination of Discrimination against Women (CEDAW) indicates that 66 per cent of girls in rural areas drop out of school before third grade and only one in eight finishes eighth grade, due to economic, cultural, infrastructural, and nutrition and health barriers that prevent or deter their attendance (CEDAW/C/GUA/3-4, p. 39). It is well known that such low educational levels limit women's awareness regarding their human rights and preclude them from attaining higher-paying jobs, which ultimately restricts their leverage to negotiate with partners or employers and increases their vulnerability to violence in the public and private spheres.<sup>20</sup>

18. Indigenous women are predominantly unpaid family workers in the agricultural sector and lack access to land, credit and other productive resources as well as to mainstream institutions and services. Some indigenous women out of necessity have sought work outside of the village and faced discrimination as women and as indigenous persons in the labour market. Many work in informal sector jobs which escape regulation and social security policies such as domestic work in private homes, which is not covered by the labour code. According to information received, even women working in the formal sector receive unequal benefits from the Guatemalan Social Security Institute (Instituto Guatemalteco de Seguridad Social, IGSS). Although women pay the same percentage of their wages as men to social security, their spouses receive no benefits, while those of men do (ibid., p. 58).

19. The dual and sometimes multiple jeopardy faced by indigenous and rural women, however, is not received passively. They are developing strategies to counter domestic and traditional forms of violence individually and collectively. Awareness-raising programmes and other projects implemented in remote communities are making an impact in empowering women. I met prominent women leaders from the indigenous communities who have made their voices heard at local, national and even international levels.<sup>21</sup>

20. The Office for the Defence of Indigenous Women has also provided social services for victims of domestic or community violence, as well as mediation, conflict resolution and legal services for indigenous women. It also coordinated and promoted action by both government institutions and NGOs to prevent violence and discrimination against indigenous women; however, it lacks the human resources and logistical capacity to perform its functions on a national level.

## **II. INTERSECTING SYSTEMS OF OPPRESSION AND FEMALE-HEADED HOUSEHOLDS**

21. Women's exposure to violence is related to their position in the multiple systems of inequality and shows a tendency to increase as these systems intersect, creating layers of discrimination and exclusion for different groups of women. Four basic systems of inequality intersect with gender hierarchies to distinguish diverse categories of women in the Guatemalan society: class (poverty); ethnicity; urban/rural residence; and displacement. Other intervening factors such as disability and sexual orientation were brought to my attention as bases for human rights violations. Therefore, most if not all women are subjected to various forms of discrimination which places them at risk of violence.

22. Before the civil war, it was rare to find women heading households due to a strict *machista* gender order that assigned to men the roles of provider and to women, caring and nurturing roles. During and after the war, however, women suddenly found themselves having to step out of their traditional roles in search of remunerated work for the sake of survival. Factors such as widowhood owing to wartime violence, internal displacement, migration of men for work, marital dissolution and abandonment of the family by men have forced women in Guatemala, like so many throughout Latin America, increasingly to shoulder the burden of supporting the family alone. Between 1990 and 1998, the percentage of urban female-headed households in Guatemala rose from 19.8 per cent to 24.3 per cent.<sup>22</sup> Out of this heterogeneous category, nuclear households of mothers and children increased from 87.1 per cent to 88.7 per cent and extended and composite families headed by women rose from 28.4 per cent to 34.1 per cent. According to 1998 data of the Economic Commission for Latin America and the Caribbean (ECLAC), self-reported female-headed households constitute 18 per cent of total rural households, while 20 per cent of the primary economic household contributors in rural areas are women.<sup>23</sup>

23. A World Bank study reveals a low level of economic responsibility on the part of fathers in Guatemala, which is visible through their unequal income contributions to the household relative to contributions by mothers. It would reportedly take a 15-fold increase in a father's income contribution for parents to achieve equal impacts on improving children's nutrition.<sup>24</sup>



Such data suggest that even in households where the male is present, women often bear the brunt of the economic and emotional responsibilities, implying that there may be more de facto female-headed households than acknowledged. On the other hand, the study further indicates a positive correlation between child welfare and the percentage of men's income allocated to the household.<sup>25</sup>

24. Other studies in Latin America have shown that families benefit economically, physically and emotionally when a father demonstrates conscientious, responsible and non-violent parenting, although, it is not possible to conclude that dual-parent families are better off than single-parent families as a general rule. Considering the low level of male support, traditional gender roles relegating women to the private sphere, significant gender wage differentials and high age-dependency ratios, it is not surprising that female-headed households are on average poorer than others.<sup>26</sup>

25. The impacts of the psychological ramifications of the civil war and poverty on men's ability to fulfil *machista* roles as providers have intensified family abandonment, unstable relationships and alcoholism, all resurfacing in the form of violence against women in and outside the home. Alcoholism among males, unemployment/underemployment and attempts to preserve patriarchal power over women contribute to domestic violence and undermine opportunities for the promotion of non-violent relationships in future generations. The women's network in Sololá informed me that poverty and discrimination had induced alcoholism throughout the indigenous male population, which has served as a catalyst for domestic violence.

26. Under such unstable and vulnerable circumstances, women heads of household are more predisposed to experience sexual and domestic violence as well as stigmatization, with little recourse to protection and justice. As these women take on remunerated work in order to survive, the socially taboo nature of their entrance into the public realm often brings with it sexual connotations that can lead to women being ostracized by their community support systems and make them targets of sexual advances.

### **III. MANIFESTATIONS OF VIOLENCE AGAINST WOMEN**

27. Violence against women is widespread in Guatemalan society and the impunity enjoyed by the perpetrators of violence sustains parallel and multiple structures of power, which has resulted in fear and lack of confidence in State apparatuses. The major problem confronting the State is its inability to provide women with legal, judicial and institutional protection from violence. As an illustration of the manifestation of multiple forms of violence, selected areas brought to my attention during the mission are briefly reviewed below.

#### **A. Murder**

28. At the time of my visit the public's attention was focused on a series of brutal murders of women. Most interlocutors were of the opinion that there may not necessarily be a systematic targeting of women, but that cases systematically remain unsolved. The majority of victims were poor women between 13 and 30 years of age, who were abducted, gang raped, tortured, mutilated and killed. The corpses were generally found dumped around Guatemala City on unused land (*lotes baldíos*). The killings continued during my visit. According to National Civil Police (PNC) statistics, there was a steady increase in the number of women murdered

with 303 in 2001, 317 in 2002 and 358 in 2003, totalling 978 reported cases. The murder rate increased even further in 2004, with 489 cases by the beginning of December. According to the police, while in 2003 women comprised 9.04 per cent of deaths due to violent acts, in November 2004 this figure reached 13.45 per cent.

29. The pattern of murders of women in Guatemala show similarities with those reported in El Salvador, Honduras and Mexico. The rate at which women are being killed, however, is much higher in Guatemala. Although 370 women were killed in Chihuahua, Mexico, over a 10-year period (1993 to 2003),<sup>27</sup> nearly the same number of women was killed in Guatemala in 2003 alone.

30. The Office of the Human Rights Ombudsman (Procuraduría de los Derechos Humanos),<sup>28</sup> in a study of violent crimes committed between January and September 2003, collected information from death certificates, police reports and the Ministerio Público and found that 272 violent deaths of women had been reported throughout the country between January and September: 53 per cent of the victims had bullet wounds, 12 per cent had stab wounds, 8 per cent had been beaten and 5 per cent had been strangled. The regions of the body most frequently injured were the head and thorax. In two cases the upper extremities had been almost amputated. According to experts, the modus operandi is reminiscent of torture methods used in the counter-insurgency. Available information indicates that the most frequent victims were housewives (24 per cent), domestic workers (13.6 per cent) and students (11 per cent).

31. The response of State security and justice institutions has been inadequate. I was told that three cases had been solved; however, no details regarding the perpetrator, sentence or compensation were provided. There has not been any effective investigation, prosecution or sanction of those responsible. No compensation or support for families of victims has been provided. Thus far, it has been the relatives of the victims, with the support of women's and other human rights organizations, who have tried to obtain justice, some of whom, I was told, have received death threats or been murdered.

32. The Myrna Mack case illustrates the obstacles faced in the search for justice for women who have been victims of violent crimes. Ms. Mack, an anthropologist, was studying the army's mistreatment of displaced rural communities when she was attacked in front of her Guatemala City office on 11 September 1990. Stabbed 27 times, she bled to death in the street. Police initially informed her relatives that she had died in a traffic accident. Later, they suppressed a 60-page report by their own investigators concluding that it had been a political killing, linking the military to the crime. Only after Helen Mack, Myrna's sister, intervened did the case begin to move forward. In 1993, a Guatemalan court sentenced army officer Sgt. Noel Beteta to 25 years' imprisonment for the murder. In 2002, another Guatemalan court sentenced Col. Juan Valencia Osorio to 30 years for his role in planning the killing. The conviction was overturned by an appeals court, only to be later reinstated by the Supreme Court in 2003. A police investigator who initially gathered the incriminating evidence was murdered in 1991. Two other investigators and three witnesses also received threats and fled the country. In 2002, a lawyer acting for the Myrna Mack Foundation reported receiving death threats. Col. Valencia Osorio is the only senior officer to be convicted of human rights violations committed as part of the country's 36-year civil war. However, since the reinstatement of his conviction in 2003, he has eluded police custody, and his whereabouts remain unknown. In December 2003 the Inter-American Court of Human Rights held that Guatemala should publicly

recognize the State's responsibility for the murder and subsequent denial of justice in the case. The Court also ruled that Guatemala should ensure that the perpetrators of the crime are brought to justice.<sup>29</sup>

### **B. Domestic violence and other crimes in the private sphere**

33. According to conservative estimates, 36 per cent of all Guatemalan women who live with a male partner suffer domestic abuse.<sup>30</sup> Women are also frequent victims of other crimes in the private sphere, which tend to go unreported or do not result in convictions. According to the Office of the Human Rights Ombudsman, a total of 2,625 cases of violence were reported by women between January and December 2003,<sup>31</sup> of which 2,027 reports indicated violence within the private sphere.

34. The women's network in Sololá municipality reported that 80 per cent of violence against women cases involve domestic violence, 5 per cent are sexual abuse, and 5 per cent are physical abuse. It is estimated that 80 per cent of the perpetrators of intra-family violence are husbands, and 20 per cent brothers. Of the victims, 40 per cent are in the 15-25 age group, 40 per cent are in the 26-40 age group and 20 per cent are in the 41-55 age group. Domestic violence also impacts, directly or indirectly, on children. It is estimated that 7 out of 10 children, mainly girls, are sexually abused in the home.

### **C. Violence against women in the workplace**

35. Although women contribute with goods and services to family and community development, often as unpaid family labour, their contributions are rarely recognized, in particular the work of indigenous women in agriculture, animal husbandry, pottery, and weaving. In recent years, however, women in increasing numbers have become paid workers in the labour market through home-based contract work or direct involvement in formal- and informal-sector jobs outside the home. The vast majority of indigenous women who take up work outside the agricultural sector work in private homes as maids. These women lack or have only a few years of education, thus disqualifying them from other forms of employment.

36. The garment export industry generates 130,000 official jobs in maquila factories, 70-80 per cent of which are staffed by young women, many of whom are single mothers. Owing to insufficient regulation of this sector, human rights violations are common. Women are reportedly subjected to physical, sexual and psychological violence. Human Rights Watch (HRW) reports widespread gender-based discrimination, including inquiries about employees' reproductive status, post-hire penalization of pregnant workers, and failure to enforce maternity protections. Despite the fact that employers are required by law to register workers with the national social security system, which will entitle employees to health care, many maquilas fail to do so but continue to deduct the social security contribution from the worker's wages, although factories can be fined and even closed down for this illegal practice; owing to ineffective monitoring, the violators often escape penalty.

37. The situation is being challenged and some progress is being made. On 9 July 2003, workers at two garment factories owned by the Korean company Choi and Shin achieved a precedent-setting victory when their unions and company management signed a first

collective bargaining agreement. The agreement provides for wage increases, improved access to health-care services and day-care facilities.<sup>32</sup>

#### **D. Trafficking**

38. Guatemala is a source, transit, and destination country for women and children trafficked for the purpose of sexual exploitation. International sex trafficking predominantly flows into Mexico and the United States. To a lesser extent, there are reports of forced labour trafficking, mainly involving children used in begging rings in Guatemala City. In March 2004, the Government signed an anti-trafficking border cooperation agreement with Mexico. Despite some progress, a long-term strategy to bring traffickers to justice and fight the corruption that makes trafficking possible is required.

39. Currently, all undocumented foreigners, including trafficking victims, are subject to deportation within 72 hours of apprehension. The new administration has pledged to give new direction to the Government's inter-agency anti-trafficking group. Both the Secretariat for Social Communication and the Immigration Service have announced plans for a public awareness campaign in 2004. A key challenge of the Government's commitment in this regard will be the implementation of the agreement with Mexico in responding to a range of trafficking problems on the joint border and protecting the rights of the trafficked victim in the process.<sup>33</sup>

#### **E. Custodial violence**

40. During my visit there was a riot in the Santa Teresa pre-trial detention centre for women in Guatemala City, where there were 223 detainees. I visited the prison following the incident. Female detainees complained that the police had used excessive force and dogs, and as a result many women had sustained injuries. Some of the women said that they did not receive adequate medical assistance and alleged that some of their belongings, including money, had been stolen during the police intervention.

41. The legal process that leads to a final verdict in Guatemala may take up to a year and a half or even longer, particularly for those who lack proper legal representation. Yet, pre-trial detainees are kept under maximum security conditions. Such a long period of what amounts to punishment is problematic since the detainees have not yet been convicted of any crime. The female detainees I spoke to emphasized the need for improved provision of medication, cultural and sport activities, work opportunities, and a place to cook and do their laundry. They also complained of unnecessary restrictions on visitation rights.

### **IV. DUE DILIGENCE IN RESPONDING TO VIOLENCE AGAINST WOMEN**

42. This section assesses Guatemala's compliance with its obligations to exercise due diligence in responding to violence against women, with a view to preventing, protecting and prosecuting. In so doing, it highlights both achievements and challenges.

### **A. Legislative initiatives**

43. Guatemala has ratified the majority of international and regional instruments providing protection for women's rights. The Constitution affirms the principle of equality between the sexes (art. 4, Freedom and Equality). The Peace Accords also contain commitments made by the Government with regard to comprehensive measures for the advancement of Guatemalan women. According to MINUGUA, a package of laws on Development Councils, the Municipal Code and decentralization has opened up new possibilities for broader social participation in development planning at the local level, particularly by groups who were historically excluded, such as women and indigenous peoples (A/58/267, para. 64).

44. The Law for the Prevention, Sanction and Eradication of Domestic Violence (*Ley para Prevenir, Sancionar y Erradicar la Violencia Intrafamiliar*, Decreto No. 97-96 del Congreso de la República), specifically addresses violence against women in accordance with the Convention of Belem do Para. This law requires the registration of cases, the collection of statistics and the development of public policies to comply with the Convention. As a result of the Law, the National Coordinator for the Prevention of Domestic Violence and Violence against Women (Coordinadora Nacional para la Prevención de la Violencia Intrafamiliar y en Contra de la Mujer, CONAPREVI) was created in 2000 (see below).

45. Despite these advances, the Penal Code does not consider some forms of violence against women as crimes. At the time of my visit, NGOs had requested Congress to include sexual harassment in the Penal Code, as it does not currently appear. There are also some discriminatory provisions that preclude women from having the full protection of the law. For example, chapter VII, article 200, of the Penal Code exonerates perpetrators of rape if the aggressor marries the victim, provided that the victim is over 12 years of age. With such a clause, Guatemala's legal system sanctions putting victims at risk of further physical and psychological trauma by condemning them to a life with their rapist.

46. Additionally, perpetrators of crimes of a sexual nature, most of which are committed against women, are highly likely to be pardoned. When a case does reach the courts, whether or not a perpetrator is sentenced in accordance with the rule of law often depends on the personal criteria used by the individual applying the law.

### **B. Institutional and programmatic initiatives**

47. Various interlocutors who believed that an effective response by the State to the phenomenon of violence against women is lacking explained that this was due in part to the absence of an integral and coordinated institutional framework and strategy to ensure public security and curtail violent crime against the general population, and women in particular. There is a consensus that this has resulted in the prevailing absence of justice and impunity for criminal acts.

48. The Women's Office (Fiscalía de la Mujer) has been in operation since 1995 as part of the structure of the Ministerio Público. Its mandate includes investigation of all cases that involve women and minors in relation to the following crimes: (a) abortion; (b) crimes against sexual freedom and decency; and (c) crimes against the legal order of the family and civil status. This office is responsible for investigating all such cases throughout the country. At the beginning of

2004, it had 43 employees, including 5 branch offices headed by an attorney, 3 assistant attorneys, and an officer. The Office also has the support of three psychologists and two agents from the Criminal Investigations Office of the Ministerio Público (Dirección de Investigaciones Criminológicas, DICRI). More personnel and greater resources need to be allocated to enhance the protection and security of victims. The PNC has established a special unit to investigate the murders of women.

49. There are a number of parallel institutions for the advancement of women with overlapping mandates reflecting the fragmented and divided nature of Guatemalan society. The National Office on Women (Oficina Nacional de la Mujer - ONAM), created in 1981, is charged with overseeing State policies on women's rights. The Office for the Defence of Women's Rights (Defensoría de los Derechos de la Mujer) has been part of the Office of the Human Rights Ombudsman since 1991. It has a general mandate to promote and monitor the implementation of gender equality in all spheres: social, political, economic and cultural. One of its objectives is to bring national law into full compliance with international human rights norms as well as implement commitments regarding women's rights contained in the Peace Accords. A national forum composed of governmental and non-governmental representatives emerged from the Peace Accords, which lobbied for the creation of a ministerial-level body that would effectively replace ONAM as the national machinery for the advancement of women. The Presidential Secretariat for Women (Secretaría Presidencial de la Mujer - SEPREM) was created in May 2000.

50. The Office for the Defence of Indigenous Women (Defensoría de la Mujer Indígena) was called for in the Agreement on Identity and Rights of Indigenous Peoples of the Peace Accords and officially installed as part of the Presidential Commission on Human Rights (Comisión Presidencial de Derechos Humanos) on 21 July 1999.

51. The Ministry of Labour has a Working Women's Unit (Sección de Promoción y Capacitación de la Mujer Trabajadora) that promotes women's equal participation in the workforce, educates working women about their rights, and fosters understanding within the Ministry about gender-specific labour rights. The Unit, like the other entities focusing on women's rights, receives inadequate funding to carry out its mandates efficiently and effectively.

52. The Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos - COPREDEH) was established on 12 July 1991. It includes one representative each from the Office of the President and the Ministries of Foreign Affairs, National Defence, the Interior and the Ministerio Público. Its administrative structure consists of a chairperson, an executive director and an assistant director. At the time of my visit COPREDEH had numerous plans to improve the human rights situation and had concluded that one of the institutions requiring urgent reform was the PNC.

53. CONAPREVI, established in January 2001 by the President, consists of the President himself, the President of the Judiciary, the Head of the Ministerio Público, the President of the National Statistical Institute, a representative of the Programme for the Prevention of Domestic Violence and Violence against Women (Programa contra la Violencia Intrafamiliar y Contra la Mujer, PROPREVI) a representative of the First Lady's Office of Social Work (Secretaría de Obras Sociales de la Primera Dama, SOSEP), and three representatives of the NGO Red de la No

Violencia contra las Mujeres. It is tasked with the implementation of the law to prevent, punish and eradicate domestic violence.<sup>34</sup> However, CONAPREVI has not received the necessary political and budgetary support needed for the fulfilment of its tasks to date.

54. During my visit, CONAPREVI launched a progressive national plan for the prevention and eradication of violence against women (PLANOVI) 2004-2014. PLANOVI is based on the understanding that all State institutions are responsible for ending all forms of violence against women, including domestic violence, and that in order to effectively address the phenomenon action must be taken in a coordinated and comprehensive fashion. It includes the following four strategic areas of work: (i) investigation, analysis and statistics on violence against women; (ii) prevention of violence against women; (iii) reintegration of survivors of violence against women into family and societal life; and (iv) strengthening of the institutions of the State to prevent, investigate, punish and reduce violence against women. I welcome this national plan and encourage the Government to provide it with the necessary financial and political support to ensure its successful implementation.

55. In addition to the above, the Ministry of the Interior introduced a campaign in 2004 that published the photos of suspects of crimes and encouraged the public to report any information they may have regarding the suspects' whereabouts. The initiative, however, did not last long because the Criminal Investigations Unit of the Police claimed that the campaign merely warned the suspected criminals. Moreover, several of the photos published were reportedly inaccurate. If designed carefully, such programmes can serve to generate greater public sensitivity towards crime prevention and deter potential criminal acts.

### **C. Initiatives in the security and justice sector**

56. Progress in the security and justice systems is lacking. MINUGUA and the Myrna Mack Foundation have presented evidence regarding the existence of clandestine security groups and parallel power structures that, with the acquiescence of the State, operate brutally to silence political opposition, activists, academics and other emerging democratic actors.<sup>35</sup> In this regard, MINUGUA stated that "The National Civil Police has been undermined by widespread corruption and an inability to stem the rise in criminal violence. The Public Prosecutor and courts have made little significant headway in combating corruption and organized crime or in investigating the ongoing harassment of human rights defenders and judicial sector officials. Important human rights investigations and judicial proceedings have languished unless accompanied by extraordinary efforts from individual judiciary officials and civil society organizations" (A/58/56, annex, para. 19). One observer has noted that counter-insurgency security structures that evolved during the war are, for the most part, still present and have become part of organized crime, and that it is these structures and elite interests that represent a significant obstacle to the implementation of the 1996 Peace Accords.<sup>36</sup>

57. In this context, a range of human rights organizations in 2002 demanded that the Government take action to eliminate these groups. The Human Rights Ombudsman responded by calling for the creation of a Commission for the Investigation of Illegal Groups and Clandestine Security Organizations in Guatemala (Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad en Guatemala - CICIACS), with the participation of the United Nations and the Organization of American States. On 7 January 2004, the United Nations and the Government of Guatemala signed an agreement to establish CICIACS.

Article 2 of the agreement would provide CICIACS with the authority to investigate the structure and activities of illegal groups and clandestine security organizations.<sup>37</sup> However, on 6 August 2004, the Constitutional Court issued an opinion declaring the agreement unconstitutional in several key areas. According to some analysts the Court failed to provide strong legal arguments for its conclusions; nevertheless, CICIACS has not been established.

58. I was told that, among the justice system institutions, the PNC is the most criticized for failing to comply with its legal mandate to provide security to the citizens of the Republic, and for serious deficiencies in the performance of investigations within the penal process (see *ibid.*). In fact, the police is considered today to be the principal source of human rights violations in the country. The Human Rights Ombudsman claims that agents of the PNC might be responsible for at least 10 of the murders of women referred to earlier. Some of the murders are thought to be part of ongoing “social cleansing” operations conducted by organized crime networks. The evidence suggests that the murders are extrajudicial executions. The Ombudsman’s Office estimates that more than one woman is murdered every day. It claims to have provided elements of proof in several cases, but that the Ministerio Público lacks interest and the political will to address the phenomenon.

59. The Women’s Office of the Ministerio Público and the special unit of the PNC reported that 40 per cent of the cases are filed and never investigated. The unit claims to lack the resources and personnel to carry out a proper investigation.<sup>38</sup> According to CONAPREVI, not one of the murders committed in 2004 has been taken to court. By November 2004, even though more than 400 murders had taken place, only 15 warrants to arrest 15 suspects had been issued. Of the 72 suspects that are currently detained, not one of them has gone to trial. The Ministerio Público claimed, on 2 November 2004, that 109 warrants were going to be issued. I have not received any further news on this matter to date.

#### **D. Follow-up by the Women’s Commission of the National Congress**

60. During my visit, on 11 February 2004, female members of the National Congress issued an official statement condemning all discriminatory actions against women, noting that they are conducive to acts of violence such as murder and sexual assault. This statement demanded that the Ministerio Público carry out proper investigations in order to solve all the cases of the murdered women and punish those responsible.

61. Legislative Agreement No. 52-04 of 6 October 2004 entitles the Women’s Commission of the Congress to follow-up on the activities carried out by the competent State institutions in order to prevent, investigate and eradicate all crimes against women. The Commission asserts that the concrete results of this agreement will be to better detect the weaknesses and shortcomings of the justice system and, therefore, determine the legislation required to correct deficiencies. The requirement that the Commission issue a report with conclusions and recommendations addressed to the State bodies that are by law required to take action in the issue of violence against women is another positive element.

62. On 27 October 2004, the Commission summoned the Minister of the Interior to explain the procedures and follow-up given to the cases of violence against women. Women’s NGOs such as CONAPREVI and the Red de la No Violencia contra las Mujeres were invited to sit in on the meeting. Afterwards, the Commission concluded that “the Government has the political will to



enlarge the security apparatus in order to provide a better service to the population in general, and specifically to women”. It also determined that an internal normative framework to establish the activities and objectives of the Ministry was lacking.

63. On 16 November 2004, the Commission summoned the Director of the PNC. Women’s NGOs were again invited. The Commission again determined that there was a “need to provide the National Civil Police with the adequate technology, and also to provide it with more funding”.

64. On 29 November 2004 the Commission summoned the Human Rights Ombudsman to share his views on the issue of violence against women. The Ombudsman stated that the first problem to be addressed was impunity. If criminals do not get caught and charged, the severity of the punishment has no bearing.

65. These consultations are an important and welcome beginning aimed at strengthening adherence to international norms and standards for the prevention of violence against women.

## **V. CONCLUSIONS AND RECOMMENDATIONS**

66. **Guatemala is a country with a rich cultural heritage, which can be an asset in its efforts to establish a democratic and just society. In doing so, however, it is essential to reverse the historically rooted manifestations of hegemonic relations in shaping the contours of social class and governance. It has been argued that “much of the crisis of governability stems from an unaddressed and serious questions about the Guatemalan society, most specifically in the intersection of nation, ethnicity, state and community”.<sup>39</sup> The missing dimension in this formulation is gender.**

67. **Gender politics as adhered to in the various communities has played a key role in not only keeping ethnic and community boundaries distinct, but also in dividing and forcing women into patriarchal patterns of sexual and gender conduct. As a result, even though discriminatory provisions in law have for the most part been eliminated, women throughout Guatemalan society continue to be subjected to discrimination and violence at home, at work, and even when accessing the criminal justice system. Furthermore, women as markers of the identity of their community are compelled to adopt subordinate behaviour, which adds de facto discrimination to the societal one. This situation is particularly prominent in the case of women of poor, rural and indigenous communities.**

68. **A positive element in Guatemala, especially at the government level, is that violence against women is acknowledged. President Perdomo personally informed me of the problem of gender-based violence in the country and asked for my recommendations. In this regard, I must emphasize that first and foremost, the pain rooted in the atrocities of the civil war must be healed. This requires an end to impunity for past as well as current crimes against women. In addition, extreme inequalities, poverty and exclusion, which played a large role in generating the conflict and continue to plague Guatemala today, have to be systematically eradicated. There is need for serious reform to rebuild the State in such a way that it can challenge the monopoly over resources and the insidious alliance between criminal elements and the still-present counter-insurgency structures. In this context, I urge the Government to expedite the creation of a mechanism to address the**

situation of clandestine security groups with similar powers to those contained in the CICIACS agreement signed in January 2004.

69. The Government must ensure that women can fully exercise their rights by eliminating barriers in the criminal justice system. Effective access to justice for women seeking the protection of their basic rights and the prosecution of perpetrators is vital to eliminate impunity for violence against women. PLANОВI, developed in consultation with civil society, is an extremely welcome initiative. It must be provided with the necessary political support and financial resources to be effective.

70. I was impressed with the media interest in and coverage of my visit. It is also encouraging to see the media working with women's organizations and playing a useful role in raising awareness about women's rights, gender-based violence and the lack of effective response by the police and justice sectors to such crimes. A critical and well-informed media is essential for informing the public about human rights violations and holding Governments accountable for their obligations under international law.

71. To conclude, at the time of my visit, with a new Government in office, the climate was promising that a window of opportunity had opened, which, if used by all concerned, could bring about an improvement in the enjoyment and protection of human rights, eliminate impunity, and provide greater resources for the elimination of violence against women. However, regrettably, as I finalize my report, there are worrisome signs. The killing of women has continued to be perpetrated with impunity since my visit; CICIACS was not created; and the Memorandum of Understanding between the Government and OHCHR to establish an office in Guatemala has not yet been signed.

72. In view of the remaining gaps and challenges, I would like to make the following recommendations addressed to the Government, civil society and the international community.<sup>40</sup>

#### **Government of Guatemala**

1. End impunity for violence against women through legislative, investigative, and judicial reform:

- Remove gender-discriminatory provisions in all law, approve the proposed legislation on sexual harassment as well as amend the Penal Code to make sexual harassment a crime;
- Strengthen the administration of justice, with specific attention to the barriers in law and procedure that impede women's access to effective judicial remedies and protection, particularly in the area of violence against women;
- Create a mechanism similar to CICIACS with a mandate to investigate parallel power structures as well as illegal activities undertaken by structures within the State, particularly in view of the serious allegations that some of the killings of

women have been linked to organized crime and security forces, including the PNC;

- Empower the Presidential Commission on Human Rights to institute a mechanism to address institutional accountability during investigation of these cases and the prosecution of all responsible parties to ensure that such crimes are not repeated in the future;
  - Investigate reports of domestic violence, issue protection orders promptly and prosecute perpetrators;
  - Adopt laws for the protection of victims of trafficking in accordance with international human rights standards, including the Recommended Principles and Guidelines on Human Rights and Human Trafficking of 2002;
  - Adopt a policy of demobilization to regulate and prosecute the use of firearms;
  - Ensure that the impact and consequences of the acts of violence committed against women during the armed conflict are adequately reflected in the design and execution of the national reparations plan and other measures of reparation and rehabilitation;
  - Strengthen labour legislation and labour inspection services to ensure the right of women to just, equitable and healthy conditions of work; promote equal pay and benefits for equal work; and safeguard the rights of women and girls employed in the formal and informal sectors, in particular those in domestic work;
  - Create mechanisms to control and prevent fraudulent adoptions and related incidents of abduction of children.
2. Provide protective and support services to women facing actual or risk of violence:
- Promote the opening and maintenance of shelters for women and their children who have encountered or are threatened with violence;
  - Institute psychosocial and economic programmes for the mental health and general well-being of women victims of the civil war, the majority being indigenous women, including through compensation;
  - Provide support for low-income families, female-headed households and women in the rural areas, including through allocation of funds for vocational training, adult literacy, credit schemes and provision of incentives for their employment, assistance with health care and subsidies for housing;
  - Initiate consultations with representatives of civil society organizations and international observers to enable their collaboration with relevant government

**entities to propose, coordinate and oversee the implementation of effective action to guarantee protection for women from violence.**

**3. Create a gender-sensitive information and knowledge base:**

- **Standardize the collection and analysis of sex-disaggregated data on violence against women through a common system for registering complaints throughout the country;**
- **Support research on violence against women and the links between family structure, paternity, child development and domestic violence and their implications on violent behaviour;**
- **Use gender-sensitive data and research for informed policy formulation to end violence and for monitoring and evaluation of progress.**

**4. Strengthen institutional infrastructure:**

- **Strengthen the legal and financial base of State institutions dealing with women's rights: the Women's Office of the Ministerio Público (Fiscalía de la Mujer) with regional representation where the incidence of violence is highest; the Office for the Defence of Indigenous Women (Defensoría de la Mujer Indígena); the Office for the Defence of Women's Rights (Defensoría de los Derechos de la Mujer) of the Ombudsman's Office; the Presidential Secretariat for Women (SEPREM), and the National Coordinator for the Prevention of Domestic Violence and Violence Against Women (CONAPREVI), among others;**
- **Define clearly the mandates of the various national machineries for the advancement of women to avoid duplication, increase efficiency and ensure coordination of all public policy on gender issues from a single body;**
- **Ensure implementation of PLANОВI (2004-2014) and the National Policy for the Promotion and Development of Guatemalan Women and the Plan for Achieving Equal Opportunities 2001-2006, and allocate the necessary resources for their successful functioning;**
- **Take the necessary steps for the establishment of an office of the High Commissioner for Human Rights in Guatemala and provide it with political and administrative support to enable it to contribute to the initiatives towards combating violence against women and instituting human rights principles.**

**5. Promote training, operational and awareness-raising programmes:**

- **Intensify and amplify existing efforts to train officials, particularly those within the PNC and the Ministerio Público responsible for receiving complaints on gender-based violence with a view to increasing the sensitivity and efficacy of their response to victims and their families;**

- **Provide gender training, technical assistance, material resources and oversight to the entities responsible for State security - the PNC, the Ministerio Público, the judiciary and technical personnel such as forensic specialists;**
- **Introduce expertise in the social and psychological fields to the institutions dealing with violence against women, particularly the PNC and the judiciary;**
- **Work with authorities in indigenous communities to institute programmes that promote the observance of women's and children's rights in the exercise of traditional law and conventions to avoid legal pluralism and multiple justice systems that perpetuate gender discrimination;**
- **Conduct media campaigns to generate zero tolerance for violence against women, eliminate all forms of discrimination and promote respect for human rights;**
- **Conduct legal literacy campaigns to inform women of their rights (Law on the Prevention, Punishment and Eradication of Intrafamilial Violence, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol and the Convention of Belém do Pará) and the places to go to submit complaints;**
- **Ensure that girls have equal access to primary education and support the completion of primary school as a minimum standard, and provide girls and women equal access to secondary education, and technical and professional training;**
- **Eliminate language barriers in education through bilingual education where possible, and special Spanish language classes for children of indigenous communities, particularly to increase indigenous girls' access to education;**
- **Promote through school curricula and media campaigns the recognition of the multicultural nature of society and its value in cultural enrichment.**

**Civil society, including human rights organizations and the media**

- **Develop solidarity networks with diverse groups, with special attention to ensuring participation of indigenous women's organizations, to develop common strategies for the advancement of women and join efforts to hold Government accountable for the promotion and protection of women's rights;**
- **Monitor the application of law by the criminal justice system in cases of violence against women, collect data and report on the situation of women, and form partnerships with authorities to develop policies to address the problems;**
- **Undertake research on the nature of domestic violence within plural legal/customary traditions, particularly in resolving disputes and conflicts,**

**and on the impact of war and displacement on the family structure and social fabric of diverse communities;**

- **Continue to play a strong advocacy role, including through work with the media to raise awareness about the scale and gravity of violence against women. The media, as set forth in the Beijing Platform for Action, must avoid gender stereotypes and show sensitivity for the needs of the victims and their families when reporting incidents of violence against women. The media, in collaboration with civil society, can promote the sharing of paternal responsibilities and demand State accountability for investigating and prosecuting perpetrators of violence.**

#### **The international community**

- **Prioritize through bilateral and multilateral funding the initiatives of women's organizations, research institutes and academia for research, advocacy and operational projects that aim to contribute towards the advancement of women, including women of indigenous groups;**
- **Provide sufficient resources to strengthen the capacity of the United Nations Country Team to integrate the promotion and protection of women's rights into all of its activities;**
- **Pursue the Memorandum of Understanding with the Government of Guatemala for the creation of an OHCHR field office in Guatemala;**
- **Promote a CICIACS-like formation to assist the Government to strengthen the capacity of State mechanisms and apparatuses to enable the establishment of rule of law in the country.**

#### **Notes**

<sup>1</sup> I also visited El Salvador from 4 to 8 February 2004.

<sup>2</sup> For a comprehensive overview of Guatemala's return to peace, see W. Stanley and D. Holiday, "Broad Participation, Diffuse Responsibility: Peace Implementation in Guatemala", in S.J. Stedman et al. (eds.), *Ending Civil Wars*. (London: Lynne Rienner, 2002) pp. 421-462.

<sup>3</sup> The parallel structures of power include clandestine groups (see footnote 9) and machista roles.

<sup>4</sup> Recovery of Historical Memory Project, *Guatemala Never Again!* (New York: Orbis Books, 1999).

<sup>5</sup> In this context the project "From Victims to Actors of Change", which was launched by Projects Counseling Services (PCS), addresses mental health, justice and recovering historical memory.

<sup>6</sup> See I.A. Luciak, "Peace Agreements as a Means for Promoting Gender Equality and Ensuring Participation of Women: El Salvador and Guatemala" (EGM/PEACE/2003/EP.7), paper prepared for a United Nations expert meeting, Ottawa, Canada, 10-13 November 2003, p. 4, also Y. Ertürk, "Women, conflict and peace in El Salvador and Guatemala", presentation at panel on "Affirmative Action and 1325", organized by OHCHR and the Government of Germany, 5 April 2004.

<sup>7</sup> URNG was diverse: 80 per cent consisted of 21 ethno-linguistic indigenous groups and the remainder were revolutionary Ladino groups.

<sup>8</sup> "Fourteenth report on human rights of the United Nations Verification Mission, July 2002-June 2003" (hereafter "Fourteenth report").

<sup>9</sup> D. Keen, *Demobilizing Guatemala*, Development Research Centre, London School of Economics, Working Paper No. 37, 2003, available at <http://www.crisisstates.com/Publications/wp/wp37.htm>.

<sup>10</sup> 42.8 per cent to 60 per cent of the population are said to be indigenous (some claim the figure to be as high as 70 per cent). According to Human Rights Watch (HRW), the discrepancies are due to the varying definitions of what it means to be "indigenous". HRW, *From the Household to the Factory: Sex Discrimination in the Guatemala Labor Force* (New York: 2002), p. 46.

<sup>11</sup> MADRE, "Guatemala: Country Overview", 2004, at [http://www.madre.org/country\\_guate.html](http://www.madre.org/country_guate.html). See also L. Viscidi, "A History of Land in Guatemala: Conflict and Hope for Reform", America's Program, Interhemispheric Resource Center, 2004, at <http://www.irc-online.org/citizen-action/focus/2004/0409guatland.html>.

<sup>12</sup> Oxfam, "Guatemala: indigenous voices loud and clear", *Oxfam Horizons*, September 2003, quoting Trends in Latin American Networking, at [http://www.oxfam.org.au/oxfamnews/september\\_2003/guatemala.html](http://www.oxfam.org.au/oxfamnews/september_2003/guatemala.html).

<sup>13</sup> Ibid.

<sup>14</sup> World Bank, *World Development Report 1997* (Washington, D.C., 1997), p. 222.

<sup>15</sup> *Human Development Report 2004*, (New York: UNDP, 2004), p. 190.

<sup>16</sup> Ibid., p. 219.

<sup>17</sup> According to the United Nations Country Team, some 200,000 women lack identification documents, some having been lost during the war. It was reported that the Embassy of Switzerland in Guatemala has initiated a registration project to enable women to obtain proper documentation.

<sup>18</sup> The Maya are comprised of 21 linguistic groups. The Garífuna are basically of African descent. The rest of the Guatemalan nation, from the ethnic standpoint, is composed of the Ladinos, or mestizos, and the population of European origin, or "Whites".

<sup>19</sup> Language is a common obstacle for indigenous schoolchildren, who are required to speak Spanish in school although it is not their native tongue. Approximately 40 per cent of indigenous schoolchildren fail in their first year, while many others quit.

<sup>20</sup> Traditionally, Mayan women were perceived as biological and cultural reproducers of the Maya community, which necessitated the reproductive control of women. This situation is still largely valid today.

<sup>21</sup> For example, just to name a few: Rosalina Tuyuc, a former congresswoman; Dominga Vásquez Julajuj, the Mayor of Solala; and Rigoberta Menchú, the Nobel Prize winner.

<sup>22</sup> *Statistical Yearbook for Latin America and the Caribbean*, United Nations publication, Sales No. E/5.04.II.G.1, May 2004, p. 48.

<sup>23</sup> The actual incidence of female-headed household is thought to be higher than these figures. The unstable and informal nature of many male-female unions as well as the self-perception of those reporting create definitional and measurement discrepancies. See FAO, "Current trends affecting women's participation in the rural economy", at <http://www.fao.org/DOCREP/006/Y4940E/y4940e08.htm>.

<sup>24</sup> G. Barker, "Men's Participation as Fathers in the Latin American and Caribbean Region: A Critical Literature Review with Policy Considerations", World Bank, p. 11.

<sup>25</sup> Ibid., p. 17.

<sup>26</sup> Owing to definitional discrepancies mentioned above, there is no consensus as to the exact percentage of female-headed households in indigenous communities, but it is known that the intersection of patriarchy and ethnicity, particularly in rural areas, condemn these women to extreme poverty.

<sup>27</sup> Amnesty International, "Intolerable Killings. Mexico: 10 years of abductions and murder of women in Ciudad Juarez and Chihuahua", AI Index AMR 41/026, 2003.

<sup>28</sup> Information received during the mission.

<sup>29</sup> See Human Rights Watch, "Guatemala: State Recognizes Role in Political Killing but Further Steps Needed to Bring Justice in Past Abuses" press release, Washington, D.C., 22 April 2004, at <http://hrw.org/english/docs/2004/04/22/guatem8485.htm>.

<sup>30</sup> "Guatemala: Supporting Poverty Reduction and Sustainable Development", (Guatemala City: Inter-American Development Bank, May 2003), p. 12.

<sup>31</sup> Information received during the mission.

<sup>32</sup> The Government of Guatemala, in the midst of negotiations for the Central America Free Trade Agreement (CAFTA), threatened to deprive the company of its export licence if it failed to negotiate a first collective agreement with the unions, reinstate unjustly fired union members, and come to agreement with the union on a plan to resolve problems in the factories.



<sup>33</sup> See the Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1). Another cross-border problem confronting Guatemala is fraudulent adoptions; however, owing to insufficient information it is not possible to focus on it here.

<sup>34</sup> Decree 97/96 of the Congress of the Republic, in accordance with constitutional mandates, article 13 of the above-mentioned law, and the Convention of Belém do Pará.

<sup>35</sup> See the report of the Special Representative of the Secretary-General on human rights defenders (E/CN.4/2003/104/Add.2).

<sup>36</sup> Keen, *op. cit.* at note 9.

<sup>37</sup> The term “clandestine groups” refers to criminal networks involving the business sector, private security companies, common criminals and gang members. It is reported that preliminary investigations have also implicated members of the police and both former and current members of the armed forces. These clandestine groups are closely linked to both organized crime and so-called “hidden or parallel powers”. These represent an informal group of powerful individuals, both civilian and military, who have embedded themselves within the State structure and use their positions and contacts to control lucrative illegal activities and guarantee immunity from prosecution. Many of the increasing number of attacks against human rights defenders, whilst often disguised as common crimes, are believed to be carried out by members of clandestine groups.

<sup>38</sup> The unit has 20 investigators divided into five groups. Each of the investigators has estimated 20 cases pending.

<sup>39</sup> J. Handy, “Democratizing what? Some reflections on nation, state, ethnicity, modernity and democracy in Guatemala” 2000, at [www.geocities.com/tayacan-2000/handy.pdf](http://www.geocities.com/tayacan-2000/handy.pdf).

<sup>40</sup> The recommendations are made following extensive consultations with women’s rights defenders. I support the requests made by the women’s movement in Guatemala contained in the document entitled “Commitments for a life without violence”, prepared for the President of the Republic by the Red de la No Violencia contra las mujeres on 25 November 2003. I also support and call for the implementation of the recommendations made by the Inter-American Commission on Human Rights in the Fifth Report on the Situation of Human Rights in Guatemala, chapter XIII, “The rights of women” (OEA/Ser.L/V/II.III, doc. 21 rev., 6 April 2001).

## **Appendix**

### **SELECTED LIST OF PERSONS/ORGANIZATIONS MET DURING THE MISSION**

#### **Public sector**

President and the First Lady, the Vice-President

Representatives of the Ministry of Foreign Affairs

The Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH)

National Coordination for the Prevention of Domestic Violence and Violence against Women (CONAPREVI)

Presidential Secretariat for Women (SEPREM)

Ministerio Público

Judicial branch, Supreme Court

Women's Commission of Congress

Ministers of Education, Health and Labour

Deputy Human Rights Ombudsman and its Office for the Defence of Women's Rights

Major of Sololá

Commissioner on Security, Minister of the Interior, Director of the National Civil Police and its Women's Unit

Penitentiary

#### **Civil society organizations**

Red de No Violencia contra las Mujeres

Comité de Beijing

Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM)

Coordinadora 25 de Noviembre

Grupo Guatemalteco de Mujeres (GGM)

Fundación Myrna Mack

Academics, National Statistical Institute, Facultad Latinoamericana de Ciencias Sociales, (FLACSO), Centro de Investigaciones Económicas Nacionales (CIEN), Asociación de Investigación y Estudios Sociales (ASIES), Universidades, Asociación para el Avance de las Ciencias Sociales (AVANCSO), Centro de Investigaciones Regionales de Mesoamérica (CIRMA)

La Asociación Pro Bienestar de la Familia de Guatemala (APROFAM)

Individuals and groups from rural indigenous communities

**United Nations agencies**

Special Representative of the Secretary-General and Head of the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA), United Nations Resident Coordinator

International Coordinator of the OHCHR project in Guatemala and colleagues

United Nations Inter-agency Thematic Group on Gender Equality

Representative of UNICEF

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