

**REPORT
ORGANIZATIONS
OF INDIGENOUS
PEOPLES
GUATEMALA**

CERD

**A critical view on the application of
the International Convention on the
Elimination of all Forms of Racial
Discrimination in Guatemala.**

ANALYSIS OF THE APPLICATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION BY THE STATE OF GUATEMALA, SUBMITTED TO THE COMMITTEE OF THE UNITED NATIONS FOR THE ELIMINATION OF RACIAL DISCRIMINATION, ON ITS 76TH PERIOD OF SESSIONS, FEBRUARY OF 2010, BY THE **ASOCIACIÓN MAYA UK'ASLEMAL XOKOPILA'**, PROYECTO DE DESARROLLO SANTIAGO –**PRODESSA**, **FUNDACIÓN RIGOBERTA MENCHÚ TUM**, CAPITULO GUATEMALA DE LA PLATAFORMA INTERAMERICANA DE DERECHOS HUMANOS DEMOCRACIA Y DESARROLLO –**PIDHDD**, **ASOCIACIÓN POLÍTICA DE MUJERES MAYAS MOLOJ**, COORDINADORA NACIONAL DE VIUDAS DE GUATEMALA –**CONAVIGUA**, MOVIMIENTO DE JOVENES MAYAS –**MOJOMAYAS**- Y LA COORDINADORA Y CONVERGENCIA NACIONAL MAYA –**WAQIB' KEJ**.

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INTRODUCTION

1. To the honorable members of the Committee for the Elimination of Racial Discrimination of the United Nations (CEDR) we, the collective of indigenous organizations formed by the Asociación Maya Uk'aslemal Xokopila', Capítulo Guatemala de la Plataforma Interamericana de Derechos Humanos Democracia y Desarrollo, Proyecto de Desarrollo Santiago (PRODESSA), Fundación Rigoberta Menchú Tum, Asociación Política de Mujeres Mayas MOLOJ, COORDINACIÓN Y CONVERGENCIA NACIONAL MAYA, Waqib' Kej and its member organizations: Asociación de Investigación Desarrollo y Educación Integral -IDEI-, AGIMS, ASCODIMAYA, Asociación Ajkemab' rech K'aslemal, Asociación Ak Tenamit, Asociación Ceiba, Asociación de Mujeres Indígenas de Santa María Xalapan, Jalapa, -AMISMAXAJ, Asociación de Servicios Comunitarios de Salud -ASECSA-, Asociación Maya Uk'ux B'e, Centro para la acción legal de Derechos Humanos -CALDH-, Colectivo Juvenil Xinka Xalapán, Comité de Unidad Campesina -CUC-, Comunidades de San Juan Sacatepequez, K'amolo Q'i, Coordinadora de Mujeres del Ix K'iche K'amalb'e, Coordinadora Juvenil de Comalapa, Coordinadora Nacional de Viudas de Guatemala -CONAVIGUA-, Coordinadora Nacional por la Reforma Educativa -CNPRE-MOLOJ-, Defensoría Maya Chort'i' -DEMACH-, Movimiento de Jóvenes Mayas -MOJOMAYAS-, Asociación Indígena para el Desarrollo Comunitario – ASIDECO AQA'BAL- Asociación para la Defensa de los Recursos Naturales de la Zona Reyna, Unidad Indígena Campesina del Norte -UNICAN-, Coordinadora de Comunidades en Resistencia por la Madre Tierra de Maya Ixil de Cotzal, submit this report whose content was consulted with approximately 40 indigenous organizations¹, with Mayan and half-cast persons with experience and/or work with Indigenous Peoples, conversations and interviews with some public officials that attend issues related to Indigenous Peoples. We ask the CERD committee to take under consideration the indigenous perspective of the application, the State of Guatemala has done, of the International Convention on the Elimination of all Forms of Racial Discrimination.

2. This document contains an analysis of the XII and XIII periodical reports of the State of Guatemala about the situation of racial discrimination, in accordance to the application of the Convention and the recommendations of the CERD. It also includes considerations about how it has been applied by the State to prevent, sanction and eradicate racial discrimination in Guatemala.

3. We express our concern about the XII and XIII periodical reports by the State of Guatemala before the honorable committee, since they only focus on the work of some State institutions that attend issues related to Indigenous Peoples, whose budgets to function are insignificant before the poverty situation of such people and they do not submit substantial information on the eradication of discrimination and racism against Indigenous Peoples in Guatemala. We remind the committee the official report is a State report not a Government report, as many times is misinterpreted by the official report of the State of Guatemala.

¹ In the annex the participating organizations in the process of making this report are listed.

I. CONTEXT

4. Discrimination and racism by the State of Guatemala has been given since its conformation and conception. The Commission for Historical Clarification states “racism, as ideological expression of colonization and subordination, has its origins in the Hispanic invasion. At that time they tried to justify the oppression and exploitation of the Mayan people based in racial concepts and by showing that act of territorial and political plundering as “a redeeming and civilizing venture”. That moment deeply marked Guatemalan history because, if at the beginning the Spanish consider themselves biologically and culturally superior, that guideline was followed by the creoles and afterwards by the half-casted. The history of the country shows that forms of subordination and exclusion originated by the Spanish invasion have been kept until today. The colonial State first and the republican State after – controlled by the creoles and, afterwards, by and elite half-casted minority, were instituted over a society in which the Mayan people have occupied the last place. As a part of a model of segregation, the colonial regime established a separation, not only socially but geographically, between people from mainland Spain and creoles on one side and the indigenous population on the other: each social group should reside in different places. This separation was recognized in the West Indies Law by the terms of “the republic of the indigenous and the republic of the Spanish”. To maintain this segregation, the people from mainland Spain and creoles were prohibited to live in the reductions or indigenous towns, although such prohibition was violated later.”²

5. In this context, they have used the legislation to impose an excluding State. A clear example is the Political Constitution of the Republic when it refers to education. If we ask ourselves, Does education responds to principles and values, cosmovision, language, history and the way of seeing and understanding the world by the Indigenous Peoples? The answer is a definite NO. Not only because racism is deeply embedded in the structures of the State and society, but because the constitutional dispositions are developed in such way that they represent decisive formal obstacles. Let see the topic of education, regulated obviously in the Political Constitution of the Republic, as well as other big topics such as health, language, justice, etc; they faithfully answer to a form of State exclusion. In the article 71, dealing with the right of education, it states that the freedom of teach and teaching criteria are guaranteed, but in the article 72 it is regulated that the goals of education are the integral development of the human being and the knowledge of the national and universal culture and reality. Up until now, one could think about the possibility of a proper and autonomous education based in the principle of freedom of teaching, but in the article 73, the same Constitution, dealing with freedom of education, states that **all private educative centers will function under the supervision of the State, and they are obliged to fulfill at least, the official study plans and programs. Obviously, the state centers, as a must, should also fulfill the same official plans and programs.** Where is the freedom of teaching and the teaching criteria? - Maybe, only in the way of teaching the different subjects, the way of explaining; but always under the yoke of the official plans and programs.

² Guatemala Memory of Silence, CEH paragraphs 14 and 15.

6. The State of Guatemala does not have the intention to change the situations described before, which is evidenced with the fact that after twenty three years after it adopted the International Convention on Elimination of all Forms of Racial Discrimination CERD -, it has implemented only a few of the commitments. This lack of interest worries us the indigenous organizations specially, when there is a non-compliance of the recommendations expressed to the State of Guatemala by the Committee against Racial Discrimination of the United Nations to make the Convention viable; since only 4% of such recommendations have been fulfilled³ between the years 1994 and 2007⁴. The years 2008 and 2009 respectively, do not reflect any difference in this sense.

7. They have not fulfilled with important recommendations, such as the inclusion of separated and updated statistical data about Indigenous Peoples and African descendants. There is no data in the State report and neither there are actions by the National Institute of Statistics to fulfill this recommendation. The Gender and People Office has not been given the importance to materialize the guidelines related to gathering specific data on Indigenous Peoples⁵.

8. The “official” report of the State of Guatemala, in which Legislative and Judicial Branches did not participate, was made by the **Presidential** Commission Against Discrimination and Racism Against Indigenous Peoples of Guatemala -CODISRA-, with technical assistance and consultancy of the United Nations Office of the High Commissioner for Human Rights – OACNUDH⁶-, when talking about measurements aimed to eliminate apartheid quotes, on paragraph 142, the article 4 of the Political Constitution of the Republic that establishes the right of equality: *“In Guatemala all human beings are free and equal in dignity and rights. Men and women, whatever their civil status may be, have the same opportunities and responsibilities. No person could be submitted to servitude or any other condition that diminishes his dignity. Human beings should keep fraternity among themselves.”*, however obvious, and perfectly knowing it, the absolutory sentence on a discrimination trial of a court, in which such court states that “dignity is not a right but something inherent to a human being, we could analyze if in this case the Right of Equality of the offended was violated”⁷. This case refers to a person who suffered expressions such as *“Son of a bitch Indio (Amerindian), bastard, trash... ignorant little Indios”*⁸.

³ This 4% only constitutes two recommendations fulfilled: the adoption of two instruments: the ILO 169 Convention and the National Policy against Racism.

⁴ The office of the High Commissioner for Human Rights. The recommendations of the Bodies of Treaties to Guatemala. Evaluation of the non-compliance of the final observations issued by the bodies of treaties of the United Nations to the State of Guatemala between 1994 and 2007, Guatemala, 2008, page 2009.

⁵ See annex IV, administrative report.

⁶ It causes surprise to see the United Nations Office of the High Commissioner for Human Rights involved in making of the official report, when its function is to watch over the unrestricted fulfillment of the Convention, instead of taking an indulgent attitude towards the State of Guatemala to conceal the true reality.

⁷ <http://www.lwfcamerica.org/?art=1232&lang=es&tittle=Impunidad%20en%20caso%20de%20discriminaci%F3n%20racial%20contra%20miembro%20de%20FLM>

⁸ See Annex II, legal and judicial thematic report. Case of José Antonio Cac.

9. This example serves to illustrate the partiality of the “official” report, in which only small “victories” are mentioned, almost all of them in the form of public policies, executive and ministry orders that do not lead to eradicate racism and do not confront it directly, since they constitute formal and not substantial progresses. In other words, they are good will declarations that are not accompanied by operative plans that allow their real implementation; hence the official report does not show any measuring and verification mechanisms on how these actions have contributed to the eradication of discrimination and racism. Discrimination and Racism are established in the pillars of the State and it is there where they should be attacked. However, two of them, the Legislative and Judicial Branches, keep silence in such “official” report, when they have a fundamental and main roll in the implementation of the Convention that is the object of this report.

II. SITUATION OF DISCRIMINATION AGAINST INDIGENOUS PEOPLES IN GUATEMALA

10. Indigenous Peoples are suffering the worst effects of the capitalist system and its neoliberal policies which is manifested through the devastation and plunder of the natural goods of Mother Earth, favoring mercantile interests of national and transnational companies with the acceptance, consent or promotion of the State. We the Indigenous Peoples are suffering the grave and worst impacts resulting of the highly polluting activities such as mining, hydroelectric, oil and mono-farming, that attempt against human and environmental health and consequently against the life of Mother Earth and of Indigenous Peoples.

11. Our cosmovision as Indigenous Peoples is based in the harmonic and holistic relationship with all the elements that form our Mother Earth, in which human beings are a part of but not controls or owns it. The environmental and structural racisms perpetuated by the State of Guatemala against Indigenous Peoples is destroying the life and existence of such people, through the grant of concessions to exploit our Natural Resources, as an example we can mention that currently there are 459 concessions (259 to exploit, 136 to mineral exploration and 64 hydroelectric projects among others). All of them located on indigenous territories. These megaprojects are generating disastrous cultural, social and environmental effects for our Life and Mother Earth.

12. In Guatemala the gender, ethnic and social-economic gaps can be observed, which have a major negative impact in the rural areas of the country, specially, among indigenous women.

Racism and structural and institutional discrimination against Indigenous Peoples have as a result, a context of a country characterized by inequality and social exclusion. In numbers recognized and accepted in governmental spheres⁹ shows that “out of the total population, 56.19% of Guatemalans is poor and 15.59% is extremely poor. Poverty in Indigenous Peoples is 74% and poverty in half-casted persons is 38%. Likewise, 2% of the population owns 90% of the

⁹ ENCOVI 2005

national territory, the 10% remaining is divided among 98% of the population as a consequence of the expropriation since the colony, of the land that historically belonged to Indigenous Peoples. This plundering has been perpetuated with other modalities in favor of national and transnational companies.

13. Most of these unequal situations have their historical and structural roots that have limited the exercise of the individual and collective rights of women, specially the indigenous women in rural areas. Likewise, political participation and civic exercise are framed in patterns and regulations that are not favorable for indigenous women and people, therefore they have carried out organizational processes to demand their civic and political participation; they have also promoted processes to influence in the political policies that can favor the search for equity and equality in integral development.

14. We can find an example of these existing inequalities and of the little or null support from the State to the demands of Indigenous Peoples; derived from the commitments assumed by the Peace Agreement, in current XXI century, the Congress of the Republic of Guatemala has carried out two reforms to the Election and Political Parties Law, that were called reforms of first and second generation (Decrees 10-04 and 35-06), that excluded the proposals made by the indigenous and women organizations in particular¹⁰. These proposal included reforms to increase the participation of women in general, in positions of popular election and, in consequence, to have more women occupied public official positions. An example of political exclusion is that the only mechanisms of electoral participation in the municipal ambit, called civic committees, in the new Election and Political Parties Law, demands a greater number of affiliates, not to reuse a symbol in the next election event and more formalities, besides they did not accept that civic committees could have a candidate running for congressman.

III. APPLICATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

Article 1

15. On regards to this article, the “official” report mentions a no end of public policies and executive orders, the Ministry of Culture makes more emphasis to “folkloric” issues than to other with greater importance, among them emphasizes the ***Executive Order 22-2004. National languages or bilingualism*** that establishes that bilingualism is mandatory in national languages as a national linguistic policy and the generalization of inter and multiculturalism. Once again we insist in how fallacious the official report is, since they are stating as an accomplishment something that it is non-executable, since the Constitution of the Republic establishes that the

¹⁰ **Asociación política de mujeres Mayas Moloj, Coordinación y Convergencia Nacional Maya Waqib’ Kej, Convergencia cívico político de mujeres**, among others. In the year 2009, the Asociación Política de Mujeres Mayas Moloj y Convergencia Cívico político de mujeres, propose the modification of the Decree 1-85 of the National Constitutive Assembly, Election and Political Partries Law, which is registered under the law initiative 4088 of the Congress of the Republic of Guatemala. This initiative proposes, among other things “...the list of candidates to run for popular election positions shloud equally include indigenous, half-casted or mestizo women and indigenous and half-casted or mestizo men, in proportional way to the composition of the corresponding election district...”

official language is Spanish, and the other languages are branded as vernacular tongues¹¹, besides when they refer to bilingual education is more of a preference than an obligation.¹² Therefore this Executive Order will remain, as so many, as a mere declaration of good intention.

16. On the other hand, in formal terms, on October of 2006 the State of Guatemala approved the Public Policy for Coexistence and the Elimination of Racism and Racial Discrimination, with the objective of implementing the actions oriented to the construction of a plural State through the identification and elimination of the mechanisms of racism and discrimination; which pretends to contribute to the transit from an homogenous and mono-cultural State to a plural State, with the purpose of Indigenous Peoples, social-cultural groups and citizens not having to suffer any type of racial discrimination or economic and social exclusion; and they feel recognized with equal civic rights coming from their culture, ethnic group or gender.

17. It is satisfactory that within this public policy Indigenous Peoples are recognized as individuals in title of rights. Nevertheless, in the course of the operative matrix, only punctual references are made to some collective rights specially, on regards to cultural and political rights. The possibility to restore territorial rights is left in ambiguous schemes or, in its case, will force to extensive interpretations of the suggested strategic actions in the Social-economical core, with that, the negotiations of the Indigenous Peoples with the State would be subordinated to this interpretations.

18. The aforementioned policy has as a main difficulty, and it is the fact that it does not establishes which institutions are responsible to execute each one of the defined strategic actions and the determined goals according to competency, under an integral concept of the institutions of the State (ministries, secretaries, autonomous and decentralized institutions) independently of the responsibility that falls on the Presidential Commission against Discrimination and Racism (CODISRA), that will even see its capacity of inter-institutional coordination limited by this reason. It does not solve this weakness announcing that CODISRA will coordinate the priority actions with the Social Cabinet presided by the Vice-Presidency of the Republic, which is an attribution of general and abstract responsibility.

19. Within the difficulties of the aforementioned policy is the one that does not establishes its own budget base for the implementation as well as monitoring and evaluation. Likewise, the source of financing of each one of the strategic actions and corresponding goals is not established. Part of this problem would be solved if the responsible institutions for each strategic action and goal are specified, since the programmed base of the general budget of incomes and expenditures of the State is generated by the executing entities on the base of their own competency. CODISRA is not an executing entity.

20. Another difficulty for its fulfillment is that a temporal framework for the implementation as a policy, and each one of the strategic actions and goals is not established. Such policy is subordinated to the operative programs and is not an essential condition that guarantees its

¹¹ **Article 143.- Official language.** The official language of Guatemala is Spanish. The vernacular tongues are part of the cultural patrimony of the Nation.

¹² **Article 76. Educative system and bilingual teaching.** The administration of the educative system must be decentralized and regionalized. In schools established in zones of predominant indigenous population, teaching shall preferably be bilingual.

fulfillment or enforceability in a determined period of time. Before the vagueness of this temporal framework, it is hard to know when the anticipated cycle for its implementation and the general evaluation of results are to be expected, which will facilitate its validation or, in this case, its renovation for other similar period of time, in the understanding that the elimination of racism and discrimination require timely processes.

21. On the other hand, regarding the fulfillment of Article 1 per se, it is relevant to have an active participation of Indigenous Peoples in the decision on how the supreme goal of the State is to be carried out, which is the common good. Hence the need to have more people that belong to the different linguistic communities in the country, involved in the executive branch with power quotas, to guarantee the exercise of the fundamental rights. However, the current government has gone a step back in this aspect since there is only one indigenous official with the category of Ministry of State.

Article 2

22. In the alternative report of the civil society named “*A Look from the Indigenous Peoples of the application of the International Convention on Elimination of all Forms of Racial Discrimination*”, it was denounced that the “*Congress of the Republic does not show any legislative decree that has the amendment or abolishment of laws and/or statutory disposition that create or perpetuate racial discrimination as a goal*”¹³ and it was exemplified with several articles of the Guatemalan ordinary legislation¹⁴, how and in which way racial discrimination is perpetuated and becomes apparent in its heart. After four years of such statements we can say and assure they are the same again. The State of Guatemala, through its institutions and public officials, has categorically unfulfilled this disposition by confirming that in the Congress of the Republic are no law initiatives in that sense.¹⁵ Quite the contrary, the law initiatives at Congress are the result of the effort of organizations and institutions of civil society, which with luck, will increase its files or will end up in the trash can.

23. By ratifying the Convention concerning Indigenous and Tribal Peoples in Independent Countries –Convention 169- of the International Labor Organization, Guatemala assumed the obligation to consult with the interested peoples, through appropriate proceedings and in particular through its representative organizations, every time administrative and legislative measures are foreseeing that affect them directly. Being a State obligation, the three branches of

¹³ Paragraph 17, page 7, of the report “A Look from the Indigenous Peoples of the application of the International Convention on Elimination of all Forms of Racial Discrimination”

¹⁴ “Article 53 - They cannot be witnesses: 1. Illiterate people or people who cannot speak or understand Spanish...” (**Title V, witnesses, Notary Code**). “Article 164 - Domestic work is not subject of schedule or the limitations of the working day...” (**Chapter four, Domestic work, Labor Code**) “Article 139 - Agricultural and ranching work of women and minors is considered complementary and subordinate to the head of the family...” (**Chapter one, Agricultural and ranching work, Labor Code**) “Article 11- Language of the law. The official language is Spanish...” (**Title I, Chapter I, Fundamental precepts, Law of the Judicial Branch**). Although the Constitution of 1985 recognized the indigenous communities in articles from 66 to 70, the State has not enacted a specific law that rules the chapter on indigenous communities. Paragraph 17 of the report “A Look from the Indigenous Peoples of the application of the International Convention on Elimination of all Forms of Racial Discrimination”.

¹⁵ This statement is based in the list of Legislative Decrees published by Congress of the Republic on its internet website: www.congreso.gob.gt

government must see they are fulfilled. The administrative bodies that should be see their fulfillment are: Ministry of Energy and Mines, Ministry of Environment and Natural Resources, Ministry of Health, Ministry of Culture and Sports who, contrary to the international treaties and conventions have favored and privileged mercantile companies in clear violation of the Rights of Indigenous Peoples. Before the destruction and plundering of the Natural Resources, we the Indigenous Peoples have adopted measures from our own forms of organization, and protected by the National and International legislation on Human Rights of Indigenous Peoples **we have carried out 42 good faith community queries** in which the result has been a categorical rejection of such projects, however the State violates the Right of Query declaring it NON-BINDING through the Constitutional Court and he continues to granting Indigenous territories.

24. Up until now, the State of Guatemala has not taken the necessary measures to recognize and protect the right of indigenous peoples to own and protect their land and territories. Neither they have adopted measures to give back the land in the cases where indigenous peoples have been deprived of the land and territories that traditionally belonged to them; or when that land and those territories have been occupied or used without the free, previous an informed consent of the affected indigenous peoples.

25. Meanwhile, the current judicial insecurity on regards to the ownership of the land keeps causing damages to the collective interests of indigenous peoples. This is because this type of traditional ownership and possession of the land is not recognized in the law, that opposes the formalities and registration and tax obligations the state law has instituted. Such lack of recognition has favored and established a justification to the plundering the indigenous peoples have suffered since memorial times and still occur with total impunity.

26. On regards to the subject of watching over all the public authorities and institutions, local and national, so they can act according with the obligation of committing no acts of discrimination; this is another task the State of Guatemala has pending. For this effect we have the case of graduate Cándida González Chipir, who was the vice-minister of Labor. She was victim of three acts of discrimination by three government employees of the Ministry of Labor. In this case, penal proceedings were carried out that ended up in a conviction sentence¹⁶. This case was characterized by several obstacles, as an example the three years it took.

27. Out of the judicial ambit, there are also aspects to underline. The fact that the victim of this crime reported the discrimination caused public reactions against the complainant in the workers union of the Ministry of Labor (all public officials): *“In the bulletin they stated that I should be preparing “chuchitos” (Guatemalan traditional home made street food), instead of complaining and that I should be thankful for the opportunity they gave me”* stated Cándida González. Despite these declarations went public nothing was done about it. Among the public policies on regards to Indigenous Peoples, which the XII and XII Periodical Report of the State of Guatemala makes reference of, there is no evidence to keep public officials from committing acts of discrimination. Not even in the public Policy on coexistence and elimination of racism and racial discrimination is contemplated the participation of public officials as a way of viability of such policy, even when sometimes these persons are who limit the exercise of rights of the

¹⁶ Penal process No. 41-2008, Penal Sentence, Narcotics and Crimes against the Environment Court, municipal of Coatepeque territorial division of Quetzaltenango.

indigenous peoples, like the case of Cándida González, who was discriminated by three public officials of the Ministry of Labor just for being an indigenous woman.

28. Likewise, we can mention the cases of the National Institute of Statistics, National Registry of People, Migration General Direction, to mention only a few examples, where what we can call “*computer racism*” has occurred. In these institutions the right to an identity is not allowed, because with the excuse the system does not allow it, the registration of Mayan, garifuna and xinca names has been impeded, and also they have hindered such persons to be recognized as Mayan-kiches, Mayan names, garifunas, etc¹⁷.

29. In the year 2005 the Law of the National Registry of People was created, whose activities among other are the registration of all the civil acts of people, such as births, registration of marriages and obtaining the Sole Document of Personal Identification. This was the function of the municipalities up until June of 2009. Within the legal framework that creates this entity, the need to incorporate the membership and self-identification Indigenous Peoples have, was not established. As an example, the Xinca Parliament has reported when they go to get their DPI, the staff from RENAP automatically identifies them as ladino and they do not attend their request to have their identity as Xincas to be respected¹⁸.

The Garifuna people are facing the same situation, since several members have refused to register themselves at the National Registry of People (RENAP) since they are not identified as Garifuna, as Mario Ellington, member of the Black Organization of Guatemala indicated.¹⁹ For the Mayans this has been also an obstacle, for example if somebody is from the K'iche people, the field of ethnic background in the DPI recognizes ladino or indigenous only.

Article 3

30. The Decree 65-90 from the Congress of the Republic gives life to the Mayan Language Academy of Guatemala. In 1994 the State of Guatemala creates the Indigenous Development Fund of Guatemala – FODIGUA, through the Executive Order 435-94. What inspires its creation is the “*obligation of the State to issue regulations and dispositions oriented to promote the social and economical development of Indigenous People of Mayan descent and to serve as a technical and financial mechanism to find solutions they face*”. The Indigenous Women Defense Office was created through the Executive Order 525-99 in the year 1999. Nowadays, it depends directly from the Presidency. Recently, in the year 2002 the Presidential Commission against Discrimination and Racism against Indigenous Peoples was created through Executive Order 390-2002. The four entities are part of the executive branch and the only one that is permanent by law is the Mayan Language Academy, the other three could disappear at any time by order or will of the President of the Republic. With these weak institutions, they pretend that Indigenous Peoples find solutions to the problems they face. In other words, the State separates itself from its obligations, creating entities without financial, technical and decisive capacity; just to pretend they care about the Rights of Indigenous Peoples²⁰.

¹⁷ See annex IV, Article 5, personal security.

¹⁸ News Agency CERIGUA, October 14, 2009.

¹⁹ Ibidem, November 19, 2009.

²⁰ See annex III, administrative report, annexes budget FODIGUA.

31. In accordance to some definitions, when “a different treatment is impose to a group of people in various aspects of life”²¹, when a distance is created or increased between something or someone and a person, we are before acts of racial segregation. Racial segregation does not lead to participation but to isolation. Marginalization and exclusion are encouraged. If FODIGUA was ordered to promote the economical and social development of the Indigenous Peoples of Mayan descent (only), with a budget of 20.2 million of a total of 42,535.5 million quetzales²²; and to solve with it the problems they face (Mayans). Wouldn’t that encourage a differentiation among indigenous groups first and then with the rest of the population, in terms of access to public services? We would have to ask the same question in the case of the Indigenous Women Defense Office that is created to take care of the legal problems indigenous women may encounter and to solve such problems with a budget of Q 15,255,969.00²³. Likewise, when the State Ministries and Vice-Ministries only have an indigenous person in positions regarding Indigenous Peoples (which is correct since he would know the needs of the indigenous peoples and how to fulfill them) but other spaces of greater decisions or incidence are restricted. For example, in the Public Administration, the highest position an indigenous person has reached is Minister of Culture and Sports, besides that Vice-Minister of Bilingual Education, Director of Secretary of Peace and Presidential Commissioners.

32. In the current administration they pretend to create the Presidential Secretary of Indigenous Peoples, which brings with it the continuous separation of the Indigenous People from the rest of the population, but generates discomfort among them. As an example, a note about this initiative: *“With the intention of opening spaces to the native people that survive in marginalization and misery, the government of Guatemala announced last Monday the creation of the Presidential Secretary of Indigenous Peoples and the regulations of the Law of National Languages...the public official gave the proposals to Vice-president Espada in a special act in the National Palace of Culture and regretted the indifference of previous administrations to recognize the importance of native people that represent 42% of the 13 million habitants...”* “The importance of culture for our country has never been recognized (...). Before, teaching a person to talk in native language was forbidden, now it could be a reality” said Vice-president Espada...“The time of recognizing that indigenous culture is a main and central part of the development of Guatemala has arrived”, *added...As an epilogue, the indigenous celebrated both proposals with the dance of the deer, one of the rituals recognized in the country, which was liven up with a leather drum and the sound of chinchines (maracas)...In Guatemala coexist 21 Mayan indigenous peoples, each one of them with its own language. Also the garifunas from the Caribbean and the xincas have their own languages. Spanish is the official language that is spoken in schools and universities.”*²⁴.

Article 4

33. The State of Guatemala considers that in order to fulfill article 4 of the convention, that is “take immediate and positive measures directed to eliminate any provocation to such

²¹ Great Universal Encyclopedia Espasa Calpe, volume 32.

²² Ministry of Public Finances, Project of Budget for the tax year 2009, page. 10.

²³ Indigenous Women Defense Office, Management report, 2009, Page. 23.

²⁴ Agency AFP, March 31, 2008.

discrimination or acts of such discrimination”²⁵, it is enough to include in their report a list of diverse legislative measures, which mostly are “pending law initiatives or required reforms”²⁶ or “pending initiatives of the recommendations of the CERD committee”²⁷. However, none of these laws, projects of law or initiatives are directed to eliminate discrimination and racism; which is considered by the indigenous peoples as a repeated and systematic way non-compliance of the recommendations of the CERD committee. Likewise, the initiatives that somehow are related to indigenous peoples have been kept away and left as non-transcendental initiatives, like the initiatives for community radios, queries to indigenous peoples and others more.

34. There is no record of any action the State is implementing to avoid the reproduction of stereotypes that favor racial discrimination; even less watching over the media to avoid they incur in this behavior. The quantitative report of June 15 to December 15 of 2008 (report 5) “Presence of indigenous women on written press” from the Observatory on Racism in the Media²⁸ analyzes that some editorials show negative postures about indigenous peoples. In the columns of opinion, authors write with some autonomy and some of them show extreme degrees of racism and rejection to the indigenous people. The subjects of maternity and reproductive health are treated sometimes as exclusive of indigenous women, they insist in male chauvinism in Mayan culture, which causes those problems, separating structural causes of relations of power and racism from the State. The speech of the media show women as passive, not knowing their own reality, living in total ignorance about their social being, the problems are concerns that come from external factors, because they cannot recognize them by themselves²⁹.

35. The media also shows the “problem” that represents to the country the practice of indigenous languages, because according to their information, it keeps being a problem to the development of the population, specially indigenous women; without the intervention of the State, a call of attention, or any action directed to eradicate the reproduction of discriminative or racist stereotypes and ideas. Nowadays it can be confirmed in the media a massive reproduction of ideas that favor superiority conceptions, negative differentiation, stereotypes, etc. This is the case of the television show called “*Moralejas*”, in this show we can hear and observe two men “dressed as indigenous”: headscarf, hat and sandals on their feet, careless look, sitting on a sidewalk with an informal fruit sale post. You can hear they have a conversation in a bad Spanish. With this type of programs, the idea of indigenous people can only have an informal job is spread, and they cannot aspire to have a college education; and that is normal to mock indigenous people because they cannot speak Spanish. Undoubtedly, this also brings the idea of differentiating one group from the other, putting indigenous peoples on an inferior situation of those who are not. The supervising entity in this case, the Ministry of Communications, Infrastructure and Housing, or through the General Directorship of Broadcasting and Television, has not taken any actions, neither CODISRA, who has to watch over the eradication of discrimination in its different expressions.

²⁵ Art. 4 CERD

²⁶ See Annex II, legislative and legal measures.

²⁷ State Report pages 40-42

²⁸ www.racismoenlosmedios.com

²⁹ See the report of the Linguistic Institute of the Rafael Landívar University, annexed to this report.

36. The justification of this inactivity could be the freedom of speech the State has to respect; however as any right, this is not absolute and it has its limitations; which in this case is the fulfillment of national and international norms that prohibit the reproduction of stereotypes that lead to put a great part of the population on a level of inequality.

37. Even though formally and publically we do not know any organization created with racist goals, or any organization that carry out any propaganda that promotes or incites racial discrimination out in the open, we consider that political parties are the structures that manipulate or reify by force or deception indigenous conglomerates with election purposes out in the open. The State does not have any mechanism to supervise and/or penalize these practices even more it also uses the “transportation” of indigenous persons with propaganda or support goals, including the executive branch.

38. This situation is not approached by the State institutions or by the media, which carries the idea that using the indigenous peoples does not constitute any violation of rights, contrary to what happens with the legitimate mobilizations of indigenous organizations, which immediately are criminalized and labeled as terrorism, a violation to the freedom of locomotion; or object of polls. This situation can be exemplified by a poll conducted by one local news program of Guatemala. In the week of October the 19th to the 23rd of 2009, Notisiete carried out a poll with the following question:

Do you agree that social and rural organizations block roads and city streets to demand for solution of their demands?

This type of polls are channelized as strategies from the media to justify the criminalization and repression against the social struggle and indigenous communities, using the system to justify the repression on the movement and peoples and to keep feeding the stereotypes of racism and discrimination as well as the difference between rural and city folks.

Article 5

39. Guatemala is considered as part of one of the regions with mega biodiversity of the planet. As an example we can mention that it is one of the 25 countries with the biggest tree diversity (1154 species of trees and 153 are in danger of extinction) and it has more than 3000 currents of water; which have been anciently preserved by the Indigenous Peoples, however the State has promoted grants, through “development policies” that are not in accordance to the vision of the Indigenous Peoples, to national and transnational companies with mercantile interests, for the exploitation of the natural resources mainly in territory of Indigenous Peoples, without their full query and consent, showing institutional, environmental and legislative racism by this.

40. The justice system is characterized by being racist and excluding, which is evidenced through the penal persecution, criminalization and sentence of men and women leaders that defend their territory, life and Mother Earth before the promotion of megaprojects (hydroelectric, mining, oil, mono-farming, etc), as well as the legitimate fight to have access to the land. This is the case of the Q’eqch’í indigenous leader Ramiro Choc who was sentenced on March 26 of 2009 to 150 years of jail and a fine of Q 2.6 million in damages. Likewise the orders for the arrest of 8 Mayan Mam women that have resisted the exploitation of gold by the Canadian company Montana Exploring in their territory and the Mayan Kaqchikel leaders of San Juan Sacatepequez

that fight against the installation of the company MINCESA.S.A and the cement company Cementos Progreso.

41. The State has refused to conduct serious, scientific and technical studies of environmental and cultural impact of projects granted for the exploitation of natural resources in indigenous territories. Even the procedures have been directed to favor national and transnational companies and they have led to:

42. To ignore and make invisible the presence of Indigenous Peoples where grants have been given. This is the case of the project of the company Cementos Progreso in San Juan Sacatepéquez in which the study of Environmental Impact includes two communities only, but in fact is directly affecting 12 communities and more than 60,000 Mayan Cakchiqueles brothers; and the hydroelectric project Xalalá which mentions there are no habitants for that region, and it will affect 18 communities and 2,328 Mayan Q'eqchis brothers.

43. They do not consider the biodiversity the country has and some species are even in danger of extinction. That is why it does not make sense to have the State destroy the few natural shocks to fight the climate imbalance that is affecting humanity, like droughts and hurricanes. This only increases the vulnerability of the Indigenous Peoples by the destruction of Mother Earth.

44. The projects to be promoted in territory of the Indigenous Peoples cause severe impacts in the life and culture of the Peoples, they mainly disturb the harmony and coexistence of the population and their relationship with Mother Earth, they destroy sacred places where the Indigenous Peoples keep a strong spiritual bond, they generate forced migration and displacement of the communities, among other effects the promotion of the exploitation of Natural Resources entails.

45. The State has the obligation to guarantee the development of people; however, this does not imply the citizens to be passive in its achievement. They got to have an active roll in the social, political, legal life of the State they belong to. International and national instruments establish that all citizens of a country have the right to participate in the spheres of power of the State in equal conditions. Nevertheless, when Guatemala entered the democratic arena in 1985, there have been 400 ministers of State, and only five of them have been Mayans, which is only 1.25% in terms of representation. This situation worries the CERD committee and they recommended to the State to *“redouble its efforts to assure the full participation of the indigenous, specially of indigenous women, in public affairs and to take effective measures to ensure that all indigenous peoples, specially xinca and garifuna, participate in all levels”*. This obligation and recommendation has not been viable since the current administration has only included 3 indigenous officials out of 51.

46. The State of Guatemala has as fundamental goal the execution of the common good, which implicates the protection of people through the respect of their fundamental rights as individuals and as a collectivity; for which it organizes itself in such way that it could guarantee the right of life, freedom, justice, security peace and integral development of people. Two aspects to achieve the aforementioned rights are **education** and **health**.

47. **Education:** In the generated observations after evaluating the report of the State of Guatemala, submitted in the year 2006. The CERD committee indicated that *“it worries them the*

high illiteracy rate of the indigenous population specially, in rural areas which is formed of 65% of women. It also worries the committee the low rate of assistance of the indigenous population, specially children and young indigenous women, at the primary level”, to that effect “it encourages the State to begin short and medium term actions to implement measures that lower illiteracy among children and indigenous women in rural areas specially. In this sense, the Committee recommends the State to duly fulfill with the educative reform with cultural pertinence curricula taking under consideration the Agreement on Identity and Rights of Indigenous Peoples”. Nowadays, from every 10 illiterate persons 6 are indigenous; 53% of indigenous people between the ages of 15 and 64 know how to read and write; 23% of indigenous children have no degree of schooling; 2.9% of indigenous men has attended the university at some point before the 9.3% of non-indigenous men; 0.3% of indigenous women has attended the university before 5.9% of non-indigenous women; 22% is the coverage of bilingual education; 260 thousand kids have access to classes in the main languages; 7500 teachers are bilingual³⁰. For the case of indigenous women, is graver since 87.5% is illiterate; only 43% finishes the primary level; 5.8% reaches middle school and 1% undergraduate school³¹.

48. Health: Historically, indigenous peoples have been excluded of the coverage of health by geographical, language and acceptance motives. Nowadays, this situation has not changed, for example in the year 2008, it was established that the *territorial divisions with more indigenous population coincide with those with the highest maternal mortality. In Alta Verapaz, Huehuetenango, Sololá and Totonicapán, where they have the highest rate of death of women giving birth, has between 76 and 100 of indigenous population. If the national rate of maternal mortality is 153 for every 100 thousand births, in these areas reaches 200 or even more*³². According to the Ministry of Health, only 10% of its personnel speak a Mayan language.

49. To finish this section, the article 5, letter f, indicates “right to access all places and services assigned for public use, such as transport, hotels, restaurants, cafes, parks and shows” However, there have been countless cases of limitation of the right to access places of public use against indigenous people. Since the year 2002, when the crime of discrimination was typified, a door was open to denounce these events. More than 20 cases have been submitted to the Public Ministry about this situation³³. In the present only one of these cases has finalized with an abridge procedure, an oral and public debate and not a sentence. Most of the accused hide behind the right of property and for this right they can reserve the right to refuse admission to anyone, without taking under account that their establishments are public and the Political Constitution of the Republic also recognizes the rights of freedom and equality. Nevertheless, Guatemala as a subscriber of the CERD Convention has not take administrative measures to sanction those who exercise the “right to refuse admission” against national and international norms.

³⁰ www.aecid.org/aecid/index.php?option=com_content&view=article&id=21&Itemid=37, 15 de enero de 2010.

³¹ Defensoría de la Mujer Indígena, Informe de Gestión, 2009, pág. 7

³² Prensa Libre, 29 de mayo de 2008

³³ Unidad de Informática del Ministerio Público, 2007

Article 6

50. On regards to this disposition of the convention, in their most recent observations³⁴, the Committee for the Elimination of Racial Discrimination (study of the periodical reports 8th to 11th of Guatemala), issued in March 2006, reiterated “... its concern for the difficulties of access to justice of the indigenous peoples, specially for the lack of acknowledgement and application of the indigenous legal system and the lack of enough appointed competent interpreters and bilingual defense officials in the legal procedures (art. 5a)”. Likewise, “... they reminded the State part of their general recommendation 31 about the prevention of racial discrimination in the administration and operation of penal justice (paragraph 5e) of the section B, which urges the State to keep the respect and acknowledgement of the traditional systems of justice of the indigenous people, according to the international norm on human rights.”, recommending “... to guarantee the right of the indigenous to use interpreters and appointed bilingual defense officials in the legal procedures”³⁵

51. The legal system of Guatemala lacks of an adequate system of legal interpreters and bilingual judges and the discriminative treatment to indigenous, when they demand the services of the institutions of the system continuous to happen. It continues functioning, in the best of cases, with isolated and superficial actions under the modality of programs and project, conditioned to the technical and political support of the international cooperation. Even worse, the legal system has not been able to institutionalize the aforementioned programs and projects and to implement the parallel actions this implicates (re-engineering, budget assignment, training, etc). We can conclude by manifesting that is essential justice becomes a real right and that is urgent the legal system deeply approaches its criteria, design and structure from the socially diverse view of the country, with the goal of fighting back the discriminative practices towards indigenous peoples and their members, and in this way totally fulfill the Convention. In regards to the actions of acknowledgement and application of the indigenous peoples own legal system, even more complex than the access to justice culturally pertinent, the State does not register any concrete action result of a public policy.

52. On 2009 CODISRA, DEMI y OACNUDH launched a second campaign focused to the rights of indigenous women. Unfortunately the campaign could not change the behavior of the authorities, who do not understand the way of living or the needs of the indigenous population, punishing poverty as a crime. This type of campaigns many times contradicts reality and becomes an insult when they serve as decoration and they do not sensitize the justice operator. For example, “Three people were detained for forest crimes in the last few hours, arrests will continue advises the Division of Protection of Nature – DIPRONA. Although the detainees state the sale of the silver fir branches is for their support, these crimes are penalized with different fines and even jail time.

³⁴ It had previously issued recommendations such as: the State must completely apply the Convention, “... *specially the articles 4, 5 y 6...*” (Paragraph 25); to facilitate the access to court to all members of the population “[in conditions of formal and material equality], *specially providing adequate services of interpretation for indigenous at all levels of the legal procedure.*” (Paragraph 27); to improve “...*training of the public officials in charge of making justice on regards to the General Recommendation XIII of the Committee.*” (Paragraph 27); and, “...*to guarantee that all members of the population have access to the pertinent legal resources and to have a process with its proper guarantees.*” (Paragraph 28)

³⁵ Final Observations of the Committee for the Elimination of Racial Discrimination (Guatemala). Paragraph 14. March of 2006.

DIPRON officer Victor Ortiz Sal advised that the arrests will continue since they have to follow the operation plan. "The detainees give many excuses to justify possession of illegal product but for us there are no excuses ". Mynor Pérez delegate of the National Institute of Forests- INAB said that the alternative for those who transport branches of silver fir illegally would be to create their own plantations to extract the product without harming the forests³⁶"

53. We have to reiterate that the bilingual personnel within the legal system is not enough and we estimate Congress missed the chance to promote equity of gender and ethnic inclusion with the creation of the Supreme Court of Justice. Only one woman and no indigenous was chosen in the election for magistrates of the Supreme Court of Justice³⁷ executed at the end of 2009.

54. We witnessed the lack of interest and slowness of attention of the cases that lead to incur in behaviors previously described³⁸. The subject is continuously denied and minimized by the justice institutions, despite it was legally demonstrated, how harmful racial discrimination is and how governmental institutions like CODISRA and non-governmental institutions do not sensitize and train justice officials. Even now is possible to find operators of the justice system that do not know that discrimination is typified as a crime or that do not conduct themselves under minimum parameters, like the district attorneys of the Public Ministry who implicitly refuse to follow a general instruction because they think racial discrimination is not a big deal. Indifference is usually manifested before the reports since they consider there is no crime to prosecute. For example, the actions of the Judge of First Instance of Quiché who controls the case of Candelaria Alvarado causes indignation, despite the evidence, she pronounced a sentence called lack of merit, which is only possible when there is no information about the offense and not enough rational motives to believe the accused has committed it or participated in it.³⁹ In annex III of this report the evidence that makes the sentence unsustainable and illegal, favoring and perpetuating racial discrimination, is attached. Combined with the previous case, another recurrent problem in the victims of racial discrimination is that they do not have the means to follow up their legal procedures. The Public Ministry waits for the victim to press charges and to become an attached plaintiff, which is illegal since the crime of discrimination is publicly prosecuted and being attached plaintiff is a right not an obligation.

Article 7

55. The State also fails to comply with this precept. For example, in a poll conducted by Prensa Libre and NALEB⁴⁰, in the first semester of 2009, is indicated that the most discriminated group is once again the indigenous people: at least 76.7% believes this, and the stereotypes of short, lazy, brown skinned and chubby continue. The second group that experiences more rejection is the garifuna, but not for their culture and customs, but for the color of their skin. 23.1 % of people stated they do not like dark skin.

³⁶ www.elquetzalteco.com.gt/10.12.2009/?q...n...arrests

³⁷ CICIG, Report of the election of magistrates to the supreme court of justice, appeals courts and other courts of the same category year 2009, Page. 8 "...It is estimated that Congress missed an historical opportunity to promote gender and ethnic inclusion equity in the creation of the Supreme Court of Justice. Only one woman and no indigenous was elected".

³⁸ Cases of José Antonio Cac and Candelaria Alvarado.

³⁹ Articles 259 and 272 of the Penal Process Code.

⁴⁰ *Prensa Libre*, June 1, 2009, page 3.

56. According to the same poll and on regards to any advance of the discrimination phenomenon, 48.5% of the interviewed stated racism increased in the last years. In addition to this, is necessary to indicate that this same company conducted a similar poll in the year 2005, and the results are almost identical; in four years there is no advance in the eradication of discrimination in Guatemala. In accordance with the Linguistic and Education Institute of University Rafael Landivar⁴¹, in the media *“The selected pieces about racism have been a few, there is not to much coverage on this subject, even though there are some cases that should be solved on the media, these are not included, which does not contribute to the acknowledgement of the different dimensions of structural, legal, institutional and personal racism that indigenous peoples are subject of. The equivocal way to transfer information uses discrimination to refer to racism, most of the information uses both categories as synonyms; discrimination and racism, when it is known that the definitions are different and they do not have the same connotation and implication. Like wise, racism is seeing as a problem that we have in Guatemala but it is almost disappearing, even racist actions are impersonalized: “Everyone is a racist but me”.*

57. When the subject of the media is approached, we enter in a field protected by the economical sector that defends the freedom of speech and their own economical interests. This power has been reflected by the lack of action by the Ministry of Communications, Infrastructure and Housing that does not have any policy channelized to avoid the broadcast of stereotypes, prejudices or the reinforcement of community radios.

Article 14

58. As it has been evidenced in the development of this analysis, there is a repeated practice by the State of Guatemala to non-comply with the dispositions of the CERD Convention. That is why the indigenous organizations have promoted, through law initiatives, that the State recognizes the competence of the CERD Committee. In the year 2002 an initiative registered in Congress with the number 2699 was submitted, in the year 2004 it got favorable ruling from the Commission of Indigenous Peoples and from that date it has not been a point of agenda of Congress and it is not tackled in the official report made by CODISRA.

⁴¹ The report Let's Change Chip is attached.

IV. IMPLEMENTATION OF THE SUGGESTIONS AND RECOMMENDATIONS OF THE SEVENTH PERIODICAL REPORT OF GUATEMALA*

59. As it was demonstrated by carrying out the evaluation of the compliance of each one of the Articles of the CERD Convention; the State of Guatemala has not take substantial measures to comply with the stipulations he committed to by adopting such Convention, even less with the recommendations issued by the CERD Committee. As we indicated at the beginning of this report, only 4% of the recommendations have been fulfilled. About this aspect, it is proper to mention that this 4% is only two recommendations fulfilled. The first and most important for the indigenous people is the ratification of the 169 Convention of the International Labor Organization; and the other one is the national policy for the elimination of discrimination, in accordance with the organizations of indigenous peoples, is not but a declaration of good will without real mechanisms of implementation, as it was previously indicated. This left us with only one recommendation fulfilled.

* Official Documents of the General Assembly, fiftieth period of sessions, (23/04/97), paragraphs from 24 to 37.

V. CONCLUSIONS

60. In Guatemala – in the XXI century – the model of “*authoritarian and excluding of the majorities, racist in its precepts and its practice, that served [keeps serving] to protect the interests of the restricted privileged sectors*” State-Nation of the country persists intact, as categorically concluded the Commission for Historical Clarification on regards to the violations of human rights and the violent events that have caused suffering to the Guatemalan population –CEH-,⁴² originated since the Spanish invasion, their colonial imposition first and, their republican and neoliberal imposition later – controlled by the creoles and then by a half-casted elite-, that was conceived as a one people, one culture, one language, one religion and one legal system, has been instituted over a society in which the indigenous peoples occupied the last places in every ambit.

61. In the context of this “State-Nation” model described; disregarding countless reports of various national and international bodies, that have witnessed and evidenced it, among them the Committee for the Elimination of Racial Discrimination through their multiple and repeated recommendations, suggesting its transformation from its deepest causes and through the implementation of diverse national and international instruments of human rights, among them the International Convention on the Elimination of all Forms of Racial Discrimination; the State of Guatemala do not comply with them, perpetuating that racist in its precepts and its practice State. This situation can be witnessed not only in the provision of the essential public services like health, education, labor and justice but in the well manifested discriminative personal relationships from half-casted people to indigenous, African-descents people, sectors of poverty and extreme poverty.

62. The Guatemalan legislation from its supreme rules – captured in the Political Constitution of the Republic-, keeps perpetuating racism and racial discrimination. In the Constitution is not captured the multicultural, multiethnic and multilingual reality of the Guatemalan population, which continues to perpetuate the concept of a nation with one language – the indigenous languages are considered vernacular tongues-, one religion, one way to administer justice, one way to understand the world. From this reality, the State of Guatemala does not register any expressed and pertinent action to review and transform this current discriminative legislation, all the contrary, it keeps issuing legal dispositions that perpetuate racial discrimination such as the Law of the National Registry of People – RENAP-, and the Law of National Languages among others.

63. The State of Guatemala has established in practice an illegitimate hierarchy of the recognized rights in the Constitution as well as the international instruments on regards to Human Rights, by relegating the observance of the fundamental rights such as the right of life, physical integrity, to a healthy environment, and the collective rights of the Indigenous Peoples to second levels in contrast with the privilege of entrepreneurship and freedom of industry.

⁴² Racism and Discrimination in Guatemala: Historical Analysis. Annex I.

64. In legal regulation, the Legislative Branch has not approved and specific law that typifies as a crime any broadcast of ideas based in the superiority or racial hate, to urge racial discrimination, and all acts of violence against indigenous peoples and African-descents. The Legislative Branch has evidenced no political will to legislate in favor of the Indigenous Peoples and as a consequence there has been no law that promotes the respect to our rights in the last 6 years.

65. The historical exclusion reflected in the extreme poverty and genocide rates and now the mining grants and the implementation of the hydroelectric megaprojects have as a converging point, their implementation in territories of the indigenous people, which ratifies the structural, institutional and environmental racism against our communities.

66. The State of Guatemala through the promotion of megaprojects (hydroelectric, mining, oil, mono-farming, etc.) in the territory of the Indigenous Peoples, promotes and institutionalizes Structural and Environmental Racism, through a capitalist and neoliberal economic model that favors mercantile interests of economic sectors and traditional politicians of the country, it also favors national and transnational companies for the exploitation and destruction of the natural resources of Mother Earth; violating this way, the acquired commitments by the State of Guatemala in the national and international legislation, that guarantee full exercise of the individual and collective Human Rights of Indigenous Peoples.

67. The state of Guatemala has been transformed in to an oppressive State against the legitimate and historical vindications of the Indigenous Peoples through a “racist and excluding justice system” which criminalizes and prosecutes leaders and women leaders that fight in defense of life, territory and Mother Earth, accusing them of terrorist, bioterrorists, usurpers, opponent to “established development”, homicides, etc., ratifying the roll of the state that has been an instrument to keep the interests of the economical and political structure of the country.

68. On regards to the strict compliance of the Convention and the Recommendations of the Committee for the Elimination of Racial Discrimination, the State of Guatemala, through perverse mechanisms like the “use” of indigenous people that apparently do not know better, try to deceive the good-will bodies such as the CERD Committee submitting a Government report not a State report, which shows several alleged actions of compliance of the Convention, which cannot be consider formal nor substantial. The actions the State of Guatemala keeps implementing, that affect sectors in state of vulnerability, specially indigenous peoples, rural workers and women, are knowingly formulated to favor the interests of the Guatemalan oligarchy and the transnational companies, mainly those who work in the extraction of precious metals. These actions are designed and executed integrally and they evidence the persisting racism.

69. Beyond the concern generated by the inefficiency of the Public Ministry as the entity in charge of the prosecution of the crime of discrimination – in force since October of 2002-,

since out of 422 reported denounces for discrimination reported by the Office of the High Commissioner for Human Rights in Guatemala,⁴³ only one of them has gotten a sentence in the last 4 years; worries more the inexistence of a law against racial discrimination that typifies racism as a crime on one hand, on the other, that have measures of diverse nature to contribute to a change of attitudes, specially in formal and non-formal education. This absence helps that racism acts, like the ones committed against the life and dignity of Candelaria Acabal, be left unpunished.⁴⁴

70. The statistical data on poverty, extreme poverty, lack of education and health, show that the provision of public services by the State keeps being excluding towards indigenous peoples, by not taking under consideration the expansion of coverage, access in their own language and respect to the own mechanisms of satisfaction of the essential needs.

⁴³ Vilma Sánchez. Commissioner of the Presidential Commission against Discrimination and Racism against Indigenous Peoples in Guatemala.

⁴⁴ See annex II.

VI. RECOMMENDATIONS

- 71.** To urge and recommend the State of Guatemala that by observing the spirit of its fundamental rule, that privileges the human being and his dignity as a supreme goal without restrictions, as well as all of the acquired obligations in diverse instruments of human rights which is a part of, specially the 169 Convention of the International Organization of Labor, the Universal Declaration of the Rights of the Indigenous Peoples, among others, facilitates concrete mechanisms to review and amend the legislation of the country in all its levels, with the goal that such legislation would reflect the multicultural, multiethnic and multilingual reality.
- 72.** To recommend that the State of Guatemala implements and adopts operative plans of each one of the policies it has issued, which shall include the budget, qualitative and quantitative means of verification, providing of the service in their own language, and respecting values and authorities of the indigenous peoples.
- 73.** To exhort the State to carry out the transformations of content in the impartial justice system, so this system does not answer to interests of determined economic, political, military sectors and to national and transnational companies, so it can effectively speed up the legal procedures against the responsible of the genocide against the Mayan people and the threats, murders against leaders and women leaders who are defending their lives.
- 74.** To urge or recommend the State of Guatemala to implement an exhaustive investigation of justice officials, including the consultancy and accompaniment of international bodies, like the International Commission Against Impunity in Guatemala, that use their jurisdictional function to criminalized the historic social vindications like the access to the land, health, education and labor, as well as the recent ones like the detriment of the environment, the privation of sacred places, usurpation and plundering of the land and territories, etc., with the goal of favoring particular and sectarian interests.
- 75.** To reiterate the State their concern and the urgent need to typify racism as a crime through the Legislative Branch and cases to receive the proper investigation and sanction by the responsible state entities.
- 76.** Remind and require to the State and the government through the corresponding entities to carry out impartial scientific studies, to evaluate the social, spiritual, cultural and environmental incidence that forecasted “development” activities may have over our life and territory and the results of these studies to be considered as fundamental criteria for the execution of the aforementioned activities.
- 77.** To require the State the urgent recognition of the community radios and to regulate their functioning through enacting a specific law or to amend the Law of telecommunications. Likewise to stop the prosecution against the community radios since it is the only repressive answer to a problem cause by the State itself.

78. To have the committee take note of the way the State is allowing the plundering of the land that historically has been a property of the indigenous people, even though they are duly registered in the corresponding registries. On the other hand, to reiterate its concern that the State does not recognize the traditional way or ownership and possession of the land, nor takes the necessary administrative measures to guarantee this form of ownership, being this omission a source of injustices and violation of the rights of the indigenous people.

79. To urge the State of Guatemala, as a sample of a civilized, democratic and respectful of the human rights State, due to the facultative character of the disposition according to the Convention, to recognize the competence of the Committee for the Elimination of Racial discrimination; consulting previously to the interested direct or indirect parties and respecting their decision, if for the effects of designation of the entity of last national instance referred in the convention, it should be created or appointed.

80. To require and reiterate to the State of Guatemala, its obligation to comply with the recommendations issued by the CERD Committee, for which it has to submit coherent information in relation to the addressed actions to eliminate discrimination and racism in Guatemala.

81. To have the Committee send the Relater of the Country in a prudential time to verify and confirm the state of the compliance of the commitments the State has acquired in the framework of the Convention, and to verify the level of compliance of the different recommendations the honorable Committee has issued to the State of Guatemala.