

Verification Report

**THE INDIGENOUS PEOPLES OF GUATEMALA:
OVERCOMING DISCRIMINATION IN THE FRAMEWORK
OF THE PEACE AGREEMENTS**

MINUGUA

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THE INDIGENOUS PEOPLES OF GUATEMALA: OVERCOMING DISCRIMINATION IN THE FRAMEWORK OF THE PEACE AGREEMENTS

I. Introduction

1. This report on the verification carried by the United Nations Verification Mission in Guatemala (MINUGUA) analyzes compliance with the commitments of the Peace Agreements related to the identity and rights of the indigenous peoples almost five years after the signing of the Agreement on a Firm and Lasting Peace. The actions of the State in regard to racial discrimination and the promotion of the participation of these peoples in national political life are analyzed by looking at the progress and limitations of public policies implemented by the Government to resolve the historical exclusion in which the majority of the indigenous population of Guatemala lives.
2. The Peace Agreements recognize that the indigenous peoples have been historically discriminated against and excluded. The Agreement on the Identity and Rights of the Indigenous Peoples says that: *“the indigenous peoples have been particularly subject to de facto levels of discrimination, exploitation and injustice, on account of their origin, culture and language and that, like many other sectors of the national community, they have to endure unequal and unjust treatment and conditions on account of their economic and social status (...)”* and that *“this historical reality has affected and continues to affect the peoples profoundly, denying them the full exercise of their rights and political participation, and hampering the configuration of a national unity which should adequately reflect the rich and diversified physiognomy of Guatemala with its wealth of values”*.
3. In February 1999, the Commission for Historical Clarification of Human Rights Violations and Violent Acts which have Caused Suffering to the Guatemalan Population (CEH) presented its report *“Guatemala, Memory of Silence”*. Analyzing the underlying causes of the internal armed conflict which ravaged the nation for more than 30 years, the report describes the creation after independence of a State that was *“authoritarian, which excluded the majorities, which was racist in its precepts and practice and which served to protect the interests of a small privileged sector”*.
4. The CEH also concluded in its investigation that *“relations between the State and the indigenous peoples of Guatemala, especially the Mayan people, have occurred under conditions of racism, inequality and exclusion, and that these conditions constituted one of the historical causes of the armed confrontation”*. In the development of that same conflict, *“the undeniable reality of racism as a doctrine of superiority expressed permanently by the State constitutes a fundamental factor for explaining the particular viciousness and indiscriminate approach with which the military operations were carried out against hundreds of Maya communities in the west and northwest of the country, in particular between 1981 and 1983, when more than half*

of the massacres and scorched earth operations were concentrated against them". Also as a result of the state violence, the CEH points out that "the Maya people's right to an ethnic or cultural identity was violated. The Army destroyed ceremonial centers, sacred places and cultural symbols. The language and the dress, as well as other identity elements were the object of repression. Through the militarization of the communities, the creation of the Civilian Self-Defense Patrols (PAC) and the military commissioners, the legitimate system of authority of the communities was destroyed, the use of their own standards and procedures to regulate their social life and to settle conflicts was prevented; the exercise of Maya spirituality was made difficult, prevented or repressed (...)".

5. In addition to these historical elements, the centralizing trend of public investment spending has also favored the continuation of racial and social discrimination. The depth of rural poverty, the regional asymmetries and the exclusion of the immense majority of the population, particularly the indigenous population, were to a large degree the result of the persistence of a centralizing economic model and the existence of a weak State that discriminated against the indigenous peoples. Verification has shown that, generally, the guidelines and public policies have not taken the ethnic diversity of Guatemala into account.

6. A number of the Peace Agreements contain specific commitments to overcome the situation described and, in particular, the structural factors of social and racial discrimination which still remain in Guatemalan society. An example of this are the commitments in regard to the indigenous peoples contained in the Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict (ARPD), the Agreement on Social and Economic Aspects and the Agrarian Situation (ASESA), the Agreement on the Strengthening of the Civilian Powers and on the Role of the Armed Forces in a Democratic Society (AFPC), the Agreement on Constitutional Reforms and the Electoral Regime (ARCRE) and, particularly, the Agreement on the Identity and Rights of Indigenous Peoples (AIDPI). As a basic commitment, the parties established that they "*recognize and respect the identity and the political, economic, social and cultural rights of the Maya, Garifuna and Xinca peoples, within the unity of the Guatemalan Nation and subject to the indivisibility of the territory of the Guatemalan State, as components of that unity*".

7. The AIDPI stresses the importance of the "*clear recognition by all Guatemalans of the reality of the racial discrimination the compelling need to overcome it*". It also recognizes the particular vulnerability of indigenous women, who suffer from double deprivation: because they are women and because they are indigenous. For this reason, the Government committed itself to making racial discrimination illegal, promoting the review of the legislation in force, eliminating all provisions which imply discrimination, disseminating the rights of the indigenous peoples by means of education and promoting their defense through offices for the defense of the indigenous peoples.

8. The AIDPI also established a commitment to officialize indigenous languages, to recognize and respect the spirituality of indigenous peoples, and to take other measures to prevent discrimination against the use of indigenous dress. A series of commitments was also given to orient public policy, taking into account the cultural dimension and the access of the indigenous peoples to social services: educational reform, making radio frequencies available to these peoples, the recognition of their systems of authorities and their customary law, and their access to the infrastructure of basic services, land, credit and work training. It is also stressed that the State has the responsibility to ensure and institutionalize the participation of indigenous peoples at all levels and in all political, economic, social and cultural matters concerning them.

9. The Mission has stressed at various times that the commitments regarding the indigenous peoples are among those showing the greatest noncompliance. An overall evaluation of compliance with the Agreements indicates that most of the actions envisaged to overcome discrimination and to grant the indigenous peoples their place in the Guatemalan Nation are pending implementation. This suggests that the change proposed in the Agreements has not been addressed, and that the mono-cultural and excluding model persists.

10. Upon conclusion of the period for complying with the commitments foreseen in the Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements (1997-2000), the Commission for the Follow-up of the Peace Agreements did a full rescheduling of the pending commitments. The preparation of the Schedule 2000-2004 confirmed that most of the commitments in regard to the identity and rights of the indigenous peoples were still pending implementation. The new schedule contains a calendar for complying with the peace commitments which are still pending and, among them, those regarding the indigenous peoples: multiculturalism, educational reform with its components of bilingualism and interculturality, the promotion of the use of indigenous languages, the regularization of titling of lands, as well as land holding in the indigenous communities, the fight against legal and de facto discrimination, the juridical protection of the rights of the indigenous communities, the conservation and administration of temples and the protection of ceremonial centers, the recognition of the standards of customary law, the recognition of their forms of organization and their participation at local level and in the system of Development Councils.

11. In assessing the status of the commitments on indigenous peoples, it is necessary to take account of events surrounding the referendum carried out in May 1999 on constitutional reforms. The reform proposal approved by Congress went much further than what had been agreed upon in the Peace Agreements and contained more than 80 questions in a complicated text to be submitted to the electorate. To facilitate voting, the Supreme Electoral Tribunal grouped the referendum questions into four subjects, among them the aspects linked to the recognition of Guatemala as a multi-ethnic, pluricultural and multi-lingual nation. With 18.5% participation at the national level, barely 2% more than at the previous referendum, the result was the rejection of the

four options submitted. Despite the fact that the question relating to the rights of the indigenous peoples was the one which received the greatest number of affirmative votes at national level, the results varied markedly in the different regions of the country, depending on whether or not the indigenous population was in the majority. The prior campaign revealed the continuing existence of strong racial prejudices in broad sectors of the population.

The indigenous peoples in Guatemala

12. Guatemala's 1985 Constitution recognizes the existence of Guatemalan indigenous groups of Maya descent and the *"right to their cultural identity in accordance with their values, their language and their customs"* (Art. 58). It also establishes that the State *"recognizes, respects and promotes their ways of life, customs, traditions, forms of social organization, the use of the indigenous dress by men and women, languages and dialects"* (Art. 66). For its part, Convention 169 of the International Labor Organization (ILO), ratified by Guatemala in compliance with the AIDPI, considers as indigenous peoples those descending *"from populations inhabiting the country or geographical region to which the country belonged at the time of the conquest or settlement or the establishment of the present state borders and which, whatever their legal situation may be, maintain all their own social, economic, cultural and political institutions, or part of them"*, and adds that *"the awareness of their indigenous or tribal identity should be considered as a fundamental criterion"* for them to be considered as such.

13. On the basis of that definition, as established in the AIDPI, the Guatemalan indigenous peoples *"include the Maya peoples, the Garifuna peoples and the Xinca peoples"* whose identity is *"a set of elements which define them and, in turn, make them recognize themselves as such"*. In the case of the Maya identity, their descent, languages, world view, culture and self-definition are mentioned. These elements are also valid for the Xinca peoples. In the case of the Garifuna people, whose presence came after the conquest, the signatories included them in the Agreement because they have specific cultural features and because they are racially discriminated against because of their origin, culture and language. In like manner, the Agreement establishes the commitment of the State to recognize the identity of the indigenous peoples as a *"fundamental element for the construction of national unity based on the respect for and exercise of political, cultural, economic and spiritual rights of all Guatemalans"*.

14. The country is made up of 25 linguistic groups which are Spanish, Garifuna, Xinca and 22 Mayan ones: Achi', Akateko, Awakateko Chalchiteko, Ch'orti', Chuj, Itza', Ixil, Popti', Kaqchikel, K'iche', Mam, Mopan, Poqoman, Q'anjob'al, Q'eqchi', Sakapulteko, Sipakapense, Tektiteko, Tz'utujil and Uspanteko. However, Spanish is the only official language. The map of the Directorate General of Bilingual Education (DIGEBI) shows the geographic distribution of the indigenous languages, even though throughout the land persons with different languages and cultures coexist.

LINGUISTIC MAP OF GUATEMALA



Source: Directorate General of Bilingual Education (DIGEBI).

Some pertinent statistical data

15. The first aspect that has to be stressed is that, as part of the deficiencies of the State as regards multiculturalism, most of the surveys and censuses are not technically designed to deal with the multiethnic and pluricultural character of the country. Therefore, except in those censuses with a specific objective, the data on the indigenous peoples are usually not duly broken down.

16. The 1998-1999 National Survey of Family Income and Expenditures (ENIGFAM) indicates that the indigenous population represents 48.6% of the total

inhabitants of Guatemala. Other sources consider that this percentage could be more than 60%. As to the geographical distribution, as shown in the following table, most of the indigenous population is concentrated in the western and northern regions of the country.

Percentage of the population that is indigenous, by department (1999)

0 to 24.9%	25 to 49.9%	50 to 74.9%	75 to 100%
Izabal	San Marcos	Chimaltenango	Totonicapán
Escuintla	Sacatepéquez	Huehuetenango	Sololá
Jutiapa	Jalapa	Quetzaltenango	Alta Verapaz
Zacapa	Retalhuleu	Suchitepéquez	Quiché
Santa Rosa	Chiquimula	Baja Verapaz	
El Progreso	Petén		

Source: Guatemala: The Rural Face of Human Development. UN System Guatemala, 1999.

17. According to the 1998-99 ENIGFAM, 60.3% of the country's population lives in the rural areas. Of this, 59% is indigenous. The rural area is where the deep asymmetries which have characterized Guatemala's society and economy are expressed with greatest force, principally in the predominance of poverty, extreme poverty and social, ethnic and cultural exclusion. As can be seen from the next table, it is in the departments where most of the indigenous population live that the highest levels of poverty are found:

Relation between ethnicity and extreme poverty*

Department	% of population that is indigenous	Extreme poverty index
San Marcos	25 to 49.9%	61.07%
Totonicapán	75 to 100%	55.62%
Huehuetenango	50 to 74.9%	37.15%
Quiché	75 to 100%	36.75%
Alta Verapaz	75 to 100%	36.60%
Sololá	75 to 100%	32.62%
Baja Verapaz	50 to 74.9%	31.01%
Jalapa	25 to 49.9%	29.23%
Jutiapa	0 to 24.9%	23.24%
Quetzaltenango	50 to 74.9%	22.42%

*Source: Final Report – Poverty Map, Preliminary Version, SEGEPLAN, 2001.

18. Social exclusion on the basis of being indigenous extends to the coverage of public services. For example, more non-indigenous families have access to drinking water, sanitation and electricity than indigenous ones:

Access to water, sewerage and electricity networks (1998)*

Services	% of indigenous population with access	% of non-indigenous population with access
Connection to water network	55.2%	70.4%
Connection to sewerage system	18.8%	43.7%
Connection to electric network	50.9%	74.8%

* Source: Guatemala: The Including Force of Human Development. United Nations in Guatemala, 2000.

19. Access to education also reflects the discrimination suffered by these peoples. Below are some examples of the coverage of different basic services, according to ENIGFAM 1998-1999:

- a) most of the 556,000 boys and girls between the ages of 7 and 14 who do not attend school are indigenous (62.3%);
- b) the highest rates of illiteracy are found in the departments with an indigenous majority: Quiché: 53.5%; Alta Verapaz: 51.3%; Sololá: 47.9%; Totonicapán: 43.3%; Baja Verapaz: 41.9%; Huehuetenango: 41.6%, compared with a national mean of 31.7%;
- c) average schooling in the predominantly indigenous departments (1.3 years) is far below the national average (2.3 years);
- d) the average illiteracy rate among indigenous women varies between 50% and 90%, and only 43% of them are able to finish primary school, 5.8% middle education and 1% higher education.

20. These aspects have a bearing on the health of the population. Insufficient income, lack of food, a lack of access to potable water, the deterioration of the environment and low levels of education are factors which influence the precariousness of health. The Ministry of Public Health and Social Welfare (MSPAS) reported that the principal causes of general and child mortality for the year 1999 continued to be acute respiratory infection, acute diarrhetic syndrome and intestinal parasites, all of them preventable diseases.

21. The condition of poverty as a consequence of discriminatory management by the State is not just a low level of income, but a set of social and infrastructure aspects which mark these inequalities. For this reason, the Peace Agreements propose a series of objectives for social development. In quantitative terms, they propose for health and education a broadening of the coverage and an increase by the year 2000 of 50% in the

social expenditure executed in 1995, as well as the commitment to use 1.5% of tax revenues for the promotion of popular housing.

II. Multiculturalism in the Peace Agreements

22. To prepare this report, the Mission has not only taken into account what is established in the national legislation and in the Peace Agreements, but also the international instruments to which Guatemala is a party. In fact, in the Comprehensive Agreement on Human Rights, the Government committed itself to continue supporting all measures designed to promote and improve the norms and mechanisms for the protection of human rights. The fight against racial discrimination is a priority for the United Nations and since its creation it has tried to put an end to the persecution and segregation of persons and groups for racial motives. Many international instruments have been adopted on this issue. The principal ones are the Universal Declaration of Human Rights (1948), the Convention on the Fight Against Discrimination in the Sphere of Teaching (1960, ratified by Guatemala in 1982), the International Convention on the Elimination of all Forms of Racial Discrimination (1966; ratified by Guatemala in 1984), the International Agreement on Economic, Social and Cultural Rights (1966; ratified by Guatemala in 1988), the International Agreement on Civil and Political Rights (1966; ratified by Guatemala in 1992) and the Convention on Indigenous and Tribal Peoples in Independent Countries (1989; ratified by Guatemala in 1996).

23. To carry out its verification, the Mission's basis is the definition of "racial discrimination" contained in the International Convention on the Elimination of all Forms of Racial Discrimination, which is: *"Every distinction, exclusion, restriction or preference based on motives of race, colour, lineage or national or ethnic origin the object or result of which is to annul or impair the recognition, enjoyment or exercise, under equal conditions, of the human rights and fundamental liberties in political, economic, social, cultural spheres or any other sphere of public life"*.

24. In the Peace Agreements, the development of most of the commitments linked to the various aspects of multiculturalism was entrusted to commissions with the participation of representatives of the indigenous peoples, according to the principle expressed in the preamble, which says that *"all matters of direct interest for the indigenous peoples need to be dealt with by and with them and that the present agreement seeks to create, expand and strengthen the structures, conditions, opportunities and guarantees regarding participation of the indigenous peoples."* In this sense, the process of implementation of the Agreement opened new spaces of direct consensus-building with state institutions and contributed to highlighting the issue of multiculturalism, as well as showing that there is still a long way to go towards a national consensus in regard to the pluricultural character of the Guatemalan nation.

25. The Mission gives special importance to verification, not only of compliance with the specific commitments of the Agreement, but also to the integration of the multicultural aspects into the design and application of public policies in regard to social, economic, political and cultural matters. Parallel to this, the recognition of customary law, one of the most complex and important elements in the establishment of a multiethnic, pluricultural and multilingual State, requires that consensus be sought between the State and the indigenous peoples. The process of constructing national unity requires the incorporation of the intercultural dimension and the important economic, social and cultural contributions of the indigenous peoples of Guatemala.

The peace commitments and the fight against discrimination

Legal and de facto discrimination

26. The Indigenous Agreement envisages a series of measures to fight against legal and de facto discrimination. They cover legal and institutional actions, public information, and other actions specifically to combat discrimination against indigenous women. The progress achieved on these issues is unequal, and there are serious delays in compliance with some of the most relevant commitments.

Legal Measures:

27. In 1996, the State of Guatemala ratified the Convention on Indigenous and Tribal Peoples, as envisaged in the AIDPI. This ratification was an important step forward in the recognition of the specific rights of the indigenous peoples. Nonetheless, it is evident that the necessary political will has not existed for this and other international agreements on racial discrimination to be implemented adequately, such as the commitment to incorporate into the Penal Code the provisions of the International Convention on the Elimination of Every Kind of Racial Discrimination, as well as the recognition of the Committee for the Elimination of Racial Discrimination, as indicated in Article 14 of the said Convention. As to making discrimination illegal, we note with satisfaction the recent favorable opinion of the Congressional Committee on Indigenous Communities in regard to a bill to amend the Penal Code in this respect. Congress should adopt this bill as a matter of urgency.

28. Another important commitment which is pending is a review of the legislation in force with a view to repealing every law and/or provision which might have discriminatory implications. Even though the Follow-up Commission rescheduled this commitment for 2001, no progress has been seen on the subject. The review should include the right to registration of indigenous names, surnames and place names and the right of the communities to change the names of the places where they reside. In addition, measures should be taken to fight against all de facto discrimination against the use of the indigenous dress and to repeal all legal provisions which hinder the right of the indigenous peoples to use communications media for the development of their identity.

Institutionality

29. As regards institutional arrangements, the Agreements envisage the promotion of the creation of a defense office for indigenous peoples and the installation of popular law offices to provide free legal assistance. In 1998, the Office of the United Nations High Commissioner for Human Rights and the Fundación Maya prepared a draft to include an Indigenous Legal Defense Office in the Office of the Human Rights Ombudsman (PDH) and a series of consultations were carried out with indigenous organizations to incorporate their proposals into this draft. Regrettably, even though the legal defense office was created, the lack of political impetus and of a budget have reduced it to the presence of a single official and have prevented it from becoming functional.

30. The Peace Agreements also establish the need to make changes in the institutionality of the State to guarantee the access of the indigenous peoples to justice, health, education and land ownership, as well as to participate in national and local decision making. The creation of offices of justices of the peace for communities and Centers of Justice Administration, as well as the installation of the Commission of Indigenous Affairs in the Supreme Court of Justice, are among the advances in this area.

Dissemination

31. With a view to overcoming the strong prejudices and the broad discrimination which persist in Guatemalan society, the Peace Agreements established the need to give broader dissemination to all the agreements as well as the Indigenous Agreement. There are also important commitments in regard to the dissemination of specific subjects and international standards on the protection and non-discrimination of groups. Another core aspect is the commitment to start campaigns to disseminate and enhance outstanding aspects of the Maya, Garifuna and Xinca cultures. As most of these commitments had not been complied with, the Follow-up Commission rescheduled them for the second half of 2001, and so far there has been no apparent sign of any move toward implementing them.

32. A timely and adequate education and dissemination campaign, which would include recognition of the value of Mayan scientific and technological knowledge, the spiritual and cultural value of indigenous dress, and the rights of indigenous women, is an inescapable commitment which the State must comply with as soon as possible. Universities, academic centers, the media, non-governmental organizations and international cooperation have an important role to play in this regard.

Discrimination against indigenous women

33. In regard to the specific discrimination against indigenous women, the most prominent elements are the particular vulnerability and double discrimination they suffer. Therefore, the Government undertook to promote legislation defining sexual harassment as a crime and to create the Office for the Defense of Indigenous Women. In this respect, the General Assembly of the United Nations took note of the creation of

the Defense Office as a positive step in the improvement of the mechanisms for the protection of the rights of women and of the Guatemalan indigenous peoples (see A/Res.54/99, No.3). Nonetheless, its functionality and effectiveness have been affected by a lack of firm governmental support in the development of its mandate and because of its limited funding. As to the classification of sexual harassment as a crime, there have been some initiatives but no progress.

34. Racial discrimination is compounded in the case of indigenous women who constitute the sector with the least opportunities regarding access to work, land, education, health and justice. At the same time, indigenous women constitute the segment of the population which suffers most from de facto discrimination. Below we cite some cases of discrimination which were verified by MINUGUA, in which public institutions and agents are involved:

Type of case	Place and date	Institution responsible	Fact
Violations of the right to use indigenous dress	San Luis, Petén, (1996)	Director and teacher of the Reformador School	The Mission verified that the pupils were obliged to wear uniform instead of indigenous dress to "identify the school's students" except when the students come from rural communities "because they are poorer". Because of the parents' complaints, the school let the teachers use their judgment about the wearing of dress.
	Santa Cruz del Quiché, (1997)	Director and teachers of the Instituto Normal Mixto del Altiplano Marquense	The director endorsed and defended a document of the assembly of parents, where they voted 128 to 56 in favor of wearing school uniform, because "we want all the students look the same. When they look the same, it is not discriminatory. There is discrimination when some, but not all, wear an uniform".
	Concepción Tutuapa, San Marcos (1999)	Director and teachers of the Instituto "Fray Bartolomé de las Casas".	The rules of the school, known by some authorities of the department, insisted on the use of uniform. According to the director, "because of pedagogic advice and the moral, and aesthetic values adopted by the school, the use of the uniform is mandatory".
Violations of judicial guarantees concerning the use of indigenous languages	Huehuetenango (1997)	Judges, court officers and prosecutors	In the Court of the department of Huehuetenango, where the majority of the population is indigenous, there was no translator. All the complaints of the indigenous population were rejected.
	Chimaltenango (1998)	Judges and officers of the Court	The accused was held in preventive detention for 14 months without ever being interrogated in his native language (Kaqchikel). A prosecutor said that he had a linguistic barrier preventing him from understanding Spanish, and subsequently, that he was mentally handicapped. He was never questioned by judicial officials in a language that he understood.
Violations of judicial guarantees concerning religious freedom.	Aldea El Zapotal, El Estor, Izabal (1996)	Mayor, officers of the court and the Police.	A group of people detained a peasant woman, who did not speak Spanish, and accused her of witchcraft because of her practice of rituals of her community to improve the productivity of the land. She was presented before the judge 39 hours later, who ignoring the arbitrary detention, condemned her to 15 days imprisonment, commuted to a fine of Q400. The woman said that she was raped at the police station.

35. The cases summarized in the foregoing table are examples of how the indigenous peoples are sometimes defenseless against the arguments used by the authorities to ignore constitutional precepts on the recognition of their right to their own form of life, customs, traditions, forms of social organization, use of their indigenous dress and languages and dialects.

Access to basic social services and cultural rights

36. One of the instruments of the assimilation of and discrimination against indigenous peoples is the exclusive use of Spanish as the official language. The fact that the languages of the majority of the populations are not used in the provision of services, access to justice, the educational system and other points of public contact in the different indigenous linguistic areas has a bearing on racial discrimination. The AIDPI states that “*language is one of the mainstays of culture since, in particular, it is the vehicle for learning and passing on the indigenous view of the world, and indigenous knowledge and cultural values. Thus, all the languages spoken in Guatemala deserve equal respect. In that context, provision must be made to recover and protect indigenous languages and to promote the development and use of those languages*”. The Peace Agreements accept the right of the linguistic communities to exist and develop, as well as the officialization of their languages. According to the AIDPI, the officialization of the indigenous languages should have an impact on education, health, administration of justice services and on the media, in order to permit their effective regionalization.

37. To comply with the commitments of the AIDPI, the Commission for the Officialization of Indigenous Languages was established in April 1997. In March 1998, it presented its proposal, which recognized four territorial languages: K’iche’, Q’eqchi’ Mam and Kaqchikel (each spoken by more than 300,000 persons in twenty or more municipal districts); seventeen community languages: Poqomchi’, Q’anjob’al, Chuj, Ixil, Tz’utujil, Poqoman, Jakalteko, Ch’orti, Achi’, Sakapulteko, Akateko, Awakateko, Uspanteko, Mopan, Sipakapense, Tektiteko and Garifuna (spoken by fewer than 300,000 persons or in fewer than twenty municipal districts); and two special languages: Itza’ and Xinca (spoken by fewer than 1,000 persons). The proposal said that the officialization of the languages should be implemented, at regional level, through education, justice and health services; in municipal services and those of the Supreme Electoral Tribunal; in the large-scale state media and in other basic services. The Commission concluded its work and ceased to function after its proposals were integrated into the draft of the constitutional reforms. The work on officialization was taken up by the Academy of Mayan Languages of Guatemala (ALMG), which recently submitted a preliminary draft law to the linguistic communities for their approval. The Follow-up Commission established in its 2000-2004 timetable that a series of commitments are pending implementation because the constitutional reforms were not approved, and that some of these commitments could be implemented by means of legislation.

38. The recognition of cultural rights of the Guatemalan indigenous peoples includes respect for their spirituality and free access to sacred places and ceremonial centers. The agreements establish that it is necessary to recognize, as part of the cultural heritage of the Nation, the temples and ceremonial centers of archaeological value which are on private property and the right of the indigenous peoples to participate in the administration and conservation of these places, as well as to amend the regulations for the protection of ceremonial centers in such a way as to make possible the practice of spirituality of the indigenous peoples. To comply with these commitments, in April 1997, a Commission consisting of representatives of the Government and of indigenous spiritual leaders was set up to define the sacred places. In August 1998, without reaching the necessary agreements on the mechanisms for the administration, the use and conservation of these places, the Commission was dissolved. Due to the importance of this subject and after a long negotiation process, the Commission was set up again and resumed its work.

39. As regards the right to use indigenous dress, the AIDPI states that “*the constitutional right to wear indigenous dress must be respected and guaranteed in all areas of national life. The Government shall take the measures provided for in part II, section A of this Agreement to combat any de facto discrimination regarding the use of indigenous dress*”. However, only the Ministry of Education has issued a ministerial resolution authorizing the use of indigenous dress in education centers.

40. The AIDPI also refers to the mass media, a subject on which the Government undertook to reform the Broadcasting Law in order to facilitate access to frequencies as well as the creation of forums for political and cultural expression so that the indigenous peoples might possess and operate communications media in their own languages. In his recent preliminary assessment of freedom of expression in Guatemala, the Special Rapporteur for Freedom of Speech of the Organization of American States (OAS) reminded “*the authorities of their obligation to comply with the Peace Agreements, especially in regard to the Agreement on the Identity and Rights of the Indigenous Peoples*”: “*These reforms have not yet been carried out. The non-compliance with this provision limits freedom of speech seriously*”. At present negotiations are taking place between the Government and the Guatemalan Council of Community Media to formulate reforms to the present Broadcasting Law.

Education

41. The Peace Agreements emphasize the role of education in the democratization of society and the State, particularly as regards the country’s multicultural character: “*The educational system is one of the most important vehicles for the transmittal and development of cultural values and knowledge. It must respond to the cultural and linguistic diversity of Guatemala, recognizing and strengthening the indigenous cultural*

identity, the Mayan educational values and systems and those of the other indigenous peoples, the access to formal and non-formal education, and including in the national study plans the indigenous educational concepts". It was with this concept that the parties agreed to implement an educational reform with social projection, centered on aspects of content and administration.

42. In addition, Convention 169 of the ILO states that the education programmes for indigenous peoples must be implemented in close cooperation with them, paying special attention to their needs, and must incorporate their history, their knowledge and technology, their system of values and their social, economic and cultural aspirations. It also mentions the importance of having the whole of the national community receive intercultural education in order to build relationships of respect and value between the different cultures and to eliminate the racial prejudices which might exist. The Constitution of the Republic establishes that "*The administration of the educational system shall be decentralized and regionalized.*" and that "*in the schools established in zones with predominantly indigenous population, teaching should preferably be bilingual*" (Art. 76).

43. Historically, the cultural diversity of the country has not been considered in the design and implementation of education policies. Therefore, the National Programme of Bilingual Education (PRONEBI) was created in 1984, and the Directorate General of Bilingual Education (DIGEBI) was created in 1995, as State entities responsible for bilingual education. However, examination of these efforts reveals that no global intercultural and bilingual education programme exists. At the same time, the study plans established for them are the same as those in the Spanish-speaking areas and no effort has been made to adapt them to the characteristics of the indigenous peoples. It is also important to note that there are no moves toward attending to the indigenous peoples with smaller populations, which makes access to education rather inequitable. In short, the bilingual education schools have in practice tended to lean toward integration, which makes this education a mechanism so that the indigenous population can learn the Spanish language. The Mission has noted the existence of pilot projects of intercultural education in some departments of the country, generally promoted by non-governmental organizations with the support of international cooperation.

44. Since the signing of the Agreements at the end of 1996, the relationship between the growth of Gross Domestic Product (GDP) and public investment in education has increased significantly. This allocation of funds in the nation's budget in general terms responds to the goal established in the Agreements.

Relationship between gross domestic product (GDP), public investment in education and the goal according to the peace agreements*

(millions of quetzals and percentages)

	1997	1998	1999	2000
GDP	107,873.4	124,022.5	135,214.4	147,889.9
Education sector expenditures	1,908.7	2,617.2	3,285.3	3,617.9
Goal according to Peace Agreements	2,056.8	2,673.2	3,138.6	3,678.0
% of GDP	1.77	2.11	2.43	2.45
% goal of GDP	1.91	2.16	2.32	2.49
Difference between expenditure and goal	-0.14	-0.05	0.11	-0.04

*Source: Bank of Guatemala, Ministry of Public Finance and MINUGUA, 2001.

45. As regards the goals established by the Agreements concerning education, at the pre-primary level an important advance was recorded in terms of coverage in the departments with an indigenous majority. From 1996 to 1999, it went from 52.7% to 64.95% in Totonicapán, from 58.9% to 76.41% in Sololá, and from 40.7% to 45.69% in Alta Verapaz. Parallel to this increase in the registration rate, for the same period an increase in the school drop-out rate was observed in all departments with the exception of Totonicapán, Quiché and Huehuetenango.

46. At the primary level an important extension of coverage was observed in all departments of the country. However, it was also found that a gap remains between the indigenous and non-indigenous populations. The expansion of educational coverage was carried out through the National Program of Self-Management for Educational Development (PRONADE), which contains few elements of bilingual and intercultural education. In addition, the number of students per teacher generally increased in a dramatic manner, which had a negative effect on the quality of education. The most deficient cases are found in the urban areas of the departments of Retalhuleu, Chiquimula, Jalapa, Alta Verapaz and Huehuetenango, and in the rural areas of Retalhuleu, Jalapa, Suchitepequez, Izabal and Alta Verapaz. As for Junior High School, the general registration trend has been lower in the departments with a high percentage of indigenous population.

47. Despite the fact that the budgetary allocation is adequate for the general increase of educational coverage and that the design of the educational reform responds to the commitments of the Indigenous Agreement, access by the indigenous peoples to education continues to be deficient. The orientation of public expenditure in education is not based on a precise assessment of the educational situation of the population or on the definition of priority investments, such as child education. Likewise, most of the administrative expenses and also those of human resources of the Ministry of

Education are centralized in the metropolitan region, where more than 50% of the total teachers work, despite the fact that it only has 42% of registered students.

48. With the signing of the Peace Agreements, and to respond to the country's multicultural and intercultural characteristics, the State undertook to implement intercultural bilingual education, through a transformation of the curriculum and administrative change. The transformation of the curriculum is being promoted through the design of the educational reform and the administrative change refers to legal changes related to the selection, appointment and placement of the teachers. To carry out the design of the reform, in April 1997 the Joint Commission for Educational Reform was established. This Commission carried out broad work in design, advice and consultancy throughout the whole country, which allowed for the contents of the agreements to be validated and incorporated into the education policies; however, the Ministry of Education has still not defined clearly what Intercultural Bilingual Education will be. To date no coordinated programme of this kind has been designed, with contents, methodology, teaching texts and an adequate education and training of the teachers.

49. It is important to stress that the Joint Commission for Educational Reform made studies and diagnoses of the education situation and prepared a draft educational reform, which is the basis for the present proposal for educational reform. This commission was subsequently assigned to the Ministry of Education, as a consultative commission, to provide follow-up to the implementation of the reform. There were some changes made in August of 1998 to broaden the participation of the indigenous delegates. This commission promoted municipal, departmental and national consultation, which was carried out at the end of 2000 on the proposal of educational reform, divided into four subjects: 1) curricular transformation; 2) professionalization of the teachers; 3) long-term education; 4) education councils. On all of these subjects there is broad support and consensus for their implementation.

Health

50. In the Agreement on Social and Economic Aspects and the Agrarian Situation (ASESA), the commitment is established to promote a reform of the national health sector: *"This reform should be aimed at ensuring effective exercise of the fundamental right to health, without any discrimination whatsoever, and the effective performance by the State, which should be provided with the necessary resources"*. In the Agreement a series of aspects related to conception, coverage, care priorities, participation, decentralization and traditional indigenous medicine are envisaged, which must be taken into account to promote the reform. In this respect, it is pointed out that *"by giving value to the importance of indigenous and traditional medicine, its study will be promoted and its concepts, methods and practices will be rescued"*.

51. Convention 169 of the International Labor Organization (ILO), provides that Governments should take measures to make available to the indigenous peoples adequate

health services and the means which will allow them to organize and render such services under their own responsibility and control, taking into account their methods of prevention, healing practices and traditional medicines.

52. According to the data on levels of poverty and extreme poverty examined before, the indigenous population of Guatemala represents a high percentage of the population which is most exposed to health problems. It is necessary to stress that the Ministry of Public Health and Social Welfare does not collect information that is broken down by ethnic identity and, furthermore, its national and departmental indicators are under-recorded by between 40% and 70%. This makes it impossible to assess the state of health by department, creates uncertainty and weakens the reliability of the indicators.

53. As regards public investment in health, as shown by the following table, the allocation of resources corresponds to the goal established in the Peace Agreements. Despite this, a strong centralization of both material and human resources can be perceived. This situation leads, in various regions of the country, to very low coverage. For example, the country has approximately one physician and one hospital bed for every thousand inhabitants, but 80% of the physicians and 50% of the nurses serve in the metropolitan area.

Relationship between gross domestic product (GDP), public investment in health and the goal according to the peace agreements*

(in millions of quetzals and percentages)

	1997	1998	1999	2000	2001
GDP	107,873.4	124,022.5	135,214.4	147,889.9	163,566.2
Executed public expenditure	1,132.9	1,351.5	1,899.7	1,972.0	-
Goal as per Peace Agreements	1,083.2	1,366.1	1,608.5	1,954.8	2,162.0
% of GDP	1.05	1.09	1.40	1.33	1.40
% goal of GDP	1.01	1.10	1.19	1.32	1.32
Difference between expenditure and goal	0.04	-0.01	0.21	0.01	0.08

*Source: Bank of Guatemala, Ministry of Public Finance and MINUGUA, 2001. Estimates for the Year 2001.

54. According to 1999 data of the Ministry of Public Health and Public Welfare, the joint coverage by this entity and the Guatemalan Social Security Institute is 40% of the total population, while 14% is covered by private practice and the rest of the population (46%) has no access to health services. There are a number of factors which limit access by the majority of the indigenous peoples to health services. These include cultural barriers, especially those of language as well as the dispersion of the population, rurality and the inability to pay for the transport in order to reach a health service.

55. As regards maternal health, midwives, whose number is estimated at 4,560 according to the Ministry of Public Health and Social Welfare, represent a decisive contribution in the network of health services, since they attend 50% of births at national level. In the northwestern region, 8 of every 10 births are attended by midwives. Among the reasons why they attend a significant number of births are the trust they generate because they live in the same place and share the same identity, and the fact that they speak the same language. It should be pointed out that in Sololá, Totonicapán, Quetzaltenango, Quiché and Petén, the Ministry of Public Health and Social Welfare promotes pilot trials on the integration of the cultural practices of the midwives into health services.

Access to justice and indigenous law

56. The discrimination which affects the indigenous peoples of Guatemala in regard to the provision of justice has two dimensions: the difficulties in access to state justice and the lack of recognition of their own normative systems. It is in this sense that the AIDPI points out that *“the failure of national legislation to take account of the customary norms which govern life in the indigenous communities and the lack of access by indigenous peoples to the resources of the national judicial system have resulted in the denial of rights, in discrimination and in marginalization”*. The commitments in this sphere are: 1) to promote and develop legal standards which recognize that the indigenous communities manage their internal affairs in accordance with their own juridical norms; 2) to include cultural expertise; 3) to develop a permanent programme for judges and agents of the Public Ministry on the culture and features of the identity of the indigenous peoples; 4) to promote free legal advisory services for persons with low economic resources; and 5) to make available legal interpreters to the indigenous communities, free of charge, ensuring that strict application of the principle that no one is judged without having had the aid of interpretation into his language.

57. ILO Convention 169 states in this respect that, *“when applying national legislation to interested peoples, due account should be taken of their customs and their customary law. These peoples should have the right to maintain their own customs and institutions, provided these are not incompatible with fundamental rights”*, adding that, *“whenever necessary, procedures should be established to settle the conflicts which might arise from the application of these principles”*.

58. The obstacles which hinder or prevent the access of the indigenous peoples to state justice are basically cultural, with the linguistic barrier holding first place. Legal proceedings are carried out in the Spanish language, few officials (judges, prosecutors, defense lawyers, policemen, prison personnel, employees of the various institutions of the justice system) know other languages and the number and linguistic diversity of the interpreters are still very reduced. In spite of what the law orders, as a general

rule, the records are not translated into the indigenous languages and the use of glossaries of legal terms in the languages of the users is not promoted. Secondly, judicial officials are not generally trained to understand the cultural lines of thought and behaviour of persons not belonging to their ethnic group or culture. Although proposed by the Peace Agreements, the use of cultural expertise is not yet generally established, which would allow the judicial officials to have valuable advice on different cultural realities and their influence on the form of coexistence and, therefore, on the application of the law. In some cases, the cultural barrier can result in criminalization of the cultural difference. Thirdly, cultural obstacles to access of the indigenous peoples to the administration of justice is evident in their lack of knowledge of rights, procedures and standards which, with few exceptions, are available only in Spanish.

59. There is also discrimination in legal interpretation. Many of the obstacles mentioned could be minimized if the application of the laws of the indigenous peoples themselves were to be promoted. In practice, this does not occur because of the lack of knowledge of judicial officials of the scope of the constitutional and legal norms which support this right. Judicial officials often expect guidelines from public authorities, ignoring the principle that the Constitution, international treaties of which the State is part, and laws are directly applicable, without the need for regulation and, even less, instructions from administrative superiors.

60. The cost of legal procedures and the location of judicial offices are another source of discrimination. In spite of the fact that in recent years the Judicial Branch has been able to provide offices of justices of peace to all municipalities, many of these are still difficult to reach by the indigenous populations which live in remote localities, because of the enormous shortages in transportation and communications and the economic difficulties many of these populations suffer.

61. The judicial reform process has identified the mechanisms which must be implemented to improve the access of the indigenous peoples to judicial services. These include improving the mechanisms of coordination between the normative systems of the indigenous peoples and state law, and other, more specific mechanisms referring to cultural and linguistic aspects. Progress in this comprehensive process of reform, modernization and strengthening of the justice system as a whole, is frequently hindered by budgetary shortages or because of the lack of political will on the part of the authorities.

62. Nonetheless, verification reveals that there has been some progress: the number of positions for legal interpreters in areas with indigenous populations was increased and an impetus has been given to hiring judges who speak indigenous languages in the municipal districts with indigenous majorities. The Judicial Branch has, according to its own data, 69 judges or magistrates who speak Mayan languages and 60 interpreter officials in regions with indigenous majorities in the 551 courts of different types

which exist at national level. The information provided indicates that some of these 69 judges to a greater or lesser degree know up to three indigenous languages, as follows: K'iche' (41), Kaqchikel (17), Q'eqchi' (12), Achi' (6), Tz'utujil (3), Poqomchi' (1) and Mam (4). Consequently, there are judicial officials with some degree of familiarity in only 7 of the 23 languages, which is of special concern in cases such as that of the Mam language, which is spoken in more than 20 municipal districts of the country by a population of more than 300,000. The situation of the Office of the Public Prosecutor is even more precarious, since it only has 17 interpreters in the Q'anjob'al (1), Tz'utujil (1), Ixil (1), Kaqchikel (4), K'iche' (3), Achi' (1), Q'eqchi' (3), Poqomchi' (1), Garifuna (1) and Mam (1) languages for the whole country. The Mission does not have reliable information on the existence of prosecutors who speak indigenous languages.

63. The Institute of Public Criminal Defense only has three interpreters located in Nebaj, Quiché (Ixil speaker); in Santa Eulalia, Huehuetenango (Q'anjob'al and Chuj speaker) and in Cobán, Alta Verapaz (Q'eqchi' speaker). It does not have lawyers who speak indigenous languages, but has designed a programme of ethnic defenders in three cities where the indigenous population is in the majority. These defense offices consist of a lawyer, an assistant and an interpreter and they have the financial backing of the international community. The penitential system has no interpreters and the National Civil Police has 14% of officers of indigenous origin who speak 22 of the 25 languages of the country. However, this resource is not used in the manner provided by the law, since many officers who speak indigenous languages are not sent to the places where their languages predominate. As regards training in multiculturalism for lawyers, judges and prosecutors, there are the Diploma in the Administration of Bilingual Justice organized by Muni-Kat and the Master's degree in Indigenous Law taught by the University of San Carlos (USAC).

64. The commitment of the Government to promote free legal advice services for persons of low economic resources is still pending implementation. In its place, there are programmes of private institutions and international agencies which offer advice and accompaniment in legal proceedings and in conflict resolution mechanisms. Popular law offices, particularly those of USAC and of Rafael Landívar University, are overloaded with work and have scarce human and material resources available.

65. The use of mediation mechanisms is a commitment of the Peace Agreements, is part of the modernization process of the system of justice and has already been incorporated into the Criminal Procedural Code. Its implementation is aimed at improving the conditions for access to justice for populations which historically have had the greatest difficulties in gaining access to the system, such as the indigenous peoples. Despite this, the use of these mechanisms is faced with the "culture of violence" inherited from the historical exclusion and racial discrimination that have prevailed in Guatemala, and which were fed by the armed confrontation of the last decades. Another obstacle to mediation derives from the attitude of the officials of the Judicial Branch themselves, who do not see this as a viable instrument to flexibilize and decongest the administration of justice and do not send cases to the mediation centers.

66. The Centers for the Administration of Justice (CAJ) were created to bring the administration of justice closer to the largely indigenous population of the municipal districts of Nebaj and Santa Eulalia. For this purpose, local points of coordination and co-management were established, where the institutions of the justice system meet with civil society organizations and the traditional authorities of the indigenous peoples, which allows them to exchange information and to put into effect an essential collaboration. Furthermore, these centers seek to identify the training these interpreters are to receive and the development of instruments such as glossaries of legal terms; they also try to promote research and the importance of cultural issues. Another important aspect is increasing awareness of alternative conflict resolution methods. In practice, however, these goals have not been fully achieved. In the Ixil region, the mayors of three municipalities state that the CAJ in Nebaj does not meet the expectations of the traditional authorities, since the resolution of conflicts which the municipal mayors or their assistants achieve are rejected by the prosecuting agents or justicial officials, with the argument that the administration of justice is their exclusive prerogative.

67. Studies on customary law carried out by different academic research centers reveal that the majority of indigenous peoples of Guatemala still keep and exercise their own normative ways of internal coexistence. These face obstacles deriving from the actions of some state authorities who, even though clear constitutional standards exist, resist recognizing their right to apply their own normative forms. The resolutions adopted by traditional indigenous authorities, in general, have a greater chance of being followed by the persons involved, in view of the nearness and the adaptation of the resolution to the social, cultural and economic realities of those affected who are, therefore, able to comply adequately with the objectives of justice.

Rights relating to the land of indigenous peoples

68. The indigenous peoples were progressively dispossessed of their ancestral lands throughout history, with communities losing the collective ownership of their lands. In 1952 an agrarian reform was decreed which contemplated expropriation, against indemnification, of the idle lands of the great plantations in order to redistribute them to small and medium producers. Since most of the Guatemalan peasants were indigenous, this measure benefited them. However, after the overthrow of the Government in 1954, the beneficiaries had to return their plots. During the next two decades, many lands belonging to the State were distributed and the settlement of Petén and of the Northern Transversal Strip was promoted. Nonetheless, these measures did not have the effect of reducing the concentration of rural property, because the main beneficiaries were not the landless peasants.

69. One of the goals of the Peace Agreements is to promote sustainable rural development through the access of peasants to land ownership and the sustainable use of natural resources. As to the rights of the indigenous peoples to the land, the AIDPI

mentions the need to: 1) regularize land holdings of the indigenous communities; 2) protect the rights of use and administration of the indigenous peoples over their lands and the resources existing on them; 3) make restitution of their community lands and to compensate them for the deprivation of which they were victims; 4) acquire lands for the development of the communities; 5) provide legal protection to the rights of indigenous communities; and 6) to foster the access of women to the land and to other natural resources. All of these commitments had to be rescheduled due to lack of compliance.

70. ILO Convention 169 provides that Governments should take measures to determine the lands which the indigenous peoples occupy traditionally and to guarantee the effective protection of their property rights. The Agreement stresses the respect for their modalities of transfer of the land rights, as well as the special protection of the rights of the indigenous peoples to participate in the utilization, administration and conservation of the natural resources which exist on their lands. It also establishes that the agrarian programme shall guarantee the indigenous peoples, under equal conditions with other sectors of the population, the allocation of additional lands when the lands they have available are insufficient to guarantee them the elements of a normal existence, and the provision of the necessary means for the development of the same.

71. As to national legislation, the Constitution of the Republic establishes that *“The lands of cooperatives, indigenous communities or any other forms of community or collective holding of agrarian properties, as well as family holdings and popular housing, shall enjoy the special protection of the State, preferential credit and technical assistance, which will guarantee their possession and development, in order to ensure a better quality of life for all inhabitants”* (Art. 67). The Constitution adds, *“Through special programmes and adequate legislation, the State shall provide state lands to the indigenous communities which may need them for their development”* (Art. 68). Even though envisaged in the Constitution, effective recognition and application of these collective rights has not occurred.

72. At present, according to the data of the Ministry of Agriculture, Livestock and Food (MAGA), the concentration of almost 75% of the farm lands in less than 1% of the producers and, on the other hand, the fact that 96% of the producers use only 20% of the land, constitute an agrarian structure which is highly concentrated and polarized. In 1998, it was estimated that close to one million peasant families (about 6 million persons) did not possess sufficient land. According to the Land Fund (FONTIERRAS), in 1998 approximately 60% of demands for land came from the Departments of Alta Verapaz, Huehuetenango, Quiché, Quetzaltenango, San Marcos and Petén, that is to say that most of them came from the departments with an indigenous majority.

73. The absence of a land registry system and of agrarian legislation and jurisdiction are elements which affect the ownership of the land and are the cause of generalized insecurity in land tenure. Those most exposed are the lands of the indigenous communities, because they do not have formal recognition under the law, because of

the lack of precision in regard to limits and because of the frequent lack of a property register. In fact, even though the lands under community or municipal administration have a certain juridical security, this right is not recognized and there is an abundance of additional titles on lands held in property and claimed by the communities.

74. FONTIERRAS, created in May 1997 in compliance with the AIDPI, replaced all the funds which existed before to finance the purchase of lands. It is supposed to finance the purchase and leasing of lands through credits, as well as financing the preparation and implementation of productive projects. According to its information, by 30 July 2001, 115 requests for financing, benefiting 8,872 families, had been approved. Officials of FONTIERRAS estimate that more than 80% of the beneficiaries are indigenous peoples, although their ethnic origin has not been confirmed. At the same time, it is estimated that close to 10% of the beneficiaries of the land distribution through The National Institute of Land Transformation (INTA) were women. For its part, FONTIERRAS has recognized the right of co-ownership (men and women) and 8% of the beneficiaries of this fund are female heads of households.

75. Another important state institution, created in June of 1997, is the Presidential Department of Legal Assistance and Resolution of Land Conflicts (CONTIERRA), which facilitates and supports the conciliatory or legal solution of conflicts about land possession or ownership, provides free orientation to the parties who cannot pay for legal advice, and suggests formulas of compensation or restitution to peasants, communities, the State or municipalities, should they have ended up being dispossessed of their lands for a cause for which they are not responsible. Up to June of 2001, more than 1,000 conflicts submitted to its cognizance were recorded. Despite the important work this office does, regrettably its statistical records do not exactly establish the ethnic groups to which their beneficiaries belong.

76. The Joint Commission on Land Rights, created by the Peace Agreements, was officially installed in June of 1997. Its function is to study, prepare and propose procedures and institutional regulations to comply with the commitments regarding the land problems of the indigenous communities. The Commission submitted a draft for the Law of the Land Fund and prepared a proposal for the Land Registry Law. At present it is working on a bill on the regularization of lands and another one for the creation of an agrarian jurisdiction.

III. Citizens and participation

77. The Peace Agreements underline the importance of political participation of all citizens for the processes of reconstruction, reconciliation and democratization. As part of the chapter on Political, Social and Economic Rights, the AIDPI establishes a number of commitments on the participation of the indigenous peoples: 1) their definition and recognition in the Constitution as well as by the Guatemalan Nation as a national, multiethnic, pluricultural and multilingual entity; 2) the recognition of

indigenous communities and authorities at the local level, and 3) the need for indigenous participation at all levels of national political life. In this last aspect, the AIDPI contemplates the creation of obligatory consultation mechanisms with the indigenous peoples, institutional forms of individual and collective participation in the decision making processes, and guarantees for the free access of indigenous peoples to the different branches of public functions, promoting their appointment to positions in local, regional and national administrations. For the implementation of these commitments, in September of 1997 the Joint Commission for Reform and Participation was created. This Commission does not have a deadline for the development of its agenda according to themes. To date, it has submitted a proposal of reform to the Law of Municipal Codes and another to the Law of Development Councils.

78. For its part, Convention 169 of the ILO states that, when applying its provisions, *“the integrity of the values, practices and institutions of these peoples must be respected”*. It also recognizes the right of the indigenous peoples to participation and consultation, *“through appropriate procedures and in particular through their representative institutions, every time legislative or administrative measures which are likely to affect them directly are contemplated”*. It is important to point out that the same Convention 169 establishes that no special measure in favor of the indigenous peoples shall affect or discriminate against or diminish the general rights of the citizens.

Participation at all levels

79. Citizenship is expressed and developed in the exercise of the right to elect and be elected, in the possibility of holding public office and social control, which guarantees the legitimacy of the political system, of political parties and elected authorities. The Peace Agreements recognize that one of the obstacles to full political and social participation is the existence of sectors of the population without personal documents. Therefore, a number of commitments promote documentation for all persons who lack it, in particular, the enactment and subsequent extensions of the Temporary Law of Personal Documentation.

80. The Mission has found that some sectors of the indigenous population, for example women in rural areas, are the ones most affected by the lack of both personal and electoral documents. The causes include the destruction of civil records in the regions most affected by the armed confrontation, the centralization of civil registry services and the distance between villages and the municipal centers. Even though the Temporary Law on Personal Documentation is in force, the lack of regulations for its application and the lack of training of civil registrars has limited its effect. At the same time, other structural factors persist which have a bearing on the lack of documents, such as the cost of travel and the loss of working hours.

81. As to political participation, various studies made by the Mission and the United Nations System indicate that low electoral mobilization is due principally to dissatisfaction with the functioning of public institutions and the lack of trust in political leaders. Nonetheless, as pointed out by the signatories of the Peace Agreements, there are structural factors which hinder the exercise of political rights, including the difficulty of obtaining electoral documents, the temporary migration of hundreds of thousands of persons looking for work during the times when general elections are traditionally held, the lack of sectorial and specific civic education campaigns for the indigenous peoples and the lack of access of broad sectors of the population to adequate and timely information.

82. During the last decades there was an increase in indigenous participation, both as voters as well as in the fight for elective offices, particularly of municipal governments. For example, in the departments of Quetzaltenango, Totonicapán, Huehuetenango, Quiché, San Marcos, Sololá, Chimaltenango, Alta Verapaz and Baja Verapaz, the number of elected indigenous mayors increased by 35% between 1985 and 1990. At the national level, comparing the legislative elections of 1995 with those of 1999, an increase of 18.9% in the proportion of indigenous candidates was seen.

The presence of indigenous deputies in Congress

(1985-2000)

Year	Total deputies	Indigenous deputies	Percentage
1985	100	8	8.0%
1990	116	6	5.2%
1995	80	8	10.0%
2000	113	14	12.4%

Indigenous presence in public administration

83. As has been stated at other times, the Mission believes that it is necessary to incorporate a greater number of indigenous persons into public functions and into the Government. The presence of a greater number of indigenous persons in the National Civil Police and in the institutions of the justice sector or other branches of public administration would be of the utmost importance to advance in the transformation of relations between the State and the indigenous peoples, and also between indigenous and non-indigenous peoples. The presence of indigenous persons in the Executive Branch has been practically non-existent. Since the country's independence, only two indigenous persons held the positions of minister and vice minister. In the present Government there has been greater participation of indigenous persons, although it continues to be very limited in decision making positions.

84. Political democratization implies, necessarily, indigenous participation in public institutions. Some public institutions have information on the number of employees of indigenous origin: the Ministry of Culture and Sports states that of its 2,008 employees, 411 are of indigenous origin (20.46%), 27 of whom work in the executive department (1.34%), 56 in the Directorate of Art and Culture (2.78%) and 328 in the Institute of Anthropology and History (16.33%). It is important to point out that most of the indigenous employees working in this institute are in charge of security and cleaning tasks of the archaeological centers.

85. The National Civil Police (PNC) has 14% of its police force who identify themselves as indigenous. As to the Army, as the following table shows, the indigenous presence is much higher in the troops than the officers:

Ethnic composition of the Guatemalan Army (2001)*

(in percentages)

	Non-indigenous	Mayas	Garifunas	Xincas
Officers	72.60	26.64	0.40	0.35
NCOs	66.24	32.04	1.10	0.62
Other ranks	41.88	56.16	0.41	1.55

*Source: National Defense General Staff, 2001

86. It should be stressed that the proportion of indigenous personnel is greater in the state entities which carry out activities which deal specifically and directly with indigenous affairs, such as the Academy of Mayan Languages of Guatemala, the great majority of whose personnel (121 of the 124 employees), is indigenous, or the Office of Defense of Indigenous Women, where 14 of its 21 members are indigenous.

Joint Commissions

87. The commitments of the AIDPI include the beginning of a harmonization and negotiation process through the three Joint Commissions and two Specific Commissions by representatives of the Government and those of indigenous organizations in order to deepen the commitments of the Peace Agreements on the subject of indigenous issues. The three Joint Commissions are: The Joint Commission for Educational Reform, the Joint Commission for Reform and Participation, and the Joint Commission on Rights Relating to Lands. The two Specific Commissions are: The Commission for the Definition of Sacred Places and the Commission for the Officialization of Indigenous Languages. The Joint Commissions have had important results, such as the proposal for educational reform, the proposals for the Land Fund Law and Land Registry Law, and the proposal to reform the Municipal Code and the Development Council Law.

88. The Joint Commissions constitute forums for participation, dialogue and negotiation between the organized sectors of the indigenous peoples and the State. The most important result of these commissions has been that indigenous leaders and government officials began to negotiate and jointly define State policies to overcome discrimination. These important achievements have not been free from difficulties, among them that: 1) the topics they deal with are very sensitive and affect broad sectors of the population; 2) the representativity of the indigenous parties has been questioned as a result of the evolution of a broad and dispersed indigenous movement; 3) Government representation has not always had the powers of decision; and 4) they have faced budgetary limitations on their operation and on the dissemination and consultation of their proposals.

IV. Final observations and recommendations

89. After more than seven years since the Global Agreement on Human Rights took effect and almost five since the signing of the Agreement on a Firm and Lasting Peace, the Mission feels that little progress has been made in one of the most important areas for the consolidation of a democratic State that is inclusive, participatory and non-discriminatory. The ethnic diversity of the Nation is not yet recognized and valued as one of the greatest riches and the indigenous peoples continue to be subject to strong racial, ethnic and cultural discrimination which deprives them of the enjoyment of their basic human rights.

90. The excluding economic and social models, as well as the centralization of public investment have led to a situation in which broad sectors of the population living in rural areas are subjected to conditions of poverty and extreme poverty, especially the great majority of the country's indigenous peoples. At the same time, the high concentration of indigenous population in regions where the armed confrontation was the most intense has made these peoples the victims of the worst consequences of the conflict which devastated Guatemala for more than 30 years.

91. To consolidate a democratic state and to ensure conditions of governability and development, it is urgent for the Government to pay priority attention to those regions where the social debt is greater and more pressing. This attention should start from the implementation of affirmative actions which will reduce, until eliminated, the gap existing between the quality of life and access to services between the indigenous and non-indigenous population. A substantial and sustained advance in the pending peace agenda is essential to overcome the deep social inequalities which still remain.

92. On the basis of what has been verified, the Mission feels that important limitations persist in the political will to undertake the necessary changes to break the structures of monocultural and racial discrimination and to advance in the construction of a democratic culture and one of peace based on the recognition of ethnic diversity and equitable access to public spaces. The State must recognize the existence and the

rights of the indigenous peoples and recognize and respect and promote the various ethnic and cultural identities which make up the Guatemalan Nation. For this, it must begin an active and decided policy to incorporate into legislation, in institutions and public policies, the recognition of indigenous peoples, their identity and their culture. This is a fundamental condition to consolidate democracy and governability in a multicultural State.

93. Faced with de facto discrimination, priority must be given to making racial discrimination illegal. It is also necessary, as reflected in the 2000-2004 timetable, to take measures to eliminate from national legislation all those aspects which are discriminatory. The State must foster a change in individual and collective attitudes to overcome the de facto discrimination by means of dissemination and education campaigns and programmes. It is especially necessary to disseminate the contents and objectives of Convention 169 of the International Labor Organization on the rights of indigenous peoples in independent countries. It is also important to make this known to State officials and to promote compliance. The Office for the Defense of Indigenous Women must be strengthened through adequate budgetary allocations. This will allow it to broaden its coverage and comply adequately with its mandate. We also issue a special appeal to the recently reinstalled Commission for the Definition of Sacred Places to advance in its work and submit a proposal which will regulate free access to temples and ceremonial centers of the indigenous peoples, as well as the holding of their ceremonies.

94. The lack of data by ethnic identity is of the greatest concern. There is no State policy of having official information reflect the indigenous presence in the country and the situation in which these peoples find themselves. It is urgent to carry out censuses and to prepare statistical data which separately show the situation of the indigenous peoples. It is also essential for the design and evaluation of public policies to prepare specific statistics of the different spheres of actions of the State, especially in the health and education sectors. At the same time, the Government must promote the official use of the languages of the indigenous peoples in the provision of social services at community level, in the administration of justice and in the educational system.

95. In the education sector, discrimination against indigenous peoples is reflected in the lack of affirmative actions which tend to close the gap in the illiteracy and schooling indices between indigenous and non-indigenous peoples, particularly girls. At the same time, school is not conceived as a way to strengthen national unity and to transmit and develop the values and knowledge of all cultures, but rather as a way to integrate indigenous peoples into the Spanish-speaking culture, thereby detracting from the value of their languages and cultural values.

96. There has so far been no sign of any efforts to provide bilingual teachers to the educational centers located in regions where the indigenous population is in the majority. This influences the high school dropout and failure rate. The significant increase in

public expenditure in education has increased the coverage of the service, but its quality continues to be insufficient and does not favor the right of the indigenous peoples to bilingual and multicultural education. The efforts to promote affirmative measures as regards education and training and to broaden bilingual education are still insufficient.

97. Therefore, the Mission feels that it is urgent to implement educational reform which will permit broadening the coverage of education services in an adequate manner. To meet its objectives, educational reform must implement a true bilingual and intercultural education addressed at everyone of both sexes, indigenous and non-indigenous peoples and which will promote curricular transformation and teachers' training for those who are in the service. In all of this, account should be taken of the conclusions of the National Dialogue and Consensus on Educational Reform.

98. In regard to health, even though particular efforts stand out in some regions, it is necessary to overcome the scarce coverage in areas with a majority of indigenous peoples, as well as the lack of linkage of the national health system to the midwives, who see to the largest part of birth assistance. In the same manner, there has been a failure to implement health programmes targeted at the Maya, Garifuna and Xinca peoples, with emphasis on women, as contemplated in the policies of the Ministry of Health and Social Welfare, which would recognize the cultural specificities of those peoples and traditional medicine. The Mission feels that it is urgent to design and implement the National Plan for Indigenous and Traditional Medicine, while at the same time emphasizing the need for health personnel to work in essentially indigenous regions to speak the local languages. Likewise, we recommend that priority be given to the institutional recognition of midwives and their training by the Ministry of Health.

99. Justice is one of the public institutional systems where indigenous populations feel the greatest impact of racial discrimination, because of the limitations on their access to state justice and the non-recognition of their normative systems. Even though in recent years the Judicial Branch has made important efforts to create offices of Justices of the Peace in all municipal districts, great challenges still exist to build a system of justice to reflect the multiculturalism of the country. Among them, the use of cultural expertise, the dissemination of the juridical framework in effect, which recognizes the coexistence of state law and indigenous law, in the law schools and in the training units of the institutions of the system. This will allow the removal of doubts as to the validity of the right of the indigenous peoples to apply their own normative systems.

100. There is an urgent need to comply with the commitment to ensure coordination between indigenous law and state law. Likewise, very specific actions must be taken to implement a programme of continuous and permanent training of judges and prosecutors about the culture of the indigenous peoples, especially the norms and mechanisms which regulate their community life. It is also necessary to increase the number of

positions for interpreters in the judicial offices, so that there will be an interpreter available for each language spoken in the territory covered by each court. Bilingual officials should be distributed to the places where the indigenous language they know is used. It is also urgent to effect a reform of the curriculum of law schools, so that they will incorporate studies on the justice, values and procedures of the traditional standards of the indigenous peoples. Lastly, it is important also to develop glossaries of legal terms in the various languages as well as to improve their distribution and approval by the Judicial Branch. It is also necessary to increase the translation of the minutes and resolutions of judicial offices, as ordered by the law. Both aspects are essential for a better service and a rapprochement between state justice and the indigenous population.

101. Another of the core problems of ethnic discrimination is the difficulty in access to land ownership and to natural resources by the indigenous peoples, especially taking into account that this is the material basis for their sustenance and reproduction as a people. The fragmentation and loss of their community lands affects the organization and social relations in the communities, brings about overexploitation of natural resources, the deterioration of their traditional systems of production and labour migrations under inhuman conditions, internally as well as illegally to other countries.

102. The lack of a comprehensive rural development policy which contemplates the multicultural dimension results in a lack of attention to the provisions regarding the protection of indigenous lands, as established in Convention 169 of the ILO and by the Constitution. There has been no compliance with the commitments of the Peace Agreements to guarantee the possession of their communal lands, the development of legal standards that will facilitate titling and the administration of the lands according to the customary norms of the communities, and consider their hope of participating in the management and exploitation of natural resources. At the same time, the attempts by the State to promote an efficient institutionality in the agrarian sector are limited, principally because of the insufficient budget allocated to key institutions such as FONTIERRAS and CONTIERRA.

103. In their definition and implementation, the set of public policies whose purpose it is to foster and facilitate access to land and credit, to health and reproductive health, to access to housing, education, training and justice, must give priority to overcoming the inequalities which affect the indigenous peoples, particularly women. So long as mechanisms for the participation of the indigenous peoples are not integrated and institutionalized in each of the sectorial ministries for the design and implementation of public policies, we recommend continuing with the harmonization schemes started in 1997, through Joint and Specific Commissions, and following up the proposals submitted by them so they may become laws and agreed public policies. The international community must make greater coordination efforts so that its support of the multicultural public policies are more effective.

104. As to the exercise of citizenship, a high percentage of the indigenous population, particularly women, lack personal identification documents, which affects the exercise of their most elemental rights, including the right to citizenship. In addition, the political parties have not integrated a representative number of indigenous persons into their bodies. For this reason, the number of indigenous candidates to elective office is very small. Public administration has not incorporated a sufficient number of indigenous persons into management positions. This political exclusion has the consequence of maintaining de facto discrimination through public policies and institutional mechanisms.

105. The democratization and modernization of the State require that the Government and the political parties recognize the sociocultural specificities and organizational forms of the indigenous peoples, so they may be incorporated into institutional reforms, administrative decentralization and the institutionalization of the participation of the indigenous peoples at all levels.

106. The pending legislative agenda of the Peace Agreements presents an opportunity for the incorporation of multiculturalism into national norms. The Peace Agreements Follow-up Commission has submitted a prioritized legislative agenda which proposes the prompt consideration of the classification of discrimination as a crime, the approval of the reforms to the Municipal Code, the Law of Development Councils, the Decentralization Law, and the reforms to the Penal Code, among the most important from the perspective of indigenous rights and the multicultural State.

107. The Mission feels that it is urgent for the Congress of the Republic to attend to this priority legislative agenda, since it offers the opportunity to advance in the adaptation of national legislation to the country's multiethnic reality. At the same time, it is necessary to advance in the reform of the Broadcasting Law, so that it will facilitate access and use of frequencies for indigenous projects. As long as this commitment is not met, the suspension of the auction of radio broadcasting frequencies should continue.

108. As regards the commitment of the Government to promote the approval of the Draft declaration of Indigenous Peoples in consultation with indigenous organizations, the Mission urges the participation and active support of the new Permanent Forum on Indigenous Affairs of the United Nations.

109. The indigenous organizations also have an important responsibility in the promotion of compliance and implementation of the commitments of the Agreement on the Identity and Rights of Indigenous Peoples. Through the areas for participation opened by the Agreement, especially the Joint and Specific Commissions which are still operating, it is possible to articulate a minimum agenda which will mobilize the organizations of the indigenous peoples.

110. In view of the lack of a U.N. entity with a specific mandate on the subject of identity and rights of the indigenous peoples, it is suggested that in Guatemala an office of the U.N. High Commissioner for Human Rights be opened, which would also have the mandate to provide follow-up in regard to the rights of these peoples.

111. Lastly, we issue a strong appeal to the Government, to political parties, to the organized sectors of civil society, to indigenous organizations and to international cooperation to return to the peace agenda as a common platform for the construction of interculturality on the basis of recognition and respect for the multiculturalism of the Guatemalan Nation.
