

CENTRE ON  
HOUSING RIGHTS  
AND EVICTIONS



**Document Prepared for  
Office of the High Commissioner for Human Rights**

Concerning

**REPUBLIC OF GUATEMALA**

To Assist in Preparation of Documents for First Cycle Universal Periodic Review

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# EXECUTIVE OVERVIEW

## I. Introduction

The Centre on Housing Rights and Evictions (COHRE) herewith offers the present Submission to assist the Office of the High Commissioner for Human Rights (OHCHR) in providing documentation to the Human Rights Council on the occasion of that body's first assessment of Guatemala in the context of the Universal Periodic Review. It has the aims of (i) assisting the work of the OHCHR in providing the Human Rights Council with high quality reporting in these areas; as well as (ii) facilitating civil society input into this revolutionary new international procedure. It is our hope that, during this crucial first phase of the Universal Periodic Review, in which its credibility as a mode of redressing human rights harms is inevitably under intense scrutiny, the material provided herein can provide a sound basis for engagement with the authorities of the country at issue.

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

Guatemala is a country with a majority Indigenous Mayan population and a long history of endemic violations of their rights. While international agreements provide for specific guarantees for the rights of indigenous peoples, in general mechanisms for the guarantee of these rights have not been implemented. Violations of the fundamental human rights of indigenous populations has long been and continues to be substantially higher than that of non-indigenous populations.

The Guatemalan Truth Commission Report (*Guatemala: Memory of Silence*, 1999) concluded that over 93% of all human rights violations and atrocities which occurred during the course of the 36-year conflict were committed by the State and State-related forces; 4% were of undetermined authorship; and 3% were attributed to the armed rebel forces. The Truth Commission found that 18% of all documented human rights violations were perpetrated by the Patrols for Civil Self-Defence (so-called "PACs" -- Patrullas de Autodefensa Civil), and that 95% of those crimes were committed in less than a three-year period (1981-1983). The PAC crimes included extra-judicial executions (including participation in the massacres), followed by torture, forced disappearances and rape.

The Truth Commission found that in certain regions of the country the Guatemalan military and paramilitaries planned and carried out acts of genocide. There are few Guatemalans alive today that remember the country's brief period of democracy (1944-1954). Most Guatemalans have lived under the control of military dictatorships or, since 1986, civilian governments that have been unable or unwilling to institute the fundamental changes necessary to bring about a real political transition, including the establishment of a functioning rule of law.

Supporting Guatemala's transition from an authoritarian and militarised society to a democratic one means supporting and empowering the non-militarised networks of citizens, especially indigenous organisations, working on the establishment of the rule of law, community reconstruction, education, housing and land rights and environmental protection.

From 1961 to 1996, Guatemala was embroiled in a bloody civil war, with State forces brutally seeking to quell a growing movement for land rights and social justice, as well as an armed insurgency led by the URNG (Guatemalan National Revolutionary Unity). In order to achieve its ends, the Government of Guatemala adopted a "scorched earth" policy within the Guatemalan countryside meant to exterminate the rebel forces, as well as any suspected "rebel sympathizers". This approach led Guatemalan State security forces to inflict horrendous violence on the innocent civilian population, many of whom belonged to the country's Mayan ethnic groups. Many hundreds of villages were destroyed and more than one million people driven from their homes during the conflict. Indeed, the United Nations Commission for Historical Clarification (CEH) found that all told over 200,000 persons, mainly of Mayan ethnicity, were killed or disappeared.<sup>1</sup> The Truth Commission found that genocide was carried out in certain Mayan-dominated regions of the country.

In this context, indigenous populations have been particularly targeted for violations in the internal armed conflicts and past and on-going land struggles; they are poorer than the already poor majority populations and they suffer discrimination on top of the exploitation and repression. Indigenous communities continue to be threatened of forced evictions and displacement as a result of the impact of planned or implemented mega-development projects, such as dams and mining, without the due legal process of consultation, participation and information.

## II. Racial Discrimination against Indigenous Peoples

As a result of centuries of endemic racial discrimination against indigenous and non-ladino peoples, the lack of access to civil, political, social, economic, and cultural rights in Guatemala predominantly affects these groups, especially those who are poor and/or live in rural areas.<sup>2</sup> While class may play a role in social exclusion of the poor, rural and indigenous, racial discrimination is at its roots.<sup>3</sup> The indigenous peoples, even being half of the total of rural

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<sup>1</sup> Guatemalan Commission on Historical Clarification (CEH), Guatemala: Memory of Silence (1999).

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

<sup>3</sup> See, e.g., *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 7 ("The anti-democratic nature of the Guatemalan political tradition has its roots in an economic structure, which is marked by the concentration of productive wealth in the hands of a minority. This established the foundations of a system of multiple exclusions, including elements of racism, which is, in turn, the most profound manifestation of a violent and dehumanizing social system. The

producers, possess only 24% of arable land.<sup>4</sup> Many forced evictions are carried out against poor and/or rural indigenous communities by economically and socially powerful, non-indigenous, individuals and companies.<sup>5</sup> Because indigenous legal systems are not generally recognized and applied by the central government,<sup>6</sup> and much land has been and continues to be expropriated from indigenous peoples, the legal titles to most land are considered to belong to the *ladino* or foreign claimant, not the indigenous claimant, if a dispute arises.<sup>7</sup> Consequently, any indigenous persons who then occupy the disputed land are considered by the government as squatters to be evicted.<sup>8</sup> Access to public services is equally difficult for indigenous groups, and “indicators of health, education and housing for these peoples and communities remain lower than for the rest of the population.”<sup>9</sup> Further, the domestic laws do not offer effective protection against discrimination.<sup>10</sup> Public authorities frequently respond to dissent and other forms of social protest by bringing criminal law actions against human rights defenders, while protecting private property interests.<sup>11</sup> Finally, indigenous peoples continue to be excluded from public decision-making on matters that directly affect their communities, such as mining and other large “development” projects.

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State gradually evolved as an instrument for the protection of this structure, guaranteeing the continuation of exclusion and injustice.”).

<sup>4</sup> National Institute of Data. IV National Census of Agriculture and Cattle, 2003. [www.ine.gob.gt/censosA.html](http://www.ine.gob.gt/censosA.html)

<sup>5</sup> See, e.g., Amnesty International, *Guatemala: Land of Injustice?*, AI Index: AMR 34/003/2006; see also *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 23 (citing for example the Northern Transversal Strip, “one of the main areas of confrontation during the armed conflict, from which many indigenous communities were displaced and where large estates were formed which are currently owned by former members of the armed forces.”)

<sup>6</sup> *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Guatemala*, U.N. Doc. CERD/C/GTM/CO/11 (2006), para. 14 (“While the Committee notes the progress that has been made in preventing racial discrimination in the administration of justice in respect of indigenous peoples, it reiterates its concern at the problems experienced by indigenous peoples in gaining access to the justice system, particularly because the indigenous legal system is not recognized and applied and because of the lack of interpreters and bilingual counsel available for court proceedings. (art. 5, subpara. (a)).”)

<sup>7</sup> See, e.g., *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1 (2006), para. 11 (“the Ixil community in Antigua Xonka [who are] occupying land they believe was expropriated from them reportedly issued legal proceedings in a local court but live under constant threat from the landowner who repeatedly sends private police squads to forcibly evict them and burn their crops, animals and makeshift shelters...They argue that none of the Ixil lands have been legally regularized or recognized, which allows *finceros* (estate owners) to keep taking more land from them. Although the Peace Accords set out a framework for regularization of indigenous lands and rights, lack of political will has left these issues unresolved.”).

<sup>8</sup> *Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance: Visit to Guatemala*, U.N. Doc. E/CN.4/2005/18/Add.2 (2005), para. 33 (finding that “the problems over land illustrate the discrimination from which these people suffer. An example would be the violence used in ‘clearing’ the Nueva Linda estate, a huge property occupied by a group of landless peasants; this ‘clearing’ led to more than nine deaths, and does not seem to have been dealt with seriously by the Government or the justice system, despite several damning reports”).

<sup>9</sup> *Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance: Visit to Guatemala*, U.N. Doc. E/CN.4/2005/18/Add.2 (2005), p. 2.

<sup>10</sup> *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Guatemala*, U.N. Doc. CERD/C/GTM/CO/11 (2006), para. 13 (stating that “while the Committee recognizes that the classification of discrimination as an offence under article 202 bis of the Criminal Code constitutes legal progress, it regrets that there is no domestic legislation that specifically prohibits and provides sanctions for racial discrimination (art. 4, subpara. (a))”).

<sup>11</sup> See, e.g., *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 26.

### III. Historical Expropriation of Land from Indigenous Peoples

Expropriation of land from indigenous peoples by foreign individuals and businesses has led to a vastly unequal distribution of land ownership.<sup>12</sup> This historical expropriation of land was “exacerbated during the conflict, and continues today.”<sup>13</sup> As a result of the history of land expropriation by powerful landowners, there are often multiple claims to the same land.<sup>14</sup> As the Special Rapporteur on the Right to Food noted, “land occupations increase as communities desperately search for ways of feeding themselves” and “occupations occur mostly when landowners have violated labour rights, or where land ownership is disputed.”<sup>15</sup> These confrontations “arising over the ownership of property, in the course of which indigenous peoples have been detained and threatened” have been of “special concern” to the UN Committee on the Elimination of Racial Discrimination (CERD).<sup>16</sup> CERD expressed high concern “at indigenous peoples’ lack of access to land, the lack of respect shown for their traditional lands, such as community forests, and the problems in relation to the restitution of lands to indigenous peoples displaced as a result of armed conflict or economic development plans (art. 5, subpara. (d) (v))”<sup>17</sup> On his visit in 2005, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance was told by Xinka representatives that the situation in their villages of Yupiltepeque, Jumaytepeque, and Guazacopán requires “urgent attention,” as they have been threatened with the expropriation of their land by the municipal authorities.<sup>18</sup>

### IV. Forced Evictions

Disputes over land ownership most often result in forced evictions of indigenous communities who claim ownership of the same land as a more powerful company or individual. The latter entities are often able to buy armed force to effectuate the eviction.<sup>19</sup> In such cases, the Government of Guatemala has either provided military and/or police forces to the party undertaking the forced evictions, or it has acquiesced when third parties hire private police

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<sup>12</sup> See, e.g., *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 5 (“[t]he present status of the indigenous peoples in Guatemala is the result of a long process of colonial subjection of the Maya people starting in the sixteenth century, which was reinforced during the liberal period in the nineteenth century, when a governing class was formed that based its power and its privileges on large rural estates and the exploitation of indigenous labour, under authoritarian and property-based regimes.”).

<sup>13</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1 (2006), para. 49 (giving as an example La Perla farm, where it is alleged that during the conflict, the landowner extended his farm into the 2,200 hectares that are recorded in the local property register as belonging to two indigenous communities (Sotzil and Ilom), with the help of the army and paramilitary).

<sup>14</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1 (2006), para. 11.

<sup>15</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1 (2006), para. 11.

<sup>16</sup> *Annual Report of the Committee on the Elimination of Racial Discrimination to the General Assembly* (Fifty-second session, 1997), U.N. Doc. A/52/18 (1997), para. 81 (“Principle subjects of concern”).

<sup>17</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination, GUATEMALA. CERD/C/GTM/CO/11 - 21 March 2006.

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

<sup>19</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1(2006), para. 11.

squads.<sup>20</sup> NGOs reported 40 forced evictions in the first six months of 2004, affecting 1,500 families.<sup>21</sup> As of 2006, an Ixil indigenous community of 270 families in Antigua Xonka live under “constant threat from the landowner who repeatedly sends private police squads to forcibly evict them...”<sup>22</sup> Not only are people forcibly evicted from their homes with the complicity of the State, but they are evicted violently, with excessive force. The Report of the Special Rapporteur on the Right to Food details how army, para-military, or private police squads burned crops, animals and shelters,<sup>23</sup> used tear gas, as well as performed extrajudicial executions of dissenting residents.<sup>24</sup> The Special Rapporteur notes that of more than 31<sup>25</sup> evictions that occurred in the first six months of 2004, over half of them were violent.<sup>26</sup> In the case of *Nueva Linda* farm (Champerico, Retalhuleu), “while some officials were negotiating a peaceful evacuation with the representatives of 22 communities who occupied the land three years ago, the Civil National Police intervened violently, leaving 9 dead, over 40 injured and 13 detained, as well as ... the communities’ crops and homes [destroyed].”<sup>27</sup> The Special Rapporteur also highlighted another case at *El Maquety* farm (Fraijanes), where 86 peasant families were forcibly evicted from their land by the police and army.<sup>28</sup> The Committee against Torture (CAT), too, has recently expressed its concern “about reports of the use of excessive force by police officers during evictions in rural areas, which often result in the destruction of homes and other personal belongings, and sometimes even in violent deaths.”<sup>29</sup> CAT recommended that Guatemala “adopt effective measures to prevent the use of excessive force during evictions, provide specific training on evictions for police officers, and ensure that complaints concerning forced evictions are thoroughly investigated and that those responsible are brought to trial.”<sup>30</sup> As a result of such frequent and violent evictions, rural and indigenous populations have no security of tenure, and they are often subjected to severe physical and/or mental pain or suffering, putting the State in violation of Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), as elaborated by the UN Committee on Economic, Social and Cultural Rights in General Comment No. 7, as well as the Convention against Torture.

COHRE documented the case of forced eviction of the Maya-Achi village of Río Negro (see Annex II), carried out through a series of brutal massacres, which has resulted in ongoing human rights violations. These ongoing human rights violations include being forced into extreme

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<sup>20</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1(2006), para. 11.

<sup>21</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1(2006), para. 12 (citing COS (Colectivo de Organizaciones Sociales), ‘Balance de la Paz 2004,’ *Otra Guatemala es Posible: Acuerdos de Paz, Unidad y lucha de las organizaciones sociales*, Guatemala, 2004).

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

<sup>23</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1(2006), para. 11.

<sup>24</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1(2006), para. 12.

<sup>25</sup> This is the figure according to Amnesty International, 2005, *infra* at note 29.

<sup>26</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1(2006), para. 48 (citing Amnesty International, *Memorandum to the Government of Guatemala: Amnesty International’s concern regarding the current human rights situation*, AMR 34/014/2005).

<sup>27</sup> *Id.* (citing FIAN, *The Human Right to Food in Guatemala*, Oct. 2004; Colectivo de Organizaciones Sociales, *Acuerdos de Paz, Unidad y lucha de las organizaciones sociales*, 2004).

<sup>28</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1(2006), para. 48 (citing Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo (PIDhDD), FIAN Brazil, *El Derecho Humano a la Alimentación en América Latina*, 2004; FIAN, *The Human Right to Food in Guatemala*, October 2004).

<sup>29</sup> *Conclusions and Recommendations of the Committee against Torture: Guatemala*, para. 21, U.N. Doc. CAT/C/GTM/CO/4 (2006).

<sup>30</sup> *Id.*

poverty; inadequate housing, food and water; lack of adequate livelihood; and lack of just and fair reparations.

While the atrocities conducted during in the 1980s in Guatemala are well documented, due remedy for survivors of those atrocities are yet to materialize. The massacres that took place in the context of the construction of the Chixoy hydroelectric dam offer but one egregious example. The massacres at Río Negro, designed to displace peasant villages near the dam and reservoir and cited as an example of genocide by the Commission for Historical Clarification, resulted not only in the brutal death of scores of Maya-Achi peasants, but also forced the survivors into extreme poverty. The World Bank and the Inter-American Development Bank has arguably been complicit in the failure to provide reparations for the survivors.<sup>31</sup> Both banks continued to provide loans for the Chixoy Dam throughout the displacement phase of the project. Indeed, the World Bank's second loan instalment to the Government of Guatemala actually occurred in 1985 - *after* the massacres and forced displacement took place. The Republic of Guatemala, with the complicity of the World Bank and the Inter-American Development Bank, unlawfully forcibly evicted the community of Río Negro in 1982. Methods used to carry out the forced eviction included a series of massacres resulting in the deaths of 444 residents of the community.

## V. Insufficient Legal Framework to Protect Land Rights

There is little to no recognition of indigenous land ownership<sup>32</sup>, especially of communal and collective nature. While Guatemala recently adopted the Land Register Act, which recognizes collective registration of ownership of communal lands by indigenous peoples,<sup>33</sup> there is still a *de facto* problem getting indigenous lands to be legally regularized or recognized.<sup>34</sup> This problem is “exacerbated by the fact that the laws and institutions for land titling, property registration and maintenance of the register of agricultural land are inadequate and ineffective, giving rise to a high level of legal uncertainty and many conflicts relating to boundaries and land tenure.”<sup>35</sup> CERD called upon the State party to “take steps to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands and territories,” and “in cases where they have been deprived of their lands and territories traditionally owned, or such lands and territories have been otherwise used without their free and informed consent, the Committee recommends that the State party take steps to return those lands and territories...”<sup>36</sup> Article 70 of the Political Constitution establishes that “the law will regulate the implementation

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<sup>31</sup> COHRE Fact-Finding Mission Report: *Continuing the Struggle for Justice and Accountability in Guatemala: Making Reparations A Reality in the Chixoy Dam Case*. [http://www.cohre.org/view\\_page.php?page\\_id=168](http://www.cohre.org/view_page.php?page_id=168)

<sup>32</sup> *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Guatemala*, U.N. Doc. CERD/C/GTM/CO/11 (2006), para. 14 (“While the Committee notes the progress that has been made in preventing racial discrimination in the administration of justice in respect of indigenous peoples, it reiterates its concern at the problems experienced by indigenous peoples in gaining access to the justice system, particularly because the indigenous legal system is not recognized and applied and because of the lack of interpreters and bilingual counsel available for court proceedings. (art. 5, subpara. (a)).”

<sup>33</sup> *Report of the High Commissioner for Human Rights on the Situation of Human Rights in Guatemala*, U.N. Doc. E/CN.4/2006/10/Add.1 (2006), para. 74.

<sup>34</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1 (2006), para. 11.

<sup>35</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 24.

<sup>36</sup> *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Guatemala*, U.N. Doc. CERD/C/GTM/CO/11 (2006), para. 17.



of indigenous peoples rights enshrines in the Constitution” (Arts. 58 and 66 to 69), but the National Congress has never passed such a law to effectuate indigenous’ rights.

## VI. Criminal Prosecution of Human Rights Defenders

There is also cause for concern over the practice of criminalizing social movements, labour and land protests by poor and indigenous groups, while treating large landowners’ refusals to pay workers as less serious violations.<sup>37</sup> Amnesty International noted that “a particular characteristic of agrarian disputes in Guatemala is that the full weight of the law and judicial system is often levied in order to enforce evictions, but not to issues relating to labour rights of rural works or land tenure of rural communities.”<sup>38</sup> As “a consequence of this practice of criminalizing social problems, the judicial officials are failing to abate tensions in society, and in many cases are exacerbating them.”<sup>39</sup> There is also a lack of agrarian regulations, courts, and tribunals to settle land and resource ownership disputes.<sup>40</sup> The Special Rapporteur on the Right to Food advised that “... an Agrarian Code to regulate the access, use and tenure of land should be elaborated, which recognizes indigenous forms of land ownership ...,” and “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.”<sup>41</sup> The High Commissioner, too, emphasized the need to establish agrarian courts and tribunals “to find solutions to the problems that arise in connection with the registration of land.”<sup>42</sup> She further advised that there is a “need for regulations to govern the functioning of such organs.”<sup>43</sup> The Committee recommended that Guatemala adopt such legislation, and “also ensure that the implementation of this legislation improves the situation of members of indigenous communities in practice and not only on paper.”<sup>44</sup>

## VII. Violation of the Right to Participate in Public Decision-Making

The Special Rapporteur on the Right of Indigenous People found, “the exclusion of the indigenous peoples from their role as citizens has been a characteristic feature of the political structure of Guatemala since colonial times and throughout the life of the Republic.”<sup>45</sup> Recently,

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<sup>37</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1 (2006), para. 54; *see also Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 26; *see also id.* at para. 35.

<sup>38</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1 (2006), para. 12 (citing Amnesty International, Memorandum to the Government of Guatemala: Amnesty International’s concern regarding the current human rights situation, AMR 34/014/2005).

<sup>39</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003); para. 35; *see also id.* at para. 26.

<sup>40</sup> *See, e.g., Report of the High Commissioner for Human Rights on the Situation of Human Rights in Guatemala*, U.N. Doc. E/CN.4/2006/10/Add.1 (2006), para. 74.

<sup>41</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1 (2006), para. 58(f).

<sup>42</sup> *Report of the High Commissioner for Human Rights on the Situation of Human Rights in Guatemala*, U.N. Doc. E/CN.4/2006/10/Add.1(2006), para. 74.

<sup>43</sup> *Report of the High Commissioner for Human Rights on the Situation of Human Rights in Guatemala*, U.N. Doc. E/CN.4/2006/10/Add.1(2006), para. 74.

<sup>44</sup> *Concluding Observations of the Human Rights Committee : Guatemala*, U.N. Doc. CCPR/CO/72/GTM (2001), para. 29.

<sup>45</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Mission to Guatemala*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 42 (reporting that “[t]his phenomenon traditionally

the Guatemalan government has granted mining and forestry rights to concession enterprises, while failing to consult the affected groups prior to making the grants.<sup>46</sup> This has both excluded indigenous groups in the areas from exploiting these resources, and ignored the impact on these groups.<sup>47</sup> By the Government's own estimation, "the granting of mining licenses by the Ministry of Energy and Mines to concession enterprises is causing the Government serious problems [since] [s]uch activities are considered a grave violation of the rights of thousands of indigenous and non-indigenous Guatemalans, who were not duly consulted and informed that the subsoil of their territory would be licensed to mining companies."<sup>48</sup> The Government "emphasized that most of the population in 9 of the 16 departments affected is indigenous and that various small groups (Chuj, Sipakapense, Chorti, Mam, Kaqchikel) will be faced with ethnocide if mining projects are not handled appropriately."<sup>49</sup> In granting mining and other natural resource exploitation licenses to concession enterprises without consulting or informing indigenous and non-indigenous Guatemalans, the Government of Guatemala is in clear breach of its obligations under ILO Convention No. 169, and is in disaccord with the recommendations of CERD.

In 2006 and 2007 COHRE carried out fact-finding missions to Guatemala to document violations of human rights resulting from the implementation of development-based projects, especially the Samastum, Champey and Xalala dams, in the Departments of Alta Verapaz and Quiché. In the case of the Xalala dam, the affected communities have carried out consultations in April 2007, following the OIT 169 Convention's norms, among its member in order to discuss the impacts of such dam and to get the community's opinion about its construction. Approximately 18,000 persons voted "no" to the construction of the dam but the consultations were not recognised by the government, which started the bid of the construction of the dam. The obligation to carry out previous and informed consultations was recognized by CERD by the adoption of General Recommendation n. 23. It emphasize that any decisions directly related to the rights and interests of the indigenous peoples shall be undertaken without their consent (para. 4, d).<sup>50</sup>

## VIII. Other factors Hindering Effective Access to the Right to Adequate Housing

High levels of social exclusion, combined with extreme poverty, especially among indigenous and rural populations, further "hinder" the enjoyment of land ownership and access to adequate housing.<sup>51</sup> On his visit to the legalized slum, Bethania, Guatemala City in 2005, the Special Rapporteur on the Right to Food found that "people were living in overcrowded shacks of tin

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involved the subordination of traditional forms of organization of the communities and peoples and exercise of their authority (indigenous mayors and guilds, for example); the belated granting of the right to vote; high rates of abstentionism among indigenous voters - continuing to the present time; the absence of indigenous people in elected posts or public offices of responsibility, including military commands; and in general scant influence on the part of indigenous peoples in decision-making concerning national life.").

<sup>46</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Mission to Guatemala*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 27.

<sup>47</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Mission to Guatemala*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 27.

<sup>48</sup> *Reports Submitted by States parties under Article 9 of the Convention on the Elimination of all Forms of Racial Discrimination, Eleventh periodic report of States parties due in 2004*, U.N. Doc. CERD/C/469/Add.1 (2005), para. 31.

<sup>49</sup> *Reports Submitted by States parties under Article 9 of the Convention on the Elimination of all Forms of Racial Discrimination, Eleventh periodic report of States parties due in 2004*, U.N. Doc. CERD/C/469/Add.1 (2005), para. 31.

<sup>50</sup> CERD, A/52/18.

<sup>51</sup> *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Guatemala*, U.N. Doc. E/C.12/1/Add.93 (2003), paras. 24, 29.

and plastic, without sanitation, and where doctors in the local health centre estimated that at least 20 percent of the children were suffering from malnourishment and more from diarrhoea, skin, and fungal diseases.”<sup>52</sup> Further, many children in Guatemala are left to live in the streets. In its Concluding Observations, the Committee on the Rights of the Child expressed its concern “at the significant number of children living in the streets ... [and] at allegations of rape, ill-treatment and torture, including murder for the purpose of “social cleansing,” of children living in the streets.”<sup>53</sup> The Committee recommended that the State party “expedite the adoption of a National Plan for the Care of Street Children and ensure that children living in the streets are provided with nutrition, clothing, housing, health care and educational opportunities, including vocational and life-skills training, in order to support their full development.”<sup>54</sup> Guatemala’s allowance of these situations is a clear violation of the right to habitability as part of the right to adequate housing (integral to an adequate standard of living secured in Article 11(1) of the CDESCR), and of Article 27(3) of the CRC.

## **XIX. Right to Water**

The right to availability of services, specifically the right to access safe drinking water, is currently being violated in Guatemala by the inaccessibility of potable drinking water across the country. The Special Rapporteur on the Right to Food observed that “access to water is problematic in urban areas, especially in illegal slums.”<sup>55</sup> He also reported that access was “particularly [problematic] in rural areas.”<sup>56</sup> Over 65 percent of the rural population lack access to an improved source of fresh water or sanitation.<sup>57</sup> Indigenous peoples, especially children and women, are among those who are most affected by the denial of access to basic public services (water and electricity) as result of race and gender discrimination.<sup>58</sup> The Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People further noted that “over 80 per cent [of the indigenous rural population] are not connected to sewerage systems and half are not connected to the electricity grid.”<sup>59</sup> Additionally, while municipalities are formally responsible for providing water, only 4 per cent of the 331 municipalities treat the water they provide.<sup>60</sup> The Special Rapporteur on the Right to Food strongly suggested that the draft water legislation “contain provisions setting out institutional responsibility, establishing an institution for the resolution of conflicts and providing redress for victims of violations of the right to water.”<sup>61</sup>

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<sup>52</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1 (2006), para. 13.

<sup>53</sup> *Concluding Observations of the Committee on the Rights of the Child*, U.N. Doc. CRC/C/15/Add.154 (2001), para. 54.

<sup>54</sup> *Id.* at para. 55.

<sup>55</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1(2006), para. 14.

<sup>56</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1(2006), para. 14.

<sup>57</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1(2006), para. 14.

<sup>58</sup> *Report of Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance: Mission to Guatemala*, U.N. Doc. E/CN.4/2005/18/Add.2 (2005), para. 11 (citing MINUGUA, *Los Pueblos indígenas de Guatemala: la superación de la discriminación en el marco de los Acuerdos de paz*, Ciudad de Guatemala, Sept. 2001, p. 11 (Original note 19)).

<sup>59</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Mission to Guatemala*, para. 11, U.N. Doc. E/CN.4/2003/90/Add.2 (2003) (original source: MINUGUA, *The indigenous peoples of Guatemala: Overcoming discrimination in the framework of the Peace Agreements*, September 2001).

<sup>60</sup> *Id.* (citing Government of Guatemala, *Política Nacional de Seguridad Alimentaria y Nutricional*, 2004, p. 11).

<sup>61</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1 (2006), para. 58(f).

## X. Discrimination against Women

Discrimination against women in Guatemala is particularly troubling, with rural and indigenous women the most affected.<sup>62</sup> Indigenous women, “because of their ethnic origin and sex, suffer twice over from discrimination.”<sup>63</sup> Various U.N. representatives have found over the past ten years that women face inequality in most spheres of life. *De facto* and *de jure* discrimination has led to persisting high levels of poverty among women;<sup>64</sup> discrimination against women in access to land;<sup>65</sup> lack of response to land-related claims;<sup>66</sup> failure of provision of land of adequate quality to indigenous women affected by the conflict;<sup>67</sup> denial of access to basic public services, including water;<sup>68</sup> and an absence of statistical information related to the situation of indigenous women.<sup>69</sup> Indigenous women, specifically, also face rejection of their traditional dress, the denial of access to education, health care and basic public services (water and electricity) and the lack of job opportunities and access to land.<sup>70</sup> The Committee on Economic, Social and Cultural Rights in 2003 observed with concern that “the de facto inequality between women and men [...] is perpetuated by traditional prejudices and social conditions, in spite of an important number of legal instruments adopted by the State party.”<sup>71</sup>

## CONCLUSION

As documented by numerous UN bodies and NGOs, the Republic of Guatemala is not currently meeting its human rights obligations under international and domestic law, as there exist various human rights violations committed by, or with the acquiescence of, the Government. COHRE

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<sup>62</sup> See, e.g., *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Guatemala*, U.N. Doc. CEDAW/C/GUA/CO/6 (2006), para. 35: “Noting that the majority of the Guatemalan population are indigenous peoples, the Committee expresses concern about the situation of indigenous women, who lack enjoyment of their human rights and are vulnerable to multiple forms of discrimination.”

<sup>63</sup> *Report of Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance: Mission to Guatemala*, U.N. Doc. E/CN.4/2005/18/Add.2 (2005), para. 11 (citing MINUGUA, *Los Pueblos indígenas de Guatemala: la superación de la discriminación en el marco de los Acuerdos de paz*, Ciudad de Guatemala, Sept. 2001, p. 11 (Original note 19)).

<sup>64</sup> *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Guatemala*, U.N. Doc. CEDAW/C/GUA/CO/6 (2006), para. 33.

<sup>65</sup> *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Guatemala*, U.N. Doc. E/C.12/1/Add.93 (2003), para. 30.

<sup>66</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), p. 2 (“Executive Summary”).

<sup>67</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 73 (“Conclusions”).

<sup>68</sup> *Report of Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance: Mission to Guatemala*, U.N. Doc. E/CN.4/2005/18/Add.2 (2005), para. 11 (citing MINUGUA, *Los Pueblos indígenas de Guatemala: la superación de la discriminación en el marco de los Acuerdos de paz*, Ciudad de Guatemala, Sept. 2001, p. 11 (Original note 19)).

<sup>69</sup> *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Guatemala*, U.N. Doc. CEDAW/C/GUA/CO/6 (2006), para. 35.

<sup>70</sup> *Report of Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance: Mission to Guatemala*, U.N. Doc. E/CN.4/2005/18/Add.2 (2005), para. 11 (citing MINUGUA, *Los Pueblos indígenas de Guatemala: la superación de la discriminación en el marco de los Acuerdos de paz*, Ciudad de Guatemala, Sept. 2001, p. 11 (Original note 19)).

<sup>71</sup> *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Guatemala*, U.N. Doc. E/C.12/1/Add.93 (2003), para. 12.

would like to highlight the following human rights issues as priorities to be retained by the Council during its review:

As a result of centuries of engrained racial discrimination against indigenous and non-ladino peoples, the lack of access to civil, political, social, economic, and cultural rights in Guatemala predominantly affects these groups, especially those who are poor and/or live in rural areas.<sup>72</sup>

Historical expropriation of land from indigenous peoples by foreign individuals and businesses, with the government acquiescence, has led to a vastly unequal distribution of land ownership.<sup>73</sup> These disputes over land ownership and possession often result in forced evictions of indigenous communities who claim ownership of the same land as a more powerful company or individual, who is able to purchase armed force to implement the eviction.<sup>74</sup> Despite many violations, there is an insufficient legal framework to protect land rights and to promote the titling of indigenous peoples lands. Land conflicts and disputes involving indigenous communities shall be resolved by the recognition of the diversity of land tenure and property rights and of indigenous customary law. There is also cause for concern over the practice of criminally prosecuting legitimate acts of dissent poor and indigenous groups as well as by other human rights defenders, while treating large landowners' refusals to pay workers as less serious violations.<sup>75</sup> Third, there is a lack of regulations, courts, and tribunals to settle land and resource ownership disputes.<sup>76</sup> In violation of the right to participate in public decision-making, the Special Rapporteur on the Right of Indigenous People found, "the exclusion of the indigenous peoples from their role as citizens has been a characteristic feature of the political structure of Guatemala since colonial times and throughout the life of the Republic"<sup>77</sup> and continues today. High levels of social exclusion, paired with extreme poverty, especially among indigenous and rural populations, further "hinder" the

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<sup>72</sup> See, e.g., *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 20 (reporting that "[d]espite the proliferation of commissions, committees and ombudsmen, progress in dismantling ethnic and racial discrimination at the institutional level has been slow. Underlying this situation is the structural discrimination against the indigenous peoples which is founded on the historical mechanisms already referred to, by means of which the indigenous peoples were excluded from access to the economic, political and institutional resources they needed in order to live on an equal footing with the remainder of the population."); see also *id.* at para. 5 (explaining that "[t]he present status of the indigenous peoples in Guatemala is the result of a long process of colonial subjection of the Maya people starting in the sixteenth century, which was reinforced during the liberal period in the nineteenth century, when a governing class was formed that based its power and its privileges on large rural estates and the exploitation of indigenous labour, under authoritarian and property-based regimes.").

<sup>73</sup> See, e.g., *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 5 ("[t]he present status of the indigenous peoples in Guatemala is the result of a long process of colonial subjection of the Maya people starting in the sixteenth century, which was reinforced during the liberal period in the nineteenth century, when a governing class was formed that based its power and its privileges on large rural estates and the exploitation of indigenous labour, under authoritarian and property-based regimes.").

<sup>74</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1(2006), para. 11.

<sup>75</sup> *Report of the Special Rapporteur on the Right to Food, Addendum, Mission to Guatemala*, U.N. Doc. E/CN.4/2006/44/Add.1 (2006), para. 54; see also *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 26; see also *id.* at para. 35.

<sup>76</sup> See, e.g., *Report of the High Commissioner for Human Rights on the Situation of Human Rights in Guatemala*, U.N. Doc. E/CN.4/2006/10/Add.1 (2006), para. 74.

<sup>77</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Mission to Guatemala*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), para. 42 (reporting that "[t]his phenomenon traditionally involved the subordination of traditional forms of organization of the communities and peoples and exercise of their authority (indigenous mayors and guilds, for example); the belated granting of the right to vote; high rates of abstentionism among indigenous voters - continuing to the present time; the absence of indigenous people in elected posts or public offices of responsibility, including military commands; and in general scant influence on the part of indigenous peoples in decision-making concerning national life.").

enjoyment of land ownership and access to adequate housing.<sup>78</sup> Additionally, the right to availability of services, specifically the right to access safe drinking water, is currently being violated by the inaccessibility of potable drinking water across the country. Lastly, discrimination against women in Guatemala is particularly troubling, with *de facto* and *de jure* discrimination leading to persisting high levels of poverty among women;<sup>79</sup> discrimination against women in access to land;<sup>80</sup> lack of response to land-related claims;<sup>81</sup> failure of provision of land of adequate quality to indigenous women affected by the conflict;<sup>82</sup> denial of access to basic public services, including water;<sup>83</sup> and an absence of statistical information related to the situation of indigenous women.<sup>84</sup>

The Government of Guatemala must adopt all necessary steps to hold the perpetrators of the Chixoy Dam massacre accountable. Several additional dams are now being planned for the rivers Negro, Ixcán, Copón, Uspantán and Cahabon, and if impunity for such violations continues it may lead to similar or other human rights violations against the Maya-Achi communities in the region. The State also has an obligation to seek further funding from the World Bank and the Inter-American Development Bank in order to implement fully the relocation component of the Chixoy Dam Project, including the provision of alternative adequate housing and just and fair compensation for lost housing, land and crops, as well as to provide just and fair compensation to the Río Negro survivors including alternative adequate housing as required by General Comment No. 7 of the Committee on Economic, Social and Cultural Rights.

The government should also refrain from carrying out technical studies and environmental impact assessments to obtain the licences to start the Xalala dam project which, if constructed, will render 34 indigenous communities comprising about 15,000 people internally displaced and homeless. Even with the bid procedure already announced publicly, the government has not carried out any consultation with the affected communities nor has provided any consistent information about the relocation/compensation plan and the environmental impact assessments. The government of Guatemala should respect and accept the consultations carried out by the indigenous communities, about the construction of the Xalala dam, as they were held in conformity with their customary law and with international human rights law.

As the Council performs its review of the human rights situation in Guatemala, and is selecting issues of concern, COHRE would emphasize the foregoing concerns and recommendations of the treaty bodies and Special Procedures indicated in Annex I.

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<sup>78</sup> *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Guatemala*, U.N. Doc. E/C.12/1/Add.93 (2003), paras. 24, 29.

<sup>79</sup> *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Guatemala*, U.N. Doc. CEDAW/C/GUA/CO/6 (2006), para. 33.

<sup>80</sup> *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Guatemala*, U.N. Doc. E/C.12/1/Add.93 (2003), para. 30.

<sup>81</sup> *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, U.N. Doc. E/CN.4/2003/90/Add.2 (2003), p. 2 (“Executive Summary”).

<sup>82</sup> *Id.* at para. 73 (“Conclusions”).

<sup>83</sup> *Report of Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance: Mission to Guatemala*, U.N. Doc. E/CN.4/2005/18/Add.2 (2005), para. 11 (citing MINUGUA, *Los Pueblos indígenas de Guatemala: la superación de la discriminación en el marco de los Acuerdos de paz*, Ciudad de Guatemala, Sept. 2001, p. 11 (Original note 19)).

<sup>84</sup> *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Guatemala*, U.N. Doc. CEDAW/C/GUA/CO/6 (2006), para. 35.

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