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**Guatemala<sup>\*</sup>, <sup>\*\*</sup>**

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\*\* The annex may be consulted in the files of the secretariat.

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## Abbreviations and acronyms

AIDS	acquired immunodeficiency syndrome
BANGUAT	Bank of Guatemala
CC	Constitutional Court
CENADOJ	National Legal Documentation and Analysis Centre of the judiciary
CGC	Office of the Comptroller-General of Accounts
CICIG	International Commission against Impunity in Guatemala
CODISRA	Presidential Commission on Discrimination and Racism against Indigenous Peoples
COGUADIH	Guatemalan Commission for the Promotion of International Humanitarian Law
CONALFA	National Literacy Committee
CONAPREVI	National Coordination Office for the Prevention of Domestic Violence and Violence against Women
COPREDEH	Presidential Commission for Coordinating Executive Policy in the Field of Human Rights
DEMI	Office for the Defence of Indigenous Women
EAP	economically active population
ECLAC	Economic Commission for Latin America and the Caribbean
ENCOVI	national living conditions survey
ENEI	national employment and income survey
FAO	Food and Agriculture Organization of the United Nations
FODIGUA	Indigenous Development Fund of Guatemala
FONAPAZ	National Fund for Peace
GANAN	Gran Alianza Nacional
GDP	gross domestic product
IDPP	Public Criminal Defence Institute
INE	National Institute of Statistics
LIDER	Libertad Democrática Renovada
MINEDUC	Ministry of Education
MP	Public Prosecution Service
MSPAS	Ministry of Public Health and Social Welfare

NGO	non-governmental organization
OAS	Organization of American States
OEI	Organization of Ibero-American States for Education, Science and Culture
OJ	judiciary
PAHO	Pan American Health Organization
PAN	Partido de Avanzada Nacional
PDH	Office of the Human Rights Advocate
PNC	National Civil Police
PP	Partido Patriota
RENAP	National Register of Persons
SEPAZ	Peace Secretariat
SEPREM	Presidential Secretariat for Women
SESAN	Food Security Secretariat
SICOIN	integrated government accounting system
TGW	National Radio of Guatemala
TSE	Supreme Electoral Tribunal
UNDP	United Nations Development Programme
UNE	Unidad Nacional de la Esperanza
UNICEF	United Nations Children's Fund
URNG	Unidad Revolucionaria Nacional Guatemalteca
WAP	working-age population

## I. Introduction

1. The Compilation of guidelines on the form and content of reports to be submitted by States parties to the international human rights treaties (HRI/GEN/2/Rev.6) stipulates that States are required to keep their common core documents current and “should endeavour to update the common core document whenever they submit a treaty-specific document”. The State of Guatemala submitted its first common core document in October 1994, since which time it has not been updated.
2. As may be assumed, during the almost 16 years which have elapsed since then, the situation in the country has undergone significant changes, which it is necessary to reflect in a new document that will provide the different United Nations bodies with a more current and realistic picture of the conditions and characteristics of Guatemalan society. This need is even more justified given that, during that period, the internal armed conflict came to an end, the peace agreements were signed and the process of their implementation was embarked upon, all of which has meant important changes in the social and political life of the country and the way in which the State views human rights.
3. The present document has been prepared with the objective of fulfilling the international commitments made in this connection and the resolute decision to improve the Guatemalan Government’s record with regard to ensuring that the information which it provides to the human rights bodies of the United Nations system is of high quality and up to date.

## II. General information about the State

4. The Republic of Guatemala is located on the Central American isthmus. Its territory borders Mexico to the north and west, Belize (the subject of a still-unresolved frontier dispute), the Atlantic Ocean and the republics of Honduras and El Salvador to the east, and the Pacific Ocean to the south. The geographical coordinates of the central area of its capital city are approximately 14°37' latitude north and 90°32' longitude west, and the country is in the time zone UTC -06:00.
5. According to the projection made by the National Institute of Statistics (INE), Guatemala would have 14,361,666 inhabitants by 2010, making it the most populated country of the isthmus. It extends over a total area of 108,889.2 square kilometres and is divided into 22 politico-administrative units, called departments, which are in turn divided into 333 municipalities (see the annexes, table 1, Size of the total population by department in the latest national population censuses and projection for 2010).
6. Guatemala has 1,687 kilometres of land frontier and 402 kilometres of marine coastline. Across these external boundaries, many economic, social, political and cultural dealings take place daily, including various forms of licit and illicit flows and traffic, which condition the lives of the people who dwell and work in the border areas and whose effects are transmitted over the entire country and region.
7. It is precisely its location on the Central American isthmus which gives Guatemala a special significance. This strip of land separates the ocean masses of the Atlantic and the Pacific and at the same time forms a natural bridge linking the great continental masses of North and South America. It is thus a natural crossroads of great ecological importance, which historical, political, economic and demographic processes have shaped into a mosaic of peoples and cultures with differences and asymmetries of such magnitude as to bring about a highly turbulent situation.

8. Present-day Guatemalan society is an accumulation of every form of deep division and duality, which can be traced back to the Spanish conquest of the sixteenth century, passing through the dictatorships that dominated the political scene for most of the twentieth century and the internal armed conflict (1960–1996). Throughout that time, a long process of colonization, exploitation and racial discrimination took place and, from the nineteenth century, a highly authoritarian and exclusive “national” State developed. Those features have left a deep mark on today’s society.

9. In recent decades, the signing of the peace agreements (1996) opened the way to the establishment of a multilingual and pluricultural State, thus laying the foundations for the construction of a more just and egalitarian society. However, the prospects for this new nation project were decisively conditioned by a power structure which neither the internal armed conflict nor the peace agreements could change.

10. The present State of Guatemala bears traits inherited from the colonial era, prominent among which are, for example, the racism and discrimination suffered by the indigenous peoples, historical economic dependence on farming and the vast inequality gap between the dominant élite and the working classes, which make up the vast majority of the population. Alongside these inherited traits, modernization efforts are being pursued in the political and economic spheres, with an essentially electoral democracy, which has constructed a weak institutional framework, infiltrated by organized crime and parallel power structures, and an economic system whose leading sectors seek to espouse the most modern forms of international capitalism and globalization but whose foundations continue to foster the concentration of wealth in a very few hands, which restricts the prospects for the country’s economic advancement, increases the asymmetry of power and undermines democratic political development and the rule of law.

## **A. Demographic, economic, social and cultural characteristics of the State**

### **1. Demographic indicators**

11. According to data from the last census conducted in 2002 by the National Institute of Statistics (INE), the population of Guatemala in that year totalled 11,237,196, equivalent to a population density of 103 inhabitants per square kilometre. On the basis of the projections made by the same source, the population growth rate between 1970 and 2008 averaged 2.4, meaning that by 2010 the population density would have increased to 132 inhabitants per square kilometre (see the annex, table 2, Annual population growth rates, 1970–2008; and table 3, Population density trends, 1880–2010).

12. In 2002, 22 per cent of the total population lived in the department of Guatemala, where the country’s capital (Guatemala City) is situated, the population density in that department amounting to 1,196 inhabitants per square kilometre (INE, 2002 census, pp. 15 and 16). The country’s population distribution is markedly unequal, largely owing to the fact that most economic, political and administrative activity is located in the capital city<sup>1</sup> and better access to basic services and greater employment opportunities are to be found there, as a result of which 38.8 per cent of the total urban population of the country resides

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<sup>1</sup> In Guatemala a metropolitan area is not defined by law but exists in fact. The capital city has grown to such an extent that it has spread beyond the boundaries of the municipality of Guatemala towards some neighbouring municipalities, to the point where it is difficult to distinguish where each begins and ends. For calculation purposes with regard to Guatemala City, which is viewed as the outcome of a process of metropolization and not solely on the basis of its municipal boundaries, data relating to the following municipalities have also been added: Mixco, Villacanales, San Miguel Petapa, Amatitlán, Santa Catarina Pinula, Chinautla, San José Pinula and Villanueva.

there (slightly more than 2 million people). The departments with the highest numbers of inhabitants after the department of Guatemala hardly make up one third of that department's population and have a far lower population density. They are, in descending order, as follows:

- (a) Huehuetenango, with 7.5 per cent of the country's total inhabitants;
- (b) San Marcos, with 7.1 per cent;
- (c) Alta Verapaz, with 6.9 per cent;
- (d) Quiché, with 5.8 per cent; and
- (e) Quetzaltenango, with 5.6 per cent.

With the exception of Quetzaltenango, none of the above-listed departments is home to more than 25 per cent of the urban population and all the others apart from San Marcos have a majority indigenous population (INE, 2002 census, page 18).

13. Figures from the 2002 census show that, in that year, 51.1 per cent of the country's total population was female (5,740,357 inhabitants), 53.9 per cent was rural (6,520,361 inhabitants) and 41 per cent was indigenous (4,610,440 inhabitants) (see the annexes, table 4, Population breakdown by department, sex, mother tongue and urban and rural area, 2002 census).

14. The Mayan people constitutes 95.7 per cent of the total indigenous population, while the remaining 4.3 per cent is composed of indigenous peoples of the Xinca and Garífuna ethnic groups. The majority of the country's indigenous peoples are located in rural areas (65.7 per cent of the total indigenous population) and are poorer and less well provided with basic services, which contributes to their continued exclusion and marginalization. Indigenous urban dwellers make up only 12.5 per cent of the country's total population, while non-indigenous urban dwellers represent 33.5 per cent.

15. An exception to the foregoing is the Garífuna ethnic group, whose population is 87 per cent urban, while at the other extreme is the Xinca indigenous people, whose urban population share is less than 20 per cent.

16. The Mayan people comprises 21 different ethnic groups, which together represent 39 per cent of the country's total population. The four predominant groups, on the basis of the number of persons belonging to them, are the K'iche', Q'eqchi', Kaqchikel and Mam, which totalled 3,573,104 persons according to the 2002 census (see the annex, table 5, Mayan population by sex and ethnic origin, 2002 census).

17. The current age structure of the Guatemalan population conforms to the more classic population pyramid shape, i.e. a wide base representing the youth population, tapering gradually and more steeply from the age of 30 years and ending with a very narrow top, almost non-existent from the age of 75 years. However, in line with population projections, society is undergoing a slow demographic transition, caused by various factors (see the annex, table 6, Population growth rate [percentage], life expectancy [in years], overall fertility rate [number of children per woman] and gross birth rate [rate per thousand inhabitants], 1960–2020):

(a) A declining fertility rate and gross birth rate. While the fertility rate was 4.6 children per woman between 2000 and 2005, it fell to 4.15 between 2005 and 2010 and is expected to decline to 3.71 children per woman between 2010 and 2015. The foregoing is reflected in the gross birth rate, which will fall, in the periods referred to, from 35.8 to 33.28 and ultimately to 30.5 live births per thousand inhabitants;

(b) A rising life expectancy. It is predicted that the population's life expectancy will increase by 3.6 years between 2000 and 2020. It is accordingly estimated that the

average age of 68.91 years recorded in 2000 for men and women will after 20 years have reached 72.5 years. As usually happens when this factor is analysed by sex, women show a higher life expectancy than that for men; in the case of the former, it is anticipated that in 2020 this indicator will reach 76.1 years, as against 72.5 years recorded in 2000, while, in the case of men, it will have risen from 65.5 years in 2000 to 69.1 years 2 decades later;

(c) A declining child mortality rate. Whereas, at the beginning of the second half of the twentieth century, Guatemala had one of the most alarming infant mortality rates in the continent, with figures reaching 202 under-five deaths for every thousand persons (in 1960), the infant mortality rate had fallen to almost one fourth (53 deaths for every thousand persons) forty years later (in 2000) and this declining trend continued, reaching 39 deaths for every thousand persons 7 years later (in 2007), which is consistent with countries having average infant mortality rates, the lowest rates being between 2.9 and 4.9 deaths for every thousand persons (predominantly in European countries) and the highest rates between 92.7 and 160.3 (primarily in sub-Saharan African countries) (see the annex, table 7, Infant mortality rates [under-one-year-olds], under-five mortality rates and maternal mortality rates, 1960–2007).

18. This gradual change in the population age structure is clearly apparent in charts 1, 2 and 3, included in the annexes, from which it can be seen how the traditional population pyramid has over the years taken on the barrel shape now typical of countries that have undergone a demographic transition such as that described.

19. A more detailed analysis of the country's population age structure currently shows a predominantly young society: in 2010, 69.7 per cent of the total population was under 30 years of age, 41.6 per cent under 15 years and 15 per cent under 5 years. At the top of the pyramid is a small group of over-60-year-olds, which makes up only 6.4 per cent of the total population and which, given the life expectancy figures, is concentrated essentially in the 60- to 64-year-old group (2 per cent of the total population) (see the annex, table 8, Total population by five-year age groups, 2005–2050).

20. It can be concluded from the above data that the dependency ratio was 46 per cent in 2010, meaning that, for every 100 Guatemalans of working age, there were potentially 46 persons who were dependent on them in economic terms, since they fell into the economically inactive age groups (under 15 and over 65 years). Of those 46 dependants, 42 were children under 15 years of age and 4 were adults over 65 years of age. However, the demographic changes predicted from population projections for the coming years indicate that the dependency ratio will decline to 32 per cent by 2050, with a breakdown of 9 children and 23 older adults.<sup>2</sup>

21. A key factor in the above patterns is the trend in birth and death statistics over recent years. While the number of births has fallen sharply (almost 40,000 fewer infants born in 2008, compared with 1999), the number of deaths has remained virtually stable or has risen at a far slower rate during the same period. In 2008, 5,094 more deaths were recorded than 10 years previously (see chart 4, Birth and death trends, 1999–2008; table 9, Births by year of occurrence and mother's department of residence, 1999–2008; and table 10, Deaths by year of occurrence and deceased's department of residence, 1999–2008).

## **2. Social, economic and cultural indicators**

22. According to data from the 2002 census, most Guatemalan households are male-headed (77 per cent), these heads of family being mainly young and middle-aged adults (79.8 per cent aged between 20 and 59 years) who have completed primary education only

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<sup>2</sup> Internal calculations based on INE data.



or have had no formal schooling (79.2 per cent of the total). In 2000, the average size of households was 5.2 members,<sup>3</sup> with an average of 2.7 children. Female household headship grew by about four percentage points between the 1994 and 2002 censuses; over that period, the number of households headed by adolescents fell by 0.4 per cent to represent just 1 per cent of the total. The educational level of household heads has been increasing; thus, while, in 1994, only 15.6 per cent of them had had access to secondary and higher education, that percentage had risen five points by 2002, to 20.6 per cent (see the annex, table 11, Heads of household by sex, 1994 and 2002 population censuses; table 12, Household heads by age group, 1994 and 2002 population censuses; and table 13, Household heads by schooling level, 1994 and 2002 population censuses).

23. In economic terms, Guatemalan society still shows considerable inequalities and disparities, despite the efforts of recent years, which have made it possible to reduce general poverty levels and extreme poverty levels, albeit not by the same proportion. According to data gathered over 17 years by the Economic Commission for Latin America and the Caribbean (ECLAC), in 1989 poverty affected 69.4 per cent of Guatemala's total population and, of that percentage, 42 per cent were destitute or living in extreme poverty; by 1998, i.e. nine years later, both indicators had fallen by, on average, slightly more than nine percentage points. According to the latest data, the downward trend was maintained, although its rate diminished, so that, by 2006, poverty had fallen by 6.3 percentage points and extreme poverty had done so even more slowly, by 2.5 points, meaning that 54.8 per cent of the total population was still living in poverty and, of that percentage, 29.1 per cent was extremely poor (see the annex, table 14, Proportion of poor and destitute persons as a percentage of the total population, by area, 1989–2006).

24. Data furnished by the National Institute of Statistics (INE), while not allowing the same evaluation to be made over time, present a better picture on the basis of the statistics provided for 2000 and 2006 and reinforce the view that the population percentage affected by poverty is following a sustained downward trend, as is the population in extreme poverty, but to a less marked degree. According to this information, 56.1 per cent of the population was living below the poverty line in 2000, falling to a level of 50.9 per cent 6 years later. This significant decline is not equally reflected in the reduction in extreme poverty, which during those years declined by just 0.5 percentage points, to 15.2 per cent, which is far below the figure of 29.1 per cent indicated by ECLAC (see the annex, table 15, Proportion of the population in poverty and extreme poverty as a percentage of the total population, by area, 2000–2006).

25. Poverty and extreme poverty in Guatemala are mostly rural, affecting 70.5 per cent of that population and just 16.3 per cent of inhabitants in the metropolitan area, which is the most urban area of the entire country. In 2006, the poor were to a larger degree female (51.5 per cent female and 48.5 per cent male) and indigenous (56.2 per cent) and poverty primarily affected male-headed households (82.6 per cent). Also, poverty affected the younger population to a significant extent (48.9 per cent of the country's inhabitants are poor persons between the ages of 0 and 14 years). As the age increases, the poor population percentage falls significantly, with persons over 65 years of age in poverty making up only 3.8 per cent of the total population (see the annex, table 16, Demographic characteristics of the population, by poverty levels, breakdown, in percentages, 2006).

26. Poverty may also be analysed by its incidence on population according to specific variables such as sex, ethnic origin or age. Of the country's total indigenous population, 74.8 per cent is poor and, of this percentage, 27.2 per cent is extremely poor, meaning that just one in every four indigenous persons escapes poverty. The foregoing contrasts with

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<sup>3</sup> This calculation includes relatives, domestic employees and guests (UNICEF, 2011, p. 117).

data on the mixed-race or non-indigenous population, where 6 of every 10 persons are “not poor” and, of these, only 7.7 per cent is extremely poor. Female-headed households are more successful than male-headed households in their efforts to keep their members out of poverty. While 69.2 per cent of female-headed households are “not poor”, this proportion falls to 57.3 per cent where a male is the household head and, whereas only 5.5 per cent of the 30.8 per cent of poor households headed by women is in extreme poverty, 11.4 per cent of the 43.7 per cent of poor households with male heads suffers from extreme poverty. As regards age, the youngest are the major victims of poverty: 6 of every 10 children below 14 years of age are poor, while, for the population aged over 15 years, this proportion falls to 4 of every 10 (see the annex, table 17, Demographic characteristics of the population, by poverty levels, incidence, in percentages, 2006).

27. In Guatemala, therefore, it is indigenous males aged between 0 and 14 years and living in male-headed households within the country’s rural areas who are most likely to be poor or extremely poor.

28. According to the 2007–2008 national human development report, prepared by the United Nations Development Programme (UNDP) on Guatemala,<sup>4</sup> among the non-poor, 10 per cent of the population — i.e. 1.3 million people — has consumption levels close to the poverty line and, of the poor, 8 per cent — i.e. 1 million people (living in general poverty) — is at risk of falling below the extreme poverty line. Without remittances,<sup>5</sup> the country’s general poverty would be 3 per cent greater and extreme poverty 4 per cent higher, which means that 500,000 people are not in extreme poverty and over 400,000 are not in general poverty thanks to family remittances.<sup>6</sup>

29. Together with poverty, rising inequality is one of the most worrying features of Guatemalan society. From trends recorded in recent years in the Gini coefficient and an analysis of income by population quintiles it can be seen how positive changes in poverty reduction have not been sufficient to improve the prevailing inequality gap. In 1998, the Gini coefficient, which relates to distribution of family income at the national level, was 0.560, with higher levels of inequality in urban areas (0.530) than in rural areas (0.510). By 2002, the situation had improved slightly, the national coefficient having fallen to 0.543, but this improvement was not sustained and, by 2006, the trend had been reversed. The position had even worsened in comparison with that recorded in 1998, the coefficient having risen to 0.585 over the territory as a whole, 0.547 in urban areas and 0.526 in rural areas (see the annex, table 18, Gini coefficient, ratios, 1995–2007).

30. The behaviour of the Gini coefficient is explained by data on income when analysed on the basis of population quintiles. It is entirely the outcome of the economic model adopted in the early 1980s and of successive structural adjustment programmes applied to the country’s economy, whose failure is evident not only from the fact that they did not promote economic activity and GDP growth, as promised, but also from the fact that they even increased the social and economic inequality gaps. Between 1998 and 2006, with few variations, approximately 60 per cent of incomes were concentrated in the top income

<sup>4</sup> UNDP, *Guatemala: ¿una economía al servicio del desarrollo humano? — Informe Nacional de Desarrollo Humano 2007/2008*, available at <http://desarrollohumano.org.gt/content/indh-20072008>.

<sup>5</sup> Family remittances are accounts in which inflows and outflows of unrequited transfers of money by emigrant Guatemalan workers resident abroad to residents in Guatemala and vice versa are recorded. The Bank of Guatemala records remittances on a net basis, i.e. the difference between inflows and outflows. In 2007, the financial volume of remittances was equivalent to 12 per cent of the country’s total GDP, i.e. comparable with the central Government’s tax revenue budget. The size of such funds is ten times greater than foreign investment and 4 times the income from exports of traditional products. UNDP, *Guatemala...* (footnote 5 above), vol. I, p. 321, and vol. II, p. 196.

<sup>6</sup> UNDP, *Guatemala...* (footnote 5 above), vol. II, p. 31.

quintile, while the bottom quintile at no time exceeded 3.7 per cent of incomes, with a slight improvement in 2002 and a higher level of concentration in 2006, during which year 62.8 per cent of the country's total incomes fell into quintile 5 and the income in quintile 1 decreased to 2.8 per cent (see the annex, table 19, Income by population quintiles, percentages of total income, 1995–2007).

31. Despite the serious global economic and financial crisis of recent years, the gross domestic product (GDP) grew between 2005 and 2010 at an average annual rate of 3.4 per cent, underwent a severe decline in 2009, during which year growth fell to 0.58 per cent, and began to show signs of recovery the following year, rising to 2.6 per cent. The country's total GDP, at constant 2000 prices, was 23,253 million United States dollars. If the total GDP value is taken into account, Guatemala continues to represent the largest economy in Central America. The same is not true when per capita GDP is considered; in this case Guatemala (2,250.00 dollars) comes after Costa Rica (4,980.00 dollars) and El Salvador (2,680.00 dollars). In fact, according to preliminary data from ECLAC, per capita GDP for 2008, at constant 2000 prices (1,700.17 dollars per inhabitant), suffered a major decline to levels very close to those of 1999 (1,698.17 dollars per inhabitant), after having peaked in 2005 (1,720.40 dollars per inhabitant) (see the annex, table 20, Gross domestic product (GDP) and per capita GDP, at constant 2000 prices, 1999–2008; and table 21, Annual GDP growth rates, as percentages, 2005–2010).

32. According to UNDP, a small group of enterprises, less than 10 per cent, receives the equivalent of two fifths of GDP as net earnings. A large group of small family enterprises, 90 per cent, which accounts for over half the self-employed population, receives only about one fifth of GDP as income. Between these 2 extremes are wage-earners, who make up about 35 per cent of the working population and receive almost all of the remainder.<sup>7</sup>

33. The composition of household consumption remained virtually unchanged during the period between 2000 and 2006. Food is the main consumption component, representing approximately two fifths of the total (39.4 per cent in 2006), followed by expenditure on housing, which accounts for almost one quarter of total household consumption (24.7 per cent in 2006). However, household consumption with respect to two of the most important items for human development, namely education and health, amounts to just 8.6 per cent.<sup>8</sup>

34. Nonetheless, consumption patterns and the relative share of households' spending on each item vary significantly depending on the socioeconomic stratum to which they belong. For example, for the poorest people, those in the bottom socioeconomic stratum, food represents 56.9 per cent of their expenditure, while for households in the top stratum it accounts for only one fourth of their consumption (24.4 per cent). In the case of housing, the low level of public investment and State protection with respect to this item means that the entire population, regardless of economic status, has to bear this cost, but with very different outcomes. Similar percentage spending with widely varying income levels produces considerable disparities. While the top stratum allocates some 30 per cent of its expenditure to housing, which provides it with access to better-quality accommodation, the 22 per cent spending allocation of families in the bottom stratum hardly enables them to afford housing in the worst conditions of overcrowding and disrepair.

35. As regards education and health, households' socioeconomic strata are reflected in clearly differentiated consumption patterns. With respect to education, the consumption of households in the middle and high socioeconomic strata (8.2 per cent and 7 per cent respectively) is four times greater than that of the poorest strata, which barely amounts to

<sup>7</sup> *Ibid.*, p. 29.

<sup>8</sup> *Ibid.*, p. 169.

2 per cent in the case of the bottom stratum and 3.8 per cent in the low stratum (see the annex, table 22, Composition of household consumption, in percentages, 2000–2006).

36. Household consumption on some items such as health and education is closely linked to State social expenditure and usually this ratio is inversely proportional. The higher the public spending level, the greater will be the coverage and the better the service quality and hence the smaller the need for families to allocate their own resources to meet those needs. According to data from ECLAC, public social spending as a percentage of GDP increased between 1990 and 2007 by 3.5 percentage points (from 3.9 to 7.4 per cent), having peaked in 2006, in which year it represented 7.8 per cent, and has not fallen below 7 per cent since 2001.

37. In 2007, social expenditure by the State of Guatemala as a percentage of GDP was the lowest in Central America (7.4 per cent). The other countries of the region, with smaller economies than Guatemala's, earmarked, in all cases, between approximately four and 10 percentage points more for priority social expenditure. At the extremes are El Salvador, with 11.1 per cent, and Costa Rica, with 17.2 per cent (see the annex, table 23, Public social spending as a percentage of gross domestic product and comparison with some Central American and Caribbean countries, 1990–2007).

38. Priority social expenditure, when measured as a percentage of total public spending, can be seen to have gradually increased. Between 1990 and 2006 it rose from 30 to 54.2 per cent. During that period, all areas of allocation show a sustained upward trend, which is far more accentuated in the case of expenditure on housing, where the increase is very much greater than in all other areas (a rise of 15.8 percentage points in 16 years). However, the highest spending is on education (21.1 per cent), followed by housing (16.7 per cent), health (8.6 per cent) and social security (7.76 per cent). According to data provided by UNDP, between 1996 and 2006 public spending on education increased from 1.7 to 3.0 per cent of GDP. This meant a rise in per capita expenditure of 86 per cent. Public spending on health rose from 0.9 to 1.8 per cent of GDP in the same period. This is equivalent to an increase in per capita expenditure of 101 per cent<sup>9</sup> (see the annex, table 24, Central government priority social expenditure by allocation area and as a percentage of GDP, 2001–2007; and table 25, Social expenditure as a percentage of public spending, 1990–2006).

39. The situation of inequity and poverty affecting most of the country's inhabitants severely restricts their access to goods to meet their basic needs, marginalizes them and denies them opportunities and rights. According to data for 2005 provided by the Food and Agriculture Organization of the United Nations, there are at least 2 million people below the minimum level of dietary consumption, which means that 16 per cent of the country's population is underfed.

40. This situation becomes worse on closer examination of the conditions of particularly vulnerable population groups, such as children. According to the latest data from the United Nations Children's Fund (UNICEF), 49.3 per cent of the infant population aged between 3 and 59 months suffered from chronic malnutrition in 2002. Once again, those most acutely affected by this serious problem were rural dwellers (55.5 per cent), indigenous inhabitants (69.5 per cent) and uneducated persons (65.6 per cent). According to the same source, these figures mean that Guatemala has the worst infant malnutrition rate in the entire American continent and the sixth-worst worldwide<sup>10</sup> (see the annex, table 26,

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<sup>9</sup> *Ibid.*, vol. I, p. 342.

<sup>10</sup> Statements made by the UNICEF representative for Guatemala, Manuel Manrique, to Europa Press in April 2008 and reported in the newspaper *El Mundo*: [www.elmundo.es/elmundo/2008/04/03/solidaridad/1207218919.html](http://www.elmundo.es/elmundo/2008/04/03/solidaridad/1207218919.html).

Absolute and relative data on the Guatemalan population below the minimum level of dietary consumption (undernourishment), 1990–2005; and table 27, Child malnutrition indicators by geographical area, region, ethnic category and educational level, in percentages, 1987–2002).

41. The poor dietary conditions of a large share of the population place it in a situation of increased vulnerability to the major risk factors and morbidity indicators in the country. From table 28, contained in the annex, it is possible to see the patterns of diseases such as cholera, dengue fever, malaria, parasitic illnesses, tuberculosis and AIDS, which are regarded as having the highest incidence within Guatemala's epidemiological profile. The table contains data for the thirteen-year period from 1995 to 2007 inclusive.

42. During that period, the highest number of recorded cholera cases (7,970) occurred in 1995. However, there followed a markedly downward trend, the number falling to a single case in 2002, and there have been no further reported cases since 2003. The same is not true of dengue fever, whose pattern over the years has been far more variable, showing no clearly defined trend and averaging 5,379 cases during the period referred to. The incidence of malaria among the population is far greater than that of dengue fever, with an average of 32,852 cases for the period. However, 2007 shows a significant reduction in the number of reported instances, which for the first time fell to below 20,000 cases per annum (15,382 in 2007). The annual parasite incidence rate (the number of observed cases per 1,000 inhabitants) reveals a rising trend over time, with the 1995 figure (2.3 cases per 1,000 inhabitants) having increased sixteenfold to an incidence rate of 36.8 cases per 1,000 inhabitants in 2007. With regard to tuberculosis, the national incidence rate has at no time exceeded 30 cases per 100,000 inhabitants (recorded in 1997) and has averaged 25.7 instances per 100,000 inhabitants over the period, a trend which may be regarded as moderate if compared with that of countries such as Swaziland and South Africa, with 1,155 and 940 cases respectively per 100,000 inhabitants, the highest rates worldwide.<sup>11</sup>

43. Although there is the risk of a degree of underreporting with any of the above-mentioned diseases, this is particularly marked in the case of acquired immunodeficiency syndrome (AIDS), owing to the social stigma which it can still mean for sufferers and to the prejudices connected with it, in addition to cultural and educational reasons. As stated by some sources, AIDS statistics might reflect some 30 per cent fewer than actual cases in existence. In 2006, the national AIDS incidence rate was 7.4 cases per 100,000 inhabitants, as against an average of 5.4 over the years referred to, with a male-female ratio equivalent to 2.1 male cases for every female case recorded in 2006. This ratio reached 4 to 1 in 2004 and 2005 and its lowest level was recorded in 2003, with a ratio of 1.8 to 1. The number of deaths officially recorded as a consequence of AIDS is available only for the years between 2000 and 2004 inclusive, during which a total of 3,043 reportedly occurred, the highest number of AIDS-related deaths (774) being recorded in 2004.

44. Recent projections by the Ministry of Public Health and Social Welfare on the extent of the AIDS epidemic indicate that, by 2015, 123,480 persons over the age of 15 years will be living with HIV, there will be 12,880 new cases of infection, and 3,650 deaths caused by HIV will be recorded that year. On the basis of these estimates, the disease prevalence among adults between the ages of 15 and 49 years would be 0.9 per cent in 2005 and 1.16 per cent in 2010, reaching 1.55 per cent in 2015.

45. The figures are far lower in the case of children (0 to 14 years), whose prospects of survival are much greater than for adults, provided that they can have access to medical care and drugs necessary for appropriate treatment. In 2015, according to the same source,

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<sup>11</sup> *The Economist*, 2009 report, p. 84.

4,300 children will be living with HIV, there will be 380 recorded new cases of HIV virus infection and 138 children will die of AIDS. On the basis of these figures and taking data on both adults and children into consideration, the only variable which displays a downward trend is that relating to the number of new cases of HIV virus among children. While, in 2005, there were 550 recorded cases, that number fell to 435 in 2010 and there could be 55 fewer recorded cases five years later (see the annex, table 28, Projections of HIV and AIDS cases, 2005–2015).

46. It can be concluded from this epidemiological profile that the average mortality rate for communicable diseases was 177.6 deaths per 100,000 inhabitants between 1995 and 2004. After a period of sustained increases, this rate peaked in 1998 (216.7 cases per 100,000 inhabitants), whereupon it began a steady decline, reaching its lowest level in 2004 (135.3 cases per 100,000 inhabitants) (see the annex, table 29, Indicators of morbidity, mortality, risk factors and disease transmission, 1995–2007).

47. An analysis of data on the 10 major causes of general mortality recorded nationwide in 2009 reveals significant differences compared with the trend observed 10 or 20 years previously. In the late 1980s and early 1990s, the main causes of death in Guatemala were related to preventable, curable and communicable diseases such as acute respiratory infections, gastrointestinal infections and other infectious or contagious diseases. However, diseases affecting adults and older adults have become increasingly prevalent as a result of changes in population structure and in people's lifestyles and habits, as well as the effects of the ever increasing process of urbanization. This is reflected in an accelerated upward trend in, for example, chronic and degenerative diseases such as cancer, diabetes or hypertension and in other health problems such as cardiac infections or cerebrovascular accidents, to all of which must be added the significant and growing incidence of deaths caused, in the case of Guatemala, by various forms of violence, prominent among which are firearm-related deaths.

48. A report published by UNDP in 2008 on the health system in Guatemala states in this connection that proportional mortality attributable to communicable diseases fell from 76 to 62 per cent of all deaths recorded, whereas deaths from cardiovascular diseases increased by 61 per cent and from tumours by 100 per cent during the same period (1986–2004). In 1986, proportional mortality was characterized by communicable causes. While proportional mortality in all the country's departments arose mainly from communicable causes, a differentiated pattern subsequently emerged.<sup>12</sup> In 2009, according to data from the Ministry of Public Health, the main cause of death, by number of cases recorded, was pneumonia, with over 6,000 fatalities, followed by acute myocardial infarction (2,953) and, immediately following, by cardiac arrest (2,222). In fourth place were firearm deaths, which left 2,156 victims and represented slightly over 10 per cent of all causes of mortality that year. Diabetes mellitus occupies seventh place and in eighth position are deaths resulting from diarrhoea (see the annex, table 30, Ten major causes of general mortality nationwide, 2009).

49. Although central government expenditure on health and welfare as a percentage of GDP and as a percentage of public spending has in recent years been virtually unchanged, public policies aimed at reducing infant and under-five mortality rates seem to be achieving positive results, which are apparently improving. The infant mortality rate was 49.2 cases per 1,000 live births in 1995 and had fallen to 30.1 per 1,000 live births by 2007, which still calls for substantial efforts and investment in order to reduce it to a minimum. In the period from 2005 to 2010, the country which had the lowest recorded infant mortality rate

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<sup>12</sup> Virginia Moscoso and Carlos Flores, *El sistema de salud en Guatemala. ¿Hacia dónde vamos?*, issue 3: "Retratos de muertes evitables", UNDP, 2008, p. 49.

worldwide was Iceland, with an incidence of 2.9 cases per 1,000 live births, while at the other extreme was Sierra Leone, with 160.3 cases per 1,000 live births.<sup>13</sup>

50. In Guatemala, the under-five mortality rate was 58.7 cases per 1,000 live births in 1997 and fell to its lowest level in 2006, with 41.2 cases recorded that year. Unfortunately, similar results have not been achieved in regard to maternal mortality, where the rate is not only high but is following an upward trend, with figures for 2005 (148.8 cases per 100,000 live births) higher than those recorded 8 years previously (94.9 cases per 100,000 live births).

51. Maternal mortality is linked to many factors, including poverty, low educational levels, malnutrition and lack of access to high-quality, nearby health services, as well as factors of a religious or cultural nature, such as male sexist attitudes prevalent in Guatemalan society, all of which restrict or condition women's opportunities for having the number of children they want, when they want. One example of this is the low percentage of women of childbearing age (between 15 and 49 years) who use contraceptive methods or whose partners use such means. According to the latest available data, only 26.9 per cent of women of childbearing age or their partners took measures to prevent unwanted pregnancies in 1995 and that figure, although displaying an upward trend, had not exceeded 35 per cent by 2002, i.e. 7 years later (see the annex, table 31, Percentage of women of childbearing age [15 to 49 years] using contraception or whose partners use contraception [contraceptive prevalence rate], 1995–2002).

52. An analysis of types of contraceptives used is also significant. As can be seen in chart 5, included in the annex, frequency of use of injectable contraceptive methods among Guatemalan women is far higher than for any other method. While 1,334,332 women opt for this type of procedure, only 342,521 women or their partners use the second most common method, the condom, followed, in descending order, by the pill, the lactational amenorrhea method and other, less-used means. This considerable difference may be due to several reasons. Not only is injectable contraception a method whose effects are long-acting and which does not entail the discipline of a daily intake, as with the pill, or a specific use agreed upon by both parties, as in the case of condoms; it is also the most discreet form of birth control available to women since they may use it without their partners' necessarily being made aware of it and they can thus exercise their right to make decisions about their bodies notwithstanding male sexist patterns that might militate against their so doing.

53. The limited use of birth control methods is also apparent from the data relating to medical abortions as a proportion of live births. However, there are no official data with respect to this indicator and the little information available gives only a glimpse of the real extent of the phenomenon. The foregoing is due to the fact that legislation in force in Guatemala allows abortions to be legally performed only if the mother's life is in danger. Therefore, most unwanted pregnancies are clandestinely terminated. Because of the little available information about this phenomenon, sources other than official ones have to be consulted. A report published in 2006 by the Guttmacher Institute (Guttmacher Institute, 2006) on abortion in Guatemala describes the following situation:

(a) The clandestine nature of abortion explains the lack of official records on abortion-related morbidity and mortality in Guatemala;

(b) Induced abortion is highly restricted and is permitted only if the life of the mother is at risk;

<sup>13</sup> *The Economist*, 2009 report, p. 83.

(c) The practice is nevertheless very common, some 65,000 abortions being performed each year on women aged between 15 and 49 years;

(d) This represents an annual rate of 24 abortions per 1,000 Guatemalan women of childbearing age;

(e) A study carried out between August 1993 and July 1994 at 6 hospitals in Guatemala found that, with regard to all women treated for abortion complications during that period, there was a high probability that the terminations had been induced in some 50 per cent of cases;

(f) A further study conducted in 2000 at the hospital of Coatepeque (a city in the western department of Quetzaltenango), showed that 10 per cent of the hospital budget and 30 per cent of gynaecological and obstetrical services were dedicated to the care of patients with abortion complications;

(g) A 2005 report prepared with 74 professionals referred to the figure of 27,000 women treated for abortion complications, 80 per cent of which were due to induced abortions.

54. The link between the population's educational levels and personal health standards is abundantly demonstrated. In the case of women, it also determines the number of children they have and decisively influences their children's schooling and the prospects of their continuing in education. However, women in Guatemala still have fewer educational opportunities than men, so that, while, in 2010, the literacy rate for males between the ages of 15 and 24 years was 89.3 per cent of the total, it was almost 11 percentage points lower for females (78.4 per cent), although the gender gap has narrowed over the past 50 years. In 1970, the difference in the male and female literacy rates in the above-mentioned age range was almost 18 points. By 1980, the difference had narrowed to 16 points and stood at 14 points 10 years later. The projections indicate that this trend will be maintained and that there should be a difference of 10 points by 2015 (see the annex, table 32, Literacy rates for the population aged from 15 to 24 years, in percentages, 1970–2015).

55. In recent years, illiteracy in Guatemala has been the subject of specific action under the responsibility of the National Literacy Committee, as a result of which it has been possible to reduce the rate by slightly more than 12 per cent between 1994 and 2004. In 2004, just over one quarter of the population aged 15 years and above (26.28 per cent) was illiterate, which represents almost 2 million people, compared with 38.75 per cent in 1994 (see the annex, table 33, Illiteracy patterns in Guatemala, total population and percentages, 1994–2004).

56. Under the Constitution of Guatemala, education from the initial stage to the lower-secondary level (or basic stage of secondary education) is a right of the people and is considered compulsory in accordance with the age limits established by law. In practice, however, efforts to enforce compulsory education have to date been centred on the primary level. The cost-free nature of education provided by the State is recognized and it is stipulated that the education system should be decentralized and regionalized in order to address the special needs or characteristics of the population groups living in the country's different areas. It is also expressly stated that, in predominantly indigenous areas, education should preferably be bilingual. Government budgets incorporate items relating to the financing of a nationwide State education system, including funds for educational establishments and teaching and administrative personnel, serving the population from pre-primary age to university level. Unfortunately, budgetary appropriations have historically fallen short of the real needs of the school population which they are intended to meet, with the result that the quality of the education provided and also its cultural relevance and, in many cases, its coverage have been deficient and insufficient, as can be seen from the indicators referred to below.



57. Table 34, included in the annex, shows trends in data on net enrolment rates for primary and secondary schooling in Guatemala. The information appearing in the table reflects the emphasis placed on the public education policy in recent years, during which it was decided to accord priority, as an essential targeting mechanism, to the coverage and provision of primary schooling over any other level. For example, it was established as a national education policy strategy for the period from 2004 to 2008 that preferential treatment would be allocated to each of the primary grades consecutively, with a view to ensuring that the largest possible number of children were enrolled in the first year of primary education and were taught under the best conditions achievable, and that school attendance would rise and dropout rates would fall. Priority attention would then be given to the next school grade the following year, and so on thereafter. It is to be hoped that the coming years' statistics will also reflect the results of the conditional cash transfer programmes introduced in recent years, since one of their key components is the requirement that children whose families are programme beneficiaries attend school on a regular basis.

58. According to available data, the net primary enrolment rate in 1970 was just 49 per cent of the total population in that age group. However, this figure had risen to 63.6 per cent by 1991 and the data show a sustained and gradual improvement in subsequent years so that, by 2000, the rate was already 85.4 per cent and, in 2009, almost all children in the corresponding age group were enrolled at that level (98.68 per cent of all primary-age children). Nevertheless, as with many other indicators, the data reflect the discrimination suffered by girls since, in all the years for which information is presented, lower enrolment rates can be observed for females than for males, the difference ranging from 8 percentage points in 1970 to 3.4 in 2007 (see the annex, table 34, Net primary and secondary enrolment rates, in percentages, 1970–2007; and table 35, Net enrolment rates, in percentages, 2001–2009).

59. It is also possible to observe a sustained upward trend in net enrolment rates for secondary education although the record at this level of schooling is seen to be poorer when the figures are compared with those for primary education. In 1970, only 8.6 per cent of the secondary-age population was enrolled in the education system. By 2000, this percentage had increased to slightly more than one quarter of the secondary-age population; in 2009 it was continuing to show improvements and already stood at 40.25 per cent. Once again, girls and adolescent females benefited to a lesser extent than boys and adolescent males from access to this level of schooling. The net enrolment rate over the period was, on average, equivalent to 2.9 percentage points lower for females than for males.

60. In addition to the above-mentioned data, information is furnished by the Ministry of Education on net enrolment rates for other stages of education such as the pre-primary level<sup>14</sup> and the upper-secondary level.<sup>15</sup> The general trend in net enrolment rates from primary schooling upwards is inversely proportional to the educational level, i.e. the higher the educational level, the lower will be the rate. Data on pre-primary and upper-secondary education show the same trend as already referred to with regard to the other levels (primary and lower-secondary education), i.e. a gradual improvement over the years. The net enrolment rate at the pre-primary level stands at 57.09 per cent of the population

<sup>14</sup> Pre-primary education is aimed at all children aged between 5 and 6 years and prepares them for entry to primary education.

<sup>15</sup> The upper-secondary level encompasses the population age group between 16 and 18 years. It follows lower-secondary education, which is also referred to as the basic stage of secondary education. Education at the upper-secondary level, which comprises 2 or 3 years of study, prepares pupils for university studies (baccalaureate) or provides them with intermediate vocational training (for careers including those of secretary, teacher, accountant, computer technician, etc.).

between the ages of 5 and 6 years, which is 16 percentage points higher than in 2001. The upward trend is far less pronounced at the upper-secondary level, the best enrolment figures (in 2009) showing a rate of only 21.21 per cent of adolescents of upper-secondary age, which is just 4.9 percentage points higher than the figure for 2001 (16.36 per cent) (see the annex, table 35, Net enrolment rates, in percentages, 2001–2009).

61. As with net enrolment rates, school attendance figures display a sustained upward trend. While the 1981 census showed an average attendance rate equal to 25.2 per cent of the school-age population, the results of the 2002 census put it at slightly more than 7 percentage points higher than the previous figure (32.9 per cent). There are no available data disaggregated by educational level or for more recent years but the difference in 2002 between the average net enrolment rate and attendance rate for all educational levels is significant. While the former was 43.88 per cent of the school-age population, the latter (attendance) was almost 11 percentage points lower (32.9 per cent). According to information gathered by UNDP<sup>16</sup> on the causes of school non-attendance, the main reasons why children and young persons stopped attending school in 2006, regardless of the stage of education at which they were enrolled, include, in first position, a shortage of money to meet schooling expenses (purchase of books and educational materials, uniforms, travel, etc.) despite the cost-free nature of enrolment and the facility of monthly payments; in second position, a lack of interest in studying, which tends rather to be a reflection of family attitudes towards academic work and not solely that of student attitudes; in third position, the need to undertake household duties (domestic tasks, unpaid work); and, in fourth position, the necessity to work (paid employment) in order to provide additional household income. Unlike the first two above-mentioned factors (shortage of money and lack of interest), whose patterns do not vary significantly according to the sex of the individual, the last 2 factors clearly show the persistent gender inequity existing in Guatemala. With regard to household duties, for example, the higher the educational level and thus also the school population age, the far greater will be the number of females than males who have to discontinue their studies. At the upper-secondary level, this factor affects only 0.5 per cent of males but means that 23.2 per cent of females cannot continue their education. At this educational level, 38.4 per cent of males abandon their schooling to take up paid employment while only 10.5 per cent of females leave school for this reason (see the annex, table 36, School attendance trends by sex, 1981, 1994 and 2002 censuses, calculations on the population aged 7 years and above).

62. Indeed, one of the major challenges facing the education system is that of eliminating school dropout and its causes. The dropout rates recorded by the Ministry of Education for all educational levels began to stabilize from around 2002. Small upward or downward variations were recorded in the ensuing years but without any clearly visible trend in either direction. In primary education, for example, the dropout rate recorded in 2000 was equivalent to 10.40 per cent. This was the highest rate reported in the period from 2000 to 2009, the lowest level occurring in 2007, when the rate fell to 5.49 per cent, rising again slightly in 2009, to 5.51 per cent. In secondary education, the lowest dropout rate (5.26 per cent) was recorded in 2005, while the year of occurrence of the highest dropout rate, 14.42 per cent, coincided with that for primary education (2000), and the period ended with a rate of 8.22 per cent (see the annex, table 37, Primary and secondary dropout rates, in percentages, 2000–2009).

63. According to a document published in November 2002 by the Organization of Ibero-American States for Education, Science and Culture (OEI), school dropout in Latin America in 2000 was far greater among secondary pupils than among primary pupils, most

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<sup>16</sup> UNDP, *Guatemala...* (footnote 5 above), vol. II, p. 118.

markedly in the first year of secondary education.<sup>17</sup> However, in the case of Guatemala, Bolivia, Brazil and 4 other countries, the document states that between 40 and 70 per cent of urban children stop attending school before completing the primary stage. It also indicates that school dropout was then more pronounced in rural than in urban areas and among lower-income households. The report states that, in 2000, the overall dropout rate in Guatemala for young persons aged between 15 and 19 years stood at 47 per cent and cites, among the most frequently encountered reasons for school dropout, the pursuit of paid employment, early pregnancy, repetition as a result of non-attendance, poor performance and delayed schooling.

64. Between 2000 and 2009, grade failure rates in primary and secondary education followed a sustained, moderate downward trend at all levels of schooling. In primary education, the failure rate, which at the start of the period was 17.77 per cent of all pupils assessed at the end of the academic year, fell a few tenths of a percentage point each year, reaching its lowest level in 2008 (12.98 per cent), and rose slightly in 2009, the period ending with 13.60 per cent of pupils failing their grade. The percentages for lower-secondary education were almost two and a half times higher than those for primary education over that entire period but their decline was far more accelerated than for primary education since, while for lower-secondary education the failure rate, which was 46.03 per cent in 2000, reached its lowest level in 2009, having fallen slightly more than 14 percentage points to 31.63 per cent, the failure rate in primary education fell by only 4.17 percentage points during the same period. According to some international parameters, in primary education a failure rate that does not exceed 9 per cent of all pupils completing a particular grade is regarded as good (see the annex, table 38, Grade failure rates in primary and secondary education, in percentages, 2000–2009).

65. As regards the ratio of teachers to students in publicly funded schools, see the annex, table 39, Pupils enrolled, teaching personnel and average pupil-teacher ratios, 2008–2009.

66. According to data from the latest national employment and income survey, conducted, in 2010, by the National Institute of Statistics (INE), the working-age population<sup>18</sup> in Guatemala represented 73.5 per cent of the total population. Within that total, 5,769,262 persons made up the economically active population, i.e. 40 per cent of all the country's inhabitants, comprising 38.5 per cent employed and 1.5 per cent unemployed. Of the economically active population, 59.65 per cent is underemployed and only the remaining 36.94 per cent is fully employed. The gross employment rate, i.e. the employed population as a percentage of the total working-age population, is equivalent to 52.4 per cent. The overall employment rate is 96.5 per cent (see the annex, chart 6, Population composition by economic variables, 2010).

67. The majority of the economically active population of Guatemala is urban, 21.7 per cent residing in the metropolitan urban area; 30.5 per cent of the economically active population lives in the country's other urban areas and the remaining 47.8 per cent in rural areas. As regards gender, almost 2 thirds of the economically active population are male (63.7 per cent) and the remaining 36.3 per cent female and, with respect to age, working children make up 13 per cent and older adults 5.2 per cent (Instituto Nacional de Estadística, 2010, transparencies 16-18).

68. In addition to unemployment, Guatemala's two main labour problems are underemployment and informal employment. The official figures for open unemployment

<sup>17</sup> Espíndola and León, *La deserción escolar en América Latina: un tema prioritario para la agenda regional*, OEI, *Revista Iberoamericana*, issue No. 30 (September-December 2002), p. 9.

<sup>18</sup> In Guatemala's official statistics, the working-age population comprises all persons aged ten years and above.

in fact correspond to those of a country in full employment, as can be seen in table 40, included in the annexes. According to the national employment and income survey, the unemployed population has, since 2002, not risen above 3.5 per cent of the total population. This rate relates to the last year for which figures were reported, the lowest level being recorded in 2007, when the rate fell to even below 3 per cent (2.47 per cent). Since 2002, the wage-earning (non-self-employed) population has risen consistently, reaching 51.17 per cent of the employed population in 2010, which means that the number of self-employed or independent workers declined by a similar proportion. According to UNDP, those most affected by unemployment are rural workers, non-indigenous workers, workers who have completed lower-secondary education and young workers (in particular those aged between 18 and 25 years) and on women. Guatemala has a low unemployment rate. It is currently the lowest in Central America<sup>19</sup> (UNDP, 2008. vol. I, p. 114) (see the annexes, table 40, Main employment indicators, 2002–2010; and table 41, Unemployment and underemployment rates for different demographic groups, 1989–2006).

69. According to the National Institute of Statistics (INE), visible underemployment refers to employed persons who work fewer than 40 hours per week and wish to work more and also includes those who work 40 hours or more per week and whose income is less than the minimum wage for the branch of economic activity in which they are employed. In 2010, visible underemployment affected two of every 10 Guatemalans (21.03 per cent), which is a higher figure than 8 years previously, when it affected 1.5 of every 10 Guatemalans (14.97 per cent). The underemployed mostly fall into the same groups as those which account for the bulk of the unemployed: urban workers, non-indigenous workers, workers who have completed lower-secondary education, young workers aged between 18 and 25 years and women. The visibly underemployed are primarily wage-earners, followed by self-employed or independent workers. As regards economic activity, those most affected are persons employed in the tertiary sector (commerce and services) and in agriculture, followed by workers in industry (see the annex, table 42, Labour market characteristics of the population aged 10 years and above, 2006).

70. As previously mentioned, besides unemployment, one of the major problems facing the country's working population is quality of employment, since a large percentage of workers are employed in the informal labour market, which means that they are not covered by the Guatemalan Social Security Institute and do not therefore enjoy the benefits provided by it, which consist essentially of medical and hospital care for workers and their dependants in connection with accidents and illnesses,<sup>20</sup> maternal and child care relating to pregnancy and childbirth, and disability, old-age and survivorship (widowhood) pensions. Available information for 2006 indicates that most persons falling into the informal worker category are uneducated, rural, indigenous females aged between 10 and 17 years and living in extreme poverty. In 2000, 83.6 per cent of the working population was engaged in informal employment, whose rate has followed a slightly downward trend over the years, having fallen by just under 2 percentage points (to 81.8 per cent) by 2006. A further indicator of informal labour, which makes it possible to appreciate the country's precarious employment situation, is the number of workers engaged without contracts, an arrangement which affected 82.7 per cent of the total population of Guatemala in 2006 (UNDP, 2008, vol. II, p. 125). Also, data from the National Institute of Statistics (INE) reveal that, in 2006, the pay of 61.4 per cent of the wage-earning population was less than the cost of the basic food basket; in 87 per cent of cases, the wage does not enable workers to meet basic living expenses; and in 50.1 per cent of cases the monthly pay was less than the

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<sup>19</sup> UNDP, *Guatemala...* (footnote 5 above), vol. I, p. 115.

<sup>20</sup> The children of workers who contribute to the Guatemalan social security system are entitled to medical care up to the age of 5 years only.

official minimum wage. In all these cases, most of those affected were female indigenous, rural and informal workers. As regards branches of economic activity, a significant percentage of these persons worked in the agricultural sector or the social services and health sector and as unskilled labourers or domestic employees.<sup>21</sup>

71. Despite the process of urbanization which Guatemala is undergoing, between 1989 and 2006 agriculture continued to be the sector which generated most employment, although its share in relation to the other productive sectors has been slowly decreasing. In 1989, almost half the country's working population (49.9 per cent) was employed in agriculture and, 7 years later (2006), the agricultural workforce comprised one third of all employed persons (33.22 per cent). The majority of agricultural workers are indigenous males. Commerce is becoming increasingly important as a generator of employment. In 2006, it provided work for 22.76 per cent of the employed population, compared with only 13 per cent in 1989. Unlike agriculture, commerce employs a predominantly female, urban and non-indigenous workforce. Given the limited significance of industry in the country's productive structure, it is understandable that the proportion of the working population employed by this sector should be the third-largest, although this share has been increasing over time. In 2006, industry employed 15.87 per cent of the population, while, some years previously (in 1989), that proportion was 2 percentage points lower (13.67 per cent) and there had been no major changes in this indicator until 2000. The industrial worker profile is male and female in virtually equal proportions, mostly rural and non-indigenous. These productive sectors were followed, to a less significant extent and in descending order, by the social services and health sector, construction, financial services and communications (see the annex, table 43, Employed population by branch of activity, in thousands of inhabitants and percentages, 1989–2006).

72. Precarious labour conditions in Guatemala have a negative effect on the organization of the labour force. Indeed, the trade-union movement has little power to influence political decision-making that could affect it and its capacity to engage in dialogue with State institutions is limited, which puts it in a position of weakness vis-à-vis the immense power of employers' organizations. Official data provided by the Ministry of Labour indicate that, in 2005, only 1.5 per cent of the country's employed population (79,915 workers) belonged to trade-union organizations. UNDP reports that the one major problem is, however, not membership numbers or sociocultural characteristics but the low level of representation of workers' organizations and their weakness in the face of the concentration of power of the major employers.<sup>22</sup> The unionized worker profile is predominantly that of a non-indigenous, urban male, educated to lower-secondary level, aged between 36 and 64 years and working for a large company employing more than 50 people.

### 3. Indicators on the political system

73. Article 140 of the Constitution defines the political system of the State as republican, democratic and representative (Asamblea Nacional Constituyente, 1985). At the head of the executive are the president and vice-president, who are elected directly by the citizens on a joint ticket. They hold office for one four-year, non-renewable term only. The vice-president may be a presidential candidate after being out of office for 4 years. Article 187 lays down that a person who has at any time held office as president of the Republic by popular election or has discharged such office for more than 2 years in replacement of the incumbent may not in any circumstances again hold such office.

<sup>21</sup> UNDP, *Guatemala...* (footnote 5 above), vol. II, p. 128.

<sup>22</sup> *Ibid.*, pp. 39 and 129.

74. Legislative power is vested in Congress, which is a unicameral body composed of 158 parliamentary members, who are elected directly by secret, universal suffrage, under a system of electoral districts and national lists, for a four-year term and may be re-elected. Each of the country's departments forms an electoral district, with the exception of the department of Guatemala. For this department, the municipality in which Guatemala City is located constitutes the "central district", while the department's other municipalities make up the "district of Guatemala". At least one member has to be elected by each electoral district. The law establishes the number of members corresponding to each district in proportion to the population. A number of members equivalent to 25 per cent of the district members is elected directly from the national list.

75. Twenty-five political parties have legally registered to take part in the next general elections, which will be held in September 2011. Under the terms of the Electoral and Political Parties Act, any group wishing to become a political party has to be represented in at least 50 municipalities and 12 departments; its membership must be equivalent to 0.30 per cent of the total number of citizens entered on the voter registration list used in the last general elections and at least one half of its members must be able to read and write.

76. Unidad Nacional de la Esperanza is the party currently in government, with Álvaro Colom Caballeros as President of the Republic and Rafael Espada as Vice-president whose terms of office run from 2008 to 2012. The main opposition party is Partido Patriota, which, according to the most recent surveys conducted,<sup>23</sup> has the best prospects of winning the next elections, with voting intention standing at 47.2 per cent. Since the beginning of the present democratic regime (1986), no party has succeeded in retaining the presidency after one term in office, i.e. the four-year period of government, which, along with other factors, shows the weakness of the system of political party organizations which lack established roots among the people, operate primarily as electoral vehicles whose purpose is to have a candidate elected to the presidency and perform a very limited role as intermediaries between the citizenry and the political system.

77. According to projections by the National Institute of Statistics (INE), the eligible electorate is increasing in both absolute and relative terms. This is due to the fall in the birth rate and to the gradual rise in life expectancy, 2 factors which together mean a growing adult demographic share. Accordingly, while, in 2005, 50 per cent of all inhabitants were aged 18 years or above, it is estimated that the adult population will make up 53.72 per cent in 2015 and constitute 61.98 per cent in 2030 (see the annex, table 44, Trends in the population eligible to vote [persons aged 18 years or above] according to demographic projections by the National Institute of Statistics (INE), 2005–2030).

78. The voter registration list has grown at a varying pace and currently contains the names of almost 6 and a half million people. The rates of increase have to be viewed with caution since the lists undergo regular updates to remove the names of thousands of persons whose registrations are duplicated or who are deceased. Between 1985 and 2007, the entries in the list rose by 117.5 per cent. Guatemalan law does not grant voting rights to foreign citizens resident in the country, to Guatemalans resident abroad or to members of the army or police in active service (see the annex, table 45, Movements in the voter registration list between 1985 and 2007).

79. At the last general elections (in 2007) there were 147 complaints relating to alleged irregularities in the voting process. According to information from the Supreme Electoral Tribunal, of the 147 complaints filed, 75 were applications for invalidation, 28 were applications for review and 26 were constitutional *amparo* actions. There were also

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<sup>23</sup> Source: newspaper *El Periódico*, 28 March 2011.

17 complaints involving various motions (such as pleas of objection and remedies of reconsideration) and one constitutional challenge. However, from the information made publicly available by the Supreme Electoral Tribunal it is not possible to know the outcome of individual complaints following their processing by the corresponding body (see the annex, table 46, Applications and other motions filed during the 2007 elections).

80. The 2008–2011 legislative body was formed on an extremely fragmentary basis as regards the number of parties represented in parliament. Thirteen separate political groups sent members to Congress, 6 of whom subsequently declared themselves as independent (with no political grouping). The distribution of seats in Congress has changed since the beginning of the parliamentary session owing to party defection, whereby a large number of members, for a wide variety of reasons, leave the ranks of the party by which they were elected. Many of them join other political parties or declare themselves as independent. There is currently no law regulating party defection or the formation of new independent caucuses in Congress. Despite these switches in party affiliation, Unidad Nacional de la Esperanza (UNE) has, less than one year from the end of the parliamentary session, succeeded in retaining most seats (33), albeit very far from an absolute majority. It has, however, received support in Congress from Gran Alianza Nacional (GANAN), with its 26 parliamentary members, under an agreement that finally led to the formation of the UNE-GANAN party alliance, which will compete as a bloc in the 2011 elections. In parliament, the largest groups in opposition have been Partido Patriota, with 26 members, and Libertad Democrática Renovada, with 25 members, which were previously part of the government bench (see the annex, table 47, Distribution of parliamentary seats by party and political group, sixth parliamentary session, 2008–2011; and chart 7, Distribution of seats in Congress, June 2010).

81. The parties which had secured the presidency in previous elections have broken up and lost considerable electoral strength. They now have just a token representation, as can be seen in their low level of grass-roots support. For example, Partido de Avanzada Nacional, which held the presidency during the 1996–1999 period, had just 2 members with seats in the last parliamentary session. The party in government between 2000 and 2003, Frente Republicano Guatemalteco, obtained a very small number of seats in the last parliamentary session (nine members). Unidad Revolucionaria Nacional Guatemalteca, a party which represents former guerrilla groups, also has a very small presence within the parliamentary spectrum (2 members) (see the annex, chart 7, Distribution of seats in Congress, June 2010).

82. In Guatemala, marked gender inequalities can also be observed in senior positions, where the presence of women is barely noticeable. This is true both in the public sector and in the private sector, and is also in evidence within the political system. For example, only 20 of the 158 parliamentary members are women, which is equivalent to a 12.6 per cent representation in Congress (see the annex, chart 8, Female members of Congress, absolute numbers, June 2010). That percentage is very far from achieving the Millennium Development Goals regarding gender equality, which set a target of at least 40 per cent female representation in parliament by 2015. This inequality is even greater in the area of municipal government. Of the 3,690 candidates — comprising mayors, deputy mayors and councillors — elected to the municipal councils in 2007, only 242 (6.5 per cent) were women and only 6, i.e. 1.8 per cent, of the 332 mayors elected were women.

83. All the elections held in Guatemala since the adoption of the 1985 Constitution have taken place within the statutorily established time limits, even when a temporary interruption occurred in the constitutional order as a result of the abortive self-staged coup d'état orchestrated by the then president, Jorge Serrano Elías, on 25 May 1993. At that time, Congress elected Ramiro de León Carpio, then serving as human rights advocate, to

head the interim government for the remainder of Serrano's presidential term, pending the holding of the next elections, which took place within the period laid down.

84. Despite the little confidence generally displayed by the citizenry in the political system,<sup>24</sup> public participation in the last three elections shows a rising trend and thus a gradual decline in absenteeism. For example, in the first round of voting in the 2007 general elections, absenteeism in relation to the number of registered voters fell from the 1995 peak of 53.2 per cent to 39.53 per cent (see the annex, chart 9, Electoral participation and absenteeism in the first round of voting, in percentages, elections from 1985 to 2007; and table 48, Relative absenteeism in the first and second rounds of voting in the 2007 general elections).

85. From an examination of historical data on elections it can be seen that absenteeism always increases in the second round of voting, when the president/vice-president pairing is determined. This is related to the fact that not only the president and vice-president but also the local authorities (mayors and municipal councils) and members of Congress are elected during the first round, and the public is usually more interested in participating at that time, which is when the authorities nearest to it are chosen. Since the 1985 elections, no candidate has won the first round of voting with an absolute majority and it has thus been necessary in all cases to hold a second round. In the 2007 elections, the number of registered voters who did not cast a ballot in the first round made up 39.53 per cent of the voter registration list but absenteeism exceeded half the list (51.80 per cent) in the second round.

86. The data have so far referred to relative absenteeism, i.e. absenteeism based on voters entered on the registration list, and not to absolute absenteeism, i.e. absenteeism calculated on the total population aged over 18 years, which undoubtedly increases the percentages. Unfortunately, there are no national-level estimates of the total extent of absolute absenteeism, although some studies have shown significant absenteeism rates, particularly in the most rural or sparsely populated municipalities. It can be concluded from internal estimates comparing the projected population aged 18 years or over in 2010 and the number of registered voters in mid-2010 that more than 16 per cent of the adult population does not register and is therefore not entitled to vote (see the annex, chart 10, Electoral participation and absenteeism in the second round of voting, in percentages, elections from 1985 to 2007; and table 49, Unregistered adult population, in percentages, voter registration list statistics, by department, as at 31 August 2010).

87. An analysis by electoral district does not reveal any specific trends in participation levels on the basis of geographical criteria. The five electoral districts in which the highest rates of relative absenteeism were recorded in 2007 (above 44 per cent) are spread over the country's different regions, in the west (San Marcos, 44.81 per cent), east (Izabal, 45.82 per cent), centre (central district, 47.27 per cent), north (Petén, 44.32 per cent) and south (Santa Rosa, 45.22 per cent). Also, absenteeism does not appear to be directly linked to ethno-territorial criteria: one department with a majority indigenous population, Huehuetenango, has an absenteeism rate in excess of 40 per cent while Sololá, Chimaltenango and Alta Verapaz, which are departments whose populations are also mostly indigenous, show absenteeism rates of 27, 31 and 33 per cent respectively. Even the view that voting levels are higher in urban than in rural areas is also questionable. Indeed, the central district, which forms the municipality where the capital city is located and is the country's most urbanized area, had the highest absenteeism rate of all the electoral districts in the first

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<sup>24</sup> See Azpuru, *Cultura política de la democracia en Guatemala, 2010: consolidación democrática en las Américas en tiempos difíciles*, 2010, p. 166, available at: [www.vanderbilt.edu/lapop/guatemala/2010-culturapolitica.pdf](http://www.vanderbilt.edu/lapop/guatemala/2010-culturapolitica.pdf).



round of voting in the 2007 presidential elections (see the annex, table 48, Relative absenteeism in the first and second rounds of voting in the 2007 general elections).

88. The media play a key role during elections as prime mechanisms for political parties to convey their agendas to the public. Regulated and equal access to media airtime and print space during electoral campaigns is therefore essential. In Guatemala, practically all media are privately owned, with the exception of the official daily newspaper (*Diario de Centro América*) and one State radio station (TGW). There are 6 national newspapers in Guatemala, *Prensa Libre*, *Siglo Veintiuno*, *El Periódico*, *La Hora* (an evening paper), *Al Día* and *Nuestro Diario*. Those having the highest circulation are *Nuestro Diario*, with a daily print run of about 250,000 copies (Verified Audit Circulation, March 2011), and *Prensa Libre*, with a morning edition of 130,000 copies and a daily readership of 600,000. The other national newspapers do not offer readily accessible information on their readership or daily print circulation figures. As regards the other media, radio and television broadcasters are in the hands of private capital, apart from TGW, as already mentioned. This radio station's coverage currently stands at 45 per cent of the national territory but is expected to reach 100 per cent of the country following a donation from Taiwan (March 2011). In the world of television, there are 2 free-to-air television news channels, Noti7 and Telecentro Trece; other news programmes are transmitted on cable pay channels, these being Guatevisión and Hechos de Guatemala. Prominent among the pay-television channels is Guatevisión, since its coverage extends to the rest of Central America and to North America. The other television broadcasters operate free-to-air channels and are in the hands of a Mexican group headed by the businessman Ángel González. They include TV Azteca Guatemala, Televisiete and Trececanal. The most well-known radio news channels include Patrullaje Informativo and Radio Sonora. There is also a large number of community radio stations, whose coverage is generally limited just to the area where they are located and which in many instances are run by non-governmental organizations or by community groups.

89. Article 220 of the Electoral and Political Parties Act stipulates: "The Supreme Electoral Tribunal, in conjunction with the political parties' scrutineers, shall, during the first 2 weeks following an election call, establish for each electoral event or plebiscite the maximum radio, television and social media airtimes or schedules and written media print space to be procured for electioneering purposes, with a view to their assignment, on an equal basis, to each participating political organization or coalition. The media may not disallow the procurement of airtime or print space by any political organization, for electioneering purposes, within the limits laid down. They shall also afford to such organizations equal treatment as regards prices or rates and the importance of the scheduling or placement of electioneering messages."<sup>25</sup>

90. The increasing work carried out by national and international non-governmental organizations (NGOs) in peripheral countries and with weak States that are unable to meet their populations' basic needs extends from basic rights such as health, education and food to social research and dissemination. There are spheres where the activities of NGOs are vital, since they not only reach places and fulfil needs not served by the State but they also address difficulties such as lack of coordination between action taken by them and by the State or between NGOs themselves, which can give rise to duplication of effort or failure to make a tangible and lasting impact. In 1996, the year when the peace agreements were signed, a report by the International Development Association stated that no one knew with certainty how many NGOs existed in Guatemala and that there was no agreement on how to define them. However, whether in the hundreds or thousands, NGOs, especially those

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<sup>25</sup> Asamblea Nacional Constituyente, p. 33.

involved in development activities, were viewed as actors of growing importance within the peace process.<sup>26</sup> That document's forecast was accurate in that Guatemala has become a country where the NGO presence has expanded significantly following the signing of the peace agreements, being concentrated in particular in the capital city and in departments with substantial indigenous populations. Decree No. 02-2003 established, in 2003, the Development Non-Governmental Organizations Act, whose article 2 defines NGOs as "non-profit-making bodies established for cultural, educational, sporting, social, welfare, charitable or socioeconomic development and promotion purposes", which "shall have their own assets, derived from national or international funding, and separate legal status". The exact number of NGOs working in the country is still not known. The Ministry of the Interior has an obligation to keep a register of such organizations, although this register is not accessible on the Internet.

#### 4. Indicators on crime and the administration of justice

91. Insecurity and violence are by far the worst problems currently affecting Guatemalan society and constitute the greatest challenge ever to have been faced by the country's justice administration system. Crime in its diverse forms is of such magnitude and complexity that the measures adopted by different governments over recent years have failed to curb the increase in violence figures or to improve the performance indicators for State institutions responsible for bringing criminal prosecutions and imparting justice.

92. Between 1999 and 2009 there was a 121.7 per cent increase in recorded homicides. The number of homicide victims in 2009 reached 6,489, having been 2,655 in 1999. For that eleven-year period, the number of non-accidental violent deaths totalled 50,946. Fatal violent crimes in recent years claimed on average, on a yearly basis, more victims (6,500 per annum) than during the internal armed conflict (4,166 per annum). According to the Pan American Health Organization (PAHO), the occurrence of more than 10 homicides per 100,000 inhabitants per annum constitutes an epidemic. In Guatemala, a rate of 46 homicides per 100,000 inhabitants was recorded in 2009 and, since 2005, the rate has not fallen below 40, which is four times the index developed by PAHO. A more detailed analysis reveals that there are departments where the rate is almost twice the national average, as in the case of Chiquimula, with 91 homicides per 100,000 inhabitants, and the department of Guatemala, with 87, followed, in descending order, by the departments of Escuintla (77), Izabal (74), Petén (71) and Santa Rosa (71). There are few aspects in common among these 6 departments. Chiquimula is located in the eastern area of the country, on the border, with a largely mixed-race (non-indigenous) population and where drug trafficking is widespread, but all these features are shared by the department of Jutiapa, where the homicide rate is appreciably lower (52). The department of Guatemala is the country's largest urban agglomeration, with high crime rates in general and a significant level of activity by criminal youth gangs (*maras*) in particular. Izabal and Petén have the lowest population density in the country but are undergoing steady demographic growth owing to a high level of internal migration to both departments. These are border departments, where there is very little government control and a high volume of illicit flows (drug trafficking, human smuggling, illegal timber trading, etc.). Escuintla and Santa Rosa, which are neighbouring southern departments, are transit areas that are becoming increasingly affected by Guatemala City's urban sprawl (see the annex, table 50, Numbers of homicides and rates per 100,000 persons, 1995–2009; and chart 12, Homicide rates per 100,000 inhabitants, 1995–2006).

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<sup>26</sup> Management Systems International, 1996, p. 12.

93. At the other extreme, the 6 departments with the lowest homicide rates are Totonicapán (4), Quiché (9), Sololá (13), Alta Verapaz (15), Huehuetenango (17) and Chimaltenango (19). They all have in common the fact that they are predominantly indigenous departments with high poverty levels and social underinvestment. The above-mentioned figures cast doubt on the widely held simplistic view that there is a virtually automatic and directly proportional link between poverty and violence, whereas this is in fact an extremely complex phenomenon with a multitude of causes (see the annexes, table 51, Numbers of homicides and rates per 100,000 persons in the 6 departments with the highest and lowest homicide rates, 2009).

94. Homicide rates recorded in Guatemala between 1995 and 1998 were significantly lower than those for more recent years, which is particularly striking if it is borne in mind that, during the first 2 years of that period (1995 and 1996), the country was still experiencing an internal armed conflict, which would not come to an end until December 1996, with the conclusion of the peace agreements. Immediately after the signing of those agreements (1997), the figures for violent deaths rose, following the static trend of earlier years, but, during the 2 ensuing years, it was possible to reduce considerably the impact of that violence, its lowest level (26 homicides per 100,000 inhabitants) being reached in 1999. The foregoing could be due to the implementation of the reforms provided for under the peace agreements with regard to the security forces, to the dissolution of the National Police and its conversion to the National Civil Police and to the initiatives aimed at strengthening the justice system, which were undertaken with the support of several countries that had collaborated in the peace process. Also, the changes thereby brought about may be factors at the origin of the positive data developments during that period. Unfortunately, many of the actions initiated in those early post-conflict years were not consolidated and even underwent major setbacks, including the formation and development of illegal security forces and clandestine security organizations, the local expansion of criminal syndicates involved in international organized crime and an increase in the number and local presence of criminal youth gangs. Many of these criminal bodies have infiltrated a significant number of State institutions, thereby ensuring their impunity and prospects of continued and increased proceeds from their illicit activities, which is leading to an alarming decline in public safety, democracy and the rule of law (see the annex, chart 11, Numbers of recorded homicides, 1995–2006; and chart 12, Homicide rates per 100,000 inhabitants, 1995–2006).

95. Guatemalans' increasing perception of insecurity, their feelings of powerlessness and their persistent demands for matters to improve are understandable when one considers that, every day, on average, 17.8 people in the country suffer violent and deliberate deaths, which means that one person is murdered every 81 minutes. As stated above, this situation is the result of a rapid decline, which has become more pronounced, particularly over the past 7 years, when, following a short period of improvement, in which the rates fell to a daily average of 7.3 homicides (1999), the pattern reversed, reaching, in 2001, the same level (8.8 cases per day) as 6 years previously (8.9 cases per day), and followed a rapid and consistent rise in the ensuing years (see the annex, table 50, Numbers of homicides and rates per 100,000 persons, 1995–2009).

96. According to data provided by UNDP, Guatemala was in 2006 one of the most violent countries in the American continent, as can be seen from chart 13, included in the annexes. Indeed, the “northern triangle” of Central America (El Salvador, Honduras and Guatemala) shows significantly higher levels of violence than Colombia, the only country in the region still to be experiencing an internal armed conflict (UNDP, 2007, pp. 22 and 23). While El Salvador ranked as the continent's most violent country, with a homicide rate of 59.9 cases per 100,000 inhabitants, followed by Honduras, with 59.6, and Guatemala, with 44.2, Colombia had a rate of 43. By contrast, in other countries of the continent, such as Chile, the United States or Uruguay, for example, the homicide indicator

did not even reach 6 cases per 100,000 inhabitants (the indicators for these countries are 1.9, 5.6 and 6.6 respectively) (see the annex, chart 13, Homicide rates, per 100,000 inhabitants, of some countries of America, 2005).

97. UNDP states that the same type of international comparison can be undertaken using cities as a unit of analysis. For the selected cities it can be seen that the capital of Guatemala ranks (as the continent's most violent) well above cities regarded as very violent, such as Detroit (47 cases per 100,000 inhabitants) and Rio de Janeiro (with 40.2). Guatemala City is one of the most violent places in the continent (108 homicides per 100,000 inhabitants in 2006). Worthy of note is the case of Medellín, which shows a homicide rate per 100,000 inhabitants of 29.4 in 2006, having been at a level of 220 as recently as 2001. This is an excellent example of what can be achieved when the authorities adopt a more responsible and holistic approach to security and succeed in fostering conditions for greater social participation (UNDP, 2007, pages 22 and 23). Added to all the foregoing is the fact that, according to data from the Inter-American Observatory on Citizen Security of the Organization of American States (OAS), 79.41 per cent of homicides in 2005 were committed using firearms (OAS, 2011) and, according to the Teaching Institute for Sustainable Development (IEPADES), the figure had risen to 82 per cent by 2008 (IEPADES, 2008, p. 2). This calls for other major problems facing Guatemalan society to be addressed: the absence of controls on the legal possession, carrying and use of weapons; the failure to punish the movement, carrying and use of illegal firearms; and the weapons trafficking taking place within the national territory for domestic consumption or supply abroad. According to this last source, only 1 per cent of the population of Guatemala possesses legally registered firearms and most criminal acts which take place are thus committed with weapons that are not duly registered, which makes it even more difficult to trace those responsible for the offences (see the annex, chart 14, Homicide rates, per 100,000 inhabitants, of some cities of America, 2006).

98. In April 2009, Congress adopted a new Firearms and Ammunition Act, 10 years after submission of the first proposal to develop this essential legislation. During that interval, the legislature repeatedly gave in to pressure and threats from interests connected with firms engaged in marketing weapons and ammunition, other groups involved in their illegal trade and criminal organizations of various kinds. The positive and innovative elements of the new law include the establishment of a more modern weapons register, a ballistic fingerprint register and a new schedule of more severe penalties for offenders.

99. In addition to homicide, which constitutes the most extreme form of violence, a number of other offences being perpetrated in the country also pose a threat to individuals' lives. They all form part of the phenomenon of crime victimization. As can be seen in table 51, included in the annex, according to the National Civil Police, 32,020 such offences in total were reported in 2008, including injuries (6,938), lynchings (39), robberies and assaults (14,820), kidnappings (213), disappearances (1,318) and domestic violence cases (2,050), all of which represents a recorded rate, for the country as a whole, of 234 life-threatening unlawful acts per 100,000 inhabitants. The criminal offences referred to here are those which have been reported to the authorities by the victims but, given the public's lack of confidence in the justice system and especially in the security forces, owing to their inefficiency in prosecuting crime, a high percentage of criminal acts is not reported, in particular robberies and assaults, injuries and, more markedly, offences which include sexual elements or take place in the home, such as domestic violence and rape. It must therefore be assumed that the extent of the phenomenon of violence is far greater than the official figures show, allowing the supposition of the existence of a "dark figure" or unknown number of crimes, regarding which little has been studied. One of the very few studies which contain any calculations in this connection indicates that, in 2005, for example, only 20 per cent of injuries were reported to the authorities and that, overall, more than 50 per cent of all offences were not reported. The sole exception to this widespread

trend was vehicle theft, since it is an essential requirement to report occurrences in order to make insurance claims (POLSEC, 2005, p. 5) (see the annex, table 52, Criminal victimizations by type of offence, frequencies and rates, 2008).

100. An analysis of crime victimization rates by department shows that, once again, the department of Guatemala presents the most serious situation, with a recorded rate of 500 criminal acts per 100,000 inhabitants, which is well above twice the national average, followed by Escuintla (359), Sacatepéquez (358), Zacapa (239), Chiquimula (271) and Izabal (223). The most frequent offences are, in all cases, robberies and assaults, followed by homicides, injuries and domestic violence. At the other extreme, the departments with the lowest crime victimization rates are, again, those which have a majority indigenous population. The rates in these departments are significantly lower, as, for example, in Totonicapán (51 cases per 100,000 inhabitants), which has a victimization rate ten times lower than for the department of Guatemala, followed by Quiché (64), Sololá (74) and Alta and Baja Verapaz (76 and 92 respectively). If these departments are compared with those having the highest rates, it is possible to see how the prevalence of some offence types differs, so that, while robberies and assaults are still the most frequent, domestic violence offences occupy second position, above injuries and homicides (see the annex, table 52, Criminal victimizations by type of offence, frequencies and rates, 2008).

101. The Domestic Violence Prevention, Punishment and Eradication Act (Congressional Decree No. 97-96) lays down the obligation that certain State institutions (the Public Prosecution Service, the Counsel-General's Office, the judiciary and the National Civil Police) use a single form (the standard domestic violence statistical report form) for the statistical recording of all domestic violence incidents reported to them and that these forms be made available to the National Institute of Statistics (INE) so that the related official statistics can be prepared. On many occasions, various women's organizations have complained of the institutions' lack of cooperation concerning this obligation and the absence of inter-institutional coordination in handling and following up reported cases, all of which makes it very difficult to obtain an accurate picture of the extent of the phenomenon. Nonetheless, the National Coordination Office for the Prevention of Domestic Violence and Violence against Women and the National Institute of Statistics (INE) have for some years been working together in order to generate periodic statistics that will make it possible to assess the scale of the phenomenon, as a crucial step towards dealing with it appropriately. In contrast with the statistics appearing in the table on crime victimization rates, which show only 2,050 cases of domestic violence reported to the National Civil Police in 2008, the National Institute of Statistics (INE) recorded, for that year, a total of 23,721 incidents, 90 per cent of which were committed against women. These figures represent a 12 per cent increase compared with the previous year, when the total number of reported cases was 21,153, although the trend as regards the sex of the victims was the same for the 2 periods. In both those years there was a marked increase in the number of recorded cases but it is very difficult to establish whether this was due to the significant rise in the number of domestic violence incidents, to the increase in the number of reported cases or to the major improvements in recording systems. The most likely reason is a combination of all three factors. Chart 15, included in the annex, shows that there were just over 8,000 recorded cases in 2005 and 2006, i.e. fewer than one third of the cases reported in the 2 ensuing years. It also indicates that the numbers in 2003 and 2004 (some 4,500 and 7,000 cases respectively) were very much lower than in the later years (see the annex, chart 15, Domestic violence cases by sex and year of recording, frequencies, 2003–2008; and table 53, Domestic violence victim population by sex, relationship to the abuser, ethnic group, age and ethnicity, frequencies, 2008).

102. According to this same source, in 2008 spouses or partners were responsible for the abuse in 73.8 per cent of cases and former spouses or former partners in 10 per cent of cases, other abusers being, to a lesser extent, parents, siblings and children. As regards age

groups, the female population aged between 20 and 29 years suffers most abuse, with 40 per cent of all cases of abuse against women and 35.5 per cent of all recorded instances of domestic violence being suffered by females in that age group. Also, the older the age group, the fewer will be the cases of abuse. Particularly telling is the relatively small proportion of recorded cases of domestic violence suffered by children below the age of fourteen years, which could either be a true reflection of the situation or an indication of the extent of the victims' defencelessness insofar as their age, living conditions and ignorance of their rights prevent them from accessing effective mechanisms for reporting abuse.

103. The 2008–2009 maternal and child health survey, conducted by the National Institute of Statistics (INE), reveals that 45.2 per cent of the women interviewed (a sample regarded as representative of the situation in the country) stated that they had been the victim of domestic violence and had suffered one of the three types of abuse about which they were questioned, i.e. verbal, physical or sexual, with 7 per cent of them reporting that they had suffered all three types. The highest percentages of abused females are found in urban areas (48.8 per cent) and among non-indigenous women (47 per cent). The violence most frequently suffered by women is verbal, followed by physical and then sexual (see the annex, table 54, Women victims of domestic violence by type of abuse, area and ethnicity, in percentages based on the total number of women interviewed, 2009).

104. In addition to domestic violence, the Public Prosecution Service recorded in the course of 2010 a total of 9,516 sexual offences, 83.4 per cent of which were committed against women. With regard to age groups, most victims of criminal acts of this kind are aged between 0 and 14 years, the trend declining among the 15- to 25-year age group and rising among women aged over 26 years. Of the various sexual offences, the most frequent is rape (57.6 per cent of cases), followed by sexual assault (32.7 per cent) and aggravated rape (8.7 per cent). In 2005, the Office of the Human Rights Advocate filed an unconstitutionality action concerning article 200 of the Criminal Code, which stipulated that persons who committed the offences of rape, indecent assault, sexual abuse or abduction could be released from the penalty laid down in that statutory instrument if they married the victim, provided that she was over 12 years of age. In November of that year, the Constitutional Court issued an order for the provisional suspension of that article, as a result of which steps were taken to discontinue this arrangement, which was deemed to be a legal provision that violated the human rights and dignity of victims of sexual offences (see the annex, table 55, Sexual offences by sex of the victim, 2010; table 56, Sexual offences by age group of the victim, 2010; and table 57, Sexual offences by type of criminal act, 2010).

105. As established in the internal regulations of the General Directorate for Prisons (Government Decree No. 607-88), this institution of the Ministry of the Interior is a civil security body entrusted with the confinement, re-education and social rehabilitation of persons deprived of liberty, both at preventive detention centres and at penitentiary facilities (Ministerio de Gobernación, 2011). The prison service is responsible for a total of 20 penal institutions with a prisoner capacity of 6,610 (6,222 men and 388 women) but, as at November 2010, it accommodated 11,144 prisoners. These data mean 68.6 per cent overpopulation and daily overcrowding, which generates tensions and creates a breeding ground for violence.<sup>27</sup> Another report by the same institution states that, at the end of 2010, the prisons housed 10,490 inmates, of whom 4,618 were serving sentences and 5,872 were being held in preventive detention.

106. In addition to overpopulation, the situation in the country's prisons is one of the aspects of the security and justice system which pose the greatest difficulties for the

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<sup>27</sup> Source: Procurador de los Derechos Humanos, 2010, pp. 61 and 62.

authorities responsible and also for the public in that they have become a focus for members of youth gangs and organized criminal associations to continue committing crimes while incarcerated. At different times, the authorities responsible have endeavoured to implement a wide variety of measures in an attempt to curb unlawful activities instigated from inside prison but such measures have so far not only proved ineffective but have even led on some occasions to violations of inmates' rights, including, in the recent past, the use of violence to carry out extrajudicial executions of prisoners.

107. The main problems facing the prison service include a limited budget; unsuitable and inadequate prison facilities; a low number of personnel (there is a total of 2,200 guards within the entire prison system), who are poorly paid and insufficiently trained to deal properly with the prison population; continual abuse and acts of violence among inmates, by inmates against prison staff and vice versa; high levels of corruption and impunity; irregularities in the allocation of prisoners to appropriate places of confinement (for example, convicted offenders serving sentences in preventive detention centres); acts of torture and cruel, inhuman and degrading treatment or punishment of prisoners; riots and coercion of the authorities by inmates (with hostage-taking, for example); trafficking in drugs and prohibited items, such as mobile telephones, weapons, ammunition, computers, etc., within prisons; and the instigation and perpetration of criminal acts against the public from inside prison, in particular acts of extortion.

108. It is difficult to access highly detailed information on the prison population, either because the information produced by the authorities responsible has not been developed to the degree of disaggregation that this report would require or because it is not sufficiently up to date and standardized to be reliable; hence the need to resort to alternative sources in an attempt to provide data that will enable an objective situational analysis to be made of Guatemala's prison conditions. On the basis of press information (the newspaper *Siglo Veintiuno*), the detailed annual report of the Office of the Human Rights Advocate portrayed as follows the situation of unconvicted detainees as at May 2010: "In the country's prisons there are 9,815 inmates, of whom 5,452, equivalent to 56 per cent, have not been convicted. The disproportion is greater in the case of women: of the 670 female inmates, 449 (67 per cent) are unconvicted. The data are furnished by the General Directorate for Prisons, which reports that there are 4,363 convicted male prisoners, equivalent to 44 per cent, and 221 convicted female prisoners, equivalent to 33 per cent". It also refers to government spending on each inmate, which is stated as equivalent, for that year, to a per capita annual sum of approximately 2,700 dollars.<sup>28</sup>

109. In recent years the State has taken a number of steps with a view to regaining control of the prisons. To that end it has implemented a policy involving, inter alia, the following measures: the adoption of a law putting into effect a national mechanism for preventing torture at any place of detention; the installation of telephone signal blocking devices to prevent inmates from communicating with accomplices outside prison; the segregation of inmates who are members of rival youth gangs; the transfer of highly dangerous prisoners to military facilities; more thorough searches of visitors; and the regular seizure of items whose possession in prison is unauthorized. However, these steps are constantly being hampered by pressure and acts of coercion by prisoners. One form of pressure employed by them is rioting, which generally entails the taking of hostages, in return for whose release inmates request the Government to reverse some or all of the measures adopted. At least four riots took place in 2010. In addition to these acts of pressure, prison officers are subjected to threats and direct assaults, which have reached such extremes that, during that year, they resulted in the deaths of at least 14 prison staff members and serious injuries to

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<sup>28</sup> *Ibid.*, pp. 66 and 67.

four others. The victims of such acts included the director of one penitentiary institution, the head of personnel at the capital city's pretrial detention centre and her husband, and several prison guards.<sup>29</sup>

110. According to information from the Ministry of the Interior, the widespread violence prevalent in prisons has also caused the violent deaths of a total of 25 persons among the prison population, many as a result of blows or fractures received in custody, presumably perpetrated by inmates.<sup>30</sup>

111. The most recent available information concerning the prison population, broken down by offence and length of sentence, is that furnished by the Public Prosecution Service for 2009 on convictions involving terms of imprisonment of 20 years or longer. As can be seen in table 57, included in the annex, 114 persons received convictions that year, 50 for the crime of murder, 40 for homicide, 21 for abduction or kidnapping and 3 for parricide. As regards sentence length, 62 persons were given prison terms ranging from 20 to 29 years, 19 were sentenced to between 30 and 39 years, 15 must serve sentences of between 40 and 49 years and the remaining 18 will be incarcerated for more than 50 years (see the annex, table 58, Persons convicted, by offence and term of imprisonment, 2009).

112. The death penalty is legal in Guatemala. It is established by article 18 of the Constitution, which also sets out the circumstances under which it may not be imposed and stipulates that it is to be carried out only after all remedies have been exhausted by the sentenced offender. It is additionally provided for in various articles of the Criminal Code. However, there is a major lacuna in the law in that it does not specify which person or authority has to hear and rule on petitions for clemency or pardon. The foregoing has meant that, since 2000, no one has been put to death even though capital sentences have been imposed on some 40 individuals. Criminals sentenced to death have lived for years in a kind of legal limbo since, although they are entitled to appeal for the commutation of their sentence, there has not been any procedure for hearing such appeals or any authority with responsibility for ruling on them. The Commission on Human Rights has recommended to Guatemala that Congress should legislate to rectify this gap in the law and resolve the problem in order to give such procedure legal certainty. In practice, capital punishment has been in abeyance. In February 2008, Congress adopted a law which reinstated the power of the president of the Republic to decide on life and death but it was decided by the presidential office to veto it since this form of punishment was deemed to conflict with offenders' right to life, the retroactivity of the law and the international commitments entered into by Guatemala as a party to the American Convention on Human Rights. That position was maintained until October 2010, when Congress re-examined this ambiguous situation and approved the restoration of the power to grant pardons as a prerogative of the president. However, the parliamentary members decided that the decree would not enter into force until 15 January 2012, the date of installation of a new Government, to which will fall the difficult task of deciding the fate of all offenders who have been sentenced to the ultimate penalty and who have been waiting on death row for over 10 years.

113. In all, between 1982 and 2000 nineteen persons under sentence of death were executed. The last executions were performed by lethal injection consisting of a combination of Dormicum, potassium chloride and pentothal. In 1982 there were four executions; in the following year the highest number of individuals (11) were put to death; 2 further executions took place in 1996; and the final 2 were carried out in 2000.

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<sup>29</sup> *Ibid.*, pp. 65 and 66.

<sup>30</sup> *Ibid.*, p. 67.



114. Despite the rapid rise in the prison population and, in some cases, the hardening of penalties for certain crimes, the situation of violence and insecurity in the country has only worsened, which prompted the Government to request the United Nations to establish and install in Guatemala an international commission against impunity. Following a necessary stage of negotiations, both in the country and with United Nations officials, this commission (CICIG) was finally approved and began operating in 2007. In the introduction to its third annual report on activities, CICIG sets out a brief analysis of the situation relating to the country's justice system, in which it states the following: "In Guatemala, some cases do not enter or progress through the justice system owing to technical weaknesses in the handling of investigations and criminal prosecutions. There is a 99.75 per cent level of impunity. Other cases are halted through political, economic or other influence and the infiltration of organized crime into State institutions. Illegal groups and parallel intelligence structures, which operate, under the protection of individuals inside the State administration, which has been infiltrated at every level, within the Government and security forces, are able, through their illicit activities, to secure impunity owing to their direct or indirect links with the State or its agents. Even after the signing of the Agreement on a Firm and Lasting Peace (1996), illegal security forces and clandestine security organizations were not dismantled but continued to operate with impunity. Their criminal conduct, which originally served the interests of the State, evolved to meet their own interests of illicit self-enrichment and they became organized crime syndicates, forming symbiotic relationships with transnational criminal organizations. They have now diversified their scope of activities and been able to extend their infiltration capacity. During the internal armed conflict, they held control of certain areas, such as ports, airports and frontier posts, among others, and they have developed in such a way that they currently have networks of professionals, including judges, lawyers and journalists, within both the public and private sectors, who provide support and take steps to ensure that these illegal security forces and clandestine organizations can continue their activities with impunity as organized crime groups."<sup>31</sup>

115. This CICIG document explains the data and procedure used to calculate the level of impunity as follows: "The impunity rate for 2009 was obtained by the Criminal Division of the Supreme Court from a sample of 600,000 cases, including 300,000 reported cases recorded by the judiciary, which gave rise to only 11,000 formal charges. Since 2008, there have been 2,173 unresolved cases, equivalent to three judgements per month by each of Guatemala's 143 trial courts. Of 50,000 reported offences, only 429 verdicts are handed down per month."<sup>32</sup>

116. The figures provided by the judiciary indicate that, during 2009, the criminal courts received a total of 346,455 cases to be dealt with at their different levels of jurisdiction. In that year, these courts issued a total of 679,967 judicial decisions, including orders, rulings and final judgements. Grouped together under the heading "cases filed" are not only reported offences but also measures such as applications made by the Public Prosecution Service, complaints of different kinds, procedures for the provision of measures for the safety of persons so requesting, etc. If the analysis is limited to the total number of reported offences (99,283) and judgements issued (19,412), it can be seen that, over the year, verdicts were rendered in only 19.6 per cent of the cases submitted. However, it should be borne in mind that judicial proceedings are not usually determined within such short time frames and it is therefore likely that many of these judgements relate to cases from previous years and that a sizeable number of the cases submitted will be decided by the courts during

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<sup>31</sup> CICIG report, 2010, p. 4.

<sup>32</sup> *Ibid.*

the coming years (see the annex, table 61, Cases filed with the criminal courts and judicial decisions, 2009).

117. According to data from the National Legal Documentation and Analysis Centre of the judiciary, the total number of judges in Guatemala has remained more or less constant over the past 6 years. In 2005, there were, in total, 737 judges within the judicial system, representing a rate per 100,000 inhabitants of 5.8 justices, the most numerous being magistrates (438, comprising both regular and deputy magistrates), who constituted almost 60 per cent of the total number, followed by criminal trial court judges ruling on drug-trafficking and environmental offences, who numbered 132 (18 per cent of the total), and, in third position, lower criminal court judges ruling on drug-trafficking and environmental offences (47 in all, equivalent to 6.4 per cent of the total) (see the annexes, table 59, Numbers of judges per 100,000 inhabitants by court, 2005–2009; and table 60, Numbers of judges by court and sex, 2010).

118. In 2006 the total number of judges declined by 9.2 per cent compared with the previous year and it was not until 2009 that it again reached a level similar to that of 2005, rising to 751 in 2010. During the past 6 years, the total number of judges has increased by 1.9 per cent but, since population growth is more accelerated, the number of judges per 100,000 inhabitants has only fallen over time, reaching 5.2 in 2010 if calculated on the basis of the population projections made by the National Institute of Statistics (INE). As in previous years, magistrates were, in 2010, the largest group (411), although their share of the total has declined in comparison with the figure for 2005 and now constitutes 54.7 per cent, the second most numerous group being criminal trial court judges (130, equivalent to 17.3 per cent), with, in third position, lower criminal court judges ruling on drug-trafficking and environmental offences (64, equivalent to 8.5 per cent of the total). As regards the sex of judges, male justices are far more numerous than female justices and account for 2 thirds of all judges in Guatemala (481, equivalent to 64 per cent of the total), while female justices make up just over one third of the total (270, equivalent to 34 per cent) (see the annex, table 60, Numbers of judges by court and sex, 2010).

119. According to the 2010 evaluation report on European judicial systems, prepared by the European Commission for the Efficiency of Justice of the Council of Europe, the average number of judges per 100,000 inhabitants in that continent was 20.6 in 2008.<sup>33</sup> Compared with geographically closer countries, Guatemala can be seen to have had the lowest number of judges per 100,000 inhabitants in the whole of Central America in 2006 (6.1, according to this source), while the rate for El Salvador was 9.6, for Honduras 8.4, for Nicaragua 7.1, for Costa Rica 18 (the highest in the region) and for Panama 7.8.<sup>34</sup>

120. In 2010, the Public Prosecution Service had 23 district prosecution offices, which were distributed over the country's 22 departments, in addition to 33 municipal prosecution offices in the same number of municipalities, meaning that there is more than one prosecuting office in each department. The institution's organizational structure also includes divisional prosecution offices, which are responsible for bringing criminal proceedings in specific spheres or fields. These offices specialize in hearing cases based on subject-matter and not necessarily on territorial jurisdiction relating to where the offences occurred. In 2010, the Public Prosecution Service had fifteen divisional prosecution offices, including, for example, offices dealing with organized crime, laundering of money and other assets, administrative offences, corruption, drug-trafficking and human rights cases.

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<sup>33</sup> Council of Europe, 2010, p. 120.

<sup>34</sup> *Source*: Programa Estado de la Nación, 2008, pp. 478, 480, 481, 483, 485 and 487.

121. Data provided by the state of the region report indicate that, in 2006, the number of prosecutors per 100,000 inhabitants in Guatemala was 6.8, putting it at an intermediate level in relation to the other countries of Central America. In this regard, Panama has the lowest figure, at just 2.3 prosecutors per 100,000 inhabitants, and, once again, Costa Rica shows the best level, i.e. 7.7 prosecutors, which is the highest rate among the 7 countries of the subregion.<sup>35</sup>

122. In the context of the peace negotiations and ensuing restructuring of the State, a new Code of Criminal Procedure was adopted in Guatemala in 1992 and entered into force in July 1994. In that year, the Supreme Court approved a decree regulating the criminal defence service, which comes under the authority of the Supreme Court. In 1997, Congress adopted Legislative Order No. 129-97, promulgating the Criminal Legal Aid Act, which provides for a public defence service that is institutionally separate from the judiciary and enjoys functional autonomy and technical independence. That order entered into force in July 1998, leading to the creation of the Public Criminal Defence Institute. Until 2008, cases were classified in the Institute's statistical records on the basis of protected legal rights and not of committed crimes and offences. Since 2009, data began to be recorded according to committed crimes and offences. The tables included in the annexes must therefore be analysed on the basis of the available information.

123. The profile of recipients of assistance from the Institute is that of a non-indigenous, unmarried adult male. Between 2005 and 2009, the Institute handled a total of 181,367 cases, of which 169,605 (93 per cent) involved the defence of adults and the remaining 11,762 (7 per cent) that of juveniles. Throughout that period, the ratio between adults and juveniles requesting the Institute's support underwent no major changes. As regards ethnic groups, 95 per cent of assisted persons were non-indigenous (171,827), while indigenous inhabitants receiving assistance from public defence lawyers accounted for only 5 per cent of all cases. However, the figures show how this ratio changed over the years, from 3.8 per cent of the indigenous population assisted in 2005 to 7.2 per cent receiving support in 2009. As regards gender, males were assisted in 81 per cent of cases and females in the remaining 19 per cent. The data reveal that the proportion of females assisted has risen significantly since 2007 owing to the fact that a free legal aid programme for women victims and their relatives was put into operation by the Institute at the end of that year. This does not necessarily mean that they are assigned a defence lawyer in criminal proceedings but ensures the provision of legal support in connection with different types of offence whose victims tend to be women. As a result, the proportion of women receiving support has more than quadrupled over the years. While the women assisted in 2005 represented 6.8 per cent, that level had risen to 29.4 per cent by 2009 (see the annex, table 62, Criminal cases and legal assistance provided by the Public Criminal Defence Institute nationwide, by age, sex and ethnic group, 2005–2009).

124. Unfortunately, there is no available information on prosecutions by the Guatemalan courts that gives a breakdown by age, ethnic group or gender, which would make it possible to establish whether the ratios between persons prosecuted and persons defended by the Public Criminal Defence Institute have followed the same pattern or whether there are significant differences, which might indicate some form of discrimination.

125. One crucial factor in improving citizen safety is the public expenditure budget allocated to combating insecurity and impunity and invested in the justice system, but, more importantly, expenditure prioritization and the appropriate use of resources earmarked for such purposes. Unfortunately, the Ministry of the Interior, which is responsible for security policies and their execution, has in recent decades been the subject of numerous and

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<sup>35</sup> *Ibid.*

repeated corruption scandals involving, for example, the purchase of weapons, ammunition and equipment (uniforms, bulletproof jackets, etc), logistical services (prison catering) and various procurement contracts, which have undermined the State's prospects for fighting crime. Ministers, deputy ministers and general directors of police have in many cases been charged, prosecuted and even convicted in connection with such offences.

126. Data provided by the Ministry of Public Finances reveal that, between 2005 and 2009, the share of public spending assigned to security, including the National Civil Police, rose by 0.7 per cent, while the judiciary's share remained unchanged during that period. Available information regarding the implementation of the general State income budget indicates that 5.5 per cent of public spending is allocated to the Ministry of the Interior, i.e. approximately 330 million United States dollars per annum (in 2009), including budget appropriations for the National Civil Police and prison service as well as all other duties and responsibilities assigned to this government department. The police budget allocation is the largest of those provided for by the Ministry since it alone represented 3.9 per cent of public spending in 2005, rising to 4.2 per cent in 2009, which is equal to about 251 million of the above-mentioned sum of 330 million dollars (see the annex, table 63, Proportion of public spending allocated to security, the national police and the judiciary, 2005–2009).

127. As already stated, public spending on the judiciary as a proportion of total central government expenditure has remained static. As the total amount of public spending increased each year over the period in question (2005–2009), the absolute sum received by the judiciary rose from about 92 million to approximately 137 million dollars.

128. In 2009, the Ministry of the Interior issued 2 resolutions under which information on police personnel assigned to each of the country's municipalities, on the deployment of patrol cars and on weapons held by the police was classified as confidential, this being a protection measure deemed necessary to guarantee staff members' safety. Also, information relating to administrative contracts which specify the characteristics of defensive equipment and weapons for supply to the police forces was declared partly confidential. Overall data are, however, obtainable on nationwide staffing levels. According to the 2010 UNDP human development report, the number of police officers in that year totalled 19,902 for the country as a whole.<sup>36</sup> Of that total, 17,902 (89 per cent) were men and only 2,322 (11 per cent) were women. There are also 1,217 inspectors, 1,004 officials, 93 superintendents and 7 directors, making a total of 22,223 staff members. As regards ethnic composition, 84 per cent of police personnel is of mixed race and the remainder belongs to indigenous ethnic groups. The UNDP document refers to the recent assessment of the National Civil Police provided in the report of the United Nations High Commissioner for Human Rights on the activities of her Office in Guatemala, which states, *inter alia*, that the National Civil Police is unable to offer an institutional response that addresses the significant challenges posed by the alarming situation of insecurity and that it had an insufficient number of serving police officers, equivalent to one officer to every 619 inhabitants, and 5,002 vacant posts in 2009. The report also indicates that the institution still faces major challenges, including with respect to internal vetting processes, tangible improvements in police facilities and salary upgrading, and states, in this connection, that it is necessary to implement joint action protocols coordinated with the justice authorities and to develop indicators with a view to evaluating the effectiveness of policing operations.

129. Given that, owing to various factors (leave of absence, vacation, sick leave, etc), about 3.5 per cent of police officers are not working, with a further 15 per cent engaged in administrative tasks in police stations or offices, 81.5 per cent of the total force (some

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<sup>36</sup> UNDP, *Informe sobre Desarrollo Humano*, 2010, p. 238.

16,220 officers) are assigned to street patrol work and are not simultaneously on duty, since they are split into three shifts to allow for rest periods due to them.

130. It has been estimated by the Ministry of the Interior that at least 60,000 police officers would be required to satisfactorily meet the country's security needs and it would thus be essential to increase the institution's budget substantially. On the basis of the police workforce in 2010, the number of officers per 100,000 inhabitants was 177.3, which is seen as a low rate by comparison with related international standards. In 2006, Guatemala had 155 police officers per 100,000 inhabitants, the data for the rest of Central America being as follows: El Salvador: 234; Honduras: 144; Nicaragua: 143 (the lowest rate in the region); Costa Rica: 228; and Panama: 496 (the highest rate).<sup>37</sup>

131. The extent of the phenomenon of violence and the Government's ineffectiveness in combating it have given rise to the emergence and growth of private security enterprises, to the point where the number of private security agents in 2010 is estimated to far exceed the number of National Civil Police officers (Noticias de Guatemala, 2010). There are no reliable data concerning the total number of private security agents owing to the absence of up-to-date records and to the illegal conditions under which a large number of such enterprises operate. Hence, the most conservative data indicate an approximate figure of 36,000 private guards employed by 148 firms registered with the Ministry of the Interior but some sources put the combined number of lawfully registered and illegal agents as high as 100,000 or 150,000. The Ministry of the Interior reports that there are a further 70 enterprises whose legalization is currently in process. The Private Entity Monitoring Unit of the National Civil Police asserts that, for all registered enterprises, the total number of agents is 60,000 but the Guatemalan Chamber of Security (a professional trade association) estimates the figure to be at least 80,000 (Sandoval, 2010). The latest human development report published by UNDP states that there are 106,700, the highest figure in Central America, adding that this implies that a large part of the public security role has been yielded, de facto, to private enterprises, over which there is neither effective control nor an adequate legal framework to regulate their operations and to ensure their complementarity and subordination to civilian public security forces.<sup>38</sup>

132. The existence of groups of this kind, which operate irregularly, means that there are associations of organized and armed individuals in the country who sell their services with little or no regulation, for which reason there have for some time been calls from various civic and political sectors for the promulgation of a new law (Security Service and Private Investigation Bill No. 2846) to control the proliferation of such activities more effectively. This bill has been held up in Congress for some 10 years owing to constant opposition over the past decade from operators of these services — for the most part retired military personnel — or businessmen engaged in the sale of weapons and ammunition.<sup>39</sup>

## **B. Constitutional, political and legal structure of the State (Franco, 2011; Asamblea Nacional Constituyente, 1985)**

133. Guatemalan law is composed of the entire body of legislation in force and is the source of that legislation. Custom fulfils a supplementary function and may be deemed valid only when texts are deficient, but any custom at variance with the law is not admitted. Although Guatemala has a high percentage of indigenous peoples, who are seeking the recognition of customary law, sometimes referred to as Mayan law, which still operates in

<sup>37</sup> Source: Programa Estado de la Nación (footnote 34 above).

<sup>38</sup> UNDP, *Informe sobre Desarrollo Humano*, 2010, p. 239.

<sup>39</sup> *Ibid.*

the community practices of many places, the State does not accord it any validity. Case law also fulfils a supplementary function, serving to complement statute law. For a case-law precedent to have authoritative force, five unbroken Supreme Court rulings with the same line of reasoning or three consistent Constitutional Court decisions are necessary.

134. Under the Guatemalan legal system the Constitution is regarded as the supreme law of the nation and the validity of any other legislative text will depend on its conformity with the Constitution. Any legislation which violates or distorts the precepts of the Constitution is rendered void *ipso jure*. Guatemala's Constitution was promulgated by the 1985 National Constituent Assembly and was amended for the first and, so far, the only time following a referendum in 1993. Also, four other legislative instruments which have the same effects as those of the Constitution were promulgated by one or other of the last 2 constituent assemblies (those of 1965 and 1985). They are the *Amparo*, Habeas Corpus and Constitutionality Act, the Elections and Political Parties Act (1985 Constituent Assembly, Decrees Nos. 1-86 and 1-85 respectively), the Public Order Act and the Freedom of Expression Act (1965 Constituent Assembly, Decrees Nos. 7 and 9 respectively). As regards human rights, all treaties and conventions acceded to and ratified by Guatemala prevail over domestic law. Within the legal hierarchy, laws promulgated by Congress (ordinary laws) rank below the Constitution. Constitutional laws have precedence over ordinary laws and any amendment to them requires a qualified majority of the House of Representatives (two-thirds vote of all congressional members) and is subject to the opinion of the Constitutional Court. Lower rungs of the legal hierarchy are occupied by regulations issued by the executive and regulatory provisions, which may not under any circumstances conflict with higher-ranking laws. At the base of the pyramid are individualized rules, which include judicial decisions and administrative rulings.

135. Ordinary laws, which comprise general and abstract rules, are, as already stated, issued by Congress. The main ones include the Judiciary Act, which regulates matters relating to the interpretation, application and validity of legislative texts and the organization and functioning of the courts; the Criminal Code, which establishes offences and related penalties; the Civil Code, which provides for matters relating to individuals, families, real rights and obligations; the Commercial Code, whose purpose is to regulate the activities of traders, legal transactions and commercial matters; and the Labour Code, which regulates employer-employee relationships and contains both a substantive and a procedural part. Procedural matters are governed by the codes of civil and commercial procedure and criminal procedure.

136. The Constitution lays down that the courts must in every judgement observe the principle that the Constitution prevails over all lower-ranking laws and regulations. This precept is an expression of the normative force of the Constitution and is to be understood as a regulatory principle which requires judges to adopt a teleological approach to interpreting constitutional provisions in order to ensure an interpretation consistent with the principles and purposes of a social and democratic State governed by the rule of law.

137. As set forth in the Constitution, Guatemala is a rule-of-law State which is organized for the protection of the individual and the family and whose highest purpose is the realization of the common good. It is recognized that the State has a duty to guarantee to the country's inhabitants life, liberty, justice, security, peace and the full development of the individual. Its system of government is republican, democratic and representative and sovereignty resides in the people.

138. Guatemala does not define itself as a multi-ethnic and pluricultural State but the Constitution recognizes that the population is composed of different ethnic groups, including indigenous groups of Mayan descent, whose right to their ways of life, customs, traditions, forms of organization, languages and dialects and the wearing of indigenous costume by men and women is recognized by the Constitution.

139. For the discharge of its functions, the Government is divided into three independent branches, i.e. the executive, the legislature and the judiciary. The subordination of one branch to another is prohibited under the law. The executive comprises the president, as head of State, the vice-president, ministers and deputy ministers. The president and vice-president are elected by universal suffrage for a non-renewable four-year term and their election to those posts requires an absolute majority. If that majority is not obtained, a second round of voting is held between the 2 candidates who received the highest number of votes in the first round. The main duties of the president are, inter alia, to coordinate, within the Council of Ministers, the country's development policy and present the general State income and expenditure budget to Congress; to direct foreign policy and international relations; to sign, ratify and denounce international treaties and conventions; to provide for the defence and security of the nation, exercising command of the armed forces and entire forces of law and order for that purpose; and to appoint and dismiss ministers, deputy ministers, secretaries, undersecretaries and ambassadors.

140. The power to legislate is vested in Congress, whose members are elected under the system of electoral districts (except for 25 per cent, who are elected under the system of national lists) for a renewable four-year term. The most important duties of Congress are to decree, repeal and amend laws; to approve, modify or reject the general State income and expenditure budget; to levy taxes; to declare war; to grant amnesty for political crimes and related ordinary offences; to undertake operations concerning the external debt; and to approve, prior to their ratification, international treaties affecting national sovereignty or laws.

141. The judiciary comprises the Supreme Court as its highest body, courts of appeal, lower courts and magistrates' courts. The courts solely have the power to adjudicate and to enforce judgements. In the exercise of judicial authority the judiciary acts independently; justices and judges also act independently of one another and of other authorities. The thirteen Supreme Court justices are elected by Congress from a list of candidates proposed by a nominating committee composed of representatives from the country's universities, the Bar Association and the judiciary. Supreme Court justices and all judges of every category, including lower-court judges, will hold office for five years and may be re-elected or reappointed, as applicable. Judges are appointed by the Supreme Court. Under the Judiciary Act, the procedures to be applied in the interpretation of a law are as follows: syntactical, relating to the actual meaning of its wording; systematic, referring to the context; and authentic, based on purpose, equity and general legal principles, with definitions given by the legislator having precedence.

142. With the aim of strengthening the rule of law, three institutions were established under the 1985 Constitution, these being the Constitutional Court, the Supreme Electoral Tribunal and the Office of the Human Rights Advocate. The Constitutional Court, whose primary function is the defence of constitutional order, is responsible for reviewing the constitutionality of laws and for hearing all *amparo* proceedings. The role of the Supreme Electoral Tribunal is to call, organize and oversee elections. The Office of the Human Rights Advocate is entrusted by Congress with upholding human rights guaranteed by the Constitution. Its main duties are to investigate and report conduct injurious to the interests of individuals and human rights violations and to supervise the public administration, and it may, for such purposes, act on its own initiative or at the request of a party. In discharging its duties, it may issue public or private censures and initiate such legal and/or administrative actions as it deems necessary. The Office of the Human Rights Advocate is a single-person institution elected by Congress for a five-year renewable term.

143. The body whose responsibility is to audit and oversee income and expenditure of the State and municipal authorities is the Office of the Comptroller-General of Accounts. This institution is also responsible for supervising entities which receive public funds. A further

institution provided for by the Constitution, in addition to those already described, is the Public Prosecution Service. This is an auxiliary institution of the public administration and the courts, which has independent functions and whose main purpose is to ensure strict observance of the laws of Guatemala. It is headed by the Attorney-General, whose role is to institute criminal prosecutions and who is appointed by the president for a four-year term from a list of 6 candidates proposed by a nominating committee composed of members of the Supreme Court, the country's universities and the Bar Association.

144. The Constitution recognizes personal rights and also social, civil and political rights. Personal rights include the right to life, physical integrity, security, equality and liberty. The Constitution also establishes freedom of thought, religion, association and movement. The procedural guarantees provided for by the Constitution include the principles of due process and presumption of innocence, the right to a fair trial and the remedies of habeas corpus and *amparo*. Also provided for are the rights of asylum, petition, assembly and demonstration and the inviolability of correspondence and the home. The rights recognized include the rights to education, culture, health and work and also the right to vote and stand for election.

### **III. General framework for the protection and promotion of human rights**

#### **A. Acceptance of international human rights norms**

145. This section incorporates information on all international human rights instruments ratified by Guatemala, under both the universal system and the Inter-American system. To the extent permitted by the information available, the dates of signature, accession, deposit, publication and entry into force in Guatemala of each of the instruments are in every case provided, together with the number of the decree and the date of its adoption by Congress. Apart from general instruments, such as the Charter of the United Nations and the Charter of the Organization of American States, all the texts are arranged thematically so as to be more readily distinguishable. Also included is a list of international human rights instruments not yet ratified by the State of Guatemala. The information furnished is the result of a meticulous process of collation undertaken by the International Human Rights Protection Mechanisms and Instruments Unit within the Study, Analysis and Investigation Directorate of the Office of the Human Rights Advocate (*Source*: Procurador de los Derechos Humanos, 2011).



## A. International instruments ratified by the State of Guatemala

<i>No.</i>	<i>Ratified instrument</i>	<i>Details</i>
General instruments		
1	Charter of the United Nations	Ratification: 21 November 1945
2	Charter of the Organization of American States	Signature: 30 April 1948 Ratification: 18 March 1951 Deposit: 6 April 1955
	Protocol of Amendment to the Charter of the Organization of American States (Protocol of Cartagena de Indias)	Signature: 5 December 1985 Congressional Decree No. 6-2001 of 28 February 2001 Ratification: 1 October 2001 Deposit: 1 October 2001 (OAS)
(i) Main instruments concerning civil, political, economic, social and cultural rights		
4	Universal Declaration of Human Rights	
5	American Declaration of the Rights and Duties of Man	
6	International Covenant on Economic, Social and Cultural Rights	Signature: 19 December 1966 Congressional Decree No. 69-87 of 30 September 1987 Accession: 6 April 1988 Deposit: 19 May 1988 (United Nations) Publication: 8 August 1988 In force in Guatemala since 19 August 1988
7	International Covenant on Civil and Political Rights	Signature: 19 December 1966 Congressional Decree No. 9-92 of 19 February 1992 Accession: 1 May 1992 Deposit: 5 May 1992 (United Nations) Publication: 11 September 1992 In force in Guatemala since 5 August 1992
8	Optional Protocol to the International Covenant on Civil and Political Rights	Signature: 19 December 1966 Congressional Decree No. 11-96 of 14 March 1996 Accession: 19 June 2000 Deposit: 28 November 2000 (United Nations) Publication: 3 January 2001
9	American Convention on Human Rights (Covenant of San José de Costa Rica)	Signature: 22 November 1969 Congressional Decree No. 6-78 of 30 March 1978 Ratification: 27 April 1978 Deposit: 25 May 1978 (OAS) Publication: 13 July 1978

<i>No.</i>	<i>Ratified instrument</i>	<i>Details</i>
10	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	Signature: 17 November 1988 Congressional Decree No. 127-96 of 27 November 1996 Ratification: 30 May 2000 Deposit: 5 October 2000 (OAS) Publication: 11 October 2001
11	Convention on the Protection and Promotion of the Diversity of Cultural Expressions	Ratification: 25 October 2006
12	Convention for the Safeguarding of the Intangible Cultural Heritage	Ratification: 25 October 2006
13	Convention on the International Right of Correction	Signature: 1 April 1953 Congressional Decree No. 11 of 5 September 1955 Ratification: 9 September 1955 Deposit: 7 May 1957 (United Nations) Publication: 20 September 1957
14	Declaration of Principles on Freedom of Expression (OAS)	
(ii) Protection and promotion of human rights		
15	Agreement between the Office of the United Nations High Commissioner for Human Rights and the Government of Guatemala on the establishment of an office in Guatemala	Signature: 10 January 2005 in New York Congressional Decree No. 40-2005 of 31 May 2005 <i>Note:</i> Initially in force until 10 January 2008 (renewed for a three-year period to 2011)
16	Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders)	
17	Proclamation of Teheran (on human rights defenders)	
18	Vienna Declaration and Programme of Action	
(iii) Against racism and discrimination		
19	United Nations Declaration on the Elimination of All Forms of Racial Discrimination	

<i>No.</i>	<i>Ratified instrument</i>	<i>Details</i>
20	International Convention on the Elimination of All Forms of Racial Discrimination	Signature: 21 December 1965 Decree-Law No. 105-82 of 30 November 1982 Ratification: 30 November 1982 Deposit: 18 January 1983 (United Nations) Publication: 6 January 1984 In force since 17 February 1983 <i>Note:</i> The State of Guatemala has not accepted the competence of the Committee on the Elimination of Racial Discrimination as established in article 14 (submission of claims to the Committee)
21	International Convention on the Suppression and Punishment of the Crime of Apartheid	Congressional Decree No. 39-2005 Instrument of accession signed on 31 May 2005 Publication: 8 July 2005 in <i>Diario de Centroamérica</i> In force since 15 July 2005
22	Convention against Discrimination in Education	Decree-Law No. 112-82 of 20 December 1982 Ratification: 21 December 1982 Deposit: 4 February 1983 (United Nations) Publication: 10 March 1983
23	Protocol Instituting a Conciliation and Good Offices Commission to be Responsible for Seeking the Settlement of any Disputes which may Arise between States Parties to the Convention against Discrimination in Education	Decree-Law No. 112-82 of 20 December 1982 Ratification: 21 December 1982 Deposit: 4 February 1983 (United Nations) Publication: 10 March 1983
24	Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief	
25	Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War	
26	Declaration on Race and Racial Prejudices	
27	Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities	
28	National Institutions' Statement to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban	

<i>No.</i>	<i>Ratified instrument</i>	<i>Details</i>
(iv) Women's rights		
29	Declaration on the Elimination of Discrimination against Women	
30	Convention on the Elimination of All Forms of Discrimination against Women	Decree-Law No. 49-82 of 29 June 1982 Ratification: 8 July 1982 Deposit: 12 August 1982 (United Nations) Publication: 6 September 1982
31	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	Signature: 7 September 2000 Decree-Law No. 59-2001 of 22 November 2001 Ratification: 30 April 2002 Deposit: 9 May 2002 Entry into force: 8 August 2002 Publication: 17 September 2002
32	Amendment to article 20, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women. Recommendation of the Committee regarding implementation of the amendment	Date of signature: 22 May 1995 Decree-Law No. 67-97 of 6 August 1997 Ratification: 5 December 1997 Deposit: 3 June 1999 Entry into force: 3 June 1999 Publication: 20 January 1999
33	Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Pará)	Date of signature: 6 September 1994 Congressional Decree No. 69-94 of 15 December 1994 Ratification: 4 January 1995 Deposit: 4 April 1995 (OAS) Publication: 11 January 1996
34	Convention on the Political Rights of Women	Signature: 31 March 1953 Congressional Decree No. 1307 of 26 August 1959 Ratification: 18 September 1959 Deposit: 7 October 1959 (United Nations) Publication: 16 October 1959
35	Declaration on the Protection of Women and Children in Emergency and Armed Conflict	
36	ILO Equal Remuneration Convention, 1951 (No. 100)	Signature: 29 June 1951 Congressional Decree No. 1454 of 8 June 1961 Ratification: 22 June 1961 Deposit: 2 August 1961 (ILO) Publication: 21 September 1961

No.	Ratified instrument	Details
37	Inter-American Convention on the Granting of Political Rights to Women	Signature: 2 May 1948 Legislative Decree No. 805 of 9 May 1951 Ratification: 17 May 1951 Publication: 28 May 1951 <i>Note:</i> A reservation was made with respect to the third paragraph of article 8. The reservation was withdrawn by Decree No. 23-90 of 25 April 1990, ratified on 6 August 1990
38	Inter-American Convention on the Granting of Civil Rights to Women	Signature: 2 May 1948 Legislative Decree No. 805 of 9 May 1951 Ratification: 17 May 1951 Deposit: 7 September 1951 Publication: 28 May 1951
(v) Children's rights		
39	Declaration of the Rights of the Child	
40	Convention on the Rights of the Child	Signature: 26 January 1990 Congressional Decree No. 27-90 of 10 May 1990 Ratification: 22 May 1990 Deposit: 6 June 1990 (United Nations) Publication: 25 February 1991 In force in Guatemala since 6 July 1990, in accordance with article 49
41	Amendment to article 43, paragraph 2, of the Convention on the Rights of the Child	Signature: 12 December 1995 Congressional Decree No. 77-2001 of 13 December 2001 Accession: 10 June 2002 Deposit: 26 December 2002 (United Nations) Publication: 8 July 2003
42	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	Signature: 7 September 2000 Congressional Decree No. 1-2000 of 23 January 2002 Deposit: 9 May 2002 (United Nations) In force in Guatemala since 9 June 2002, in accordance with article 49 Publication: 18 September 2002
43	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	Signature: 7 December 2000 Congressional Decree No. 76-2001 of 11 December 2001 Ratification: 30 April 2002 Deposit: 9 May 2002 Entry into force: 8 June 2002 Publication: 19 September 2002

<i>No.</i>	<i>Ratified instrument</i>	<i>Details</i>
44	ILO Worst Forms of Child Labour Convention, 1999 (No. 182)	Signature: 1 June 1999 Congressional Decree No. 27-2001 of 23 July 2001 Ratification: 21 August 2001 Deposit: 11 October 2001 (ILO) Entry into force: 11 October 2002 Publication: 17 October 2002
45	Inter-American Convention on Support Obligations	Ratification: 13 September 1995 Deposit: 2 May 1996
46	The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption relativo a la Protección del Niño y la Cooperación en materia de Adopción Internacional	Signature: 29 May 1993 Congressional Decree No. 50-2002 of 13 August 2002 (declared unconstitutional, Constitutional Court ruling of 13 August 2003) Date of ratification: 17 October 2002 Date of deposit: 26 November 2002 (Netherlands) Date of publication: 4 March 2003 Decree No. 77-200 (Adoptions Act)
47	Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages	Date of signature: 10 December 1962 Decree-Law No. 99-82 of 15 November 1982 Accession: 17 December 1982 Deposit: 18 January 1983 (United Nations) Publication: 23 February 1983
48	Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples	
(vi) Against slavery, servitude and forced labour		
49	Slavery Convention	Signature: 25 September 1926 Decree-Law No. 110-83 of 16 September 1983 Accession: 16 September 1983 Deposit of instrument of accession: 11 November 1983 (United Nations) Publication: 7 December 1983
50	Protocol amending the Slavery Convention signed at Geneva on 25 September 1926	Signature: 7 December 1953 Decree-Law No. 110-83 of 16 September 1983 Accession: 16 September 1983 Deposit: 11 November 1983 (United Nations) Publication: 7 February 1984

<i>No.</i>	<i>Ratified instrument</i>	<i>Details</i>
51	Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery	Signature: 7 September 1956 Decree-Law No. 111-83 of 16 September 1983 Ratification: 16 September 1983 Deposit: 11 November 1983 (United Nations) Publication: 8 December 1983
52	ILO Abolition of Forced Labour Convention, 1957 (No. 105)	Signature: 25 June 1957 Congressional Decree No. 1321 of 7 October 1959 Date of ratification: 10 November 1959 Date of deposit: 9 December 1959 (ILO) Date of publication: 19 December 1959
(vii) Administration of justice		
53	Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas	
54	Principles on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	
55	Code of Conduct for Law Enforcement Officials	
56	Basic Principles on the Use of Force and Firearms by Law Enforcement Officials	
57	Guidelines on the Role of Prosecutors	
58	United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)	
59	United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)	
60	Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power	
61	Inter-American Convention on Serving Criminal Sentences Abroad	Congressional Decree No. 43-2005 of 13 July 2005 Publication: 12 August 2005
62	Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century	
63	Statute of the Central American Court of Justice	Decree No. 78-2007 of 13 December 2007

<i>No.</i>	<i>Ratified instrument</i>	<i>Details</i>
	(viii) Absolute prohibition of torture and ensuring protection of the integrity of persons deprived of liberty	
64	Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	
65	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Congressional Decree No. 52-89 of 12 October 1989 Accession: 23 November 1989 Deposit: 5 January 1990 (United Nations) Publication: 26 April 1990
66	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Decree No. 53-2007 of 7 November 2007 Deposit: 9 June 2008 (United Nations) <i>Note:</i> The National Office for the Prevention of Torture was established, as the national prevention mechanism, under Congressional Decree No. 40-2010
67	Inter-American Convention to Prevent and Punish Torture	Signature: 9 December 1985 Congressional Decree No. 64-86 of 11 November 1986 Ratification: 10 December 1986 Deposit: 29 January 1987 (OAS) Publication: 24 February 1987
68	Standard Minimum Rules for the Treatment of Prisoners	
69	Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment	
70	United Nations Rules for the Protection of Juveniles Deprived of their Liberty	
	(ix) Disablement	
71	Convention on the Rights of Persons with Disabilities (New York, 13 December 2006)	Congressional Decree No. 59-2008 of 30 September 2008 Deposit: 7 April 2009 In force since 7 May 2009, in accordance with article 45 of the Convention Published in the Official Gazette on 18 May 2009
72	Optional Protocol to the Convention on the Rights of Persons with Disabilities (New York, 13 December 2006)	Deposit: 7 April 2009 In force since 7 May 2009 Published in the Official Gazette on 18 May 2009
73	Declaration on the Rights of Mentally Retarded Persons	



<i>No.</i>	<i>Ratified instrument</i>	<i>Details</i>
74	Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	Signature: 7 June 1999 Decree-Law No. 26-2001 of 17 July 2001 Ratification: 8 August 2002 Deposit: 28 January 2003 (OAS) Entry into force: 13 August 1995
75	Standard Rules on the Equalization of Opportunities for Persons with Disabilities	
76	Declaration on the Rights of Disabled Persons	
(x) Indigenous peoples		
77	ILO Indigenous and Tribal Peoples in Independent Countries Convention, 1989 (No. 169)	Signature: 7 July 1989 Congressional Decree No. 9-96 of 5 March 1996 Ratification: 10 April 1996 Deposit: 5 June 1996 (ILO) Entry into force: 5 June 1997 Publication: 24 June 1997
78	Agreement establishing the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean, concluded at Madrid on 24 July 1992	Signature: 24 July 1992 Decree No. 51-95 of 14 July 1995 Ratification: 30 May 2000 Entry into force: 28 November 2000 Deposit: 28 November 2000 (United Nations)
(xi) Employment and freedom of association		
79	ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)	Signature: 9 July 1948 Legislative Decree No. 843 of 7 November 1951 Ratification: 28 January 1952 Deposit: 13 February 1952 (ILO) Publication: 11 February 1952
80	ILO Right to Organize and Collective Bargaining Convention, 1949 (No. 98)	Signature: 1 July 1949 Legislative Decree No. 843 of 7 November 1951 Ratification: 28 January 1952 Deposit: 13 February 1952 (ILO) Publication: 12 February 1952
81	ILO Employment Policy Convention, 1964 (No. 122)	Signature: 9 July 1964 Congressional Decree No. 41-88 of 4 August 1988 Ratification: 19 August 1988 Deposit: 12 September 1988 (ILO) Publication: 19 October 1988
82	ILO Seafarers' Welfare Convention, 1987 (No. 163)	Deposit of instrument of ratification: 3 November 2008

<i>No.</i>	<i>Ratified instrument</i>	<i>Details</i>
(xii) Social progress and development		
83	Millennium Declaration	
84	Declaration on Social Progress and Development	
85	Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind	
86	Declaration on the Right of Peoples to Peace	
87	Declaration on the Right to Development	
88	Rome Declaration on World Food Security	
(xiii) Health and well-being		
89	Declaration on the Commitment to Combating HIV/AIDS	
90	WHO Framework Convention on Tobacco Control	Signature: 25 September 2003 Legislative Decree No. 47-2005 of 14 July 2005
(xiv) Migrants and human trafficking		
91	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Signature: 7 September 2000 Congressional Decree No. 61-97 of 23 July 1997 Ratification: 7 March 2003 Deposit: 14 March 2003 (United Nations) Entry into force: 1 July 2003 Publication: 4 July 2003
92	Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Convention)	Signature: 15 November 2000 Congressional Decree No. 36-2003 of 19 August 2003 Accession: 4 February 2004 Entry into force: 1 May 2004 Publication: 21 May 2004
93	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Convention)	Signature: 15 November 2000 Congressional Decree No. 36-2003 of 19 August 2003 Accession: 4 February 2004 Entry into force: 1 May 2004 Publication: 5 May 2004
94	Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	Decree No. 40-2007 of 26 November 2007 Publication: 19 October 2007 Deposit: 13 December 2007 Entry into force: 13 March 2008

<i>No.</i>	<i>Ratified instrument</i>	<i>Details</i>
95	Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Convention)	Deposit: 1 April 2004
96	Final Protocol to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	Adopted by Decree No. 40-2007 of 26 November 2007 Publication: 19 October 2007 Deposit: 13 December 2007 Entry into force: 13 March 2008
(xv) Refugees, nationality, stateless persons and asylum		
97	Convention on the Reduction of Statelessness	Signature: 30 August 1961 Congressional Decree No. 100-2000 of 19 December 2000 Accession: 20 March 2001 Entry into force: 23 August 2001 Publication: 20 August 2001
98	Convention relating to the Status of Stateless Persons	Signature: 28 September 1954 Decree No. 5-96 of 20 February 1996 Ratification: 29 June 2000 Entry into force: 26 February 2001 Date of Publication: 26 June 2003
99	Convention relating to the Status of Refugees	Signature: 28 July 1951 Decree-Law No. 34-83 of 29 March 1983 Accession: 29 March 1983 Deposit: 22 September 1983 (United Nations) Publication: 25 November 1983
100	Protocol relating to the Status of Refugees	Signature: 31 January 1967 Decree-Law No. 34-83 of 29 March 1983 Accession: 29 March 1983 Deposit: 22 September 1983 (United Nations) Publication: 25 November 1983
101	Convention on Territorial Asylum	Signature: 28 March 1954 Decree-Law No. 13-83 of 24 February 1983 Ratification: 28 February 1983 Deposit: 13 May 1983 Publication: 13 May 1983

<i>No.</i>	<i>Ratified instrument</i>	<i>Details</i>
102	Convention on the Nationality of Married Women	Signature: 26 December 1933 Congressional Decree No. 2130 of 25 March 1936 Ratification: 6 April 1936 Deposit: 17 July 1936 Publication: 19 May 1936
103	Convention on the Right to Asylum	Date of signature: 20 February 1928 Legislative Decree No. 1716 of 18 May 1931 Ratification: 20 May 1931 Deposit: 28 September 1931 Publication: 11 June 1931
104	Convention on Political Asylum	Signature: 26 December 1933 Decree No. 2068 of 22 April 1935 Ratification: 28 April 1935 Deposit: 3 July 1935 Publication: 20 June 1935
105	Convention on Diplomatic Asylum	Signature: 28 March 1954 Decree-Law No. 16-83 of 24 February 1983 Ratification: 3 March 1983 Deposit: 13 May 1983 Publication: 16 June 1983
106	Declaration on the Human Rights of Individuals Who are not Nationals of the Country in Which They Live	
107	Declaration on Territorial Asylum	
	(xvi) Environment	
108	Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof	Signature: 11 February 1971 Decree-Law No. 13-94 of 26 January 1994 Ratification: 28 March 1994 Deposit: 1 April 1996 (United Nations) Entry into force: 1 April 1996
109	Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques	Signature: 10 December 1976 Decree-Law No. 77-87 of 12 November 1987 Ratification: 20 January 1984 Deposit: 21 March 1988 (United Nations) Entry into force: 21 March 1988
110	Vienna Convention for the Protection of the Ozone Layer	Signature: 22 March 1985 Decree-Law No. 39-87 of 8 July 1987 Ratification: 20 July 1987 Deposit: 11 September 1987 (United Nations) Entry into force: 22 September 1988

<i>No.</i>	<i>Ratified instrument</i>	<i>Details</i>
111	Montreal Protocol on Substances that Deplete the Ozone Layer	Signature: 16 September 1987 Decree-Law No. 34-89 of 14 June 1989 Ratification: 11 July 1989 Deposit: 7 November 1989 (United Nations) Entry into force: 5 February 1990
112	Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer	Decree-Law No. 17-2001 of 12 June 2001 Ratification: 15 October 2001 Ratification of the London Amendment (1990), the Copenhagen Amendment (1992), the Montreal Amendment (1997) and the Beijing Amendment (1999): 21 January 2002 (United Nations)
113	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	Signature: 23 March 1989 Decree-Law No. 3-95 of 25 January 1995 Ratification: 25 April 1995 Deposit: 15 May 1995 (United Nations) Entry into force: 13 August 1995
114	United Nations Framework Convention on Climate Change	Signature: 13 June 1992 Decree-Law No. 15-95 of 28 March 1985 Ratification: 3 August 1995 Deposit: 15 December 1995 (United Nations) Entry into force: 15 March 1996
115	Kyoto Protocol to the United Nations Framework Convention on Climate Change	Signature: 10 July 1998 Decree-Law No. 23-99 of 12 May 1999 Ratification: 7 July 1999 Deposit: 5 October 1999 (United Nations)
116	Convention on Biological Diversity	Signature: 13 June 1992 Decree-Law No. 5-95 of 21 February 1985 Ratification: 14 June 1995 Deposit: 10 July 1995 (United Nations) Entry into force: 8 October 1995
117	Cartagena Protocol on Biosafety to the Convention on Biological Diversity	Ratification: 28 October 2004 Deposit (United Nations) Entry into force: 26 January 2005
118	Convention on International Trade in Endangered Species of Wild Fauna and Flora	Signature: 3 March 1973 Decree-Law No. 63-79 of 2 October 1979 Ratification: 11 October 1979 Entry into force: 5 February 1980

<i>No.</i>	<i>Ratified instrument</i>	<i>Details</i>
119	United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa	Signature: 17 June 1994 Decree-Law No. 13-98 of 25 February 1998 Ratification: 4 May 1998 Deposit: 10 September 1998 (United Nations) Entry into force: 9 December 1998
120	Stockholm Convention on Persistent Organic Pollutants	Signature: 29 January 2002 Deposit: 30 July 2008
121	Convention on the Protection of the Underwater Cultural Heritage, 2001	Decree No. 63-2007 of 20 November 2007 Deposit: pending (June 2009)
(xvii) Missing persons		
122	Inter-American Convention on the Forced Disappearance of Persons	Signature: 24 June 1994 Congressional Decree No. 18-96 of 28 March 1996 Ratification: 27 July 1999 Deposit: 25 February 2000 (OAS) Publication: 19 November 2001
123	Convention on the Declaration of Death of Missing Persons	Signature: 6 April 1950 Decree-Law No. 842 of 7 November 1951 Ratification: 25 May 1951 Deposit: 25 December 1951 (United Nations) Entry into force: 24 January 1952 Expiry: 23 January 1957
124	Declaration on the Protection of All Persons from Enforced Disappearance	
125	Protocol for extending the period of validity of the Convention on the Declaration of Death of Missing Persons	Signature: 16 January 1957 Decree-Law No. 1456 of 8 June 1951 Ratification: 22 June 1961 Deposit: 8 August 1961 (United Nations) Expiry: 24 January 1967
126	Protocol for the further extension of the period of validity of the Convention on the Declaration of Death of Missing Persons	Signature: 15 January 1967 Decree-Law No. 1721 of 7 November 1967 Ratification: 9 February 1968 Deposit: 12 March 1968 (United Nations) Entry into force and period of validity: 12 March 1968 (5 years)
(xviii) International humanitarian law		
127	Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)	Signature: 12 August 1949 Legislative Decree No. 881 of 16 April 1952 Ratification: 21 April 1952 Deposit: 14 May 1952 (United Nations) Publication: 3 September 1952

<i>No.</i>	<i>Ratified instrument</i>	<i>Details</i>
128	Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention)	Signature: 12 August 1949 Legislative Decree No. 881 of 16 April 1952 Ratification: 21 April 1952 Deposit: 14 May 1952 (United Nations) Publication: 3 September 1952
129	Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention)	Signature: 12 August 1949 Legislative Decree No. 881 of 16 April 1952 Ratification: 21 April 1952 Deposit: 14 May 1952 (United Nations) Publication: 1 and 2 September 1952
130	Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)	Signature: 12 August 1949 Legislative Decree No. 881 of 16 April 1952 Ratification: 21 April 1952 Deposit: 14 May 1952 (United Nations) Publication: 2 and 3 September 1952
131	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)	Date of signature: 8 June 1977 Congressional Decree No. 21-87 of 23 April 1987 Date of accession: 21 September 1987 Date of deposit: 19 October 1987 (United Nations) Publication: 6 September 1988
132	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)	Date of signature: 8 June 1977 Congressional Decree No. 21-87 of 23 April 1987 Date of accession: 21 September 1987 Date of deposit: 19 October 1987 (United Nations) Date of publication: 6 September 1988
133	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)	Congressional Decree No. 57-2007 of 13 November 2007
134	Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention	Accession: 2 October 2005
135	Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict	Deposit: 19 May 1994 (UNESCO)
136	Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict	Deposit: 4 February 2005 (UNESCO)

**B. Other instruments ratified by Guatemala**

<i>No.</i>	<i>Instrument</i>	<i>Status</i>
(xix) Security, terrorism and transnational crime		
137	United Nations Convention against Transnational Organized Crime	Signature: 12 December 2000 Decree-Law No. 36-2003 of 19 August 2003 Ratification: 18 September 2003 Deposit: 25 September 2003 (United Nations) Entry into force: 25 October 2003
138	International Convention against the Taking of Hostages	Signature: 17 December 1979 Decree-Law No. 118-82 of 30 December 1982 Ratification: 30 December 1982 Deposit: 11 March 1983 (United Nations) Publication: 10 June 1983 <i>Note:</i> Expired in 2002, as stated in the text of the Ministry of Foreign Affairs
139	International Convention for the Suppression of Terrorist Bombings	Signature: 12 January 1998 Decree-Law No. 70-2001 of 29 November 2001 Ratification: 30 January 2002 Date of Deposit: 12 February 2002 (United Nations) Entry into force: 14 March 2002 <i>Note:</i> A reservation was made pursuant to article 2, paragraph 2 (a), of the Convention
140	International Convention for the Suppression of the Financing of Terrorism	Decree-Law No. 70-2001 of 29 November 2001 Ratification: 30 January 2002
141	Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents	Signature: 21 December 1974 Decree-Law No. 103-82 Ratification: 29 November 1982 Publication: 4 March 1983
142	Inter-American Convention against Corruption	Date of signature: 23 March 1996 Decree-Law No. 15-2001 of 10 May 2001 Ratification: 12 June 2001 Date of deposit: 3 July 2001 (OAS) Entry into force: 2 August 2001
143	Framework Treaty on Democratic Security in Central America	Signature: 15 December 1995 Decree-Law No. 118-97 of 25 November 1997 Ratification: 21 June 1999 Deposit: 28 October 1999 (OAS) Entry into force: 28 October 1999
144	Inter-American Convention against Terrorism	Legislative Decree No. 57-2005 Ratification: 31 August 2005



<i>No.</i>	<i>Instrument</i>	<i>Status</i>
<b>(xx) Disarmament and use, trade and control of weapons and ammunition</b>		
145	Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I, II and III thereto)	Signature: 10 October 1980 Decree-Law No. 62-83 of 6 June 1983 Ratification: 6 June 1983 Deposit: 21 July 1983 (United Nations) Entry into force: 21 January 1984 Deposit of instrument of ratification of amendment: 13 February 2009
146	Additional Protocol to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (Protocol IV, entitled Protocol on Blinding Laser Weapons)	Signature: 13 October 1995 Decree-Law No. 21-2001 of 13 June 2001 Ratification: 10 June 2002 Deposit: 30 August 2002 (United Nations) Entry into force: 28 February 2003
147	Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II as amended on 3 May 1996) annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects	Signature: 3 May 1996 Decree-Law No. 20-2001 of 15 May 2001 Ratification: 23 July 2001 Deposit: 29 October 2001 (United Nations) Entry into force: 29 April 2002
148	Amendment to article 1 of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects	Decree No. 39-2007 of 26 September 2007 Publication: 19 October 2007 Deposit: 13 February 2009 (United Nations) Entry into force: 13 August 2009
149	Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (Protocol V)	Decree No. 54-2007 of 7 November 2007 Deposit: 28 February 2008 (United Nations)
150	Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction	Signature: 14 January 1993 Decree-Law No. 54-2000 of 2 May 2001 Ratification: 3 December 2002 Deposit: 12 February 2003 (United Nations) Entry into force: 14 March 2003

No.	Instrument	Status
151	Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction	Signature: 3 December 1997 Decree-Law No. 79-98 of 13 August 1998 Ratification: 7 January 1999 Deposit: 26 March 1999 (United Nations) Entry into force: 1 October 1999
152	Inter-American Convention on Transparency in Conventional Weapons Acquisitions	Signature: 7 June 1999 Decree-Law No. 84-2000 of 28 November 2000 Ratification: 9 January 2001 Deposit: 3 July 2001 (OAS) Entry into force: 21 November 2002
153	Convention on the Prevention and Punishment of the Crime of Genocide	Signature: 22 June 1949 Legislative Decree No. 704 of 30 November 1949 Ratification: 13 December 1949 Deposit: 13 January 1950 (United Nations) Publication: 6 January 1950
154	Comprehensive Nuclear-Test-Ban Treaty	Signature: 20 September 1999
155	Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco)	Ratification: 6 February 1970 Ratification of first amendment: 21 August 1998 Ratification of second amendment: 26 November 2003
(xxi) Miscellaneous instruments		
156	Vienna Convention on the Law of Treaties	Signature: 23 May 1969 Decree-Law No. 55-96 of 26 June 1996 Ratification: 14 May 1997 Deposit: 21 July 1997 (United Nations) Entry into force: 21 July 1997 <i>Note:</i> Reservations were entered. The Republic of Guatemala formally confirms reservations I and III, formulated by it upon signature of the Vienna Convention on the Law of Treaties and relating respectively to the fact that Guatemala does not accept any provision of the Convention which could prejudice its rights and its claim to the territory of Belize, and to the fact that it will apply the provision contained in article 38 of the Convention only in cases where it considers it to be in the national interest to do so; and with respect to reservation II, formulated on the same occasion and relating to the fact that the Republic of Guatemala will not apply articles 11, 12, 25 and 66 of the Vienna Convention on the Law of Treaties insofar as they are contrary to the Constitution. <i>Diario de Centroamérica</i> , 27 August 1998

<i>No.</i>	<i>Instrument</i>	<i>Status</i>
157	Agreement on the Importation of Educational, Scientific and Cultural Materials with annexes and Protocol annexed	Signature: 22 November 1950 Congressional Decree No. 1369 of 14 June 1970 Ratification: 20 June 1960 Deposit: 8 July 1960 (UNESCO) Date of Publication: 4 July 2003
158	World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty	Decree-Law No. 13-2002 of 3 April 2002 Ratification: 10 June 2002 Deposit: 8 October 2002 (WIPO) Entry into force: 8 January 2003
159	Treaty on the Transfer of Sentenced Persons between the Republic of Guatemala and the Kingdom of Spain	Signed at Madrid on 23 March 1996 Decree No. 44-2005 Issue: 13 July 2005 Publication: 12 August 2005
160	Convention on the Recovery Abroad of Maintenance	Signature: 26 December 1956 Legislative Decree No. 1157 of 29 March 1957 Ratification: 2 April 1957 Deposit: 25 April 1957 (United Nations) Publication: 12 April 1957
161	Convention on the Safety of United Nations and Associated Personnel	Deposit: 23 September 2008
162	Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel	Deposit: 11 November 2008
163	International Treaty on Plant Genetic Resources for Food and Agriculture	Signature: 29 June 2004 Ratification: 1 February 2006
164	International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations	Signature: 26 October 1961 Congressional Decree No. 37-76 of 18 August 1976 Ratification: 7 September 1976 (United Nations) Deposit: 14 October 1976
165	Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms	Signature: 26 October 1961 Decree-Law No. 36-76 of 18 August 1976 Ratification: 7 September 1976 (United Nations) Deposit: 14 October 1976 Entry into force: 4 November 1976
166	Dominican Republic - Central America - United States Free Trade Agreement	Decree No. 31-2005 of 10 March 2005
167	Doha Declaration	Ministerial Declaration (Doha, 2001)

<i>No.</i>	<i>Instrument</i>	<i>Status</i>
(xxii) Other declarations and resolutions		
168	Declaration of the Principles of International Cultural Cooperation	Proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its fourteenth session, on 4 November 1966
169	Declaration on the granting of independence to colonial countries and peoples (Right of self-determination)	General Assembly resolution 1514 (XV) of 14 December 1960. Proclaimed by the General Assembly in its resolution 1803 (XVII) of 14 December 1962, entitled "Permanent sovereignty over natural resources"
170	Right to the Truth	Commission on Human Rights resolution 2005/66 of 20 April 2005
171	Constitution of the World Health Organization	Signature: 22 July 1946 Deposit: 26 August 1949

**C. International human rights instruments not yet ratified by the State of Guatemala**

<i>No.</i>	<i>Instrument</i>	<i>Status</i>
1	Rome Statute of the International Criminal Court	With Congress since 2002
2	Convention on Cluster Munitions	Signature: 30 May 2008 In process of ratification (June 2009)
3	Protocol to the American Convention on Human Rights to Abolish the Death Penalty	
4	International Convention for the Protection of All Persons from Enforced Disappearance	
5	Amendment to article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination	
6	Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity	
7	Amendments to article 17, paragraph 7, and article 18, paragraph 5, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	
8	International Convention against Apartheid in Sports	
9	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (New York, 10 December 2008)	
10	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	

<i>No.</i>	<i>Instrument</i>	<i>Status</i>
11	International Convention against the Recruitment, Use, Financing and Training of Mercenaries	
12	Convention on Long-range Transboundary Air Pollution	
13	Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on the Reduction of Sulphur Emissions or their Transboundary Fluxes by at least 30 per cent	
14	Protocol to the 1979 Convention on Long-range Transboundary Air Pollution concerning the Control of Emissions of Nitrogen Oxides or their Transboundary Fluxes	
15	Protocol to the 1979 Convention on Long-range Transboundary Air Pollution concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes	
16	Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Further Reduction of Sulphur Emissions	
17	Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Heavy Metals	
18	Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Persistent Organic Pollutants	
19	Amendment to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	
20	Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal	
21	Convention on Environmental Impact Assessment in a Transboundary Context	
22	Convention on the Protection and Use of Transboundary Watercourses and International Lakes	
23	Convention on the Transboundary Effects of Industrial Accidents	
24	Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters	
25	Amendment to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters	

<i>No.</i>	<i>Instrument</i>	<i>Status</i>
26	Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	
27	Agreement on the establishment of the International Vaccine Institute	
28	Vienna Convention on Succession of States in respect of Treaties	
29	Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations	
30	Inter-American Convention on International Traffic in Minors	
31	Inter-American Convention on the International Return of Children	
32	Universal Copyright Convention as revised at Paris, with Appendix Declaration relating to Article XVII and Resolution concerning Article XI, Paris, 24 July 1971, and protocols I and II thereto (revision of the Convention of 1952, Paris)	
33	Statutes of the International Centre for Genetic Engineering and Biotechnology and amendments to articles 6 and 7	
34	Protocol to the Statutes of the International Centre for Genetic Engineering and Biotechnology on the Seat of the Centre	
35	International Tropical Timber Agreement	Signature: 14 July 2006

## **B. Legal framework for the protection of human rights at the national level**

146. In Guatemala, human rights are recognized by the Constitution, guaranteed by legislation and protected by international law. As previously mentioned, constitutional provisions stipulate that international human rights treaties and conventions become part of the law and prevail over domestic legislation. If no national law is applicable to specific rights but an international instrument has been adopted on the matter, the latter may be applied directly (art. 46).

147. The Constitution is regarded as a protective instrument and a substantial part of its content is concerned with upholding human rights. In article 1 it establishes that the highest purpose of the State is the realization of the common good and that the State is organized for the protection of the individual and the family; in article 2 it provides that the State has a duty to guarantee to all its inhabitants life, liberty, justice, security, peace and the full development of the individual; and in article 44 it not only lays down that the interests of society have precedence over private interests but also stipulates that laws and

governmental or any other regulations which diminish, restrict or distort the rights guaranteed by the Constitution shall be rendered void *ipso jure* (Asamblea Nacional Constituyente, 1985). Title II of the Constitution relates specifically to human rights (arts. 3 to 139) and is subdivided into the following chapters:

- (a) Chapter I, relating to individual rights (arts. 3 to 46);
- (b) Chapter II, comprising 10 separate sections, all relating to social rights:
  - (i) Section one: family (arts. 47 to 56);
  - (ii) Section two: culture (arts. 57 to 65);
  - (iii) Section three: indigenous communities (arts. 66 to 70);
  - (iv) Section four: education (arts. 71 to 81);
  - (v) Section five: universities (arts. 82 to 90);
  - (vi) Section six: sport (arts. 91 and 92);
  - (vii) Section seven: health, social security and welfare (arts. 93 to 100);
  - (viii) Section eight: employment (arts. 101 to 106);
  - (ix) Section nine: State workers (arts. 107 to 117);
  - (x) Section ten: economic and social system (arts. 118 to 134);
- (c) Chapter III: civic and political rights and duties (arts. 135 to 137); and
- (d) Chapter IV: limitations on constitutional rights (arts. 138 and 139).

148. Title VI (arts. 263 to 276), which deals with constitutional guarantees and the defence of constitutional order, is divided into the following chapters:

- (a) Chapter I: habeas corpus (arts. 263 and 264);
- (b) Chapter II: *amparo* (art. 265);
- (c) Chapter III: unconstitutionality of laws (arts. 266 and 267);
- (d) Chapter IV: Constitutional Court (arts. 268 to 272);
- (e) Chapter V: Human Rights Commission and Human Rights Advocate (arts. 273 to 275); and
- (f) Chapter VI: *Amparo*, Habeas Corpus and Constitutionality Act (art. 276).

149. The Constitution lays down that the institution of proceedings against perpetrators of human rights violations is a public right which may be exercised by the simple lodging of a complaint, without any surety or formality, adding, in article 46, that resistance by the people to protect and uphold the rights and guarantees set forth in the Constitution is legitimate.<sup>40</sup>

150. The OAS Inter-American Commission on Human Rights summarized as follows the main human rights content of the Constitution: individual rights include the right to life, the right of all human beings to liberty and equality and the right to freedom of action; unlawful or arbitrary arrest is prohibited; persons arrested must be handed over to the competent judge within a period of 6 hours and may not be subject to any other authority; all detainees must be informed immediately of the reason for their arrest, the authority

<sup>40</sup> Source: Misión Internacional de Verificación, 2010, pp. 23 and 24.

which ordered their arrest and the place of their detainment, and such circumstances must be communicated by the quickest means to the person named by the detainee; every detainee is entitled to be assisted by defence counsel, who may be present during all judicial and police procedures, and detainees may not be compelled to make a statement except before the judge, which must take place within a period not exceeding 24 hours; extrajudicial interrogations are devoid of probative value; no individuals may be taken to places of detention, custody or confinement other than those designated publicly and by law for that purpose and anyone in breach of this provision will be held personally liable; persons arrested for minor offences or misdemeanours must not be held in custody if their identity can be established by documentation, the testimony of a well-known person or the authority; and no individual may be sentenced or deprived of rights without having been summoned, heard and convicted in a lawful trial before a competent and previously established court or tribunal.

151. The Constitution of Guatemala prohibits special or secret courts and procedures which are not pre-established by law. It sets forth the principles of presumption of innocence, public trials, non-retroactivity of law, *nullum crimen, nulla poena sine lege* and no imprisonment for debt. With regard to the death penalty, it lays down that such punishment may not be imposed on the basis of presumption or be applied to women, persons aged over 60 years, persons guilty of political crimes or politically related ordinary offences or offenders whose extradition has been granted on that condition. It also lays down that Congress may abolish the death penalty.

152. With regard to the prison system, the Constitution lays down that imprisonment should be aimed at achieving prisoners' re-education and social rehabilitation and must meet minimum standards, including the prohibition of discrimination, cruel treatment, physical and mental torture, degrading treatment and the assignment of labour incompatible with prisoners' physical condition. It also stipulates that sentences must be served at official penitentiary facilities and that prisoners have the right to communicate with their relatives, defence lawyer, religious counsellor or physician and with the diplomatic representative of their country of nationality. With regard to juveniles, it lays down that they cannot be held criminally liable and that those in breach of the law must receive treatment designed to provide an all-round education and be cared for by specialized personnel and institutions and may under no circumstances be confined in penitentiary facilities or detention centres for adults.

153. It establishes the principle of inviolability of correspondence and the home. It recognizes freedom of movement and the right of every person to enter, stay in, transit and exit the territory of Guatemala or to change domicile or residence with no restrictions other than those laid down by law. Guatemalan citizens may not be exiled or denied entry to the national territory or be refused passports or other identity documents.

154. The right of asylum is recognized. It is laid down, in accordance with the principle of *non refoulement*, that the expulsion of political refugees to the country of their persecution may not be ordered. The right of petition is established, entitling the inhabitants of Guatemala to address petitions, either individually or collectively, to the authorities on administrative, fiscal or political matters. Also established are free access to the courts, to agencies of the State and to State records and archives, the public nature of administrative acts, the right of assembly and peaceful demonstration, and the rights to freedom of association, freedom of expression by any means without censorship or prior authorization and freedom of religion and worship with no restrictions other than the observance of public order and respect for other beliefs.

155. Ownership of private property is guaranteed as an inherent right of the human person and such property may be freely disposed of in accordance with the law. It is, however, recognized that private property may be expropriated for duly substantiated



reasons of collective utility, social benefit or public interest. Persons whose property is expropriated will be duly compensated by the payment of the appraised value, which is to be determined on the basis of the current worth of the expropriated property. Confiscation of property and the imposition of confiscatory fines are prohibited. Copyright and patent rights are recognized, as is freedom of industry, trade and labour.

156. Particular mention should be made of the treatment given in title II, chapter 2, section 3, to the rights of indigenous persons and indigenous communities, whose right to their cultural identity in accordance with their values and their own customs and language is recognized. It is specified that the State recognizes, respects and promotes their ways of life, customs, traditions, forms of social organization, languages and dialects and the wearing of indigenous costume, and that it shall protect their cooperative and communal lands and family property, guaranteeing that the same system will be maintained, and shall provide for special promotion and development programmes and measures to prevent discriminatory treatment in the payment of their wages when they work outside their communities. Provision is also made for the promulgation of a specific law to regulate all matters relating to the protection and safeguarding of such rights.

157. Chapter 4, which deals with limitations on constitutional rights and the suspension of such rights and guarantees in exceptional cases, lays down that, in the event of invasion of the territory, serious disturbances of the peace, acts against the security of the State or public disasters, the full exercise of certain rights provided for in the Constitution may be curtailed, it being specified that the only rights which may be suspended are the right of freedom of action, the right not to be arrested except by court order, the right to freedom of movement and residence, the right of assembly and demonstration, the right to freedom of expression, the right to bear arms and the right of State workers to strike.

158. Nationality and citizenship rights are protected under title III. No Guatemalan nationals by origin may be deprived of their nationality. The right to naturalization is also recognized. Citizenship is acquired on attainment of majority (18 years of age) and may be suspended or forfeited and recovered in accordance with the provisions of the law.

159. Constitutional guarantees and the defence of constitutional order include, first and foremost, the remedy of habeas corpus, which may be sought by any person whose enjoyment of individual freedom is in any way restricted or who is unlawfully detained or suffers ill-treatment even if detained in conformity with the law. Should the person for whose benefit such remedy has been instituted not be located, the court must order an investigation of the case until it has been fully elucidated. The remedy of *amparo* is also provided for, its purpose being to protect persons whose rights are threatened or to restore such rights if they have been violated.<sup>41</sup>

160. Guatemala's legal system contains, in addition to the constitutional laws already referred to, a number of ordinary laws which to a greater or lesser extent are also concerned with the observance of human rights, including, in particular, the Criminal Code, the Code of Criminal Procedure, the Labour Code, the Judiciary Act and the Congressional Human Rights Commission and Office of the Human Rights Advocate Act.

161. The adoption of international human rights instruments has given rise to measures to achieve concordance and harmonization between those instruments and current domestic law. In this connection, other national laws have been promulgated, such as the Act on the Comprehensive Protection of Children and Adolescents (Decree No. 02-04 of 7 January 2004), which conforms to the Convention on the Rights of the Child, being based on the

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<sup>41</sup> Paragraphs 148 to 158 were taken from the summary of the Constitution's content by the Inter-American Commission on Human Rights in its 1985 country report on Guatemala.

best interests of the child; the Prisons Act (Decree No. 33-06 of 5 October 2005), which incorporates international principles and norms relating to persons deprived of liberty, in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the National Adoption Act (adopted in December 2007), which is consistent with The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

162. Existing national legislation has been amended in order to bring it into line with international law. This is the case with the Criminal Code in the following areas: (a) the establishment of the criminal offence of human trafficking, in conformity with the provisions of the Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention, this measure being strengthened with the adoption of a national anti-human trafficking policy and plan of action (for the period 2007–2017); and (b) the establishment of the criminal offence of racial discrimination, in accordance with the peace agreements and the International Convention on the Elimination of All Forms of Racial Discrimination.

163. A number of national plans and policies, whose implementation should have an impact on the exercise of human rights, have been adopted, including the national human rights policy and action plan, the national human rights education policy, the youth violence prevention policy, the public policy on combating human trafficking and providing comprehensive victim protection, the public policy on peaceful coexistence and elimination of racism and racial discrimination, and the national policy on promoting equity for Guatemalan women.

### **C. Framework within which human rights are promoted at the national level**

164. The efforts pursued to date by the State of Guatemala to promote human rights have resulted in the establishment of (a) the Office of the Human Rights Advocate, in 1985, and (b) the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH), in 1992, to function as a national monitoring mechanism in this sphere within the executive.

165. One of the most important aspects in the development of national human rights institutional capacities has been the achievement of greater understanding and awareness of the importance for the State to respect, promote and enforce such rights. This has given rise to the setting up of specialist human rights units, sections and working groups within State bodies and institutions with responsibility for this matter, including the Human Rights Unit in the Ministry of National Defence; the Human Rights Unit in the Counsel-General's Office; the COPREDEH Unit for the Protection of Human Rights Defenders, Journalists and Judges; the human rights, gender and domestic violence units and offices for the defence of indigenous peoples within the structure of the Public Criminal Defence Institute; the Special Human Rights Prosecution Division; the Special Prosecution Division for Crimes against Life; the Divisional Prosecution Office for Crimes against Human Rights Activists; and the Special Unit on Trafficking and Irregular Adoptions within the Public Prosecution Service.

166. On the specific recommendation of the Office of the United Nations High Commissioner for Human Rights in Guatemala, the Forum for Analysis of Attacks against Human Rights Defenders in Guatemala was set up within the criminal investigation body of the National Civil Police. The following units also form part of that institution: the Human

Rights Office in the Criminal Investigation Division, which provides direct support to the Public Prosecution Service's Unit on Crimes against Human Rights Activists; the Human Rights and Victim Support Unit; and the Multiculturalism Division, which operates within the General Subdirectorate for Crime Prevention.

167. Bodies exist for the protection of particularly vulnerable groups, such as the Food Security Secretariat, the Presidential Secretariat for Women, the National Commission on Prevention of Domestic Violence, the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala, the National Adoption Council, the National Commission on Children and Adolescents, the National Council for Migrants and the Council for Social Cohesion, whose function is to coordinate measures of support for the most economically and socially at-risk groups.

168. Other bodies involved in promoting and protecting human rights have been set up as part of the commitments made under the peace agreements, including the Peace Secretariat, the National Council for the Peace Agreements, the Office for the Defence of Indigenous Women, the National Reparations Plan, the Fund for Indigenous Development and the National Fund for Peace.

169. With regard to international humanitarian law, the Guatemalan Commission for the Promotion of International Humanitarian Law has been established as a multidisciplinary inter-institutional body to advise the Government on international humanitarian law matters and to encourage the implementation of related national and international norms.

170. In addition to the actions carried out by State institutions for the promotion and protection of human rights, provision is made in national law for the pursuit of activities by non-governmental organizations to those ends. From a purely normative perspective, there are no obstacles to setting up such civil society groups and associations. The Civil Code and the Development Non-Governmental Organizations Act (Decree No. 02-2003) set out the statutory requirements for so doing. The Municipal Code regulates matters relating to the organization of neighbourhood committees and associations. Non-governmental organizations, in accordance with the law regulating them and the Municipal Code, must comprise at least 7 persons and up to 25 per cent of their membership may consist of foreign nationals. The procedure for establishing such entities is both simple and free of charge and the law stipulates that non-governmental organizations and neighbourhood committees and associations are entitled to be financed from their own assets, which may be derived from either national or international resources. The Comprehensive Agreement on Human Rights, concluded by Unidad Revolucionaria Nacional Guatemalteca and the Government, in 1994, as part of the peace negotiation process, established the commitment on the part of the State to protect all individuals and organizations working to uphold and promote human rights, i.e. human rights defenders, this undertaking being also provided for in related international conventions and treaties to which Guatemala is a party.

#### **D. Reporting process at the national level**

171. For purposes of analysing and monitoring the human rights situation, reports of various types are drawn up in Guatemala, with responsibility for their preparation falling to clearly differentiated bodies. The Office of the Human Rights Advocate is required to deliver a report to Congress via the Congressional Human Rights Commission. In accordance with the law, this document, which has to be submitted each year to Congress at its plenary meeting in the second fortnight of January, must contain detailed information on the activities undertaken by the Office of the Human Rights Advocate during the year preceding its submission and also on the prevailing human rights situation in the country in the same period.

172. Status reports have to be presented by the State of Guatemala to the different treaty bodies of the universal human rights system as part of the responsibilities assumed on acceding to or ratifying the corresponding international human rights treaty or convention. The State undertakes to provide in these periodic reports an account of the prevailing situation in the country with regard to the rights provided for under each treaty and monitored by each committee. These reports have to be delivered in accordance with the periodicity established by each committee. The periods vary, depending on the treaty concerned, but are usually between 2 and 5 years. In the case of Guatemala, responsibility for preparing these reports and for following up the recommendations or comments made by each committee in the light of the reports rests essentially with COPREDEH. However, in the case of the Convention on the Elimination of All Forms of Discrimination against Women, the Presidential Secretariat for Women is responsible and, with regard to the International Convention on the Elimination of All Forms of Racial Discrimination, the reports are drawn up by the Presidential Commission on Discrimination and Racism against Indigenous Peoples.

173. Aware that the preparation of such reports provides an excellent opportunity to conduct a comprehensive review of measures adopted by the State with a view to aligning domestic law with the provisions of international treaties and also to monitor progress achieved and setbacks encountered in the reporting interval, the State of Guatemala has developed a clearly defined methodological framework and process for that purpose.

174. The methodological process incorporates the following stages:

- (a) Identifying the central topic of the report;
- (b) Studying or examining the covenant or convention relating to the topic and the reporting guidelines issued by the committee concerned, previous reports submitted by the State and the comments or recommendations made by the committee;
- (c) Formulating a work plan for the preparation of the reporting document;
- (d) Identifying the issues on which information is to be gathered;
- (e) Compiling the necessary data;
- (f) Organizing the compiled data and removing any information which does not meet the requirements;
- (g) Analysing the available information;
- (h) Drafting the main findings from the analysis;
- (i) Validating the analysis conducted, i.e. the content of the prepared document;
- (j) Incorporating any changes deemed relevant on the basis of the validation undertaken; and
- (k) Submitting the prepared report to the relevant bodies.

175. One of the most important stages in the process is possibly that of validating the document's content since this is seen as an opportunity for the work carried out to be examined, assessed and enhanced by other persons, institutions or bodies familiar with the topic for the purposes of generating debate, eliciting support, improving the information contained in the report and eliminating any errors or misinterpretations which may have been included. Also, this stage is regarded as the time to encourage broad public scrutiny of government policies with the involvement of civil society and government actors.

176. The validation or consultation exercise is carried out with all the organizations and institutions external to COPREDEH which have participated in the document's preparation, essentially by providing information and analytical views, and whose expertise or

specialized knowledge enables them to make valuable contributions to the exercise. In order that these bodies can have an opportunity to review public policies and advances in the area of human rights, they are invited to attend one or more working meetings or workshops, at which the report's content is discussed. The inputs from participants in the process are organized and incorporated in the report prior to its submission to the Secretary-General of the United Nations.

## **E. Follow-up to concluding observations of human rights treaty bodies**

177. Until relatively recently, all concluding observations made by human rights treaty bodies to the State of Guatemala were duly received but were not systematically followed up, which meant that such observations had little effect on the human rights situation prevailing in the country or on related laws and regulations.

178. In 2010, COPREDEH set about the task of organizing all the recommendations made to the State since the submission and consideration of the first report furnished by the country to the United Nations up to the most recent one, and also the recommendations formulated by the Office of the United Nations High Commissioner for Human Rights in Guatemala.

179. For that purpose, COPREDEH posted on its web page ([www.copredeh.gob.gt](http://www.copredeh.gob.gt)) the follow-up system for recommendations made to the State in the area of human rights, in which all these recommendations have been set out and arranged according to various criteria. This system is a tool designed to serve as a guide to compliance with the recommendations and as a means of disseminating and publicizing them, given that their fulfilment is a commitment which has been entered into by the State.

180. The criteria on the basis of which the recommendations are arranged are as follows: (a) recommendations issued by treaty bodies; (b) recommendations arising from evaluation exercises based on the Charter of the United Nations, such as special procedures or the universal periodic review; and (c) recommendations made by the Office of the High Commissioner for Human Rights. In each of these cases, it is possible to consult the recommendations according to the topic to which they refer, their date of issue and the level of implementation which they have reached, together with related general technical information.

181. Whenever recommendations are received by the State of Guatemala, they are included in the follow-up system and their content is transmitted to the institutions concerned so that they are aware of their responsibility for following them up and fulfilling them. The degree of progress achieved by the State in regard to each recommendation is subsequently reviewed by COPREDEH and these advances are recorded in the relevant section within the system in order to ensure that it is kept current and up to date.

182. Finally, reference to the progress made in relation to each of the recommendations is included in the ensuing periodic reports prepared by the State for the treaty bodies in response to the measures recommended.

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