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**RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND
ALL FORMS OF DISCRIMINATION**

**Report by Mr. Doudou Diène, Special Rapporteur on contemporary forms
of racism, racial discrimination, xenophobia and related intolerance**

Addendum* **

MISSION TO GUATEMALA

* The summary of this report is being circulated in all official languages. The report itself, which is annexed to this document, is being reproduced in the language of submission (French) and translated into English and Spanish.

** The reason for the late submission of this report is to reflect the latest information.

Summary

From 26 June to 2 July 2004, the Special Rapporteur visited Guatemala as part of a mission to the Central American region that also took him to Honduras and Nicaragua (see E/CN.4/2005/18/Add.5 and Add.6). He visited the country at the invitation of the Government of Guatemala and in pursuance of his mandate. The regional mission was prompted by the need for the Special Rapporteur to help to shed light on two particularly significant factors in the problem of racism: (1) the depth of the historical legacy of racism and racial discrimination, the ideological underpinning of the slave-holding and colonial systems, which has had a deep influence on the structure of societies in the region; and (2) the impact of the political violence that has marked the recent history of Central America on communities of indigenous people and people of African descent, which have historically experienced discrimination. The three countries have similar ethnic and demographic features and common historical and political legacies and, as countries in transition towards peace-building, social cohesion and the consolidation of democracy, are of particular interest with respect to the structuring and management of ethnic, racial and cultural pluralism.

The Special Rapporteur observed three trends in all three countries that reveal the existence of deeply rooted discrimination: (1) a troubling correlation between poverty-stricken areas and areas inhabited by communities of indigenous people and people of African descent; (2) the marginal involvement of representatives of those communities in power structures - the government, parliament and the judiciary - as well as their insignificant presence in decision-making positions in the media; and (3) their treatment in the media as objects of folklore. He also found, to varying degrees in the three countries, a lack of awareness of how extensive and deeply rooted discrimination is, among both the political authorities and the population as a whole.

The Special Rapporteur notes, by contrast, statements by civil society actors he spoke with, as well as testimony from members and representatives of all the peoples and communities concerned, that the societies in Guatemala, Honduras and Nicaragua remain deeply imbued with racial prejudice and discriminatory practices against such peoples and communities. Their situation is a legacy of the colonial conquest and the slave-holding system, which, by subjugating these peoples and communities and belittling their identities and cultures on the basis of an openly racist ideology, have effectively marginalized them in a lasting way at the political, social, economic and cultural levels. Despite principled claims of being multicultural, the Hispanic legacy and identity of these countries are highlighted to the detriment of the legacies of indigenous peoples or people of African and indigenous descent, which are reduced to folklore. The rejection of the reality of ethnic pluralism, in political, cultural and social terms, is particularly evident in everyday life through discriminatory acts such as frequent denial of access to public places. Denying people the opportunity to express their identities is one of the most telling forms of discrimination. The inadequacy of public services (education, health and justice in particular) in areas inhabited by these communities and the absence of genuine bilingualism are objective demonstrations of the lack of social and cultural integration of these peoples and communities. Thus, indicators of health, education and housing for these peoples and communities remain lower than for the rest of the population.

In Guatemala, the Special Rapporteur found that the process of strengthening democracy and peace-building begun nearly 10 years ago following the signing of the peace agreements has progressed considerably, particularly with regard to legislation and the institutional protection of human rights. The Criminal Code has been amended to include provisions banning racial discrimination, and the country has established two important commissions, the Presidential Human Rights Commission and the Presidential Commission on Discrimination and Racism against Indigenous Peoples. A human rights procurator and an institution designed to support, defend and promote the human rights of indigenous women (the Office for the Defence of Indigenous Women) complete the institutional framework. The judicial system has also undertaken reforms to free itself from the sway of the other branches of power, draw closer to the people and break the cycle of impunity that has long characterized certain actions by the State, as well as by individuals.

The Government has committed itself to the implementation of the peace agreements, where the resolution of the question of ethnicity remains an essential dimension. The Vice-President of the Republic, with whom the Special Rapporteur met, said that he was aware of the persistence of racial discrimination in Guatemalan society, a phenomenon reduced by most political authorities with whom the Special Rapporteur met to economic and social discrimination alone. The Government has expressed its willingness to conduct political, economic and social reforms to enable indigenous peoples to participate at all levels. Special efforts are reportedly being contemplated to encourage public officials to be more sensitive to the cultural diversity of the country and adopt a multicultural perspective and non-discriminatory attitudes in their relations with citizens. Unlike the previous Government, the current administration has stated its readiness to implement the provisions of the peace agreements relating to indigenous peoples, including with respect to bilingual education, the provision of health services and access to justice in the languages of the peoples concerned. Efforts will also be made to give greater consideration to customary law in the settlement of disputes involving members of indigenous peoples.

The Special Rapporteur recommended in particular that the Government of Guatemala should acknowledge at the highest level the persistence of racism and discrimination against peoples and communities of indigenous people and people of African descent and evaluate their forms, manifestations and impact at the economic, social and cultural levels. He also recommended that a national plan to combat racism and racial discrimination should be developed in a democratic manner on the basis of the Durban Declaration and Programme of Action. The campaign against racial discrimination should be combined with the building of an authentically multicultural society promoting both the expression of specific cultures and identities and interaction between the members of the various peoples and communities and knowledge of and respect for one another. He further recommended that all organizations of the United Nations system present in Guatemala should grant an important place in their mandates to the struggle against racism, discrimination and xenophobia by promoting policies and programmes to that end.

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS
OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED
INTOLERANCE, MR. DOUDOU DIÈNE, ON HIS MISSION TO GUATEMALA
(26 JUNE TO 2 JULY 2004)**

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Introduction

1. During his visit to Guatemala, from 28 June to 2 July 2004, the Special Rapporteur met with several of the country's officials, including the Vice-President, Mr. Eduardo Stein, and the Deputy Minister for Foreign Affairs, Ms. Marta Altolaguirre Larraondo. He also met with representatives of the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (the Presidential Human Rights Commission in short, or COPREDEH), the Presidential Commission on Discrimination and Racism against Indigenous Peoples (CODISRA), the Office of the Human Rights Procurator and the Office for the Defence of Indigenous Women, as well as with Ms. Rigoberta Menchú Tum, a winner of the Nobel Peace Prize and goodwill ambassador for the peace agreements. In his desire to learn more about Guatemalan society in all its complexity and diversity, the Special Rapporteur also met with representatives of the Mayan, Xinca and Garifuna¹ peoples and with representatives of civil society, religious communities, intellectual circles and the media. His consultations took place in the capital, Guatemala City, and elsewhere in the country, including in the city of Quezaltenango in the north-west, the administrative centre of the department of the same name, where a majority of the people are indigenous, and in the town of Livingston in the south, on the Caribbean coast in the department of Izabal, where the Garifuna and Maya-Quiché peoples live side by side.

2. The visit to Guatemala took place against a backdrop of the consolidation of the peace process. Government action, supported by the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA), seems to have laid the institutional and legislative groundwork for a solution to the economic, social, political, cultural, ethnic and racial conflicts in the country. The departure of MINUGUA in December 2004 was a staging post along the way to completing the complex and long-term work of gradually implementing the institutional, political, economic and social changes needed for peace to take root. The efforts of the field office of the Office of the United Nations High Commissioner for Human Rights in Guatemala to encourage the emergence of a human rights culture, combined with the activities of various specialized agencies of the United Nations in the field of peace and social and human development, especially those of the United Nations Development Programme (UNDP), link up with the groundwork that has been laid and that is being built on with a view to giving effect, through an updated system of governance and pluralist democracy, to the commitments entered into by the various protagonists and enshrined in the peace agreements. The Special Rapporteur believes that the fragility of the peace-building process, the continued violations of human rights and the marginalization of groups that suffer from discrimination as a result of weak legal protection would justify the rapid return to Guatemala of the field office of the Office of the United Nations High Commissioner for Human Rights.

3. Most of the people from both the Government and civil society with whom the Special Rapporteur met welcomed his visit and thought that it was taking place at a particularly crucial time, when the parts of the peace agreements relating to human rights in general and the identity and human rights of indigenous peoples and people of African descent in particular were in need of a boost. The Special Rapporteur would like his visit to be seen as a critical, forward-looking contribution to the implementation of the agreements, particularly with regard to racism and discrimination.

4. The Special Rapporteur would like to thank the Government of Guatemala for its cooperation and for the willingness of its representatives to make themselves available. He is also grateful to the representatives of the Presidential Human Rights Commission and the Presidential Commission on Discrimination and Racism against Indigenous Peoples for the very useful information they gave him. He would like to express his gratitude to Ms. Birgit Gerstenberg, the head of the field office of the Office of the United Nations High Commissioner for Human Rights in Guatemala, and to her team for their excellent work in organizing and coordinating his visit; to Mr. Juan Pablo Corlazzoli, the United Nations resident coordinator in Guatemala, for logistical support and his substantial contribution to the success of the mission, and particularly for organizing a meeting with the United Nations country team in Guatemala; and to Mr. Tom Koenig, the representative of the Secretary-General and head of MINUGUA, for the information he supplied and for the logistical support of MINUGUA. Lastly, he would like to thank the regional officials he met in Quezaltenango and Livingston, as well as the representatives of civil society he talked to, including the representatives of the indigenous and Garifuna communities.

I. GENERAL OVERVIEW

A. Ethnic and demographic situation

5. Guatemala covers an area of 180,889 km². A country of social contrasts and cultural diversity, it has a population of 11,237,196 inhabitants,² of whom 50 per cent are female. Four groups give the country its ethnic and racial diversity: the Maya, Ladinos, Garifuna/Garinagu³ and Xinca. The Maya and Ladinos form the largest groups. Some 41 per cent of the population identifies itself as indigenous, and 59 per cent as non-indigenous: 39.3 per cent is of Mayan origin (4,411,964) and 0.2 per cent of Xinca or Garifuna origin (16,214 and 5,040 respectively).

B. Political and social context

6. It should be pointed out that it is little more than eight years since peace was established in Guatemala, following the signature on 29 December 1996 of the peace agreements between the Government and the insurgents - the Unidad Revolucionaria Nacional Guatemalteca (URNG) - which put an end to the conflict that had been affecting the country since 1960. Guatemala is thus engaged in a process of profound political change aimed at ensuring the effective participation of all parts of the nation and thus giving the provisions of the peace agreements a chance to become firmly established. The consolidation of democracy and reconciliation in preparation for the establishment of the rule of law remains one of the challenges in this process. The years of conflict have left Guatemalan society with a legacy of resentment and a culture of violence that give rise to injustice and to authoritarian, antisocial and predatory behaviour. Observers agree that the human rights situation has worsened, particularly because of the activities of the illegal and violent groups that continue to kidnap and murder people. As highlighted in several reports by MINUGUA, the denial of the right to justice is one of the most common human rights violations.⁴ Moreover, the new national civil police force sometimes acts outside the law in an excessively violent manner.

7. However, some steps have been taken to remedy the situation. In July 2002, the 20 largest Guatemalan political parties adopted, at the initiative of UNDP, a multiparty national agenda that aims to bring about political change and the implementation of the peace agreements through ongoing dialogue. Many social forces are now committed to building a society based on the values of reciprocity, respect for others, mutual responsibility and fairness.

II. POLITICAL AND LEGAL STRATEGY AND INSTITUTIONAL FRAMEWORK

A. The emergence of multiculturalism

8. The 1985 Constitution recognizes Guatemala's ethnic diversity (art. 66), though without actually affirming its multi-ethnic nature, as is done in the 1995 Agreement on Identity and Rights of Indigenous Peoples, which stipulates that "the Guatemalan nation is multi-ethnic, multicultural and multilingual in nature". Although the draft reform of the Constitution proposed by Congress in 1999 that would have included this and other provisions was not approved by the people,⁵ successive governments since the adoption of the peace agreements have recognized that the country's ethnic diversity is a fundamental characteristic of the Guatemalan State and have endeavoured to promote multiculturalism. In his inauguration speech, on 14 January 2004, President Oscar Berger recalled that Guatemala is a country made up of various peoples and cultures that form the foundation and core of its identity. He recognized indigenous peoples as a fundamental part of the Guatemalan identity and said that it would be by recognizing its roots, overcoming its divisions and accepting its diversity that Guatemala would be able to consolidate national unity. The Vice-President, Mr. Eduardo Stein, with whom the Special Rapporteur met, reaffirmed the Government's multi-ethnic, multicultural and multilingual vision of Guatemala, while acknowledging the persistence of racial discrimination. The Special Rapporteur was particularly impressed by the Vice-President's intellectual grasp of the issues and by his availability and commitment.

9. In practical terms, the Government's acceptance of multiculturalism is reflected in its efforts to develop multilingual educational curricula, with the support of the United Nations Educational, Scientific and Cultural Organization (UNESCO). Under the auspices of the Department of Bilingual Intercultural Education, which was established in 1995, the educational reform project instigated by the Ministry of Education in 2002 is intended to integrate Mayan values, experience and knowledge into educational courses. The development of multicultural and intercultural curricula is the outcome of efforts to adapt the education system to national and local realities, and should help all Guatemalans to identify with the ethnic, linguistic and cultural richness of their country.⁶ The reform affects both the methods chosen for the transmission of knowledge and teaching materials and resources.

10. A number of teachers from primary and secondary schools are being trained in multicultural education, and curricula are being revised with the help of education councils consisting of teachers and representatives of civil society and the communities concerned. The reforms should eventually replace the monolingual and monocultural education system with one that produces culturally aware pupils with linguistic skills in both Spanish and indigenous

languages. The Educational Campaign against Discrimination Act, which was adopted by Congress in 2002 (Decree No. 81-2002), requires the Ministry of Education to set up programmes to eliminate ethnic and racial discrimination. The aim of the National Languages Act adopted by Congress in 2003 (Decree No. 19-2003) is to grant official status to the Mayan, Garifuna and Xinca languages and to promote respect for them and their development.

11. Under the Agreement on Identity and Rights of Indigenous Peoples, which states that all the languages spoken in Guatemala must be treated with respect and requires the State to take steps to protect those languages and promote their development and use, a commission was set up in 1997 to grant official status to indigenous languages. It identified four regional languages spoken by over 300,000 people, 16 community-based languages spoken by less than 300,000 people and two special languages.⁷ After this, the Academy of Mayan Languages was set up to guarantee the development and use of most of these languages. The law establishing the Academy was adopted by Congress on 18 October 1990 (Decree No. 65-90).

12. It is important to highlight, in addition to the Government's efforts to strengthen social cohesion, the national campaign for an inter-ethnic dialogue under the slogan "Our diversity is our strength", which was launched on 29 June 2004 at the initiative of the Mesoamerican Regional Research Centre (CIRMA) to encourage intercultural interaction between the different ethnic groups in Guatemala. The campaign will run from 2004 to 2006, and includes cultural events in the country's biggest cities, interactive exhibitions, university debates and lectures. During his visit to Quezaltenango, the Special Rapporteur attended the launch of the campaign, giving a talk on intercultural dialogue as a tool for building multiculturalism. His intention was to demonstrate, by clarifying the concepts of "diversity" and "dialogue and peace", the need to combine the campaign against racial discrimination with the promotion of an egalitarian, interactive and democratic form of multiculturalism based on the recognition and promotion of, and respect for, the characteristics of cultural and religious identities and the promotion of interaction and the construction of a pluralist national identity.

13. Moreover, the Special Rapporteur was told about the Government's commitment to an administrative reform process that will enable the authorities to provide multilingual services for citizens. Efforts are being made to change the attitude of civil servants towards indigenous groups. Furthermore, competent individuals will continue to be recruited from these groups in order to ensure that indigenous people are represented within the civil service.

14. The Special Rapporteur was kept fully informed about progress in the reform of the judicial system.⁸ Since 1998, a course on interculturalism has been introduced in the curriculum for training justices of the peace. To ensure that the justice system reaches every region in the different languages used in the country, 607 bilingual employees who speak the languages of the Maya and Garifuna were trained between 2002 and 2003 and assigned to 21 departments. They consist of 98 judges, 369 legal officials, 43 bilingual interpreters and 97 administrative employees. A judicial commission on indigenous matters and a subcommission set up to monitor and support the strengthening of the justice system have undertaken a study on the issue of multiculturalism in the justice system. Several workshops have been organized to raise awareness of multiculturalism among officials in the justice system and representatives of

indigenous communities and the Office for the Defence of Indigenous Women. A study has also been carried out on the community courts responsible for applying customary indigenous law. Under the auspices of the Supreme Court and in cooperation with the Academy of Mayan Languages, the Public Prosecutor's Office and UNDP are preparing a glossary of Mayan legal terms.

**B. Legal and institutional framework for efforts to combat racism
and racial discrimination and to protect human rights**

15. The Constitution affirms and recognizes the primacy of the human person as the subject and object of State action, and the Comprehensive Agreement on Human Rights of 29 March 1994 called on the Government to undertake a number of legislative and institutional reforms to protect human rights in general and combat racial discrimination in particular. Paragraph 2 of the Agreement stipulates that "the Government of the Republic of Guatemala shall continue to encourage all those measures designed to promote and perfect norms and mechanisms for the protection of human rights".

16. Of the laws that have been passed, the following are worth mentioning: the Civil Service Act (Decree No. 1748), which prohibits discrimination of any kind in the recruitment of civil servants; and the Labour Code (Decree No. 1441), which prohibits discrimination in the private sector. The Judicial Service Act (Decree No. 41-99) severely punishes (with an unpaid 20-day suspension) any judge who indulges in discriminatory acts in the course of his or her duties. As regards the media, the Broadcasting Act (Decree No. 433) prohibits the broadcasting of comments that are denigrating or insulting or that incite racial discrimination.

17. The adoption on 17 October 2002 of Decree No. 57-2002, which introduced article 202 bis into the Criminal Code, marked a significant step forward in the provision of criminal sanctions for discriminatory acts. This article describes discrimination as "any distinction, exclusion, restriction or preference based on gender, race, ethnic origin, language, age, religion, financial status, state of health, handicap, civil status or any other ground, reason or circumstance with the intention of preventing or hindering a person, group of persons or association from enjoying a legally established right, including a right established by customary law or custom, in accordance with the Political Constitution of the Republic and international human rights treaties". The punishments applicable for an act recognized as discriminatory by a court of law are a prison term of one to three years and a fine of 500 to 3,000 quetzales. The punishment may be increased if the discrimination is based on language, culture or ethnic origin. The law also forms the basis for the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), which have been ratified by Guatemala. However, this law needs to be backed up by another law with a broader scope that would punish racial discrimination in all areas, including housing, access to health services, education and access to any place or service intended for use by the general public (transport, hotels, restaurants, cafes, theatres and parks), in accordance with article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination.

18. At the institutional level, Guatemala has several bodies devoted to the promotion and protection of human rights. The most important are the Presidential Human Rights Commission, the Presidential Commission on Discrimination and Racism against Indigenous Peoples, the Office of the Human Rights Procurator and the Office for the Defence of Indigenous Women.

19. The Presidential Human Rights Commission was established in 1991 to coordinate government policy on human rights. It supports the various ministries in formulating and implementing measures to protect human rights and may submit to the Government draft laws designed to improve the protection of human rights. It centralizes the collection of data on complaints of human rights violations and maintains channels of communication and cooperation with the judicial system and the Human Rights Procurator to follow up such complaints. It is also responsible for coordinating the drafting of Guatemala's periodic reports to the bodies monitoring the human rights treaties to which Guatemala is a party. The Commission has seven regional offices, which bring it closer to the people.

20. The Presidential Commission on Discrimination and Racism against Indigenous Peoples (CODISRA) is the prime institution for combating racial discrimination. It was established in October 2002, and its task is to: advise and support the different State institutions and departments and private-sector enterprises in drawing up policies and setting up mechanisms to combat racial discrimination; formulate public policies guaranteeing non-discrimination; act as a link between indigenous peoples' organizations and the Government in matters of racial discrimination; keep a record of the cases of racial discrimination brought to its attention and forward them to the relevant institutions; and launch campaigns against racial discrimination. Although it is linked to the executive, CODISRA is an offshoot of Guatemalan civil society, and is made up of representatives of the Mayan, Xinca and Garifuna peoples. However, its members believe that its effectiveness is limited by the shortage of funding, its statutory inability to rule on the cases of discrimination referred to it and its inability to bring actions against the relevant State bodies. They believe that a broadening of its mandate would give it greater credibility among the population groups concerned.

21. The Office for the Defence of Indigenous Women, which was set up in 1999, is the institution responsible for defending the human rights of indigenous women. Its main task is to propose solutions to the problem of the extreme vulnerability of indigenous women in Guatemalan society. It promotes and develops, in cooperation with governmental and non-governmental bodies, action, public policy proposals, action plans and programmes for the prevention and elimination of all forms of violence and discrimination against women. The Office is also responsible for receiving complaints and reports of violations of women's rights and forwarding them to the competent authorities, and for counselling women who have been subjected to violence, ill-treatment, discrimination or sexual harassment.

22. The Constitution also established the post of Human Rights Procurator (arts. 273-275), who is a judge appointed by Congress to promote and ensure that the State respects human rights, report and investigate State actions that violate human rights, respond to individual complaints of human rights violations by investigating them and taking out prosecutions, and recommend remedial measures to be taken by the authorities to ensure respect for and the protection of human rights.

23. The Special Rapporteur noted that, despite the tasks allocated to these institutions, combating racism and racial discrimination is not yet a national priority. Further efforts are needed to encourage political action and solutions that, in conjunction with legal measures, would strengthen the present system of protection. This would make it possible to avoid purely theoretical reforms and, instead, to ensure the effectiveness of existing legislation and improve the procedures for remedies, which are currently considered of little practical use.

C. Analysis and evaluation of the political and legal strategy and the institutional framework

24. The Spanish Conquest and the subsequent period of colonization, which began in Guatemala in 1524, left the country with a legacy of political, economic and social stratification that basically persists to this day. Such stratification, which is based on racial prejudice, kept indigenous groups at the bottom of the social ladder and reduced Africans to slavery. The indigenous groups were considered as backward and as obstacles to development, and were exterminated and marginalized, while their culture was devalued and treated as a form of folklore. This situation illustrates the malaise affecting Guatemalans' sense of identity, whereby the thriving cultural practices and expressions of indigenous people are downplayed even as the architectural and archaeological legacy of indigenous people, particularly the Maya, is put on display for the benefit of Guatemala's image abroad. The achievement of independence and the construction of a modern State have propagated, not to say exacerbated, this legacy of discrimination and marginalization. In this connection, the Commission for Historical Clarification, which was set up to shed light on human rights violations committed during the armed conflict, has stressed that one of the causes of the armed conflict was "the creation of an authoritarian State which excluded the majority of the population, was racist in its precepts and practices, and served to protect the interests of the privileged minority".⁹

25. Despite official statements recognizing multiculturalism, Guatemala clearly and overwhelmingly gives preference to its Hispanic identity. The country's official language is still Spanish, and the 24 other national languages are for domestic use only. A large proportion of the population - the Mayan population alone accounts for 43 per cent of it - is therefore marginalized from the viewpoint of the State, the administration, the judiciary and the economy. Despite the progress made in reforming the justice system, the Special Rapporteur's attention was drawn to the fact that, out of a total of 650 judges, only 98, or 15.08 per cent, speak indigenous languages.¹⁰

26. Despite the deep historical roots of racial discrimination, its pervasiveness in contemporary society and its clear daily manifestations, the Special Rapporteur considers that there is no clear recognition of this reality by the political authorities and the dominant classes. Although some government representatives recognize it in private, the official line is that discrimination is essentially of a social and economic nature. The failure to recognize the reality of racial discrimination and its pervasiveness throughout society is thus a major initial obstacle to efforts to confront this problem directly and objectively and find a lasting solution.

27. The Special Rapporteur finds that the Government's legal strategy and the institutional provisions introduced to combat racism and racial discrimination, while they do represent some progress, are ambiguous, since the present institutions and mechanisms, because of their links to the executive, do not have the independence they need to be effective, and they lack democratic legitimacy. They also lack the financial resources needed for their work.

28. The Special Rapporteur was particularly struck by the lack of an intellectual and ethical strategy to combat racism and discrimination. Neither the structure nor the content of Guatemala's system of education has been subjected to deconstruction with a view to analysing the history of racism, its origin, its mechanisms, its process, its expressions and manifestations. History, for example, which is the workshop for the discriminatory and racist construction of identities, does not appear to have been revisited, either in its written form or in the way in which it is taught. The mirror of identity, reflected by the media, ensures that indigenous people and people of African descent remain historically invisible as part of the heritage of discrimination and racism. The system of dominant values marginalizes the traditional cultural and spiritual values and practices of these groups. The task of building a genuine form of multiculturalism that is egalitarian, interactive and democratic therefore constitutes a major challenge for Guatemalan society.

III. DESCRIPTION OF NATIONAL INSTITUTIONS, VIEW OF THE UNITED NATIONS AND PRESENTATION OF THEIR SITUATION BY THE POPULATION GROUPS CONCERNED

29. The views expressed by the Presidential Human Rights Commission, the Presidential Commission on Discrimination and Racism against Indigenous Peoples and representatives of indigenous peoples and communities all condemn the persistence of racism and racial discrimination, notwithstanding the reforms under way and the current legislation. According to the representatives of these institutions and communities, racism continues to permeate mentalities and is reflected not only in personal relationships but also in the way that politics, the economy, society, the judiciary and communications are organized. The assessment by the United Nations country team reaches the same conclusion, observing that:

30. "Guatemala remains a fragile State that is unable, through its public policies, to overcome discrimination and ensure due respect for the country's ethnic diversity. Discrimination is still evident in several areas of national life. It mainly affects indigenous peoples, women, children, young persons and adults ... Public investment has not been targeted in such a way as to foster equal opportunities and development; on the contrary, it encourages further racial and social discrimination. Public policies to eliminate poverty and social exclusion have little impact and have not been able to close the gap between rich and poor."¹¹

A. Situation of indigenous peoples and people of African descent in general

31. Several of the individuals the Special Rapporteur talked to pointed out that several attempts were made during the armed conflict to weaken the Mayan people and indeed to question whether they really are a people. The lives of members of this people and their ability to reproduce were directly jeopardized by military action. Their living conditions and their

development were also jeopardized by subjecting them to economic hardship. In its report, the Commission for Historical Clarification set up to shed light on human rights violations committed during the armed conflict highlighted proven acts of genocide, which were analysed on the basis of the Convention on the Prevention and Punishment of the Crime of Genocide. It spoke of:

- “A scorched earth policy” (including murders, setting fire to houses and crops and the complete destruction of villages);
- “Massacres, followed by population displacements and the persecution and murder of survivors”;
- “Targeted assassinations of community chiefs or leaders of Mayan organizations, and their enforced disappearance”;
- “The murder of elders, women and children, which affected the transmission of the culture and the possibility of cultural continuity in the communities”.¹²

32. There are numerous cases of violations of the human rights of indigenous peoples during the armed conflict which have not received sufficient attention from the justice system, with the result that the guilty parties remain unpunished. The vast majority of these peoples and communities are still waiting for compensation and reparation for all the violations and hardships they suffered during the years of political violence. In contrast, the Special Rapporteur was told by former members of the Civil Self-Defence Patrols (*Patrullas de Autodefensa Civil*) who, together with members of the army, committed atrocities against civilians during the 1980s, that they had been promised that they would soon receive financial compensation from the Government.

33. Many of the situations brought to the Special Rapporteur’s attention, including those concerning indigenous peoples’ land rights and their cultural and spiritual identity, have been reported previously by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, in his report on his mission to Guatemala in 2001. There is no need to repeat them here, as there is no change to report.¹³ 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.

34. Racism in everyday life is reflected in scornful looks, jokes in bad taste, comments about indigenous individuals and Mayan women’s refusal to go into public places (such as shops, restaurants or nightclubs) wearing traditional costume. The feeling that they are marginalized and that their identity is not recognized was apparent in conversations with several of them, who said the looks they receive from others make them feel “like foreigners in their own country”. Members of the Presidential Commission on Discrimination and Racism against Indigenous Peoples stressed that racial discrimination is generally suffered in silence by victims. Those who suffer from and those who practise discrimination seem, by force of habit and out of a feeling that it is normal, to have become so used to racist behaviour that it seems natural to them.

35. Government action to combat racism is seen by some sectors of the Ladino population as special treatment for indigenous peoples. The involvement of indigenous peoples in the decision-making process is generally limited to inviting their representatives to consultations without taking into account their views in the final decision or including them in political and economic decision-making bodies.

36. At the institutional level, of the 153 members of Congress, only 14 are of indigenous origin. Political parties balk at presenting candidates from indigenous communities. In the army, indigenous people make up the majority of the rank and file but a far smaller proportion of officers (72.6 per cent of whom are Ladinos, as compared with 27 per cent who are indigenous).¹⁴ In the Government, individuals of indigenous origin generally occupy posts below the rank of deputy minister and presidential secretary, and are rarely appointed as ministers.

37. It was recognized that the peace agreements have not yet produced the structural changes expected and that the Agreement on Identity and Rights of Indigenous Peoples is the least used instrument, since the laws and reforms proposed generally remain unimplemented for lack of resources and political will. Despite the judicial reforms under way, many of the people who talked to the Special Rapporteur think that the justice system is deficient and that indigenous customary law is not sufficiently integrated in the judicial process. Thus, a judicial monism prevails and traditional indigenous authorities are not considered capable of administering justice according to the practices and customs of their communities, contrary to the relevant provisions of ILO Convention No. 169.

38. Several of the people the Special Rapporteur talked to stressed the persistence of the traditionally inegalitarian structure of Guatemalan society, the legacy of a long history of discrimination, social exclusion and marginalization. Those who suffer most as a result of this structure are people of indigenous and African origin at every level. According to UNDP data, these people are becoming increasingly impoverished. In 2002, poverty in general affected 57 per cent of the population, or 6.5 million people, and extreme poverty 21 per cent of the population, or 2.4 million people. The situation is particularly serious in rural areas, where the majority of indigenous people live; 72 per cent of these people are affected.¹⁵

39. The departments populated for the most part by indigenous communities have the highest poverty levels.¹⁶ Health and education indicators reveal the same disparities. The departments with the highest levels of illiteracy are for the most part inhabited by indigenous people. The illiteracy rates range from 41 per cent to 53 per cent: 53 per cent in Quiché; 51.3 per cent in Alta Verapaz; 47.9 per cent in Sololá; 43.3 per cent in Totonicapán; 41.9 per cent in Baja Verapaz; and 41.6 per cent in Huehuetenango - while the national average is 31.7 per cent.¹⁷ Poverty, lack of access to drinking water, environmental degradation, cultural marginalization and the lack of sanitation facilities are factors that have a negative impact on the health of indigenous people. Cultural barriers are especially noticeable in the failure of officialdom and administrators to use indigenous languages in health centres and the failure to incorporate traditional medicine in health programmes. Pilot projects designed to integrate 4,560 midwives are only just beginning to get under way, even though over 50 per cent of the population has recourse to the services of traditional doctors or healers. The Special Rapporteur

believes that the correspondence between areas of poverty and social marginalization and the geographical distribution of indigenous people or people of African origin shows the depth of systemic, structural discrimination in Guatemala.

40. Representatives of the Garifuna claim that, despite the fact that they first landed on the shores of what is now Guatemala in 1806 and despite the fact that they are mentioned in the Agreement on Identity and Rights of Indigenous Peoples, the Garifuna are not fully recognized as Guatemalans and are discriminated against when they emigrate from the Izabal region (Livingston) to the capital. Many of them have been harassed by the police, who consider them as illegal foreign immigrants in Guatemala. In schools in the department of Izabal, Garifuna children feel discriminated against because their language is not used and they feel they are not receiving the same attention from teachers as Ladino children. Moreover, the absence of their culture, history and traditions from school courses makes these children feel marginalized. The lack of opportunities, which is related to the lack of development projects in their region¹⁸ and to the discrimination against them, has forced many of them to emigrate, particularly to the United States of America, from where they support the families they left behind. They are afraid that their community might lose its language because there is no bilingual education for their children. In light of the interest shown by tourists in their region, some of them say they are afraid they may be forced out of Livingston in the same way as they were forced off the island of Saint Vincent in 1796.

41. During a visit to a Garifuna couple living with HIV/AIDS, the Special Rapporteur was able to gauge the effects of the lack of adequate health facilities in the town of Livingston, in the department of Izabal. The health centre in the town has neither the appropriate drugs nor sufficient equipment to treat, for example, HIV-positive persons and AIDS patients, who are obliged to go to Puerto Barrios, which is about an hour away by boat. The trip requires financial resources that these individuals do not always have. In Livingston, many sick people die for lack of adequate medical care. The lack of health care shows a lack of commitment on the part of the Government towards the population groups that suffer most from discrimination. For this reason, Guatemala has been denounced to the Inter-American Commission on Human Rights by HIV/AIDS patients who have no access to treatment.

42. Representatives of the Xinca people also stressed the specific forms of discrimination from which they suffer, which are related to the pressure exerted on them since colonial times not to speak their language and to abandon their traditional costumes, as well as the breakdown of their communities. They pointed out that the State dealt ruthlessly with Xinca efforts to organize, rejected their customary law and expropriated their communities' land for the benefit of big landowners, leaving the Xinca to be exploited as farm workers on coffee plantations. Like other indigenous peoples, the Xinca were the victims of military repression during the armed conflict and were marginalized economically and socially. Although its members are still treated as if they were invisible, the Xinca people is starting to rebuild itself, with the aim of recovering its cultural identity as a distinct people among the other indigenous peoples. For example, Xinca organizations have begun to carry out in-depth sociocultural and anthropological research into their people's practices and customs. Their representatives claim that the situation of their communities in the villages of Yupiltepeque, Jumaytepeque and Guazacapán requires urgent attention, as they have been threatened with the expropriation of their land by the municipal authorities.

B. Situation of indigenous children and women

43. Indigenous children and women are among those who are most affected by racial discrimination. Indigenous women, because of their ethnic origin and sex, suffer twice over from discrimination, which typically takes the form of a 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. The illiteracy rate among indigenous women is between 50 per cent and 90 per cent; only 43 per cent of them complete their primary education, 5.8 per cent secondary education and 1 per cent higher education.¹⁹

44. In the area of reproductive health, indigenous women mostly resort to the services of healers and give birth in hazardous conditions. The maternal mortality rate, which is estimated at 74 per 100,000 live births in Guatemala, is one of the highest in Central America, and is linked to the situation of indigenous women. In 2000, according to UNDP, 65.4 per cent of the cases of mortality related to childbirth concerned indigenous women.²⁰

45. As far as children are concerned, the majority (62.3 per cent) of the 556,000 children aged between 7 and 14 who do not go to school are indigenous.²¹ The rate of malnutrition among indigenous children is 29 per cent, as compared with 17.2 per cent among non-indigenous children; the infant mortality rates are, respectively, 69 and 52 per 1,000 live births.

46. Several cases of racial discrimination described by the Human Rights Procurator illustrate the form taken by discrimination both in personal relationships and within institutions. For example, Ms. Rigoberta Menchú tried to sue members of the Frente Republicano Guatemalteco political party for making allegedly racist remarks about her, calling her a “market Indian” and a “tomato seller” and inviting her to “sell her vegetables somewhere else”; a councillor from the town of Xela is being prosecuted for saying during an interview that “during the conquest, the Spaniards exorcised the indigenous peoples”; a teacher of Mayan origin and her pupils were forced to identify themselves as Ladinos on a form for the Ministry of Education; a pupil of Mayan origin was refused admission to a private school because she was dressed in Mayan costume; and in 1996, racist graffiti appeared on walls in the city of Quezaltenango, which was governed by an indigenous person.

IV. CONCLUSIONS AND RECOMMENDATIONS

47. **Racism and racial discrimination are deep-rooted, though not institutionalized, in Guatemala. They are reflected in the pervasiveness of the centuries-old prejudices that have marked Guatemalan history, culture and mentalities and that have been amplified by the tragic events of the country’s recent past, culminating in a genocide of indigenous peoples. Guatemala’s economic and social situation is characterized by the non-egalitarian development of the so-called Ladino population and of indigenous peoples and people of African descent, illustrating the structural and systemic nature of discrimination. The lowest economic and social development indicators are found in the regions populated mostly by indigenous people and people of African descent. The correspondence between areas of economic impoverishment and social marginalization and the geographical distribution of indigenous groups is a glaring example of the systemic and structural nature**

of racial discrimination. The Special Rapporteur therefore believes that combating racial discrimination should be a cornerstone of the process of building peace and democracy in Guatemala. A true and lasting peace cannot be reduced to its political and legal dimensions, as formulated in the peace agreements and subsequent laws; if it is to be achieved and to be really lasting, it must be based on efforts to eradicate racism and racial discrimination by taking appropriate measures while promoting reconciliation. The Special Rapporteur therefore makes the following recommendations:

- (a) Given the pervasiveness of racism and racial discrimination, the Special Rapporteur believes that a bold political act is needed to demonstrate the Government's determination to eliminate this evil. The President should make a solemn statement formally recognizing the existence and the social, economic and cultural consequences of these phenomena and should express the Government's commitment to eliminating them on a democratic basis and with the participation of the indigenous peoples and people of African descent concerned;
- (b) Moreover, the Special Rapporteur recommends that the Government should go beyond this formal recognition of the country's ethnic diversity by writing it into the Constitution, in accordance with the Agreement on Identity and Rights of Indigenous Peoples;
- (c) Having noted the lack of coordination between the institutions and government departments responsible for combating racism, as well as the lack of financial resources or the inadequate allocation of resources, the Special Rapporteur recommends that an integrated approach should be taken to combating racism and racial discrimination, by drawing up a national programme to combat racism and discrimination and simultaneously promoting an egalitarian, interactive and democratic form of multiculturalism, with a view to building a society based on ethnic and cultural pluralism that encourages dialogue and interaction between all its members. Such a programme should be based on the Durban Declaration and Programme of Action;
- (d) The relevant provisions of the peace agreements, particularly the Agreement on Identity and Rights of Indigenous Peoples, should be subjected to a critical evaluation to determine their achievements and shortcomings. In this context, combating racism and racial discrimination should be linked to the long-term promotion of multiculturalism based on the principle of unity and diversity, the recognition and promotion of, and respect for, the identity-related, ethnic, spiritual and cultural characteristics and peculiarities of all peoples and communities, and the promotion of a process of interaction and cross-fertilization between them all;
- (e) Given the profound and long-lasting impact of racism and discrimination on the structure of Guatemalan society, the Special Rapporteur recommends the adoption of a programme of voluntary or affirmative action in favour of peoples who have historically suffered from discrimination, that is, indigenous peoples and people of African descent;

(f) Special emphasis should be placed on the core issue of the construction of a pluralist identity in Guatemala through the promotion of multicultural and intercultural education that pays special attention to the way history is written and taught, to the system of values and to the development of genuine multilingualism in all walks of life. In this context, special attention should be paid to two central dimensions of national identity: the promotion of multiculturalism in the media, both in their output and in their management and operational structure; and the dynamic national culture resulting from the promotion of the country's architectural and historical heritage and the development of the creativity and thriving cultural practices of all its peoples and communities. The development of adequately-resourced local, community-based, free media should be part of these efforts;

(g) The process of catharsis initiated by the Commission for Historical Clarification set up to shed light on past human rights violations should be pursued in order to expunge the painful experience of discrimination and put an end to the impunity enjoyed by those responsible for the political violence; the Commission's recommendations with regard to preserving the memory of the victims of the armed conflict, moral and material redress for victims or their families, and the establishment of a mental-health programme for those traumatized by the armed conflict should be implemented quickly;

(h) The Presidential Commission on Discrimination and Racism against Indigenous Peoples and the Presidential Human Rights Commission should be linked by law to Congress to make them statutorily independent, in accordance with the Principles relating to the Status of National Institutions (the Paris Principles); similarly, these commissions should be given their own financial resources under the annual State budget;

(i) The Special Rapporteur encourages Congress to speed up the process of adopting the law that will authorize the Government to make the declaration recognizing the competence of the Committee on the Elimination of Racial Discrimination under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination;

(j) It is recommended that non-governmental organizations should take an active part in drawing up and implementing a national programme to combat racism and racial discrimination, by making proposals to eliminate racism and racial discrimination, with the focus on resolving communities' specific problems; in the process, these organizations should work together to help build a more mutually supportive and democratic society.

Recommendations at the regional level

48. Efforts to combat racism and racial discrimination should take into account the regional dimension in Central America, where the societies share not only demographic, ethnic and cultural similarities, but above all a historical heritage of racism and discrimination, amplified by present-day political violence. The countries of this region are also characterized by movements of population groups which are victims of discriminatory practices to various degrees in the different countries. The Special Rapporteur consequently recommends that the Organization of American States (OAS), and in

particular the Inter-American Commission on Human Rights, should assign a central role in peace-building to the thoroughgoing eradication of racism and racial discrimination with a view to building democratic, egalitarian and interactive multiculturalism in the region. OAS should support the efforts of the Central American States by means of studies on the shaping of multi-ethnic identities and their manifestations, as well as assistance in the drafting of coordinated domestic and regional legislation, the strengthening of institutions for the protection of human rights and civil society, and the revision of educational and media programmes and systems.

49. OAS should also promote intercultural tourism centred on the following elements: the existence of a shared geographical and historical heritage, the vitality of authentic cultural and spiritual practices and forms of expression and their profound interactions in time and space. Intercultural tourism can make it possible to combat discrimination through the rehabilitation of identities that have historically been denied or scorned, to check the tendency inherent in modern mass tourism to treat culture as folklore, and to foster the fundamental link between land and culture, and land and origins, which lies at the heart of the demands made by indigenous peoples and communities and people of African descent.

Notes

¹ Le mot *garífuna*, qui est souvent utilisé dans ce rapport, proviendrait de la racine arawak *karina* qui se serait transformée en *Callinagu*, *Garinagu* et *Karifouna*. *Garífuna*, qui signifie « mangeur de manioc », s'écrit dans la langue originale *garífuna* au singulier et *Garinagu* au pluriel. En français, on peut écrire au pluriel *garífuna* ou *garífunas* (sans prononcer le -s final). Le nom de *Garífuna* (avec une majuscule) sert normalement à désigner l'ethnie, mais il peut désigner la langue (le *garífuna*, avec une minuscule) et servir d'adjectif : p. ex., *la langue garífuna*, *le peuple garífuna*. [www.tlfq.ulaval.ca/axl/amsudant/Garifuna_histoire.htm].

² D'après l'Enquête nationale sur les conditions de vie de la population, réalisée au cours de l'année 2002 par l'Institut national de statistiques du Guatemala.

³ Bien qu'inclus parmi les peuples autochtones par l'accord sur l'identité des peuples autochtones, les *Garinagu* (singulier *Garífuna*) doivent être considérés comme une population d'ascendance africaine, même s'ils empruntent une proportion importante de leur langue aux Amérindiens Arawaks avec lesquels ils ont coexisté sur l'île de Saint-Vincent d'où ils ont été déportés vers les côtes atlantiques du Honduras, du Guatemala, du Belize et du Nicaragua actuels. Leur culture, qui s'est maintenue à travers les siècles, reste profondément africaine.

⁴ PNUD, « Guatemala: Una Agenda para el Desarrollo Humano. Informe Nacional de Desarrollo Humano 2003 », p. 9.

⁵ Un projet de réforme de la Constitution soumis au peuple en 1999 prévoyait de reconnaître le caractère « pluriculturel, multiethnique et multilingue » du Guatemala (art. 1er amendé) mais n'a pas été adopté.

⁶ Commission consultative pour la réforme éducative, Rapport, mars 2001. Cf. *La Cultura Maya en la Educación Nacional*, Ministerio de Educación de la República de Guatemala/UNESCO, Proyecto Movilizador de Apoyo a la Educación Maya, Ciudad de Guatemala, 2004, p.17.

⁷ 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. 16, pour le détail de ces langues.

⁸ Le Rapporteur spécial a en outre reçu le Rapport initial du système judiciaire sur la réforme judiciaire pour la période 2003-2004.

⁹ *Guatemala. Memory of Silence. Report of the Commission for Historical Clarification. Conclusions and Recommendations*, F & G Editores, Ciudad de Guatemala, 1999, p. 17.

¹⁰ Communication de la Fundación Mirna Mack, en date du 28 juin 2004.

¹¹ « Marco de asistencia de las Naciones Unidas para el Desarrollo (UNDAF) Guatemala 2005-2008 », Equipo de País del Sistema de las Naciones Unidas, juin 2004, p. 7.

¹² *Guatemala. Memory of Silence...*, op. cit, p. 23-43.

¹³ Voir E/CN.4/2003/90/Add.2, p. 17 à 20.

¹⁴ MINUGUA, « Los Pueblos indígenas de Guatemala... », op. cit., p. ...

¹⁵ PNUD, « Guatemala: Una Agenda para el Desarrollo Humano. Informe Nacional de Desarrollo Humano 2003 », op. cit., p. 228. Voir également les données de l'Instituto Nacional de Estadísticas, « Mapas de pobreza de Guatemala », août 2001.

¹⁶ Alta Verapaz, Huehuetenango, Izabal, Quiché, Quetzaltenango, San Marcos, Totonicapán, Chimaltenango, Sololá, Suchitepéquez, Baja Verapaz, Sacatepéquez.

¹⁷ MINUGUA, « Los Pueblos indígenas de Guatemala... », op. cit, p. 11.

¹⁸ La ville de Livingston est relativement isolée du reste du pays, étant atteignable par mer au terme de plus de 45 minutes de navigation, depuis certains points côtiers.

¹⁹ MINUGUA, op. cit., ibid.

²⁰ Defensoría de la Mujer Indígena, « Primer informe. Situaciones y derechos de las Mujeres Indígenas en Guatemala », avril 2003.

²¹ Ibid, p. ...
