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and Political Rights**

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Parties under Article 40 of the Covenant**

Third periodic report

Guatemala* **

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** Annexes may be consulted in the files of the Secretariat.

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I. Introduction

1. In preparing the third periodic report of Guatemala on implementation of the International Covenant on Civil and Political Rights, the Presidential Commission for Coordination of Human Rights Policies (COPREDEH) had the support and technical assistance of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Guatemala.

2. It was decided that an inter-ministerial participatory approach would be the best methodology, one that had been designed by the OHCHR Office in Guatemala and improved through thematic workshops held to compile information obtained from the officials directly involved, who interact with staff from other institutions and with whom they share not only related tasks but also programmes, projects, concerns and difficulties in the performance of their work related to implementation of the Covenant.

3. The thematic workshops functioned as a forum for the exchange and systematization of information, allowing a preliminary analysis of information and encouraging the active participation of governmental agencies. They also provided a means of disseminating national and international instruments.

4. The inter-ministerial participatory approach proved to be an appropriate methodology for preparing the reports required for creation of this document, since it was prepared on the basis of agency input and resulted in a network of officials who may be consulted in due course for updates to the information submitted and for fulfilling special requests for information.

5. As a complement to the thematic workshops, questionnaires were sent to each institution consulted in order to obtain input for responding to the general comments and concluding observations of the Human Rights Committee.

6. This report of Guatemala is the result of participatory and consultative inter-ministerial consultations and has been approved by the institutions that participated in the drafting process.

II. Implementation of the International Covenant on Civil and Political Rights

A. Article 1 – Right to the self determination of peoples

1. Action taken to ensure that indigenous peoples have free access to their wealth and natural resources

7. As part of the activities conducted by the Ministry of Environment and Natural Resources (MARN), the Directorate General of Training and Social Participation Organization joined forces with the Oxlajuj Ajpop Association to draft a strategy to be implemented by the Ministry in cooperation with indigenous peoples for creation of a

socio-environmental agenda from the perspective of indigenous peoples, which aims to give shape and substance to environmental policy using a multicultural approach.

8. A proposal to be submitted in 2009 is being drafted and includes:

(a) Activities by indigenous peoples to defend mountains, forests, springs, rivers, ponds, lakes, birds, animals and the environment from pollution;

(b) Activities that the Ministry of Environment and Natural Resources (MARN), the National Council of Protected Areas (CONAP) and the National Forestry Institute (INAB) must recognize, respect and promote the preservation of mountains, forests, springs, rivers, ponds, lakes, birds and animals;

(c) Changes to be implemented by the Ministry of Environment and Natural Resources in its policies, programmes and projects and CONAP and INAB in order to provide for the direct participation of indigenous peoples;

(d) Recommendations to sources of international cooperation, research centres and universities concerning the rights of indigenous peoples, nature and the environment;

(e) Tasks to be carried out by local municipalities to preserve nature and the environment.

9. In 2008, the Ministry of Environment and Natural Resources worked closely with the Ixil Round Table, which comprises:

(a) The Commonwealth of the Ixil Regional Meeting for Peace (ERIPAZ);

(b) The Ixil Regional Board (23 civil society organizations in the Ixil area);

(c) The Hidroxacbal Company;

(d) The Ministry of Environment and Natural Resources (MARN);

(e) Other public entities.

10. The purpose of the *K'ulbali'b ti un'cbal yol* Ixil Round Table is to learn from the incidents connected with the construction of the Xacbal Hydroelectric plant in the area, especially on how to establish dialogue for the active participation of indigenous peoples and the general population.

2. Sustainable development

(i) Measures taken

11. The following measures have been taken:

(a) The Ministry of Energy and Mines (MEM) developed the Energy Policy for 2008–2022, which establishes programmes to guide operations in the national energy sector

and whose main goal is to reduce the current dependence on fossil fuels through promotion and development of renewable energy. One of those programmes is the Energy Matrix Change programme, which aims to modify the current composition of electricity generation in Guatemala, with short-, medium- and long-term policies that will make it possible to produce 58 per cent of the country's electricity from hydropower by 2022 so as to reduce the price of electricity.

(b) Creation of a Vice-Ministry for Sustainable Development as part of the Ministry of Energy and Mines with administrative and technical responsibility for exploiting natural resources for the benefit of local communities without degradation of the habitat, through technical and administrative activities that allow recognition of rights, protection of resources and compensation for those rights.

(c) The Ministry of Energy and Mines has given priority to the Government strategy "Governing with the People", in which it responds to the requests and demands of municipal governments, rural communities and individual users through thematic working groups, providing prompt and timely solutions to appeals from indigenous peoples to exploit natural resources rationally and sustainably and share benefits.

(d) Respect for indigenous peoples' ownership of their land is an imperative and a pre-condition for the success of a policy of socialization of energy and production. Socialization is the tool used for the comprehensive exploitation of natural resources.

(ii) *Sustainable development policy*

12. During 2009, policies and strategies will be drafted to promote the proper development of energy and mining projects. The sustainable development policy of the Ministry of Energy and Mines will be the environmental and social framework, in which principles and clear responsibilities for energy and mining projects are established. In the diagnostic phase of implementation of that policy, environmental and social factors that hinder private participation in energy projects will be identified and addressed with a series of recommendations in line with the Millennium Development Goals.

3. Status of mining activities

13. Mining activities in Guatemala have triggered conflicts between local communities and the companies carrying out exploration projects, primarily because of objections by local inhabitants to not being promptly informed about the granting of concessions and the impact that can have on local communities. Those conflicts have often resulted in criminal proceedings. The Ministry of Energy and Mines promotes measures to prevent and solve conflicts, if any, case by case. However, the mining companies themselves have adopted general measures, such as provision of information to local residents, environmental inspections and sustainable development programmes.

4. Protected areas

14. The Public Prosecutor's Office reported that between 2001 and 2008 there had been nine evictions for the crime of theft from protected areas. During those evictions, 27 people

were arrested for flagrant theft from protected areas, but not for violence or related activities.

15. On the issue of protected areas, the Government has taken several steps through the National Council of Protected Areas (CONAP), the institution responsible for protecting socially desirable levels of biodiversity through protected areas and other in situ and ex situ conservation mechanisms and providing environmental services for the social and economic development of Guatemala for the benefit of present and future generations through the drafting and implementation of policies, strategies, regulations and incentives and the promotion of coordination and cooperation of all parties involved in the management of biodiversity in Guatemala. Among its main achievements is the strengthening and expansion of the national system of protected areas, in which there are currently 256 protected areas.

16. In August 2006, Guatemala began adopting protective measures established by the Inter-American Commission on Human Rights to preserve the El Rosario-Naranjo archaeological site.

B. Article 2 – General obligation to respect and protect

17. Article 46 of the Constitution establishes the general principle that human rights treaties and conventions adopted and ratified by Guatemala take precedence over domestic law.

18. As part of the general obligation to respect the rights enshrined in the Covenant, public officials must not violate those rights, and if there is a violation of the Covenant, the Government has an obligation to provide access to an effective remedy and fair compensation for damage and to investigate the facts in order to establish the liability of public officials, as described below.

1. Liability of public officials

19. According to information provided by the Judiciary, 1,987 cases were filed in criminal courts for crimes committed by public officials or employees between 2005 and 2008. The main reasons for criminal proceedings were abuse of authority, dereliction of duty and disobedience.

20. During that period, 184 decisions were issued for offences committed by public officials, of which 88 were convictions.

2. Investigation of human rights violations committed during the internal armed conflict

(i) Action taken

21. The Human Rights Committee urged Guatemala “to investigate allegations of human rights violations, past and present, to act on the findings of its investigations, to bring to justice those suspected, to punish the perpetrators and to compensate the victims of

such acts". The following information describes the status of the investigation of human rights violations that occurred during the internal armed conflict.

22. Among the activities taken to strengthen the investigation of violations of human rights committed during the internal armed conflict was the creation of the Human Rights Section within the Public Prosecutor's Office for criminal prosecution of these crimes. That Section performs its functions through the following four units: (a) the Human Rights Activists Unit; (b) the Justice Officials Unit; (c) the Journalists and Trade Unionists Unit and (d) the Special Cases, Violations of Human Rights and Historical Clarification Unit.

23. In order to improve the work of the Human Rights Section the following measures were implemented:

(a) Restructuring and strengthening, with the appointment of new staff in the Special Cases, Violations of Human Rights and Historical Clarification Unit, which has national responsibility to investigate and prosecute cases of serious crimes resulting from the armed conflict in the context of international humanitarian law, crimes against humanity, genocide, extrajudicial executions and kidnappings;

(b) Amendments are being discussed to the regulations of the Human Rights Section on its role and development of appropriate strategies and plans for investigating crimes committed during the internal armed conflict and the criminal prosecution of the masterminds and executors of those crimes against humanity;

(c) An agreement on bilateral cooperation between the Public Prosecutor's Office and the International Commission against Impunity in Guatemala (CICIG) was signed to promote and strengthen the criminal investigation of crimes committed against human rights;

(d) A cooperation agreement was signed between the Public Prosecutor's Office and the Human Rights Ombudsman to ensure the protection of victims of human rights violations;

(e) Through Ministerial Agreement 103-2008 of the Ministry of the Interior, the Agency for Analysis of Attacks on Human Rights Defenders was established;

(f) Adoption of Governmental Agreement 430-2003 governing the creation, organization and operation of the Guatemalan Multisectoral Commission for Labour Relations, which addresses labour issues;

(g) Participation in the round table set up by COPREDEH on preparation of protection measures;

(h) With the support of the Office for Protection of Witnesses and Victims, protection has been provided for 35 people involved in cases filed with the Human Rights Section;

(i) Part of the archives of the National Police have been recovered by the Human Rights Ombudsman;

(j) There is coordination between the Human Rights Section and the Forensic Anthropology Foundation for conducting anthropological investigations in the event of exhumations and for taking DNA samples from the family of victims to compare with bone samples found in exhumations;

(k) There is coordination with the National Civilian Police to follow up on cases;

(l) Twenty-four-hour shifts have been established for the of Human Rights Section for immediate intervention in the event that any illegal act is perpetrated against a human rights activist in order to begin an investigation at the scene;

(m) There is immediate support of a team of crime scene technicians to collect evidence at a crime scene, under a prosecutor or assistant prosecutor, as well as with investigators from the Division Criminal Investigation of the Human Rights Unit of the Ministry of the Interior.

(ii) *Progress achieved*

24. The following progress has been made by the Human Rights Section in the investigation and prosecution of cases over which it has jurisdiction:

(a) Charges were brought in 49 cases, of which 40 resulted in convictions. In the so-called Rio Negro case, three people were sentenced to 30 years in prison;

(b) As of December 2008, 63 arrest warrants had been issued as the result of investigations conducted by the Human Rights Section;

(c) Twenty-three cases involving special investigation procedures are being processed, in which the Human Rights Ombudsman has been asked to conduct investigations into cases of kidnapping, with the participation of the Public Prosecutor's Office;

(d) Investigation has begun on 1,200 cases submitted by the National Reparations Programme for the crime of kidnapping.

(iii) *Challenges*

25. Despite the strengthening of the Human Rights Section, it is still difficult to investigate properly facts stemming from the internal armed conflict and in general facts that involve the Human Rights Section, because of a lack of a budget for field operations and the difficulty of travelling to many regions of the country due to insufficient human resources, a lack of vehicles and a lack of technical equipment. An interdisciplinary team of qualified professionals is also lacking. This means that all investigations are slow. The Witness Protection Office should also be strengthened to provide better service to victims, their families, witnesses, parties to the proceedings and persons involved in the administration of criminal justice to ensure their security.

26. Another difficulty encountered in investigations and criminal proceedings arising from acts of violence committed during the internal armed conflict is the lack of statistics within the Judiciary on the number of cases stemming from human rights violations that occurred during that period. There are no data on completed or pending cases, the number of persons prosecuted or sentenced involved in those cases and on court decisions in which the Covenant or the doctrine of the Human Rights Committee have been applied directly. The Government is still attempting to fill this information gap.

27. Investigation of cases of violence by the Human Rights Section is affected by factors such as a lack of cooperation of victims, witnesses and institutions involved in the protection of human rights defenders because of a fear of cooperating owing to the insecurity existing in Guatemala, although they are offered protection, and the lack of cooperation by the various government agencies that have information relevant to human rights cases.

28. Nonetheless, the Ministry of National Defence has been able to establish administrative procedures for providing information specifically requested by the Public Prosecutor's Office and the courts. In addition, a Department of Public Information has been created within the Ministry of National Defence, based on the Access to Public Information Act contained in Congressional Act No. 57-2008.

(iv) *Specific cases*

29. In one of the cases opened for forced disappearance, investigation led to the trial of Mr. Felipe Cusanero Coj, an army officer from San Martín Jilotepeque (Chimaltenango) accused of the disappearance of Mr. Alejo Culajay Hic and others that occurred on 23 November 1983.

30. In this case, the Public Prosecutor's Office filed charges on 6 April 2006 and requested a trial for those acts. The charges were admitted, and the court was ordered to begin the trial, designating the Court for Criminal Activities, Drug Activities and Crimes against the Environment in the department of Chimaltenango to try the case.

31. In oral and public hearings, breach of the principle of non-retroactivity of the law, violation of the principle of the rule of law and the unconstitutionality of that specific case were raised and rejected. Contrary to the decision that resolved the last of the incidents mentioned, the defence appealed rejection of the issue of unconstitutionality to the Constitutional Court, which rejected that appeal.

32. In further discussion of that incident, the issue of unconstitutionality was again raised, but the court took the same decision, and the defence filed an appeal against that decision, which has not yet been decided by the Constitutional Court.

3. Implementation of the National Reconciliation Act

33. In its concluding observations issued in 2001, the Human Rights Committee recommended that Guatemala "strictly apply the National Reconciliation Act, which explicitly excludes crimes against humanity from amnesty". The Government does not have statistical data to determine the degree of compliance with that recommendation, because

the Judiciary has no records of criminal proceedings in which application of the National Reconciliation Act was requested.

34. However, the Unit for Special Cases, Human Rights Violations and Historical Clarification of the Human Rights Section of the Public Prosecutor's Office has records of 17 arrest warrants that have been suspended by invoking the National Reconciliation Act or an application for amnesty relating to the case of the Massacre at Dos Erres. This particular case has been submitted for litigation to the Inter-American Court of Human Rights, which has not yet issued a decision.

4. Compensation to victims of human rights violations during the internal armed conflict

35. In its concluding observations issued in 1996 and 2001, the Human Rights Committee recommended that Guatemala “provide adequate compensation for victims of human rights violations”. The following information is provided in relation to that recommendation.

36. As reported, Guatemala created the National Reparations Programme (PNR) for the primary purpose of promoting national reconciliation and strengthening the peace process by repairing the effects of the internal armed conflict. Its overall objective is to provide comprehensive reparations focused on restoration of the dignity of victims of the human rights violations and crimes against humanity that occurred in Guatemala.

37. The National Reparations Programme (PNR) is a government programme that receives resources allocated in the national budget. The highest authority is the National Reparations Commission (CNR) formed by a representative of the President of the Republic as chairman, the Minister of Public Finance and the Secretary for Planning and Programming of the Presidency (SEGEPLAN), the Secretary for Peace of the Presidency (SEPAZ) and the chairman of the Presidential Commission for Human Rights (COPREDEH).

38. Under this programme, victims of human rights violations committed during the internal armed conflict can submit claims at the national level. In addition to this domestic mechanism, Guatemalans can submit claims for human rights violations to the Inter-American System of Human Rights after exhausting domestic recourse. In that case, information on government compensation is transmitted to both mechanisms.

39. The purpose of the National Reparations Programme (PNR) is to compensate fully victims of the internal armed conflict through 15 regional offices located in Barillas, Chimaltenango, Coban, Denton, Huehuetenango, Ixcán, Mazatenango, Nebaj, Panzós, Petén, Rabinal, San Marcos, Santa Cruz del Quiché, Sololá and Zacapa.

40. Regulations have been drafted on qualification criteria for beneficiaries of the National Reparations Programme (PNR), establishing objective criteria and procedures for determining individual and collective beneficiaries and for repairing damage that they suffered as a result of a violation of human rights, a crime against humanity and genocide that occurred during the internal armed conflict.

41. Those regulations state that in the case of victims who have died or are missing, beneficiaries will be close relatives (father, mother, children, spouse or partner). And when there are no surviving close relatives, the brothers and sisters of a deceased or missing victim will benefit. In all other cases, the beneficiaries are the persons directly affected. The following violations are compensated by the PNR: forced disappearance, extrajudicial execution, physical and psychological torture, forced displacement, forced recruitment of minors, sexual violence, rape of children and massacres.

42. Monetary damages are paid from the PNR budget allocation of 300 million quetzals per year, and between 2005 and 2008 a total of 23,848 persons were compensated financially. See details in annex I, table 1, of this report.

43. The following are the reparations programme's main achievements:

(a) Establishment of a model of full reparation and implementation of a pilot plan in the community of Cocopa in Nebaj (Quiché), based on the PNR compensation policy as well as promotion of awareness and provision of information to local communities about the importance of reparations honouring the dignity of a victim's memory;

(b) Three pilot experiments were initiated to make community assessments and community plans for comprehensive compensation in Pexla Grande in Nebaj (Quiché), in La Estancia de la Virgen and its eight subdivisions in San Martín Jilotepeque (Chimaltenango) and in Chichupac in Rabinal (Baja Verapaz);

(c) The first monetary reparations were made to victims of lost childhood who have been reunited with their biological families;

(d) In 2008, the PNR awarded compensation amounting to 235 million quetzals, which is 45.9 per cent of the reparations made so far;

(e) Delivery of 10,477 letters of pardon signed by the president to beneficiaries of monetary compensation as part of measures to restore dignity;

(f) Studies have been made of 29 communities where the programme will carry out reparation activities in 2009;

(g) Nine hundred houses are being built for victims of forced displacement under an agreement signed with the National Fund for Peace (FONAPAZ);

(h) A total of 64,705 persons have been provided services in PNR regional headquarters, and 841 rural communities have been visited;

(i) Exhumations have been mapped in order to systematize 100 per cent of the information resulting from anthropological forensic research to date, and future investigations have been planned.

44. In addition to the progress made by the PNR, COPREDEH, as the institution responsible for monitoring requests and lawsuits against Guatemala in the Inter-American

System of Human Rights, has coordinated several cases of provision of moral and material compensation for the relatives of victims and survivors of the internal armed conflict. This has been performed in compliance with the operative paragraphs of decisions of the Inter-American Court of Human Rights or friendly settlement agreements and agreements on compliance with recommendations resulting from background reports issued by the Inter-American Commission on Human Rights.

45. In compliance with the State's commitments arising from the procedures outlined above, material reparations have been granted to 438 beneficiaries as the result of the signing of friendly settlement agreements and compliance agreements based on recommendations with approximately 355 persons as the result of judgements of the Inter-American Court of Human Rights.

46. Investigation, prosecution and punishment of those responsible for human rights violations is part of the reparation process, although that aspect has proven to be the most difficult, because based on information provided by the Public Prosecutor's Office to COPREDEH most cases before the Inter-American System are still in the investigative phase. In order to remedy that situation, a Committee was created within COPREDEH to monitor cases pending before the Commission and the Inter-American Court of Human Rights.

47. Three cases have been decided in contrast to general non-respect for the commitment to provide justice: (a) the Rio Negro Massacre, where a conviction was issued on 28 May 2008; (b) the Myrna Mack Chang case, in which a conviction has been issued and (c) the Xamán case.

48. The issue of reparations resulting from cases brought before the Inter-American Court of Human Rights is difficult because there is no provision in the budget of COPREDEH to make those reparations. Despite that difficulty, arrangements have been made to provide both material and moral reparations and to restore dignity.

5. Implementation of measures and policies at the institutional level

(i) Training for public officials

49. The Human Rights Committee recommended that Guatemala “devise an educational programme so that all segments of the population, in particular members of the army, the security forces and the police, as well as present and former members of the Civilian Self-Defence Patrols, develop a culture of tolerance and respect for human rights and human dignity”. Among the training given to public officials is that undertaken by the Education and Training Unit of the Institute of Public Defence (IDPP) on “respect for and guaranteeing of human rights”, as detailed in annex I, table 2, of this report.

50. Since 2004, the Ministry of National Defence, through the Department of Human Rights created in 2003, participates in the programme called “Human Rights Initiative”, promoted by the United States Southern Command through the Centre for Research, Training and Human Rights Analysis (CECADH) based in Costa Rica, which aims to provide support to military and security forces in developing action plans to strengthen their human rights programmes in four thematic areas: teaching, training, internal monitoring

and relations with civil society. The activities listed in annex I, table 3, of this report have been carried out.

51. In addition, following an annual study programme of the Ministry of National Defence, education and training is provided in each military unit on the issue of human rights and international humanitarian law, with emphasis on each category of human rights.

(ii) *Strengthening the Presidential Commission for the Coordination of Human Rights Policies and the Human Rights Ombudsman*

52. In its concluding observations issued in 1996, the Human Rights Committee recommended that Guatemala “strengthen the resources and jurisdiction of the Human Rights Ombudsman and the Presidential Commission for the Coordination of Human Rights Policies (COPREDEH) to enable them to discharge effectively their responsibilities”.

53. In response to that recommendation, both institutions have been staffed to the level allowed by the budget. In the case of COPREDEH, its budget is 14.3 million quetzals. However, that budget is insufficient for the proper exercise of its functions.

54. At the structural level, COPREDEH will be strengthened through a merger with the Department of Peace to create the single institution of the Secretariat for Human Rights and Peace (SEDEHPAZ).

C. Article 3 – Equal enjoyment of rights for men and women

1. Regulatory framework

55. On the legislative front, Guatemala has made significant progress in promoting equal enjoyment of rights for men and women, which are described below.

(i) *The crime of rape*

56. The Human Rights Committee recommended that Guatemala “immediately repeal the legislation related to the provision that exempts from punishment the perpetrator of the crime of rape if he marries the victim, and the existence of honest womanhood so that they can set the elements of that crime”. That recommendation has been implemented by Guatemala.

57. On 17 March 2006, the Constitutional Court, through Case No. 2818-2005, upheld the partial general unconstitutionality decided by the Human Rights Ombudsman of article 200 of the Criminal Code, Act No. 17-73, which stated that for the crimes of rape, statutory rape, indecent assault and abduction, active individual criminal responsibility or punishment, if any, would be cancelled by the legitimate marriage of the victim and the offender, provided that the victim was older than 12 years of age, with the prior approval of the Public Prosecutor's Office. Article 200 was in conflict not only with the Constitution but also with treaties and international agreements to which Guatemala is a party, one of which is precisely the International Covenant on Civil and Political Rights.

58. Declaration of the unconstitutionality of article 200 of the Criminal Code represented substantial progress by Guatemala in implementing the recommendations made by the Human Rights Committee, because with that decision, that law ceased to have effect within the Guatemalan legal system. That decision also strengthens domestic legislation and is a step forward in harmonizing domestic legislation with the International Covenant on Civil and Political Rights. However, adoption of that measure did not fully comply with the recommendation issued by the Human Rights Committee. But with adoption of Congressional Act No. 9-2009 on Sexual Violence, Exploitation and Trafficking in Persons, which repeals articles 176, 177 and 178 of the Criminal Code covering crimes of rape through inexperience or trust, statutory rape by fraud and aggravated rape, respectively, offences that disappear from domestic criminal law.

(ii) *The crime of discrimination*

59. Congressional Act No. 57-2002 amended the Criminal Code, by adding article 202 bis governing discrimination, defining discrimination as “any distinction, exclusion, restriction or preference based on gender, race, ethnicity, language, age, religion, economic status, illness, disability, marital status or any other cause, reason or circumstance which prevents or hinders a person, group of persons or an attorney, the exercise of a legally established right, including customary law or custom, in accordance with the Constitution and international treaties on human rights”. While this criminal provision does not refer solely to gender discrimination, it is an important step towards strengthening the regulatory framework covering the equal enjoyment of rights for men and women.

60. Statistics relating to criminal proceedings initiated for this crime are presented in the discussion of implementation of article 26 of this report.

(iii) *Violence against women*

61. In its concluding observations issued in 1996, the Human Rights Committee recommended that Guatemala “establish violence (especially within the home) and acts of discrimination against women (such as sexual harassment in the workplace) as punishable crimes”. To implement this recommendation and in the absence of specific crimes in which to place the violence to which women are victims, bills and amendments were proposed to change the regulatory structure associated with this aspect. The following main changes have been proposed:

Adoption of the Act against Femicide and Other Forms of Violence against Women, Congressional Act No. 22-2008

62. It should be noted that although this act does not cover the crime of harassment there has been legislative progress in this regard, because under the crime of violence against women are material considerations that allow punishment for acts of physical, sexual or psychological violence carried out in public or private against women. That is based on considerations such as having repeatedly or continuously attempted to establish or re-establish unsuccessfully a relationship or intimacy with the victim or at the time of the harassment having had with the victim a relationship of a marital, cohabitational, family or dating intimacy, friendship, companionship based on an employment, educational or

religious relationship.¹ One defining aspect of this crime is the intent to perpetrate an act of violence against a woman because she is a woman, that is, because of her gender.

63. That legislation provides that the term public sphere refers to that of interpersonal relationships that take place in a community and include social, employment, educational, religious or any kind of relationship that is not part of the private sphere, which is that of interpersonal relations that are based on domestic or family relationships or relationships of confidence.²

Adoption of the Act against Violence, Sexual Exploitation and Trafficking in Persons, Congressional Act No. 9-2009

64. Congressional Act No. 9-2009 incorporates several amendments to the Criminal Code, creating new types of crimes and amending or repealing existing offences. Among the offences incorporated is the crime of sexual assault, although not only women are the victims, it is related to use of violence for sex.

65. Before enactment of this law, the Judiciary registered a total of 2,792 women and adolescent victims of crimes against sexual freedom and security and against decency in 2007, and on the basis of partial data up to the third quarter of 2008 a total of 2,290 cases were filed for the same crimes in 2008.

(iv) *The status of women in civil matters*

66. One of the legislative developments in civil matters for the protection of women, children and the family is Congressional Act No. 39-2008, which amends existing Civil Code provisions regarding the determination of paternity, establishing a DNA test as the only proof against an accusation of biological paternity. It also states that a refusal by an alleged father to submit to a DNA test will constitute proof of paternity.

67. Another step forward is the decision by the Constitutional Court to declare the general unconstitutionality of the expression “good behaviour” contained in article 169, paragraph 2, of the Civil Code.

68. Article 169 concerns the right of women seeking separation or divorce to alimony, a right they retain unless they remarry, but which before the declaration of unconstitutionality was conditioned on good behaviour.

69. As for article 226 in chapter V of the Civil Code regarding extramarital paternity and governing the illegality of a request for damages by a mother for moral damages in cases of criminal or carnal knowledge of a minor at the time of conception, the expression contained in article 226, paragraph 1, of the Civil Code was declared unconstitutional. That article used the term: “led a dissolute life or”, an expression that voided the action. The decision of unconstitutionality was pronounced on 29 November 2007 in case No. 541-2006.

¹ Act against Femicide and Other Forms of Violence against Women, Act No. 22-2008, article 7.

² Ibid., article 3.

(v) *Legal measures*

70. The following bills have been submitted to Congress, seeking to amend legislation concerning women and to place women on an equal footing for the adequate protection of their legal rights:

(a) Bill No. 3566, proposing adoption of the Anti-Harassment and Sexual Harassment Law;

(b) Bill No. 2630, proposing amendment of the Criminal Code to incorporate the crimes of domestic violence, sexual harassment and sexual abuse;

(c) Bill No. 3612, proposing adoption of the Protection of Women's Human Right to a Life Free of Violence Act;

(d) Bill No. 3525, proposing amendments to the Labour Code, including regulation of harassment and sexual harassment in the work place.

71. In addition to the proposed amendments to legislation, other legislative measures were adopted in favour of women, such as the 1999 Dignity and Integral Promotion of Women Act promoting the comprehensive development of women and their participation in all levels of economic, political and social life in Guatemala and the Social Development Act (Congressional Act No. 42-2001) creating a legal framework for implementing legal procedures and public policy aimed at promoting, planning, coordinating, implementing, monitoring and evaluating government activities for the development of the social, family and human aspects of human beings with emphasis on the most vulnerable groups.

2. Capacity-building related to gender(i) *Presidential Secretariat for Women (SEPREM)*

72. The Presidential Secretariat for Women (SEPREM), established by Act No. 200-2000, functions as an adviser and coordinator of public policy to promote the integral development of Guatemalan women and a culture of democracy. Its functions include:

(a) Promotion of the full participation of women in Guatemala's development and real and effective equality between men and women;

(b) Monitoring of the observance and application of constitutional principles, laws, treaties and conventions relating to women as well as ensuring compliance with the commitments made by Guatemala in international organizations and peace agreements;

(c) Analysis of existing legislation in order to promote appropriate reforms and the elimination of provisions that have uneven effects on men and women.

73. SEPREM promotes the National Policy for the Advancement and Development of Guatemalan Women, which creates strategies to improve women's living conditions and address inequalities and inequities that affect them. Implementation of the agenda of

Garifuna, Mayan and Xinka women and nine thematic axes were incorporated in the updating of the National Policy on the Promotion and Integral Development of Women 2008–2023. The Equal Opportunity Plan for 2008–2023 is currently being carried out.

74. SEPREM, as an advisory body and public policy coordinator, advises and supports victims who contact that institution, ensuring that they are heard by the National Coordinator for the Prevention of Domestic Violence and Violence against Women (CONAPREVI), following a model of integral care for female survivors of violence. In addition, legal advice has been provided in Integrated Support Centres for Women Survivors of Violence (CAIMUs).

75. On the legislative front, SEPREM provides help to civil society organizations. In 2008, a proposal was made to reform the Labour Code in favour of female domestic workers, which is being discussed by the Legislature, and SEPREM is participating in a working committee for discussion of the proposed reform.

76. SEPREM works in coordination with the Ministry of Public Health and Social Welfare in the Reproductive Health Programme within National Network for Responsible Parenthood, in which SEPREM is coordinator of the legal committee. In 2009, it is expected that a public multi-sectoral policy of responsible parenthood and a strategic plan for 2009–2018 will be adopted. In addition, SEPREM is working on health issues with agencies such as CONASIDA and the Ministry of Health.

(ii) *Defence of Indigenous Women*

77. The Office for the Defence of Indigenous Women (DEMI) works with governmental and non-governmental entities to develop public policy, plans and programmes for preventing and eradicating all forms of violence and discrimination against indigenous women and deals with complaints made to DEMI, providing legal advice to victims of human rights violations. It also drafts, coordinates and implements educational programmes providing training and promoting awareness of the rights of indigenous women nationally.

(iii) *National Coordinating Office for the Prevention of Domestic Violence and Violence against Women*

78. The National Coordinating Office for the Prevention of Domestic Violence and Violence against Women (CONAPREVI) was created by Act No. 831-2000 of 24 November 2000 in order to coordinate, advise and promote public policies aimed at eradicating domestic violence against women.

79. As a strategy to prevent, punish and eradicate violence against women, CONAPREVI developed the National Plan for the Prevention and Eradication of Domestic Violence (PLANOVI 2004–2014). PLANOVI covers four strategic areas: (a) research, analysis and statistics, (b) prevention of domestic violence and violence against women, (c) comprehensive care for survivors of domestic violence and (d) capacity-building.

80. In the area of comprehensive care for survivors of domestic violence and violence against women, CONAPREVI has promoted the creation of Integrated Support Centres for Women Survivors of Violence (CAIMUs), which provide care to all Guatemalan women

who need the service, although mostly low-income women regularly use the centres. CAIMUs are reliable and safe places where women who suffer or have suffered violence can find support, information and advice at no cost and without requirements or conditions. Women only need to desire receiving care, counselling and protection.

81. CAIMUs provide quality care and human warmth, based on a model of comprehensive care for female survivors of violence in two strategic areas: attention and intervention. Services include eight aspects: initial attention, legal advice, psychological support, social support, medical care, support and self-help groups, temporary shelter for women and their children and telephone support.

82. CAIMUs provide training aimed at helping female survivors of violence to find employment. Coordination with public institutions facilitates their employment and economic independence. Services include support networks and training in self-care, security, prevention, awareness, investigation, advocacy, social auditing and negotiation.

(iv) *National Civilian Police*

83. The National Civilian Police (PNC), through its Human Rights Section, conducts internal and external training on gender and women's rights and monitors, supports and advises women who report violations of their human rights.

84. The National Civilian Police currently has a Department of Gender Equality, and several government institutions have gender units, but the main problem preventing proper functioning is the lack of an adequate budget. In many cases, single-person units are created making the work invisible and without effective programmes.

(v) *National Office for Women*

85. The National Office for Women (ONAM) is attached to the Ministry of Labour and Social Welfare. One of its activities is cooperation with the Congressional Commission for Women and 19 members of parliament through a workshop on the functioning of ONAM, in order to coordinate support for the legislative agenda on gender.

(vi) *Social Welfare Secretariat*

86. As a strategy to support working women, especially low-income working women, the Social Welfare Secretariat operates comprehensive care centres for girls and boys. Currently, there are 35 centres caring for children up to six years of age who are provided food and education. The centres are open from 7.00 a.m. to 6.00 p.m. This possibility allows mothers to work with peace of mind, knowing that their children are cared for.

3. Access to justice under conditions of equality*(i) Progress*

87. The Judiciary has carried out the following activities:

(a) Creation of the Unit for Women and Gender Analysis within the Judiciary, through Resolution No. 67/006 of the Judiciary and the Supreme Court, as the coordinator and guide in matters relating to gender within the Judiciary. It is responsible for helping to ensure equality for women and men and eliminate gender discrimination in the administration of justice and the internal functioning of the Judiciary. This unit carries out activities in three main areas: among higher-level authorities of the Supreme Court and institutional policy, at the level of the courts and at the administrative level. This office provides information about legal matters and existing rights to women upon request and provides support and referral to organizations that provide legal, medical and psychological support.

(b) Sixty mediation centres operated by the Judiciary offer immediate and intercultural attention through promotion of access to justice for rural and urban inhabitants. An attempt is made to solve conflicts through open dialogue encouraged by a mediator in order to meet the needs and interests of both parties under conditions of respect and shared responsibility.

(c) Promotion of awareness among judiciary officials aimed at improving services, especially services for women, who traditionally have not had access to justice. The Institutional Training Unit helps to train staff and officials, judicial assistants and administrative and technical staff in order to strengthen ethical standards and implement inclusive justice.

(d) Outreach programmes of services, primarily related to domestic violence, have also been implemented. At the end of 2006 and early in 2007, brochures and posters were distributed and radio spots broadcast in six Mayan languages. Those educational materials dealt with issues of domestic violence and were aimed at female victims and other women fighting for their human rights.

(e) In order to enable women to use the courts, the Judiciary has established daycare centres for children of female users of the courts.

(f) Until April 2007, support was provided to female victims of violence through the Psychology Unit and its referral networks. This referral service is still offered in family and juvenile courts.

(ii) Access to justice for indigenous women

88. Measures implemented include:

(a) Creation of institutions for providing legal support to indigenous women, such as the Office for Defence of Indigenous Women and the National Commission against Racism and Discrimination;

(b) Establishment of offices within the Institute of Public Defenders for defending indigenous rights;

(c) Hiring of court interpreters, an issue that is described throughout this report;

(d) Signing of an agreement between DEMI, the Office of the United Nations High Commissioner for Human Rights and the Presidential Commission against Discrimination and Racism to provide appropriate follow-up to cases of discrimination and racism and restore the rights of the persons involved.

89. One significant step has been an increase in the number of complaints filed by indigenous women with DEMI because of the violence to which they are subjected, which means progress in raising the awareness of women about their right to adequate judicial protection and the Government's obligation to guarantee their life, security and personal integrity. Complaints also increased because DEMI provides full services in languages spoken by the indigenous population and takes into consideration the women's culture. See details on the increase in complaints from 2005 to 2008 in annex I, tables 4 and 5, of this report.

90. Civil cases generally deal with problems of support, conflict among family members, paternity, disposition of property, increased child support, domestic violence, disputes over inheritance, payment of child support arrears, correction of birth certificates, late registration of births, conflicts among family members over land, recognition of paternity, return of children, guardianship of children, changes in agreements and divorce. Criminal cases involve crimes involving persons, kidnapping, murder, denial of economic support, aggression, rape by deception, burglary, threats, theft, violation of the rights of the child, discrimination, minor injuries, child abduction, disappearance, habeas corpus, disobedience and requests for protective measures.

91. The main challenges concerning access to justice for indigenous women include:

(a) Expansion of the budget of the Office for the Defence of Indigenous Women (DEMI) because the current budget is insufficient to meet all needs and solve the problems of indigenous women. A specific allocation should be made for helping indigenous women to eradicate vulnerability, marginalization and discrimination against indigenous women and to raise their standard of living and achievement. A budget increase would expand DEMI's operations to all departments, especially to those where there is a high percentage of indigenous inhabitants, namely Chimaltenango, Sacatepequez and Totonicapán, where Centres for the Administration of Justice (CAJ) already exist and where the Human Rights Ombudsman has no office because of insufficient resources. During nine years of operations, DEMI has gradually grown, but lacks a presence in several departments in order to serve all indigenous women.

(b) Provisions enabling the National Statistics Institute (INE) to incorporate gender and ethnic information on the status of indigenous women, which can be used in surveys and the next census to fill current data gaps.

4. Access to employment inside and outside Government

92. Steps have been taken to facilitate women's access to employment, including through a subsystem of formal education in Municipal Technical-Vocational Training Centres (CEMUCAFs), which offer women an opportunity to train and find employment or to work for themselves.

93. The following measures have been implemented by the Ministry of the Interior and the PNC to promote access to and retention of women in public office:

(a) Adjustment of the requirements for admission of female candidates to the PNC, setting a minimum height less than that required for men. Upon graduation, women police officers are assigned to places near their home;

(b) Establishment within the internal regulations of the PNC of sexual harassment by a member of the police force as a serious offence against a female police officer;

(c) Implementation of training within the PNC, through the Gender Equality Division, on the employment rights of female police officers;

(d) Facilitation of access of indigenous women to the PNC. The Multicultural Division attempts to recruit new police officers through radio spots in their mother tongue, including in Akateco, Chuj, Ixil, Popti, Qanjobal and Uspantec. Multicultural staff provide advice to candidates on assessment guidelines, and an effort is made find suitable assignments for indigenous staff.

(e) Women have been promoted to leadership positions in several departments of regional offices of the PNC and receive specialized training.

(f) In order to increase the retention of women within the police, daycare services have been expanded, allowing police officers who are mothers to leave their children in the care of trained staff, while carrying out their police duties.

94. A total of 2,205 women are working for the National Civilian Police. Details on their positions in the hierarchy are given in annex I, table 6, of this report. The Multicultural Division of the PNC has 142 registered indigenous policewomen. See details in annex I, table 7, of this report.

D. Article 4 – Temporary suspension of rights

1. Regulatory framework

95. As indicated in the second periodic report of Guatemala to the Human Rights Committee, article 138 of the Constitution states that “It is the duty of the State and the authorities to maintain the inhabitants of the Nation in the full enjoyment of the rights guaranteed by the Constitution.” Article 138 indicates that in the event of invasion, serious disturbance of the peace, activities against state security or public disaster, the full

applicability of articles 5, 6, 9, 26, 33, 35 (para. 1), 38 (para. 2) and 116 (para. 2) may cease.

96. In that report, it is also stated that the Public Order Act, which has constitutional status, regulates matters concerning states of emergency and the measures and powers provided for under various types of states of emergency. Provisions for limiting or temporarily suspending constitutional rights have not changed.

2. Training of the National Civilian Police for states of emergency

97. The Ministry of the Interior trains its staff to provide security and establishes the provisions and procedures to be followed when declaring a state of emergency through the basic course for officers of the National Civilian Police conducted by the National Civilian Police Academy, which addresses the individual constitutional rights to be respected and applied during states of emergency.

98. The Human Rights Section of the PNC holds training workshops for various hierarchical levels of police personnel with refresher courses on (a) General Order No. 69-2008 on the morals and ethics of the National Civilian Police, (b) due process and (c) the use of force and firearms. That training sets basic criteria for the conduct of all police personnel and basic principles of morality required of all police officers.

99. During states of emergency, the police must observe the rules contained in the Constitution, the Code of Conduct for law-enforcement officers and General Order No. 69-2008 on morals and police ethics. That general order was drafted by a commission composed of representatives of civil society, the staff of the Inspectorate General of the Directorate-General, the Executive Secretariat, the Secretariat for Legal Aid and the adviser to the Office of the Director General of the National Civilian Police

3. International notification of states of emergency

100. In its concluding observations issued in 2001, the Human Rights Committee recommended that Guatemala “notify the other States parties through the intermediary of the Secretary-General of the United Nations in all cases when an emergency situation is declared and to inform them of the provisions from which it has derogated and of the reasons for the derogation”. To meet this international obligation, COPREDEH is responsible for notifying declared states of emergency through the Ministry of Foreign Affairs.

4. States of emergency declared between 2001 and 2008

101. Between 2001 and 2008, 14 states of emergency were declared, seven as preventive and seven as the result of a public calamity. Details of the duration and the rights that were suspended in each state of emergency are given in annex I, table 8, of this report.

E. Article 5 – Prohibition of restrictive interpretation and undermining of the rights of this Covenant

102. As stated in previous reports, the International Covenant on Civil and Political Rights is part of domestic legislation, compliance with which is mandatory. Therefore, there have been no changes in the content and application of this article, reaffirming the State's duty to safeguard and protect.

F. Article 6 – Right to life

1. Public security

103. Ensuring the protection and security of Guatemalans is one of the greatest challenges that the Government faces. There are currently 19,119 police officers, who make up the National Civilian Police (PNC) for protecting the population.

(i) Regulatory framework

104. On 15 April 2008, Congressional Act No. 18-2008 was published in the *Diario de Centro America* containing the Basic Act for the National Security System. That act created the National Security Council, chaired by the President and composed of the Vice-President, the Minister of Foreign Affairs, the Minister of the Interior, the Minister of National Defence, the Secretary for Government Strategic Intelligence and the Attorney General.

105. That act also amends the act on the Executive, creating the State Strategic Intelligence Secretariat to replace the Strategic Analysis Secretariat of the Presidency.

106. Through Act No. 71-2005 the General Direction of Civil Intelligence (DIGICI) was created under the Ministry of the Interior, and the roles and responsibilities of that service were defined.

107. Through Decree No. 15-2009, Congress approved the Act on Arms and Ammunition.

(ii) Security Cabinet

108. The Government's Security Cabinet has the following responsibilities:

(a) To implement and enforce policies and plans defined by the Ministry of the Interior for the security of persons, their families and property, the guarantee of their rights, enforcement of judicial orders and decisions and immigration laws;

(b) To ensure that employees and officials in the public security forces under the command of the Ministry of the Interior exercise their duties of protecting and guaranteeing human rights and maintaining public order;

(c) To propose plans for the regulation of private security services aimed at effectively monitoring and managing the persons providing those services;

(d) To propose strategic plans to combat terrorism, drug trafficking, money laundering, organized crime, illegal migration, common criminals and all other scourges that threaten public security and internal order;

(e) To monitor implementation of strategic plans for public security by the Ministry of the Interior;

(f) To support and comply with missions ordered by the Ministry.

(iii) *Progress and measures implemented*

109. The following measures have been implemented:

(a) Patrols or joint operations conducted by the National Civilian Police and the Ministry of Defence known as “joint patrols” with personnel from the PNC and the military, who perform police actions in order to seize firearms, arrest people with outstanding arrest warrants, carry out investigations in support of the Public Prosecutor's Office such as searches, inspection and registration. These are made pursuant to Act No. 40-2000 of the Support for Civilian Security Forces Act, which regulates the prevention and combating of organized and minor crimes.

(b) Subscription of inter-institutional agreements, including (a) an agreement between the Ministry of the Interior and the Ministry of Defence on joint patrols; (b) an agreement for the advancement of national security and justice in Guatemala, led by the Vice-President, which involved the three government agencies and other decentralized and autonomous institutions involved in the administration of justice, namely the CICIG, public prosecutors, the Attorney General's Office, the Comptroller General, the Constitutional Court, the Ministry of the Interior, the General Planning Secretariat, the Security Advisory Council and the G3 Group for international cooperation;

(c) Implementation by the PNC of security plans to prevent crime against users and drivers of urban and suburban transport and against lynchings, etc. Those acts of violence have caused distress among the population, as well as the proliferation of vehicle theft. Given this situation, the PNC has launched Service Orders No. 06-2009 “Security for drivers and users of urban and intercity transport in the department of Guatemala” and No. 07-2009 “Security against theft of vehicles” for the purpose of preventing and combating violence against drivers of urban and suburban transportation.

(d) An increase in the number of local security boards at the national level;

(e) Institutionalization of multisectoral control of alcoholic and fermented beverages in order to prevent human trafficking and enforce alcohol prohibition;

(f) Creation of the multisectoral committee for urban and suburban public transportation in the department of Guatemala.

(iv) *Challenges and difficulties*

110. One of the main difficulties faced by the PNC in carrying out its functions is the fear of citizens to sue alleged perpetrators, plus:

(a) A weak system of justice and the absence of eyewitnesses to crimes;

(b) A weak prison system, which leads to the use of the PNC for the transfer of inmates and perimeter security at prisons.

2. On the arbitrary deprivation of the right to life

111. Because of the increase in violence involving the arbitrary deprivation of the right to life of persons in Guatemala, it has become necessary to adopt measures to strengthen the regulatory and institutional framework in order to reduce those crimes. This issue is one of the most important challenges facing Guatemala. The following information concerns the prevention, prosecution and punishment of such acts.

(i) *Prevention, investigation, prosecution and punishment of violent crime (present and future human rights violations)*

Crime prevention

112. Among the measures implemented by the National Civilian Police for preventing crime is the creation of operational plans aimed at preventing and countering violent crimes and crimes against property, which is reinforced by the issuance of various instructions and implementation of operations following investigation.

Main achievements in crime prevention

113. The following progress has been accomplished in preventing crime:

(a) Decentralization of the Sub-Office for Crime Prevention by opening offices in each of the police commissariats at the national level;

(b) Increased formation of Local Citizen Security Boards at the national level, resulting in a decline in crime;

(c) Closer ties with the mayors of 150 municipalities for issues concerning the organization of municipal security committees in order to promote awareness in local governments concerning issues of public security;

(d) Promotion of awareness among pupils and parents about “The police is your friend” and the “Resisting drugs” campaigns in order to ensure that students refrain from participating in youth gangs and drug use. See annex I, table 9, of this report.

Investigation, trial and punishment

114. As noted in discussion of article 2 in this report, the Human Rights Committee recommended that Guatemala “investigate present and future allegations of human rights violations”. In addition, the Committee recommended “giving special priority to investigating and bringing to justice the perpetrators of human rights violations, including police and military personnel. The perpetrators of such acts must be tried and punished; mere separation from service or dismissal from the army is not sufficient. The State party should also take all necessary measures to prevent the occurrence of these acts.” In relation to these recommendations, the following information is presented about the investigation, prosecution and punishment of arbitrary deprivation of the right to life.

115. According to statistics provided by the Judiciary, between 2005 and the third quarter of 2008 75,621 cases were filed for violent crimes and personal integrity in criminal courts.

116. Also between 2005 and the third quarter of 2008, the Judiciary issued 9,085 decisions involving violent crime and aggression in criminal courts. During 2008, the National Civilian Police recorded 5,834 cases of arbitrary kidnapping. Those cases must be investigated to ensure prosecution and punishment of those responsible and the right of victims to adequate compensation for damage.

117. The PNC, through its Criminal Investigation Division, has implemented measures to combat hijacking and organized crime, strengthening measures to arrest persons accused of committing murder. The cases treated are listed in annex I, table 10, of this report.

118. The following measures have been implemented to strengthen investigations:

(a) Training by domestic and international institutions and agencies specialized in investigations in order to raise the level of PNC investigators;

(b) Signing of a cooperation agreement between the Ministry of the Interior and the Spanish Agency for International Cooperation to strengthen the PNC's violent crimes section. The current organization of that section does not allow cooperation with the 20 agencies for investigating violent crimes of the Ministry of the Interior. As a result, homicide investigators have a heavier workload, and there are few results. Under the new project, 20 teams will work closely with the Ministry of the Interior: one team for each agency. The project is currently under way and began with the remodelling of the facilities located at 11th Avenue 14-47 in Zone 1 of Guatemala City that will house the staff for the metropolitan area. Work is also progressing on operational and procedural manuals for the Investigation Unit.

(c) A team of nine investigators from the Criminal Investigation Division of the National Civilian Police was formed within the Investigative Unit of Attacks on Human Rights Defenders.

(d) A bilateral cooperation agreement was signed between the Ministry of the Interior and the International Commission against Impunity in Guatemala (CICIG) to support, strengthen and contribute to the investigative work of the Ministry of the Interior.

(e) Agreement No. 03-2008 dated 17 June 2008 was signed with the Myrna Mack Foundation to contribute theoretical and practical knowledge and skills for improvement of the PNC's work. Under that agreement, training has been provided to the Inspectorate-General of the PNC on administrative investigation, strengthening investigative techniques and legal considerations.

(f) Assignment of police officers to magistrates for criminal matters and courts of first instance that have been created at the national level and which operate 24 hours a day;

(g) Training programmes conducted by the Division of Child and Juvenile Welfare (DIANA) of the PNC for police personnel that deal with cases involving child victims and juvenile delinquents;

(h) Creation of the National Institute of Forensic Sciences (INACIF) through Act No. 32-2006 as an autonomous institution. One of its aims is to ensure the impartiality and reliability of technical and scientific investigations and contribute to the production of scientific evidence.

119. INACIF seeks to produce useful evidence from raw evidence for the Judiciary through technical and scientific analysis based on facts, transparency and autonomy, grounded in science and using teamwork. INACIF began to function on 19 July 2007 and began its investigations using forensic medicine on 6 December 2007.

120. Unlike the previous medical service, which was limited to conducting autopsies and examining bodies, did not have a scientific laboratory and was part of the Judiciary, INACIF has broader functions and is required to issue technical and scientific forensic medical expert opinions at the request of a prosecutor or judge. It is an autonomous institution operating at the national level throughout the year.

Measures implemented for building capacity to prevent and investigate violent crimes

121. Steps have been taken to strengthen institutions related to public security, including activities aimed at improving and restructuring the PNC. One improvement has been the creation of the Inspectorate-General on 9 December 2005 through Act No. 662-2005, which acts as a system of internal controls in accordance with General Order No. 48-2007 of the Directorate-General of the PNC.

122. The Inspectorate-General of the National Civilian Police is in charge of the Office for Professional Responsibility (ORP), the Human Rights Section and the disciplinary code. These units receive all complaints against police officers involving illegal acts and apply legal, administrative or disciplinary sanctions.

Improvement and professionalization of the National Civilian Police

123. A process of improving the PNC was initiated because agents of that institution were involved in crimes. However, one of the main obstacles in that process has been a lack of complaints from victims of crimes attributable to agents of that institution because of a fear of reprisals. The PNC and the Ministry of the Interior must change the image and

perception that people have of this institution in order to create domestic and international confidence in the police force.

124. On 2 April 2009, Act No. 97-2009 was published in the *Diario de Centro America* establishing regulations for the organization of the National Civilian Police, cancelling the previous regulations contained in Act No. 662-2005.

Disciplinary procedure for officers of the National Civilian Police

125. In order to prevent crimes and acts of corruption, the work of police officers is monitored. The work of the police is constantly monitored by heads of every police commissariat, station and substation and the various divisions. In addition to this monitoring, statistics are kept of complaints made at the offices of Victim Services and Citizen Services and records of the ORP and local public security boards. In addition, complaints against police officers to the Human Rights Ombudsman and the Office of Administrative Offences of the Public Prosecutor's Office are studied.

126. Another measure of prevention is the maintenance of records kept to identify officers and their itinerary, which are monitored by radio and often by telephone.

127. When despite the monitoring and prevention mechanisms, a police officer is suspected of having committed a crime, the Office of Professional Responsibility orders a preliminary investigation to determine whether there is evidence of involvement of the accused in order to bring charges or impose administrative sanctions. The proper operation of the Office of Professional Responsibility is essential for improving police personnel. That office can also be requested to conduct an investigation by the Human Rights Section of the PNC upon receipt of a complaint.

128. Any officer found guilty is sanctioned in accordance with the provisions of the disciplinary regulations of the PNC. There are several degrees of sanctions, and every effort is made to ensure full respect for human rights and the internal rules of that institution.

129. In December 2008, the PNC had registered 1,100 complaints against police officers that were being investigated.

Professionalization of the National Civilian Police

130. Professionalization is promoted through the divisions and sections of the PNC, namely the Academy, the Office of Human Rights Promotion and Development, Honour and Service and the Directorate-General for Crime Prevention. Furthermore, training is provided in national police commissariats during the "*Hora Académica*" on various aspects of police work.

131. Owing to the public's lack of confidence in the PNC, it has become necessary to improve that institution's image through the idea of community policing promoted through staff training. The main difficulty in professionalization is the lack of sufficient funds. As a result, the support of international donors is being sought in addition to domestic funding.

132. Creation of the career of police officer is one of the challenges in professionalization of the PNC, as that would improve police personnel and allow for promotions based on merit.

133. The following progress has been made:

(a) Drafting of a bill on recognition of courses taken in Guatemala and abroad and creation of the Post-graduate College of Police Sciences, offering technical courses and degrees through an agreement with the University of San Carlos;

(b) Reform of the curriculum of the Police Academy and establishment of the requirement that candidates have at least a middle-level education;

(c) Incorporation of the issue of human rights in Police Academy courses, covering the definition and concept of human rights, individual rights, social rights and obligations and civic and political duties and rights;

(d) Training on human rights for police trainees in the basic course is focused on prevention of lynching. A group of police chiefs has been trained in this issue. The Human Rights Section of the PNC has also trained police personnel;

(e) Implementation of training and promotion of awareness of police personnel through the Gender Equity Division, resulting in the training of approximately 200 agents in the employment rights of female police officers and care for female victims. More than 1,500 agents were trained in dealing with domestic and sexual violence.

3. Preventive measures and protection for members of various social groups, the Judiciary, journalists, human rights activists, trade union members and members of political parties in carrying out their functions without intimidation

134. Among its concluding observations issued in 1996 and 2001, the Human Rights Committee urged “the Government to take all necessary steps, including protective and preemptive measures, to ensure that members of various social sectors, particularly members of the judiciary, lawyers, journalists, human rights activists, members of trade unions and members of political parties, be enabled to perform their duties without intimidation of any sort”. Guatemala has adopted and implemented several measures and actions related to this recommendation and has faced some obstacles, which are addressed below.

(i) *Progress in protecting members of various social groups*

135. The following measures have been implemented in order to ensure that members of various social sectors can perform their work without intimidation.

Regulatory framework

136. In July 2007, the Office for Analysis of Attacks on Human Rights Defenders became operational under Ministerial Agreement 103-2008 published in the *Diario de Centro America* on 23 January 2008. It is attached to the Vice Ministry for Security of the

Ministry of the Interior, and its role will be to analyse patterns of attacks on human rights observers and defenders, using a scientific approach.

Public policies and programmes

137. The following public policies and programmes have been established:

- (a) A policy of prevention and protection for human rights defenders and other vulnerable groups;
- (b) A programme of prevention and protection for human rights defenders and other vulnerable groups;
- (c) A manual on prevention and protection mechanisms for the National Civilian Police.

Protective measures implemented

138. In order to provide adequate protection so that judges and judicial officials can exercise their functions without fear of reprisal and in order to protect members of other social sectors, Guatemala has taken the following steps:

- (a) Coordination of security measures among the three branches of government that provide security for judges and judiciary officials. An allocation of 30 million quetzals has been approved for the judiciary for creation of its security unit, and two million quetzals have been approved for protection of the Public Prosecutor's Office;
- (b) Cooperation between the Security Unit of the Judiciary, the Deputy Ministry for Security of the Ministry of the Interior and the Presidential Commission for Human Rights for the protection of 88 threatened and intimidated judges since 2004;
- (c) There is cooperation between the Public Prosecutor's Office and the Ministry of the Interior for the protection of approximately 40 public prosecutors, 67 witnesses and 80 family members and other persons involved in trials;
- (d) Appointment of approximately 1,500 PNC officers for the security of public officials and beneficiaries of protective measures issued by the Inter-American System of Human Rights;
- (e) The Public Prosecutor's Office requested the Judiciary and the Executive to evaluate and redesign the Witness Protection Programme;
- (f) The Ministry of the Interior provides security and protection at the request of the Human Rights Ombudsman. The Ombudsman for Human Rights has requested police protection for human rights defenders;
- (g) Protection by the Ministry of the Interior for the Special Prosecutor for crimes against journalists in order to allow him to act without pressure, threats or intimidation;

(h) The Executive, by Government Agreement No. 645-05 of 6 December 2005, established general rules for access to public information, encouraging other branches of government to consider the need to adjust all standards of governance to international standards, based on transparency;

(i) On 28 June 2005, the President and the Vice-President reiterated to human rights organizations and the general public that steps had been taken to guarantee universal freedoms of human rights defenders, recognizing their work in building democracy and condemning all acts of intimidation such as threats, theft, raids and attacks against them. On 17 July 2005, the willingness to support and protect them so that they can work freely and safely was reiterated publicly and in writing in the media;

(j) The Ministry of the Interior has been reorganized to ensure implementation of appropriate and effective security measures;

(k) The Ministry of the Interior and the Presidential Commission for Human Rights agree on security measures based on their needs and their work for individuals, human rights defenders, operators and justice officials.

(ii) *Mechanisms for implementing protective measures*

139. The Division for the Protection of Important Persons, which since 2009 is now called the Division of Protection of Persons and Security, is responsible for providing personal security for important persons, public officials and individuals benefiting from protective measure. However, because that division has exceeded its capacity for providing security, the General Department of Public Security currently provides personal security through its regional offices, because requests for protection are given priority attention by the Ministry of the Interior.

140. The Ministry of the Interior carries out a risk analysis of each request for protection in order to allocate the limited human resources available, which is an obstacle to responding immediately to requests for protection. Normally, two to four agents are assigned to each person requesting protection. The number of agents assigned depends on the degree of danger to the official or the beneficiaries; for high risk cases eight police officers are assigned. The period during which a person is protected depends on the risk. There are cases in which protection has been provided indefinitely.

141. On the issue of protection for members of various social sectors, the Ministry of the Interior has implemented the following risk prevention and protection mechanisms.

Risk prevention measures taken by the Government

142. The following risk prevention measures have been taken:

- (a) The PNC has drafted plans and guidelines that combine aspects of public security in harmony with the fundamental freedoms;
- (b) Direct and constant coordination between the Office for Analysis of Attacks on Human Rights Defenders of the Ministry of the Interior and Division 110 of the National Civilian Police concerning treatment and processing of complaints of threats, harassment, intimidation or attack against human rights defenders, lawyers, court officials, trade union members and journalists;
- (c) Division 110 of the PNC requests its staff to be aware of the security situation of human rights defenders;
- (d) Analysis of patterns of attacks against human rights defenders;
- (e) Improvement of the staff of the Division of Criminal Investigation, even if that means reducing the number of police officers;
- (f) Security of public buildings and the staff working in (i) the Presidential Commission for Human Rights, (ii) the Office of the Human Rights Ombudsman, (iii) the Myrna Mack Foundation, (iv) FODIGUA, (v) the Organization of the women's sector, (vi) the Centre for Human Rights Legal Action (CALDH), (vii) the Forensic Anthropology Foundation, (viii) the Historical Archive on the premises of the PNC and (ix) the Madres Angustiadadas Organization;
- (g) Immediate implementation of interim measures issued by the Inter-American Commission on Human Rights, and provisional measures ordered by the Inter-American Court of Human Rights through the staff of the Division for the Protection of Important Persons, the Division for Protection and Security and police stations;
- (h) Granting security measures for defenders of human rights and other important persons who have benefited from protective measures ordered by international organizations, when there are threats or attacks against them. Before provision of security, a risk analysis is carried out by the PNC to determine which security measures should be implemented.

Protection mechanisms

Protective measures

143. The Ministry of the Interior implements protective measures through the PNC in favour of human rights defenders and other persons threatened or attacked. The following remedies are implemented: (a) personal through the Division for the Protection of Important Persons, (b) perimetral and (c) permanent, the latter two provided by the Division for Protection and Security (DIPROSE). Guatemala implements the following security measures.

Security measures

144. Security measures are implemented to protect defenders of human rights and members of various social groups that have suffered attacks. These measures are implemented by domestic agencies, because the beneficiaries have not appealed to international organizations.

145. To implement that type of measure, the Ministry of the Interior, through the Vice-Ministry for Support of the Judiciary coordinates the activities to be implemented with the PNC and the Public Prosecutor's Office to safeguard the life, security and integrity of the beneficiaries and their family, when justified by a risk analysis.

146. Risk analysis involves an investigation of the environment and the situation in which the beneficiary lives to determine the appropriate type of security to be implemented after acceptance by the person to be protected.

Precautionary and provisional measures granted by the Inter-American System

147. Personal, perimetral or permanent security is used for this type of security measures. The procedure for implementation begins with notification through COPREDEH to Guatemala of the granting of the measure. That request is transmitted to the Ministry of the Interior. When the Inter-American system did not indicate the type of measure to be implemented, COPREDEH coordinates with the beneficiary of the protection and the Ministry of the Interior to determine the measure to be adopted in each case.

148. After determining the measure to be used, the Ministry of the Interior orders the Directorate-General of National Civilian Police to comply with protective measure, which transmits that order to the General Sub-office for Operations and Public Security when the security is to be perimetral or permanent. That office transmits the request to the Division for Protection and Security (DIPROSE). If the protection is to be personal, the order is transferred to the General Department of Specialist Units for transmission to the Division for Protection of Important Persons and immediately appointment of the necessary police security.

Security measures implemented by the Judiciary for its officials

149. The Security Unit of the Judiciary was created in 2002 through Supreme Court Resolution No. 5-2002 as a dependency of Administrative Management Department, which replaces the Security Department of the Judiciary. The head and staff of that unit are considered to be employees that can be appointed and dismissed. Its main functions are to provide security for the head of the Judiciary and judges of the Supreme Court, for judges and magistrates who need it as a result of attacks, threats or intimidation that affect their lives or physical integrity as a complement to the services provided by the State security forces and provide surveillance and protection of buildings in which the courts and administrative offices function and any other premises or property belonging to the Judiciary.

150. In 2006, the Security Unit was expanded by recruiting 300 additional agents because it did not have the operational capacity to protect the lives of judges, safeguard facilities and provide security for justice officials. In order to regionalize the security of judicial officials, 295 police officers were recently hired to safeguard the Judiciary's facilities.

151. The Security Unit of the Judiciary is being equipped with weapons, ammunition and equipment in addition to vehicles, radios, cell phones, electronic security devices and the possibility of leasing aircraft. The Security Unit of the Judiciary coordinates activities with the support of the Ministry of the Interior, the National Civilian Police, prosecutors, COPREDEH and the Human Rights Ombudsman.

Activities coordinated by the Presidential Commission for Human Rights (COPREDEH)

152. COPREDEH, through the Department for the Coordination of Protection Mechanisms, is responsible for coordinating protection measures ordered by the Inter-American System of Human Rights and actions or urgent appeals issued by the United Nations system. The following information describes implementation of precautionary and temporary measures.

153. To strengthen the ongoing work of the Coordination Unit for the Protection of Human Rights Defenders, Court Administrators and Operators, Journalists and Social Communicators of COPREDEH, the Department for the Coordination of Protection Mechanisms was created within COPREDEH by Internal Agreement No. 85-2008. The following achievements have been made:

(a) Review and updating of the policy on the prevention and protection of human rights defenders and other vulnerable groups;

(b) Preparation and adoption of the Prevention and Protection Programme for Human Rights Defenders and other vulnerable groups;

(c) Preparation and final discussion of the bill creating the Prevention and Protection Programme for Human Rights Defenders and other vulnerable groups;

(d) Preparation of regulations for the Prevention and Protection Programme for Human Rights Defenders and other vulnerable groups;

(e) Preparation of the Manual for the Prevention and Protection of Human Rights Defenders and other vulnerable groups.

(iii) *Data on the number of measures implemented*

154. According to information provided by the Ministry of the Interior, in December 2008 protective measures were provided for 76 defenders, activists and human rights organizations. Security is being provided for the headquarters and staff of nine institutions in addition to protection of foreign embassies and members of Congress. In addition, 23 services of the Secretariat of the Supreme Court of Justice are covered. In the Judiciary, five services are covered, 138 services in the Public Prosecutor's Office, 139 services in the Office of the Human Rights Ombudsman, one service in the Secretariat for Administrative

Affairs and Security, 31 services in the Ministry of the Interior and six services in the Attorney General's Office.

(iv) *Challenges and difficulties*

155. One of the difficulties concerning violence against members of various social sectors is the absence of statistical data on prosecutions and investigations of criminal acts against trade union members, justice officials, journalists and human rights defenders and activists. The Government has difficulty in gathering information regarding this issue.

4. Extrajudicial executions and accountability of public officials

156. One of the recommendations in the concluding observations of the Human Rights Committee on the second periodic report concerns “the State's duty to conduct investigations to identify those responsible for extra-judicial executions and bring them to justice. The Government should also take the necessary measures to prevent the occurrence of such violations of articles 6 and 7 of the Covenant.”

157. Concerning the participation of public officials in extrajudicial killings, the Centre for the Collection, Analysis and Dissemination of Criminal Information of the Ministry of the Interior has registered 10 complaints involving 35 police officers. Those allegations were transmitted to the Public Prosecutor's Office for investigation.

158. According to statistical data for the period between 2005 and 2008, the Judiciary recorded 58 cases submitted to the courts for the crime of extrajudicial execution. In that period, 11 judgements were delivered of which five were guilty verdicts. During 2008, the PNC, through its agencies, carried out 13 investigations of the crime of extrajudicial execution.

159. However, the Judiciary has no specific statistics on cases brought against agents of the State security forces charged with committing violent crimes.

5. Femicide and other forms of violence against women

160. As indicated in the information provided concerning article 3 in this report, the Act against Femicide and other forms of violence against women was adopted (Act No. 22-2008). Article 6 of that act creates the offence called femicide and states: “Any person committing the crime of femicide who, in the context of unequal power relations between men and women puts to death a woman, because she is a woman...” That article defines the circumstances in which that crime is committed. That act also created the crimes of economic violence and violence against women.

161. Article 12 of Act No. 22-2008 provides for State liability for acts or omissions by public officials who hinder, delay or deny the enforcement of sanctions under that act.

(i) *Progress in implementation*

162. The Judiciary and the Supreme Court of Justice have agreed on which courts have jurisdiction to hear cases of crimes established by that act. The Act against Femicide has

been published and disseminated in the competent courts, and training workshops have been held for judges and justice officials dealing with these cases.

163. The Judiciary, through the Institutional Training Unit, has conducted 47 training activities related to the Act against Femicide under the Training Programme for Women's Human Rights for a total of 357 men and 222 women during 2008.

164. In 2008, SEPREM held 17 workshops at the request of the Training Unit of the Ministry of the Interior for 309 men and 260 women (prosecutors and assistant prosecutors); a total of 569 trainees.

165. SEPREM, as part of the Advisory and Verification Committee of CONAPREVI, has supported training for a total of 291 trainees in referral networks. A programme on implementation of international instruments on women's human rights for public officials will be implemented in 2009.

166. To strengthen investigation of crimes committed against women and children, investigators from the Femicide Unit attached to the Homicide Unit against Women, which belongs to the Division of Criminal Investigation of the PNC, have been trained in investigative techniques, and the staff of the PNC has been trained for proper implementation of that body of law and for the proper investigation of these crimes. The following subjects are dealt with:

(a) Promotion and dissemination of Act No. 22-2008, Act against Femicide and other forms of violence against women, conducted by the Human Rights Section of the PNC, in order to train and sensitize all levels of the police how to care for victims of these crimes and provide quality service. A total of 1,084 police officers and 10,505 persons from outside that institution have been trained;

(b) A basic course on criminal investigation to strengthen the Homicide Unit against Women for new investigators was taught by the School of Criminal Investigation of the PNC;

(c) A course in crisis and hostage negotiation was taught by the School for Criminal Investigation of the National Civilian Police;

(d) A course on crime scene investigation was given at the School for Criminal Investigation;

(e) A training course on investigation of violent crimes and homicide was taught at the School for Criminal Investigation of the National Civilian Police;

(f) A course on femicide was taught at the School for Criminal Investigation of the National Civilian Police.

167. Between May and September 2008, the Judiciary recorded a total of 1,174 cases of crimes of femicide, economic violence and violence against women in all criminal courts of which 15 cases of femicide, 44 cases of economic violence, 1,115 cases of violence against women, including 24 cases involving young girls.

6. Prevention and investigation of crimes committed against women and children*(i) Measures undertaken to prevent violence against women*

168. Action has been taken to prevent and properly investigate acts of violence against women as well as proper treatment for the victims of that violence. Some of those activities are described below:

(a) The Criminal Investigation Branch of the National Civilian Police operates within the following divisions: (a) female homicide, (b) human trafficking, (c) threats and (d) juveniles. All those divisions seek to prevent, investigate, identify, pursue and apprehend those responsible for crimes against women.

(b) In 2008, the Operations Division for Public Security of the National Civilian Police implemented the General Perseverance Plan 2008, aimed at encouraging districts and police stations throughout the country to plan activities to prevent, prosecute and eliminate crime within their jurisdictions, protecting the life and physical integrity of persons and property through development and implementation of their own security plans.

(c) In connection with assistance to female victims of domestic violence, the police may act *ex officio* at the request of a victim or at the request of others and (i) provide relief and protection for victims of assault, even when they are in their domicile at the time of the complaint; (ii) in cases of where the perpetrator was caught in the act, that person is arrested and turned over to the Judiciary; (iii) a report is prepared of the facts based on information collected from relatives, neighbours and other persons present.

(d) The Human Rights Section of the PNC has conducted training sessions on providing comprehensive care for female victims in cases of domestic violence and violence against women. That section, in collaboration with the Justice Reform Programme, has trained 3,000 PNC officers on how to act in cases of violence against women.

(e) The Gender Equity Division of the Directorate-General for Crime Prevention of the National Civilian Police has a continuous recruitment programme aimed at children, teenage students in public and private schools, women's organizations and community leaders to foster a culture of preventive security. This programme provides training using participatory methods to involve participants in making decisions for improvement of the community. During the training, a pamphlet on self-protection measures for women is distributed, which has been prepared by the Division for Gender Equity. Training topics include gender and violence against women, prevention of violence against women, domestic violence, sexual violence and self-protection measures for women.

(ii) *Measures implemented to improve care for victims*

169. The following measures have been implemented:

(a) In accordance with article 19 of the Act against Femicide and other forms of violence against women (Act No. 22-2008), the Directorate-General of the Institute for Public Defence created the National Coordination for Free Legal Assistance to Victims and Their Families, through Resolution No. 64-2008, which provides free legal assistance to victims of any form of violence against women and their families by providing public defenders to ensure the effective exercise of their rights. The National Coordination has a central headquarters, eight regional offices and a call centre that serves the entire country. Each office is staffed by professionals in the fields of psychology, social work and public defenders who provide legal advice and assistance in the search for quick solutions. There are a total of 101 lawyers in that service, which operates independently from the criminal defence services provided by the Institute for Public Defence. The free legal assistance service provides orientation, advice, assistance and legal representation directly to the victim or her family. In addition, all the legal and non-legal actions necessary to the defence and protection of the interests of the victim and her family are carried out, including acting as legal parties. The IDPP provides comprehensive assistance to victims, including, in addition to legal advice, psychological counselling and social support through appropriate institutions for additional or specialized care, monitoring of complaints and claims and providing interpreters if needed.

(b) Effective 25 November 2008, the Institute for Public Defence began providing assistance from the call centre for emergency legal care for women victims and their families in the form of immediate attention in cases of life-threatening violence or aggression, activating a mechanism for inter-agency coordination among the National Civilian Police, municipal volunteer fire corps and the Comprehensive Care Centres for Women Survivors of Violence (CAIMUs) or through action by a lawyer to obtain necessary protection measures.

(c) A referral and support network has been created which aims to ensure that the operations of governmental and non-governmental institutions providing various services related to care for victims of violence are coordinated, especially as regards temporary shelters caring for women survivors of violence, appropriate referral of formal complaints to the MP and PNC and courts and providing help from the municipal volunteer fire corps for urgent or hospital care.

(d) Training in dealing with domestic violence has been given within the PNC, and the staff trained in this area has joined the delegations providing care for victims that operate in each police station. The Division of Victim Services of the PNC is a specialized unit responsible for creating flexible and efficient processes in dealing with complaints, the police and provision of preventive primary care to victims. In the Central District of Guatemala City, the Division of Victim Services plays a very important role in providing victims with psychological, social and legal services. In 2008, assistance was provided to more than 6,327 female victims.

(iii) Progress in investigation

170. The main obstacles in investigating acts of violence against women are the gender inequality that still exists existing in Guatemalan culture, an absence of complaints from female victims and an absence of cooperation of relatives of victims as witnesses in trials. The following progress has been made:

(a) Increased access to justice for women through the creation of specialized courts and prosecution offices;

(b) Implementation of the National Plan for the Prevention and Eradication of Domestic Violence and Violence against Women (PLANOVI 2004–2014);

(c) Provision of modern computer equipment to the Criminal Investigation Division of the National Civilian Police;

(d) Provision of technical resources for mobilization of the public security forces, which allows it to perform better its functions;

(e) Permanent coordination among PNC officers and members of the Office of the Prosecutor of Violent Crimes for investigation of threats to the life and physical integrity of persons and for improving mechanisms for dealing with cases affecting women's rights;

(f) INACIF has prepared a guide for handling evidence from forensic labs related to sexual crimes. There is also a database of DNA genetic profiles based samples of male fluids found in victims.

(g) Mobile justice of the peace courts are fully operational and are supported by the Judiciary. These courts bring justice to people living in poverty by providing quick and gratuitous conciliation and mediation services for the solution of problems.

(h) Establishment of effective permanent programmes and services within the Judiciary in the agencies dealing with violence against girls and women. Those agencies exist in Guatemala City, Villa Nueva and Mixco, dealing in criminal matters around the clock in addition to the mixed magistrate courts in all departments and municipalities, except in Guatemala City, where there are specialized courts. In addition, there are mobile courts (which operate properly equipped vehicles) and that follow a schedule in various urban and rural areas to facilitate access to justice. The various courts described handle complaints of domestic violence and prescribe appropriate security measures before referring them to family or criminal courts.

7. Status of lynchings

171. Lynchings have recently had a significant impact on the national level, affecting several departments. In 2007, this phenomenon occurred more often despite efforts and prevention programmes implemented by several institutions, including an educational programme carried out by the Judiciary.

172. In Guatemala, lynching is not a crime, so the violence that leads to lynching must be dealt with as a crime against legally protected rights. But in order to generate statistics, the Judiciary records those crimes as crimes committed as a result of lynchings. Between 2005 and 2008, 1,168 cases were recorded in the courts.

(i) *Progress and measures implemented*

173. The Government of Guatemala has taken several steps to prevent lynchings. In 2004, the Judiciary asked several institutions to revive and form the National Committee for Support of the Preventive Education Subprogramme on Lynchings, and in 2005 an agreement was signed with the participating institutions.

174. That Committee has made the following significant progress:

(a) Strengthening of the National Committee for Support of the Preventive Education Subprogramme on Lynching;

(b) Drafting of an annual plan of functions and activities by the National Committee;

(c) Drafting of an annual report of the National Committee to verify progress and follow planned activities;

(d) Preventive action plans and training for various segments of the population;

(e) Provision of facilitators requested by magistrates to strengthen preventive activities in their jurisdictions;

(f) Creation of a new computer system for the Information and Telecommunications Centre (CIT) of the Judiciary in order to have better statistics on the social phenomenon of lynching in accordance with guidelines provided by the National Committee;

(g) Introduction of the study of the prevention of lynching into the curriculum of the various courses taught for new recruits and staff receiving additional training in the National Civilian Police Academy;

(h) Participation in the prevention of lynching, misdemeanours and crimes with the Association of Metropolitan Markets;

(i) Cooperation with universities to encourage field work by psychology students and the help of students in assisting the inhabitants of towns where lynchings have occurred. As a result, the University of San Carlos is in the process of signing an agreement with the Judiciary;

(j) Cooperation with the National Association of Municipalities (ANAM) to gain the support of mayors in strengthening preventive activities in their jurisdiction;

(k) Cooperation with departmental governors in preventive activities against lynching through the Departmental Development Councils;

(l) Cooperation for the creation of quick-reaction networks in the event of lynching, particularly with the Network of Dealing with Conflict in Huehuetenango;

(m) Contact with top officials for the improvement of education;

(n) Cooperation with the United Nations High Commissioner for Human Rights to strengthen the prevention of the social phenomenon of lynching;

(o) Training programmes for several segments of the population.

(ii) *Obstacles facing the National Committee for the Prevention of Lynching*

175. The National Committee for the Prevention of Lynching faces the following obstacles:

(a) Several institutions that are part of the National Committee lack a specific action plan for preventing lynching;

(b) There is a lack of specific economic resources;

(c) Several institutions lack follow-up action plans to prevent lynchings;

(d) A lack of perseverance on the part of several institutions by constantly changing their officials;

(e) Job instability in the institutions that are part of the National Committee;

(f) Short-sighted municipal and departmental authorities who avoid their responsibility to prevent the social phenomenon of lynching;

(g) A lack of cooperation of municipal and departmental authorities to prevent the social phenomenon of lynching;

(h) The rising tide of violence plaguing the country;

(i) A lack of commitment by some educators to implement the Axis of Civic Life in the primary and basic curriculum of the Ministry of Education on human rights;

(j) A lack of willingness of officers to honour commitments made before their appointment.

(iii) *Challenges for the National Committee for the Prevention of Lynching*

176. In order to strengthen the work of the Committee, the Executive Secretariat of the Coordinating Body for the Modernization of the Judiciary is requesting funding from Spain for recruiting a consultant to prepare a manual on the prevention of lynching based on terms

of reference drafted by the National Committee. Funding is also required for other projects of the National Commission on the Prevention of Lynching for specific locations.

8. Activities to avoid impunity

177. In the concluding observations issued in 1996, the Human Rights Committee recommended that the Government “take all pertinent measures to avoid cases of impunity and, especially, to allow the victims of human rights violations to find out the truth about those acts, to know who the perpetrators of such acts are and to obtain appropriate compensation”.

178. One of the major improvements in implementation of measures to prevent impunity was the creation of the International Commission against Impunity in Guatemala (CICIG). The CICIG was established under an agreement between the United Nations and the Government of Guatemala signed on 12 December 2006 and ratified by Congress on 1 August 2007.

179. The main function of the CICIG is to determine the existence of illegal groups and clandestine security organizations and to cooperate with the Government in disbanding those groups. In addition, CICIG has the power to apply criminal and disciplinary sanctions against attempts to block its activities.

180. Through Decision No. 65-2009, the Government created the Presidential Commission for Assistance and Support of the CICIG. The mandate of the CICIG has been extended for two years beginning in 2010.

9. The National Commission for the Search for Missing Persons

181. “Creation of an appropriate independent body to investigate disappearances” is one of the recommendations made by the Human Rights Committee in its concluding observations issued in 2001. In order to create that body to assist with the processes related to the forced disappearance of persons, bill No. 3590 containing the draft act for National Commission for the Search for Victims of Forced Disappearance and Other Ways of Disappearing was presented to Congress. That bill was reviewed by the Congressional Commission for Public Finance and Currency, which gave a favourable opinion in August 2007.

182. As an alternative to the creation of the Search Commission, the Executive issued Act No. 264-2006, temporarily creating the Executive Commission for the Search of Persons Missing during the Internal Armed Conflict as a consultative and advisory body for one year, extendible by a decision of the President, or ending upon creation of the Commission described in the preceding paragraph. That attempt encountered several difficulties that prevented achieving the objectives and had no concrete results. Efforts are continuing to adopt bill 3590.

183. Another significant development is the creation of the Guatemalan Commission for Implementation of International Humanitarian Law (COGUADIH) through Order No. 948-99 of 28 December 1999. It is an advisory body to the Government on adoption, implementation and dissemination of international humanitarian law under the Ministry of

Foreign Affairs. COGUADIH has worked since 2007 to carry out activities related to the implementation and dissemination of international humanitarian law through six working groups, including the working group for monitoring the recommendations of the International Committee of the Red Cross on missing persons.

10. The national reconciliation process

184. The Human Rights Committee urged Guatemala “to continue working in the process of national reconciliation which may bring lasting peace to Guatemalan society, the state has worked on this process, obtaining the following developments”.

(i) Regulatory framework

185. The following progress has been made in establishing a regulatory framework:

(a) Decision No. 64-09 temporarily established the Committee on Declassification of Military Records as part of the Executive;

(b) The Peace Secretariat, under the Presidency, supports, advises, coordinates and implements government commitments arising from the peace accords. Its activities are regulated by the Framework Act of the Peace Accords, Congressional Act No. 52-2005. That Act recognizes the peace accords as a government obligation, compliance with which is dynamic and gradual, requiring changes in legislation, institutions and policies.

(c) As indicated above, public policy is based on the Peace Accords and the recommendations of the Commission for Historical Clarification (CEH) for compensation to victims of human rights violations during the armed conflict and is implemented through the National Reparations Programme (PNR), which was created by the National Reparations Commission through Decision No. 258-2003.

(d) Through the National Fund for Peace (FONAPAZ), the Government also carries out concrete activities for implementing the International Covenant on Civil and Political Rights. FONAPAZ was created in 1991 to solve problems of compensation and to assist the population affected by the armed conflict. Government Order No. 408-91 of 28 June 1991 declares the targeting, design, implementation, supervision and monitoring of programmes and projects for assisting local populations to be of national importance and creates the fund to strengthen the peace process and national reconciliation through implementation of programmes and projects. Government Decision No. 244-92 of 13 April 1992 declared efforts to eradicate extreme poverty among large segments of the Guatemalan population to be of national importance as a means for consolidating peace. On 28 February 2000, Governmental Agreement No. 91-2000 declared activities aimed at strengthening economic and social development and improving the standard of living to be of national importance, as well as efforts made to eradicate poverty and extreme poverty as a means of consolidating peace. FONAPAZ is participating in implementation of public policy in accordance with government guidelines and the Peace Accords.

(ii) *Progress and measures implemented*

186. The Government has implemented the following measures to strengthen the national reconciliation process:

(a) The Peace Secretariat (SEPAZ) is fulfilling its mandate to support, advise and monitor the activities of Executive agencies in compliance with government commitments contained in the Peace Accords, focusing on those contained in the Comprehensive Agreement on Human Rights, the Agreement on Identity and the Rights of Indigenous Peoples, the Agreement on Socio-economic Aspects and the Agrarian Situation and follow-up to the recommendations of the Commission for Historical Clarification.

(b) In compliance with the Comprehensive Agreement on Human Rights and the recommendations of the Commission for Historical Clarification, the power of the PNR has been strengthened.

(c) In compliance with the Comprehensive Agreement on Human Rights and in response to the recommendations of the Commission for Historical Clarification, the Directorate of the Peace Archives has been established within the Peace Secretariat, bringing together trained staff to organize, preserve and file and a research team that will analyse the documents and draft reports. There is also a team that specializes in computer work to automate the work, which will be checked against each document.

(d) The Directorate of the Peace Archives contributes to the reconstruction of historical memory by processing and analysis the archives of the military and other public agencies that contain information related to the period of internal armed conflict, including the Welfare Secretariat, the Presidential General Staff, the National Reconstruction Committee and the National Compensation Programme.

(e) Despite the difficulties encountered in the exercise of its functions because of a lack of budget and staffing and logistical problems, which have been overcome over time, FONAPAZ has continued to assist urban and rural inhabitants with various projects based on implementation of the Peace Accords. Between 2001 and 2008, FONAPAZ assisted 928,999 persons through 7,922 projects under the Food, Social and Rehabilitation Aid for the Displaced programme with an investment of 2,137,322,745 quetzals. During that period, FONAPAZ has completed a total of 11,411 projects benefiting 2,434,957 people, with an investment of 3,725,136,225 quetzals in water and sanitation, food assistance and social reintegration of displaced persons, culture, sports, productive economic development, education, environment, health, welfare, housing, pre-investment and monitoring. FONAPAZ currently has 22 departmental offices, but not in El Progreso.

11. Status of the death penalty

187. In its concluding observations issued in 2001, the Human Rights Committee recommended that Guatemala “limit the application of the death penalty to the most serious crimes and restrict the number of crimes carrying that penalty in accordance with article 6, paragraph 2, of the Covenant, inviting the Government to move towards the full abolition of the death penalty”. The following information concerns application of the death penalty and the status of sentenced prisoners.

188. According to information provided by the Judiciary, there are 12 persons sentenced to death whose sentence has not been changed, out of a total of 23 persons awaiting execution, three of which are at large and the sentences of eight other persons have been revoked or suspended.

189. The Institute for Public Defence has made every effort in the cases of those sentenced to death, and several cases have gone to the Inter-American courts system, and the Inter-American Court of Human Rights has issued two judgements against the Government of Guatemala in the cases of Fermín Ramírez and Ronald Raxcacó Ernesto Reyes. Those judgements are being implemented by Guatemala. In both those cases, death sentences were commuted to imprisonment.

190. According to information provided by the Judiciary, between 1942 and 2000 38 people were sentenced to death and executed. The most recent execution in 2000 was by lethal injection. It is important to note that no death sentences has been executed since 2000, and the number of persons sentenced to death has declined owing to legal appeals, even though appeals for clemency or pardon have not been granted owing to the absence of regulations.

12. Status of the clemency procedure

191. In its concluding observations of 2001, the Committee recommended that the Government of Guatemala “guarantee any person sentenced to death the right to seek pardon or commutation of sentence by bringing the legislation into line with the obligations of the Covenant and adopting provisions to ensure that the right to seek pardon may be exercised”. The status of the pardon process in Guatemala is described below.

192. There are no regulations in Guatemala on the procedure for appealing for pardon or grace by a person sentenced to death in light of Congressional Act No. 32-2000, which repealed Act No. 159 of 19 April 1892, regulating the power of the President to commute the death penalty and grant clemency.

193. The absence of legislation indicated above prevents the exercise of the right of a person sentenced to death to seek pardon. As a result, there have been several bills to regulate and re-establish that right. Congressional Act No. 06-2008, the Act Regulating Commutation of Death Sentences, was vetoed by Governmental Agreement No. 104-2008, because that decree violated constitutional principles. Thus, a vacuum exists in Guatemalan law regulating that right and, as a result, the death penalty cannot be executed. Given the lack of regulations for requesting a pardon in Guatemala, the Supreme Court of Justice has established a de facto moratorium on the death penalty.

194. However, there are alternative mechanisms for those facing the death penalty to apply for commutation of their sentence. One such mechanism is review proceedings, which are regulated by the Guatemalan Code of Criminal Procedure. Review proceedings were the basis for commuting a sentence in decisions of the Inter-American Court of Human Rights in the cases involving Fermín Ramírez (issued on 20 June 2005) and Ronald Ernesto Raxcacó (issued on 15 September 2005), which have come to set a precedent for the Guatemalan justice system and represented significant progress in the question of the

death penalty, reducing the number of people sentenced to death. The Judiciary has recorded six cases in which review proceedings have been used.

195. According to information from the IDPP, the procedural status of prisoners currently awaiting a decision on their appeal for pardon or commutation of the death penalty is as follows: three persons have submitted applications for review, which are being considered; three persons have applied for clemency and review, which are being processed; two people have filed for protection, which has not yet been granted; two people have submitted applications for review and amnesty, which has not yet been decided; and two people are in the process of presenting appeals.

13. Status of maternal mortality

(i) Maternal mortality

196. The main goal of social development and public health policy is reduction of maternal mortality by 15 per cent and infant mortality by 10 per cent in the medium term, in cooperation with the National Reproductive Health Programme (PNSR) and the Ministry of Public Health and Social Welfare (MSPAS).

197. The maternal and neonatal component of the PNSR seeks the following goals:

- (a) Reduction by 2015 of maternal mortality by 75 per cent;
- (b) Strengthening of the capacity for emergency obstetric care by the health services;
- (c) Establishment of local committees for identification and transfer of obstetric emergencies and increased female and volunteer staff;
- (d) Reduction by 2011 of inpatient maternal mortality through provision of skilled care during pregnancy, childbirth and post-partum in 100 per cent of all hospitals, CAPs and CAIMIs;
- (e) Timely and quality surveillance of maternal and neonatal morbidity in hospitals at the national and local levels.

Progress made and measures implemented

198. The following measures have been implemented:

- (a) Training workshops have been conducted on care during pregnancy, childbirth, post-partum and obstetric emergencies with the collaboration of AGOGO and Quality in Health.
- (b) Post-Abortion Care (APA) has been implemented in 32 hospitals in the national network.

(c) Twenty-five assistant nurses working in basic health teams in remote communities were trained in obstetric care.

(d) A total of 16,000 traditional midwives were trained and equipped with the support of the United Nations Population Fund in the departments of Alta Verapaz, El Petén, Izabal, Jalapa and Jutiapa.

(e) The Ministry of Health has developed a set of policies and strategic guidelines for 2008–2012 aimed at improving the health of the population with special emphasis on vulnerable groups, including mothers and children.

(f) MSPAS has promoted prenatal care, defined as care and activities for women during pregnancy, including early identification of complications, danger signs, self-care and participation of the family for giving birth in better conditions for the mother and child. The current approach to prenatal care is: “Every pregnancy represents a risk”. With that orientation, 1,785 health care providers were trained in pre and post-natal care, balanced counselling and contraceptive techniques.

(g) A programme of contraception has been approved, which has trained health care providers in contraceptive counselling, in order to increase birth intervals and thereby protect women's health.

(h) During 2007, the following specific activities were implemented:

(i) A budget allocation for PNSR to finance all activities in health care for women of childbearing age. A total of 32,572,890 quetzals were allocated for 2007, an increase of the previous allocation of 29,455,575 quetzals;

(ii) Construction and expansion of Comprehensive Maternal and Child Health Care Centres (CAIMI) in the municipalities of Tacaná and Tecum Uman in the department of San Marcos and the municipality of Asuncion Mita in the department of Jutiapa;

(iii) Equipment for six oral health units in the area north-west, north-east and southern Guatemala, Totonicapán, Quiché and Sacatepéquez;

(iv) Reconstruction, renovation and staffing of the health services network to provide better care;

(v) Equipment of the operating room, intensive care and paediatric service of the Hospital in Melchor de Mencos.

Challenges

199. The following challenges are being dealt with:

- (a) Strengthening the technical expertise of staff providing pregnancy, childbirth, post-partum and newborn care;
- (b) Strengthening administrative skills for the acquisition, storage, distribution and supply of medicines and supplies in a timely manner;
- (c) Improvements in MSPAS to ensure retention of highly trained human resources in all maternal and neonatal services;
- (d) Training of staff in order to decrease maternal and neonatal mortality and provide family planning services;
- (e) Implementation of a national and local logistical model for supplies and medicines needed for maternal and neonatal care;
- (f) Establishment of a model of supervision, monitoring and evaluation at the national and local levels that guarantees provision of skilled care in all institutions;
- (g) Implementation of a national system of epidemiological surveillance of maternal mortality (VEMM), incorporating epidemiological surveillance of infant mortality (VEMN) into the same network throughout the country's health services;
- (h) Training workshops in the use of the guidelines for care during pregnancy, childbirth, post-partum and obstetric emergencies;
- (i) The Programme on Post-Abortion (APA) in conjunction with the Centre for Epidemiological Research in Sexual and Reproductive Health (CIESAR);
- (j) Establishment of committees for epidemiological surveillance of maternal mortality;
- (k) Provision of accessible and culturally appropriate services;
- (l) Training for auxiliary nurses in obstetric care;
- (m) Implementation of the law on social development and universal access to family planning methods.

200. Implementation of the actions outlined above is a challenge for the Government, which should be implemented with priority to ensure that women and children receive quality health care and thus reduce infant and maternal mortality rates.

201. Because the issue of the reduction of maternal and child mortality is one of the priorities of health policy for 2008–2012, the following strategy has been adopted, which includes:

- (a) Development of strategies for cross-sectoral coordination;
- (b) Prioritization and targeting on municipalities with the highest maternal and neonatal mortality;
- (c) Promotion of interaction with social networks and other development actors to strengthen solidarity in reducing maternal and neonatal mortality;
- (d) Promotion of a health culture with emphasis on safe motherhood, maternal and parental responsibility and care for adolescents based on a multisectoral approach;
- (e) Surveillance, monitoring and evaluation of maternal mortality.

Difficulties

202. Despite the efforts made and the progress achieved, there are obstacles to implementation of these programmes. In most cases, the major obstacle is related to the budget allocation for the reproductive health component as well as a lack of interest and commitment by sources of financing. In addition, programmes are often slowly implemented owing to administrative processes and disbursement mechanisms for verification of expenses.

203. Two of the main difficulties that increase the risk of complications and mortality are multiple pregnancies at a young or older age or very short intervals between pregnancies.

Abortion related to unwanted pregnancies

204. In its concluding observations issued in 2001, the Human Rights Committee stated that Guatemala had “the duty to adopt the necessary measures to guarantee the right to life (art. 6) of pregnant women who decide to interrupt their pregnancy by providing the necessary information and resources to guarantee their rights and amending the legislation to provide for exceptions to the general prohibition of all abortions except where the mother’s life is in danger”. Regulation of abortion in Guatemala is described in the following paragraphs.

Regulatory framework

205. In order to create mechanisms to prevent life-threatening illegal abortions, Act No. 87-2005, the Act on Universal and Equitable Access to Family Planning Services, was adopted and integrated into the National Programme for Reproductive Health, which aims to ensure access to family planning services, providing information, counselling, education on sexual and reproductive health and access to family planning methods.

206. Guatemalan criminal law considers seeking abortion, abortion with or without consent, forced abortion, criminal abortion and accidental abortion to be criminal offences. But the Guatemalan Criminal Code states that therapeutic abortion, self-abortion and accidental self-abortion are not punishable.

Status of abortion in Guatemala

207. Unsafe abortion is defined as the procedure used to terminate an unwanted pregnancy, either by a person lacking the necessary skills or in an environment that does not meet minimal medical standards. It is a major cause of reproductive morbidity and mortality in countries like Guatemala, where abortion is illegal or restricted to very special cases. It is a rarely documented illegal act that is difficult to study and for which there is little real data on its incidence and complications. As a result, little attention is paid to the problem. However, the little evidence that is available suggests that clandestine abortion is being performed and treatment is provided by for complications.

208. Studies reveal that despite restrictions on abortion, Guatemalan women seek it for various reasons, ranging from a low capacity to care for a child, sufficient existing children and pregnancies that endanger a woman's life to pregnancies resulting from rape or incest.

209. Despite government policies and plans to promote women's health, the problem of complications and deaths resulting from abortion are not properly addressed. Provision of accurate and reliable information about unsafe abortion is an important factor in solving this problem.

210. The Post-Abortion Care Programme (APA) is a joint effort between the MSPAS and CIESAR, which was implemented in July 2003 in 22 of the 36 public hospitals, one for each department. In 2005, that programme was expanded to all 36 national hospitals, which now offer post-abortion care, consisting of cleaning of the uterus through the manual vacuum aspiration (MVA), counselling focused on humane treatment, making it easier for patients to understand the risks of abortion and provide post-abortion contraceptive methods prior to discharge.

211. There are 359 clinics with a capacity to provide vaginal deliveries and post-partum care. Of those, 23 per cent are in the public sector (including the military), 6 per cent belong to the IGSS and 71 per cent are in the private sector, including APROFAM. Only 12 per cent of the clinics in the public sector, only 4 per cent of the clinics operated by IGSS and 57 per cent of the clinics in the private sector offer APA public services. Approximately 27 per cent of the clinics do not offer APA. About 75 per cent of the services offer post-abortion counselling, including 55 per cent in the public sector, 67 of the IGSS clinics and 83 per cent of the private sector.

212. The rate of maternal mortality attributed to abortion is 4.4 per 100,000 live births. In the public service, that rate is 3.7 per 100,000 live births.

14. Fighting poverty*(i) Programmes implemented*

213. FONAPAZ is currently carrying out programmes to fight poverty and extreme poverty. The following domestic programmes are being implemented:

- (a) The Community Integration Programme (PROINCO);
- (b) The Programme for Human Settlements and Development (PAHYD);
- (c) The Minimum Housing Programme (PROVIMI);
- (d) The Agricultural Promoters Programme.

214. FONAPAZ also operates programmes with foreign support. During the period covered by this report, FONAPAZ implemented the following projects: the Integrated Rural Development Project for the Productive Reintegration of Returnee Communities and Economic Recovery in Settlement Areas (PDP II), the Support Programme for Reintegration of URNG Veterans of the Armed Conflict (PARECII/EU), the Ixcán/EU self-settlement programme, the Ixil/EU self-sustaining programme, the Sayaxché and Liberty Programme (PSL), the Socio-Economic Recovery Project in the Department of San Marcos (PREAPAZ) and the Community Development Programme (DECOPAZ).

(ii) Institutional measures implemented

Social Cohesion Council

215. The Social Cohesion Council was created through Governmental Agreement No. 79-2008, which created the Inter-institutional Social Cohesion Council to coordinate social investment programmes.

216. The main areas for strategic programmes driven by the current President are solidarity, governance, productivity and regional development. FONAPAZ promotes solidarity aimed at fighting poverty and extreme poverty and is an important member of the Social Cohesion Council for the implementation of projects. It has carried out corrective maintenance in 246 schools at priority sites of extreme poverty under the so-called "Hundred Days Plan", followed by maintenance of 428 more schools. Its work focuses on rehabilitation, repair and maintenance. The Social Cohesion Council promotes programmes to improve the lives of Guatemalans, providing tools for development. One of its main programmes is the "My family is progressing programme".

Rural development programme

217. Investment in programmes to be implemented by the Presidential Rural Development Programme (PRORURAL) will directly create sustainable rural employment for more than 370,000 families and for over 470,000 families indirectly between 2008 and 2009. The programmes seek to support local food security and to establish a programme for

production of certified basic seeds and rural extension, a service that was not been provided by the Government during the past ten years.

218. Power generation will also be promoted through the rehabilitation and construction of small environment-friendly hydropower projects, and unprecedented support will be provided for local handicrafts. The families benefited and the planned investment will promote rural development during 2009. The following progress has been achieved by PRORURAL during 2008:

(a) Drafting of the PRORURAL strategic plan and seven presidential programmes that promote economic activities generating rural employment, food security, agricultural support activities at the local level, development of tourism in strategic locations and support for low-cost power generation projects;

(b) The PROMAIZ programme is benefiting over 7,000 families;

(c) EXTENSION RURAL, a cross-cutting assistance programme supporting most of the presidential programmes during 2008, which has formed 630 groups involving 18,900 persons;

(d) PRORURAL implemented the following programmes in 2008 for the training of human resources:

(i) 25 scholarships for young people from 45 municipalities. This assistance will give them an opportunity to study in El Zamorano to become an agricultural engineer. They must work for two years in their own municipality in order to graduate;

(ii) Through an alliance with HELPS, the PROMAIZ programme has been operating in Alta Verapaz, Quiché, Sacatepéquez, San Antonio Palopo, San Juan Cotzal, San Pedro Carcha, Solola and Sumpango;

(iii) Among programmes and projects with external financing, two loan agreements with the International Fund for Agricultural Development (IFAD) were renegotiated;

(iv) The IFAD West programme has been rescued by redefining its activities, programme coverage and strategic planning;

(v) The IFAD East programme is being followed up and steps are being taken to activate it.

(e) The Section for Trade and Inputs (*Comercio e Insumos*) has been established to support all presidential programmes and will serve as the basis for the new Programme of Inputs.

Department of Agriculture, Livestock and Food

219. The Ministry of Agriculture, Livestock and Food, the main institution in the agricultural sector, works to improve the standard of living of local inhabitants through various programmes and projects. The Vice-Ministry for Food Security is part of that ministry.

220. The Vice-Ministry for Food Security and Nutrition (VISAN) operates within the National System for Food Security and Nutrition as the main agency for projects in food security and nutrition. It has created the Special Programme for Food Security.

221. VISAN has worked in coordination with the Social Cohesion Council, the Social Welfare Secretariat of the Wife of the President (SOSEP), the National Fund for Peace (FONAPAZ) the Secretariat for Food and Nutritional Security (SESAN), the National Coordinator for Disaster Reduction (CONRED), the Ministry of Health and Welfare and the Ministry of Education. Through programmes coordinated by the Vice-Ministry for Food Safety and Nutrition, a total of 20,150,729 persons (12,108,436 men and 8,042,293 women) have benefited between 2001 and 2008. Specific programmes are described below.

222. The Government of Guatemala has a public policy for food security and nutrition, an act on national food security and nutrition and a Department of Food and Nutritional Security.

Guatemala City

223. Guatemala City is raising the standard of living for residents of local inhabitants through several programmes and activities including a community maternal and child care project, municipal kindergartens, a programme to strengthen families and programme of nutritional health and food education.

G. Article 7 – Prohibition of torture and abuse**1. Regulatory framework**

224. The Government has taken steps to prohibit torture and cruel, inhuman and degrading treatment by adopting the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment through Act No. 53-2007 of 7 November 2007, published in the *Diario de Centro America* on 5 December 2007.

225. That Protocol was adopted on 18 December 2002 by the United Nations and signed by Guatemala on 25 September 2003. The act of ratification requires that the Executive, through the Ministry of Finance, allocate funds annually for supporting that protocol.

226. On that basis, the Government of Guatemala made a commitment with the international community and Guatemalan society to create one or more independent mechanisms for the prevention of torture at the national level and creation of the National Prevention Mechanism by July 2010. Civil society organizations and government

institutions participated in that process and decided to form a high-level technical and political mechanism. That mechanism has not yet been defined and established.

227. The crime of torture is currently governed by article 201 bis of the Criminal Code, which states:

“The crime of torture shall apply to anyone who, by order of the State authorities, or with their authorization, help or acquiescence, intentionally inflicts on another person severe pain or suffering, whether physical or mental, for the purpose of obtaining information or a confession from that person or a third party relating to an act he may have committed, or who persecutes another person for the purpose of intimidating him or, through his action, other persons. The crime of torture also applies to members of groups or gangs organized for the purposes of terrorism, insurgency, subversion, or any other criminal purpose. The perpetrator(s) of the crime of torture may also be tried for the crime of abduction. The consequences of acts carried out by a competent authority in the legitimate exercise of its duty and to protect public order do not constitute torture. Those guilty of the crime of torture shall be liable to imprisonment lasting between 25 and 30 years.”

2. Measures implemented

228. The following measures have been implemented:

(a) Creation of the Centre for the Collection, Analysis and Dissemination of Criminal Intelligence (CRADIC) by the Ministry of the Interior, which gathers information about persons suspected of crimes and analyses crimes to find patterns. There are approximately 20 requests daily by the Public Prosecutor's Office and the National Civilian Police for this type of information. After analysis, that information is sent to investigators in the Public Prosecutor's Office or the PNC. CRADIC is a useful tool for investigating crimes committed by members of the PNC, which are referred to the Public Prosecutor's Office for investigation.

(b) Training of police officers concerning the prohibition of torture and cruel, inhuman or degrading treatment. The Human Rights Section of the PNC provided nationwide training sessions on issues concerning the prohibition of torture and other cruel and inhuman treatment with the support of the Institute for Comparative Studies in Criminal Sciences. In addition, there is specific training for new recruits on the identification of possible crimes by the National Civilian Police in the exercise of its functions.

(c) In order to prevent abuse of students at the Police Academy, the Human Right Section of the National Civilian Police has provided information to police personnel on handling denunciation by students of any violation of their rights and informing that office. Positions have been established within the Academy for collecting complaints and forwarding them to a human rights official.

(d) The Directorate-General of Prisons has worked to disseminate five fundamental aspects of plans and projects for the benefit of prisoners through the observance and enforcement of minimum standards for the treatment of prisoners and

respect for their fundamental rights. During 2008, three workshops were held to stress the rules of the Prisons Act and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. That training was coordinated by the School for Prison Studies and the Institute for Comparative Studies in Criminal Sciences for managers, assistant managers, mayors and staff of the multidisciplinary teams in detention centres.

(e) The National Institute of Forensic Sciences has specific protocols for the handling of autopsies that are used in cases involving victims with signs of torture, cruel, inhuman or degrading treatment, based on internationally recognized instruments, including the Stockholm Protocol. Those protocols and guidelines were developed on the basis of international forensic scientific expertise. All the procedures used must be validated and accepted by international organizations.

3. Complaint, investigation, prosecution and punishment

229. In 2005, one single case of torture was submitted to the criminal courts.

4. Domestic violence

230. Guatemala has legal standards for protection against domestic violence, including the Act on the Prevention, Punishment and Eradication of Violence (Act No. 97-96). The Act against Femicide and other forms of violence against women, Act No. 22-2008, was recently adopted. That act, as its name implies, governs not only acts of violence involving the arbitrary deprivation of life of women but also of femicide. The following offences have been added as crimes:

(a) Public and private violence against women based on physical, sexual or psychological violence;

(b) Economic violence.

231. That law provides that customs or cultural or religious traditions cannot be used to justify crimes against women.

232. The Prosecutor for Women within the Public Prosecutor's Office is responsible for the criminal prosecution of crimes of violence against women, and the Prosecutor for Violent Crimes is responsible for investigating crimes of femicide.

233. The Prosecutor for Women recorded a total of 2,054 complaints of violence against women from May to December 2008 under the Act against Femicide and other forms of violence against women. Most complaints are under investigation, and there have been 22 indictments for the crime of violence against women.

234. Those two s are responsible for providing preventive measures for victims of domestic violence and violence against women. Statistics from the Judiciary show that there were 25,455 security measures provided in 2005 in cases of domestic violence by magistrates, courts, mobile justices of the peace and family courts of first instance. In 2006, there were 27,634 complaints; 34,651 were registered in 2007 and partial data for 2008 reports 24,031 cases.

235. The Judiciary has statistics on the number of cases filed for crimes or misdemeanours for domestic violence in the courts. In 2005, there were 189 cases of crimes and 1,581 misdemeanours; 320 cases of crimes and 2,260 misdemeanours in 2006 and 403 cases of crimes and 2,314 misdemeanours in 2007, and partial data for 2008 recorded 179 cases of crimes and 1,419 misdemeanours.

236. Seven complaints against elements of the PNC for violence against women have been recorded, which were reported to the police emergency telephone number (110) and subsequently investigated by CRADIC for referral to the Military Police.

237. Regarding investigation of violence against women, the Public Prosecutor's Office has coordinated with the National Civilian Police to make outstanding arrests. An additional investigator has been assigned from the Criminal Investigation Service of the PNC to the Prosecutor for Women. A major achievement is that judges have immediately processed protective measures, arrest warrants and search warrants requested by prosecutors in emergencies.

(i) *Child and adolescent victims of domestic violence*

238. In its concluding observations issued in 1996, the Human Rights Committee recommended that “stern measures must be taken to punish those found guilty of committing any kind of violence against minors, especially against those who endure hard living conditions” because one of the most widespread forms of violence against children and adolescents is domestic violence. The following information is provided on those cases.

239. When cases involve children and adolescents, the Public Prosecutor's Office takes special measures to prevent their re-victimization, including psychological counselling by staff of the Office of Women, and judges are requested to close trials, prevent contact with the accused and structure questioning in accordance with the children's age and status.

240. Domestic violence involving the abuse of pregnant women can result in abortion, which is classified as a felony. According to statistic of the Judiciary, there were two felony abortion cases in 2005, three in 2006, two in 2007 and no case of felony abortion in 2008.

(ii) *Activities carried out*

241. The Attorney General's Office, through the Unit for Protection of the Rights of Women, keeps internal statistics for the National Statistics Institute (INE). Among the functions of that unit is the provision of legal advice and psychological counselling and shelter for women who need it and the prosecution of alleged offenders in order to decrease the problem of domestic violence through talks on violence and detection of problems by psychologists.

242. In cases of domestic violence when a medical evaluation of the victim is required, the public prosecutor or the trial judge immediately refers the request and the person to evaluate to the medical examiner of the INACIF, where that examination is given priority and provided immediately.

243. Several measures to help survivors of domestic violence have been implemented. The Office for the Defence of Indigenous Women has organized 12 groups called *K'amon Naoj*, translated as self-help group, in its regional offices. Each group consists of 7 to 12 participants and meets fortnightly. Self-help groups provide support for the joint solution of problems of indigenous women, guiding them to unify their thoughts and feelings in the search for personal and community welfare. That process incorporates elements of the Maya cosmology.

244. The following instructions have been issued by the Public Prosecutor's Office in order to strengthen criminal proceedings:

(a) Regulation No. 70-2008 of 3 July 2008 determining the competence of prosecutors to try crimes under this law, based on Act No. 22-2008, the Act against Femicide and other forms of violence against women;

(b) Instruction No. 10-2008 implementing the protocol for the care of victims of crimes against freedom and sexual protection and decency in the Office of Victim Services of Public Prosecutions;

(c) General Instruction No. 09-2008 implementing the protocol for the care of children and adolescents who are direct or incidental victims;

(d) General Instruction No. 08-2008 implementing the protocol for dealing with a crime victim during the first interview;

(e) General Instruction No. 07-2008 implementing model victim services in the Public Prosecutor's Office;

(f) General Instruction No. 03-2008 on treatment of crimes arising from domestic violence by prosecutors and criteria for the proper treatment of crimes arising from domestic violence;

(g) General Instruction No. 05-2006 on treatment of crimes against sexual freedom and security by the Attorney General and criteria for the proper treatment of crimes against sexual freedom;

(h) General Instruction No. 04-2006 on the prosecution of crimes committed in the handling of illegal adoptions, defining criteria for effective prosecution of criminal organizations for crimes in adoption processes.

245. The Public Prosecutor's Office is planning and implementing activities to include civil society in the operations of that office, including the following:

(a) The signing of an agreement with Fundacion Sobreviventes, an organization that operates the National Referral Network and provides shelter, psychological support and counselling for female crime victims;

(b) A draft agreement with the international organization International Justice Mission, which provides advice and support for child victims of sex crimes;

(c) A draft agreement with the Forensic Anthropology Foundation of Guatemala (FAFG) to support the Public Prosecutor's Office in performing anthropological forensics and DNA analysis;

(d) An agreement with the Ministry of Public Health and Welfare for comprehensive, coordinated care for crime victims;

(e) An agreement with the Teaching Institute for Sustainable Development (IEPADES), an organization that provides training workshops for prosecutors.

H. Article 8 – Prohibition of slavery, trafficking and servitude

1. Human trafficking

246. In its concluding observations on the second periodic report of Guatemala, the Human Rights Committee recommended that “The State party should conduct investigations to identify those responsible for the traffic in children and bring them to justice. It should take the necessary measures to prevent the occurrence of such violations of articles 6, 7 and 24 of the Covenant.” Information is provided in the following paragraphs on human trafficking, including child and adolescent victims, and on the current status of adoption in Guatemala.

(i) Regulatory framework

247. The following progress has been achieved:

(a) Adoption of the Act on the Protection of Children and Adolescents (Congressional Act No. 27-2003). Adoption of that legislation was recommended by the Human Rights Committee in its concluding observations issued in 2001, which stated: “The State party should promulgate a Juvenile Code that guarantees minors the enjoyment of all their rights pursuant to article 24 of the Covenant.”

(b) Amendment in 2005 of article 194 of the Criminal Code by Congressional Act No. 14-2005 regarding criminalization of trafficking. The crime of human trafficking was defined through the Act against Sexual Violence, Exploitation and Trafficking in Persons, Congressional Act No. 9-2009, with the addition of article 202 ter of the Criminal Code, which covers that type of crime.

(c) That article defines the crime of human trafficking as the use of “the prostitution of others, any form of sexual exploitation, forced labour or services, any labour exploitation, begging, any form of slavery, serfdom, the sale of people, extraction and trafficking of human organs and tissues, the recruitment of minors for organized criminal groups, making irregular, uneven process of adoption, pornography, forced pregnancy or forced marriage or servile”.

(d) The amendments incorporated into the Criminal Code by that act create the offence called “Profit from the trafficking in persons” contained in article 202 quater and

define aggravating circumstances for such crimes. Act No. 9-2009 also provides for a repatriation procedure for victims of trafficking, sanctions and protection of witnesses and other aspects.

(e) Approval of the Adoption Act, Congressional Act No. 77-2007, which seeks to regulate adoption as an institution of national interest and its judicial and administrative procedures, cancelling the processing of adoptions by notaries. A central authority, the National Council for Adoptions (CNA), was created as an autonomous public institution.

(f) Integration of the crimes of (i) irregular adoption (article 241 bis) and (ii) irregular adoption process (article 241 ter) into the Criminal Code as offences against civil status;

248. The following international instruments have been adopted by Guatemala:

(a) The United Nations Convention against Transnational Organized Crime and its three protocols:

- (i) The Protocol against the Smuggling of Migrants by Land, Sea and Air;
- (ii) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
- (iii) The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.

(b) The Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption. That Convention aims to ensure that international adoptions are conducted in accordance with the best interests of the child, respecting fundamental rights, and a system of cooperation among States parties to ensure those guarantees and prevent the theft, sale or trafficking of children, ensuring that adoptions are carried out on the basis of established guidelines.

(c) Accession of Guatemala to the Hague Convention on the Protection and Cooperation in Respect of Intercountry Adoption. On 22 May 2007, Congress ratified the Hague Convention by Act No. 31-2007, which entered into force on 31 December 2007.

(ii) *Public policy*

249. Public policy is defined by the Public Policy in Trafficking in Persons and of Integral Protection of Victims and the Strategic Action Plan 2007–2017.

250. That policy establishes guidelines and steps for the prevention of this crime, providing comprehensive care and protection to victims and ensuring the application of justice through the prosecution of those responsible for that crime.

(iii) Progress achieved and institution-building

251. The following progress has been made:

(a) Creation of the Inter-institutional Commission to Combat Trafficking in Persons and Related Offences, through Government Decision No. 246-2007 of the Ministry of Foreign Affairs, for inter-agency consultation, management of initiatives and promotion of consensus to combat trafficking in harmony with international ;

(b) Creation of the Unit for Human Trafficking within the Office of the Prosecutor for Organized Crime;

(c) Creation of the Section to Combat Trafficking in Persons within the Criminal Investigation Division of the National Civilian Police;

(d) Creation in 2004 of the Unit for Child and Juvenile Victims within the Office of the Public Prosecutor for Women;

(e) Creation of the Human Trafficking Unit within the Attorney General's Office (PGN). This unit is responsible for interviewing child and adolescent victims of trafficking after rescue to formalize a complaint for a competent judge, who is in charge of returning the child to its family or for placement in an institution. The Office of the Prosecutor for Children and Adolescents of the PGN works to provide prevention, care, representation and protection for child and adolescent victims of these crimes.

(f) Dissemination of the Act on the Protection of Children and Adolescents on the rights of children and adolescents and how these may be threatened or violated. Those programmes have been implemented in educational institutions and are aimed at teachers, directors, support staff and pupils. This process is promoted by the PGN.

(g) The Ministry of Education, as part of the Inter-institutional Commission against Human Trafficking, provides information to children on protection measures using the natural and social sciences stressing democracy, a culture of peace and family life.

Status and regulation of the adoption process

252. Internationally, Guatemala has been considered to be a country that exported children for international adoption because formalities were handled by a notary public and children being adopted were housed in nurseries or cared for in private homes.

253. In order to protect the interests and rights of children being adopted, legislative measures and administrative steps have been adopted, which were addressed within the regulatory framework described above.

254. With the entry into force of the Hague Convention and the Adoption Act, the National Council for Adoptions began to function on 31 December 2007. The National Council for Adoptions (CNA) has the following programmes: orientation for biological mothers, supervision of public and private institutions providing shelter for children under the coordination of the Social Welfare Secretariat of the Presidency; registration of children

deprived of their family rights; registration of private and foreign institutions; provision of counselling for adopting families and the families of adopted children.

255. The work of the CNA is based on assurance of the protection of children and adolescents in the adoption process, allocation of a suitable family for each child in the adoption process, promotion of domestic adoption, assurance of the best interests of the child and its cultural identity, monitoring of children and adolescents awaiting adoption and assurance that children and adolescents benefit fully from their rights.

Progress made and measures implemented

256. The following progress has been made: implementation of the Adoption Act, establishment of CNA headquarters, registration of adoptions begun with a notary under the previous law, review together with the Attorney General's Office of the processing of adoption files under consideration, completion of 27 domestic adoptions and international adoption of a child with special needs, counselling for biological mothers in conflict with their motherhood, counselling for adopting parents, training of a multidisciplinary team with the assistance of the United Nations Children's Fund (UNICEF), preparation of protocols for the multidisciplinary team through a UNICEF consultant, negotiation of two cooperation agreements (one administrative establishing the headquarters of the CNA and another on cooperation with a counterpart organization in Chile).

257. After creation of the National Council for Adoptions, implementation of the new law on adoptions was begun, but difficulties such as limited human and financial resources, political conflicts and opposition from vested interests were encountered. Despite those difficulties, the Council is operating and has achieved progress in counselling birth mothers and adoptive families. Informational workshops for candidates for foster parenthood and training workshops for families adopting children as well as training for the multidisciplinary staff have been held.

258. The CNA has implemented measures for the protection of children that were already in the process of adoption under the previous system and measures to locate children. It has also required notaries processing adoptions to fill out a form with information about the child, the birth mother, the child's residence, the name of the care provider and the director of the notary office. In conjunction with the PGN, the Council began checking the veracity of the data provided by notaries.

259. Children who are rescued from trafficking or illegal or irregular adoption are presented to a judge of a children's court through the Attorney General's Office, and then the process of protection begins.

260. The following activities have been taken by CNA to protect children who are in the process of adoption:

- (a) Psychological, social and legal evaluation of children who are in the process of adoption in shelters;
- (b) Monitoring of shelters in coordination with the Social Welfare Secretariat of the Presidency in order to document the children's status;
- (c) Monitoring of children in the adoption process accommodated in shelters and temporary government programmes;
- (d) Counselling for biological mothers in conflict with their pregnancy, wishing to give their child up for adoption;
- (e) Monitoring of the period of socialization of children in the adoption process.

261. In accordance with article 23 of the Adoption Act, the CNA monitors adopted children through reports provided by the central authority of the host country of the child after completion of the adoption process.

262. If the CNA discovers anomalies in the adoption process, a complaint is submitted to the Public Prosecutor's Office. Irregularities or lack of consent of the birth mothers were found in 34 cases of children, in which the PGN, after investigation by the Unit for Children and Adolescents, brought accusations. The PGN also rescues children, represents them and investigates and searches for family members.

Challenges and difficulties

263. There are challenges and difficulties for the proper functioning of the National Council for Adoptions and implementation of policies and programmes, such as a lack of financial resources available as planned and staff shortages.

264. After one year of operations, the CNA faces specific challenges and goals. It requires regional headquarters and additional multidisciplinary staff and continuous training. Other challenges are to ensure that children placed in institutions are adopted by Guatemalan families and to convince birth mothers in conflict with their motherhood to assume their rightful role and not abandon their children.

(iv) *Reporting and investigation of cases*

265. According to the 2007 detailed report of the National Commission on Children and Adolescents (CNNA), Guatemala has one of the highest rates of adoption. Most adoptions are conducted for profit, and a high percentage of children have been kidnapped, abducted from their homes or bought from their parents. Between 1996 and 2006, 27,128 children were placed for adoption.

266. The CNA filed two complaints with the Public Prosecutor's Office for child trafficking, because of irregularities in the adoption procedure. The CNA also filed a

complaint in the case of a Guatemalan family that reportedly paid a mother to give her daughter up for adoption. That case is in the investigative phase in the Office of Human Trafficking. These cases were initiated under the previous system of procedures. With implementation of the new adoption process, the CNA has not identified cases of trafficking in persons, as there is now a system of judicial and administrative cross-checks, which does not allow a single institution to control the procedure, providing greater transparency. Moreover, the new legal framework closed loopholes that had allowed the trafficking of children through false adoptions.

267. There are recent reports of children being sold online, which the public prosecutor is now investigating. CNA has contacted its counterpart in Spain to exchange information for investigations and eradicate practices that lie outside of the new Adoption Act.

268. Five reports of trafficking and sexual exploitation of children have been submitted to the PGN.

2. Child labour

269. In its concluding observations issued in 2001, the Human Rights Committee recommended that Guatemala “also take the appropriate measures to comply with the provisions of international instruments on child labour”. In accordance with that recommendation, Guatemala provides the following information related to child labour.

(i) Regulatory framework

270. As part of compliance with the recommendations issued by the Human Rights Committee, the Government has been gradually updating its legislation on child labour, with the following progress:

(a) Through Congressional Act No. 9-2009, article 156 (a) was added to the Criminal Code, which incorporates the criminal offence of “Employment of minors in work harmful to their integrity and dignity”;

(b) Ratification of Convention No. 182 on the Worst Forms of Child Labour and Immediate Action for Its Elimination and issuance of Government Agreement No. 250-2006, which contains regulations for implementation of that Convention;

(c) Convention No. 138 concerning the Minimum Age for Admission to Employment was ratified in 1989;

(d) Issuance of Government Order No. 112-2006, which contains the Regulations on Labour Protection for Children and Adolescent Workers, which seeks to regulate the monitoring and protection of the rights of children and adolescents as well as complaints of threat to or violation of their rights within the jurisdiction of the Ministry of Labour and Social Welfare of the provisions of the Act on the Protection of Children and Adolescents for the effective protection of their rights and regulation of the conditions under which teenagers may work.

271. Besides the legislative measures outlined above, the following standards related to child labour have been adopted:

- (a) Ministerial Agreement No. 154-2008 creating the Inter-agency Coordination Protocol regarding under-age workers;
- (b) Government Order No. 1928-2004 regulating pyrotechnic activities;
- (c) Ministerial Agreement No. 435B-2003 establishing the Special Unit for Cases of Child and Adolescent Workers;
- (d) Ministerial Agreement No. 525-2003 appointing labour inspectors.

(ii) *Public policy*

272. With the goal of eliminating child labour, the Ministry of Labour drafted the National Plan for the Prevention and Eradication of Child Labour (2000–2004). That plan was adopted and announced in all 22 departments.

(iii) *Progress achieved and institution-building*

273. Through Government Decision No. 347-2002, the National Commission for the Eradication of Child Labour was established, chaired by the Vice-President and composed of several ministers, for discussion, support and implementation of the National Plan for the Prevention and Elimination of Child Labour and Protection of Working Adolescents, strengthening coordination to identify alternatives and strategies to reduce or eliminate the cause of child labour and provide financial resources.

274. The Executive Secretariat of the National Commission for the Prevention and Eradication of Child Labour in Guatemala implements a strategic agenda based on the National Plan.

275. The Special Unit for Cases of Child and Adolescent Workers of the Ministry of Labour dealt with 183 cases in 2004, 236 cases in 2005, 274 cases in 2006 and 295 cases in 2007.

276. An action plan for the prevention of child domestic work has been prepared. With the collaboration of the Government of Canada, the Ministry of Labour and Social Welfare created an action programme entitled “Strengthening the Social Welfare Department of the Ministry of Labour and Social Welfare for Monitoring the Prevention and Eradication of Domestic Child Labour”, which created the “Monitoring Technical Committee for the prevention and eradication of child domestic work undertaken by children and adolescents in private homes,” which became effective on 17 February 2005 by Ministerial Agreement No. 24-2005.

277. Based on that plan, the project for the prevention of domestic child labour among indigenous populations was implemented in the municipality of Comitancillo, department of San Marcos. That project has benefited 250 children, 50 adolescents and 250 fathers and mothers, who were provided clothing for children and adolescents, dietary supplements,

shoes, school supplies and employment opportunities for parents, ensuring that children and adolescents could continue their education and that adolescents gained technical skills. That project was completed on 31 December 2007.

(iv) *Challenges and difficulties*

278. The main difficulties faced by the Government in implementing action plans related to child labour have been the change of officials and insufficient economic resources. As a result, they are looking for alternatives. The main challenges are breaking with cultural patterns and ensuring that children and adolescents stay in school.

279. Despite efforts to prevent and eradicate child labour, the Survey of Living Conditions (ENCOVI) 2006 identified 266,361 child and adolescent workers, 536,812 children who work in agriculture and, according to the final report of that study 3,709 children and adolescents who work in fireworks factories.

3. Forced prostitution

280. The Attorney General's Office is aware of one complaint regarding forced prostitution, which it is investigating.

4. Status of female domestic workers

281. The wages of women working in private homes are, on the average, less than the minimum wage and "working conditions in general are high risk, since female domestic employees work behind closed doors and are at psychological and social risk because they are living outside their family and socio-cultural environment".³

282. The following activities have been carried out to regulate that type of work and to protect female domestic workers:

(a) A letter of understanding signed between the Ministry of Labour and the Support Centre for Housekeeping Workers (CENTRACAP) for holding 11 workshops on labour rights and obligations and complaint mechanisms for domestic workers;

(b) The Human Rights Section is organizing workshops to raise awareness about women's rights and hears cases of violations of individual or collective rights,

(c) Bill No. 3467 was submitted for adoption of the act providing specific protection for domestic workers, which seeks to regulate the system of paid domestic work in terms of workday, wages, social security, overtime, leave for education, the right to pre and post-natal care and payment of bonuses.

³ Information contained in the seventh periodic report of Guatemala on application of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/GUA/7).

5. Provision of civic service

283. Civic service in Guatemala is governed by Civil Service Act, contained in Congressional Act No. 20-2003, the Civic Service Act and the Government Agreement No. 731-2003, regulations for the provision of civic-military service, governing voluntary recruitment. There are two forms of civic service in Guatemala: military service and civil social service.

284. Military service trains Guatemalans to defend their homeland, following a military doctrine that respects human rights and civic, political and moral values.

285. Social service aims to help citizens engage in social, economic and cultural development of Guatemala, stimulating solidarity among Guatemalans through greater knowledge about the country's society and promoting civic participation in directly solving local and national problems.

286. There have been no reports of forced recruitment during the period covered by this report.

I. Article 9 – Right to liberty and security of person

1. Arrest

287. As part of its concluding observations on the second periodic report of Guatemala, the Human Rights Committee regretted the lack of information regarding rules governing the detention, especially as related to the time that a detainee has access to an attorney, doctor, interpreter and family, and recommended that the State party “should provide this information so that the Committee can assess its compatibility with the requirements set out in articles 9 and 14 of the Covenant”, information that is provided in this section.

288. In accordance with article 6 of the Constitution, a person can be legally detained when caught in the act or by order of a competent court for a crime or misdemeanour. A suspect must be presented to a competent judge within six hours from the time of arrest.

(i) Procedure for the arrest of a person

289. After the creation of rotating courts, the PNC must take all persons arrested to a competent court and not to police substations or other places for preventive detention.

290. Instructions have been given to police chiefs to transfer immediately anyone arrested to the Detention Office. Courts have been established in the municipalities of Guatemala City, Mixco and Villa Nueva, where only oral statements are heard, avoiding lengthy written procedures.

291. Accordance to the National Civilian Police, the time between arrest and presentation to a judge varies depending on the distance from where the events occurred and traffic congestion. If an order originates in a competent court and during working hours, it is

handled by the judge making that order. Otherwise, it is sent to a judge on duty within six hours.

292. In the other departments, flagrant cases are arrested, read their rights, handcuffed, searched and taken to a police station for processing by a court on duty within the legal deadline. During training sessions on human rights, emphasis is placed on fundamental rights that must be made known to persons detained or apprehended, focusing on the constitutional provisions of the Act creating the National Civilian Police.

(ii) *Detention of a minor*

293. The Act on the Protection of Children and Adolescents is intended to enable the PNC to become an institution that respects due process and the human rights of both victims and perpetrators, with which officials in the justice system must fully comply under the Constitution, the Peace Accords and the act establishing the National Civilian Police. It also is important to promote all activities that contribute to crime prevention, particularly those committed against the majority of the population.

294. If police agents apprehend a minor, they detain him and take him to a juvenile court during business hours or to a magistrate on duty after hours, placing the minor at the disposition of that magistrate. In that case, the Office of Detentions does not intervene.

295. In this issue, the Act establishing the National Civilian Police provides that their agents must act in accordance with the principles, rights and guarantees established by law, respecting the dignity, identity, age and gender of the adolescent. The use of degrading or humiliating measures is prohibited as well as any type of questioning during the arrest, detention and investigation.

296. This specialized aspect of law provides specific procedures for the case of young offenders, in the form of a warning and prohibition on the use of force and degrading methods against an offender at the time of the arrest or investigation. The PNC has no record of complaints of violations of this law brought against the PNC.

(iii) *Status of guarantees for persons arrested and cases filed for violation of that right*

297. The Institute for Public Defence reported that people who are detained are deprived of access to a physician if necessary, because that right is not established as a service of justice or a detainee's rights. Family visits are also curtailed for persons in detention waiting to be heard. They can receive visits only from their attorney. Food is also not allowed for detainees in a holding cell (the place where detainees await a court appearance).

298. Detainees are often held up to 23 hours without food. That is why defence lawyers from the IDPP use a recourse such as requests for habeas corpus and appeal those circumstances to judicial authorities.

299. According to information provided by the IDPP, the public defender does not always have access during the initial arraignment to the police reports until they are transferred to the designated judge by the Public Prosecutor's Office and the National Civilian Police.

300. One of the major difficulties during a criminal trial is a lack of interpreters in the Judiciary to attend arraignments, causing delays in the application of justice, because in that case the public defence attorney often requests suspension of the hearing until an interpreter is present. In those cases, the accused's rights are violated because he is not arraigned within a reasonable time and in his own language.

301. In order to overcome this obstacle to the application of justice, the Institute for Public Defence has 15 Mayan-speaking interpreters and one Garifuna interpreter. In some cases, one person can be used as an interpreter for more than one Mayan language. The right of access to an interpreter is specifically addressed in article 14 of this report.

302. According to statistics provided by the Judiciary, between 2005 and 2008 a total of 671 cases were filed for unlawful arrest and illegal detentions in criminal courts. The greatest number was issued in 2006, a total of 49 convictions for crimes of illegal and irregular detention, 39 of which were decided in favour of the defendant.

2. Pretrial detention and alternatives

303. In its concluding observations issued in 2001, the Human Rights Committee recommended that Guatemala “should continue to take all necessary measures to reduce the number of persons in pretrial detention and the period during which they are detained”. The following information concerns the status of pretrial detention in criminal trials.

304. Under criminal law, pretrial detention is intended to ensure the presence of the accused at the trial and is approved only after hearing the accused to determine whether there is information about the existence of a crime and sufficient reasonable grounds to believe that the accused committed or participated in it, as required by article 259 of the Code of Criminal Procedure. The accused is not immediately released when there are reasonable grounds to believe that the accused has committed a crime or participated in such an act, and where there is risk of flight or danger of obstruction of the truth.

305. However, after the judge has reviewed the charges and considered whether there is a risk of flight or obstruction, he may decide to implement one of the proxy measures provided for in article 264 of the Code of Criminal Procedure which excludes application in trials against repeat offenders of crimes of homicide, murder, parricide, aggravated rape, accidental rape, rape of a child under 12 years of age, all types of kidnapping or abduction, sabotage, aggravated robbery, cases involving the tax authorities and offences under Congressional Act No. 48-92, Act against Drug Trafficking and offences under the Law to Combat Organized Crime.

306. When a person is found innocent of the charges against him, he should be immediately released given that freedom should be restricted only to the extent absolutely necessary to ensure the presence of an accused person at a trial.

(i) *Extension of pretrial detention*

307. Extension of pretrial detention is a legal concept established in article 268 of the Code of Criminal Procedure that applies when the legal status of a person subject to criminal proceedings has not been determined during a maximum of one year, the period during which a person may be detained preventively, or if upon sentencing there is a delay in signing and the maximum period established has passed. Article 268 of the Code of Criminal Procedure states:

“Deprivation of freedom shall end... (3) after one year, but in the case of a guilty verdict and an appeal is made, preventive detention may last three additional months. The Court of Appeals, in cases submitted to it by justices of the peace, local judges, courts or the Public Prosecutor's Office shall decide, and if necessary authorize an extension of the preventive detention established by the Code, determining the time of the extension granted.

In no case may Magistrates' Courts grant the extension referred to in this article more than twice. In proceedings where a guilty verdict has been rendered, preventive detention may be extended during the processing and decision of any special appeal.

In the cases submitted to it on its own initiative or at the request of the Boards of the Court of Appeal or the Attorney General, the Supreme Court may authorize, in cases within its competence, an extension of the above deadlines as often as necessary, setting specific time extensions. In that case, it may indicate the steps required to expedite the procedure and will be responsible for review of the sentence.”

308. The IDPP, however, believes that pretrial detention has been authorized incorrectly in several cases, when criminal courts do not honour acquittals, when the defendant is obviously not guilty and agrees to a special appeal, which extends pretrial detention, as well as the use of criminal appeals courts, abuse of procedures that can also lead to an incorrect extension of pretrial detention.

(ii) *Number of persons subject to criminal proceedings that were remanded in custody*

309. In 2005, a total of 4,427 orders of pretrial detention were issued by criminal courts, 2,824 orders were issued in 2006 for pretrial detention, 2,320 orders were issued in 2007 and 1,588 orders were delivered in 2008.

310. The Judiciary does not currently have statistics on the maximum duration of pretrial detention for any one person, but will begin to collect data on that aspect. According to article 323 of the Code of Criminal Procedure, the preparatory process should be completed as soon as possible while a person is in custody, proceeding as expeditiously as possible and must take place within three months. In cases of a proxy measure, the maximum period of preparation is six months from the time of indictment. The Directorate-General of Prisons has estimated that a person remains in pretrial detention for approximately 18 months.

(iii) Measures taken to reduce pretrial detention

311. Jurisdiction over criminal matters is exercised by courts under legal mandate authorizing them to hear criminal proceedings, take a decision and implement a verdict. In accordance with Resolution No. 3-2006, as extended by Resolution No. 44-2007, Agreements 3-2007, 4-2007 and 6-2007 and Agreement 22-2007 of the Supreme Court, criminal courts of first instance and courts for drug trafficking and environment crimes were established that are open 24 hours a day, allowing the administration of justice within a reasonable time and respect for human rights of the persons subject to criminal prosecution.

312. Those courts hear cases of crimes committed within the jurisdiction of that court and are responsible for:

(a) Receiving the initial statement of adults and juvenile delinquents apprehended in flagrant crime or upon order of a competent judicial authority;

(b) Resolving the status of persons making an initial statement, decreeing either a lack of evidence, alternatives, alternatives to detention or custody in accordance with the Code of Criminal Procedure or temporary measures under the Law on the Protection of Childhood and Adolescence;

(c) Adopting, with regard to those placed at their disposal, the indictment, the criterion of expediency, the conditional suspension of prosecution or summary proceedings under the Code of Criminal Procedure or, where appropriate, conciliation, release or the criterion of opportunity, according to the provisions of the Law on the Protection of Children and Adolescents;

(d) Issuing decisions required for carrying out investigation or the gathering of evidence and, where appropriate, conducting due diligence;

(e) Issuing arrest or search warrants.

313. When an indictment is issued, the case is assigned by the Centre for Administrative Management of Criminal Procedures to a criminal court, a court for drug trafficking or for environmental crimes under previously established appropriate rules of jurisdiction.

314. As a mechanism to reduce the length of pretrial detention, the IDPP, through its public defenders, raises issues of habeas corpus and protection.

3. Resources available in the event of infringement of the rights enshrined in this article

315. Guatemalan law provides for habeas corpus to protect persons from arbitrary deprivation of liberty.

316. Individuals have the right to appeal personally or through their relatives or others and to raise the issue of habeas corpus in the magistrates' court on duty, which shall carry out preliminary measures to ensure the security of the person detained and provide an opportunity to gain their freedom, as determined by article 82 of the Act on Protection,

Habeas Corpus and Constitutionality. That act states that anyone who is illegally detained, imprisoned or otherwise restrained in the enjoyment of his individual liberty or is threatened with the loss of it or suffers harassment, even if the imprisonment or detention is based on law, is entitled to request an immediate hearing in a court, either in order to be released, granted freedom or obtain cessation of the harassment or coercion.

317. The Institute for Public Defence intervened in two cases in which a person's right to be heard within the constitutional deadline of 24 hours was violated, seeking habeas corpus before the court on duty, however, unsuccessfully.

4. The right to reparations

318. No statistics are available from the Judiciary on trials that have been started by persons who have been illegally detained to repair harm caused. That is, however, a right that can be exercised by a person.

5. Training for judicial officials

319. World Bank funding has been used for planning and supporting the summer school held by the Judiciary since 1997 in cooperation with the General Council of the Judiciary of Spain and Spanish Agency for International Cooperation, involving Guatemalan and internationally renowned legal scholars. The annual summer school is an important source of training, where over several days, judges, magistrates, prosecutors and public defenders discuss issues involving the justice system. That same forum provides training on use of the *Manual of Criminal Procedure* and *Criminal Trial Conceptual Guide*, two guides published by the judiciary with the support of Spain, AECI, UNDP and the Modernization Unit. Through that training, staff involved in administering justice are provided information about the use of alternatives to preventive detention.

J. Article 10 – Persons deprived of their liberty

1. Regulatory framework

(i) The Prisons Act

320. In the second periodic report submitted by Guatemala to the Human Rights Committee, it was stated that one of the difficulties encountered concerning the rights of persons deprived of freedom was the absence of a law governing the functioning of the prison system. Until then, prison law was not governed by laws, but by regulations.

321. On 6 October 2006, Congressional Act No. 33-2006 was issued, which contains the Prisons Act, which came into force six months after its publication in the *Diario de Centro América*.

322. The Prisons Act makes up for the lack of legislation that existed in this area and applies to preventive detention centres and prisons. Under that law, the prison system must promote the social rehabilitation and reform of prisoners, complying with constitutional,

international treaties and conventions on human rights to which Guatemala is a party and with the provisions of other standard rules.

323. Article 3 of that act stipulates the following purposes of the prison system: “(a) maintain the custody and security of prisoners in defence of society and (b) provide the conditions for prisoners favourable to their education and rehabilitation into society, enabling them to achieve personal growth while serving their sentence and later reintegration into society.”

324. Due to the recent coming into force of the Prisons Act, the Government faces major challenges in promoting proper and effective implementation of that act. Nevertheless, as of December 2008, the following conclusions can be drawn about progress and difficulties in this aspect.

Progress achieved

325. The following progress has been made:

- (a) More humane treatment for inmates;
- (b) A legal instrument that covers prison activities and regulates the conduct of prison staff and the prison system;
- (c) Implementation of the Pilot Plan for Multidisciplinary Teams in certain places of detention;
- (d) Establishment of the disciplinary procedures that are not applied arbitrarily;
- (e) Participation of governmental and non-governmental organizations in prison management;
- (f) Establishment of the minimum rights of prisoners and the obligations they must meet for a harmonious stay;
- (g) Establishment of inter-agency agreements that allow better rehabilitation of prisoners;
- (h) A study is being conducted to determine the number of persons who can initiate proceedings before the court hearing their case, seeking a reduction in sentence. Similarly, through frequent visits and follow-up by multidisciplinary teams of cases, control and order are maintained in coordination with security personnel.

Difficulties

326. The Guatemalan prison system faces the following difficulties in achieving adequate implementation of the new rules:

(a) There is not the infrastructure required to implement accurately and for delivery of the best results programmes and projects aimed at the comprehensive rehabilitation of prisoners;

(b) Regulations have not been adopted for full implementation of that ;

(c) There is not enough prison staff for serving the prison population and maintaining security;

(d) The enormous increase in the number of persons sent to prison by the courts has created overcrowding in prisons;

(e) There is a lack of respect for the human rights of a population as vulnerable as that of the prisoners.

2. Status of the prison system and detainees in relation to implementation of Act No. 33-2006

(i) Conditions of detention

327. All persons deprived of liberty, according to the principle of humanity, should be treated with the respect they deserve and the inherent dignity of all human beings. It is strictly forbidden for prison authorities to inflict physical, mental or psychological torture or moral coercion on prisoners or require activities that are incompatible with their physical status, denigrating activities or abuse, as well as scientific experiments.

(ii) Order and security in prisons

328. Article 31 of the Prisons Act stipulates that if there is a riot or serious disturbance of order within the prison system, the director of each centre must make arrangements to preserve the life, limb and the assets of people, including visitors and staff. He may suspend certain activities in order to restore order. Violence caused by the detainees has had serious consequences and damages, including arbitrary deprivation of the right to life.

329. The Directorate-General of the Prison System has recorded ten riots, in which violent events have occurred (wounded and dead persons), with victims among detainees and administrative and security staff of the prison system.

330. During 2007, there were 31 deaths of detainees in the custody of the Directorate-General of the Prison System, of which 15 died violently and 16 of natural causes. In 2008, the toll was 38 persons, of which 17 were due to violent causes and 21 to natural causes.

(iii) *Disciplinary regime*

331. The Prisons Act provides that the director of the centre or in his absence the Director General of the Prison System exercises disciplinary authority in the prisons. Consequently, no one else is entitled to exercise such authority. Upon receipt of a complaint of a prison director, a hearing is held within three days of the person accused of infringement and evidence is considered. The director must take a decision within 48 hours. This procedure does not allow for a defence.

332. No person may be sentenced to prison without having been judged for the crimes of which he is accused. Decisions regarding prison may be revoked, upon appeal to the person who made the decision, except in the case of resolutions issued by the Minister of the Interior, against which appeal may be made. The filing, requirements, deadlines, processing and resolution of the resources listed are governed by the provisions of the Act on Administrative Disputes.

(iv) *Control of entry*

333. Upon admission of all persons deprived of their liberty by court order in centres of the Directorate-General of the Prison System, personal information and information on the legal status is provided, plus any comments that the prisoner may wish to make. Photographs and fingerprints are also taken. In addition, there is an attorney or law student on each multidisciplinary team who keeps track of the inmates.

334. Arrested persons who have not been brought before a competent judicial authority to decide their legal status are not received in detention centres, thus avoiding any illegal detention.

(v) *Access to basic services*

335. The medical care that is provided for detainees upon request is described in paragraph 337 of this report. Visits to inmates are established on a weekly schedule and by sector, because it is impossible to allow everyone daily visits because of a lack of security personnel and space to accommodate all the relatives and friends who wish to visit centres. The following paragraphs deal with other aspects related to the access of detainees to legal counsel, medical care and educational and employment activities.

Access to counsel

336. Each prisoner has the right to be assisted by an attorney when required. That attorney can be a public defender appointed by the Institute for Public Defence or a private attorney paid for by the prisoner, family or friends. Should the need for an interpreter arise, officials or employees of the prison system with a knowledge of that language provide the needed services and make known all rights and obligations.

Access to medical care

337. In the event of an illness or upon request, prisoners are entitled to be cared for by private physicians or to receive care in public or private institutions at their own expense,

with the agreement of the coroner and the Public Prosecutor's Office and with the authorization of the judge concerned, except in cases of extreme urgency in which case they can leave with the permission of the centre's director, who must immediately notify a competent judge.

Access to educational, employment, sporting and cultural activities

338. In compliance with the act governing the prison system, prison officials must promote educational, employment, sporting and cultural activities, taking into account that prisoners are deprived of their freedom only to the extent which serves to prevent escape or ascertaining the truth. Consequently, they can not be deprived of their rights or abilities or required to perform activities related to prison other than those required for their arrest. Persons held pending trial have the right to be treated as innocent, but the programmes and activities that encourage rehabilitation are accessible to all prisoners without any distinction. There are the following measures and programmes:

Rehabilitation measures or programmes (work and education)

339. All programmes and projects in all disciplines (education, work, psychology, psychiatry, medicine, social work and) are channelled through the Social Rehabilitation Branch of the Directorate-General of the Prison System with the purpose of preparing the prison population for proper reinsertion into society.

340. At the date of this report, there are only programmes supported by an organization outside the Directorate-General, which works with young gang members who have decided to leave their gangs and take up a normal social life through a programme for finding job opportunity with a fair wage for young former gang members.

341. Currently, there are no programmes that allow prisoners to work outside prisons, but beginning in April 2009 a progressive programme providing the opportunity for some activities outside prisons will be introduced in all detention centres to readjust the prison population in coordination with judges.

342. The progressive system is the set of activities aimed at the rehabilitation and social reinsertion of convicts through phased demonstrations of progress towards rehabilitation. The phases of this scheme are: (a) diagnosis and placement, (b) treatment, (c) provisional freedom and (d) controlled freedom.

343. The Social Rehabilitation Branch has conducted and is developing the following programmes and projects aimed at the rehabilitation and reintegration of prisoners.

Educational measures

344. Education is a service provided in conjunction with the Ministry of Education, which supports all activities and diplomas obtained in prisons, so that upon release there are no obstacles to continuing their education or accessing decent employment.

345. The Santa Teresa Preventive Detention Centre for Women has educational programmes covering the early stages of literacy, basic education, secondary school and

English language courses. In the Women's Counselling Centre, coverage is broader and includes English language courses for beginners and intermediates, the use of computers, theology and biblical studies at the primary, basic and secondary levels.

346. Currently, there is a total of 633 prisoners benefiting from literacy courses and 380 detainees are participating in informal education.

Employment measures

347. Existing programmes include:

- (a) Training in preventive medicine aimed at the prison population;
- (b) A programme of successful entrepreneurs;
- (c) Cooking of pizzas;
- (d) Manufacture of lamps, disinfectants, lotions and soaps;
- (e) Lath work;
- (f) Painting and crafts;
- (g) Assembly work;
- (h) Cooking of beans.

348. A total of 4,867 detainees have useful and productive employment, and 6,286 prisoners are engaged in skilled labour, according to data corresponding to December 2008. Annex I, table 11 of this report presents data on the skills taught.

(vi) *Registration procedure for visits to detention centres*

349. In all detention centres of the prison system, the following procedure is followed:

- (a) Food: food is inspected with wooden paddles to establish that no illegal items enter the prison with food;
- (b) People: persons are searched and are requested to leave their cell phones at the entrance.

350. But by no means is the vaginal inspection justified or treatment that physically or emotionally degrades persons visiting detention centres. The heads of each centre give instructions for procedures for registration.

(vii) *Equal rights for female prisoners*

351. Male and female prisoners are treated equally by the prison system. However, there are very special situations for each gender to be served in a particular way, such as motherhood and the education of children.

(viii) *Compliance and redemption of sentences*

352. Enforcement of sentences is the task of criminal court judges in Guatemala City and the department of Quetzaltenango. They implement sentences and enforce the maintenance of proper conditions in the prison system. Similarly, the calculation and granting of benefits of sentences are determined by a hearing of the Public Prosecutor's Office, based on reports on work, education and behaviour that are required for granting a benefit.

353. Chapter V of the Prisons Act contains general provisions on the reduction of sentences and states that prison sentences, including those established by converting a fine to a prison term, through education and public-service or productive work, in accordance with relevant regulations. The formula for reducing sentences is one day of reduction for every two days of education or public-service or productive work, or one day of education and one day of work. A completion certificate for special literacy courses or primary education in a detention centre is worth an additional one-time reduction of 90 days of a sentence.

(ix) *Separation of accused from convicts*

354. In October 2008, a pilot plan of multidisciplinary teams implemented in four prisons and one preventive detention centre. One of the specific goals of that plan is the preparation of profiles of prisoners and the strategic placement of each of the inmates.

355. However, in several prisons, prisoners and accused are held together, because infrastructure is inadequate to separate prisoners by legal status.

(x) *Maximum-security regime*

356. There are two centres that are designated as maximum security prisons. However, they are not much different from other prisons. For example, El Boqueron, the Santa Rosa Centre, is designated as a maximum-security prison because it has several doors and bars before reaching the cell blocks. In the Escuintla Centre, there is a cell phone signal blocker, because prisoners there are serving sentences for crimes of high social impact or because other centres refused to accept the prisoners because of violent and aggressive behaviour. Those are some of the special characteristics of those centres.

(xi) *Persons in preventive detention*

357. In relation to the treatment of persons held in preventive detention, it is important to note that those prisoners receive equal treatment, in that prisoners are given an opportunity to study, work and exercise and to receive medical, psychological and social counselling.

358. Based on article 29 of the Prisons Act, the heads of prevention centres must foster educational, occupational, sporting and cultural activities, taking into account that persons in custody are confined only in order to prevent escape or obstruction of the investigation of the truth. Consequently, no one can be deprived of their rights or required to perform activities other than those related to that person's arrest. A person in preventive detention has the right to be treated as innocent.

359. As previously stated, persons in custody have access to public or private legal assistance. Based on schedules, family members and friends may visit a prisoner or a prisoner may receive a conjugal visit. A nurse is available 24 hours a day, and a doctor is on duty to serve the prison population.

360. With regard to the need for interpreters, the security and administrative staff in the prisons and a person from the Social Rehabilitation Branch act as interpreters to communicate with the prisoners.

(xii) *Persons serving a sentence*

361. There were a total of 4,340 prisoners serving a sentence as of December 2008: 4,162 men and 178 women.

362. Twenty per cent of the prison population have great difficulty in obtaining benefits because they have abandoned or postponed their defence. Given that situation, a survey is currently being made in the prisons in Guatemala City for the Unit on Sentencing of the Public Defender's Office.

Situation of people sentenced to death

363. Article 30 of the Prisons Act provides that persons sentenced to death shall be confined in places specifically designed for them in prisons, where their fundamental rights are respected. However, in order that the prisoners may maintain social ties, they are placed on rehabilitation farms.

3. Responsibility of prison officials for violations of prisoners' human rights

364. Upon receipt of a complaint against a prison official, an administrative investigation is carried out with interviews of the accused and the accuser or alleged victim to establish the veracity of the facts and inform the Public Prosecutor's Office, which determines further action.

365. As of December 2008, there have been several investigations by the Public Prosecutor's Office, and judicial proceedings were initiated against one director of a detention centre.

(i) *The situation of prisoners in relation to the prohibition of torture and cruel, inhuman or degrading treatment*

366. The Directorate-General of the Prison System has no record of cases concerning violation of the prohibition of torture against prison officials, but there is a record of four convictions for violation of human rights issued by the Human Rights Ombudsman, with recommendations for improving prison conditions. There was no report in the prison system, as of December 2008, of complaints by women in detention concerning prostitution or cruel or inhuman treatment against prison staff or other prisoners.

367. However, during 2008, COPREDEH informed the Directorate-General of the Prison System that several detainees of Colombian nationality held in the Santa Teresa Preventive Detention Centre had been victims of torture and cruel treatment. As a result, prison officials personally interviewed each inmate, and all declared not having suffered any kind of abuse by the authorities of the centre or the inmates. It was found that, through a misunderstanding, the person in charge of that sector and other inmates threatened and rejected the complainants. As a precautionary measure, they were placed in the hospital ward where, as of December 2008, they remain.

368. Through the Coordination for Human Rights, the Institute for Public Defence investigated 11 allegations of abuse committed by public officials against detainees. Of the 11 victims, nine were men and three women [sic].

4. Status of female prisoners

369. In December 2008, 440 women were being held prisoner in preventive detention or serving a sentence:

- (a) Women in preventive detention: 178;
- (b) Women serving sentences: 262.

370. The Directorate-General of the Prison System has two centres for detention of only women and nine and joint centres for men and women. In the women-only centres, most administrative and security personnel are women, and 20 per cent of the guards are males assigned to perimeter security and the main entrance. In the joint centres, there is a female director and a number of female staff who serve and guard the prisoners, since they are separated from men.

371. The Women's Counselling Centre (COF) is part of the prison system, in which women are serving sentences. Women being held in preventive detention are held in the other centres, but there are special situations where, for shelter of life and physical integrity of the population, the authorities have found it necessary to place persons serving sentences in those centres.

(i) *Intimate visits*

372. Women prisoners are granted the right to conjugal visits by their spouse, partner or friend according to a schedule established by the heads of each centre. However, there is

not enough space for intimate visits for female prisoners in the Santa Teresa Pretrial Detention Centre for Women.

(ii) *Pregnancy and breast-feeding*

373. The Santa Teresa Detention Centre and the COF have a special space for accommodating detained pregnant women and nursing mothers, enabling them to bond closely with their newborn children. Newborn babies are placed in day care close to the mother who also provides care.

374. Children may stay with their mothers until the age of four, at which time they must be given to a close relative or the Social Welfare Department allowed to place them in childcare homes or foster homes. There are currently 30 children staying with their mothers in detention centres.

375. The children of female prisoners that live in prisons are provided with basic care and treated in public hospitals. They are fed and given counselling by a psychologist.

376. In 2008, the agreement between the Prisons Department and the Social Welfare Department was changed to improve food and health services for children.

(iii) *Education and employment programmes*

377. There are educational programmes in prisons for women in primary and secondary education and literacy and employment programmes in the production of lamps and handicrafts in *foami*, mesh and raffia. In addition, there are sports activities and religious and psychological counselling.

5. Special arrangements for imprisonment of juvenile delinquents

378. Because of the special rules applicable to juvenile delinquents and their special protection status, there are specialized centres of detention. At the time of this report, Guatemala has four such centres:

- (a) The Juvenile Centre for Boys;
- (b) The Juvenile Centre for Boys II;
- (c) The Juvenile Centre for Female Prisoners;
- (d) The Juvenile Centre for Provisional Detention.

379. Juvenile delinquents cannot be prosecuted, but the following penalties may be imposed for crimes:

- (a) Deprivation of liberty at home;
- (b) Deprivation of liberty during free time;

- (c) Deprivation of liberty in specialized centres during weekends;
- (d) Deprivation of liberty in open, semi-open or closed detention centres.

380. As of December 2008, the Social Welfare Department has a record of 194 juveniles temporarily detained and 89 adolescents serving a sentence, for a total of 283 juvenile prisoners, of whom 20 are women.

381. Disciplinary sanctions applied in prisons are remedial and depend on the wrongdoing by the juvenile prisoners. The following disciplinary measures are imposed in prisons for misdemeanours or serious offences while in prison:

- (a) Verbal reprimand;
 - (b) Written warning;
 - (c) An increase by 50 per cent in cleaning work up to a maximum of eight days when the offence is minor and 15 days when the offence is serious;
 - (d) Reduction by 50 per cent of the time allowed to listen to the radio or watch television, for a maximum of 15 days for minor offences and suspension of 100 per cent for a maximum period of 30 days when the offence is serious;
 - (e) Restriction of sports or cultural activities, up to a maximum of three days for a minor offence and for a maximum of 30 days in the case of serious misconduct;
 - (f) Suspension of non-family visits for a maximum of four times;
 - (g) Suspension of family visits for a maximum of twice;
 - (h) Restriction of freedom of movement in specific areas of the prison up to a maximum of 30 days;
 - (i) Solitary confinement in special cases for a period not exceeding eight days subject to review by the Disciplinary Board.
- (i) Role of the Social Welfare Department in juvenile delinquency

382. The Social Welfare Secretariat of the Presidency is the competent authority responsible for carrying out all activities relating to compliance with the sanctions imposed on adolescents and protection measures. The following units are part of the Social Welfare Secretariat:

- (a) The Under-secretariat for Juvenile Delinquents is the governing body for management policies and care for juvenile delinquents;
- (b) The Office of the Programme for Juvenile Delinquents is responsible for designing, proposing, implementing and coordinating all activities conducted by the multidisciplinary teams in the process of integrating juvenile inmates.

383. The Social Welfare Secretariat has multidisciplinary staff in detention centres with teachers, psychiatrists, doctors, nurses, occupational therapists, instructors and social workers who carry out activities in accordance with an individual plan and educational project for each juvenile prisoner. In accordance with the Law on Protection of Children and Adolescents, the Social Welfare Department has the obligation to provide comprehensive care for adolescent prisoners and for adolescents who are serving a sentence that is an alternative to imprisonment. Prisoners in internment centres receive formal education, ranging from literacy courses to secondary school diplomas through programmes sponsored by CONALFA, TELESECUNDARIA and IGER, with a team of teachers in each centre and an education coordinator.

384. The individual and educational plans are the means through which sentences imposed by a competent court are reviewed every three months through bi-monthly progress reports at a hearing by the Court for Monitoring Implementation of Sentences.

385. In addition, the Social Welfare Secretariat is gradually providing job-training workshops in computer use and baking, activities that were requested by the juvenile detainees.

(ii) *Measures taken to promote the rehabilitation and re-socialization of juvenile delinquents*

386. Multidisciplinary staff-training programmes on detention and correctional measures. During 2008, training courses on national and international standards of juvenile justice were provided. In addition, staff were trained in the use of psychotherapeutic techniques for treating juvenile delinquents and in mediation and conciliation.

387. Model specialized detention centre. Studies were conducted during 2008 for a model centre for juvenile detainees, with division of the prison population according to age and type of imprisonment and crime.

388. Post-release programme. During 2008, a counselling programme was designed for teenagers released from specialized detention centres after serving their sentences with a social support network to provide opportunities for continuing education and employment.

389. Project for strengthening and decentralizing of rehabilitation and re-socialization programmes for juvenile delinquents. With the support of UNICEF and the European Commission's justice reform project, technical workshops were held in 2008 in graphic design and computer repair in two internment centres (CEJUDEP and CEJUPLIVII). That programme will be extended to other centres in 2009. In addition, the first phase of decentralization of reintegration and social rehabilitation programmes for adolescents was designed and implemented (seven sites) in order to ensure a decentralized process of comprehensive care throughout Guatemala.

390. Coordination among institutions in the justice system. In order to strengthen the administration of juvenile justice in criminal matters, meetings were held for coordination of the implementation of a model for management of judicial hearings with the support of UNICEF, the Judiciary, the Spanish Agency for International Cooperation and participation Social Welfare Secretariat.

391. Design and implementation of internal rules of the Secretariat for Rehabilitation and Re-socialization of Juvenile Delinquents. In 2008, implementation of internal rules began. A manual of procedures and a functions manual were designed for the staff of the prison programme and rehabilitative measures.

K. Article 11 – Imprisonment for breach of contractual obligations

392. There has been no change in legislation regarding the prohibition of depriving a person of his liberty for failing to meet a contractual obligation.

L. Article 12 – Freedom of movement

393. Article 26 of the Constitution regulates freedom of movement and states: “Everyone has the right to enter, stay in, pass through and leave the national territory and to change his domicile or residence, subject only to such restrictions as are imposed by ”. That same article also states that “no Guatemalan may be expelled from or denied admission to the national territory or denied a passport or other identification documents. Guatemalans may enter and leave Guatemala without being required to produce a visa. The penalties which may be incurred by anyone who contravenes this provision shall be specified by .”

394. As indicated in the second periodic report, the Migration Act is contained in Congressional Act No. 95-98. Its regulation was approved by Governmental Resolution No. 529-99 dated 20 July 1999.

395. The Migration Act ensures an effective immigration system, regulating the entry and exit of nationals and foreigners from the country and the stay of foreigners in Guatemala. Its provisions are mandatory and must be observed by all nationals and foreigners, with the exception of representatives and officials of other countries accredited in Guatemala.

396. The Ministry of the Interior reports no record of a complaint for restriction of the right to enter, remain or leave the country. The right to leave the country freely is restricted only for persons subject to a court order, in cases where the court has given notice to the immigration authorities.

397. The only limitation on foreigners entering Guatemala freely is the lack of a proper visa under the Migration Act. There is no prohibition or restriction on the entry of Guatemalans, because in addition to being a right enshrined in the International Covenant on Civil and Political Rights it is a constitutional right.

398. The act creating the National Council for Attention to Migrants (CONAMIGUA), contained in Congressional Act No. 46-2007, was approved. CONAMIGUA is the government body that coordinates, defines, monitors and oversees the activities of governmental bodies and institutions protecting, assisting and providing assistance and relief to Guatemalan migrants and their families in Guatemala, as well as migrants in Guatemala.

399. The Council was created on 9 October 2008, before the election by Congress of the Secretary and Executive Under-Secretary. Members of CONAMIGUA include the Foreign Minister, who presides, a deputy elected by Congress, the Secretary for Planning and Programming of the Presidency, the Assistant Human Rights Ombudsman, the Vice-minister for the Economy in charge of foreign economic policy, the Deputy Minister of Labour and Social Security and the General Manager of the Banco de Guatemala.

400. Because the Council was created only recently and is still in the process of being organized, it is impossible to report on progress in implementing its policies, plans and programmes.

M. Article 13 – Mandatory departure of aliens

Expulsion of an alien

401. A foreigner who is fully in Guatemala can be expelled following conviction for a crime, if as part of the sentence expulsion from Guatemala was imposed as a penalty, in accordance with article 42 of the Criminal Code.

402. The IDPP provides free legal counselling and assistance to foreigners who request it in criminal trials. Defence lawyers are instructed to inform the respective embassies and consulates of the existence of cases involving foreigners. In addition, the Human Rights Coordinator of the Institute assists embassies and consulates in obtaining information about their citizens. The Institute for Public Defence also provides support for Guatemalans who want to benefit from the Inter-American Convention for the enforcement of sentences abroad and seek to serve their sentences in Guatemala. The Judiciary guarantees foreigners access to interpreters and justice on an equal footing with Guatemalans. The Judiciary has no statistics on the number of cases in which the additional penalty of expulsion from the country was imposed.

403. If a judge so decides, the Directorate-General of the Prison System initiates the procedures required for returning a convicted person to his country of nationality. For example, in the case of a Colombian convicted of a crime and subject to expulsion from Guatemala, prison authorities handed over the prisoner to the immigration authorities for coordination of transportation to Colombia.

N. Article 14 – Right to due process

1. Regulatory framework

404. As indicated in the second periodic report submitted by Guatemala to the Human Rights Committee, Guatemala amended its criminal legislation by Congressional Act No. 51-92. That act contains the Code of Criminal Procedure, on the basis of which oral criminal proceedings and public and adversarial trials are conducted. The Code of Criminal Procedure regulates the procedural safeguards to be observed during the conducting of criminal proceedings, its various stages, parties to proceedings and the evidence that can be used. This body of law has been amended several times in order to bring legislation on criminal procedure into effect that ensures due process.

405. Apart from the amendments to the Code of Criminal Procedure, other legislation such as the issuance of Congressional Act No. 32-2006, the Basic Law of the National Institute of Forensic Sciences of Guatemala (INACIF), has been adopted, creating this new institution in order to ensure that objectivity and impartiality in the handling of criminal proceedings is subject to the highest standards of technical, scientific and ethical rigour.

2. Progress made and measures implemented

(i) Ongoing training for judges on compliance with due process and judicial guarantees

406. It is for this reason that when a judge hears a criminal case he immediately informs the accused of his rights under the Constitution and the Code of Criminal Procedure, which can be asserted by the accused or through an attorney. The accused has the right to introduce all evidence that helps to clarify the illegal act, even though the Public Prosecutor's Office has the burden of proof. The Supreme Court is the guarantor of the application of the principle of consistency between sentence and crime (*iura novit curia*). Guatemalan criminal proceedings provide for a judge's impartiality in the administration of criminal justice because the judge's function is only to provide judicial control. The Public Prosecutor's Office is responsible for holding criminal proceedings and prosecuting crimes.

(ii) Free interpretation services

407. This measure was implemented to ensure that persons being tried who speak a Mayan language are assisted by an interpreter that allows them to communicate freely. Provision of interpreters is based on a strategy of local recruitment of bilingual staff. For example, within the Division of Multiculturalism of the General Sub-office for Crime Prevention of the National Civilian Police, there are six interpreters, including one woman. They interpret to and from Man, Ixil, Kaqchiquel and Quemchi in the departments of Alta Verapaz, Quetzaltenango and Quiché. Their role is to back up the hiring of agents of the PNC from the same region, who understand and speak the same language as the person seeking assistance or who has been detained.

408. As noted in relation to article 9 (paras. 297 and following of this report), the Institute for Public Defence also provides interpreters through indigenous defenders. Within the Judiciary, 389 bilingual staff (Spanish/Maya) are working throughout Guatemala (308 men and 81 women) who are working in courts in municipalities with predominantly indigenous populations, including 65 officer I/interpreters (20 women and 45 men) in the departments of Alta Verapaz, Chimaltenango, Chiquimula, El Quiché, Huehuetenango, Quetzaltenango, Sacatepéquez, San Marcos, Solola, Suchitupéquez and Totonicapán.

(iii) Procedures for assigning responsibility for violations of due process

409. In the case of judges and magistrates, the act governing judicial careers establishes the procedure to be followed for dealing with verbal or written complaints against a court officer. Those processes respect the guarantees of due process for accused judges or magistrates. If the complaint concerns court officials and administrative staff, disciplinary administrative proceedings are governed by the Civil Service Act and regulations of the Judiciary.

(iv) Implementation of rotating courts

410. The principle of quick court action leading to the application of justice in a reasonable period of time is guaranteed.

(v) Facilitating the management of trials by the Camera de Amparos y Antejuicios

411. Judges, lawyers, staff and a committee composed of staff from the Department of Protection, in addition to the technical staff dealing with trials, computer information and legal aspects from the Modernization Unit, define the conceptual framework, planning and programmes for implementation. Computerized control was developed for phases of protection for entry, distribution, resolution and serving sentences. A manual was designed for processing protection, validated by its users. Working groups from the Camera de Amparos and the Section de Amparos y Antejuicios were trained in the use of those tools.

412. The system of protection is currently operating efficiently, and delays have been significantly reduced. Installation of new functionalities in 2004 was accompanied by technical training, and adjustment for new functional requirements is in the final stages, owing to the enthusiasm shown by those who operate that tool. In addition, a tool is being developed for monitoring appeals.

(vi) Implementation of alternative mechanisms for conflict resolution, mediation centres and mobile courts

413. Progress in this area is described in annex II to this report.

(vii) Judicial reform

414. As another step towards judicial reform, the Commission and the Modernization Unit continue to bring justice to users, streamlining trials and improving administration. As part of the promotion of alternative mechanisms for conflict resolution, the National Training Programme for Training and Advice on Conciliation was carried out, with 43 workshops for 1,086 participants, including judges and court officials.

(viii) Training and cultural awareness among justice officials and the indigenous communities

415. Under this programme, the Supreme Court, through Committee on Modernization of the Judiciary, promotes dialogue and creates opportunities for understanding among courts and traditional indigenous authorities.

(ix) *Evaluation of mobile courts*

416. An assessment has been carried out of the mobile courts to ensure that service is provided to more people and places of difficult access.

(x) *Formulation of proposals for model judicial proceedings*

417. Proposals have been made for a model of judicial proceedings by the Committee on Modernisation of the Judiciary, using modern techniques, a structured organization based on the role of the courts and legislation, cutting-edge computer technology and new functional court infrastructure, as well as staff training and the upgrading of court and support staff. This is primarily aimed at reducing the duration of court proceedings and providing efficient judicial services for users. Furthermore, the creation of the Office for Plaintiffs within the Judiciary, aims to reduce the volume of activities currently provided by the Penal Management Centre and the Centro de Servicios Auxiliares, thus improving information for plaintiffs.

(xi) *Validation of templates with court personnel*

418. Completion of personnel forms is part of the work to be done in all branches of law prior to the design and implementation of management software. A total of 316 forms were completed. An additional 937 forms from non-criminal branches were complied.

(xii) *Computerization*

419. Computer systems are being developed for streamlining judicial processes, including the System for Managing and Processing Injunctions, the Records and Control System of Appeals and the Penal Management System (SIGESPE) for consultation online of files managed by the Criminal Management Centre.

(xiii) *Telecommunications*

420. Courts throughout the country have been equipped with technology for nationwide telecommunications coverage, with voice, data and image interconnection of all judicial or administrative units. To ensure the sustainability of the IT projects, the Modernization Unit coordinates activities and provides support through the CIT.

(xiv) *Improvement of court infrastructure*

421. Procedures require improvement of courts, expanding courtrooms in order to provide for oral and quick hearings. Modern design and functional respect for the regional cultural environments has been incorporated into the construction and remodelling of courts.

(xv) *Separation of duties*

422. The administrative functions of the courts have been separated as part of judicial reform in order to encourage courts to devote more time to the substantive work of administering justice. A management and organizational model was designed and

implemented to provide better service by providing adequate logistical and human resources, planning, social communication and computer services, achieving substantial improvement of institutional management.

(xvi) *Combating corruption*

423. Corruption in the Judiciary has been fought through promotion of a code of ethics and the technical and financial support of the Commission on Combating Corruption.

(xvii) *Indigenous protection*

424. The Institute for Public Defence has a project for defending indigenous rights, focused on access to culturally relevant justice in their native language, as stipulated in the Code of Criminal Procedure and ILO Convention No. 169. Workshops have also been conducted for indigenous authorities and leaders, which have benefited more than 7,000 participants.

425. In order to comply with the demand for access to justice services with an intercultural approach, the Institute has expanded its defence of indigenous rights to 15 sites nationwide, with defenders, assistants and interpreters fluent in local language, a free public defence service, specifically in areas with the largest indigenous populations.

426. The Native American Advocacy Programme began in 2001 in compliance with the Peace Accords, based primarily on the identity and rights of indigenous peoples and the agreement on strengthening civilian power and the role of the army in a democratic society.

(xviii) *Information Unit*

427. In December 2008, the Judiciary began establishing an information unit, pursuant to the Act on Access to Public Information, Congressional Act No. 57-2008, published in the *Diario de Centro America* of 23 October 2008 to ensure that all interested persons, without discrimination, have the right to request and access public information in possession of the authorities.

3. Challenges

428. The following challenges must be met:

(a) To study the characteristics of communities in order to provide better service and generate substantive information for improvement of access to justice and management of the Judiciary, based on an understanding of the main features of selected communities in order to expand the capabilities for planning, policy formulation and decision-making to guide how best to satisfy current and future demand from users, especially for indigenous communities, taking into account local customs;

(b) As part of the streamlining of judicial processes, an inventory of cases and a study to reduce delays in the processing and resolution of matters known to the courts will be carried out.

4. Respect for due process for aliens subject to prosecution

429. The Supreme Court respects the physical integrity of individuals without distinction based on nationality. However in trials involving foreigners, in which the embassy of the country of origin of the accused is involved, the Code of Criminal Procedure provides for the accused to be assisted by an interpreter in the event the accused does not speak Spanish. For conducting trials, the principle of territoriality of criminal law is used, taking into account the safeguards laid down in international human rights treaties.

430. Furthermore, in the case of foreign persons involved in criminal proceedings, the Judiciary has reported that embassies accredited in Guatemala are involved in trials and defendants have the right to be assisted by an interpreter in the case of their not speaking Spanish.

5. Access and effective use of resources*(i) Appeal in judicial proceedings*

431. A writ of protection may be filed at any stage of a trial. Often, however, abuse in the filing of this action in a single same process undermines the criminal investigation, which can range from six months to three years, as criminal proceedings can be suspended by declaring a temporary protection.

432. According to statistics from the Office for Constitutional Affairs, Protection and Habeas Corpus of the Public Prosecutor's office, as of November 2008 there had been 3,032 requests for protection, 51 requests for habeas corpus, 62 general objections of unconstitutionality and 254 specific cases of unconstitutionality.

433. According to data provided by the Judiciary, there were 2,080 injunctions in courts in 2005, 2,447 in 2006 and 2,828 injunctions in 2007. Partial data from the third quarter of 2008 reports 2,076 requests for protection.

434. The measures implemented to streamline the conduct of constitutional motions have already been described in paragraph 411 of this report.

6. Juvenile delinquents

435. After the entry into force of the Act on Protection of Children and Adolescents (Act PINA), the Judiciary strengthened mechanisms for the judicial protection of the rights of Guatemalan children.

436. The Supreme Court of Justice, through the criminal justice for child and adolescent victims project, with support from the United Nations Children's Fund (UNICEF), has held a series of programmes and workshops aimed at strengthening the administration of justice for children and adolescents around the country this year. That programme has benefited 62,456 children, training 5,917 justice officials, coroners and education professionals and promoting a new culture based on the new paradigm of the Act on Protection of Children and Adolescents, which involves not only knowledge of the new judicial procedures but

also pursuing a different vision of children and adolescents, requiring judges to adopt an active position regarding the rights of children.

437. The following programmes are being carried out: strengthening of justice for children and adolescents, promotion of the rights of child and adolescent victims of crime, training on the Law of Protection of Children and Adolescents for magistrates and prevention of abuse and promotion of a culture of denunciation. Those programmes have helped create opportunities for discussion, study, analysis and support among persons involved in the issue of juvenile justice, based on the adoption of the new Law PINA.

438. Round tables have been held that have led to improvement of communications and coordination within the justice system and effective implementation of the rights of the child in general.

439. The need for inter-agency contact led the authorities to coordinate a programme related to justice sector institutions involved in the application of justice for children and teenagers, including magistrates, judges in children's and juvenile courts, the juvenile prosecutor, the Office for Public Defence, the Social Welfare Secretariat, the Office of Victim Services of the National Civilian Police and Public Prosecutor's Office. The results have been encouraging. For example, psychologists from the Office of Victim Services of the Public Prosecutor's Office have collaborated in the project, training prosecutors and assistants from the Attorney General's Office, forensic doctors, magistrates and court officials for dealing with child victims.

440. The Office for Juvenile Delinquents has been created within the Public Prosecutor's Office.

(i) *Achievements*

441. The project for criminal justice for child and adolescent victims, in coordination with Committee X of the Supreme Court, has carried out a series of activities, including approval in December 2007 of the general rules for courts and tribunals dealing with children and adolescents, whose human rights are threatened or violated and juvenile delinquents under Agreement No. 42-2007 of the Supreme Court.

442. Implementation of the new model for managing hearings on the jurisdiction of childhood and adolescence, takes effect in oral proceedings promoted by the Law on the Protection of Children and Juveniles. Since its inception, this process has received the technical and financial support of UNICEF and the Spanish Agency for International Development Cooperation (AECI) at the request of the Supreme Court, who provided the audio equipment required for its implementation, as well as consultants to assist in its implementation.

443. Workshops have been conducted, providing general information on the new model, involving all the judges of children's and juvenile courts in the country. The first objective was to disseminate the principles and guidelines of the new model for its implementation.

444. Visits were also made to each of the children's and juvenile courts, both in Guatemala City and in the interior, and to the Court of Appeals in that field in order to

monitor, support and follow up application of the model through the holding of scheduled hearings. This model is intended to streamline court procedures in order to promote compliance with the deadlines established by law and the rendering of justice more rapidly and in benefit of the population served.

7. Status of the judiciary career

445. Article 209, paragraph 2, of the Constitution establishes the judiciary career and indicates that a specific law will regulate matters relating to it. It also establishes that the salaries and promotions of judges shall be based on competition. In 1999, Act No. 41-99 on career service in the Judiciary establishes the principles, rules and procedures and creates the institutions required for the administration and operation of the Judiciary.

446. The Constitution and the law governing a career in the Judiciary provide that entry to the judiciary should be by competition, through a selection process, followed by a course for aspiring judges. They then enter the judiciary as magistrates. However, judges who were already in office at the time of the approval of the law on careers in the Judiciary were admitted to the Judiciary through an objective selection process, based on a number of factors of performance. In conclusion, entry to the Judiciary is through competition, and remaining in the Judiciary is through evaluation of their performance.

O. Article 15 – Right to legal certainty

447. As part of domestic legislation, the right to legal protection is respected and guaranteed through the principle of the rule of law, which has constitutional status in article 17 of the Constitution, which states: “No crime or penalty without prior . No act or omission shall give rise to a penalty unless it constituted a punishable crime or misdemeanour under previously enacted legislation.” In addition, sections 1 and 2 of the Code of Criminal Procedure state that no penalty can be imposed that was not previously sanctioned by . Likewise, no process, complaint or grievance can be entertained for crimes or acts not established as crimes or offences by a previous . Without those conditions, any action taken by a court is void and compromises the responsibility of the court. The Criminal Code also regulates this right in article 1 which states: “No one shall be punished for actions not expressly designated as crimes.”

448. The non-retroactivity of criminal law is also a constitutional principle enshrined in article 15 of the Constitution, which states: “The law has no retroactive effect, except in criminal matters if favourable to the defendant.” This guarantee is also contained in article 2 of the Criminal Code, which states: “If the law in force at the time when the offence is committed differs from a subsequent law, the law with the provisions most favourable to the offender shall be applied, even where final judgement has been passed and the sentence is being served.” In the event that there is a final ruling, this guarantee is enforced through judicial review, governed by Chapter VII of the third book called *Challenges, Code of Criminal Procedure*.

449. There are no criminal proceedings in the records of the Judiciary containing assumptions regarding article 15 of the Covenant, under which the Judiciary and the

Supreme Court respect the principle of legality contained in domestic and international legislation.

P. Article 16 – Recognition as a person before the law

450. There has been no change in respect of this article because, as noted in the second periodic report to the Human Rights Committee, article 1 of the Civil Code provides that “Legal status begins with birth and ends with death. The unborn child is regarded as already born in respect of all eventualities from which he might gain, the exception being when the conditions of birth are not viable.”

451. All acts and facts relating to civil status and the capacity of persons must be registered. Previously, municipal registry offices were responsible for recording data and any amendments. Those municipal registry offices were replaced by the National Registry of Persons (RENAP). RENAP is the entity responsible for organizing and maintaining the centralized registration of persons, recording facts and events concerning civil status and other data from birth to death, and the issuing of a personal identification document.

452. RENAP was created by Congressional Act No. 90-2005.

1. Marriage and family

453. The Civil Code states that marriage is a social institution whereby a man and a woman come together legally on the basis of the equal rights and obligations of both spouses. This equality was not specifically stated in the substantive civil law, so there have been substantial reforms to allow for the real existence of the equality of rights and obligations arising from marriage. Among these reforms are: the institution of marriage, which corresponds to both spouses, as well as the obligation to care for their minor children and settle differences between spouses within the marriage. It also repealed sections 113 and 114 of the Civil Code relating to women working outside the home.

Q. Article 17 – Right to privacy, personal intimacy and prohibition of arbitrary interference

1. Regulatory framework

454. As regards the protection of the home, article 23 of the Constitution establishes the right to the inviolability of the home in the following manner: “The domicile is inviolable. No one may enter the home of another without the permission of the occupier, except on the written order of a competent judge in which the grounds for the action are specified, and never before 6.00 a.m. or after 6.00 p.m. Such entry may be made only in the presence of the party concerned or his representative.” In addition, article 24 of the Constitution establishes the right to the inviolability of correspondence, documents and books.

455. In relation to the protection of the law from illegal attacks on the honour and reputation of individuals, article II of Chapter II of the Guatemalan Criminal Code regulates crimes of honour, which are: libel, slander, defamation and publication of insults.

(i) *Definition of domicile*

456. Article 36 of the Civil Code defines the legal domicile of a person as the place established by law where a person has his residence for the exercise of his rights and fulfilment of his obligations, although not actually present there. The same body of law provides that the person who has no habitual residence is considered to be domiciled at the place where he is. Article 32 states that a domicile is established voluntarily by residing at a place with the intention of staying there.

(ii) *Provisions relating to the exercise of this right*

Act to combat organized crime

457. Act No. 21-2006, the Act to Combat Organized Crime, defines criminal conduct attributable to the members and participants of criminal organizations, establishes and regulates special methods for investigating and prosecuting criminals as well as all measures to prevent, combat, disrupt and eradicate organized crime in accordance with the provisions of the Constitution, international treaties signed and ratified by Guatemala and ordinary laws. This law establishes special methods of investigation, such as undercover operations, monitoring of deliveries, wire-tapping and surveillance of communications. That law provides that wire-tapping can be performed only with appropriate court authorization if initial investigation shows that means of communication are being used in committing crimes by members of organized criminal groups.

Law on the Directorate-General of Civilian Intelligence

458. Article 4 of Congressional Act No. 71-2005 governing the Directorate-General of Civilian Intelligence establishes rules on wire-tapping, which may be used when there is evidence of organized criminal activities involving drug trafficking and common crime and when there is danger to the life, physical integrity, liberty and property of persons. Temporary interception of telephone, radio and similar means may be requested as an emergency measure by the Public Prosecutor's Office before a bench of the Court of Appeals. However, any information obtained beyond the purpose of the intervention cannot be used as evidence against a person. That article also states that court authorization is not necessary, if the head of the service or his representative request intervention for any of the situations described above.

459. Article 5 of this legislation guarantees the confidentiality of data provided in trust.

Law on Access to Public Information

460. There also exists the law on Access to Public Information, Congressional Act No. 57-2008, published in the *Diario de Centro America* on 23 October 2008, which provides the right to request and access public information in possession of the authorities for all persons without discrimination.

461. In fulfilling that goal, the law establishes general provisions, requirements of transparency, access to public information, public information units, confidential and privileged information, *habeas* data, public records, procedures for accessing public information, intervention of the Ombudsman for Human Rights, a culture of transparency, means of appeal, responsibilities, penalties and several transitional and final provisions. That law came into force in April 2009, and, therefore, no progress can be reported in its implementation.

462. For proper implementation of that law, each institution is required to create information units that are obligated to provide public information requested by any individual or public or private, national or international entity of any kind, State institution or entity, agency, organization, agency, institution and anyone else who operates or manages public resources, State property or acts of public administration in general.

463. Although the spirit of that law is to allow access to public information, access to confidential and privileged information is restricted. Article 24 of the Act on Access to Information represents substantial progress in human rights, stating that in no event may information relating to investigations of violations of fundamental human rights or crimes against humanity be classified as confidential or restricted.

R. Article 18 – Right to freedom of thought, conscience and religion

1. Recognition of the legal status of churches

464. Article 36 of the Constitution establishes freedom of religion, which is limited only by issues of public order and respect for the dignity of the hierarchy and the followers of other faiths.

465. Article 37 of the Constitution recognizes the legal status of the Catholic Church and provides that other churches, religions, organizations and religious associations must obtain recognition of their legal status in accordance with the rules of their own organization. The Government may not deny such recognition, except for reasons of public order.

466. Based on those articles of the Constitution, articles 15 and 17 of the Civil Code and Act No. 263-2006 dated 24 May 2006, which contains provisions for obtaining recognition

of the legal status of Protestant churches, the administrative procedure that churches must follow prior to authorization of their legal status and approval of their statutes is as follows:

(a) Interested persons shall file with the Administrative Branch of the Ministry of the Interior a request addressed to the Minister signed by the person authorized to perform administrative tasks, which must contain the following information:

(i) The full name, age, marital status, nationality, profession or occupation, address, identity card number and mailing address of the applicant;

(ii) An application for recognition of the legal status of an evangelical church should be accompanied with a copy of the act creating the church (the Ministry of the Interior will provide those concerned with a copy) and proof of the non-existence of another church with the same name issued by the Administrative Branch of the Ministry of the Interior.

(b) The application for legal recognition and approval of the constitution of an evangelical church must be submitted to the Directorate for Legal Affairs of the Ministry of the Interior for review and a favourable decision;

(c) After legal review, the application is returned to the Administrative Branch, which submits it to the Attorney General's Office for approval;

(d) After approval by the Attorney General, the applicant must publish at his expense the ministerial agreement granting legal recognition and approval of the statutes of the evangelical church;

(e) Upon publication of the agreement, the legal status of the evangelical church and its statutes are recognized.

467. Final registration of a church is made in the Register of Legal Entities of the Ministry of the Interior. That procedure is performed in order to protect freedom of religion, making sure the statutes are not contrary to existing law and public policy, which is the only reason that can be invoked to deny the legal status.

468. The Ministry of the Interior has no record of any complaints filed against a public official in violation of this . At the time of drafting this report, there were 1,116 evangelical churches recognized and approved by the Ministry of the Interior.

2. Free access to sacred sites

469. Bill No. 3835 was submitted to Congress, proposing adoption of the law on Sacred Sites of Indigenous Peoples, which seeks to ensure the historic, cultural and spiritual values of indigenous peoples through recognition, respect, dignity, use, preservation, management and access to holy sites.

S. Article 19 – Right to freedom of expression and opinion

470. In 2001, the Human Rights Committee recommended that Guatemala “amend legislation on defamation to ensure a proper balance between the protection of a person's reputation and freedom of expression”. The following information related to that recommendation is presented.

471. The right to freedom of expression is regulated by article 35 of the Constitution and is covered by the law on freedom of expression, which has constitutional status.

472. One aspect of progress made in relation to the protection of the right of freedom of expression is repeal of sections 411, 412 and 413 of the Guatemalan Criminal Code, in which the Constitutional Court upheld the partial general unconstitutionality raised in case No. 1122-2005. Those articles governed crimes of contempt of presidents of State agencies (article 411), contempt for authority (article 412) and provision of proof of a complaint (article 413). This measure has sought to establish a balance between freedom of expression and protection of reputation. Those three articles were declared unconstitutional because they were incompatible with the guarantee of freedom of expression.

473. As indicated in paragraph 1 of article 17 of this report, criminal law establishes offences against the honour of individuals. But provides for special circumstances in determining liability for such offences, namely (a) proof of the veracity of the charge applicable in criminal libel that favours the person accused of that crime and (b) exceptions to the imputation of those crimes for people expressing their technical view on some literary, artistic or scientific production and who for some reason express that view on the ability, education, fitness or conduct of another person.

474. Furthermore, in relation to this right, bill No. 3918 was presented to Congress, proposing amendment of article 164 of the Criminal Code regulating the crime of defamation. The proposed bill includes criminal responsibility for representatives of legal entities, increased imprisonment and fines and a ban on granting alternative measures to the persons accused of criminal defamation. However, the Committee on Constitutional Legislation issued an unfavourable opinion on this bill on 1 December 2008.

T. Article 20 – Prohibition of propaganda and advocacy of war and racial or religious hatred

475. The information provided by Guatemala on this article in its second report on compliance with the Covenant has not changed substantially.

476. However, among the progress made by Guatemala is regulation of the crime of discrimination, which was previously covered in this report in the section on the regulatory framework under article 3.

477. Although the crime of discrimination contained in the Criminal Code does not refer exclusively to racial discrimination, it should be noted that this issue is defined as racial discrimination in article 1 of the Convention on the Elimination of All Forms of Racial

Discrimination, by incorporating specific tangible elements, defining discrimination as any distinction, exclusion, restriction or preference which prevents or hinders a person, group of persons or associations, from the exercise of legally established rights, including customary law or customs. Article 202 bis of the Criminal Code governing this crime also contains circumstances that aggravate the penalty by one third: (a) when discrimination is on basis of language, culture or ethnicity; (b) for any one who in any form or by any means disseminates, supports or incites discriminatory ideas, (c) if the act is committed by a public official or employee in the exercise of his office and (d) if the act is committed by an individual in providing a public service.

U. Article 21 – Right of peaceful assembly

478. As indicated in Guatemala's second report, the right to peaceful assembly and demonstration is also contained in the Constitution. To exercise this right, notice must be given to the departmental government in the department or location of the assembly or demonstration. The departmental government should coordinate with the National Civilian Police and the Municipal Traffic Police, if it exists in that department, to implement measures for the safeguard and security of individuals.

V. Article 22 – Right of association

479. There has been no change in the information provided by Guatemala in its previous report in relation to this right.

W. Article 23 – Right to a family

480. The regulatory framework relating to the protection and guarantee of this right has not changed substantially the information submitted by Guatemala in its second periodic report to the Human Rights Committee. However, several measures been implemented.

1. Measures taken

(i) The “Mi familia progresada” programme

481. One of the major advances in protecting the family is creation of the “*Mi familia progresada*” programme, which is a current government initiative that promotes improvement of human development of families living in poverty or families that are vulnerable to poverty through investment in education, health, nutrition and conditional cash transfers; all aimed at reducing intergenerational transmission of poverty.

482. To achieve its purpose, the programme promotes intersectoral action and works with various public institutions. The “*Mi familia progresada*” programme is run by the Executive Coordination Secretariat of the Presidency, which coordinates its activities with the Ministry of Health, the Ministry of Education and the Department for Food Safety, among others, under the Social Cohesion Council, which provides programmatic and geographical orientation.

483. The Social Cohesion Council assigns priorities to geographic areas and areas of extreme poverty. The programme's target population is families living in extreme poverty with children between 0 and 5 years of age and pregnant or breastfeeding women. After reviewing the poverty rates of all municipalities, the Social Cohesion Council decided to prioritize initially 46 municipalities, which are receiving conditioned cash transfers.

484. At the date of this report, the second phase is under way. The National Statistics Institute (INE) is surveying beneficiary families in another 44 municipalities. The third phase of the programme will reach the rest of the municipalities having the highest poverty rates nationwide.

(ii) *The Directorate-General for Strengthening the Educational Community*

485. The Ministry of Education holds workshops for parents, and in 2008 created the Directorate-General for Strengthening the Educational Community, which organizes assistance programmes for parents of schoolchildren, with emphasis on the issue of education and nutrition values.

X. Article 24 – Right to special protection for children

1. Progress made and measures implemented

486. The following paragraphs describe progress made in implementing the recommendations of the Human Rights Committee contained in its concluding observations issued in 1996 and 2001, namely that “appropriate stringent measures be taken to ensure the fullest possible implementation of article 24 of the Covenant, including adequate protection of street children. Stern measures must be taken to punish those found guilty of committing any kind of violence against minors, especially against those who endure hard living conditions,” and “that the State party should take effective measures both to protect and rehabilitate street children, pursuant to article 24 of the Covenant, including measures to put an end to sexual exploitation and child pornography, and to punish those found guilty of any kind of violence against minors.”

(i) *Law on the Protection of Children and Adolescents*

487. Congress adopted Act No. 27-2003 containing the Law on Protection of Children and Adolescents, which is a legal instrument for family integration and social promotion. It aims to promote the comprehensive and sustainable development of children and adolescences in Guatemala within a framework of democracy and unrestricted respect for human rights. This law regulates issues related to children and adolescents whose human rights are threatened or violated and matters related to juvenile delinquents.

488. According to article 85 of the Law on Protection of Children and Adolescents, the National Commission on Children and Adolescents (CNNA) is responsible for drafting policy for the comprehensive protection of children and adolescents and for transfer of that policy to the system of urban and rural development councils, ministries and state agencies for incorporation into their development policies. This Commission also monitors compliance and take any action required to make that protection efficient.

489. Article 96 of the Law on Protection of Children and Adolescents provides for the creation of a Special Unit for Children and Adolescents in the National Civilian Police, whose main goal is to train and advise systematically all members of the National Civilian Police on the rights and obligations of children and adolescents.

490. In compliance with this legal provision, article 8 of Government Agreement No. 662-2005, entitled "Regulations on the Organization of the National Civilian Police", creates the Division of Care for Children and Adolescents (DIANA), which forms the organizational structure of the General Office of Crime Prevention, which under article 7, paragraph (b), of those regulations is assigned the role of coordinating, managing and preventing all cases that are related to children and adolescents.

(ii) *Public Policy and Action Plan for the Comprehensive Protection of Children and Adolescents 2004–2015*

491. The public policy for integral protection is a policy instrument for medium and long-term strategic and social planning, aimed at creating conditions so that children and youth can enjoy a decent life, based on respect for their human rights, development and strengthening social protection and protection of their families. This policy also promotes coordination, coherence and comprehensiveness in the activities undertaken in various sectors.

492. The National Action Plan for Children and Adolescents includes strategic actions linked with other public policies formulated by the Government, namely (a) the National Policy for the Promotion and Development of Guatemalan Women and the Equal Opportunities Plan 2001–2006; (b) the 2001 poverty reduction strategy; (c) the Social and Population Development Policy, 2002; (d) the National Plan for Comprehensive Care of Adolescents; (e) the National Plan for the Eradication of Child Labour and Protection of Working Adolescents; (f) the National Plan against Commercial Sexual Exploitation of Children and Adolescents and the National Plan for the Protection of Street Children.

493. The following policies are included in the action plan: basic social policies, social welfare policies, policies for special protection, guarantee policies and policies for the participation of children and adolescents.

(iii) *Free education*

494. A major milestone has been reached in education by declaring education to be free of charge, thus increasing the number of children enrolled in the national education system. Under Presidential Agreement No. 226-2008 of 12 September 2008, the provision of public education is free, so that admission, enrolment and study in official pre-primary, primary and secondary schools are not subject to any mandatory or voluntary payment.

495. Following that agreement, the Ministry of Education created the Free Public Education Unit, which is responsible for dealing with complaints related to unauthorized charges and anomalies in private schools. In addition to that measure, the Ministry of Education has implemented programmes and projects aimed at improving the educational system, including an art education programme, model future schools, a subsystem of

education serving over-age children and youth who did not attend school or who did not completed their studies and want to continue and after-school education programmes of accelerated elementary and basic adult education.

(iv) *Street children*

496. In order to provide adequate protection for street children, in 2004 Guatemala City created centres for children and adolescents at risk of becoming street children under the Ministry of Social Affairs. This programme promotes care and prevention activities targeting children and adolescents at risk of becoming street children, while contributing to the eradication of high-risk child labour. Children receive formal pre-primary and primary education. Education is also offered for over-age children, using the methodology called Education Programme for Working Boys and Girls (PENNAT).

497. An average of 317 lunches and 634 meals are served daily. Help with school lessons is also provided along with extracurricular activities, such as art, music, dance, computer use, recreation and human development in order to reinforce self-esteem, identity and human, ethical and moral values.

498. The following programmes have been carried out to improve the health of vulnerable street children:

- (a) Supplemental educational curriculum;
- (b) Supplement of menus suggested by the dietician;
- (c) Anthropometric monitoring;
- (d) Analysis of cases that merit referral or management by the Multidisciplinary Technical Board (physician, psychologist, nutritionist, social worker, director and coordinator);
- (e) Preparation of food for distribution to the three centres began in September 2008, for which was created and equipped the kitchen in Los Patitos Care Centre;
- (f) Preparation of instructions for the preparation and distribution of food;
- (g) Definition of the role and responsibilities of staff;
- (h) Four people were hired for work in the kitchen.

499. When a local government or the Social Welfare Secretariat becomes aware of a vulnerable street child, they inform the Attorney General's Office, which is responsible for sending that child to the Rescue Unit to be taken to the Board of Children and Adolescents and then to be cared for.

500. The measure described above is a positive step in protecting children and implementing the recommendations issued by the Human Rights Committee on this matter.

(v) *Prevention of crimes against children*

501. The National Civilian Police have launched several operations in coordination with the Attorney General's Office to prevent children from being exploited. Through the DARE programme, staff meetings are held in schools in order to inform children about their rights and obligations. In addition, preventive measures are carried out to alert children and teenagers about self-protection and self-care, avoiding vulnerability to violence. There has been an exchange of violent toys for educational toys, encouraging a culture of peace and social harmony, raising the awareness of both children and parents about the consequences of using dangerous weapons.

502. As a measure for protecting child victims, the Social Welfare Secretariat of the Presidency implemented the Social Risk Programme for:

- (a) Children and adolescents on the street;
- (b) Children and adolescent who are victims of commercial sexual exploitation;
- (c) Immigrant children and adolescents.
- (vi) Handling and investigation of cases of child victims of violence

503. Research and monitoring cases of child victims are the responsibility of the Juvenile Section of the Criminal Investigation Division of the National Civilian Police. The Juvenile Section performs the following investigation upon receiving a report of violence against children and adolescents:

- (a) Location of the place where the problem is occurring;
- (b) Interviews with neighbours near that place;
- (c) Monitoring;
- (d) Photographing of that place for documenting the case;
- (e) Identification of the person charged during the investigation;
- (f) Coordination with the Public Prosecutor's Office and the competent court for formally ordering intervention.

504. The Juvenile Section of the PNC acts on requests for the rescue of children as follows:

- (a) A search warrant is issued by a competent court;
- (b) Coordination with the Attorney General's Office for immediate intervention;
- (c) An intervention can be initiated by making a complaint to the Public Prosecutor's Office or to any Citizens Advisory Bureau of the National Civilian Police;

(d) The last step in carrying out an intervention is a request for inspection and registration of the suspected property.

505. The PNC provides only support for staff of the Attorney General's Office, who are responsible for the intervention.

2. Difficulties and challenges

506. The education system serves children and adolescents between 5 and 18 years of age at the pre-primary, primary and basic and diversified secondary education levels. At the primary level, children attend grade schools, in which five or more teachers work, and each teacher conducts a grade or class. There are also multi-grade schools that operate with four or fewer teachers, where one or more teachers conduct one or more grades simultaneously.

507. There is insufficient staff assigned to DIANA and insufficient logistical support and physical space. It is recognized at the governmental level that there has been considerable progress in improving education for children and adolescents and that the PNC has been sidelined. Non-governmental organizations and even governmental organizations involved in assisting children and adolescents disapprove of the activities and attitude that police officers often have towards the problems of children and adolescents whose human rights are threatened or violated as well as juvenile delinquents.

Y. Article 25 – Political rights

1. Progress made and measures implemented to encourage the participation of women

508. The following progress has been made in implementing the recommendation issued by the Human Rights Committee in its concluding observations of 2001 that stated: "In order to comply with articles 3, 25 and 26, the State party should take appropriate measures to improve participation women, if necessary through the adoption of affirmative action programmes, and inform the Committee about the outcome of that programme."

(i) Political participation

509. The following initiatives have been implemented:

(a) As a measure to encourage the participation of women in the electoral processes, the Supreme Electoral Tribunal (TSE) provides education and training on civic and political rights, conducts recreational activities and disseminates educational materials on the subject.

(b) For the 2007 elections, voting was decentralized, which increased women's participation in the voting and reduced the barriers of distance that had greater impact on women than on men.

(c) During the 2007 elections, 242 women were elected to positions in municipal governments. There are six female mayors, eight deputies elected from a national list and

11 deputies elected by congressional district. See annex I, tables 12, 13 and 14, of this report.

(d) The Ministry of Education is carrying out activities to encourage women to run for elected office. Those activities are implemented through school governments in most bilingual and non-bilingual schools, promoting the participation of girls.

(ii) *Access of women to positions in the public administration*

510. Guatemala has implemented activities to ensure that its citizens have equal access to positions within the public administration. In the Executive, 49 per cent of public servants are women and 51 per cent are men. Within that percentage, 11 women hold senior management positions. Activities have been implemented to encourage the participation of women in public office in accordance with general government policy.

511. In order to make access to public administration more efficient and agile and to ensure that public servants exercise their rights, skilled personnel have been incorporated into the National Civil Service Office. The payment of employee benefits has also been decentralized and has been transferred to the directorates of human resources of each of the institutions of the Executive for the benefit of workers. As part of this decentralization process, 190 public servants were trained, and the recording of the time of service of public servants has been systematized.

(iii) *Women's access to positions in the Judiciary*

512. There is a good example of the strengthening of the participation of women in areas of power. In 2005–2006, for the first time in the history of the Judiciary, a woman was elected as head of the Supreme Court and the Judiciary. During her mandate, various aspects covered in the Covenant were completed. The following are the main legacies of that management:

(a) In support of implementation of judicial equity and institutional mechanisms for the advancement of women, the Unit of Women and Gender Analysis was created with the primary goal of advising and supporting main-streaming and institutionalization of gender into policies, plans, programmes and projects of the Judiciary in Guatemala;

(b) Systematization of initial and continuing training programmes for judges concerning gender, women's human rights and violence against women;

(c) For implementation of the Human Rights Programme for Women, 13 workshops were held by the Modernization Unit, for the training of 344 staff of the institutions in the Judiciary, with the financial support of the World Bank;

(d) Promotion of the creation of a training programme in women's human rights for institutions in the Judiciary at the professional and technical levels supported by the Institute of Human Rights of the University of San Carlos;

(e) Creation of new family courts and expansion and modernization of existing family courts;

(f) As the result of the meeting of the three presidents of the branches of government, the National Commission on Femicide in Guatemala was created;

(g) Ten courts were created, including four first instance family courts located in Guatemala City, Quetzaltenango, Suchitepéquez and Villa Nueva.

513. More women have been hired, and the following staff existed as of December 2008:

Court officials

Men: 1,659

Women: 1,482

Total: 3,141

Out of which, 484 court officials speak a Mayan language, including 145 women.

Administrative staff

Men: 2,176

Women: 1,068

Total: 3,244

Administrative staff who speak a Mayan language: 309, of which 64 are women.

Judges and magistrates

Men: 531

Women: 270

Magistrates and judges who speak a Mayan language: men 98, women 16.

514. As of November 2008, there were a total of 7,186 officials and employees of the Judiciary, 907 of which speak a Mayan language.

515. Of the 13 judges who compose the Supreme Court, two are women.

2. Progress made and measures implemented to encourage the participation of indigenous peoples

(i) Political participation

516. On the issue of participation of indigenous peoples in the electoral process, creation of additional polling stations in isolated areas of the country, whose inhabitants are mostly of Indian descent, made a difference in the number of people who went to the polls. In previous elections, people had to travel many hours to cast their vote, making it difficult to exercise this right.

517. In this context, it is important to highlight the participation of the first indigenous female candidate for the presidency of the Republic, Dr. Rigoberta Menchu. Apart from Dr. Menchu, there was no other presidential candidate of indigenous origin, and there was only one indigenous vice-president candidate.

518. The new president-elect, Engineer Alvaro Colom, took office on 14 January 2008, with the endorsement of the various peoples who make up Guatemala and with a vision of unity for the country through harmony and the elimination of discrimination.

(ii) *Participation in the Executive*

519. The Executive is made up of thirteen ministries, of which two ministries are held by one woman and one man of indigenous extraction. Two indigenous women also occupy positions of vice-minister. In accordance with Guatemalan legislation, the governors of departments are appointed by the President. As a result of the 2007 elections, two indigenous men and three indigenous women have been appointed governors.

(iii) *Participation in the Legislative*

520. In the 2007 elections, 158 deputies were elected, of which 15 are indigenous (four women and 11 men), thus keeping the same number of indigenous deputies elected in 2003, with the difference that the number of women increased, for in the previous period there was only one indigenous female deputy.

(iv) *Participation at the municipal level*

521. As a result of the general elections held in September 2007, out of the 332 mayors in the country, 129 are now indigenous, which represents an increase compared to the 2003 elections, when there were 123 indigenous male and female mayors. According to the Guatemalan Association of Indigenous Mayors and Authorities (AGAI), increased indigenous participation in the 2007 elections was reflected at the local level.

(v) *Participation in the system of development councils*

522. The system of development councils has five levels: the local, municipal, departmental, regional and national. The Development Councils Act (Act 11-2002) assigns them the responsibility of organizing and coordinating public administration through the formulation of development policies, budgets and programmes and by encouraging public and private inter-institutional coordination.

523. In accordance with article 2 of that act, the general principles of the system of development councils are: (a) promotion of respect for the cultures of peoples living in Guatemala; (b) the promotion of harmonious intercultural relations; (c) optimization of their effectiveness and efficiency at all levels of government; (d) constant attention because functions are assigned to each level of government based on their complexity and features that can be better performed there than at any other level. The promotion of participatory democracy in conditions of fairness and equal opportunities for the Garifuna, Maya and Xinca and non-indigenous population without discrimination; (e) conservation and maintenance of environmental balance and human development based on the world views of the Garifuna, Maya and Xinca and non-indigenous population and (f) gender equity, understood as non-discrimination against women and effective participation of both men and women.

524. Act No. 11-2002 does not establish or define the number of places to be distributed, but provides for the participation of representatives of the Garifuna, Maya and Xinca and integration of the development councils, as follows:

(a) The National Urban and Rural Development Council (CONADUR). Participation of four representatives of the Maya, one of the Xinca and one of the Garifuna;

(b) Regional Urban and Rural Development Councils (COREDURs). One representative of each of the indigenous peoples living in the region;

(c) Departmental Development Councils (CODEDES). One representative of each of the indigenous peoples living in the department.

3. Exercise of voting

525. In order to facilitate voting in 2007, the Supreme Electoral Tribunal implemented measures to promote voter registration, including development of urban and rural voter registration brigades. In order that the population reaching the age of 21 registers as a voter at the time of obtaining their identity card, the municipal offices are located near the offices of RENAP.

526. The departmental, municipal and local electoral boards are made up of honourable people who have no links with any political party, in order to ensure the secret voting by all citizens.

527. Decentralization of voting increased participation, especially in rural areas. The Supreme Electoral Tribunal also conducted awareness campaigns in relation to the electoral process in the Mayan languages through local media.

528. One achievement is the decentralization of polling stations, making it a challenge for the Government to expand coverage in the process of decentralization. To guarantee all citizens the right to vote, the Supreme Electoral Tribunal must ensure that citizens update their place of residence.

529. Several steps forward were made through regulatory reform. The Law on Elections and Political Parties was amended by Congressional Acts Nos. 10-2004 and 35-2006.

(i) Difficulties

530. The main difficulties faced in the process of decentralization are a lack of access roads to some communities, a lack of communications and conflict between members of local communities.

Z. Article 26 – Prohibition of any discrimination, and guarantee of equal and effective protection

531. In order to protect and guarantee the legitimate exercise of the right to vote, several activities have been implemented, primarily in relation to indigenous peoples.

1. Status of the legal and institutional framework for recognition of the rights of indigenous peoples

532. Within the Guatemalan system, substantial changes have been made aimed at recognizing the right of indigenous peoples, including the following:

(i) *Legal framework*

533. They have approved several related regulatory bodies, among which are:

(a) Act No. 57-2002 amending the Criminal Code and creating the crime of discrimination;

(b) Act No. 19-2003 on the National Language Act;

(c) Act No. 81-2002 on the Education against Discrimination Act;

(d) Government Order No. 526-2003, creating the Vice-Ministry for Intercultural Bilingual Education;

(e) Government Order No. 22-2004 on generalization of bilingual education, multiculturalism and interculturalism in the national education system;

(f) Ministerial Agreement No. 930-2003 of the Ministry of Education on the promotion and respect of the use of indigenous dress for students, technical and administrative staff, official and private establishments;

(g) Act No. 11-2002 creating Urban and Rural Development Councils;

(h) Act No. 12-2002 on the Municipal Code;

(i) Act No. 14-2002 on the General Law on Decentralization;

(j) Act No. 24-2006 setting August 9th of every year as National Day of Indigenous Peoples of Guatemala.

(ii) *Public policy: plans and programmes*

534. The following important public policies have been adopted to combat discrimination and racism:

(a) The National Policy on the Promotion and Advancement of Women for 2008–2023;

(b) The Public Policy for Coexistence and Elimination of Racism and Racial Discrimination, adopted in October 2006.

535. The Government has begun a process of promoting awareness in the media that seeks implementation of the policy for the elimination of racism. Furthermore, the Government has developed various public policies, including on issues related to indigenous peoples. These policies include:⁴

(a) The Public Policy for Coexistence and the Elimination of Racism and Racial Discrimination (2006);

(b) The National Housing and Human Settlements Policy (2004);

(c) The Health Policy (2004–2008);

(d) The Environmental Education Policy of the Ministry of Environment and Natural Resources (2004);

(e) The National Policy for the Development of Micro, Small and Medium-sized Enterprises (2005);

(f) The Public Policy for Youth (2005–2015);

(g) The National Policy on Food and Nutritional Security (2005);

(h) The Public Policy for the Prevention of Sexually Transmitted Diseases (STDs) and the Response to the Epidemic of Acquired Immune-Deficiency Syndrome (2005);

(i) The National Human Rights Education Policy (2006–2015);

(j) The Rural Development Policy (2006);

(k) The Public Peace Culture Policy (2006–2015);

⁴ Information included in the 12th and 13th reports of Guatemala on compliance with the International Convention for the Elimination of All Forms of Racial Discrimination (CERD/C/GTM/12-13).

(l) The Agrarian Policy (2007);

(m) National policies regarding books, reading, writing and libraries (2007–2014).

(iii) *Institutional framework*

536. The Government has changed its structure, creating the following institutions that will strengthen the inclusion and recognition of the rights of indigenous peoples:

(a) Presidential Commission against Discrimination and Racism against Indigenous Peoples. Government Agreement No. 390-2002.

(b) Strengthening the Defence of Indigenous Women by creating it as a dependency of the Presidency with administrative, technical and financial capacities. Government Agreement No. 442-2007.

(c) The Indigenous Peoples Unit of the Ministry of Environment and Natural Resources (2007) is the entity responsible for proposing bills related to treatment of the environment and the preservation of ecology. Ministerial Agreement No. 412-2006.

(d) The Indigenous Peoples Department of the Ministry of Labour is responsible for ensuring compliance with ILO Convention No. 169 and all matters relating to labour activities in Guatemala. Ministerial Agreement No. 364-2003.

(e) TV MAYA, awarding of television channel five to the Academy of Mayan Languages for promotion of awareness among the Guatemalan population. Government Agreement No. 756-2007.

(f) The National Compensation Commission (July 2004). Government Agreement No. 258-2003, and its amendments Nos. 188-2004 and 619-2005.

(g) Unit for Holy Places and the Practice of Mayan Spirituality under the Ministry of Culture and Sports. Ministerial Agreement No. 510-2003.

(h) Coordination of Indigenous Peoples, Institute of Public Defence.

(i) Office for Multiculturalism of the National Civilian Police.

(j) The Indigenous Inter-Agency Coordination (2002).

(k) Creation of municipal offices for the defence of indigenous rights and legal offices that provide free legal assistance to persons of limited economic means in municipalities in which there are a large number of indigenous communities.

(l) The High-Level Committee to Deal with Indigenous Rights, coordinated by the Ministry of Foreign Affairs, for the participation of specific government agencies involved indigenous affairs, the Judiciary, the Legislature and autonomous bodies such as

the Academy of Mayan Languages for discussion at the highest level of issues related to national and international commitments regarding indigenous peoples' rights and combating discrimination and racism and proposing courses of action to follow.

2. Progress made and measures implemented

537. After creation of the crime of discrimination under Guatemalan law, the Judiciary recorded 24 cases presented between 2005 and the third quarter of 2008. Six convictions and two acquittals have been issued.

538. The Programme for Decentralization and Municipal Strengthening of the Presidential Secretariat for Executive Coordination is promoting municipal and political projects for strengthening local power through the Programme for Democratic Municipalities which is contributing to 11 multicultural municipal agendas and the drafting of four Municipal Multicultural and Intercultural Public Policies focused on gender and youth. They include organizational and institutional basis for implementation, resource base for public policy, legal basis and acts of authority and legitimacy. To strengthen indigenous councils at the local level (COCODES) and at the municipal level (COMUDES) participation and representation of the indigenous population has been encouraged through the strengthening of 15 of their own organizations, which have an impact in 31 municipalities.

539. As for the strengthening of the indigenous peoples' own organizations, help has been given in workshops and three national meetings with indigenous authorities to inform them in their own language of the need for interaction and coordination with the authorities of their community and municipality.

540. In order to contribute to democratization of political, economic, social and cultural participation for unity in diversity among the four peoples that make up Guatemala, final touches are being put on a consultation with 750 indigenous authorities at the national level to strengthen the representation of the National Council of Garifuna, Mayan and Xinca Elders through 100 national delegates.

3. Access to justice⁵

541. Procedures for coordination, advocacy, education and training have been strengthened with an inclusive vision of the rights of indigenous peoples within the justice system through the Coordinator of Indigenous Defenders of IDPP.

542. The Coordinator of Indigenous Defenders has begun working with the following institutions: (i) in the justice sector: the Attorney General's Office, the Judiciary and the Ministry of the Interior; (ii) the National Commission for Monitoring and Supporting the Strengthening of Justice (CNSAFJ); (iii) the National Commission to Support the Judiciary's Sub-programme against Lynching; (iv) the Office for the Defence of Indigenous Women's Rights (DEMI); (v) the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA); (vi) the Regional Investigations

⁵ Ibid.

Centre for Central America; (vii) the Bar Association and the Notaries' Association; (viii) the Soros Foundation; (ix) the Chichicastenango Community Development Association (ASDECO) and (x) the Legal and Social Services (SERJUS).

543. Among the efforts to produce a symbiosis between the two systems of indigenous customary law and domestic statutory law, the first community magistrates were created in 1997. These courts are composed of indigenous personnel from the same community who speak the dominant language in that region. The Judiciary has gradually been appointing bilingual staff to the courts in the municipalities with the greatest indigenous population density with a view to having trained human resources to facilitate access to justice.

544. These courts are in Santa Maria Chiquimula in Totonicapan, San Andrés Semetabaj in Solola, San Miguel Ixtahuacan in San Marcos, San Rafael Petzal in Huehuetenango and San Luis in Petén. The localities chosen are areas where the armed conflict was most intense, and the indigenous population density was the highest. The magistrate's court is a collegial body made up of three judges with an administrative staff of one secretary, four officials and a duty officer, plus a person for cleaning and general building maintenance.

545. In the places where these courts have been located, no incidents of lynching have occurred, and in general peace has been maintained. Even though their competence is solely in criminal justice, as provided by the Code of Criminal Procedure (art. 552 bis), in view of their legitimacy these authorities are in practice consulted on family matters and in common civil cases, as explained in the latest evaluation and inspection carried out by magistrates of the Supreme Court and the body responsible for the general supervision of courts.

546. The Supreme Court has set up a Commission for Indigenous Affairs among whose various goals is to analyse all aspects of the administration of indigenous justice, which involves examining the operation and the assessment of the community magistrates' courts. The Commission also aims to provide all the courts in the multi-ethnic areas of the country with the appropriate interpreters and, especially, to ensure the gradual appointment of persons who speak the dominant language of that community.

547. The Institutional Training Unit for the Judiciary (UCI) permanently holds seminars, courses and workshops on multiculturalism for judges and officials in the justice system to strengthen respect for Guatemala's ethnic diversity, multiculturalism and multilingualism and to prevent discrimination. When judges leave the UCI, they commit themselves to promoting the same values they have received and teaching them to the auxiliary staff in their jurisdictions, thus producing a multiplier effect in the communities where they serve.

548. An Indigenous Affairs Section has been created in the Library of the Judiciary. This section has been created to allow reference books to be consulted more quickly and more easily.

549. There are administrative sanctions on staff by the Discipline Unit of Human Resource Management of the Judiciary for cases of racial discrimination.

550. One of the committees of the Supreme Court of Justice (Committee VI), monitors the rights of the indigenous population and is considering implementing a project for an indigenous legal system for which it needs full political, administrative and financial support.

551. Between 2005 and 2007, as a result of the programme to strengthen civil society-indigenous public prosecutors' offices, whose aim is to offer scientific and technical support to public prosecutors in the field of the indigenous peoples' human rights and expertise, the following were achieved:

(a) Publications, manuals and periodic training modules to be carried out by the Training Unit (UNICAP);

(b) Strategies for awareness-raising and communications and training for personnel specializing in discrimination and the rights of the indigenous peoples;

(c) A collection of 703 texts was created for the training unit for public prosecutions (UNICAP) on issues related to gender, indigenous rights and indigenous ;

(d) The first specialized course in criminalization of discrimination with 60 participants, including public prosecutors and assistant prosecutors from the Faculty of Law and Social Sciences at the University of San Carlos and Legal Research Institute at the National University of Mexico;

(e) A course in indigenous legal interpretation and translation for interpreters of the Public Prosecutor's Office, members of civil society and indigenous organizations involved in issues of justice, which was endorsed by the Faculty of Law and Social Sciences of the University of San Carlos.

552. The Public Prosecutor's Office has issued the following internal regulations:

(a) General Instruction No. 09-2007, issued on 20 November 2007 to ensure due attention to the criminal prosecution of the crime of discrimination, as amended by General Instruction No. 01-2008;

(b) General Instruction No. 08-2007 on the processing of cases involving the crime of discrimination;

(c) General Instruction No. 12-2005 on application of the manual of anthropological forensic investigative procedures;

(d) General Instruction No. 01-2005 on application of the criterion of opportunity, referred to in article 25 (a) of the Criminal Procedure Code, instructing prosecutors on the repairing the damage must be "privileging compensation taking into account the customs and traditions of indigenous communities";

(e) General Instruction No. 10-2005, instructing prosecutors in cases in which indigenous and local authorities disagree on the extent of punishment to be applied and in which the accused is a member of the Garifuna, Mayan or Xinca communities, priority will

be given to house arrest in the community under the supervision of a local authority or institution, who regularly reports to the court.

553. The National Civilian Police has a Multiculturalism Division (DMLT) under the Crime Prevention Branch. Prior to the creation of DMLT, the Office of Multiculturalism had been created by PNC General Order No. 01-2003, which in 2005 became the Multiculturalism Division of the General Office of Crime Prevention by Government Agreement No. 662-2005.

554. This Division's activities are related to training and promotion of awareness of police personnel with knowledge, understanding and respect for the multicultural nature of Guatemala. The profile of recruits for the basic course for PNC agents takes into account the psychometric characteristics of the Guatemalan indigenous population, lowering the height requirement to 1.45 metres for women and 1.55 metres for men.

555. The Human Rights Ombudsman, through the Defence of Indigenous Peoples, created in 2006 the figure of the *Yom b'e, k'amalb'e* of human rights. The *k'amalb'e* of human rights cooperates with the Human Rights Ombudsman. He is an honourable person in that community, recognized for his leadership and efforts in defending human rights. Currently, there are 39 employees in remote municipalities in the departments of Chimaltenango, Huehuetenango, San Marcos, Santa Cruz and Solola. This mechanism seeks to extend institutional outreach to places where, because of their isolation, violations of the human rights of indigenous people are not reported.

556. Tables are annexed to this report with information about cases handled by the National Commission against Racism and Discrimination.

4. Education

557. Reorientation of bicultural education to intercultural bilingual education began in 1995 in Guatemala. To date, about 2,000 schools are affected in 18 indigenous communities: 17 Mayan communities and one Garifuna community. The purpose of intercultural bilingual education is to develop the linguistic competence of indigenous children in two languages and in more than one of two cultures.

558. The Ministry of Education (MINEDUC) is the institution with the largest number of programmes with components for indigenous peoples. There is the programme of activities common to the mother-tongue programme (L1) and the second-language programme (L2), the programme of pre-primary education, the programme of primary education and the literacy programme. The programme of activities shared by L1 and L2 has among its projects the Direction and Co-ordination of Bilingual Education, which covers all the projects of this programme.

559. The pre-primary education programme also has among its projects a pre-primary bilingual programme geared to Maya-speaking infants in urban and rural areas, with a view to preventing drop-outs, absenteeism and repeating classes at the primary level. Among the actions taken, bilingual teachers have been hired and funds transferred to community organizations to provide those teachers with teaching materials.

560. The Primary Education Programme also has a bilingual primary project, with sub-programmes entitled monolingual primary and bilingual primary. As at the pre-primary level, the aim is to keep children in primary school. Bilingual teachers have been hired and funds transferred to community organizations to provide children with the materials they need. The number of schools, pupils and teachers has increased since then, but has not yet reached a level of coverage corresponding to the proportion of indigenous population in the country.

561. In addition, the National Literacy Committee (CONALFA) operates at the departmental and municipal levels. It currently serves approximately 9,450 communities in Spanish and 17 Mayan languages. Greater coverage of Mayan languages is primarily in K'iché, Kakchiquel, Mam and Q'eqchi.

562. The “Bi-alpha” methodology stresses the value of learning in one’s mother tongue and in a second language. In 2006, literacy training in Spanish and Mam was given in five municipalities of the department of Huehuetenango. This teaching method revolves around five themes: production, the environment, gender, community organization and human rights.

(i) *Bilingual and intercultural education*

563. Government Agreement No. 22-2004 establishes for the General Directorate of Bilingual and Intercultural Education (DIGEBI) of MINEDUC a national policy on language, bilingualism that is to become widespread and national languages are to be compulsory, priority being given to the mother tongue, with the second language being another national language and the third language a foreign language. The teaching and practice of multiculturalism and interculturalism in the classroom in the Garifuna, Maya, Xinca and Spanish languages is compulsory.

564. MINEDUC has 12 bilingual and intercultural teacher-training schools where bilingual teachers are trained to teach classes in other national languages. The chief aim of bilingual intercultural education is to develop the cognitive and socio-affective skills of students, particularly indigenous persons, in order to render them capable of competent interaction in multicultural contexts, using their (indigenous) mother tongue and their second language.

565. MINEDUC has revitalized bilingual intercultural education (EBI): 1,844 bilingual teaching posts have been created; 432 bilingual posts have been opened to competitive exams; 293,300 self-teaching guides and teaching modules have been prepared in four major Mayan languages and distributed in two major languages (Mam and K'iche') in 1,170 EBI schools. A total of 1.7 million texts and primary guides have been reproduced in the Mayan languages (K'iche', Kaqchikel, Mam and Q'eqchi') in communication, languages, mathematics and Spanish as a second language.

566. Training in the use of that active methodology has been given to 2,400 teachers. To guarantee that bilingual education is actually practised in the classroom, 5,474 bilingual teachers have been given technical pedagogical back-up, and visits were made to 2,737 schools on four occasions in 2006.

567. Curricular reform includes intercultural education for all and EBI for the indigenous population. The debate on putting together a new proposal for education took several years, as it was difficult for the parties involved to adapt to the new variables of linguistic and cultural diversity.

568. The results of the most recent national examinations show the positive effects of bilingual education on the efforts of children in primary schools when one compares the results obtained by indigenous pupils in bilingual schools with those achieved by their peers in exclusively Spanish-speaking schools. That is why MINEDUC launched a plan to revitalize bilingual education in the country in April 2005.

569. The production of textbooks in indigenous languages gives clear proof of one of the major difficulties hindering bilingual education in Guatemala. Although there has been a switch to explicit advocacy of intercultural approaches in education and State bilingual education has purportedly moved on from a transitional stage to one of maintenance and development, generally speaking national curricula and even bilingual school textbooks continue to take Western culture as the reference.

(ii) *Educational reform*

570. After a process of simplification and teaching mediation, the basic nationwide curriculum came into effect in 2005, focusing on the human being as the entity promoting personal development, social development, cultural characteristics and processes that promote participatory harmonious coexistence. The axes of the educational reform and curriculum are:

(a) Unity in diversity. Multiculturalism and interculturalism, with components of identity, education for the unity, diversity and coexistence of peoples rights;

(b) Life in democracy and a culture of peace. (i) gender, ethnic and social equality, with the components: equity and equality, gender and self-esteem, sex education (HIV/AIDS), employment equity, ethnic equity, social equity, gender and class; (ii) value-oriented education with the components of personal, social and civic, ethical, cultural, ecological; (iii) family life, with components of family organization and finances, duties and rights of the family, duties and rights of children and youth, education for health, prevention and eradication of domestic violence, intergenerational relationships (care and respect for the elderly); (iv) city life, with the components of population education, education in human rights, democracy and culture of peace, civic education (legal culture, fiscal education, driver education and education on wise consumption).

(c) Comprehensive sustainable development. (i) sustainable development including human development, the human-nature relationship, preservation of natural resources and conservation of cultural heritage; (ii) social security and the environment: natural and social risks, prevention of disasters, insecurity and vulnerability.

(d) Science and technology. (i) training at work: work and productivity, labour legislation and social security, (ii) technological development: appropriate use of technology and information management.

571. A total of 44,991 primary school teachers were trained in implementation of the national basic curriculum. Also during 2007, the basic middle-level basic cycle of the national curriculum was implemented. At the same time, steps were taken to develop the curriculum area within the framework of the Strategy for the Improvement of Educational Quality (APRENDO) and as part of the Strategy for Education for Democratic Values and Civic Education 2004–2008, the Ministry of Education began implementing in 2004, the Citizenship Project Building, based on the Peace Accords, Design Reform and the Axis of Life in Democracy and Culture of Peace, which began in 2004, and in 2007 the Citizenship Building Programme was created in the Ministry of Education.

AA. Article 27 – Cultural rights to profess and practise one's own religion and to use one's own language

572. In its concluding observations issued in 2001, the Human Rights Committee recommended that Guatemala “continue its efforts to guarantee members of indigenous communities the enjoyment of all the rights recognized by article 27 of the Covenant and adopt comprehensive legislation for this purpose. It should also ensure that the implementation of this legislation improves the situation of members of indigenous communities in practice and not only on paper.” Furthermore, the Committee had recommended in 1996 “that further measures be taken to ensure that members of indigenous groups be protected against the prevailing violence within the country and enjoy fully their rights under article 27 of the Covenant, particularly with regard to preservation of their cultural identity, language and religion. The legislation on indigenous communities should be enacted without delay.” The following progress has been made and measures taken for the proper implementation of that recommendation.

1. Promoting culture

573. The Ministry for Culture and Sport (MICUDE) is the body promoting cultural development in Guatemala. Its long-term vision and policies promote the consolidation of this significant contribution to the Guatemalan economy.

574. Guatemala, through MICUDE and its departments and decentralized institutions like the Academy of Mayan Languages, the Guatemalan Indigenous Development Fund (FODIGUA) and the National Fund for Peace (FONAPAZ), among others, has launched programmes to support creative endeavour and social communication, as well as the protection and conservation of the cultural heritage, mindful of the decisive advantages that such support brings to the cultural sector as a whole.

575. The purpose of the Department for Promotion and Advancement of MICUDE is to organize and carry out research aimed at identifying the true sociocultural situation and the features of the local communities of our country. It endeavours to promote an awareness of cultural diversity through research and by carrying out sociocultural studies.

576. Among the cultural policies to emerge from the National Congress on Culture and Sport Policy was the culture of peace and sustainable human development policy that will promote a culture of peace on a foundation of activities and values built by Guatemalan

society in recognition of its multicultural nature. The aim is to form relationships by facing and overcoming difficulties and to generate development with a vision of the future.

577. In addition, the policy of protecting and conserving our cultural and natural heritage views the cultural heritage as being all material and immaterial evidence of the different cultures of Guatemala. For that reason, we have intensified the work of gathering, safeguarding, restoring and disseminating the heritage that consists of various forms of traditional cultural expression, including monuments, visual and plastic arts and set design.

578. In addition, as one of the strategies for protecting and conserving our cultural and natural heritage we encourage the local populations to take part in the work of researching, rescuing and restoring our cultural and natural heritage to its function in society. In the case of the sites that are considered sacred, a harmonious balance between their spiritual function and respectful tourist visits will assist in restoring them to their place in society.

2. Sacred sites of indigenous peoples

579. To protect the religious and spiritual practices peculiar to the Mayan peoples, MICUDE has adopted favourable measures, building, for example, 23 alternative altars at eight archaeological sites in the country, a move that was coordinated with and supported by Mayan spiritual guides and the Sacred Sites Unit. Likewise, the staff responsible for the administration of all the sacred archaeological sites under the jurisdiction of MICUDE have received training concerning Ministerial Agreement No. 425-2005 regulating exemptions from entrance fees to archaeological parks and ceremonial centres for spiritual guides and those accompanying them.

580. Likewise, CODISRA and DEMI have implemented and are implementing communication strategies to combat racial prejudice and foster intra-national and intra-cultural understanding, tolerance and friendship among the different groups that form the State of Guatemala. These measures and actions have been described in the section on institutional means of combating racism, articles 1 and 2 of the Convention, in the present report.

581. As noted in the discussion of article 18 in this report, a bill is currently being discussed to regulate the sacred sites of indigenous peoples.

3. National languages

(i) Regulatory framework

582. Through Congressional Act No. 9-2003, Congress issued the National Languages Act, which aims to regulate regarding the recognition, respect, promotion, development and use of the Garifuna, Maya and Xinka languages.

(ii) *Guatemalan Academy of Mayan Languages*

583. The Guatemalan Academy of Mayan Languages (ALMG) has adapted the Braille system to the Mayan languages. This work was the result of follow-up to the workshop on adaptation of the Braille system to the Mayan Languages: challenges and prospects for special education in Guatemala. The Academy has set up a centre for instruction in the K'iche' language for workers and officials in Santa Cruz del Quiché to enable them to provide better service to the population.

584. The Academy has issued a technical linguistic ruling on the correct name of the hill and sacred site called Ikitiw or Iq Utiw, in the municipality of San Lucas Toliman, declaring it a natural and cultural park, thus averting the dispute that was under way regarding the hill, which had been invaded by the Wider World Evangelical Church.

585. The Academy promotes the spread of knowledge of the Achi language and researches, plans and executes cultural projects in the department of Baja Verapaz to make known the traditions and the way words are pronounced and written, since this differs from village to village, as well as broadcasting radio programmes and teaching a diploma course in cultural linguistics. Among its activities, the Academy is supporting the project to standardize the transcription of the Poqoman language, so that the population that speaks it has a grammatical tool to facilitate understanding and interaction among the communities that speak dialects of the Poqoman language. Since this language has a series of dialectal variants, an attempt is being made to unify the way it is written and read. The Academy is also publicising the Mayan Languages Act, since this is urgently needed if institutions are to be aware of the rules and apply them, so that discrimination against indigenous peoples can be prevented.
