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تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير الممثلة الخاصة للأمين العام عن حالة المدافعين عن حقوق الإنسان، هينا جيلاني* **

إضافة

البعثة إلى غواتيمالا***

* تأخر تقديم هذه الوثيقة.

** قرر مجلس حقوق الإنسان في قراره ٨/٧ تمديد ولاية المكلفة بالإجراء الخاص المعنية بحالة المدافعين عن حقوق الإنسان بوصفها مقررة خاصة. ويشكل هذا التقرير آخر تقرير للممثلة الخاصة للأمين العام المعنية بحالة المدافعين عن حقوق الإنسان.

*** يعمم موجز تقرير هذه البعثة بجميع اللغات الرسمية. أما التقرير نفسه الوارد في مرفق هذا الموجز فيعمم باللغة التي قُدِّم بها وبالإسبانية فقط.

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موجز

يعرض هذا التقرير استنتاجات وتوصيات الممثلة الخاصة للأمين العام المعنية بحالة المدافعين عن حقوق الإنسان بشأن بعثة المتابعة التي اضطلعت بها إلى غواتيمالا في الفترة من ١٨ إلى ٢٢ شباط/فبراير ٢٠٠٨.

وكان الغرض من بعثة المتابعة تقييم التقدم المحرز والتحديات في تنفيذ توصيات الممثلة الخاصة بعد انقضاء ست سنوات على زيارتها الأولى.

ومع أن الممثلة الخاصة تسلِّم بإحراز بعض التقدم منذ الزيارة التي قامت بها في عام ٢٠٠٢، ولا سيما في مجال إنشاء المؤسسات ومبادرات الحماية الذاتية للمدافعين عن حقوق الإنسان، فإنها تعرب عن قلقها العميق إزاء تدهور البيئة التي يعمل فيها المدافعون عن حقوق الإنسان والتي تتسم باستشراء الإفلات من العقاب على الجرائم والانتهاكات التي ترتكب ضدهم.

ويتضمن الجدول التالي مقارنة بين وضع المدافعين عن حقوق الإنسان كما تم تقييمه خلال الزيارة التي جرت عام ٢٠٠٢ ووضعهم أثناء زيارة المتابعة في عام ٢٠٠٨. ويشكل هذا الجدول عرضاً عاماً تحليلياً للتطورات التي حصلت في السنوات الست الأخيرة والتي شكلت محور اهتمام زيارة المتابعة ولا يلخص الجدول جميع الاستنتاجات الواردة في هذا التقرير، لا سيما تلك التي لا صلة لها مباشرة بالقضايا والشواغل التي أثيرت أثناء البعثة الأولى.

الوضع المقارن للمدافعين عن حقوق الإنسان في عامي ٢٠٠٢ و٢٠٠٨

البعثة الأولى – ٢٠٠٢[أ]	بعثة المتابعة – ٢٠٠٨
البيئة التي يعمل بها المدافعون	
كان التقدم المحرز في تنفيذ اتفاقات السلام بطيئاً إلى أبعد الحدود، مع وجود جدول أعمال تشريعي حافل ينتظر الإقرار بهدف تنفيذها. ويعتبر تنفيذ اتفاقات السلام شرطاً لا غنى عنه لتهيئة بيئة آمنة للمدافعين عن حقوق الإنسان ولتعزيز وحماية حقوق الإنسان في غواتيمالا (الفقرات ٩ و٢٤ و١٠١)[ب].	بعد انقضاء اثني عشر عاما على توقيع اتفاقات السلام، فإنه من المخيِّب للآمال عدم حصول تقدم في تنفيذها واختفائها عملياً من الأجواء السياسية، وذلك رغم استمرار المشكلات التي كان القصد من اتفاقات السلام أن تعالجها (الفقرة ١١)[ج].
تدني موقع البلد في مؤشر التنمية البشرية مقارنة بمنطقة أمريكا اللاتينية (الفقرة ٧).	تصنف غواتيمالا كثالث بلد في أمريكا اللاتينية تسود فيه أكبر درجة من اللامساواة من حيث توزع الثروة، وهي تحتل أسوأ موقع في مؤشر التنمية البشرية في المنطقة (الفقرة ١٢).
ارتفاع مستوى العنف في البلد (ويرد الحديث عنه في كل أجزاء التقرير).	يعتبر معدل العنف وجرائم القتل مرتفعاً جداً. فقد كان معدل جرائم القتل إبان الزيارة الأولى التي قامت بها الممثلة الخاصة تسع جرائم في اليوم في حين وصل هذا العدد عندما قامت الممثلة الخاصة بزيارتها الثانية إلى سبع عشرة جريمة (الفقرة ١٣).

البعثة الأولى – ٢٠٠٢[أ]	بعثة المتابعة – ٢٠٠٨
المدافعون عن حقوق الإنسان	
كان ما تتسم به منظمات المجتمع المدني من نضج ومرونة في مواجهة الظروف الصعبة موضع إعجاب الممثلة الخاصة (الفقرة ١٠٠).	تأكدت الممثلة الخاصة من قدرة أوساط المدافعين عن حقوق الإنسان على بلوغ مستوى جيد جداً من التنظيم، ومن جهودهم المستمرة للعمل معاً وإنشاء أو تعزيز الآليات والمبادرات الرامية إلى حماية أنفسهم على نحو أفضل (الفقرة ١٦).
ارتفاع مستوى الاعتداءات على المدافعين عن حقوق الإنسان (في كل أجزاء التقرير).	تزايد عدد الاعتداءات على المدافعين عن حقوق الإنسان بل وتضاعف هذا العدد في الخمس سنوات الأخيرة ليصل إلى اعتداء كل يومين (الفقرة ٢٣).
شملت الانتهاكات المرتكبة ضد المدافعين جرائم القتل والاعتداء على سلامتهم البدنية، والتهديد، والتخويف والمضايقات والوصم (الفقرات ٤٢-٥٢ و١٠٤).	يستمر ارتكاب الانتهاكات نفسها. وثمة شكل آخر من أشكال مضايقة المدافعين برز بصورة أكبر وهو يتمثل في تجريم المدافعين عن حقوق الإنسان (الفقرتان ٢٥-٢٦).
وكان الصحفيون الذين أبلغوا عن حالات الفساد أو عن التحقيقات المتصلة بالاعتداءات من بين مجموعات المدافعين الأشد تأثراً بانتهاكات حقوق الإنسان (الفقرة ٥٥).	وتؤكد الممثلة الخاصة بأن الإبلاغ أو وضع التقارير عن الجريمة المنظمة، والاتجار بالمخدرات، والفساد وغير ذلك من الأنشطة الإجرامية، حيث قد تظهر مسؤوليات السلطات الموازية أو تغدو علنية من خلال تحريات الصحافة ما زال يُعدُّ أمراً شديدة الخطورة (الفقرة ٤٣).
الانتهاكات الخطيرة لحق تنظيم الجمعيات بما في ذلك التهديد بالقتل، والتسريح التعسفي والاضطهاد الذي يواجهه رؤساء وأعضاء النقابات العمالية (الفقرة ٥٢).	تعرب الممثلة الخاصة عن قلقها لاستمرار استهداف أعضاء النقابات بكثير من الاعتداءات، وتؤكد وجود مستويات تبعث على القلق من العنف ضد النقابات (الفقرة ٤٩).
الاستجابة المؤسسية	
ثمة قانون بشأن سبل الحصول على المعلومات ينتظر إقراره من جانب الكونغرس (الفقرة ٢٦).	ترحب الممثلة الخاصة باعتماد القانون المتعلق بسبل الحصول على المعلومات في النصف الثاني من عام ٢٠٠٨ (الفقرة ٥٥).
تقوم اللجنة الرئاسية المعنية بتنسيق سياسات حقوق الإنسان (COPREDEH)، في جملة أمور أخرى، بتنسيق عمل الحكومة في مجال حقوق الإنسان وتوفر المعلومات للآليات الدولية لحقوق الإنسان (الفقرتان ٣٠-٣١).	ضم ممثلين عن أوساط المدافعين إلى الهياكل الحكومية وخصوصاً اللجنة الرئاسية COPREDEH والأمانة الرئاسية لإحلال السلام (SEPAZ). وقد دأبت اللجنة الرئاسية المعنية بتنسيق سياسات حقوق الإنسان، على مر السنين، على الاستجابة لرسائل الممثلة الخاصة وأثبتت أنها محاور يجري حواراً بنَّاءً (الفقرتان ٥٦-٥٧).
يعدُّ مكتب أمين المظالم مؤسسة هامة ذات تغطية وطنية وولاية واسعة في مجال رصد حقوق الإنسان والتحقيق في الشكاوى المتصلة بانتهاك حقوق الإنسان (الفقرة ٢٩).	وقد أُعجبت الممثلة الخاصة بالإنجازات التي حققها مكتب أمين المظالم في معالجة الشكاوى وفي اكتساب ثقة الناس. وكثيراً ما يتعرض موظفو المكتب وأمين المظالم نفسه للاعتداءات والتهديدات (الفقرات ٦٣-٦٦).

البعثة الأولى – ٢٠٠٢[أ]	بعثة المتابعة – ٢٠٠٨
ولا يثق الناس برجال الشرطة. ويفضل الكثيرون عدم الإبلاغ عن التهديدات خشية التعرض للانتقام. ويخشى ضحايا التهديدات الذين توفر الشرطة الحماية لهم أن يكون للذين يقومون على حمايتهم صلة بمرتكبي أعمال التهديد والاعتداءات (الفقرتان ٦٤ و٦٦).	ينبغي إصلاح جهاز الشرطة كي يكسب ثقة السكان (الفقرة ٧٤) فالحماية التي توفرها الشرطة انتقائية، وغير فعالة بل تصبح في بعض الأحيان سبباً للتعرض للمزيد من الأخطار عندما يُعتقد أن أفراد الشرطة أنفسهم ضالعون في الاعتداءات على المدافعين (الفقرة ٦٧). ويحظى المدافعون المعرضون للخطر ببعض الحماية نتيجة الضغوط الدولية في الغالب (الفقرة ٦٨). ويشكل الخط الساخن الذي أوجدته الشرطة للتصدي للاعتداءات والتهديدات تطوراً إيجابياً لكنه لا يتم استخدام هذا الخط بالقدر الكافي من جانب المدافعين (الفقرة ٧٢).
ويوجد في غواتيمالا مجال يكاد يكون كلياً للإفلات الفعلي من العقاب على انتهاك حقوق الإنسان، بما في ذلك انتهاك حقوق المدافعين (الفقرة ٦٣).	إن ما تورده التقارير عن نسبة الإفلات من العقاب البالغة ٩٨ في المائة في حالات الاعتداء على المدافعين عن حقوق الإنسان يجعل من العدالة كلمة لا معنى لها في غواتيمالا (الفقرة ٧٥).
وثمة رأي شائع بأن عدم فعالية التحقيقات يعود إلى عدم توفر الوسائل التقنية والتدريب الكافي والصحيح لرجال الشرطة والمدَّعين العامين (الفقرة ٦٧).	لقد تلقى مكتب النائب العام منذ الزيارة الأولى للممثلة الخاصة المزيد من الموارد. لكنه على الرغم من هذه الزيادة في الموارد وإنشاء وحدات تخصيصية في مكتب النائب العام لتيسير مجرى التحقيقات، فإن عدم قيام المدعين العامين بالتحقيق والملاحقة القضائية مخيِّب للآمال (الفقرة ٧٦).
لقد أشير إلى سوء التنسيق بين الشرطة والمدعين العامين كسبب آخر لقصور التحقيقات وعدم فاعليتها (الفقرة ٦٧).	على الرغم من انعقاد اجتماعات شهرية واتخاذ قرارات داخلية لتحسين التعاون بين الشرطة والمدعين العامين، فإن سوء التنسيق بين الجهتين يظل مشكلة ماثلة، كما كان عليه الحال في عام ٢٠٠٢ (الفقرة ٧٧). غير أنه مما شجع الممثلة الخاصة اتخاذ بعض المبادرات لتعزيز أداء رجال الشرطة وتوفير حماية أفضل. ومن بين هذه المبادرات إنشاء وحدة جديدة معنية بحقوق الإنسان في قسم التحقيقات الجنائية التابع للشرطة المدنية الوطنية في كانون الثاني/يناير ٢٠٠٨ وهيئة تحليل الاعتداءات على المدافعين عن حقوق الإنسان (الفقرة ٧٠).
تم في ١ أيار/مايو ٢٠٠٢، تعيين مدَّعٍ عام متخصص في التحقيق في الجرائم المرتكبة ضد المدافعين عن حقوق الإنسان (الفقرة ٣٦).	يتولى المدعي العام المعني بحقوق الإنسان مسؤولية التحقيق في الجرائم المرتكبة ضد المدافعين. بيد أنه لا يوجد مدعون عامون متخصصون إلا في العاصمة. أما بالنسبة للدعاوى التي ترفع خارج العاصمة فإن تبادل الملف في قضية ما جيئة وذهاباً بين المدعي العام المتخصص في العاصمة وبين المسؤولين ذوي الاختصاص في المناطق يشكل عاملاً يعيق سير التحقيقات (الفقرة ٧٧).

البعثة الأولى – ٢٠٠٢[أ]	بعثة المتابعة – ٢٠٠٨
إن القضاة والمدعين العامين والشهود ذوي العلاقة بالإجراءات القضائية في دعاوى انتهاك حقوق الإنسان أو الفساد يتعرضون للتهديد (الفقرة ٦٥).	كثيراً ما يتلقى القضاة الذين يحققون في دعاوى حقوق الإنسان الحساسة التهديدات ويتعرضون لتهجُّم وسائل الإعلام التي تسيطر عليها عموماً السلطات الموازية. ويسبب ذلك تعرضهم لمزيد من العنف في حين أن التدابير الأمنية المتخذة لحمايتهم لا تفي بالغرض المنشود منها في أغلب الحالات. ولا يستفيد القضاة في المحاكم الابتدائية الواقعة خارج العاصمة وقضاة الصلح إلا من أقل قدر من الحماية (الفقرة ٧٩).

(أ) E/CN.4/2003/104/Add.2.

(ب) جميع الإشارات إلى أرقام الفقرات في العمود الأيمن من الجدول تتعلق بالوثيقة E/CN.4/2003/104/Add.2.

(ج) جميع الإشارات إلى أرقام الفقرات في العمود الأيسر من الجدول تتعلق بالتقرير الحالي.

Annex

REPORT OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, HINA JILANI, ON HER MISSION TO GUATEMALA (18 to 20 February 2008)

CONTENTS

Introduction

1. The Special Representative of the Secretary-General on the situation of human rights defenders conducted a mission to Guatemala from 18 to 20 February 2008. The Special Representative would like to thank the Government for extending the invitation to visit the country and for the collaboration they provided to ensure a fruitful visit. The Special Representative also expresses her gratitude to the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Guatemala for the outstanding assistance provided in the organization of the mission.

2. The visit to Guatemala was a follow-up mission aimed at identifying progress and challenges in the situation of human rights defenders six years after the visit undertaken by the Special Representative from 26 May to 1 June 2002.[1]

3. The Special Representative held 15 meetings during her visit to the country; all were held in Guatemala City. She met with government representatives, members of the judiciary and the parliament, the Ombudsperson (*Procurador de los Derechos Humanos*), the international community, and human rights defenders. In particular, she met with the President and a member of the Human Rights Commission of the Congress, with the Vice-President of the Republic, the Vice-Minister of Foreign Affairs, the Minister of Interior (*Ministerio de Gobernación*), the head of the Presidential Commission for the Coordination of Human Rights Policies (*Comisión Presidencial de Derechos Humanos*, COPREDEH), the head of the Presidential Secretariat for Peace (*Secretaría de la Paz*, SEPAZ), the President of the Constitutional Court, the President of the Supreme Court of Justice, the Attorney-General, the Ombudsperson (*Procurador de Derechos Humanos*), the Director of the Institute of Public Penal Defence, representatives of the Association of Judges and Magistrates, the head of the International Commission against Impunity in Guatemala (*Comisión Internacional contra la Impunidad en Guatemala*, CICIG), and some 30 representatives of the diplomatic community. She also met a wide range of non-governmental organizations (NGOs), journalists, trade unionists and other groups from the dynamic civil society of the country. The Special Representative expresses her appreciation for the coordinated way in which civil society interacted with her.

I. THE CONTEXT IN WHICH HUMAN RIGHTS DEFENDERS WORK

A. Methodology

4. The purpose of the visit to Guatemala, as a follow-up mission, was not to make a full assessment of the situation of human rights defenders but rather to evaluate progress and challenges in implementing the recommendations of the Special Representative six years after her first visit.

5. The previous report was used as a basis for assessing progress and gaps in the subsequent six years. To facilitate the assessment, a matrix was prepared containing a list of some 30 issues, which captured the main findings and recommendations of the first report in a schematic manner. For each item, information on developments that occurred between 2002 and 2008 was sought

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[1] See E/CN.4/2003/104/Add.2.

before and during the mission. This allowed immediate identification of areas in which progress has been evident, versus other areas where change and improvements have not taken place.

6. The information gathered during the visit, however, went beyond the issues raised in the 2002 report. The present report gives an account of both aspects, i.e. the follow-up assessment and an updated overview of the situation of human rights defenders in Guatemala.

B. From the Peace Accords to a renewed commitment while problems persist

7. Guatemala remains a country with daunting challenges. It ranks among the most unequal in terms of income distribution. Violence and organized crime are rampant, the level of impunity is almost total and the influence of parallel powers impedes change. This has caused a dramatic deterioration in the environment in which defenders operate.

8. The Peace Accords, signed in 1996 to turn a page after 36 years of internal armed conflict and to build a country through peace and democracy on the solid foundations of human rights (the backbone of the Accords), were meant to shape the political agenda for the following years.

9. To assist the country in the implementation of the Peace Accords, the United Nations Verification Mission in Guatemala (MINUGUA) was established in 1997. At the time of the first mission of the Special Representative, MINUGUA actively supported the visit and was struggling with the difficulties that the country was facing in the implementation of the Peace Accords. In her report, the Special Representative remarked that "progress in the implementation of the peace agreements has been extremely slow" and that "the pending legislative agenda for the implementation of the peace agreements is still very heavy".[2] In her recommendations, the Special Representative made it clear that "the implementation of all the peace agreements is a necessary condition for the existence of a safe environment for human rights defenders and, more generally, for the promotion and protection of human rights in Guatemala".[3]

10. The mandate of MINUGUA expired in 2004. The involvement of the international community and the United Nations in supporting the implementation of the Peace Accords continued with the establishment in 2005 of the OHCHR office in Guatemala, in agreement with the Government, with a mandate to monitor the human rights situation in order to advise State institutions and civil society.

11. Twelve years after the signature of the Peace Accords and six years after the first visit of the Special Representative and her subsequent recommendations, it is disappointing to observe little progress in the implementation of the Peace Accords. The weak implementation of the Peace Accords was confirmed by most interlocutors with whom the Special Representative met, and mainly attributed to a lack of political will. The Special Representative noted not only limited progress in the implementation of the Peace Accords, but also their de facto disappearance from the agenda and vocabulary of all her interlocutors. This is a silent though eloquent indication of the diminished expectations regarding the actual implementation of the Peace Accords. The country wants to move forward and rid itself of the legacies of the past,

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[2] Ibid., paras. 9 and 24.

[3] Ibid., para. 101.

which the Peace Accords seem to embody for some quarters of society and the political establishment. However, the problems that an effective implementation of the Peace Accords was meant to tackle are still there.

12. In 2002, the Special Representative observed the unequal distribution of wealth and the low position of the country in the Human Development Index vis-à-vis the rest of Latin America.[4] Six years later, Guatemala is the third most unequal country in Latin America in terms of wealth distribution[5] with the worst human development index of the region.[6] Inequalities in the distribution of land are acute. In 2000, 1.5 per cent of the population controlled approximately a third of the land of the country. Land disputes are a constant; in December 2005, there were some 1,050 pending disputes on land and large numbers of farmers and their families had been displaced.

13. The level of violence and killings is extremely high. In 2007, there were 5,781 violent deaths and a homicide rate that makes Guatemala one of the most violent countries in the region and the world.[7] Regrettably, after a sharp decline in homicides following the signing of the Peace Accords in 1996, killings began to rise dramatically after 1999, with rates nearly doubling from a high base in just seven years. The chances of conviction were as little as 2 per cent.[8] At the time of the first visit of the Special Representative, the average of killings was 9 per day while at the time of the second visit it had reached 17.

14. "There are many mysterious powers" said the Vice-President of the Republic to the Special Representative in reference to the vicious linkages between violence, poverty, organized crime and parallel powers. In this environment, attacks, threats and violence against defenders have proliferated as the analysis in the following sections of this report shows.

15. "Human rights are our priority" the Vice-President of the Republic assured the Special Representative, who was encouraged by the commitment expressed by the Government. She hopes that this commitment will be sustained and determined enough to take the country through the reform processes and transformation that will enable Guatemala to tackle structural problems, including inequalities, violence and impunity, that impede the enjoyment of human rights of the people of Guatemala and put those who defend those rights at great risk. While welcoming the inclusion of some members of the human rights defenders' community in the Cabinet as a signal of the Government's commitment towards human rights, she reminds the Government that an effective and credible human rights policy must go beyond the appointment of a few experts in different institutional structures. To make tangible progress, human rights must be part and parcel of the political agenda and permeate all sectors of Government action.

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[4] Ibid., para. 7.

[5] See Gini index in the United Nations Development Programme (UNDP) *Human Development Report 2007-2008*, p. 283.

[6] Ibid., p. 231.

[7] A/HRC/7/38/Add.1, para. 12.

[8] United Nations Office on Drugs and Crime, *Crime and Development in Central America: Caught in the Crossfire*, May 2007, pp. 55 and 56.

II. HUMAN RIGHTS DEFENDERS

A. Monitoring mechanisms and other initiatives for self-protection

16. In 2002, the Special Representative was impressed by the maturity of civil society organizations and their resilience in the face of difficult circumstances.[9] The defenders' community reported that the first visit of the Special Representative helped them in giving recognition to their work and legitimacy to their claims. In her follow-up visit, the Special Representative was able to confirm the very good level of organization of the defenders' community, their continued efforts to work together and establish or strengthen mechanisms and initiatives to better protect themselves.

17. In particular, she welcomed the establishment and strengthening of the NGO Unit for the Protection of Human Rights Defenders (*Unidad de Protección de Defensores y Defensoras de Derechos Humanos, UDEFEGUA*) as a monitoring entity within the National Movement for Human Rights (*Movimiento Nacional por los Derechos Humanos*) set up by the civil society sector to enhance the protection of human rights defenders from within the human rights community. Established in 2003, UDEFEGUA monitors attacks against human rights defenders; regularly reports on them, including by providing an analysis of patterns and by bringing them to the attention of international and regional human rights mechanisms; undertakes additional research on complex and emblematic cases; facilitates mediation between defenders attacked and local institutions; supports defenders in approaching public prosecutors concerning attacks they have been victims of, including by providing some legal assistance; and coordinates with public structures, such as COPREDEH, the Ombudsperson, the Ministry of Interior and the police, on protection measures for defenders at risk. In 2007, UDEFEGUA processed 259 cases reporting attacks against defenders, three quarters of which were considered by UDEFEGUA as attacks on the right to defend human rights, the remaining quarter being considered episodes of common crime.

18. In addition to UDEFEGUA, in recent years other monitoring mechanisms have been established to monitor attacks against specific sectors of civil society. They are: (a) the Centre for the Environment, Social and Legal Action (*Centro para la Acción Legal-Ambiental y Social de Guatemala, CALAS*), which monitors attacks against environmentalists; (b) the Commission on Freedom of Expression of the Journalists' Association of Guatemala (*Comisión de Libertad de Expresión de la Asociación de Periodistas de Guatemala*), which reports on violations of the right to freedom of expression; and (c) the General Centre of Workers of Guatemala (*Central General de Trabajadores de Guatemala, CGTG*), which monitors trade union rights.

19. The Special Representative appreciates the capacity-building initiatives undertaken by defenders, both by national and international organizations, to enhance their self-protection in the areas of risk prevention and risk analysis, security plans, and IT security. An additional form of protection that is being practised in the country is the accompaniment of defenders by international organizations.

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[9] E/CN.4/2003/104/Add.2, para. 100.

B. Communications sent to Guatemala between the two visits

20. The increased number and intensity of attacks against human rights defenders in Guatemala were among the factors that prompted the follow-up visit of the Special Representative. In the time between her two visits, the Special Representative addressed to the Government 87 communications of allegations of human rights violations affecting defenders. While reiterating the caveat that the picture resulting from the communications sent by the Special Representative does not reflect human rights violations against defenders in the magnitude they occur worldwide but only those reported to her, Guatemala emerged among the countries of greatest concern among those on which the Special Representative received information. The 87 communications of the Special Representative reported allegations of human rights violations affecting over 170 defenders, a third of whom were women, and some 100 organizations, including trade unions; women's organizations; farmers' organizations and those working on land rights; environmentalist organizations; youth associations, students' networks and children's rights organizations; media associations; organizations working on justice and the right to truth, including associations of the families of victims of past abuses; indigenous organizations; associations to protect the rights of displaced persons; organizations working on economic, social and cultural rights; organizations providing legal aid and assistance; organizations working on the rights of lesbian, gay, bisexual and transgender people; religious organizations engaged in humanitarian, social and human rights work; organizations working on migrants' rights; international NGOs; and staff of the Office of the Ombudsperson.

21. The Government responded to approximately 50 per cent of the communications with a different level of responsiveness from year to year. The responsiveness of the Government was satisfactory until 2004 with a sharp decline in 2005 and 2006, while in 2007 the rate of replies increased to about 60 per cent of communications sent.

22. Overall the responses of the Government illustrate a general will to provide protection to human rights defenders at risk and report a good deal of information on the implementation of protection measures to that end, in some cases prompted by decisions of the Inter-American Commission on Human Rights (IACHR). However, the main flow of State response has been in the areas of investigation, prosecution and conviction of perpetrators, where the impunity of perpetrators is the rule.

C. Overview of attacks and violations against human rights defenders

23. The alarming picture that the Special Representative was getting through the communications mechanism on the intensity and seriousness of attacks against human rights defenders was confirmed in situ. The number of attacks against human rights defenders increased and basically doubled in the last five years with an average of one attack against defenders every other day. Fifty defenders were killed between July 2002 and December 2007, of which 23 killings took place between 2005 and 2007.

24. As already captured by the communications sent by the Special Representative, all sectors of the human rights community are affected by attacks and violations against them. Defenders working on economic, social and cultural rights are among the most affected groups. Organizations working on justice and the right to truth are also targeted. This also includes some defenders from the Institute of Public Penal Defence (*Instituto de la Defensa Pública Penal*)

working on sensitive cases. Other sectors of the defenders' community suffer attacks specific to their area of work. These are, among others, trade unions, journalists, women defenders, peasants' organizations, indigenous organizations and youth defenders, as well as international NGOs.

25. The same violations against defenders as identified in the previous report have continued to occur, including an alarmingly high level of killings, attacks against the physical integrity of human rights defenders, threats, intimidation and harassment. Another form of harassment of defenders that emerged more prominently during the second visit was the criminalization of human rights defenders. This phenomenon most affects defenders working on land rights, the environment and the rights of indigenous peoples, whose enjoyment of those rights is perceived to interfere with strong economic interests linked to projects such as the construction of a cement factory or the functioning of a gold mine. Available data on the criminalization of defenders is considered to underestimate the real extent of the problem, but the reported figure of 45 proceedings against defenders registered in the last few years gives the phenomenon the dimension of a pattern rather than a series of isolated cases. Human rights defenders are charged with crimes like terrorism, activities against the security of the nation, or aggravated theft of land. In two cases, court proceedings have already resulted in convictions. Considering the overall immobility of the judiciary in providing justice, prosecutions against defenders appear to be conducted with inexplicable speed and efficiency.

26. The final recommendation of the first report of the Special Representative urged the Government "to take further steps to gain the trust of the civil society, particularly human rights defenders, and to discourage tendencies amongst public officials to see human rights defenders as adversaries to be challenged".[10] Findings of ongoing stigmatization and criminalization of defenders from some sectors of the political establishment and the media are disappointing and worrying. By taking away credibility and legitimacy from the work of defenders, the open or subtle hostility of some politicians and some media makes them more vulnerable to attacks.

27. As a result, impunity is the general rule for violations committed against defenders and is probably the major cause for the high number, continuity and intensity of such violations. Another element that proved to contribute to increased levels of violence against defenders was the pre-election context of 2007.

28. In the second half of 2007, however, a decrease in the attacks against defenders was observable. Several factors are linked to this decrease. On 28 June 2007, the OHCHR office in Guatemala organized a public event to condemn attacks against human rights defenders. A number of representatives of the diplomatic and international community as well as State institutions and civil society organizations took part in the event. This event marked a turning point in terms of fewer attacks against defenders, accompanied by a number of initiatives at Government level.

29. The Minister of Interior personally initiated a process of dialogue with human rights organizations with the aim of jointly analysing patterns of aggression against defenders. This process was formalized by Ministerial Agreement 103-2008 of 10 January 2008, which provided

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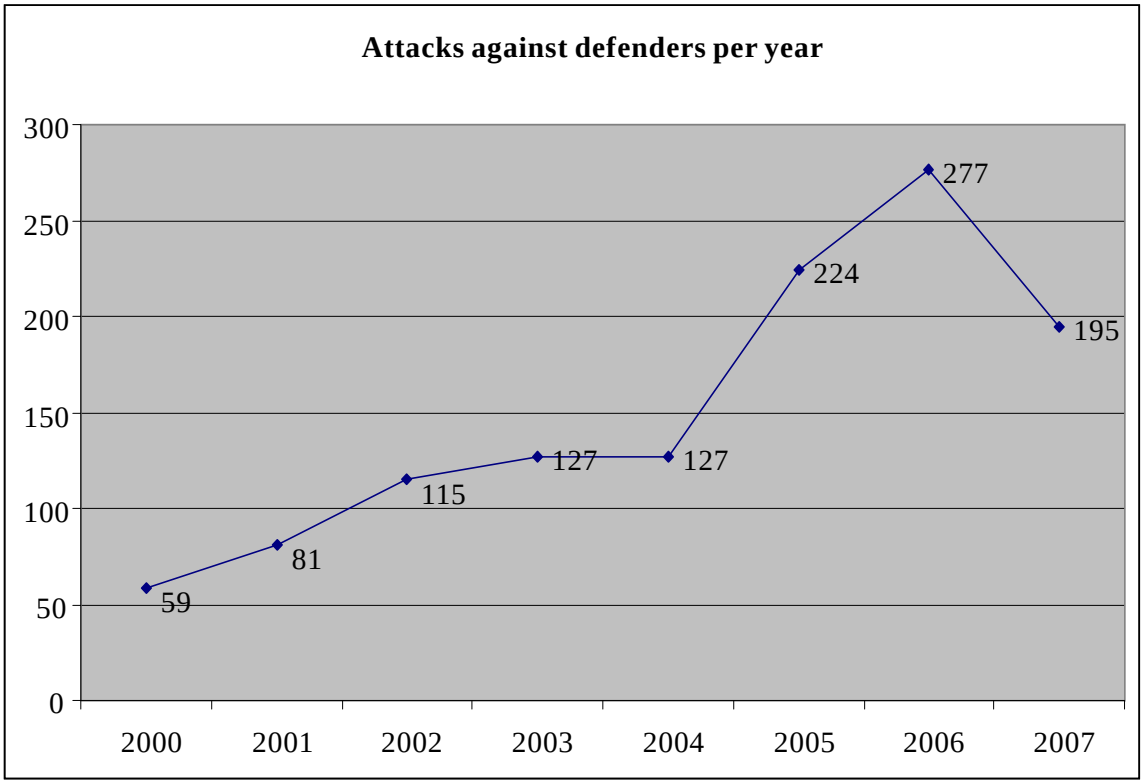
[10] E/CN.4/2003/104/Add.2, para. 104.

for the establishment of the Body for the Analysis of Attacks against Human Rights Defenders (*Instancia de Análisis de Ataques contra Defensores de Derechos Humanos en Guatemala*).

30. Human rights defenders consider that these initiatives and the personal engagement of the Minister of Interior, especially in addressing the flaws of the police, may have contributed to a decrease of up to 30 per cent in attacks against defenders. This shows how political will alone can make a tangible difference to the security of defenders.

31. The graph below shows the increase and decrease in attacks against defenders explained in these paragraphs.[11]



32. On 11 January 2008, the new Human Rights Unit of the Criminal Investigation Division of the National Civil Police (*Unidad de Derechos Humanos de la División de Investigación Criminal de la Policía Nacional Civil*) was officially created.

33. The establishment of the International Commission against Impunity in Guatemala (CICIG) was also considered a contributing factor to a more secure environment for defenders. Even if not yet operational at the time of the visit, its mere establishment was a strong signal that the endemic impunity in the country is being addressed.

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[11] Data collected by UDEFEGUA in its report "Venciendo barreras", January 2008, p. 10.

1. Defending the rights of indigenous peoples, land rights, the environment and livelihoods of local communities

34. Guatemala's economy continues to be largely based on agriculture. Disputes over land, therefore, remain a source of social tension and conflict. Conflicting interests between landowners and farmers on land access and use or between large-scale industrial projects, including in the mining sector, the cement industry, and the construction of waterpower plants, impact negatively on the livelihoods of indigenous communities. This generates social unrest and violence that targets farmers' organizations and their leadership, with a worrying pattern of criminalization of social movements defending the rights of indigenous peoples and land rights.

35. In addition to the criminalization of their claims, defenders working on these issues are targeted with killings, death threats, office searches, and stigmatization campaigns.

36. The lack of consultation with indigenous peoples on the decisions related to awarding mining licences was among the many human rights violations related to the exploration or exploitation of natural resources put forward by human rights defenders. The obligation of consulting indigenous peoples through their own representative institutions whenever consideration is being given to legislative or administrative measures which may affect them directly is established in the United Nations Declaration on the Rights of Indigenous Peoples[12] as well as in International Labour Organization (ILO) Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries[13] that Guatemala has ratified. Despite a decision on a complaint of the ILO Governing Body in June 2007, reiterated by an individual observation of the Committee of Experts on the Application of Conventions and Recommendations published in 2008, requesting the Government "to initiate a process of consultation before granting any exploration and exploitation licences … and to maintain consultation and participation procedures with all the communities concerned which occupy or otherwise use these lands, whether or not they hold title of ownership …",[14] the Special Representative was informed of the disappointing attitude of the Government and concerned private actors, who ignore or disregard the results of consultative initiatives set up by defenders of affected communities. In particular, the Special Representative was informed of the initiative "community consultations" (*consultas comunitarias*) initiated in the municipality of Sipakapa calling on the population to express its position on the presence of a mine on their territory. Seventeen other municipalities carried out community consultations with the participation of almost all the population.

2. Defenders working on justice and the right to truth

37. Defending the right to truth and claiming justice for past abuses have marked topical moments of the recent history of Guatemala and its politics. Calling for compliance with the

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[12] Article 19.

[13] Article 6.

[14] GB.299/6/1, para. 73 (c). The Governing Body also "requested the Government to endeavour to resolve any consequences of the granting of the exploration licence including by assessing, in consultation with the communities concerned, whether and to what degree their interests have been prejudiced, and where such prejudice was found, to ensure that fair compensation was provided […]", para. 73 (b).

Peace Accords, the filing of cases of genocide before the Office of the Attorney-General, claiming justice through the Spanish judiciary (see paragraph 81 below) or advocating for the establishment of an international commission against impunity, and other major battles carried out by human rights defenders claiming justice and truth, have profoundly marked the political environment. There has been an inadequate response to the quest for justice and to its polarizing effect within the institutional setting and among parallel powers, leaving defenders engaged in this struggle exposed to intense and continued violence and attacks.

38. In 2007, about 30 per cent of attacks against defenders targeted those working on justice and the right to truth. In the last eight years, some 350 attacks against defenders have been registered. Most of those are threats of various kinds but they also include kidnappings and killings (13). The sophistication of some attacks indicates the likely use of State intelligence in their perpetration. The number and intensity of the attacks have increased since 2004 and tend to intensify at critical moments, when a case is about to be submitted to the public prosecutor, a court decision is awaited, or when witnesses are preparing to testify with the help and support of defenders. The continuity of attacks over time is intended to dissuade defenders from pursuing justice at the different stages of judicial proceedings.

39. The absolute impunity of those committing crimes and making attacks against defenders engaged in seeking justice is disconcerting. Data submitted to the Special Representative indicates that in 68 per cent of cases, an investigation of the alleged crimes against defenders simply does not exist and, more dramatically, in none of the cases reported has there been a court sentence of whatever kind. Paradoxically, in eight cases, human rights defenders, from being the victims of crimes became the accused parties in the course of the proceedings.

3. The Institute for Public Penal Defence (*Instituto de la Defensa Pública Penal*)

40. The Institute for Public Penal Defence has some 800 staff in 34 offices throughout the country, which provide legal assistance in penal proceedings of an often sensitive nature and with clear human rights implications. Members of staff of the Institute working on these cases are often the target of threats against which inadequate protection is provided and investigations of which do not yield tangible results. To cope with the insufficient measures for protecting staff at risk, sensitive cases are assigned to a group of staff instead of one or two individuals who could easily become the target of threats. Nevertheless, the Special Representative learned of a sensitive case on which all five staff members asked to be reassigned in fear for their lives. This is one, among the many, emblematic examples of the degree of danger to which the Institute is exposed.

41. The Ombudsperson was indicated as the main and basically only source of support and protection. When informed of attacks against staff of the Institute, the Ombudsperson intervenes by issuing statements condemning the attacks and supporting the work of the Institute and helps in furthering investigations within the limits of his mandate.

42. The Special Representative found that the work of the Institute is not recognized as work in defence of human rights and not protected as such, although it should be. It should also receive more resources. The 2 per cent of the budget of the judiciary, which she understood as being the current amount of resources assigned to the Institute, is not adequate to meet the challenges confronting it, particularly when the institutional response, including from within the

judiciary itself, is so weak and the Institute has to cope with threats and attacks against its staff from its own means.

4. Defending freedom of expression and the right to information

43. In her previous report, the Special Representative indicated that "journalists who report on cases of corruption or on investigations of past abuses" were among the groups of defenders most affected by human rights violations.[15] During her follow-up visit, the Special Representative was able to confirm that reporting on organized crime, drug trafficking, corruption and other criminal activities, where the responsibilities of parallel powers may surface or become public through the activities of investigative journalism, remain highly dangerous. Cases of death threats, physical and verbal attacks and a total of eight killings from 2003 to 2007 remain a concern. In addition, defenders pointed to the deterrent effect of the presence of, and the threat represented by, parallel powers on journalists who tend to apply self-censorship regarding information denouncing organized crime, corruption or other violations for fear of retaliation.

5. Women defenders

44. Women's human rights organizations work mainly on assisting women victims of violence. Their analysis suggests that current acts of violence against women represent a continuum of the violence perpetrated during the armed conflict and that the impunity for such violence and for the attacks against women defenders indicates that the social and cultural root causes of gender-based violence are still present in the country despite the end of the armed conflict. Women defenders are exposed to, and the target of, gender-specific attacks against them, namely sexual violence, against which the country did not have a specific law until April 2008. While justice and redress would break the vicious cycle of violence, impunity and the gender-based bias with which parts of the judiciary and the institutional framework are imbued, perpetuate it.

6. Youth defenders

45. The Special Representative was pleased to see a considerable number of youth defenders engaged in the defence of human rights in different areas, such as supporting young people who lost their parents during the armed conflict, students' associations working on the right to education, those working on the broad human rights situation of youth, and organizations affiliated to the Catholic Church and engaged in a wide range of social activities in support of youth rights.

46. The engagement of youth in the defence of human rights has a high educational value. For most youth defenders, their engagement in youth associations is among their first experiences of public participation and human rights defence. Ensuring a conducive environment for youth defenders is a social investment, as well as a responsibility of the Government under the Declaration on human rights defenders.

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[15] E/CN.4/2003/104/Add.2, para. 55.

47. While reiterating her appreciation for a well-organized group of youth defenders, the Special Representative finds their accounts of the hostile environment around them particularly concerning. Youth defenders are stigmatized and discouraged in their activities and all organizations reported specific episodes of attacks targeting them. Some attacks are clearly acts of retaliation specifically targeting student defenders, like threats of expulsion from school or university.

48. A youth organization working on the rights of lesbians, gays, bisexual and transgender people is exposed to attacks linked to the stigmatization around sexual orientation and gender identity and reported, inter alia, constant harassment from the police.

7. Trade unions

49. In her first mission, the Special Representative noted serious violations of the right to organize, including death threats, wrongful dismissal and persecution of union leaders and members.[16] The Special Representative reports with concern that trade unionists continue to be the target of many attacks and confirms the existence of worrying levels of anti-union violence.

50. The Special Representative concurs with the conclusions of the monitoring mechanisms of the ILO[17] and acknowledges some measures of protection granted to trade unionists under threat but remains deeply concerned about the almost total impunity of those who launch attacks against trade unionists.

8. International non-governmental organizations

51. Between 2004 and 2005, attacks against international NGOs were concentrated against organizations engaged in international accompaniment of local organizations. In April-May 2007, the target of attacks shifted to international cooperation agencies, i.e. those offering financial and political support to national organizations. All the attacks were denounced to the competent authorities but impunity for the alleged perpetrators has remained a rule without exception. In one case, the organization attacked even hired a lawyer and other experts to support the investigations, with the purpose of generating a positive precedent in the identification and prosecution of perpetrators that would have hopefully contributed to improving the response to attacks against defenders. Despite these efforts and their symbolic value, no concrete results have been achieved in the investigation of the case.

52. This regrettably shows that international cooperation agencies are unwelcome in the country, they are not immune to direct attacks and face similar levels of impunity as national organizations.

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[16] E/CN.4/2003/104/Add.2, para. 52.

[17] Report of the Committee of Experts on the Application of Conventions and Recommendations, Individual Observation addressed to Guatemala concerning Freedom of Association and Protection of the Right to Organise Convention (No. 87) 2008, available at http://www.ilo.org/ilolex/gbe/ceacr2008.htm.

III. THE INSTITUTIONAL RESPONSE

A. The parliament

53. "I love Guatemala but it lacks justice" ("*Amo Guatemala pero falta la justicia*"), said a member of the Human Rights Commission of the parliament to the Special Representative. Members of the Commission showed awareness of the human rights violations affecting defenders and expressed their will to be receptive to their plight.

54. The Special Representative encourages the parliament, in particular through its Human Rights Commission, to make more efforts to acknowledge and value the work of defenders through public statements and become a source of political and institutional support for them. She also encourages the parliament to institutionalize consultations with civil society and human rights organizations when drafting and debating human rights legislation.

55. She welcomes the adoption of a law on access to information in the second half of 2008 and recommends the Government adopt adequate measures for its full implementation.

B. Structures and policies

56. The Presidential Commission for the Coordination of Human Rights Policies (COPREDEH) continues to be the coordinating entity for government action on human rights. As mentioned in paragraph 15 above, the Special Representative noted with interest the inclusion of representatives of the defenders' community in government structures, particularly in COPREDEH and SEPAZ. While referring to the reservations stated above and the apprehensions she has in this regard, she nevertheless hopes that having former civil society leaders in government structures is improving the accessibility to State institutions for human rights defenders and civil society organizations.

57. The Special Representative acknowledges that COPREDEH, as the government institution responding to and following up on her communications, has proved to be an effective interlocutor engaged in a constructive dialogue on the issues she has been raising over the years. This has taken place through the Coordination Protection Unit (*Unidad Coordinadora de Protección*), a specialized unit within COPREDEH established in 2004 to coordinate, adopt, and monitor protection measures, and to report to international and regional mechanisms.

58. At the end of 2007, COPREDEH drafted the Public Policy for Prevention and Protection of Human Rights Defenders 2007-2017 (*Política Pública de Prevención y Protección para Defensores de Derechos Humanos, Sujetos Procesales, Periodistas y Comunicadores Sociales 2007-2017*), with five specific objectives: (1) fighting against impunity; (2) improving and strengthening human rights protection mechanisms and programmes; (3) promoting a culture of human rights; (4) designing and implementing a national plan of action to promote and implement the Declaration on human rights defenders; and (5) the establishment of an early warning mechanism.

59. Among the measures to improve and strengthen protection mechanisms, the policy envisages the implementation of a programme of protection measures with a range of possible actions to protect defenders with different degrees of intensity based on an assessment of the

level of risk, threat, or vulnerability. The purpose of the programme is not only to organize protection measures in a coherent system but also to offer a standard and transparent service without discrimination against or unequal treatment of those in need of protection.

60. The Special Representative recommends the Government report on how the policy is being implemented with a frank analysis of challenges and achievements. It would be interesting to receive information on the national plan of action to implement the Declaration on human rights defenders. Considering that 2008 is the tenth anniversary of the Declaration, renewed efforts to promote its implementation should be made known at the international level. In its dialogue with the current mandate holder, the Government could also provide information on the early warning mechanism and how it is working, with an evaluation of its strengths and weaknesses.

61. The Special Representative identified two main challenges facing COPREDEH and SEPAZ as the two government institutions with a human rights mandate. On the one hand, they have to integrate the human rights agenda in overall government action. A human rights programme within a specialized institution will not bring about the change needed to improve the human rights situation of the country. Ministries such as the Ministries of Interior, Justice, Finance, Labour, Education to name a few, are key to implementing a human rights agenda, which will also have to permeate the actions of the other State powers, namely the judiciary and the Congress. Are COPREDEH and SEPAZ in a position to be the engine of the human rights agenda? Is the commitment to human rights of the President and of those in high-level positions of the executive strong, determined and sustained enough to take the country through the reform process and transformation it needs? These are questions that can only be answered with reference to the performance of these institutions and by measuring this performance against the increase in the level of security of defenders in real terms.

62. On the other hand, a stronger effort is needed to make remedies and protection known and accessible to the individuals in need. While the defenders' community was overall quite aware of the protection measures they could ask for and who to ask them of (leaving aside considerations about their effectiveness), outside of the defenders' circle, i.e. human rights organizations organized in networks, other categories of individuals exposed to similar threats and attacks, like judges or staff of the Institute for Public Penal Defence, did not know much about COPREDEH or the programme of protection measures.

C. The Ombudsperson

63. The Special Representative was impressed by the achievements of the Office of the Ombudsperson in addressing complaints and in gaining people's trust. With a convening capacity of some one thousand organizations, the Office of the Ombudsperson is a reference for Guatemalan civil society and other institutions like the Institute for Public Penal Defence (see paragraph 41). In 2007, the Office of the Ombudsperson received some 60,000 complaints and indicated it had solved 1,600. There were 179 complaints concerning human rights defenders. The Ombudsperson considered that defenders working on the right to truth are particularly at risk.

64. The Office of the Ombudsperson itself is in the front line of the efforts being made in the country on the right to truth, with the gigantic archive of over 70,000 documents concerning

past crimes that it managed to recover. It is the biggest archive of its kind in Latin America. Five attempts to burn the archive have already taken place. The Ombudsperson would like to turn the archive into a museum of historic memory and is gathering resources to analyse the documents. At the time of the visit, some 200 people had been recruited to go through the documents of the archive. Resources gathered were however temporary and mostly coming from international donors, which reduces the sustainability of the efforts under way.

65. The Ombudsperson is also engaged in efforts aimed at addressing the structural causes of impunity and has requested authorization to oversee the functioning of the police and the Office of the Attorney-General. The Ombudsperson reported an increase in the resources allocated to his office, which were however mainly used in infrastructure.

66. Members of staff working in the Office of the Ombudsperson and the Ombudsperson himself are often the victims of attacks and threats. The Special Representative has brought some of these attacks to the attention of the Government in her communications. In the years between her two visits to the country, she sent seven communications on threats and attacks against staff of the Office of the Ombudsperson.

D. The police

67. Physical protection of human rights defenders, as well as of other individuals under threat, is provided by the National Civil Police (PNC). Given the deterioration in the security situation of the country, with large numbers of individuals at risk, many of the resources of the police are devoted to individual protection, which is often unevenly distributed among the individuals and population at risk, with more concentration of police protection efforts in rich areas and less in highly populated but poorer areas. In addition, the Special Representative was told by defenders that protection offered by the police is selective, inefficient and at times is even a cause of further risk when the police themselves are believed to be involved in attacks against defenders.

68. Defenders noted that police protection is generally given only to defenders whose cases have been brought to the attention of the Government through a communication from the Special Representative or when the IACHR has requested the provision of protection measures (*medidas cautelares*). While this shows the effectiveness and importance of international and regional human rights mechanisms in protecting human rights defenders, it is a concern that defenders at risk receive some protection only when there is international pressure. Even when protection is provided through the intervention of an international or regional mechanism, the implementation of protection measures is often deficient and is resisted by the police or the Ministry of Interior.

69. The Special Representative was provided with an illustrative case in this respect. In May 2003, IACHR requested protection measures for 22 members of the organization HIJOS (*Hijos por la Identidad y la Justicia contra el Olvido y el Silencio*). In June 2003, HIJOS and COPREDEH agreed that protection measures would consist of surveillance of the premises of the organization undertaken by uniformed PNC police. For the rest of the year, the security situation of the organization improved significantly. However, the police reduced their protection at the beginning of 2004 and as of March of the same year, a number of attacks occurred. Members of the organization were followed, some received death threats, and in June 2004 two young men with the same names as HIJOS members were killed. However, in August 2004 a

COPREDEH report to IACHR recommended protection measures be removed. HIJOS prepared a report detailing the attacks and threats that had occurred and managed to have the protection measures extended for six more months. In December 2004, the organization informed the police of a change of premises taking place in January 2005 and requested the police to protect the new premises. On 9 January 2005, the inauguration day of the new premises, the organization was searched and documents removed by unknown individuals while the police re-established protection measures only on 23 February. In the following months new attacks occurred, including an attempted kidnapping of a member of the organization. In view of the deterioration in the security situation, HIJOS decided to change its premises again in August 2005 and requested COPREDEH and the police to provide protection to the new premises. At the time of the visit of the Special Representative, nearly three years later, protection had not yet been provided.

70. The Special Representative was however encouraged by some initiatives recently undertaken by the Government to increase police performance and better protection. These include the Human Rights Unit of the Criminal Investigation Division of the National Civil Police established in January 2008 and the Body for the Analysis of Attacks against Human Rights Defenders (see paragraphs 32 and 29 above). The Body is under the responsibility of the Vice-Minister for Security and its remit is the analysis of the context and pattern of attacks against human rights defenders. It is meant to function for four years and is composed of representatives of the Ministry of the Interior, the police, the General Direction for Civil Intelligence (DIGICI) and national and international NGOs. The Special Representative was pleased to learn that since April 2008, representatives of the Office of the Attorney-General and the OHCHR office in Guatemala have also taken part in the work of this entity.

71. The Ministry of the Interior informed the Special Representative of the efforts being made to improve its investigative capacity, including the existence of five investigators specialized in investigating attacks against human rights defenders and the training of some 2,000 police staff on how to deal with attacks against defenders.

72. The police have set up a hotline to respond to attacks and threats against individuals, including defenders. The service, which was used at the very beginning, was later rather underused by defenders who admitted they could make better use of the hotline and stressed the necessity of enhancing the capacity of the police assigned to this service.

73. Among the concerns about the flaws in, and weaknesses of, the police, the Special Representative calls attention to the absence of an independent oversight mechanism.

74. The Special Representative shares the view of several of her interlocutors in calling for a reform of the police to redress the flaws and weaknesses of the police in a more holistic and systematic manner and to address the need to gain the trust of the population, including defenders.[18]

[18] See also A/HRC/7/38/Add.1, para. 92.

E. The quest for justice

1. The judiciary

75. "In Guatemala there is almost total de facto impunity for violations of human rights, including those committed against human rights defenders." These were the words of the Special Representative in 2002.[19] "The reported figure of 98 per cent of impunity for attacks against human rights defenders makes justice an empty word in Guatemala." These were her words after her follow-up visit in February 2008.

76. While in 2002, the lack of technical means and proper training were indicated as being among the causes of the inefficiency of investigations,[20] in the following years the Office of the Attorney-General was given more resources. Despite the increase in resources and the establishment of specialized units in the Office of the Attorney-General to facilitate investigations, the inaction of prosecutors in investigating and prosecuting cases is disappointing, and there is neither a disciplinary system in place to sanction the lack of diligence of public prosecutors nor an external oversight mechanism.

77. The Human Rights Prosecutor (*Fiscalía de Derechos Humanos*) within the Office of the Attorney-General is in charge of investigating crimes against human rights defenders. However, specialized prosecutors only exist in the capital. For cases which occur outside the capital, the back and forth of the file between the specialized prosecutor in the capital and those with territorial competence is a factor impeding investigations. Despite monthly meetings and internal decisions to improve collaboration between the police and prosecutors, poor coordination between the two institutions remains a problem, as it was in 2002.[21]

78. Witness protection is a major concern. "In this country we will never succeed with impunity if we do not protect witnesses", said the Ombudsperson. Despite the fact that the law on witness protection is deficient, investigations are still heavily and mainly based on witnesses and not on technical evidence.

79. Judges investigating sensitive human rights cases are often threatened and exposed to attacks by the media, which is largely controlled by parallel powers. This makes them vulnerable to further violence while the security measures for their protection are often inadequate. Judges in the first instance based outside the capital and peace judges are the least well protected.

80. In this discouraging panorama, the Constitutional Court disappointed hopes for justice in an emblematic decision adopted in December 2007. The Court denied the extradition request formulated by the Spanish judiciary to try in Spain five people accused of having committed terrorism, murder and kidnapping during the armed conflict. Without entering into the merit of the decision of the Constitutional Court, the Special Representative regrets that, in a country in such urgent need of signals against impunity as Guatemala, the Constitutional Court did not seize

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[19] E/CN.4/2003/104/Add.2, para. 63.

[20] Ibid., para. 67.

[21] Ibid., para. 67.

the opportunity of sending such a signal by interpreting the Constitution as an instrument that can provide justice instead of denying it.

2. The International Commission against Impunity in Guatemala (CICIG)

81. An agreement between the Government and the United Nations, which entered into force in September 2007, led to the establishment of the International Commission against Impunity in Guatemala (*Comisión International Contra la Impunidad en Guatemala*, CICIG).

82. CICIG is functionally an independent entity assisting national institutions in the investigation and prosecution of crimes allegedly committed by illegal security forces and clandestine security organizations.

83. CICIG is not an independent prosecutor but has the power to prompt the initiation of criminal prosecutions by filing criminal complaints with the relevant authorities, with the possibility of joining a criminal proceeding as a private prosecutor (*querellante adhesivo*). Legal action remains a prerogative of the public prosecutor, however CICIG can request the removal of public prosecutors who do not collaborate with it.

84. The participation and involvement of civil society and human rights defenders are fundamental to achieving the daunting objective of CICIG to pursue a few emblematic cases that would have a domino effect in breaking the vicious cycle of impunity. Witness protection is another essential component of this endeavour that requires the support of the international community. A number of agreements on witness protection with third countries have been signed and others are on the way.

85. Finally and most importantly, the collaboration and will of the national political and institutional environment are fundamental for enabling CICIG to make a meaningful attempt to fight impunity. The success of CICIG would not benefit Guatemala only but could become a model for other countries in the region and in post-conflict contexts.

IV. CONCLUSIONS AND RECOMMENDATIONS

86. **The Special Representative is deeply concerned at the deterioration in the security situation of human rights defenders and the pervasive impunity affecting the vital functions of democracy and the rule of law. She considers that the situation of human rights defenders and of human rights more broadly is unlikely to improve without a clear turning point on impunity. For this reason, a number of her recommendations go beyond the specific situation of human rights defenders.**

87. **The Special Representative has recognized some progress since her first visit in 2002, namely:**

(a) The well organized community of human rights defenders and their ability to establish and coordinate mechanisms for self-protection, including the NGO Unit for the Protection of Human Rights Defenders;

(b) The achievements of the Office of the Ombudsperson in addressing complaints and in gaining people's trust;

(c) The establishment of the International Commission against Impunity in Guatemala (CICIG), tasked with the investigation of crimes allegedly committed by illegal security forces and clandestine security organizations.

Recommendations for the consideration of the Government

88. **Turn the commitment to human rights into a political agenda permeating Government action with specific, measurable, achievable, realistic and time-bound (SMART) objectives on the achievement of which the Government holds itself accountable.**

89. **Adopt a policy on the protection of human rights defenders in consultation with human rights defenders and relevant stakeholders. Report on its implementation, including on the programme of protection measures, to relevant human rights mechanisms, such as the Special Rapporteur on human rights defenders.**

90. **Take concrete and visible steps to give political recognition and legitimacy to the work of human rights defenders. This can be done by firmly condemning attacks against defenders and by acknowledging the importance of their work.**

91. **Institutionalize consultation processes between the Government and civil society organizations on relevant areas of Government action. For human rights matters, COPREDEH should ease access of civil society organizations and human rights defenders to Government structures and facilitate consultations.**

92. **Ensure coordination among institutions responsible for the investigation of cases, particularly between the police and the Office of the Attorney-General. The Body for the Analysis of Attacks against Human Rights Defenders is an appropriate mechanism to this end, if all concerned institutions and organizations participate in, and contribute to, its work.**

93. **Undertake a comprehensive reform of measures and protocols for witness protection. The recommendations made by OHCHR in this respect can guide the reform process.[22] Ensure the inclusion of protection measures for human rights defenders acting as witnesses or supporting witnesses in judicial proceedings.**

94. **Undertake reform of the police tackling its flaws and weaknesses, including the need to gain the trust of the population. Establish a functioning oversight mechanism. The advisory services of OHCHR and other human rights actors and mechanisms should be sought to support the reform process.**

95. **Take measures to ensure and monitor the full collaboration of relevant institutions, particularly the Office of the Attorney-General, in the implementation of the recommendations and findings of the Ombudsperson and CICIG.**

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[22] See A/HRC/7/38/Add.1, para. 72.

96. **Provide the Institute for Public Penal Defence with protection for staff under threat and with adequate resources to carry out its important institutional mandate.**

97. **Provide the Ombudsperson with adequate resources and political support to maintain and process the archive of documents on past crimes and to make its information accessible.**

Recommendations for the consideration of the parliament, particularly the Human Rights Commission

98. **Make concrete efforts to acknowledge and value the work of defenders through public statements and become a source of political and institutional support for them.**

99. **Institutionalize consultations with civil society and human rights organizations when drafting and debating human rights legislation.**

100. **Collaborate more actively with institutions with a human rights mandate, such as COPREDEH and the Ombudsperson.**

Recommendations for the consideration of human rights defenders

101. **Strengthen networks and coalitions of defenders both within and outside the country to enhance the protection that defenders can provide to each other through these networks. Maintain an inclusive approach to the notion of "who defends human rights". Staff of the Institute for Public Penal Defence and some judges working on human rights cases face similar risks and attacks to those suffered by human rights organizations. Coordination of strategies with them, including on self-protection initiatives, can be of mutual benefit.**

102. **Seek and use all available opportunities to participate and be consulted in decision-making processes of public institutions, including approaching the Commission on Human Rights of the Congress.**

Recommendations for the consideration of the international community

103. **Continue monitoring the situation of human rights defenders and express support for their work through, inter alia, the interventions of international and regional human rights mechanisms, the work of the OHCHR office in Guatemala, and the actions envisaged in the European Union Guidelines on human rights defenders.**

104. **The Special Representative welcomes the inclusion of a number of recommendations addressing the situation of human rights defenders made by member States of the Working Group on the Universal Periodic Review (UPR) of the Human Rights Council on the occasion of the review of Guatemala under this new mechanism.[23] While further efforts are needed to improve the quality and consistency of recommendations, the commitment of member States to thoroughly monitor the situation of human rights defenders in the framework of the UPR is a meaningful contribution to improve their situation.**

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[23] See A/HRC/8/38, para. 89, recommendations 18-22, 30 and 36.