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CONCLUDING DISCUSSION OF GUATEMALA'S REPORT, HUMAN RIGHTS EXPERTS POSE QUESTIONS ON HUMAN RIGHTS DEFENDERS, ADDRESSING CONFLICT'S AFTERMATH, INDIGENOUS RIGHTS¹

FOLLOWING TWO-DAY CONSIDERATION, DELEGATION SAYS 'MIND-SET' TRULY CHANGED; STATE OF DENIAL REPLACED BY GENUINE DESIRE TO BUILD SOCIETY THAT PROTECTS HUMAN RIGHTS

AS it concluded discussion on Guatemala's third periodic report today, the Human Rights Committee commended the country for putting in place legislative measures to improve its compliance with the International Covenant on Civil and Political Rights, but added it had not done enough to protect human rights defenders, address the consequences from its 36-year internal armed conflict and protect indigenous rights.

"We really think there should be stronger controls to prevent attacks against human rights defenders", Zonke Zanele Majodina, expert from South Africa and Committee Chairperson, said in concluding remarks. She could appreciate the challenges in complying with the Covenant, as her own country had experienced its own conflict. "It's very difficult to establish institutions that respect the rule of law," she said. But, she remained hopeful that Guatemala's commitment to upholding human rights — especially of the indigenous population — would be a long-standing one.

Equally important, other experts said, was ensuring that funding was available for the newly created Agency for Analysis of Attacks on Human Rights Defenders, and revising a provision in the Criminal Code that allowed prosecutors to reject cases before speaking with the alleged victims. Questions centred on how reparations were determined in those cases, and on how many people had been tried and sentenced for such abuse.

Linked to those issues were concerns about the Government's ability to live up to commitments made in its historic peace accords — signed in 1996 and brokered by the United Nations — as well as comply with rules and decisions set by inter-American human rights bodies. In that context, several of the 18 experts — who are charged with monitoring the Cove-

1. <http://www.un.org/News/Press/docs/2012/hrct745.doc.htm>.

nant's implementation — queried the delegation on Guatemala's treatment of indigenous rights to land. One specifically asked about steps to make the prior and informed consent of indigenous peoples a prerequisite for issuing exploration and extraction permits in indigenous territories.

Responding to those concerns, one delegation member said a unit had been set up to analyse the patterns of attacks on human rights defenders, efforts in which the Ministry of the Interior and the Presidential Commission for Human Rights had been involved. There also was a unit in the Prosecutor's Office to deal with such crimes. More broadly, he said that since 2008 more than 600 protection measures had been put in place, for example, to protect social groups, journalists, activists, trade union workers and political party members, so they could do their work without intimidation.

Regarding prior informed consent, another delegation member acknowledged that no consultations had been carried out with indigenous peoples. Projects that had been authorized twenty years ago were now being built and there was certainly a need. The question of consultations was not a "yes or no" matter. He agreed that they must take place, but the Government also had seen the need to develop regulations for the procedures. "It's not an excuse," he said. "It's something we have to do."

Adding to that, another delegation member said a new unit for indigenous affairs had been set up in the judiciary and was to begin operations in two days, on 22 March. It had three main responsibilities: to promote policies that advanced indigenous rights; to promote training on indigenous rights — including on legal pluralism — for judiciary and law enforcement staff; and to advise judiciary authorities on indigenous matters. While no one expected it to solve every problem, the hope was that, in the long run, it would provide the necessary technical assistance to enhance indigenous policies and make the situation more visible.

In final commentary, one expert asked why it was only now that Guatemala had decided to solve the problem of femicide, when the killing of women had occurred regularly throughout the decades.

In response, Adela de Torrebiarte, Commissioner for Police Reform, said it had only been within the last six or seven years that a word had been used to describe the murder of women. The question now was how to deal with it. It was not easy to pass legislation that was appropriate for that crime. "There was a lot of opposition," she said. Claims that such a law would be unconstitutional had their roots in a machismo culture and a "patriarchal approach to life" that prosecutors often took into account.

In closing remarks, a Government official speaking on behalf of Gert Rosenthal, Permanent Representative of Guatemala to the United Nations, said the country had come a long way. It had moved from being extremely defensive and in a state of denial, to genuinely trying to live up

to its peace agreement commitments and build a more democratic, participatory and tolerant society that protected human rights.

Even so, some challenges were difficult to overcome, as they dated back over forty years of entrenched cultural patterns. The country still dealt with serious human rights violations. But, the mindset had truly changed in his lifetime. "We are no longer trying to cover up things," he said.

The Human Rights Committee will reconvene at 10 a.m. Wednesday, 21 March, to address the situation of Cape Verde in the absence of a report.

I. BACKGROUND

The Human Rights Committee, the 18-member expert body that monitors global implementation of the International Covenant on Civil and Political Rights, continued its 104th session today with its second day of discussion of Guatemala's third periodic report (document CCPR/C/GTM/3). Issued 31 March 2010, the report contains an article-by-article discussion of the implementation of the Covenant, including on the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial.

II. GOVERNMENT'S RESPONSE

JOSE FRANCISCO CALI TZAY, Director of Human Rights at the Ministry of Foreign Affairs, began the government's response to the questions posed by the Committee on the previous day by stating that two favourable rulings had been handed down regarding the National Commission for Disappeared Persons. To answer Mr. Salvioli's query, it was indeed on the legislative agenda and had been placed there for rapid approval.

Turning to the question of damages, the delegation would be sending the Commission a detailed description in writing regarding damages provided or awarded to the victims of internal armed conflict, as well as the overall damage packages.

Regarding the states of emergency, martial law had been decreed based on the official publication of place and time, and with respect for Article 4 of the Covenant. Those measures were adopted due to high levels of drug-trafficking violence. In Guatemala and some other Latin American countries, drug-trafficking was a threat to the security of states.

With regard to sex education, the family planning law had yielded many results. The national survey on maternal and infant health showed that there had been progress in the area of implementation. Statistics showed that 72.2% of the survey population obtained contraception from a public source and 27.6% had obtained it from a private source. The Guatemalan Institute for Social Security conducted family planning classes, free of charge.

Coming back to the care of pregnant women, the Institute also provided medical education and healthcare treatments. As for financial services for pregnant mothers, they received 100% of the minimum wage once the person had contributed to the job for six months. They also had eighty-four days of leave which included the pre- and post-natal period. A chart was available for the Committee's perusal regarding the use of those services in different areas of the country.

Turning to abortion, there was currently a ban on abortion. Any measure to change that would require a constitutional amendment and that process required a national assembly to propose and pass a national referendum. The current measures taken by the Guatemalan Institute for Social Security, focusing on prevention, were the best way to tackle that issue. The Government was not making an excuse, but societies like Guatemala and Mexico were struggling with issue. Mexico had "a much more organized society" and they hadn't been able to change the constitution to do that.

As for the death penalty, more information would be sent to the Committee after a consultation with Congress.

ALBA TREJO, Presidential Commission against Femicide, speaking on the question of violence against women, said that Guatemala was working on three investigation protocols — on killing women, on sexual violence, and violence against women. Investigation normally lasted three months. There were two forensic doctors involved in investigating the cases. Each case received one to three hours of analysis to look at the testimony. If it was a family violence problem, that would not come under the purview of the Ministry of Interior.

The Ministry also provided training to prosecutors and law enforcement officers. The Commission against the Murder of Women combined a multi-sectoral effort by thirty-one different organizations, so that a rapid response could be formulated. There were a number of plans in place for prevention of violence and to increase capture of perpetrators. This year, so far, 130 had been captured, whereas last year only eight had been captured. That sent a clear message that there would be no impunity.

Further, a new campaign against domestic violence would be coming out in the Mayan language. There would also be dissemination of information through brochures and pamphlets about the path to femicide, so that women could identify different kinds of violence. Those were translated into various indigenous languages. Various mayors and leaders of the Mayan population had signed "letters of understanding".

Although that might seem a paternalistic approach, it was necessary to involve the right authorities. It was difficult to reach Mayan women, because of language and cultural differences. It was better for the community to deal with it at their own level and without interrupting their pace. There was also an education campaign aimed at children, so that children would understand that violence in families was not natural.

In order to combat sexual violence against women, the government was creating more street lighting, planning recreation areas, keeping open spaces clean, and making sure that the community participated in the debate about the subject.

Another member of the delegation added that training had also been provided within the judiciary on the subject of violence against women. There was a training programme geared to attorneys, judges and legal staff; a certificate programme on social work, justice, human rights and gender; and a third cross-cutting gender programme with normative analysis in the area of violence against women. In 2009, 657 people had been trained, 545 in 2010, and 1,016 in 2011. The point was that the judiciary had been working very hard to train staff.

On the subject of "maquiladoras", there was a proposal before the Congress and the commission on the economy to deal with the wage issue. Regarding joint security organizations, the Government was looking to restructure the national civil police and the description of their functions. The main goal was a preventive approach vis-à-vis those joint patrols. They were trying to ensure that the national civil police was community-based. There was also gender training within the police, and outside it.

Following up on the last response about joint patrols, NIGEL S. RODLEY, expert from the United Kingdom, stated that he had once visited Guatemala on a human rights mission in the mid-1980s and he remembered "the civil patrols that allegedly maintained order". He wished for some reassurance that none of the people who were involved in the civil patrols then, twenty or twenty-five years ago, would be involved today in either the military, or the police, or for that matter, in private security companies.

III. DELEGATION'S RESPONSE

Responding to the query on civil patrols, ADELA DE TORREBIARTE, Commissioner for Police Reform, said "this doesn't mean people are organizing as they did in the past." It was very important that the civil police become more professional. Guatemala now had a body to deal with private security companies, as well as a law to ensure those companies did not "indulge in excesses". In the past, there had been a problem with armed people who were not subject to decisions by any institution. Today, that issue was being addressed. The Ministry of Governance had ratified various measures and there would be close monitoring of those companies.

Adding to that, another delegation member said joint patrols were headed by National Civil Police. The army was not authorized to arrest anyone; only the civil police could make arrests. He reassured the Committee that civil self-defence patrols would not reappear, as there now was strict prosecution of any such cases. Strict sentences had been handed down by the courts for those found guilty of massacre, torture

and kidnapping. “The Government and civil society simply do not want to go back to that very dark period in Guatemalan history,” he insisted. The Ministry of Governance was doing its utmost to ensure the National Civil Police could operate everywhere, reinstalling police offices in areas where they had not been in the past.

IV. EXPERTS’ COMMENTS AND QUESTIONS

WALTER KALIN, expert from Switzerland, said the Government’s focus on combating crime, while commendable, also could increase prison overcrowding and he wished to know what would be done to address that issue. On the separation of accused persons from convicted persons, he said the report’s paragraph 355 stated that, due to a lack of infrastructure, such a separation was not possible. Paragraph 354 referred to a pilot project, adopted in 2008, to improve the situation and he asked to what extent it had been implemented.

On the requirement to separate adults from youth, the written responses stated that the Social Welfare Secretariat was advocating for such a separation. That need to advocate indicated that separation was not taking place and he asked about the present situation. How was civilian oversight ensured in facilities that were run by the army? Paragraph 330 stated that 15 prisoners had died of violent causes in 2007. That was an old figure and he asked for more recent figures to understand the magnitude of the problem. Finally, he had seen reports of violence against female prisoners by guards, some of whom had been raped while in transfer. To what extent did male guards have access to women? Why were female guards not used?

MARGO WATERVAL, expert from Suriname, asked about issues 16 to 21. She welcomed Guatemala’s efforts to reform its institutions. She was satisfied with the replies, and welcomed the election of the attorney general. She also hoped that a procedure for the nomination and election of all high-ranking officials would be transparent and based on objective grounds. She was pleased to learn that the judiciary had studied rural and urban communities, and that judges were being trained in implementing the International Labour Organization (ILO) Convention 169 on Indigenous and Tribal Peoples. Were judges also being trained in the Covenant on Civil and Political Rights?

Further, she asked about the laws, protocols, programmes and policies to enhance Guatemala’s capacity to fight impunity, particularly about the coordination among the Public Prosecutor, the security forces and the judiciary. She also asked for information on the Judiciary Service Act, as well as the Act for the Protection of Persons Involved in the Conduct of Judicial Proceedings and Persons Linked to the Administration of Justice. She also asked about expanded geographic coverage of the justice system for indigenous peoples.

FABIÁN OMAR SALVIOLI, expert from Argentina and Committee Vice-Chairperson, said the Government’s written reply on xenophobia

was not satisfactory. Complaints had been channelled to the Public Prosecutor. Article 202b of the Criminal Code did not address the Committee's concerns regarding the criminalization of expressions of racial discrimination and xenophobia. Had Guatemala adopted a law criminalizing such behaviour? Also, had there been decisions rendered in complaints sent to the Public Prosecutor?

Turning to human rights defenders, he said the Agency for Analysis of Attacks on Human Rights Defenders was an important institution, but it was just beginning its work. Did it have enough funding? The Prosecutor had not reported a large increase in such attacks. But, respectable non-governmental organizations had registered their concern about the risk of such attacks. "The picture is fairly clear," he said, adding that the Criminal Code authorized prosecutors to reject cases before speaking with the alleged victims. If that was the case, would it be revised? He asked about reparations and action taken to combat such attacks. He also wondered how many people had been tried and sentenced for attacking human rights defenders.

Acknowledging Guatemala's efforts to promote indigenous peoples' participation in democracy, he said there had been reports of the Government's systematic violation of indigenous peoples' rights to land, and further, its failure to live up to peace agreement commitments. He was concerned about the Government's compliance with rules set by inter-American human rights bodies. What was being done with the results of the informed consent process? Were those results integrated into public policy?

CHRISTINE CHANET, expert from France, asked about dissemination of the Covenant, as the written responses on that issue were rather brief. She wondered why dissemination of international instruments had been limited to the judiciary and the police. Doctors, for example, were not familiar with the Covenant's provisions, particularly in cases of rape, when they treated victims as though they were sick. In cases of torture, how were doctors being made aware of the Covenant's legal provisions? Schools would be a good place to start.

Also, the report mentioned a project to offer an abridged version of the Covenant's provisions — which rights would be included? She urged making such instruments known throughout civil society in several languages, particularly so indigenous peoples could access them.

KRISTER THELIN, expert from Sweden, said he had been surprised to learn that the head of the delegation was also a member of a treaty body. While that was not an issue for the Committee, he wished to share the observation. He agreed that the current discussion had been fruitful in dealing with Guatemala's "troubled" past. While Guatemala's report was nearly four years late, that was greatly compensated by the fact that its replies were very timely.

He asked about an issue that had been of concern to the Committee the last time Guatemala had come before it ten years ago. It dealt with

the jurisdiction of military courts. Paragraph 20 of the Committee's last concluding observations had noted the "wide jurisdiction" of military courts to hear cases, including those that belonged to ordinary courts, which prevented punishment for serious human rights violations. Those Concluding Observations recommended the State party to amend the law to limit those courts to deciding on military personnel cases of an exclusive military nature. He had seen no reference to that issue in the current report or discussion. Had any amendments been made or were any projected?

AHMAD AMIN FATHALLA, expert from Egypt, asked for clarity on the geographic coverage of the justice system. A five-year plan for the 2006-2010 period was mentioned in the report, which would expand coverage and access to justice. He had heard nothing about where that plan stood today and he wondered about its results, now that it had been over two years.

YUJI IWASAWA, expert from Japan and Committee Vice-Chairperson, asked for more detail about progress on incorporating indigenous law into the national legal system. He asked about the "preliminary proposal" mentioned in connection with prior consultations with indigenous peoples. What was the status of it and what did the Government plan to do with it?

LAZHARI BOUZID, expert from Algeria, wondered if Guatemala's legal services and finances were benefitting indigenous peoples in civil and political matters. What percentage of judges were fluent in indigenous languages? The report noted a bill before Congress concerning sacred sites for indigenous peoples — had it been enacted into law? If so, what were the results of that law in terms of practice on the ground? Paragraph 468 of the report stated that 1,116 churches had been registered with the Ministry of the Interior — did that include other places of worship, such as temples, mosques or places sacred for indigenous peoples?

Before responding, a delegation member asked Ms. WATERVAL if she could repeat the laws on which she sought further explanation. He also asked Mr. THELIN to clarify what specifically he wished to know about military court jurisdiction.

Responding, Ms. WATERVAL said she sought comment on the Judiciary Service Act; and the Act for the Protection of Persons Involved in the Conduct of Judicial Proceedings and Persons Linked to the Administration of Justice.

Mr. THELIN said was referring to paragraph 20 of the Committee's Concluding Observations of 27 August 2001, which had asked Guatemala to amend the law on military courts and to limit their jurisdiction.

Delegation's response

Ms. DE TORREBIARTE, addressing the detention questions, said that measures had been taken for people convicted of minor offenses. Her Ministry was coordinating with the Supreme Court of Justice to allow

more space for detainees. On facilities run by the army, she said that, by way of background, there had been a lot of insecurity around that issue. In the past, it was dangerous to take high-profile criminals to prison. So, a few small prisons were created in the days when the army was running things. Today, however, the penitentiary system controlled prisons. The Police Commissioner had spoken with communities, and the Government had decided on a way to deal with high-profile prisoners, which included a former President.

There were very few female guards, she continued. On human rights defenders, she said that in the past, there had been a hotline for defenders. However, the technology used by the National Civil Police was in pretty bad condition and she was not sure that the hotline was still working.

Continuing, on the subject of protection for human rights defenders, another delegate stated that a unit had been set up to analyse patterns of attacks against human rights defenders. The ministry of interior and the presidential commission on human rights were involved in that. There was also a unit in the office of the prosecutor to deal with such crimes. Since 2008, there had been national mechanisms to ensure real protection for defenders, without their having to resort to international mechanism. Over 600 measures of protection were being applied now, including protections for social groups, journalists, activists, trade union workers, and members of political parties, so they could do their work without intimidation. There were also regulations governing it.

In response to the question about the dissemination of international instruments, the Government's efforts had focused on providing accessible publication of various human rights instruments.

As to whether there had been trials in discrimination cases, there had been several. There was a law right now on xenophobia, but it had not yet passed, he said. Guatemala had a very serious situation, with the publication of xenophobic articles. Guatemala was taking a leadership position on that and updating its domestic law, so that it was in line with international instruments.

On violence in prisons, investigations were underway on those particular cases, he said. Over 12,000 people had been injured in prisons. Of which 6,500 were not yet sentenced and were in preventive detention. On woman detainees, there were women guardians, but the Government would note the recommendations of the Committee and when women prisoners were transferred to other prisons, women guards would accompany them.

Military courts did not decide civil cases, but there were cases of military personnel who had committed crimes against civilians, he said. Those were tried in civil courts.

The Catholic Church was recognized in the laws of the country, but there was freedom of religion and authorization could be requested for other religions, he said. There were several mosques in Guatemala and

the Mayan religion did not require authorization, because it was an age-old practice. The law on places of worship was before the parliament and had gone through a second reading, but action had not been taken. The delegation would convey the Committee's recommendation to the Congress.

On the subject of prior informed consent, the delegation had to acknowledge that no consultations had been carried out with the indigenous people. The former administration had made efforts to carry out consultations, but there had been criticism by civil society. The Government was resolved to continue working on the legislation for prior informed consent. The consultations were conducted by the communities themselves. The legal framework showed that the State was the one who should carry out the consultations. Guatemala had not yet dealt with that matter.

Another delegate clarified matters relating to the five-year plan on the system of justice. The previous five-year plan had ended in 2010 and the five-year plan adopted for 2011-2015 was available for the Committee to look at. It included elements such as developing the jurisdictional approach, the services programme, and improving administration effectiveness. There had been problems with prosecutions moving from court to court. The Supreme Court consisted of thirteen members and each member held the term for five years, not for life. The court had decided in February this year to set up a new secretariat to strengthen the administration of the judiciary. The main task now was to move ahead with programmes and projects that had been proposed for the five-year-plan and to improve administration, in order to make the excellent provision of justice possible. Since last year, Guatemala had been following a policy of zero tolerance to corruption and impunity. Specific complaints had been lodged and some were under investigation.

Regarding the number of judges and national coverage, there was at least one jurisdictional body in all municipalities of Guatemala. The "most remote department" of the country had just created a municipal body. There were forty-eight criminal judges and a new court for femicide. Currently, the Government was studying where the greatest need was for additional courts.

At the national level, eighty-one interpreters covered more than fifteen languages in the courts. The State was aware that this was a significant and recurring problem and had created a new unit for indigenous affairs within the judiciary. That was historical progress. The new unit would begin operation on 22 March — in two days. It was mandated to cover three areas — promote implementation of policies for the rights of indigenous peoples; promote training and awareness programmes on indigenous rights and legal pluralism within judiciary staff and law enforcement; and conduct studies to orient and advise authorities in the judiciary on the matter of indigenous issues. Guatemala was not going to solve all the problems with the creation of that unit, but the hope was that it would

enable Guatemala to make the situation more visible. In the long run, the unit would provide the technical assistance necessary to enhance policies in the area of indigenous issues.

Regarding the subject of protection for the judiciary, there were a total of 580 security personnel for the Supreme Court in 215 locations, he said. The Government had conducted a study to see if an increase in staff or improvement of equipment was necessary. The study revealed that it was necessary to provide technical assistance. With United Nations Development Programme (UNDP) support, Guatemala had been working on the issue and a study was underway to look at protection for magistrates and judges. Based on the findings, Guatemala would develop manuals and find funding for security equipment.

As to the question of how many convictions there were for discrimination, there were no exact figures available at the moment, but the Government would be happy to send specific numbers later.

Another delegate responded to the question about minors deprived of liberty. The ministry of interior was looking at correction facilities for juveniles, he said. Many of the juveniles belonged to gangs; they were teenagers who had committed extortion, assassination and murders. Recently, there had been a riot where juveniles had committed violent acts in the prison. Such problems happened when juveniles were sentenced to serving prison time and became adults in prison. The new Government was working with the ministry of interior to address that issue, with a holistic policy that had a psychological and rehabilitative focus.

The Ministry of Health had established a protocol on sexual violence about a year ago. The protocol contained a treatment guide, as well as a guide to treatment in the case of AIDS, pregnancy and so forth. There were doctors, psychologists and legal specialists available to victims of sexual violence. Sixty-two doctors, twenty-four hospitals and sixty psychologists were involved in addressing the needs of victims. It was taking time to train practitioners in the new protocol, but it was in place.

Adding information to a previous answer, one of the delegates stated that in order to prevent revictimization of children, it had become necessary to create a metropolitan centre with more modern facilities and a special chamber for children. The number of judges at the centre had been increased and the judicial delays in trying cases had been reduced by fifteen percent.

V. EXPERT QUESTIONS

CORNELIS FLINTERMAN, expert from the Netherlands, asked about abortion legislation. Eleven years ago the Committee had recommended that Guatemala must amend its abortion legislation. Was it to be understood that that particular recommendation had not been complied with? One of the difficulties seemed to be a constitutional provision prohibiting abortion. But, in the framework of constructive dialogue, he wished to know the opinion of the delegation — could the constitutional

provision be interpreted in such a way that it would allow abortion in certain circumstances, such as pregnancy, result of a rape, and danger to the life of the mother? He was asking the delegates' opinion because it was the golden rule of interpretation, with any legal provision, that it should not lead to harmful results.

Also, Guatemala was party to the Second Optional Protocol to the Covenant. Could the Government give any indication of the measures taken to make everyone in Guatemala aware of the possibility that, after the exhaustion of local remedies, there was still a way for individuals to find justice in case of violations of their rights?

Mr. KAELIN said that he wanted to take up an additional issue regarding health services provided during detention. The report had interesting relevant information and stated that all detainees were provided medical check-ups. Elsewhere, the report also said that administrative staff were responsible for deciding when people needed medical treatment outside prison. Mr. Kaelin wondered how many people were working for this administrative unit and whether there was sufficient staff, especially when people needed emergency treatment. The unit seemed to be over-burdened. What about HIV testing in prisons? He had been informed of one case where an HIV test was administered without the consent of the person, but no medical treatment was provided when the person was diagnosed HIV-positive.

MARAT SARSEMBAYEV, expert from Kazakhstan, asked when exactly femicide had become a problem for the whole nation. Maybe femicide had always been a problem, but the Government had decided only now to solve the problem.

Mr. SALVIOLI stated that it seemed there was no specific definition for a xenophobic crime. That would be reflected in the Committee's conclusions. In regard to human rights defenders, there was legal coverage, but he wished for more details about the practical situation on the ground. With regard to consultations with indigenous peoples, why wasn't the state convening meetings with them? The indigenous people had a mechanism of meetings that they had developed themselves, but how would the state know their opinions if it did not call for consultations with them on its own initiative? Reinforcing what Mr. Flinterman said, the political constitution of Guatemala did not refer to abortion specifically. What it said was that the rights of persons were to be protected from the moment of conception. "If a mother's life was in danger, it would be absurd to protect the right of the person who was about to be born, but not the one who was going to give birth," he added.

Mr. FATHALLAH stated that the information provided by the delegation regarding the ongoing five-year-plan for the judiciary did not answer his question about the implementation of recommendations for geographical coverage of justice in the 2006-2010 plan.

VI. RESPONSE

Another delegate said the question of consultations with indigenous peoples was not a “yes or no” matter. ILO Convention 169 enforced indigenous peoples’ rights. He agreed that consultations must take place, but the Government also had seen the need to develop regulations that would cover those kinds of procedures.

He said it was important to fill in those details. For example, “grandfathers” had consulted among one another to determine which materials would be best for preserving Mayan activities, a point which showed that consultations were part of Guatemalan heritage. Determining who could be involved and how they should be conducted were questions to consider. “It’s not an excuse, it’s something we have to do,” he added.

Other consultations must be held on projects that had been authorized twenty years ago and were now being built, he said. The Committee could see what the previous Government had done — it had not explicitly granted exploration or mining rights. “We must develop regulations to determine how to hold consultations with indigenous peoples.”

ALBA TREJO, Presidential Commissioner against Femicide, said there was more discussion about the problem of femicide today than in the past. While femicide had always existed, the word to describe it had appeared only within the last six or seven years. The question centred on how to deal with the murder of women in a “special” way. Sometimes, the murder of a woman involved torture and rape. It was easy to pass a law in Guatemala appropriate for that crime. “There was a lot of opposition,” she said, citing claims such a law would be unconstitutional. Prosecutors often took into account “machismo” and the “patriarchal approach to life” when determining constitutionality. The Government was using all kinds of mechanisms to prevent impunity and the recurrence of such crimes.

Another delegate addressed the question about implementation of the five-year plan to 2010, saying Guatemala had received technical assistance from United States Agency for International Development in drawing up that plan. During the 2006-2010 period, Guatemala had created sixty-two new jurisdictional bodies. He did not have data on what had actually been accomplished during the timeframe. But, the current five-year plan stated that the Supreme Court had reviewed implementation of the previous plan, with a view to forward planning.

VII. CLOSING REMARKS

A delegation member, speaking for Mr. ROSENTHAL, said the composition of Guatemala’s delegation reflected various judicial bodies and branches of the executive, in an effort to bring together different parts of the apparatus designed to protect human rights. Usually, the Minister of Foreign Affairs would head the delegation, but as the meeting had been held in New York, he could not attend. Nonetheless, “We wanted to have

experts from different sectors and departments to answer the questions,” he said.

He believed Guatemala had come a very long way. Guatemala had moved away from being “extremely defensive” and in a state of denial, “trying to prove what was un-provable”, to genuinely trying to live up to its peace agreement commitments and build a more democratic, participatory and tolerant society that respected human rights. “Of course, this doesn’t mean we have done this”, he said.

The country still had serious human rights violations. The list of issues was proof of that. But, what had truly changed in his lifetime was the mindset. “We are no longer trying to cover up things,” he said. Guatemala was ready to be open to international bodies and better defend human rights. As proof, a pillar of its foreign policy was the defence of human rights at the international level. Indeed, it would be hypocritical for Guatemala to “go preaching abroad what we do not do in our own country”. The country was aware of its shortcomings, and the enormous obstacles preventing it from doing better.

Some challenges were difficult to overcome, he said, as they dated back over forty years of entrenched cultural patterns. Others, like the lack of resources, would be easier to address. In all such efforts, Guatemala was “battling” to provide all rights to which people were entitled under national and international law. “We stand ready to maintain an ongoing dialogue with the Committee, both here, in Geneva or at home,” he concluded.

In her closing remarks, ZONKE ZANELE MAJODINA, expert from South Africa and Committee Chairperson, commended Guatemala for putting in place legislative measures and policies to improve compliance with the Covenant, citing efforts to guarantee the independence of public protector’s office as one example.

On other fronts, she said the Committee was concerned at a number of areas in Guatemala’s human rights record, especially surrounding the consequences of the armed conflict, the reparations issue, and the abolition of the death penalty. Other issues concerned the protection of indigenous rights, general safety and security — especially in the context of the joint military patrols — and the prohibition of abortion. Moreover, “We really think there should be stronger controls to prevent attacks against human rights defenders,” she said.

At the same time, she said she could appreciate the challenges in complying with the Covenant, as her own country had gone through its own conflict. “It’s very difficult to establish institutions that respect the rule of law,” she asserted. She remained hopeful that Guatemala’s commitment to upholding human rights — especially of the indigenous population — would be a long-standing one.