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Совет по правам человека
Тринадцатая сессия
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Поощрение и защита всех прав человека, гражданских, политических, экономических, социальных и культурных прав, включая право на развитие

Доклад Специального докладчика по вопросу о праве на питание Оливье де Шуттера* **

Добавление

Миссия в Гватемалу

* Представлен с опозданием.
** Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении, распространяется в полученном виде только на языке представления.

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Резюме

Настоящий доклад содержит выводы и рекомендации Специального докладчика по вопросу о праве на питание по результатам его посещения Гватемалы 3-5 сентября 2009 года. Цель данной поездки заключалась в оценке осуществления рекомендаций, подготовленных предшественником Специального докладчика по итогам его поездки в Гватемалу в феврале 2005 года, и рассмотрения текущего хода осуществления права на питание в Гватемале.

Специальный докладчик был впечатлен степенью приверженности и масштабами предпринятых правительством Гватемалы усилий для улучшения положения в области продовольственной безопасности в стране. Вместе с тем, он приходит к выводу о необходимости дополнительных мер по устранению структурных препятствий на пути к полному осуществлению права на питание, включая коренные народы.

Доклад призывает правительство рассмотреть рекомендации по линии пяти приоритетных направлений действий, в рамках которых следует принять следующие меры:

a) решить проблему неравноправного доступа к земле, включая полное осуществление и кодификацию закона о Стратегии в области комплексного развития села;

b) обеспечить включение принципов по защите прав человека в существующие социальные программы и программу денежных трансфертов "Моя семья живет все лучше и лучше", в частности;

c) повысить минимальную заработную плату и укрепить кадровый состав Трудовой инспекцией;

d) укрепить коммуникационно-информационную систему по вопросам питания и продовольственной безопасности (СИКСАН);

e) провести реформу системы налогообложения, включая осуществление мер по внесению изменений в солидарный налог и увеличение подоходного налога для категории самых высоких налогов.

Annex

Report of the Special Rapporteur on the right to food, Olivier De Schutter, on his mission to Guatemala (3 to 5 September 2009)

Contents

I. Introduction

1. The Special Rapporteur on the right to food conducted a country visit to Guatemala from 3 to 5 September 2009, at the invitation of the Government. The visit aimed to assess the implementation of the recommendations issued by the Rapporteur's predecessor during his visit to Guatemala in February 2005; to examine the current status of the realization of the right to food in Guatemala; and to formulate concrete recommendations on the basis of information received from competent Government authorities and representatives of civil society and the international community.

2. During his visit to Guatemala, the Special Rapporteur met with a wide range of dignitaries at the highest level of Government, including the President and Vice-President of the Republic. The Special Rapporteur also met the First Lady and representatives from various line ministries gathered within the Council of Social Cohesion, as well as the Minister and Vice-Minister for Foreign Affairs, the Minister of Agriculture, the Minister of Finance, the Minister of Health, the Sub-Secretary on National Food and Nutrition Security, the Secretary of Planning, the Secretary for Agrarian Affairs and officials from the Ministry of Economy.

3. In addition, the Special Rapporteur held meetings with the Human Rights Ombudsman *(Procurador de los derechos humanos)* and his staff; with magistrates of the Constitutional Court, including its President; and with members of the Congress, including its President. The Rapporteur also had exchanges with representatives of the Presidential Commission on Racial Discrimination against Indigenous Peoples (CODISRA) and the Office for the Defence of Indigenous Women (DEMI). In addition, the Special Rapporteur met with members of the international community in Guatemala, representatives of the Regional Programme for Food and Nutrition Security for Central America (PRESANCA) and with a wide range of civil society representatives. As part of the visit, he also addressed a public forum on the right to food in Guatemala co-hosted by the Government and the United Nations system in Guatemala.

4. The Special Rapporteur expresses his deep appreciation to the authorities for the quality of their cooperation, and for the frankness of the discussions he was able to have during his visit. The Special Rapporteur would also like to thank the Presidential Commission for Human Rights (COPREDEH) and the Office of the United Nations High Commissioner for Human Rights in Guatemala for the excellent organization of the visit.

5. The present report provides an account of the Special Rapporteur's findings and recommendations emanating from the visit. Following an overview of relevant international standards used by the Special Rapporteur as a framework for analysis, the report describes the situation of hunger and malnutrition in Guatemala, followed by an assessment of a number of key issues from a right to food perspective. The report concludes with a set of recommendations geared towards further action for the full realization of the right to food in Guatemala.

II. The right to food as a framework for analysis

6. The assessment conducted by the Special Rapporteur during the visit was grounded in the human right to adequate food as recognized in several international human rights instruments, including inter alia the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.

7. The right to adequate food imposes three levels of obligations on States, as elaborated by the Committee on Economic, Social and Cultural Rights.[1] The obligation to *respect* existing access to adequate food requires States not to take any measures that result in preventing such access. The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to *fulfil (facilitate)* means that States must proactively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfil (provide)* that right directly.

8. In addition to these obligations, the general principle of non-discrimination requires that special attention is paid to particularly vulnerable groups, which suffer from hunger and malnutrition as a result of marginalization and exploitation. In addition, States are obliged to use the maximum of their available resources, to achieve the progressive realization of the right to food. This report takes these obligations as well as the recommendations issued by the previous Special Rapporteur as its starting point.

III. Situation of hunger and malnutrition in the country

9. In his report on the visit conducted in 2005, the previous Special Rapporteur on the right to food[2] noted that spending on food in more than 60 per cent of Guatemalan homes did not meet minimum daily dietary requirements and that chronic child malnutrition was among the highest in the world. The Special Rapporteur ascribed these phenomena to a large extent to the inequitable distribution of wealth, high concentration of land ownership, and inadequate minimum wage in the country.[3]

10. In 2009, Guatemala remains a country in which wealth is distributed in a highly inequitable manner. The GINI coefficient, which measures inequality, is among the highest in Latin America (53.7)4 and almost 80 per cent of arable land is in the hands of just 2 per cent of the population; 50.9 per cent of the population are poor and 15.2 per cent are extremely poor.5 According to the Forum for Consultation and Social Participation (Instancia de consulta y participación social, INCOPAS) more than 3 million people currently suffer from hunger, which is double the number of hungry in 1991.**6** The Food and Agriculture Organization of the United Nations (FAO) places the number of undernourished at 2.1 million.**7**

11. Poverty predominantly affects those living in rural areas, who amount to 60 per cent of the population. In addition, 74.8 per cent of the indigenous community live in poverty (compared to 36.2 per cent for the rest of the population).**8** In this context, it is estimated that 16 per cent of the total population in Guatemala are undernourished.[9] Moreover, 43.4

[1] Committee on Economic, Social and Cultural Rights, general comment No. 12 (1999) on the right to adequate food (art. 11), para. 15.

[2] Jean Ziegler was the Special Rapporteur on the right to food from 2000 to 2008.

[3] E/CN.4/2006/44/Add.1, paras. 6-14.

[4] UNDP, Human Development Report, 2009.

[5] UNDP, National Human Development Report, 2008, annex 11.

[6] Instancia de Consulta y Participacion Social (INCOPAS), "Informe de la sociedad civil: situación del derecho a la alimentación y otros derechos relativos en Guatemala", September 2009, page 2.

[7] FAO, The State of Food Insecurity in the World, 2009.

[8] National Institute for Statistics (INE), National Survey of Living Conditions 2006 (ENCOVI 2006).

[9] FAO Statistics Division, Global Statistics Service, Food Security Indicators, Guatemala, 2008.

per cent of all Guatemalan children aged under five are malnourished. The latter figure rises to 58.6 per cent (or more, according to some estimates) among indigenous children.[10]

12. Since 2008, Guatemala has been severely affected by the global food price and economic crises. While overall poverty had been reduced from 56 per cent in 2000 to 51 per cent in 2006, it is estimated that the impacts of both the high food prices in 2007-2008 and the global economic crisis have offset this 5 per cent gain.[11] Likewise, GDP growth decelerated to 4 per cent in 2008 following steady annual increases from 2.4 per cent to 6.3 per cent between 2001 and 2007, with GDP per capita increasing from US$ 1,625 to US$ 2,519 in the same period. Remittances from abroad, which represent approximately 12 per cent of GDP,[12] decreased by 10 per cent as a direct result of the crisis, while revenues from tourism, foreign direct investment and overall trade flows also declined. In this context, Guatemalan families currently spend 66 per cent of their income on food.[13]

13. The third national census measuring the height of first-grade primary school children in Guatemala's public education system, conducted in August 2008, provides a further indication of the structural nature of malnutrition, its linkages with inequity and social exclusion, and the additional adverse impact of the food and economic crises. Of 459,808 children measured, 54.4 per cent were classified as having a normal height for their age, while the height for age ratio of the remaining 45.6 per cent was below the median, with moderate deficiencies registered among 32.9 per cent and severe cases among 12.7 per cent. Figures change according to the mother tongue of the children. Spanish mother tongue children had a 34.6 per cent prevalence of height to age deficiencies, while this figure goes up to 62.5 per cent in the case of children whose mother tongue is not Spanish. Within the latter group those speaking Chorti (80.7 per cent), Akateco (79.1 per cent) and Ixil (76.9 per cent) portray the highest level of chronic malnutrition based on their below average height.[14]

14. In addition to these already extremely high malnutrition rates, the visit of the Special Rapporteur took place as Guatemala was facing a particularly acute crisis. A drought linked to the El Niño phenomenon caused a significant loss of crops in particular in the region known as the *corredor seco* (dry corridor) affecting up to 2.5 million people and causing the death of at least 17 children from severe acute malnutrition.[15] This led the World Food Programme to pledge 20 tons of high energy biscuits and 200 tons of other food supplies in order to complement Government rations assisting 75,000 families. On 10 September, President Álvaro Colom issued Decree n. 10-2009 declaring a "state of calamity" in the

[10] *Encuesta Nacional de Salud Materno-Infantil (*ENSMI), 2008-2009, pp 52-53. See also Samuel Loewenberg, "Guatemala's nutrition crisis", *The Lancet*, vol. 374 (July 2009), p. 187.

[11] The transmission from international prices to prices on the domestic market was very indirect, however net food buyers did lose out from the price increases of staple crops, including marginal and medium-size farmers. See Alain de Janvry and Elisabeth Sadoulet, working paper "The global food crisis and Guatemala: what crisis and for whom?", University of California at Berkeley, May 2009.

[12] Data from the Banco de Guatemala, 2009.

[13] Centro Internacional para Investigaciones en Derechos Humanos/Coordinación de ONG Cooperativas, *Situación de los Derechos Económicos, Sociales, Culturales y Ambientales en Guatemala 2009*, p.29.

[14] Tercer Censo Nacional de Talla Escolar en Escolares del Primer Grado de Educación Primaria del Sector Oficial de la República de Guatemala, 2008, Ministerio de Educación y Secretaría de Seguridad Alimentaria y Nutricional (SESAN).

[15] Secretaría de Planificación y Programación de la Presidencia (SEGEPLAN), "Informe de avance de las acciones y medidas adoptadas durante la emergencia", November 2009.

country, allowing the immediate purchase of food through the Ministry of Finance, outside the normal procedures. The state of calamity has been extended since.[16]

15. While the present report does not focus in detail on this crisis, the Special Rapporteur notes with concern that information about the drought and its impact was available at least as early as May 2009.[17] This indicates that the Government could possibly have taken action more swiftly. As discussed further below, the failure to intervene in timely fashion may be linked to implementation gaps in the legal framework governing food and nutritional security, in particular in so far as the State has failed to set up and consolidate an effective early warning system.

IV. The obligation to respect the right to food

16. The Special Rapporteur was generally impressed by the level of commitment of the government towards the realization of the right to food. A large number of measures have been taken since the current administration took office in order to improve the situation of the poorest segments of the population. A non-exhaustive overview of these measures will be presented and discussed below under the obligation to fulfil the right to food.

17. Before turning to these measures, however, this section will first review relevant issues falling under the obligation to respect the right to food. As part of this obligation, Guatemala must abstain from the adoption of any measure that could result in depriving people of access to their existing means of producing food. In particular, this means that people should not be evicted from the land they depend on for their livelihoods, unless certain conditions are complied with; and trade agreements entered into by the State should not affect the existing enjoyment of the right to adequate food.

A. Forced evictions

18. During his visit, the Special Rapporteur received information from non-governmental organizations (NGOs) about forced evictions of peasant communities in different parts of the country, allegedly executed by State or private security forces, and mostly linked to the production of sugar cane and palm oil, as well as mining exploration and exploitation. Some violent evictions reportedly took place in the weeks prior to and during the mission, in particular in the Peten and Pacific coast areas. In some cases, crops and houses were destroyed, the families being left with nothing, and leaders of peasant organizations were held by the police or threatened.

19. In relation to these evictions, the Special Rapporteur recalls the obligation of all States parties under the International Covenant on Economic, Social and Cultural Rights, inter alia, to control strictly the circumstances under which evictions may be carried out and to ensure legal remedies or procedures are available to those affected by eviction orders, and adequate compensation is provided.[18] To the extent that evictions of peasant

[16] Two additional decrees were issued in October and November 2009 to extend the state of calamity. Only the first two had been approved by the Congress at the time of writing.

[17] In May 2009, SESAN issued the 2009 Food Contingency and Emergency Plan, which predicted an early and prolonged drought, which should be monitored, and could result in crop losses. In April 2009, MFEWS/MAGA (Mesoamerican Food Security Early Warning System/Ministerio de Agricultura, Ganadería y Alimentación) published reports announcing below average rainfall, which would have a negative impact on the harvesting of the crops and subsequently on food reserves.

[18] Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on the right to adequate housing (art. 11 (1) of the Covenant): Forced evictions, para. 13.

communities are a response to a means of peaceful protest against the absence of progress in the implementation of agrarian reform, it should be recalled that both the right to peaceful assembly and the prohibition against inflicting inhuman and degrading treatment on individuals, prohibit the use of violence against peaceful protests.

20. In the view of the Special Rapporteur, local land conflicts and related evictions are not always handled in accordance with the above-mentioned norms in Guatemala. For example, the Rapporteur was informed of several cases of evictions in situations where the identity of the land owner had not been properly verified or where the boundaries of the land in question (*finca)* had not been delineated in a precise manner. The participation of *finca* workers in the conduct of the eviction, although it is illegal, was also witnessed on several occasions. While the government has shown openness to solving some cases through forums for dialogue (*mesas de dialogo*), the Special Rapporteur notes that, all too often, the wealthy landowners are better supported by the State apparatus than the peasants (*campesinos).*[19]

B. The impact of trade agreements

21. In 2005, the then Special Rapporteur stressed the potentially adverse effects on food security of trade liberalization in the agricultural sector, in a context where land ownership is highly concentrated and public support mainly targets export-oriented agriculture. In this regard, he noted that competition from cheap imports had affected the production of basic staple foods.[20] Referring to the Dominican Republic- Central America-United States Free Trade Agreement (CAFTA, later DR-CAFTA), he considered that this agreement risked exacerbating food insecurity for indigenous and peasant communities.

22. DR-CAFTA came into force in 2006. With the exception of white corn, for which a tariff of 20 per cent was maintained outside quota, tariffs on the import of grain from the United States of America were eliminated under the agreement. While some economic growth has been achieved, this appears to have been mainly to the benefit of agribusiness companies requiring basic grains for food processing, and the poultry industry.[21] This has reportedly destabilized traditional small-scale peasant production and accentuated dualization in the farming sector with increased competition over land, water, government support programmes and extension services.

23. Civil society organizations have documented some of the effects of DR-CAFTA on the agricultural sector.[22] However, three years after its entry into force, the Special Rapporteur was struck by the absence of government-managed data on the impact of the agreement on the right to food. Likewise, the Rapporteur was unable to obtain a comprehensive assessment of the potential impact of the Association Agreement between Central America and the European Union, which is currently being negotiated. The Special Rapporteur regrets that there is no mechanism in place to assess the impact of such trade and investment agreements.

[19] This situation is not new, although the current administration seems to be intent on changing this culture. For an assessment of the situation under the previous administration, see Amnesty International, "Guatemala: land of injustice?", 29 March 2006, p. 2.

[20] E/CN.4/2006/44/Add.1, para. 55.

[21] Alberto Alonso Fradejas, "Contradicciones históricas ante la crisis del paradigma agroalimentario postmoderno. Reflexiones desde Guatemala", *Observatorio en agropecuario y sustentabilidad*, August 2008.

[22] Instituto de Estudios Agrarios y Rurales/Coordinacion de ONG y Cooperativas, "Tres años de DR-CAFTA: promesas no cumplidas y crisis cada vez más profundas".

24. Although Guatemala is still a net exporter of food commodities, its dependency on imports for basic foods has been increasing since the structural adjustment programmes of the 1980s.[23] Such dependency creates a vulnerability to price shocks on the international markets. Although the sharp increases of food prices on the international market sparking the global food crisis in 2007-2008 do not appear to have translated into similar prices hikes domestically, staple food prices did record a modest increase. As farmers in Guatemala and smallholders in particular, are generally net buyers of staple foods, they were thus negatively affected by these increases.[24]

25. In order to deal with the impacts of the 2008 global food crisis, and later with the 2009 drought, the Government took the decision to reduce tariffs on certain foods, notably white corn. Temporary measures of this nature can be effective as long as measures are taken to ensure that tariff reductions lead to a reduction in consumer prices. This did not happen in Guatemala. Agribusinesses managing imports maintained high prices and there does not appear to have been any trickle-down effect to the ability of the poorest segments of the population to purchase imported food. The Special Rapporteur is also concerned that such tariff reductions reduce revenues flowing into the State budget, while the arrival of imported grains drives less competitive small farmers in Guatemala out of the market. It is therefore important that such tariff reductions remain temporary and are combined with support measures to local producers, including price support mechanisms.

V. The obligation to protect the right to food

26. Following the above review of issues falling under the obligation to respect the right to food, this section will turn to relevant aspects of the obligation to protect. Under this heading Guatemala should ensure appropriate protection against labour rights and other abuses by private businesses, including transnational corporations.

A. Protection against violations of labour rights

27. The Special Rapporteur observes that labour legislation remains insufficiently protective of the rights of workers in certain areas.[25] In particular, he notes a provision in the labour code, which stipulates that benefits that are not claimed within 30 days of the termination of employment are considered forfeited. This provision should be abolished immediately, as it is routinely abused by employers who make verbal promises that they will re-hire laid-off workers, but fail to do so within 30 days after which these workers lose their benefits.

28. Low salaries also remain an element of concern. According to information received by the Special Rapporteur, 50.1 per cent of workers currently receive a salary that is below the legally established minimum wage.[26] Furthermore, the cost of the basic food basket (*canasta básica alimentaria*) is higher than the minimum salary.[27] While the minimum salary has been increased three times since 2005, these increases were below the level of

[23] For statistics on import dependency ratios see FAOSTAT, FAO Statistics Division, 2009.

[24] See footnote 11 above.

[25] E/CN.4/2006/44/Add.1, para. 13.

[26] ENCOVI, 2006, see footnote 8 above.

[27] Ibid. The National Institute for Statistics (INE) also uses a so-called basic vital basket (*canasta básica vital*), which in addition to food includes education, health, clothing, housing, transport and leisure; 87 per cent of the economic active population has a salary lower than this basket, which amounts to US$ 421.54. The price of the basic food basket stood at US$ 231 as of November 2009.

inflation.[28] It is also worth noting that the minimum salary for workers in *maquila* factories is even lower than the minimum salary for other labour.

29. Apart from the areas in which it is insufficiently protective, labour legislation is often not fully implemented. The Labour Inspectorate, with a staff of 238 for the whole territory, is significantly under-resourced and hence unable to monitor compliance with labour legislation.[29] In addition, it does not have the power to impose sanctions. The 1996 Agreement on Socio-Economic Aspects and the Agrarian Situation, as part of the Peace Agreements, provides for strengthening the Labour Inspectorate, and this should be treated as a priority.[30] This is particularly important since a significant number of violent conflicts in the rural areas have their source in violations of labour rights which remain unremedied, and against which workers stage protests by occupying farmland. The Government could also consider treating violations of labour legislation as criminal offences, rather than merely as administrative offences, in order to ensure that the sanctions for violations will be truly effective and dissuasive.

30. While the failure to adequately monitor compliance with labour legislation is not new, it is now more urgent than ever, because of the gradual transition from the *mozos colonos* system (in which workers, mostly of Mayan origin, receive a combination of cash and a small plot of land for both housing and the cultivation of crops) towards a system of waged employment on large plantations. Indeed, in the context of industrialized agricultural methods and conversion to new crops, large landowners seek to redefine the borders of their *finca* and reconfirm their land titles. In this process, former *mozos colonos* become seasonal wage labourers, with no land of their own to cultivate food, and with no social protection whatsoever. Under these circumstances, the Special Rapporteur is particularly concerned that disproportionate force continues to be used against landless workers who resort to forms of protest against unpaid wages or other abuses that include the occupation of *fincas*.

B. Mining

31. In his mission report, the previous Special Rapporteur expressed concern that the Law on Mining does not provide adequate protection for the rights of indigenous communities over their natural resources, including their rights to be consulted in accordance with International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.[31]

32. Given the concerns expressed by his predecessor, the Special Rapporteur was encouraged to learn that a discussion on amendments to the above-mentioned law is currently underway. This law, adopted by Congress in 1997, has been criticised for its preferential treatment of mining companies, as it provides for tax exemptions and the use of water free of charge. In addition, approval mechanisms for required environmental impact assessments are reportedly lenient.

33. The Special Rapporteur notes the debate on proposed amendments to the law in the context of the so-called High Level Commission composed of both Government and civil society representatives, established in 2006. He is also aware of the initiative by the Parliamentary Commission on Energy and Mines to reactivate the debate on legal reform in 2008, which remained ongoing at the time of the visit. Civil society representatives made a number of proposals on the institutionalization of consultations with communities affected

[28] INCOPAS, "Informe de la sociedad civil: situación del derecho a la alimentación y otros derechos relativos en Guatemala", September 2009, page 7.

[29] Ibid., page 3.

[30] Agreement on Socio-Economic Aspects and the Agrarian Situation**,** part III Land Situation and Rural Development, section H Labour Protection, para. 39 (c).

[31] E/CN.4/2006/44/Add.1, para. 28.

by mining operations; the improvement of environmental impact assessments and the creation of a fund to ensure rehabilitation and compensation for damage to the environment caused by mining activities; the increase of taxes on mining operations and of fees for the use of water; and the adoption of a moratorium on mining licences until the law has been amended in this sense. The Special Rapporteur encourages the Congress to pay due attention to these proposals and to adopt the new law swiftly with full recognition of the rights of affected communities over their natural resources. This is all the more urgent given that the Constitutional Court declared parts of the Law on Mining unconstitutional in 2008.[32]

C. Agrofuels

34. Although displacements related to mining exploration and hydroelectric projects remain an important concern, a new trend is the increased pressure on land due to the development of crops for agrofuel production, such as palm oil (*palma africana*), sugar cane and jatropha (*piñon*). The area of land used for the production of such export cash crops is increasing. In 2005, an estimated 35,000 hectares were planted with palm oil and 197,000 ha with sugar cane – 72 per cent sold on international markets.[33] In 2007, 65,000 ha were planted with palm oil and it is estimated that this number will reach over 100,000 ha in 2010.[34] In 2008, 308,657 ha (441,636 *manzanas*) were dedicated to sugar cane plantation, according to the National Agricultural Survey. As these areas expand, there is increased speculation on land prices and less land available for small peasants to rent and grow basic grains.

35. The conversion of areas traditionally planted with basic grains into sugar cane and palm oil plantations has had an adverse impact on food production levels. Between 1990 and 2004, the production of corn went down by 15.7 per cent; of beans by 17.8 per cent; of wheat by 64.6 per cent; and of rice by 21.4 per cent.[35] In turn, these reductions mainly affect small producers, as for example 55 per cent of corn is grown on parcels smaller than 5 *manzanas* (3.49 ha).[36] Despite the large number of families depending on the production of basic grains, however, the Government has not implemented a coherent and coordinated policy designed to support small-scale production.

36. Also of concern is the fact that the areas more susceptible to conversion to sugar cane and palm oil are those where the Secretariat of Agrarian Affairs has registered the highest levels of land conflicts. These include the Petén, Alta Verapaz and Izabal regions, which have traditionally been corn-growing, but have been increasingly targeted for the production of cash crops.

37. The Special Rapporteur notes that Decree 40-74 (*Ley Obligatoria y de Fomento para el Cultivo de Granos Básicos*) obliged anyone who owned, rented or used a piece of land larger than 100 *manzanas* to dedicate 10 per cent of their land to the production of basic grains. Although the decree was never enforced, it is regrettable that, instead of insisting on its implementation, the Congress decided to abolish it in 2008.

[32] INCOPAS, "Informe de la sociedad civil: situación del derecho a la alimentación y otros derechos relativos en Guatemala", September 2009, page 6.

[33] *Atlas de la agroenergía y los biocombustibles en las Américas*; Instituto Interamericano de Cooperación para la Agricultura (IICA), 2007.

[34] *El Periódico*, 15 July 2008.

[35] Ricardo Zepeda Gaitan and Martin Wolpold-Bosien, *Avances en la Promoción del Derecho a la Alimentación en Guatemala*, CIIDH/ FIAN, 2007.

[36] IV Censo Nacional Agropecuario, 2003.

VI. The obligation to fulfil the right to food (facilitate)

38. The obligation to fulfil the right to food includes the facilitation of efforts to strengthen people's access to and utilization of resources and means to ensure their livelihood. This involves the drafting and implementation of a participatory right to food strategy; the preparation of a comprehensive and participatory food insecurity and vulnerability diagnosis; the effective implementation of a rural development plan and agrarian reform; and the setting up of recourse mechanisms.

A. Right to food strategy

39. Since 2005, with the adoption of the Law on the National System for Food and Nutritional Security,[37] Guatemala stands out as one of the first countries to have adopted a framework law on the right to food, leading a movement that now reaches almost twenty countries worldwide, including a number of countries in Latin America.

40. The law establishes a national food and nutrition security system (SINASAN), involving Government authorities and representatives of Guatemalan society (art. 6) in the design of a national food and nutrition security policy (art. 7). A National Food and Nutrition Security Council (CONASAN), is also established (art. 11) as the governing body of SINASAN. The Secretariat for Food and Nutritional Security of the Presidency of the Republic (SESAN) is the coordinating body (art. 19).

41. In addition, a forum for social consultation and participation (*Instancia de consulta y participación social*, INCOPAS) allows for the inclusion of representatives from different sectors such as indigenous peoples, peasants, the private sector, the church, universities and social research centres, unions, NGOs, women's organizations and professional colleges. It would appear that the technical proposals elaborated by INCOPAS have generally not been heeded by CONASAN. This relates for example to an initiative for social auditing and a proposal for strengthening the Contingency and Food Emergency Plan (*Plan de contingencia y emergencia alimentaria*).[38] In addition, civil society participation appears to have been very limited in the context of departmental, municipal and community commissions on food and nutrition security.[39]

42. The Law also foresees the creation of a group of supporting institutions (*Grupo de instituciones de apoyo,- GIA*) composed of government institutions, which do not belong to CONASAN, and international cooperation agencies. The latter was never officially formed.

43. The Strategic Plan for Food and Nutrition Security (*Plan Estratégico de Seguridad Alimentaria y Nutricional*, PESAN 2009-2012) establishes binding commitments for the member institutions of CONASAN. Its main objective is to coordinate the interventions to address food and nutritional insecurity and chronic malnutrition in a sustainable and integral manner. The plan focuses in particular on the production of basic grains; the promotion of access to the basic food basket; awareness-raising on nutrition and consumption patterns, including the promotion of breastfeeding; increased coverage and quality of health, water and sanitation services; and strengthened capacity of SINASAN and civil society. The latter includes the need for increased coordination between State, departmental and municipal levels; the creation of a system of information, planning,

[37] Ley del Sistema Nacional de Seguridad Alimentaria y Nutricional (2 de mayo de 2005, Decreto No. 32-2005).

[38] INCOPAS, "Informe de la sociedad civil: situación del derecho a la alimentación y otros derechos relativos en Guatemala", September 2009, page 10.

[39] INCOPAS, "Proceso histórico de la INCOPAS y el contexto actual de SAN: un enfoque desde sociedad civil", September 2009, p.1.

monitoring and evaluation of food security programmes ; and the development of a contingency plan for those areas of the country at high risk of food insecurity.

44. Despite the above-mentioned plan being in place, and its excellent legal framework, the institutions set up to implement it appear to have been ineffective in practice. The limited powers of CONASAN are generally considered a constraint, while SESAN lacks political weight and has tended to focus on the nutritional aspects of food security rather than on issues of equity and sustainability. The creation of social programmes to promote food security outside the institutional framework has also raised issues of coordination and consistency. This relates specifically to a range of programmes aimed at combating hunger and poverty coordinated by the so-called Council on Social Cohesion (see section VII below).[40] In this regard, the Special Rapporteur notes the risk of a weakening of SINASAN and CONASAN and possible duplication of efforts. This risk of duplication also exists with the *Comisión Nacional Gabinete Especifico Socio Ambiental* and the *Comisión Nacional del Programa de Emergencia para la Generación de Empleo, Seguridad Alimentaria y Nutricional, Sostenibilidad de los Recursos Naturales y Gobernabilidad*. It should be recalled that one of the main advantages of a national strategy is to improve coordination across different branches of government and programmes. Its purpose would be defeated by the coexistence of multiple, uncoordinated strategies involving different sets of actors.

B. Food insecurity and vulnerability diagnosis

45. In his report on the 2005 visit, the Rapporteur's predecessor noted the creation of SINASAN as a "hunger early warning system", which "monitors and evaluates the impact of food security programmes and provides an early warning to identify potential crisis situations".[41]

46. Following the creation of SINASAN and CONASAN under the 2005 Law, the System of Information and Communication on Food and Nutrition Security (SICSAN) was set up and placed under the responsibility of SESAN. The system was however dismantled in 2007, only to be relaunched by the current administration. If it is to manage an effective early warning system, SESAN should be strengthened. It currently has less than 100 employees, at national and regional levels, and an annual budget of less than US$ 2 million. However, the deaths registered as a result of acute malnutrition in the dry corridor this year placed the consequences of the failure to consolidate such a system in stark focus. While taking note of two recent protocols on mandatory notification of cases of malnutrition, the Special Rapporteur calls upon the Government to urgently improve its early warning system.

[40] This Council is headed by the First Lady and composed of representatives of the the Ministry of Education (MINEDUC), the Ministry of Public Health and Social Assistance (MSPAS), SESAN, the Secretariat of Social Works of the Spouse of the President (SOSEP), the Ministry of Public Finance and the Ministry of Agriculture, Livestock and Food (MAGA).

[41] E/CN.4/2006/44/Add.1, para. 35.

C. Rural development

47. The agreement reached in May 2009 on a policy for integral rural development is an encouraging development. This policy, which promotes the growth of crops for domestic consumption and foresees a reorganization of supply chains, could represent an opportunity to increase the incomes of smallholders, who currently receive a farm gate price for their produce which most frequently represents a small fraction of the final price paid by the consumer, given the degree of concentration in the food production and distribution chain.

48. It is crucial that the policy for integral rural development is adequately funded and implemented without delay. The Government could prioritize poverty-stricken regions and households, with a particular focus on indigenous peoples when targeting its interventions. The special needs of women farmers should also be appropriately considered, while the participation of indigenous peoples in policymaking should be facilitated. Those elements of the policy that seek to limit excessive concentration of land ownership, such as the redistribution of fallow land and the development of alternative modes of resolution of conflicts over land, are also particularly important. Finally, the Special Rapporteur calls for the swift codification into law of this policy, based on the policy and draft bill currently under discussion, which are the result of extensive consultations between civil society and the Government.

49. Other relevant government initiatives include the Programme for the Production of Basic Grains (*Programa de producción de granos básicos*), which seeks to increase the production of corn and relies on the distribution of improved seeds and fertilisers, combined with credits for farmers to enable them to rent land and make the necessary investments. In 2008-2009, the implementation of this strategy was hampered by a lack of land, fertilizers, seeds and credit. The Ministry of Finance was unable to release the funds on time, while the increase in the cost of fertilizers made it impossible for the Government to buy and distribute the anticipated quantities.

50. The development and distribution of certified and improved seeds is managed by the Institute of Agricultural Science and Technology (*Instituto de Ciencia y Tecnología Agricolas*, ICTA). In April 2008, ICTA announced that it had run out of certified seeds. The seeds had been sold to private retailers, from which the Government would now have to buy them. Around 20 per cent of certified seeds are used in the country and the rest are exported.[42] In September 2009, ICTA announced it was facing budget constraints and did not have a plan for seed production.[43] The Special Rapporteur encourages the Government to address this shortcoming urgently.

51. As part of the ongoing efforts towards agricultural and rural development, the Special Rapporteur would also favour the reconstitution of food reserves at local level, in order to ensure that remunerative prices are paid to smallholders as they sell their crops during the harvest season, and to allow the stocks to be released during the lean season, thus reducing the volatility of prices for food commodities and ensuring that all have access to affordable food at all times.

[42] Alejandro Pérez, "Se atrasa producción de granos por falta de recursos y semillas", *El Periodico*, 26 April 2008.

[43] *Prensa libre*, 3 September 2009, p. 20.

D. Agrarian reform

52. As mentioned above, the concentration of land ownership and/or control remains high in Guatemala. The most recent agrarian census, which dates back to 2003, found that 92 per cent of small producers occupy 22 per cent of available land while the remaining 78 percent is controlled by a small group of large producers. The previous Special Rapporteur identified the "failure to resolve the land question, including 'land-grabbing' during the war and the historical inequities of land ownership, as well as the failure to resolve the issues of the cadastre, individual and collective land titles, restitution and redistribution of land" as key obstacles to the full realization of the right to food in Guatemala.[44]

53. As part of his appraisal the previous Special Rapporteur mentioned the establishment of an organization for land conflict resolution (CONTIERRA), although very few cases had been resolved at the time of his 2005 visit, due to a lack of funding and institutional instability. He also assessed results achieved by the Fondo de Tierras (FONTIERRAS), a land fund providing credit for land purchases. In 2005, FONTIERRAS had redistributed 76,493 hectares to 15,996 families, a limited result given the demand of up to 300,000 rural families.[45]

54. In relation to land conflicts, the Secretariat for Agrarian Affairs received a total of 4,183 cases between 1997 and 2008. Of these cases, 1,789, or 43 per cent, were resolved.[46] The Special Rapporteur took note of several proposals to address this low rate of land conflict resolution. These include the adoption of an agrarian code with objective criteria for the resolution of land conflicts and the creation of agrarian tribunals and an agrarian ombudsman to review cases. The Special Rapporteur encourages the swift implementation of these proposals, and calls upon the Government to ensure that these new bodies will have the necessary capacity to deal with the conflicts presented to them.

55. In relation to the redistribution of land, the FONTIERRAS Regularization Programme (*Programa de Regularización*) received 11,615 individual and 486 collective submissions (*testimonios*) representing a total of 49,012 families between 2000 and 2008.[47] While the acquisition of land title through the Regularization Programme is in itself a step forward, the Special Rapporteur was informed that this programme has in practice contributed to increased land concentration, as families who lack resources and productive capacity to work the land, often sell their land upon regularization. Peasant organizations and experts indicated to the Rapporteur that land re-concentration had taken place since 2003 as a result of agrofuel production and the development of mining and hydroelectricity projects.

56. The FONTIERRAS Programme on Access to Land (*Programa de Acceso a la Tierra*) provided a total of GTQ 668 million in credits and GTQ 396 million in subsidies between 1998 and 2008. During this period a total of 90,412 hectares were distributed among 19,178 families. In comparison with the situation in 2005, the Special Rapporteur notes that the output of FONTIERRAS appears to have been very limited between 2006 and 2008 with only 4,236 hectares redistributed, involving 909 families. Of a total of 236 *fincas* distributed between 1998 and 2008, only 12 were distributed between 2006 and 2008, with unprocessed and outstanding applications apparently totalling over 900 files.[48]

[44] E/CN.4/2006/44/Add.1, para. 53.
[45] Ibid., para. 37.
[46] Centro Internacional para Investigaciones en Derechos Humanos/Coordinación de ONG Cooperativas, Observatorio del gasto social: "La tenencia de la tierra y la conflictividad agraria en Guatemala", December 2008, p. 35.
[47] Ibid., p. 41.
[48] Ibid., p. 42-43.

57. These figures corroborate information received by the Special Rapporteur during the visit that FONTIERRAS has been underfunded and has not worked effectively. Investment in the programme had gone down from GTQ 126.5 million in 2004 to GTQ 22 million in 2006.[49] The low number of *fincas* distributed indicates that landowners have generally been reluctant to sell their land under the market-based mechanism operated by FONTIERRAS, while families eligible for FONTIERRAS credit faced high prices as a result of an overestimation of the value of the *fincas*. As a result, the majority of families who were given credit to buy a *finca* are now highly indebted, while no technical assistance was provided to enable them to work the land. In certain cases, the land distributed was not even suitable for cultivation.

58. The Special Rapporteur was informed that discussions on the future status and resources of FONTIERRAS are currently under way, as the 10-year period originally foreseen for land purchases comes to an end in 2009. This is an opportunity to address the shortcomings identified above and to ensure that the backlog of cases that has built up is reduced, whilst making provisions for increased support to the beneficiaries of the programme in terms of technical assistance and investment in infrastructure and social services. The need for this is clear given that out of the total number of *fincas* distributed by 2006, 72 per cent had no health-care facilities, 61 per cent had no school, 67 per cent had inadequate housing, 68 per cent had no drinking water and 71 per cent were without electricity.[50]

59. The limited results of FONTIERRAS are also linked to the creation of a separate programme on land leasing (*Programa de Arrendamiento*), which was set up in 2004 and has gradually received increased funding, going up from GTQ 32.5 million in 2004 to GTQ 52 million in 2006. By 2008, the programme had approved more than 82,000 leases covering approximately 60,000 hectares of land.[51] However, this programme has provided largely short-term leasing arrangements for land without an option to buy. It is not a substitute for the Programme on Access to Land as it does not lead to secure land tenure.

60. The creation of a fully functional land registry is another pertinent part of agrarian reform in Guatemala. In this respect, the Special Rapporteur wishes to express his concern at a provision of the 2005 Land Registry law, which provides that landowners can claim up to 20 per cent of land, relative to the size of their own holding, in addition to the area which their property documents state they are entitled to.[52] This provision, which contains the promise of unending future conflicts and increased land concentration, should be abolished immediately.

E. Recourse mechanisms

61. In terms of recourse mechanisms, and more broadly accountability for the right to food, the Special Rapporteur notes in particular the active role of the Ombudsman. Article 15 (j) of the SINASAN law stipulates that CONASAN must "know, analyse and propose amendments to the policies and strategies in the area of food and nutritional security on the basis of the recommendations issued by the Ombudsman annually on the respect for and the protection and progressive realization of the right to food and nutritional security". The Special Rapporteur welcomes this institutionalized role for the Ombudsman in monitoring implementation of the SINASAN law as an innovative and effective means of ensuring accountability for the realization of the right to food.

[49] Ibid., p. 45.
[50] Ibid., p. 43.
[51] Ibid., p. 45.
[52] Decreto número 41-2005, Ley del Registro de Información Catastral, articles 38 and 67.

62. In August 2008 and March 2009 respectively, the Ombudsman produced two reports on the right to food with recommendations to improve implementation of the SINASAN law in accordance with the above-mentioned provision. During the visit of the Special Rapporteur the Ombudsman expressed regret that the recommendations contained in these reports have not been followed up. While the capacity of COPREDEH to monitor overall follow-up by the executive branch of recommendations made by the Ombudsman appears to have been strengthened under the current administration, institutionalized mechanisms to ensure appropriate discussion and corrective measures on the basis of the Ombudsman's recommendations on the implementation of the SINASAN law should be given more consideration.

63. In addition, a 20 per cent reduction in the Ombudsman's budget was announced at the time of the mission. The Special Rapporteur is worried that this might affect the ability of the Ombudsman to report consistently and in a timely manner on the realization of the right to food as required by the SINASAN law, as well as to continue other relevant initiatives, such as the development of indicators for monitoring and evaluation.

64. Litigation on issues related to the right to food has been limited to cases brought before the Constitutional Court under the *amparo* procedure, challenging the compatibility with fundamental rights of regulations of a general nature or acts of the State. A recent example of the latter is the case launched by the Ombudsman before the Constitutional Court on 19 August 2009 in the context of the malnutrition crisis in the *corredor seco*, as discussed above. The Ombudsman brought this case against CONASAN and SESAN, arguing that their failure to intervene decisively in the malnutrition crisis amounts to a violation of rights enshrined in the Constitution and international human rights mechanisms, as well as in the SINASAN law.

65. On 24 August 2009, a civil court of first instance (*Juzgado Cuarto de Primera Instancia Civil*) determined that the right to life, health, food and nutrition security, peace and the integral development of the human person had been violated, as well as the principle of precedence of international human rights treaties over domestic law. It ordered the concerned authorities to fulfil their obligations in line with the Ombudsman's recommendations.[53] The Special Rapporteur welcomes this development. The improved legal protection of rights enshrined in the Constitution and in the SINASAN law through such litigation is a means to ensure accountability for the implementation of the right to food in Guatemala.

VII. The obligation to fulfil the right to food (provide)

66. The second aspect of the obligation to fulfil the right to food concerns the direct provision of food and related necessities whenever an individual or group is unable to enjoy the right to adequate food by the means at their disposal. This includes the establishment of appropriate social programmes, the distribution of food aid in emergency situations and overall disaster management.

[53] Procurador de los derechos humanos, "Informe al relator especial de las Naciones Unidas sobre el derecho a la alimentación", September 2009, pp. 6-9.

A. Social programmes

67. Among the impressive number of initiatives taken by the current administration in order to improve the situation of the poorest segments of the population, those coordinated by the Council on Social Cohesion (*Consejo de Cohesión Social*) feature prominently. The most important of these initiatives is the cash transfer programme *Mi Familia Progresa*, currently reaching 136 municipalities identified as the poorest in the country.

68. Under *Mi Familia Progresa*, monthly cash transfers of GTQ 150 or 300, equivalent to 10 or 20 per cent of the minimum wage respectively, are provided to poor families. These transfers are conditional on school attendance by children and regular medical check-ups. According to information received during the mission, 446,174 families benefited between March 2008 and September 2009 and 90 per cent of the allocation went on food expenses. The programme was able to expand quickly, due to its flexible nature, but some supply-side problems have surfaced, for example the insufficient capacity of school and health centres to cope with the rise in attendance.

69. In addition, *Mi Familia Progresa* only covers selected municipalities. To determine the target areas, a 2002 municipal vulnerability index prepared by SEGEPLAN was used, according to which 80 municipalities were classified as priority areas and 41 as high priority. Under the current administration another 10 municipalities were included in the priority category in 2008. The Special Rapporteur regrets that more up-to-date and disaggregated data collected by SESAN has not been used to improve the index. For a better mapping of food vulnerability and insecurity, the State should strengthen these capacities and incorporate a human rights-based approach to the indicators used.[54]

70. Other food security-related programmes are *comedores solidarios*, which offers nutritious meals at affordable prices through public cafeterias in urban centres and *bolsa solidaria*, which distributes a monthly package of grains and foodstuffs in and around Guatemala City, conditional on the participation of beneficiaries in development training. Additionally, the *bolsa solidaria rural temporal* offers a package of basic foodstuffs to rural families at risk of malnutrition, and the *bolsa de subsistencia* provides ready-to-cook food to families in a state of disaster. The impact on food security of these particular programmes would be further improved by provisions to ensure to the extent possible the purchase of locally produced foodstuffs, preferably from family farms and rural entrepreneurial families.

71. Some degree of accountability for these social programmes has been ensured. For example, if a family living in one of the municipalities covered by *Mi Familia Progresa* is not deemed eligible, it can bring its case before the municipal delegation of the programme, which has the obligation to review it, while Community Councils for Development (*Consejos Comunitarios de Desarrollo, COCODES*) allow for beneficiary participation and monitoring of the delivery of aid and cash transfers.

72. Concerns have nevertheless been expressed about the sustainability, transparency, and coordination of social cohesion programmes. In the view of the Special Rapporteur, these concerns could be addressed by the increased integration of human rights principles in these programmes, and *Mi Familia Progresa* in particular. This would require a better mapping of poverty and food vulnerability and insecurity, ensuring improved targeting until universal coverage can be achieved, and prioritizing the food insecure. In addition,

[54] See the report prepared by the Office of the High Commissioner for Human Rights on Indicators for Promoting and Monitoring the Implementation of Human Rights (HRI/MC/2008/3).

beneficiaries should be better informed about their rights under the programmes in order to claim benefits if left out. Additional efforts should also be made to develop and improve mechanisms through which the beneficiaries can take part in the design, implementation and evaluation of the programmes.

73. The Special Rapporteur welcomes the invitation of the First Lady to study further how these principles could be implemented in the programmes coordinated through the Council on Social Cohesion. He also expresses the hope that, in time, these programmes will be institutionalized and codified into legislation in order to improve their sustainability and transparency. In this regard, the creation of a task force to work on such institutionalization is a step forward. The proposal to establish a Ministry of Social Development also deserves serious consideration.

B. Food aid

74. In partnership with national institutions, the World Food Programme (WFP) supports around 350,000 people in Guatemala through food for development, school meals, and mother and child health-care schemes. This includes 75,000 people who are covered by the regional Protracted Relief and Rehabilitation Operation (PRRO), which seeks to enhance the preparedness in communities exposed to recurrent natural events.

75. WFP schemes are implemented in partnership with the Government and local and international NGOs. A successful partnership initiative by the Government, WFP, FAO and NGOs is the development and distribution of VitaCereal, a blended food supplement distributed (as of 22 September 2009) to 100,000 children and 50,000 pregnant and lactating women to combat malnutrition. VitaCereal is distributed primarily in rural areas where access to healthy food is severely limited and has proven to be especially relevant during food crises. It is worth noting that VitaCereal is made with locally produced white maize as one of the main components.

76. Efforts must be made to ensure that food aid is targeted towards implementation of the Strategic Plan for Food and Nutrition Security (PESAN 2009-2012) adopted under the SINASAN law. More generally, food aid delivery in Guatemala should follow an objective mapping of food vulnerability and insecurity; take into account the potential impact on local agricultural production and on the affordability of food; and adhere to transparent criteria which are set out in legislation, so as to allow for effective remedies for potential beneficiaries who are unjustifiably excluded.

C. Disaster preparation and management

77. Guatemala is prone to natural disasters, including hurricanes, earthquakes, floods, droughts and frosts. It is therefore vital to ensure preparedness against such contingencies, and appropriate funding of the responses. The belated reaction to the 2009 drought should serve as a warning sign.

78. CONASAN drafts a yearly Food Contingency and Emergency Plan (*Plan de Contingencia y Emergencia Alimentaria*) identifying the necessary actions and budgetary allocations needed to assist people affected by a food crisis that may arise due to natural or socio-economic causes. The implementation of the plan is coordinated through an inter-institutional monitoring group, headed by SESAN and bringing together the Ministry of Agriculture, Livestock and Food, (MAGA), the Ministry of Public Health (MSPAS), the National Fund for Peace (FONAPAZ), the Council on Social Cohesion, the Secretariat of Social Works of the Spouse of the President (SOSEP) and government departments. Main components include the provision of emergency food packages - *bolsas solidarias rurales*

and *bolsas de subsistencia* - and basic health services to affected persons and communities. The Special Rapporteur calls on the Government and the international community to ensure that adequate resources are allocated to the implementation of the plan. The establishment of strategic food reserves, possibly in cooperation with other countries of the region in order to spread risks and ensure a mutualization of efforts, could be a component of such a plan, provided they are managed in a way that ensures accountability and transparency.

VIII. Non-discrimination

79. Discrimination against indigenous peoples is a long standing feature of Guatemalan society. Although indigenous peoples represent up to 64 per cent of the population according to some estimates, most policy decisions are made without their consultation and participation, and their food security is particularly affected by large-scale development projects and land concentration.

80. The Special Rapporteur regrets that there is no special regime for the protection of the territory traditionally belonging to indigenous peoples. The lack of coordination between institutions that are mandated to combat the discrimination of indigenous people and defend their interests is also a source of concern. At the same time, the Special Rapporteur is encouraged that a law on the rights of indigenous peoples (*iniciativa de ley general de derechos de pueblos indígenas de Guatemala*) is currently being discussed in Congress. In addition to addressing access to land, the bill recognizes the right of indigenous peoples to food sovereignty and security, and spells out the obligations of the State in this regard.

81. In addition to the protection of indigenous peoples, the Special Rapporteur calls upon the Government to continue its efforts to address discrimination against women. In this regard, the concluding observations issued in February 2009 by the Committee on the Elimination of Discrimination against Women require urgent follow-up, in particular as they relate to women's access to land and credits. The plight of Maya, Xinca and Garifuna women also deserves special attention.[55]

IX. Use of maximum available resources

82. In 2004, Guatemala spent 6 per cent of its GDP on social programmes. This amounts to less than US$ 300 per capita and ranks among the lowest figures in Central America.[56] Eight hundred and fifteen million quetzales are available for the implementation of PESAN 2009-2012, which is the equivalent of 0.25 per cent of GDP and 1.64 per cent of the State budget.[57] An annual increase of approximately 8 per cent would be required for the implementation of the Strategic Plan.[58] This appears unlikely in the current context, given that the draft budget for 2010, which assigned 34.9 per cent of the budget, i.e. 6.7 per cent of GDP,[59] to social and environmental programmes, was not passed by Congress.

[55] CEDAW/C/GUA/CO/7.

[56] Campaña Nacional Guatemala Sin Hambre, "Justiciabilidad del derecho a la alimentación en Guatemala", page 9.

[57] Centro Internacional para Investigaciones en Derechos Humanos/Coordinación de ONG y Cooperativas, *Situación de los Derechos Económicos, Sociales y Culturales y Ambientales en Guatemala 2009*, page 32.

[58] Ibid.

[59] Campaña Nacional Guatemala Sin Hambre, "Justiciabilidad del derecho a la alimentación en Guatemala", page 10.

83. Budget analysis is a useful tool to ensure that scarce resources are used efficiently in the realization of human rights, especially those of the most vulnerable sections of the population. The Special Rapporteur welcomes various civil society initiatives in this regard. These include a social spending observatory (*Observatorio del gasto social*), coordinated by the NGO and cooperatives coordinating organization, CONGCOOP, and the International Centre for Human Rights Investigations (CIIDH), budget analysis conducted by the Social Collective on the Right to Food (*Colectivo Social del Derecho a la Alimentación*); and a research and advocacy project on fiscal commitments and the rights to food, health and education by the Centre on Economic and Social Rights in collaboration with the Central American Institute for Fiscal Studies.

84. The Special Rapporteur acknowledges the important efforts that have been made in 2008-9 to advance the discussion on tax reform. However, he regrets that the level of taxation of incomes remains among the lowest in the region. In 2009, taxes represented 9.9 per cent of GDP. This is still a long way below the 12.5 per cent stipulated in the 1996 Peace Agreements. To achieve that, a structural reform of taxation, including changes to the Solidarity Tax and an increase in the income tax on the highest revenues, would be essential.

X. The role of the international community

85. Guatemala remains highly dependent on donors and lenders for its public budget[60] and this imposes a special responsibility on the international community. The Special Rapporteur was encouraged by the good spirit and level of coordination among donors, as well as by the *Mesa Sectorial de Seguridad Alimentaria Nacional*, organized by SEGEPLAN as a forum in which different actors can pool their efforts for food security. In light of the budgetary constraints identified above, he believes donors could support the implementation of the SINASAN law, PESAN 2009-2012 and social programmes, as well as the new Policy on Integral Rural Development. The international community should support the efforts underway in Guatemala to improve food security, but also promote a form of development that is more inclusive and sustainable. In addition to the need for targeted support in a transparent manner, this also requires more consistency across different policy areas. In particular, trade agreements and support to investment should be assessed for their impact on food security, and be carefully tailored to avoid any negative impact.

XI. Recommendations

86. The Special Rapporteur was impressed by the degree of commitment and the range of efforts deployed by the Government to improve the situation of food security in the country. He is also fully aware of the difficult circumstances Guatemala is facing and of the role of international assistance and cooperation in this regard. He is concerned, however, that too little is done to remove the structural obstacles to the full realization of the right to food, including for indigenous people, and to put an end to the very high levels of child malnutrition that remain in the country. This is not a task for the Government alone. All branches of Government, including Congress, and all sectors of society, including political parties, should accept responsibility for this situation, and see it as their duty to move towards improving it.

[60] In 2009, donations and external debt amounted to 13.4 per cent according to figures presented in the 2009 Law on the General Budget (Ley del Presupuesto General de Ingresos y Egresos del Estado para el Ejercicio Fiscal 2009).

87. This report contains a number of recommendations, which the Government is invited to consider. The Special Rapporteur believes that five issues deserve the highest priority:

(a) Unequal access to land remains a source of conflict. In the short term, the government should abstain from carrying out forced evictions that are in violation of international standards. It should adopt legislation protecting land users from such evictions, and reform the 1997 Law on Mining, in particular in order to improve respect for the rights of indigenous communities over their natural resources. The possibility for landowners to claim up to 20 per cent of land in addition to the documented size of their property, provided for under the 2005 Land Registry law, should be removed immediately. The Policy for Integral Rural Development should also be fully implemented, including as regards land redistribution, and it should be adequately funded. The adoption of the Policy into legislation would be a welcome step in this direction. Finally, the adoption of an agrarian code with objective criteria for the resolution of land conflicts and the creation of institutions to solve conflicts over land could significantly contribute to lessening tensions over land in the rural areas;

(b) The existing social programmes, and the *Mi Familia Progresa* cash transfer programme in particular, could be improved by the integration of human rights principles. This would require a more adequate mapping of poverty and food vulnerability and insecurity; improved targeting until universal coverage can be achieved; and prioritizing the food insecure. Beneficiaries, particularly within the non-Spanish speaking communities, should be better informed about their rights under the programmes. Additional efforts should also be made to develop and improve mechanisms through which the beneficiaries can take part in the design, implementation and evaluation of the programmes;

(c) Consistent with the right of everyone to a decent standard of living, the minimum salary should be raised. The capacity of the Labour Inspectorate should be reinforced, particularly in the rural areas;

(d) In order to improve its ability to react to emerging crises, Guatemala should strengthen the System of Information and Communication on Food and Nutrition Security (SICSAN) and have in place a well-functioning early warning system and the corresponding emergency response. This could require reinforcing the capacity of the Secretariat for Food and Nutritional Security of the Presidency of the Republic (SESAN), and ensuring that all resources will be available to fund the measures proposed by the National Food and Nutrition Security Council (CONASAN) under the Food Contingency and Emergency Plan;

(e) The low level of taxes on incomes is a major obstacle to the ability of Guatemala to fulfil its obligations under the International Covenant on Economic, Social and Cultural Rights. A structural reform of the taxation system, including changes to the Solidarity Tax and increasing the income tax on the highest revenues, will be essential if Guatemala is to deploy the "maximum of available resources" to the realization of the right to food.