

GUATEMALA

Follow- up - State Reporting

i) Action by Treaty Bodies, Including Reports on Missions

CERD/C/SR.1253 (1998)

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-second session

SUMMARY RECORD OF THE 1253rd MEETING

Friday, 6 March 1998, at 10 a.m.

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ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

Mission of Mr. Yutzis to Guatemala

83. Mr. YUTZIS, presenting the report he had prepared on his mission to Guatemala (CERD/C/52/Misc.22), indicated that the report began by describing the situation in the country after 36 years of civil war and the peace agreements signed on 19 December 1996. The second part of the report considered the positive aspects of the peace process that would contribute to the implementation of the Convention. The third part reported on obstacles and limitations to the peace process which affected the implementation of the Convention. Lastly, in the fourth part, he drew various conclusions from his mission. He pointed out that he had been provided with all the necessary assistance in his work by the Government and by the Presidential Commission on Human Rights. He had also been able to meet numerous representatives of the indigenous communities.

84. The situation in Guatemala remained precarious, since it was difficult to overcome three decades of war. Moreover, the fragility of the judicial system and the grave economic difficulties were harmful to the implementation of the Convention. Conflicts were likely to recur. In the conclusion of his report, he emphasized that clear-cut and operational mechanisms had to be established to involve civil society and the indigenous sectors satisfactorily and effectively in the implementation of the peace agreements, and that the Government should specifically reaffirm its determination to include the indigenous peoples' pluralist vision and practice in the process of building peace.

85. The CHAIRMAN suggested that the Committee should draft a recommendation concerning the situation in Guatemala.

86. Mr. VALENCIA RODRIGUEZ supported the Chairman's proposal. He endorsed the conclusions of the report prepared by Mr. Yutzis and said he would like more information about the persisting climate of violence and impunity referred to in chapter III of the report. The Government gave an assurance, in particular, that the climate of violence had been dispelled.

87. Mr. NOBEL commended the quality and structure of the report. He would like to know the

current position regarding the repatriation of the Maya people who had taken refuge in Mexico because of the civil war.

88. Mr. van BOVEN welcomed the report by Mr. Yutzis. He would like some information about the results of the work of the truth and reconciliation commission set up after the civil war. Also, did Mr. Yutzis think that the question of impunity tended to facilitate or hamper the peace process? Many of the indigenous people, who represented the majority of the population, had been victims of the civil war. What was their current status?

89. Mr. DIACONU thanked Mr. Yutzis for his report. He would like to know how his terms of reference, namely to assist the State party in the implementation of the Convention, had been applied in practice. The report said nothing about Guatemalan legislation. If there was any anti-discrimination legislation, was it adequate? Had the conclusions of the report been communicated to the Government and, if so, had it provided any reply? Lastly, he noted that the conclusions referred to the peace process. In his view, they should have focused on the implementation of the Convention.

90. Mr. de GOUTTES thanked Mr. Yutzis for having emphasized the problem of impunity and the difficulties encountered by the judiciary which hindered the peace process. Those points were, in his view, relevant to the Convention. The report suggested that indigenous people did not have access to the justice system and were mistrustful of it. The Committee should place emphasis on the relationship between indigenous people and the judiciary. Obviously, there were political difficulties that stemmed from the lack of resources made available by the Government for the administration of justice.

91. Mr. SHERIFIS congratulated Mr. Yutzis on his report. Like Mr. de Gouttes, he wished to underline the difficulties in the relationship between the various indigenous populations and the judiciary. What was the situation of the Maya who had taken refuge in Mexico? He recommended that the discussion on the situation in Guatemala should be pursued at a later meeting, since the quality of the report warranted it.

92. Mr. YUTZIS said that he had taken account of the fact that 85 per cent of the population was indigenous in drafting his report, which was oriented towards the implementation of the Convention.

93. The CHAIRMAN proposed that the Committee should revert to the report prepared by Mr. Yutzis at a later meeting.

94. It was so decided.

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CERD, A/62/18 (2007)

CHAPTER IV. FOLLOW-UP TO THE CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

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497. On 12 April 2007, reminders were sent by the coordinator on follow-up to the following States parties which had not yet sent information following adoption of the concluding observations of the Committee at its sixty-seventh and sixty-eighth sessions, held respectively from 1 to 19 August 2005 and from 20 February to 10 March 2006: Barbados, Bosnia and Herzegovina, Botswana, El Salvador, Guatemala, Guyana, Lithuania, Mexico, Nigeria, Tanzania, Turkmenistan, Uzbekistan, Venezuela and Zambia.

498. Between 18 August 2006 and 17 August 2007, follow-up reports were received from the following States parties on the implementation of the recommendations regarding which the Committee had requested information within a year: Azerbaijan (CERD/C/AZE/CO/4/Add.1), Bahrain (CERD/C/BHR/CO/7/Add.1), France (CERD/C/FRA/CO/16/Add.1), Georgia (CERD/C/GEO/CO/3/Add.1), Lithuania (CERD/C/LTU/CO/3/Add.1), Mexico (CERD/C/MEX/CO/15/Add.1), Uzbekistan (CERD/C/UZB/CO/5/Add.2), Ukraine (CERD/C/UKR/CO/18/Add.1), Norway (CERD/C/NOR/CO/18/Add.1), and Guatemala (CERD/C/GTM/CO/11/Add.1) (see annex IV for an overview of the follow-up reports pending receipt, received, examined or scheduled for consideration at the seventy-second session).

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Annex IV

OVERVIEW OF INFORMATION PROVIDED BY STATES PARTIES ON THE IMPLEMENTATION OF THE CONCLUDING OBSERVATIONS

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Sixty-eighth session (20 February-10 March 2006) - Follow-up reports due by 10 March 2007

<u>State party</u>	<u>Date of receipt of follow-up report</u>	<u>Session at which follow-up report was discussed</u>
...		
Guatemala	20 July 2007	Report scheduled for consideration at the seventy-second session
...		

a/ A reminder was sent by the Co-ordinator on Follow-up to this State party on 12 April 2007.

ii) Action by State Party

CERD, CERD/C/GTM/CO/11/Add.1 (2007)

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Information provided by the Government of Guatemala on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination

[20 July 2007]

SPECIAL REPORT SUBMITTED BY THE STATE OF GUATEMALA TO THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION CONCERNING THE IMPLEMENTATION OF PARAGRAPHS 13, 15 and 19 OF THE COMMITTEE'S CONCLUDING OBSERVATIONS FOLLOWING ITS CONSIDERATION IN FEBRUARY 2006 OF THE EIGHTH TO ELEVENTH PERIODIC REPORTS, CONSOLIDATED IN ONE DOCUMENT

I. SUBMISSION OF REPORT

1. The State of Guatemala hereby submits to the Committee on the Elimination of Racial Discrimination the special report requested pursuant to the Committee's concluding observations following its consideration in February 2006 of the consolidated eighth to eleventh periodic reports of Guatemala.

II. INTRODUCTION

2. The present report provides information to the Committee on the implementation of its recommendations contained in paragraphs 13, 15 and 19 on the following topics: classification of racial discrimination as an offence; access to justice by indigenous women; and the right of indigenous peoples to be consulted.

3. We wish to inform the Committee that the new members of the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA) were appointed under Government decision No. 07-2007 of 12 January 2007. The President of the Republic appointed Mr. Romeo Emiliano Tiú López as coordinator and the following persons as members of the Commission: Ms. Vilma Julieta Sánchez Coyoy, Mr. Ruperto Montejó Esteban, Mr. Marco Antonio Curruchich Mux and Ms. Marilis Guendalin Ramírez Baltasar.

4. The appointment of the new members will give fresh impetus to the work of the Commission, given that one of the priorities of the workplan for this and following years is to give effect to commitments entered into by the State through its signature and ratification of international human rights instruments relating to indigenous peoples' rights. Although the State as a whole bears

responsibility for commitments arising from these instruments and for the recommendations issued by the Committee, CODISRA's mandate assigns it special responsibility for follow-up and action in this area.

5. The Committee should be informed that the State recognizes racism and racial discrimination, which are strongly rooted in our country and are the product of efforts to build a monocultural State, as one of the main obstacles to achieving equality among the various ethnic groups that make our country a multicultural and multilingual society. Although the way ahead may be fraught with obstacles, we believe that the peace agreements truly represent a watershed in the country's history, particularly with regard to the recognition of indigenous peoples' rights.

6. In the years following the signing of the Guatemala peace agreements in 1994, major strides were made along this path, clearing the way for the establishment of forums for dialogue, which have gradually allowed for greater participation by indigenous peoples in the nation's affairs. We fully recognize that participation is an essential condition for progress in finding solutions to the concerns raised by the various ethnic groups. Moreover, it is the only means of ensuring that issues directly or indirectly affecting these groups will be examined by political decision makers, and hence, included in the workplans and public and institutional policies to be implemented.

7. The Committee should also be advised that this document is being submitted at an important political juncture for the country, since this is an election year. The present report was drafted shortly before the first round of elections on 9 September 2007. It should be noted in this regard that the public policy agendas focus primarily on topical issues. We are therefore bound to admit that, with some exceptions, matters relating to indigenous peoples and other human rights issues regrettably do not figure prominently in those agendas. This is an unfortunate problem, but nonetheless a feature of the national reality, that represents a challenge to be met and an obstacle to be overcome from the perspective of both the State and the nation. Nevertheless, the State welcomes the fact that, among those running for the presidency in these elections, Nobel Peace Prize winner Rigoberta Menchú has been nominated as a candidate by one of the political parties, making her the first indigenous woman in the history of the country to stand for the office of President. This initiative represents a major breakthrough and creates positive expectations for higher levels of participation by indigenous peoples in the future.

8. Notwithstanding the foregoing, we reaffirm the political will of this Government and of various institutions and agencies of other organizations to continue striving to achieve more substantive progress, even though we recognize that institutions of the State are, by nature, subject to change. Bearing this in mind, information will be provided below on measures taken in respect of each of the issues in question, although it is still too early to speak of significant progress. On the other hand, we can provide assurances that there is an interest in and commitment to promoting all the measures needed to achieve more specific qualitative and quantitative progress in the future.

III. ACTIONS TAKEN BY THE STATE

A. Recommendation contained in paragraph 13

The Committee recommends that the State party adopt specific legislation classifying as a punishable act any dissemination of ideas based on notions of superiority or racial hatred, incitement to racial discrimination, and violent acts directed against indigenous peoples and persons of African descent in the State party

9. As the Committee has been duly informed in the past, the only specific provisions that currently classify racial discrimination as an offence are found in the following statutes:

(a) The Criminal Code (Decree Law No. 57-2002), which has introduced an article 202 bis, entitled “Discrimination”;

(b) The Civil Service Act (Decree No. 1748), which prohibits all forms of discrimination;

(c) The Labour Code (Decree No. 1441), which prohibits discrimination of any kind in the private sector;

(d) The Judicial Service Act (Decree No. 41-99), which punishes discrimination with a 20-day suspension without pay for judges who, in the exercise of their functions, commit acts of discrimination;

(e) The Radiocommunications Act (Decree-Law No. 433), which prohibits the dissemination of statements that are disparaging or insulting or that constitute incitement to racial discrimination.

10. In addition, we have been informed that efforts to draft a bill on the issue are currently under way with CODISRA.

11. The two cases presented below by way of example were brought on the basis of complaints that were lodged between 2002 and 2003 and founded on current legislation. The proceedings have advanced in the past few years, and judgements were handed down in 2006. These cases are considered to be important references in efforts to combat discrimination and strengthen mechanisms for the enforcement of justice in this particular area.

12. Cases involving racial discrimination during the country’s recent past are considered to have a significant precedent-setting impact with respect to the current change transforming the traditional practices of the justice administration system and also the mentalities of the officials responsible for managing it. This impact is subsequently felt at the individual level, where there is recognition that these harmful practices exist and that some means must be found to punish and eradicate them, but also that victims must come forward in order to report them.

13. First of all, we cite the case of Edgar Willvany Jiatz Cutzal, a Kakchiquel Maya who had been the victim of persistent degrading treatment on the basis of his indigenous origin. Mr. Jiatz Cutzal succeeded in bringing about the establishment of an important precedent at the national level, since his complaint with the Judicial Disciplinary Board led to the imposition of the disciplinary sanctions provided for in article 40 (d) of the Judicial Service Act, which classified the misconduct as a serious offence in conformity with article 47 of the General Regulations for the Civil Service (Judiciary) Act

and which imposed on each of the defendants a 15-day suspension of employment without pay. The decision on the appeal regarding the Judicial Service Council’s decision to declare inadmissible the petition set out in Nos. 2 and 3 of the case file in question is still pending.

14. Secondly, we refer to the case of *María Olimpia López y López v. the La Fratta nightclub*, which is located in the departmental capital Quetzaltenango. The complaint was filed under case No. 305-2003 and states that María Olimpia López was refused entry to the club because she was dressed in traditional costume. This incident was reported to the Office of the Human Rights Procurator of Quetzaltenango and the Public Prosecutor’s Office. The case ended in a public apology from the individuals responsible, in which they admitted their offence and undertook to comply with the decision of the trial court in Quetzaltenango. The Court applied the opportuneness criterion and informed the defendants of the requests by López y López, which were accepted.

15. It may be concluded that both these cases set a precedent for putting an end to the notion that discrimination is an acceptable practice in the country.

16. In both of these examples, the timely measures taken by CODISRA helped to ensure due process; its efforts are currently directed towards monitoring cases to ensure that judgements are duly enforced.

17. The State recognizes that, for the time being at least, the sanctions that the courts have been able to impose have been primarily administrative in nature. It is hoped that the promotion of due process will generate a store of practical experience in terms of increasing awareness among justice administrators of the implications of racial discrimination. Training is an important part of this experience and has already been introduced for justice officials as a means of improving their knowledge and implementation of national legislation and international instruments to which the State is a party in the area of indigenous peoples’ rights.

18. The following table lists cases that have been registered by the Public Prosecutor’s Office and that are already being used to establish a database. The process used to compile and register these cases is explained below, in the section listing some of the measures being taken within the Public Prosecutor’s Office.

Table 1

Public Prosecutor’s Office Discrimination Case status January to October 2006		
Case status	Total	Percentage
Under investigation	34	52.31
Pending	14	21.54
Dismissed	10	15.38
Closed	4	6.15
Referred to a justice of the peace	2	3.08
Being processed	1	1.54
Grand total	65	100

B. Recommendation contained in paragraph 15

Bearing in mind its general recommendation No. 25, the Committee recommends that the State party guarantee indigenous women access to the justice system. Furthermore, it recommends that the State party adopt the bill classifying sexual harassment as an offence, and that the commission of such an offence against an indigenous woman shall constitute an aggravating circumstance

19. In order to promote action in this area, it is important to identify the main obstacles faced by indigenous women in their attempts to gain access to justice. In March 2007, the Office for the Defence of Indigenous Women's Rights (DEMI) conducted a diagnostic study of the problems related to indigenous women's access to the official justice system.¹

20. This study indicates that, although indigenous women may have succeeded in obtaining access to four distinct levels of jurisdiction within the country's judicial system in order to seek protection from the violence and socio-economic hardship to which they are subjected, the bodies concerned have failed to provide an adequate response to their petitions.

21. The diagnostic study also shows that the domestic violence that affects all Guatemalan women, and especially indigenous women, is the main problem faced by indigenous women in the country.

22. Even though there is a valid legal framework in the country, i.e. the Act on the Prevention, Punishment and Eradication of Domestic Violence (Decree No. 97-96), it must be acknowledged that the scope of application of this Act is limited, since it does not classify domestic violence as a punishable offence - hence the need for specific legislation concerning this serious problem.

23. The information produced by this diagnostic study is considered to be highly relevant, primarily because it outlines a series of recommendations intended for the judiciary and for several departments of the executive branch. These recommendations will, in turn, be adopted by each institution and will help them to focus their efforts, and to ensure that those efforts are effective and adjusted to the realities and needs of indigenous women in the country.

24. In this connection, bodies such as DEMI, the Presidential Secretariat for Women, the National Commission for the Prevention of Domestic Violence, the Public Prosecutor's Office, the Public Criminal Defence Institute, the National Civil Police and the judiciary are expected to become the main promoters and implementers of actions to ensure the application of the recommendations outlined in the diagnostic study.

25. The initiatives that have been put forward are listed below:

(a) Initiative No. 1576, taken up in plenary on 1 January 1996, containing a proposal for approval of the bill on combating sexual harassment in the workplace and in education;

(b) Initiative No. 1580, taken up in plenary on 1 January 1996, containing a proposal for approval of the bill on combating sexual harassment;

(c) Initiative No. 2608, taken up in plenary on 24 January 2002, proposing approval of the

bill on combating sexual harassment in the workplace and in education. On 19 September 2002, the plenary took up the initiative proposing approval of the bill on the prevention and punishment of acts of sexual harassment.

26. The latest initiative taken up by the plenary Congress is Initiative No. 3566, dated November 2006, concerning acts of sexual harassment. This proposal is currently under consideration and awaiting a decision in three congressional committees: the Committee on Constitutional Matters, the Committee on Women's Issues and the Committee on Human Rights.

27. We recognize that one of the biggest problems facing not only indigenous women but also the population in general is access to a prompt and effective system of justice. In order to deal with this shortcoming, a number of measures have been identified in an effort to improve and streamline the processes involved. As a result, in the past 10 years the number of courts has grown three times as fast as the population of the country, so that the ratio of one court for every 33,000 inhabitants in 1990 changed to one for every 22,000 in 2000. The greatest increase in courts of first instance occurred in municipalities and departments outside the capital, leading to an improvement in geographical coverage of the system.

28. Likewise, in 2006, permanently staffed municipal courts functioning on a 24-hour, year-round basis were established and put into operation in the capital city. This practice, which has been effective in expediting judicial processes, will be replicated in other municipalities of the country.

29. Another course of action for strengthening the mechanisms that facilitate indigenous women's access to justice is the Tripartite Agreement of Inter-agency Cooperation signed on 6 March 2007 between the Public Criminal Defence Institute, DEMI and the National Coordinating Office for the Prevention of Domestic Violence and Violence against Women (CONAPREVI).

30. The signatories of this Agreement pledged to adopt specific measures in their respective spheres of activity. For instance, the Public Criminal Defence Institute undertook the following commitments:

(a) To provide services of free legal counselling, assistance and advice by means of inter-agency cooperation among the signatories of the agreement, including support, advice and follow-up by the Public Criminal Defence Institute for all cases referred by DEMI, with the aim of helping to establish a management and liaison structure dedicated to improving the legal situation of women in terms of ensuring the full respect of their human rights by the national justice system;

(b) To facilitate the participation of the ombudswomen of DEMI in training and educational activities that allow for an exchange of institutional experience in the area of indigenous justice and, in particular, in safeguarding the guarantees and rights of indigenous women in the official justice system and under indigenous law, in order to create uniform criteria that promote a comprehensive view of justice from the multicultural and gender perspective;

(c) To facilitate access to information that serves as a basis for carrying out projects and research of interest to the parties, particularly with regard to the issue of access to justice in the official and indigenous legal systems on the part of indigenous clients.

31. The DEMI, for its part, pledged to carry out the following activities:

(a) To refer to the Public Criminal Defence Institute all cases in which indigenous women are the aggrieved or the accused party and require legal advice and assistance, or those in which cultural aspects must be taken into account in defending rights and in which there is a need for support and legal representation;

(b) To carry out exchanges of experience with official guardians concerning situations in which assistance to and treatment of indigenous women must take into account intercultural elements that promote a comprehensive view of justice from an intercultural and gender perspective;

(c) To provide its support and cooperation for projects and research that are carried out either separately or jointly by the Institute on issues of interest to both parties and that promote full respect for the human rights of women in the institutional, political, economic, social and cultural spheres of life.

32. CONAPREVI pledged to take the following action:

(a) In public policies aimed at reducing violence against women, to promote the adoption of specific measures, and in the support models developed, to advance the right of indigenous women to a life free from violence, in consultation and coordination with DEMI and the Public Criminal Defence Institute;

(b) To stimulate research and the collection of statistics and relevant data on the causes, consequences, effects and frequency of domestic violence and violence against women, taking ethnic considerations into account, in order to evaluate and implement joint measures with the Public Criminal Defence Institute and DEMI;

(c) To intervene jointly with the parties in cases in which indigenous women who report incidents, lodge complaints or provide counselling, support and/or shelter for injured parties are subjected to coercion or threats.

33. It is important to note that, in order to ensure the proper implementation of these measures, the parties undertook to devise jointly an annual plan that will serve to measure the progress achieved.

34. Among other measures, the Public Prosecutor's Office registered a total of 65 cases involving discrimination between January and October 2006. These cases were compiled as part of a special investigation undertaken in the various prosecution services, and were intended to serve as a basis for the project to establish and put into operation special prosecution services to handle racial discrimination cases. Provision was made to convert the prosecution services for indigenous persons into specialized units placed within district prosecution services to provide training to the Public Prosecutor's Office through the preparation of a support services manual and raising awareness concerning the issue of racial discrimination.

35. It should be noted that these discrimination cases do not relate exclusively to racial discrimination

but also to complaints alleging discrimination on the basis of religion, illness or disability. Nevertheless, cases relating to racial discrimination reportedly account for some 25 per cent of the complaints.

36. Furthermore, by means of agreement No. 20-2007 dated 9 May 2007, the Attorney-General and Public Prosecutor issued the Regulations on the Organization and Functioning of the Department for the Coordination of Indigenous Peoples' Rights within the Public Prosecutor's Office.

37. While this agreement is attached to the present report for the Committee's information, we would nevertheless like to emphasize that the main functions of the above-mentioned Department include the following:

(a) To provide specialized advice, studies and analyses, and to become a productive source of indigenous peoples' policy in order to strengthen the capacity of the Public Prosecutor's Office in the area of indigenous peoples' rights;

(b) To ensure the proper implementation of national and international instruments concerning indigenous peoples' rights in order to generate input for the prosecution service;

(c) To establish guidelines and coordinate the development of tools for training and awareness-raising, both internally and externally, concerning indigenous peoples' rights;

(d) To coordinate with the various secretariats of the Public Prosecutor's Office in matters relating to indigenous peoples' rights;

(e) In coordination with the Information and Press Department, to devise strategies for internal and external communication and awareness-raising in the area of indigenous peoples' rights;

(f) To develop mechanisms for communication and coordination with institutions in the justice system in matters relating to indigenous peoples' rights;

(g) To study and analyse the official and indigenous legal systems in order to formulate policies to facilitate their application;

(h) To coordinate the use of interpreters by the various prosecution services of the Public Prosecutor's Office;

(i) To coordinate the anthropological (linguistic, cultural) expert opinions that may be required by the various prosecution services throughout the nation.

38. The Department for the Coordination of Indigenous Peoples' Rights will comprise four professionals in the fields of anthropology, sociology and social history and will receive support from a technical team.

39. From our perspective, the existence of this Department within the Public Prosecutor's Office has

proved to be an important step, and one that is seen as helping to strengthen this institution's capacity to serve indigenous people in accordance with their ethnolinguistic needs. Moreover, it helps to increase awareness among the staff working in this branch of the justice system and, as a result, is expected to facilitate the access of indigenous persons to justice.

40. With the cooperation of the European Union, the "Combating exclusion (rural-indigenous women)" programme is currently under way in Guatemala. Its overall objective is to promote the social, economic and political inclusion of poor rural women, in particular the indigenous women of Guatemala.

41. With regard to the issue of indigenous women's access to justice, included in the 2007 annual operating plan of this programme is a project to support processes aimed at devising and/or implementing a strategy for gender and ethnic equality through the Coordinating Office of the Justice System, with emphasis on the sustainability of the programme's efforts in keeping with its objectives. In order to implement this project, account was taken of: the outcome of the diagnostic study mentioned previously on indigenous women's access to justice, which was conducted by DEMI; the recommendations issued by various treaty monitoring bodies, such as the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women; and those of special rapporteurs of the United Nations and inter-American systems who have issued recommendations related to improving the justice system and access to it by indigenous peoples, particularly indigenous women.

42. The implementation of this project is expected to ensure more effective and broader access to justice for indigenous women by strengthening justice sector institutions. The target set for 2008 is to ensure that at least 10 judicial institutions develop equality and gender strategies based on a multicultural approach.

43. Another important development that bears mentioning is a study that was published in May 2007 conducted by the National Commission to Monitor and Support the Strengthening of Justice, entitled "*Acceso de los indígenas a la justicia oficial en Guatemala*". This Commission was established by Government Order No. 310-2000 with the aim of providing advice on and managing proposals and recommendations it considers suitable and desirable for the overall improvement of the justice system in Guatemala. The study was conducted for the purpose of broadening and furthering the national debate on the issue of indigenous peoples' access to justice.

44. The purpose of the foregoing is to find reasonable and jointly accepted formulas for harmonizing the country in the area of justice, on the basis of genuine respect for cultural diversity. The study shows that the protection of ethnic and cultural diversity finds endorsement in the recognition of legal pluralism, while at the same time creating contradictions and tensions vis-à-vis the ordinary courts, which necessarily requires the coordination and peaceful coexistence of both. The coexistence of diverse world views and even differing legal systems and institutions is, in turn, based on principles of tolerance, diversity, respect for differences and pluralism, which are essential for the effective administration of justice.

45. This document also presents the view of the system's users and makes a series of important

recommendations that will be carried out by the State's institutions in order to satisfy genuine needs.

C. Recommendation contained in paragraph 19

The Committee recommends that when taking decisions having a direct bearing on the rights and interests of indigenous peoples the State party endeavour to obtain their informed consent, as stipulated in paragraph 4 (d) of its general recommendation No. 23. The Committee also recommends that before adopting the draft legislation on consultative procedures, the State party include a clause referring to the right of indigenous peoples to be consulted whenever legislative or administrative measures are contemplated that may affect them with a view to securing their consent to such measures.

46. Articles 97, 118, 119 and 125 of the Constitution of the Republic of Guatemala stipulate the obligation to direct the national economy towards achieving the utilization of the country's natural resources and human potential in order to increase wealth and to strive towards full employment and the equitable distribution of national income; achieving this natural resource utilization by creating the conditions for developing the environment while maintaining ecological balance; and systematically promoting a policy of economic and administrative decentralization with a view to obtaining adequate regional development.

47. The peace agreements, in particular the Agreement on Identity and Rights of Indigenous Peoples,² set forth the Government's commitment to promote the participation of indigenous peoples at all levels and to establish, as expressly stipulated in paragraph (d) (i) of this Agreement, "mandatory mechanisms for consultation with the indigenous peoples whenever legislative and administrative measures likely to affect the Maya, Garifuna and Xinca peoples are being considered".

48. In order to achieve the objectives set forth in both the Constitution and the peace agreements, relevant legislation governing the economic and administrative decentralization of the country and the participation in governance of the Maya, Xinca and Garifuna peoples and of the non-indigenous population was enacted through the Municipal Code and the Urban and Rural Development Councils Act, which stipulate the following:

(a) Municipal Code, article 65 (Consultations with indigenous communities or indigenous authorities of municipalities): when the nature of a matter is such that it affects, in particular, the rights and interests of indigenous communities of a municipality or those of its authorities, the Municipal Council shall conduct consultations at the request of the indigenous communities or authorities, including the application of criteria that are in keeping with the customs and traditions of the indigenous communities;

(b) Urban and Rural Development Councils Act, article 26 (Consultations with indigenous peoples): pursuant to the law governing consultations with indigenous peoples, consultations with the Maya, Xinca and Garifuna peoples on development measures promoted by the executive branch and directly affecting these peoples may be conducted through their representatives in the Development Councils.

49. Similarly, in another sphere of activity, the general outlines of the National Mining Policy of Guatemala³ were formulated in August 2005, and the objectives, scope and impact of consultations were set out in section II, articles 6 to 8, of that Policy.

50. In addition, the Government consultative procedure was established through the Urban and Rural Development Councils System, as indicated previously. The aim of the System is to ensure that the peoples concerned receive, through appropriate procedures and, in particular, through the appropriate institutions, information concerning all aspects of mining projects being carried out on their land that may affect them. To that end, account must be taken of the views they express on these matters, and measures must be taken to remedy aspects that, technically and objectively, are found to be detrimental to their interests. Its aims are:

(a) To reach agreement with or obtain the consent of the peoples concerned in connection with the projects or measures proposed by the mining operations projects being carried out on their lands;

(b) To identify the interests of the peoples who would be adversely affected, and the extent to which they would be so affected, before granting the corresponding permits.

51. In order to facilitate the process of consultation with indigenous peoples, the procedure provides for the intervention of independent specialists who are accredited and accepted by the parties, as well as for the report they submit to be taken into account in the final decision concerning whether or not to grant the mining permit in question. On the basis of these provisions, several public consultations have been held to determine whether or not private projects for the utilization of water or mineral resources or for oil exploitation will be authorized to proceed.

52. Experience to date shows that, among the entities that request consultations from local governments, the following stand out as the main promoters of this practice: the Roman Catholic Church and the civil society organizations National Indigenous and Peasant Coordinating Committee (CONIC) and Colectivo Madre Selva, which have provided logistical resources for purposes of the consultations. This has made it possible to conduct 11 consultations with indigenous communities from 2005 to the present. Each consultation has its own procedure with regard to such aspects as:

(a) Official announcement;

(b) Organization of the consultation;

(c) Supervision and registration of the participants;

(d) Method of voting.

53. Within this process of conducting consultations with the indigenous communities, a number of cases with particular characteristics have been registered, such as the case of San Pablo in the department of San Marcos, where consultations with the population were recorded as incomplete owing to a breakdown in the procedure, which impeded its progress and subsequent completion.

Other cases, such as that of Sipacapa, also in the department of San Marcos (in the north-west), and Río Hondo in the department of Zacapa (in the east), were able to generate jurisprudence at the national level. These are some examples of how the consultation process was conducted differently in each community. A timetable has been drawn up and will be filled in over the course of the current year (2007) in order to provide for consultations on mining and natural resource utilization. Information will be transmitted to the Committee in due course concerning the outcome of these consultations.

54. Despite the growing number of such experiences, we are aware that the process of consulting with the indigenous communities still reveals shortcomings that reflect the need to strengthen the existing regulatory framework. Along these lines, four initiatives⁴ seeking the adoption of rules to govern practice were presented, but due to the breakdown and negligible impact of lobbying within the plenary Congress, it was not possible to pass them. The Office of the Vice-President has convened several working sessions with various departments of the executive branch for the purpose of combining the initiatives into a single proposal. This stems from the fact that, when an analysis was conducted of the various proposals, they were found not to be altogether in keeping with the principles laid down in International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries of 1989, to which Guatemala is a party. Consequently, the effort to unify the proposals also carries with it the idea of harmonizing the joint proposal with the provisions of Convention No. 169. This is a process that we hope will produce positive results, and information concerning these will also be transmitted to the Committee in due course.

55. Moreover, the Organization of American States (OAS) in Guatemala has lent support to some indigenous organizations in unifying initiatives concerning consultation mechanisms. These efforts are being carried out with assistance from the Office of the Human Rights Procurator.

56. In conclusion, it may be stated that the trend is increasingly to seek joint initiatives that make the consultation process truly legitimate and inclusive, and based on respect for the rights and interests of the indigenous peoples. Nevertheless, the State recognizes that, in order to reach these joint decisions, it is necessary to broaden forums for dialogue and streamline consensus-building processes, given that the alternative would be to prolong the issues at stake without achieving positive results. Despite this, and despite the complexity of the issue itself, it is important to note that the current trend is towards the unification of initiatives in the light of domestic laws and, in particular, of the international covenants and conventions that the State has adopted in this area.

1/ The information presented in this section is based on data contained in the second report prepared by DEMI entitled "El acceso de las mujeres indígenas al sistema de justicia oficial de Guatemala". Owing to the quantity and quality of the information it provides, this report is attached as an annex to the present replies.

2/ The peace agreements were adopted as law by means of Legislative Decree No. 52/2005, which approved the Framework Law concerning the Peace Agreements.

3/ On 23 August 2005, and for reasons justifying the amendment of mining legislation, these general outlines were formulated in chapters describing and advocating the proposed amendments on the basis of constitutional principles and jointly agreed portions of the mining policy that deal specifically with the consultative procedure, set out in section II, articles 6, 7 and 8, of the policy document.

4/ Of the four initiatives presented, three were from indigenous civil society organizations and one from the congressional Committee on Indigenous Communities.