



**Convention on the
Rights of the Child**

Distr.
GENERAL

CRC/C/OPAC/GTM/1
17 July 2006

ENGLISH
Original: SPANISH

COMMITTEE ON THE RIGHTS OF THE CHILD

**CONSIDERATION OF REPORTS SUBMITTED BY STATES
PARTIES UNDER ARTICLE 8 (1) OF THE OPTIONAL
PROTOCOL TO THE CONVENTION ON THE RIGHTS OF
THE CHILD ON THE INVOLVEMENT OF CHILDREN IN
ARMED CONFLICT**

Initial reports of States parties due in 2004

GUATEMALA*

[17 May 2006]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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Introductory remarks

1. Guatemala has been a party to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict since May 2002. In compliance with article 8, paragraph 1, of the Protocol, Guatemala hereby submits its report on the measures taken to implement the Protocol to the Committee on the Rights of the Child.
2. The report was prepared in a participatory process that involved not only governmental and non-governmental institutions and agencies, but also other State bodies and civil society organizations which are linked directly or indirectly, by virtue of their functions or activities, to the exercise, promotion and protection of the rights set out in the Protocol. In the process of drafting the report, an institutional analysis was conducted, with respect, in particular, to the work of government offices such as the Ministry of Defence and the Ministry of the Interior, with a view to determining how familiar their staff were with the Protocol and identifying the actions planned or already taken to ensure its effective application. This exercise was extremely important in that it made it possible not only to identify the progress made, but also to identify possible courses of action to improve the implementation of the Protocol.

I. INTRODUCTION

3. Before considering the details of the involvement of children under the age of 18 in the Guatemalan armed conflict that ended in 1996, it should be noted that the involvement of children in armed conflict - a phenomenon that is particularly prevalent in countries in Africa and the Middle East - occurred in Guatemala in very specific circumstances, as described below.
4. For 36 years, Guatemala was the scene of an internal armed conflict which ended with the signing of the Agreement on a Firm and Lasting Peace between the Government and the Unidad Revolucionaria Nacional Guatemalteca (URNG) in 1996. The participation of children and young persons in the war can thus be analysed by focusing on two periods, the first covering nearly four decades of internal armed conflict (1960-1996) and the second covering the period from the signing of the peace agreement to the present.
5. In this context, it must be acknowledged that during the war, forcible military recruitment was common practice both for the national army and the guerrilla groups that made up the Unidad Revolucionaria Nacional Guatemalteca. According to both the official report of the Commission for Historical Clarification, established under the peace agreements, and the reports of non-governmental organizations and indigenous movements, such as the National Coordinating Committee of Guatemalan Widows (CONAVIGUA), during the internal armed conflict some 45 per cent of the male population was recruited at some time by one or other of the parties to the conflict, and 20 per cent of those recruited were minors.
6. Before the peace agreement was signed, Guatemala's domestic legislation did not include a law that afforded children comprehensive protection or outlawed their involvement in armed conflicts, even though the State was already a party to the Convention on the Rights of the Child, which it ratified in May 1990, and other international humanitarian law instruments. Nevertheless, the legislation in force at the time clearly specified that only those persons who had attained the age of majority, set at 18, could enlist in the army. In practice, however, the parties to the conflict, in contravention of the law, did use persons under the age of 18 in the war.

7. More than 3,000 guerrillas of the Unidad Revolucionaria Nacional Guatemalteca participated in reintegration programmes when the internal armed conflict ended. It is estimated that 214 of those guerrillas were minors.

8. Unfortunately, there are no official records of the exact percentage of minors who participated in the war, either in the army or in guerrilla forces. Nevertheless, since it is the responsibility of the State to ensure that this practice is not allowed for any reason, as well as to enforce the law, one of the important measures which took immediate effect following the signing of the peace agreement was the express order issued by the then President of the Republic, Ramiro de León Carpio, in his capacity as commander-in-chief of the army, not to allow anyone at all under the age of 18 to enlist, even if they volunteered. In compliance with the order, the Minister of Defence gave orders to all military commanders in the country to enforce the presidential order. The provision has remained in force since then, and we can therefore guarantee that in Guatemala there is currently no provision for, or systematic practice of, enlisting anyone under the age of 18 in the army.

9. The Comprehensive Agreement on Human Rights, the first agreement signed between the Government and the Unidad Revolucionaria Nacional Guatemalteca in 1994, entered into force before the peace agreement was signed and established a framework for protection which included child protection measures, thereby demonstrating the Guatemalan Government's commitment to ensuring that enlistment in the armed forces would be voluntary until a new law on military service was adopted.

10. Today, in accordance with the Comprehensive Agreement on Human Rights, a new law on national civic service, which offers the possibility of serving the country through military or community service, has entered into force.

11. In addition, with a view to strengthening civilian power and the role of the armed forces in a democratic society, the armed forces prepared the so-called National Defence Paper, which sets out the guidelines to be followed by the army under a new institutional vision of national defence. Various activities are being undertaken within this framework, including: the preparation of a new national defence policy; the review and reorientation of military doctrine; and proposals to reform the current Military Code. In addition, there are new regulations on the implementation of military service under the new Civic Service Act.

12. According to this new vision, military service should prepare, organize, adapt and integrate national resources of all types with a view to coping with a war or any natural or man-made disaster.

13. The changes in policy, vision and operation within the army are fundamental to the strengthening of democracy in the country and to the observance and effective exercise of the human rights of all Guatemalans. This is particularly important because human rights were systematically violated during the internal armed conflict, principally by the parties to the conflict, and the civilian population was most affected. These atrocious practices have now stopped and the Government has publicly assumed responsibility for Guatemalan institutions at both the national and international levels.

14. Emerging from this painful past, Guatemala is now taking steps to set the country on a different course, with a new focus on multiculturalism, multilingualism and respect for human rights, in the belief that this is the only way for it to grow and develop as a democracy.

II. OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

Article 1

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Guidelines: *Meaning of “direct participation”; deployment or maintenance of forces; number of members of the armed forces.*

15. Guatemalan legislation provides for the enjoyment and exercise of certain rights by the country’s inhabitants at certain ages. In this connection, the Constitutional Court has ruled that “the Guatemalan constitutional system allows various minimum ages to be set, since, in addition to recognizing the citizens’ rights of persons over the age of 18 (Constitution, art. 147), it also establishes specific ages for the exercise of certain rights, particularly those of a political nature, for access to specific rights”.

16. Accordingly, persons have different legal status in accordance with the different ages determined by law, either as active subjects with the capacity to have and to exercise rights, or as passive subjects entitled to special social and legal protection. It should be specified that age in itself does not generate any rights: it is the laws which determine which rights are acquired on reaching the age of 18 and which on reaching a different age, on the basis of the various considerations that make it permissible for a person to exercise a given right.¹

17. Consequently, in order to be able to exercise the rights and obligations recognized by law, persons must have legal capacity, which is understood as the ability of a man or woman to enter into legal relationships.

18. This capacity takes two forms: first, the capacity to enjoy rights, that is, to be the subject of rights and obligations; and second, the capacity to exercise those rights, that is, the ability to act. For example, the right to serve and defend your country is acquired at the age of 18, as is the right to vote.

19. “Relative capacity” refers to the ability to exercise rights and obligations at a given age, for example, to work at the age of 14 or, with the consent of one’s parents or guardians, to marry at the age of 14 (girls) or 16 (boys).

20. The exercise of citizenship takes the form of the participation by citizens in public and private affairs. In practice, participation means collaborating, taking action, cooperating, contributing, providing, supporting, offering mutual help or providing assistance. Depending on the area in which it is practised, participation can be classified as social, community, citizen or political participation.

21. This broad concept of participation therefore sees participation as an act that makes all individuals, through their involvement in economic, political and cultural activities, protagonists in the various social processes.

22. Citizen participation is viewed as a natural product of the historical development of human beings, although in today's world it has international and national legal connotations that underpin citizen action.

23. In the field of citizen participation, Guatemala's legislation includes legal instruments that can be invoked by its inhabitants. They include the Constitution of the Republic of Guatemala, which in title II ("Human rights"), chapter I, on individual rights, recognizes the obligation of the State to protect human life, integrity and security in accordance with the principles of equality in dignity and rights, regardless of civil status, age, ethnic origin or sex,² and to provide security and social welfare for minors.³

24. Chapter III of the Constitution covers civil and political rights and obligations, which include, in addition to those set out in other laws, serving and defending one's country, participating in political activities and carrying out military and community service, in accordance with the law.⁴

25. Furthermore, article 17 of the Decentralization Act (Decree No. 14-2002) establishes that citizen participation is the process through which an organized community, for economic, social and cultural purposes, participates in the planning, execution and comprehensive control of the steps taken by the national, departmental and municipal authorities to strengthen the process of decentralization.

26. In order to strengthen social participation in other fields, the Development Councils Act (Decree No. 11-2002 of 12 March 2002) was adopted. The Act establishes a system of development councils as the principal means of participation by the Maya, Xinka, Garifuna and non-indigenous population groups in public affairs, in order to pursue the democratic development planning process while taking into account the national, multi-ethnic, multicultural and multilingual unity of the Guatemalan people.

27. The functions of the municipal and community councils pursuing development at the local level include the promotion of policies and projects for the comprehensive protection and advancement of children, adolescents, young people and women.

28. Article 60 of the new Municipal Code (Decree No. 12-2002) stipulates that the municipal councils must provide the fullest possible information on the activities and participation of all citizens in local life.

29. The specific law concerning the participation of men and women in military and community service is the Civic Service Act (Congressional Decree No. 20-2003), which establishes civic service as a personal activity which all citizens are entitled to perform for a given period of time. There is a choice between two forms of service: military service and community service.

30. The aforementioned Act establishes that all citizens have a duty to register in the Citizens Register within six months of reaching their eighteenth birthday (the age of majority). The registrar submits a report to the National Civil Service Council in June of each year.

31. Furthermore, articles 69 and 76 of the Act establishing the Army (Decree No. 72-90) require Guatemalans, preferably on reaching the age of 18, to register in order to obtain a record of their military registration and enlistment in the relevant service.

32. Consequently, the exercise of the right to citizen participation in community, political and social activities is recognized by law, while for the purposes of military or civic service, men and women must be 18 years of age or over, as the recruitment of minors is prohibited.

33. As mentioned above, various commitments made within the framework of the peace agreements have been implemented by taking practical action: this action is described below.

Comprehensive Agreement on Human Rights

34. Conscription for compulsory military service must not be carried out by force or violate any human rights and, as a civic duty and right, should be fair and non-discriminatory. The practice of forced recruitment has been stopped, both for adults and minors.

35. The Government of Guatemala shall continue to implement the necessary administrative decisions regarding military service and shall draft, as soon as possible and in the spirit of the agreement, a new law on it. A new law has already been adopted.

Agreement on the strengthening of civilian power and on the role of the armed forces in a democratic society

36. The mission of the Guatemalan army is defined as the defence of the sovereignty of the country and the integrity of its territory; it will not be assigned other functions and its participation in other fields will be limited to cooperative tasks.

37. The agreement requires amendments to the Act establishing the Army to reflect constitutional amendments and reforms deriving from the peace agreements. The draft reform of the Military Code is ready for adoption, pending the outcome of the advisory opinion.

38. A new military doctrine will be formulated. The doctrine will be centred on respect for the Constitution, human rights, the international instruments ratified by Guatemala in relation to military matters, the defence of sovereignty and national independence, territorial integrity and the spirit of the peace agreements. Congress is currently studying the draft of the new military doctrine.

39. The practice of voluntary enlistment in the military will be continued while the Government of Guatemala adopts the necessary administrative decisions, based on the Comprehensive Agreement on Human Rights, and Congress approves the new law on civic service, which includes military and community service. The Civic Service Act (Congressional Decree No. 20-2003) has now been promulgated.

40. Civilian power is strengthened by strengthening social participation, and by increasing opportunities and the capacity for citizen participation.

Administrative and legal measures

41. Some of the administrative measures taken to implement the commitments contained in the peace agreements are described below.

Establishment of the Advisory Council on Security

42. Established pursuant to Government Order No. 48-2003 of 26 February 2003 with the objective of analysing and drafting proposals to improve the country's security, the Advisory Council on Security is composed of members of civil society and the Government.

National Civic Service Board

43. This Board was established pursuant to Decree No. 20-2003 with the aim of contributing to the strengthening of peace, harmony and national reconciliation in accordance with the obligations contained in the Constitution, international treaties ratified by Guatemala and the agreement on the strengthening of civilian power and on the role of the armed forces in a democratic society. Citizens have both a duty and a right to participate in the civic, cultural, economic and social development of the country.

44. The Board covers the whole country, and its functions include establishing policy, managing the register of citizens of age to do civic service, and approving local and national plans for civic service. There are also local boards with the authority to act at the municipal level, and an executive secretariat that provides administrative assistance to the Board and the local boards.

45. Although the legal framework is in place, efforts are still being made to secure the necessary economic resources for the formal establishment and operationalization of the Board.

National plan of action for children and young persons in Guatemala, 2004-2015

46. The guiding principles of this plan are family unity and integrity, the best interests of the child, non-discrimination, equity and equality of opportunity, non-institutionalization of children and young persons, shared responsibility for the effective exercise of rights, and the participation of children and young persons.

Reform of the Act establishing the Army

47. Pursuant to Decree No. 79-95, articles 6 and 92 of Decree No. 72-90 were amended to provide that the Guatemalan army consists of officers, generals, senior officers, junior officers, cavalry cadets, cavalry trainees studying at the military academies, specialists, ordinary soldiers and other personnel of the permanent force.

48. The army's active service comprises the permanent force, which is made up of soldiers and officers.

National Youth Council

49. The National Youth Council was established as the lead agency to implement regular programmes and activities pursuant to Government Order No. 406-96 of 26 September 2006, with a view to strengthening governmental bodies dealing with young people and inter-agency coordination on comprehensive policies to facilitate the participation of the youth of Guatemala.

50. With regard to juvenile prisoners, studies and research conducted by the Government and child-rights organizations from civil society indicate that there are no records of children or young persons being held in prison.

Article 2

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Guidelines: *Description of the recruitment process; legal provisions on lowering the minimum age of recruitment.*

51. Guatemala has legislation that directly protects children, such as the American Convention on Human Rights, which Guatemala ratified in 1978. Article 19 of that Convention provides that the child has the right to measures of protection. Since ratifying the Convention on the Rights of the Child in 1990, Guatemala has passed the Act on the Comprehensive Protection of Children and Young Persons under Legislative Decree No. 27-2003. Article 57 of the Act provides as follows: “International humanitarian law: In the event of armed conflict, children and young persons have the right not to be recruited and the State shall abide by and enforce the applicable norms of international humanitarian law. The State shall take all possible measures to ensure that persons who have not yet attained the age of 18 years do not take a direct part in hostilities and are not recruited for military service at any time.”

52. The legal provisions adopted to criminalize recruitment of children fall within the framework of the statutory offences set out in the Criminal Code, in article 209, “Abduction of minors”; article 418, “Abuse of power”; and article 423, “Decisions violating the Constitution”. Given that no other provisions apply to these offences, they are under the jurisdiction of the ordinary courts, which are responsible for determining punishment.

53. Guatemala has also ratified the following international instruments on human rights and international humanitarian law related to this issue, which constitute the domestic law in force in the country:

Geneva Declaration of the Rights of the Child, 1924;

Universal Declaration of Human Rights, 1948;

Fourth Geneva Convention, 1949;

Declaration of the Rights of the Child, 1959;

International Covenant on Economic, Social and Cultural Rights, 1976;

Protocols Additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts (Protocol I) and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II);

Convention on the Rights of the Child, 1989;

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

International Labour Organization (ILO) Minimum Age Convention (No. 138) and Minimum Age Recommendation (No. 146), 1973;

ILO Worst Forms of Child Labour Convention (No. 182), 1999.

54. The context in which compulsory military recruitment began in Guatemala is outlined in the introduction to this report. At the time of the conflict, there were so-called “military commissions” in the country, groups of civilians backing up the army, particularly by making arrangements in the villages for military service. Unfortunately the methods these groups employed during the conflict constituted systematic compulsory and arbitrary recruitment. In 1995, the military commissions were abolished by Decree No. 79-95 in order to halt such human rights violations and, in particular, to comply with the commitments undertaken in the peace agreements. Some 24,000 people who had been acting as military commissioners were thus definitively withdrawn from that function.

55. Currently, in accordance with the provisions of the Act establishing the Army (Decree No. 72-90 - see annexes), enlistment is either voluntary or by call-up, and anyone defying call-up is escorted to the military establishment. As has already been mentioned, only people who have reached the age of majority (18 years) may carry out military service.

56. In order to be admitted to the armed forces, Guatemalan men and women must produce their residence card, in order to prove that they have reached the minimum age for joining up, which is 18 years.

57. The residence card is the identity document introduced by Decree No. 1735 of the Guatemalan Legislative Assembly on 4 June 1931, article 1 of which establishes a “compulsory residence card for all Guatemalans and foreigners aged between 18 and 60 years living in the Republic”. The decree establishes the regulations implementing the Residence Card Act, article 1 of which provides that “the residence card is the official compulsory identity document for all Guatemalans and residents in the country aged between 18 and 60 years”.

58. Only the municipal authorities located in major towns can issue residence cards, in accordance with the guidelines on when and how to issue them. The contents of the card are defined in article 13 of the Act: the card will bear a serial number and a Civil Register number. The serial number will be stamped on the blank forms sent to the municipal authorities by the Ministry of the Interior. The Civil Register number will be identical to that on the entry in the Register and will also include an uppercase letter before the serial number, indicating when the card was issued.

Article 3. The following information is required for each registration:

- Serial number corresponding to the registration entry
- Place and date
- Resident's name
- Father's and mother's surnames (in the order used by the resident) if the resident is legitimate, legitimized or recognized; the mother's surname only if the resident is an illegitimate child not recognized by the father
- Date and place of birth
- First names and surnames of parents
- Civil status, and name of spouse if married
- Profession or occupation
- Whether the person is educated or illiterate
- Abode, including the name of the canton, neighbourhood, village, hamlet, farm or estate
- Military service completed or not
- Military rank, if applicable
- Physical characteristics, such as visible moles or scars, impediments, physical defects, skin colour, eye colour, hair colour and whether the hair is straight or curly
- Height in centimetres, barefoot
- Person's signature, or if unable to sign, signatures of two suitable witnesses from the same locality
- Date and signatures of the secretary and mayor, or if the mayor is unavailable, the signatures of two suitable witnesses from the same locality
- Fingerprint
- Person's photograph

59. Guatemalan legislation makes no provision for reducing the minimum age of recruitment in exceptional circumstances.

60. Under Guatemalan legislation, Guatemalans who reach the age of 18 may choose between military service and community service. This respects the principle of conscientious objection, enabling young people whose religious, moral or philosophical beliefs prevent them from taking up arms not to do so. Instead they are allowed to perform some other type of civic service for the benefit of the community.

61. The current Civic Service Act is divided into seven sections, as follows: (1) general provisions; (2) organization; (3) forms of participation; (4) exceptions; (5) rights and obligations of community service; (6) community service options; and (7) resources.

62. The first section describes civic service as “the personal activity that all Guatemalans who reach adulthood should perform for their country for a period of time to make a contribution to the country’s development and external security”.

63. The basic principles of civic service are respect for human rights, and non-compulsory, universal and non-discriminatory recruitment. In addition, cultural diversity should be recognized and civic service should be for a predetermined period of time and optional.

64. The aim of civic service is to ensure that citizens - young people for the most part - are aware of and concerned by the social situation in the country, to promote solidarity within the population, and that they are directly involved in resolving the country’s problems. A fundamental principle is that civic service is performed by doing community service or military service, the former being of an eminently civilian nature and the latter of a military nature.

65. The second section of the Act defines the administrative organization of civic service, which is the responsibility of the national and local civic service boards. The Act establishes the boards’ membership, structure and functions. It also provides for the establishment of a special permanent executive secretariat. It establishes the National Civic Service Board as the lead agency in this field, and stipulates that the Board is strictly civilian in nature and covers the entire country.

Article 3

Minimum age for voluntary recruitment; State party’s binding declaration; safeguards

Guidelines: *Minimum age for voluntary recruitment; disaggregated data on children below the age of 18 years; measures of protection adopted for under-18-year-old recruits. Information on the national debate on adopting the binding declaration and campaigns to disseminate it. Safeguards; information made available to volunteers for military service; the use of military justice or discipline; incentives used by the national armed forces to encourage recruitment; data on schools operated by or under the control of the armed forces, and their functioning.*

66. Article 8 of the Guatemalan Civil Code provides as follows: “Capacity: The capacity to exercise civil rights is attained at adulthood.”

67. “All persons aged 18 years and over are adults.” Guatemalan legislation is therefore in line with the provisions of the Optional Protocol and the norms of international humanitarian law concerning non-recruitment of persons under the age of 18.

68. As has been mentioned previously, Guatemala has no information to provide on article 3, paragraph 3, since no one under the age of 18 is recruited under any circumstances.

69. Regarding the binding declaration to be made by all States parties to the Optional Protocol, on 30 April 2002, Guatemala made its declaration in the instrument ratifying the Optional Protocol, where it indicated that: “Guatemala shall not permit the compulsory recruitment of persons under 18 years of age into its armed forces, and in keeping with article 3, paragraph 4, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the description of the safeguards adopted to ensure that such recruitment is not forced or coerced shall be submitted at a later date.”

70. As for the description of the safeguards, according to paragraph 2 of the declaration, the safeguards will be submitted at a later date. The Ministry of Defence is currently drafting a description of the safeguards to be adopted to ensure that recruitment is not forced or coerced.

71. A description of the process can be found in the information provided on article 2.

72. The doctor attached to each military brigade or squad carries out a general physical examination of all volunteers (measuring blood pressure and pulse, checking cardiovascular activity, dental check, sight test, blood group test, and pulmonary examination) to determine the volunteers’ age and state of health.

73. The document required to verify the age of volunteers is the residence card, which is as a kind of identity card issued by the Civil Registry to everyone over the age of 18. Criminal and police records are also consulted as a further background check.

74. Persons under the age of 18 are not recruited in Guatemala. The armed forces accept only those who have reached adulthood, and recruits must provide their personal details in order to join up. They are assigned to a unit and receive induction training to ease their integration into the ranks of the Guatemalan army.

75. The information volunteers are given on their duties and obligations during military service includes details of their rights, the non-use of force, universality, equality and recognition of cultural diversity.

76. Given that they are adults, Guatemalans who do military service are not usually accompanied by their parents or guardians. The relevant information is therefore given directly to the recruits, as established in the Constitution and in the Military Civic Service Act and its regulations.

77. The minimum period of active service is as follows:

Career officer: 33 years;

Warrant officer: 30 years;

Specialist: 30 years;

Rank and file: 24 months.

78. Ordinary soldiers are given the time required to attend to matters not pertaining to military service and are also given 8 days' leave every 45 days.

79. Career officers, warrant officers, and specialists are granted leave and holidays as follows:

While on duty, ordinary leave or holiday;

During days off and holiday periods, extraordinary leave or holiday;

At weekends, leave is granted according to the requirements of the military establishment to which the person concerned is posted;

Leave is granted according to the applicant's needs;

Annual leave.

Since no person under the age of 18 is allowed to serve in the armed forces, no information can be provided on military justice or discipline as applied to minors.

80. Similarly, since Guatemala does not recruit persons under the age of 18, there are no disaggregated records or data on the number of such recruits on trial or in detention, nor on the minimum or maximum punishments for desertion.

81. Currently, the following legal instruments apply to serving military personnel:

Military Code;

Act establishing the Army;

Rules on Military Service in Peacetime;

Rules on Disciplinary Sanctions of the Army of Guatemala.

82. With regard to measures or sanctions that apply for desertion by serving troops, in accordance with the Military Code, articles 149 and 170 of Decree No. 214 of the War Secretariat, section 1, provide as follows:

83. Article 139: "Any ordinary soldier belonging to a unit of the Army of the Republic who abandons his post is a deserter."

84. The applicable sanctions for desertion are as follows:

85. Simple desertion shall be punished by a sentence of imprisonment for a period of six months to one year. The deserter shall first be stripped of his rank, if he is a corporal or sergeant.

86. If he deserts again or the circumstance mentioned in paragraph 6 of article 147 applies, but none of the circumstances mentioned elsewhere in that article apply, then he shall incur a sentence of imprisonment for a period of six months to one year and shall carry out public service, as well as returning or paying for any weapons or uniforms he takes with him.
87. Aggravated desertion under the circumstances mentioned in paragraphs 2 and 5 of article 147 shall be punishable by a sentence of imprisonment for a period of two years and public service.
88. A punishment of 5 to 10 years of rigorous imprisonment shall be handed down for desertion if the deserter's unit of the field army or reserves is engaged in a campaign.
89. Desertion for abandoning a guard post, guard duty or any other arms-bearing post during peacetime shall be punishable by imprisonment for a period of two to four years and public service.
90. Desertion for the offences mentioned in article 142 committed during wartime shall be punishable by death.
91. Persons who incite or cover up the crime of desertion shall incur two thirds of the punishment due to the deserters, or a penalty of 8 to 10 years' imprisonment if the deserters are sentenced to death.
92. In the case of an attempt to desert in peacetime, the soldier's commander shall impose financial and disciplinary measures, including imprisonment for a period of no less than two months and no more than six months and service in the barracks.
93. A bill containing the new Military Code is currently before Congress, and has already been approved by the Defence Committee. The new Military Code will regulate the minimum and maximum sanctions for desertion.
94. The bill containing the Code seeks to protect the legal rights covered by military law, to establish sanctions proportionate to the offence committed, to establish adequate procedures in conformity with standard legal procedure, and to guarantee respect for the constitutional rights of the members of the army, which are the same as those of any other Guatemalan citizen.
95. It also endeavours to update standards and procedures dating from the nineteenth century and still in use today. The purpose is to establish a body of laws that reflect the needs of today's society and the values of a military institution, and that ensure the efficient and effective administration of military justice over the long term.
96. The proposed Military Code is based on the Guatemalan Criminal Code and Code of Criminal Procedure in order to ensure it is in line with national law, and the Model Military Justice Code formulated by the Inter-American Legal Committee in 1998. The military justice codes of Colombia, El Salvador, Spain and Venezuela were also taken into consideration, since those countries have modernized their military justice systems within the last 10 years, incorporating new trends in constitutional, criminal, criminal procedure and prison law into a military legislative framework.

97. The new rules are also in conformity with the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

98. To better understand how the Military Code was constructed, it is important to know that the drafting committee based its work on the following criteria:

- The code must meet the requirements of a modern army;
- It must be compatible with new trends in military criminal law and military criminal procedure law;
- It must comply with the Guatemalan Constitution and all human rights treaties and agreements signed and ratified by Guatemala;
- It must draw a distinction between legal situations occurring in wartime and peacetime;
- It must consider military criminal law to be a specialized area of criminal law;
- It must provide internal controls for the armed forces that respect the principles of military life;
- It must be compatible with current national legislation.

In addition, it should be clear from the structure of the Military Code that it is an amalgamation of a number of laws into a single legal text.

99. Thus the proposed Military Code is structured as follows:

Part I: Military criminal law;

Part II: Military criminal procedure law;

Part III: Organization and functions of the military justice system;

Part IV: Military prison system.

100. Monthly remunerations not arising from work performed:

- *Bono 14* (annual bonus);
- *Aguinaldo* (yearly Christmas bonus);
- Other allowances for courses taken;
- Death indemnity compensation;

- Life insurance;
- Training allowances (weapons, nursing, mechanics, etc.);
- Fees for primary education under the Comprehensive Education Programme for Soldiers (PEISOL);
- Military medical centre entitlements.

101. Military schools and educational training centres have different rules regarding age of entry, which varies from centre to centre.

102. The minimum age for entry to schools administered by the armed forces is as follows:

Polytechnic School: 17 years (must have completed secondary school);

Adolfo V. Hall schools in Guatemala: 11 years (comprehensive study programme);

Military Aviation Technical School: must have successfully completed the third grade of basic education, age unimportant;

Military Aviation School: no minimum age of entry, but a minimum of two years of study in the Polytechnic School is required, which suggests that entry age would start at 16 or 17 years old.

103. In Guatemala, there are 11 educational establishments administered by the armed forces, in the following locations: four in the capital city, one in San Marcos, one in Santa Cruz del Quiché, one in Jalapa, one in Retalhuleu, one in Zacapa, one in Chiquimula and one in Alta Verapaz.

104. As for the type of education provided in military training centres, the proportion of academic education and military training in the curricula is as follows:

105. **Polytechnic School**

Type of education: military;

Proportion: 100 per cent of the education provided consists of training for Guatemalan army officers;

Length of course: four years;

School year: January to December;

Rank or degree on graduation: sub-lieutenant in any area of weapons or services; bachelor's degree in technology and resources administration.

106. Centre for Advanced Studies in National Defence (CESDENA)

107. This is the Guatemalan army's professional development centre, where senior officers, junior officers and specialists serving in the army receive training in various areas. For example, officers attend the centre to take basic, advanced and degree courses in military personnel management, which are fundamental requirements for promotion. Courses are also offered in civilian and military relations, at various levels.

108. The centre also has a language academy where both officers and specialists can study languages, on courses taught by civilian professionals.

109. Guatemalan Adolfo V. Hall schools

Type of education: civilian and military;

Proportion: 70 per cent academic, 30 per cent military;

Length of course: basic level, three years; comprehensive level, two to three years;

School year: January to October;

Rank or degree on graduation: sub-lieutenant in the Army Reserve (on completion of five years of study); diploma in arts and sciences (two years); agronomist (three years); computer technician (three years); business management specialist (three years).

110. Military Aviation Technical School

Type of education: individualized, in specialized technical, academic and military areas;

Proportion: 90 per cent academic, 10 per cent military;

Length of course: two years;

School year: January to October;

Rank or degree on graduation: diploma in arts and sciences; aviation mechanic.

111. Military Aviation School

The course is a strictly military pilot-training course.

112. After the peace agreements were signed, and largely as a result of the recommendations contained in them, a major review was carried out of the courses offered in the military training centres - both technical training centres and civilian military centres. The review led to changes in the curriculum and the introduction of new teaching methods in such important areas as: human rights; human rights and international humanitarian law; international humanitarian law

in peacetime; the implementation of international human rights instruments; and international human rights monitoring mechanisms. These changes were in direct response to the need for members of the armed forces to have and apply knowledge in these areas in order to prevent human rights violations from being carried out by the State's own institutions.

113. Although such topics as international humanitarian law were already included in the curriculum, the review increased the number of hours devoted to their study, introduced new rights-related topics and consolidated the teaching of existing topics at all levels and in all academic military training centres run by the Guatemalan army.

114. The courses given in the training and professional development centres of the Guatemalan army on the application of international humanitarian law cover the following.

115. The various treaties constituting the international law of armed conflict.

116. Disputes between the armed forces and members of the armed forces; civilian personnel; military objectives; civilian property; specially protected persons and goods; demilitarized zones; and war victims.

117. Various types of conflicts, the principles governing such conflicts, international law of armed conflict, international humanitarian law and human rights law.

118. Number of male and female cadets currently studying at the Polytechnic School:

Female cadets: 30;

Male cadets: 270;

Total: 300.

119. Number of female and male students currently attending the various Adolfo V. Hall schools and the aviation schools:

Females: 152;

Males: 1,517;

Total: 1,669.

120. Military Aviation Technical School:

Females: 33;

Males: 202;

Total: 235.

121. Military Aviation School:

Female officer: 1;

Male officers: 6;

Total: 7.

122. All members of the Guatemalan army and all students in schools run by the armed forces have the right to use the army's complaint mechanisms regarding any mistreatment, particularly if their human rights have been violated. Every commanding officer is duty-bound to ensure that his or her subordinates are treated correctly; if they are not, military law and military regulations provide disciplinary and criminal sanctions.

123. Government Order No. 358-2003 of 20 June 2003 established a human rights department in the Guatemalan army to act as an internal institutional mechanism for the prevention of human rights violations within the army. The department is now working on a draft complaints code, in conjunction with the Office of the Human Rights Procurator.

Article 4

Recruitment methods; measures to prevent the recruitment of minors

Guidelines: *Information on armed groups operating in the national territory; statistics on persons under the age of 18 recruited by armed groups; commitments and measures to prevent the recruitment of minors into armed groups.*

124. No new armed groups have been reported in the country since the signing in 1996 of the peace agreements between the Government and the Unidad Revolucionaria Nacional Guatemalteca, and the demobilization of the groups associated with the latter.

125. Negotiations between the Government and the armed groups active in the country during the internal armed conflict led to the signing of the Agreement on a Firm and Lasting Peace in 1996.

126. As indicated above, 3,000 guerrillas were demobilized, including 214 minors, but no other data disaggregated by sex, age, region, rural or urban zone or ethnic origin are available. According to information provided by the Ministry of Defence, no minor was ever arrested during the hostilities.

127. We would like to recall the commitment made by the Government and the Unidad Revolucionaria Nacional Guatemalteca in the Comprehensive Agreement on Human Rights, title VI, on "Military conscription". Paragraph 6.1 states that "conscription for compulsory military service must not be carried out by force or violate any human rights and, as a civic duty and right, should be fair and non-discriminatory".

128. Two new measures were instituted with regard to conscription. The army adopted internal administrative measures specifically prohibiting the recruitment of minors under the age of 18 years and also prohibiting forced recruitment, and the new law on civic service was enacted. Before the internal armed conflict, the Ministry of Defence, through each military command's civilian relations unit, tried to encourage both men and women to enter military service. Following the reform of the structure of the armed forces, those units have been renamed "civilian-military liaison units". They disseminate information to the civilian population on specific issues, including military service, taking into account the provisions of the peace agreements as well as important principles of human rights and international humanitarian law.

129. Please refer to the provisions of the Civic Service Act annexed to this document.

130. Important principles relating to the protection of adolescents and children during armed conflicts were established as a result of the adoption of the Act on the Comprehensive Protection of Children and Young Persons. In title IX of the Act, entitled "Right to protection during armed conflict", article 57 reads as follows: "International humanitarian law: In the event of armed conflict, children and young persons have the right not to be recruited and the State shall abide by and enforce the applicable norms of international humanitarian law."

131. "The State shall take all possible measures to ensure that persons who have not yet attained the age of 18 years do not take a direct part in hostilities and are not recruited for military service at any time."

Article 5

Nothing in the present protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

Guidelines: *National legal framework for the implementation of the Protocol.*

132. National legislation currently in force in Guatemala relating to the protection of the rights of the child, as well as a list of the principal relevant international instruments to which Guatemala is a party, are listed below.

133. Guatemalan legal framework:

- Political Constitution of the Republic of Guatemala;
- Comprehensive Agreement on Human Rights;
- Agreement on the strengthening of civilian power and on the role of the armed forces in a democratic society;

- Decree No. 20-2003, Civic Service Act and its regulations;
- Decree No. 27-2003, Act on the Comprehensive Protection of Children and Young Persons;
- Decree-Law No. 106, Civil Code.

134. International legal framework:

- Universal Declaration of Human Rights;
- Convention on the Rights of the Child;
- Geneva Conventions and Additional Protocols;
- ILO Convention No. 182;
- International Covenant on Civil and Political Rights;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- American Convention on Human Rights (Pact of San José, Costa Rica).

Article 6

Legal and administrative measures; dissemination of the Protocol; physical and physiological recovery and reintegration

Guidelines: *Legal framework and amendments to legislation; legal status of the Protocol; bodies responsible for its implementation; monitoring and evaluation mechanisms; training and dissemination of information about the Protocol.*

Measures adopted to promote disarmament; budget resources allocated to training programmes; social reintegration and child protection measures; legal provisions criminalizing the recruitment of children; criminal responsibility of children.

135. With regard to bringing domestic law into line with the Optional Protocol, as indicated in relation to article 2, following the entry into force of the current Constitution in 1985 and the Convention on the Rights of the Child in 1990, a “doctrine for the comprehensive protection of children” was introduced. Subsequently, civil society organizations working to promote children’s rights and government bodies responsible for the protection of children underscored the need to draft a law that would meet current needs, be in conformity with the doctrine of comprehensive protection and promote a new vision in which the child was no longer seen as simply requiring special protection but was considered a citizen in his or her own right requiring the same protections as other citizens. After many years of awareness-raising, discussion and formulating proposals, as well as tremendous lobbying by State institutions and especially civil society organizations, the present Act on the Comprehensive Protection of Children and Young Persons (Decree No. 27/2003) was adopted.

136. As regards the legal status of the Protocol, pursuant to article 46 of the Constitution, international human rights treaties ratified by the State of Guatemala take precedence over national legislation. Any such treaty is therefore immediately incorporated into national law and may be invoked before the courts.

137. The departments and bodies responsible for coordination and implementation of the Optional Protocol include the Office of the Attorney-General, the legal representative of the State responsible for acting on behalf of and in defence of persons not physically present and minors, in accordance with article 1 of Decree No. 512, the Act on the Organization of the Public Prosecutor's Office.

138. The Ministry of Defence, the institution responsible for recruitment for military service, is likewise responsible for ensuring that the recruitment process respects the provisions of the Protocol and for dissemination of information about its contents to all ranks of the armed forces.

139. The Office of Social Welfare is the government body responsible for managing State policies and activities aimed at promoting the quality of life, well-being and physical and mental health of children and young persons, in particular those who are in a vulnerable situation.

140. The Office is also responsible for managing social welfare programmes instituted by the Executive. It has four departments: the Department of Administration; the Department of Child and Family Welfare; the Department of Treatment and Counselling for Minors; and the Department of Special Educational Assistance. The Office is the authority responsible for taking action to protect children whose human rights have been violated.

141. The Office of Social Work of the First Lady (SOSEP) organizes programmes to assist population groups affected by extreme poverty and violence. It operates community day-care centres and runs programmes for widows and orphans who have been the victims of domestic violence.

142. The Ministry of the Interior, as the supreme budgetary and management body of the civil service, is responsible for the adoption of administrative measures aimed at the implementation of the Civic Service Act (Decree No. 20-2003) through the National Civic Service Board, which it chairs, the local civic service boards and the Executive Secretariat for Civic Service, as provided for in the Act.

143. The children's and youth unit of the Public Prosecutor's Office, headed by a deputy prosecutor, is responsible for any proceedings involving minors, pursuant to Decree No. 40-94, the Act establishing the Public Prosecutor's Office.

144. The children's and youth unit of the national civilian police is responsible for training and advising all members of the police force in matters relating to the responsibilities and rights of children. The unit organizes its programmes in accordance with the principles of the Act on the Comprehensive Protection of Children and Young Persons.

145. Another mechanism for the implementation and monitoring of the Protocol are the municipal child protection boards, established in 1998 by the Children's Rights Procurator with a view to promoting children's rights at the local level. They are made up of local people, supported by the municipalities and empowered to report and request special protection measures for specific cases involving actual or potential human rights violations (Act on the Comprehensive Protection of Children and Young Persons, art. 104).

146. The Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH, or the Presidential Human Rights Commission) is responsible for coordinating official initiatives aimed at fulfilling the State's commitments under the international human rights covenants and conventions, as well as for monitoring the implementation of recommendations made by international human rights treaty bodies.

147. The National Commission on Children and Young Persons, established by the Act on the Comprehensive Protection of Children and Young Persons, is responsible for developing policies for the comprehensive protection of children and young persons and for the integration of those policies into the work of the system of urban and rural development councils, ministries and State bodies.

148. The Office of the Children's Ombudsman, a division of the Office of the Human Rights Procurator, is responsible for promoting, protecting and increasing awareness of the rights of children and young persons. More specifically, its job is to protect the human rights of children by investigating complaints submitted to it or taken up by it on its own initiative. It aims to identify those responsible, order a stop to any violation, ensure that appropriate steps are taken or that the complaints are forwarded to the appropriate bodies, and ensure that the child protection authorities fulfil their duties. It also checks up on governmental and non-governmental institutions working with children in order to ensure that they take whatever steps are necessary to protect the rights of children and young persons and implement the recommendations made to them.

149. The Human Rights Procurator, acting through the Office of the Children's Ombudsman, is responsible for the defence, protection, dissemination, administrative control and monitoring of the human rights of children and young people. The Procurator also reviews and gives an opinion on draft legislation relating to children and young people; reviews current legislation with a view to proposing amendments that might improve the situation of children; requests information from public officials concerning problems relating to children and the ways and means used to resolve them; and oversees the activities of State institutions to ensure that they respect children's rights.

Review of national legislation and amendments introduced

150. In addition to the provisions described above, with reference to articles 2 and 3 of this report, there are other legal provisions in force which, in various ways, serve as a bulwark against unlawful activities that harm or threaten children or young persons.

Revised Criminal Code (Decree No. 17-73)

Offence of enforced disappearance

151. Decree No. 33-96 introduced an additional article, 201 ter, which established enforced disappearance as an offence. “The offence of enforced disappearance is committed by any person who, on the orders or with the authorization or support of the State authorities, deprives a person or persons of their liberty for political reasons, concealing their whereabouts or refusing to reveal their fate or acknowledge their detention, or by a public official or employee, whether a member of the State security forces or not, who orders, authorizes, supports or acquiesces in any such acts.

152. “The offence of enforced disappearance shall consist of the deprivation of the liberty of one or more persons, even in the absence of political grounds, by elements of the State security forces in their official capacity, if they act arbitrarily or with an abuse or excess of force. The offence of enforced disappearance is also committed by members of organized groups or gangs having terrorist, insurgent or subversive purposes or any other criminal purpose who, as members of or participants in such groups or gangs, engage in abduction or kidnapping.

153. “The offence shall be deemed to persist until such time as the victim is released.

154. “A person who is guilty of enforced disappearance shall be sentenced to 25 to 40 years’ imprisonment and the maximum term of imprisonment shall be replaced by the death penalty in cases where, for the purpose of or in the process of the enforced disappearance, the victim suffers serious, very serious or fatal injuries or permanent psychological damage.”

Offence of torture

155. Congressional Decree No. 58-95 added article 201 bis, which defines the offence of torture. “The offence of torture is committed by any person who, on the orders or with the authorization, support or acquiescence of the State authorities, intentionally inflicts severe pain or suffering, whether physical or mental, for such purposes as obtaining from the victim or a third person information or a confession concerning an act the victim or a third person has committed or is suspected of having committed, or who continually intimidates a person and, through that person, others.

156. “The offence of torture is also committed by members of organized groups or gangs having terrorist, insurgent or subversive purposes or any other criminal purpose.

157. “The perpetrator or perpetrators of the offence of torture shall also be tried for the offence of kidnapping. The consequences of acts carried out by a competent authority in the legitimate exercise of its duty and for the protection of public order shall not be considered torture.”

Legislation to assist people affected by the internal armed conflict

Act on Personal Documentation of the Population Displaced by the Internal Armed Conflict

158. A crucial aspect of the process of reintegrating thousands of Guatemalan refugees or displaced persons into society was the adoption of a law relaxing the requirements for personal

identification documents indicating the civil status of persons affected by the destruction of civil registration records in the armed conflict. Congressional Decree No. 73-95, the Act on Personal Documentation of the Population Displaced by the Internal Armed Conflict, was adopted for that purpose.

National Reconciliation Act

159. The internal armed conflict gave rise to acts that could, in legal terms, be classed as political offences or ordinary offences. In the interests of achieving peace and reconciliation in Guatemala, there was a need for fair and even-handed treatment that took into account the various circumstances and factors involved in the armed conflict. To that end, the National Reconciliation Act was adopted under Decree No. 1445-96, which laid an obligation on the State to assist victims of armed conflict, such assistance to be provided, under the supervision of the Peace Secretariat, by governmental measures and programmes of a civil, social and economic nature. The Act does not, however, apply to the crimes of genocide, torture and enforced disappearance, or to any other offences that are not subject to statutory limitations or discharge from criminal liability in accordance with domestic law and the international treaties ratified by Guatemala.

160. One of the recommendations made by the Commission for Historical Clarification in Guatemala, which was established under the peace agreements, was that the provisions of international humanitarian law should be widely circulated in peacetime to all sections of the population, and particularly to the armed forces.

161. In implementation of that recommendation, and as part of the internal reforms that included a reorientation of army studies and training, instruction in international humanitarian law has been expanded to ensure that the law is properly applied. At the same time, courses have been given in international human rights standards, an important aspect of which is a knowledge of the international covenants and conventions and their application.

162. It should be noted that, following a number of workshops organized during the preparation of this report by the Presidential Human Rights Commission (the government body responsible for drawing up the report) jointly with the Army Human Rights Unit, the current Minister of Defence sent a message to all military units and establishments, including those involved in military training, instructing them to include in their curriculum the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

163. In 2004, the Ministry of Defence also signed two agreements relating to education: (1) a framework cooperation agreement with the Inter-American Institute of Human Rights and (2) a cooperation agreement with the Human Rights Study, Training and Analysis Centre. The results of these initiatives were as follows:

- Improved relations with civil society and national human rights institutions;
- More widespread understanding of the army's achievements and the challenges it faces in respect of human rights training within the army;

- Implementation of a consensus-based document on human rights in relation to military doctrine, military education, internal controls and civilian-military relations, adapted to the army's needs;
- Human rights courses for trainers; and
- Observance of human rights principles in the army.

164. Another area of activities was the organization by the Presidential Human Rights Commission, through the Department of Education, of seminars and workshops for State officials on the Optional Protocol and its implementation.

165. The Office of the Human Rights Procurator, through the Office of the Children's Ombudsman, also provided training aimed at the municipal child protection boards based in 180 towns and provincial capitals, at civil society organizations that work for the protection of the rights of children and young persons, and at units of the Guatemalan army both in cities and in the interior. This training took the form of workshops, forums, talks and seminars held by educators and coordinators attached to the Office of the Children's Ombudsman.

166. In that connection, it should be pointed out that the Government has taken measures to assist with the physical and psychological recovery and social reintegration of victims of the armed conflict. This work has been carried out by the Ministry of Public Health and Social Welfare through its implementation of the National Mental Health Programme. The health-care components of the programme include gender-based violence, domestic violence and general violence. The programme adopts an integrated approach, covering all age groups and prioritizing preventive action at every level of care, from clinics and health centres to hospitals.

167. The technical care aspects of the programme were also given priority in the 2005 Health Guidelines and Policies.

168. These programmes have made it possible to include on the health agenda at various levels such topics as human rights, the elimination of torture, peaceful conflict resolution, peace agreements, the Act on the Prevention, Punishment and Eradication of Domestic Violence and the human rights treaties ratified by Guatemala, especially those relating to vulnerable sectors of society (women, children, the elderly and disabled people).

169. The Ministry of Health employs trained mental-health staff to provide care in the areas or departments most affected during the time of the conflict, such as Quiché, Alta Verapaz, Ixcán, San Marcos, Huehuetenango, Baja Verapaz and Guatemala City.

170. The National Compensation Programme organizes activities aimed at providing compensation for harm caused by the armed conflict, in particular that suffered by widows, the elderly and children. Such compensation takes one of three forms: financial compensation; psychological and cultural restitution; or formal acknowledgement. The programme, to which the Government allocates \$39 million a year, is scheduled to last 13 years.

171. The Psychology Unit of the Office for the Defence of Indigenous Women's Rights has also embarked on an institution-building project to address the problem of violence against women. The current approach is to promote the Mayan world view among self-help groups. The project will last for three years with technical and financial cooperation from the Swedish International Development Cooperation Agency.

172. Measures adopted in relation to disarmament, in accordance with the commitments undertaken in the peace agreements, include the following.

173. **Demobilization and disarming of the voluntary civil defence committees.** In accordance with the report by the United Nations Verification Mission in Guatemala (MINUGUA), this paramilitary organization - which was established in 1981 and officially recognized in 1983 by Government Order No. 222-83, and which ultimately had over 800,000 active members - was demobilized pursuant to Government Order No. 143-96. In August 1996, 2,643 voluntary civil defence committees were abolished, 270,906 members were demobilized and 14,000 weapons were surrendered.

174. **Disbanding of the mobile military police.** In 1997, the demobilization took place of 699 members of the ordinary mobile police and, in December of that year, of 1,722 members of the special mobile military police, pursuant to Government Order No. 13-98. The demobilization of the members of this military unit, which was thereby completely disbanded, constituted part of the 33 per cent reduction in army numbers.

175. In 1997, the Government established a support programme for the social and economic reintegration of members of the mobile military police. Under the programme, which was coordinated by the National Fund for Peace (FONAPAZ) and the International Organization for Migration, members of the police were granted the following: financial compensation, according to their length of service in the army; occupational training; employment opportunities in government bodies and the private sector; and microenterprise start-up loans.

176. Government Order No. 456-2000 provided for the participation of civil society in the design and formulation of Guatemalan national defence policy.

177. **Reduction and restructuring of the army.** Between 1997 and 1998, the number of troops was reduced by 33 per cent, after which, as the relevant document indicates, the army comprised 31,423 persons, in line with the requirements of the government order. The reduction was based on the tables setting out the army's organization and equipment, which authorized 46,900 serving troops during the final stage of the internal armed conflict. By government order, the Military Commissariat was closed, the Military Geographic Institute became the National Geographic Institute, the broadcasting frequency for a television channel controlled by the army was assigned to the Executive, and graduates of Adolfo V. Hall schools joined the military reserves. However, the size and resources of the army, as well as its arms and munitions acquisitions policy, must be determined within the framework of national defence policy and the new military doctrine.

178. The order stipulates that the size, resources and future organizational units of the army should be sufficient to enable it to discharge its function as the defender of Guatemalan sovereignty and territorial integrity and should be commensurate with the country's economic means.

179. **Secretariat of Administrative Affairs (SAAS).** This secretariat was set up by the Government to replace the Presidential General Staff, and has been built up to take on security responsibilities.

180. **Peace and Concord Commission.** In accordance with the Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that have Caused the Guatemalan Population to Suffer (the Commission for Historical Clarification), signed on 23 June 1994, and pursuant to Government Order No. 263-2001, the Peace and Concord Commission was established to promote and enhance peace and concord and to coordinate reconciliation efforts. Its mandate includes encouraging and assisting efforts to determine where and under what circumstances persons detained during the internal armed conflict disappeared or died.

181. The Comprehensive Agreement on Human Rights affirms that compensating and assisting victims of human rights violations is a humanitarian duty. Such compensation or assistance shall be provided under government measures and programmes of a civilian and socio-economic nature, giving priority to those whose need is greatest, given their economic and social position. Decree-Law 145-96, the National Reconciliation Act, created within this framework, is implemented by the Peace Secretariat. The Act states that giving assistance to the victims of violations of human rights during the internal armed conflict is a humanitarian duty of the State. The disbursement of such assistance is coordinated by the Peace Secretariat, on the basis of the recommendations contained in the report of the Commission for Historical Clarification.

182. As set out in the preceding paragraphs, the National Compensation Programme currently being implemented comprises a set of policies, projects and programmes designed to provide redress, compensate, make restitution, indemnify, assist, rehabilitate and restore the dignity of victims of the internal armed conflict.

183. As to the legal reforms related to the restructuring and modernization of the army to ensure its subordination to civilian authority and to repair civilian-military relations, the Arms and Munitions Act (Decree No. 63-96) stipulates that gun licences which were previously issued to persons over the age of 18 but under the age of 25 shall not be renewed when they expire. Exceptions are made for persons within that age group who are members of the Guatemalan army, who work for the civil or public security forces or in private security forces that meet the requirements of the law, or who are trained, active members of those forces.

184. In accordance with the agreement on the strengthening of civilian power and on the role of the army in a democratic society, the army's task is to defend the sovereignty and territorial integrity of the country, and its participation in other areas is limited to cooperative tasks. The Military Justice Bill was presented to Congress and approved on first reading in July 2002.

185. Other bills on the administration of military criminal justice - the Military Criminal Justice Act, the Military Criminal Procedure Act, the Act on the Structure and Functions of the Military Courts and the Military Prisons Act - were introduced on 9 November 2004, have been approved by the Congressional Defence Committee and are now under review by the Legislative Committee.

186. The Military Code (Decree No. 214-1878) was amended by Congressional Decree No. 41-96, which repeals article 546 of the Code of Criminal Procedure (Congressional Decree No. 5-92).

187. A number of joint government and civil society associations are tackling the consequences of the internal armed conflict. They include the National Commission on the Search for Children Who Disappeared during the Internal Armed Conflict, established on 21 June 2000.

188. The objectives of the commission are to discover and reveal the truth in cases of disappeared children in Guatemala; to promote and support efforts in the areas of documentation, searches and family reunification; and to promote and support action to achieve justice and compensation.

189. Progress made since the establishment of the Commission includes: (a) 1,280 cases documented; (b) 324 cases resolved; (c) 131 family reunifications; (d) 108 exhumations; (e) 85 pending cases of family reunification; (f) 1,000 cases of psychological and social counselling; (g) 600 cases of ongoing psychological and social counselling; and (h) 16 family committees organized to search for disappeared children.

190. Qualitative progress includes: (a) family members are now confident to speak out on the issue; (b) there is solidarity among families at the national level, and cooperation at the international level; (c) the issue of disappeared children and their rights is receiving attention; (d) multiculturalism is respected; (e) there is coordination between and within institutions with regard to the National Compensation Programme and the National Compensation Commission; and (f) new technologies are being used in investigations.

191. Among the obstacles faced by the Commission is the lack of scientific tools, finance and access to information.

192. In late 2005, the Office of the President of the Republic, through the Presidential Human Rights Commission, launched a proposal to establish a national mechanism to search for persons who disappeared during the armed conflict. The proposal has been discussed by working groups comprising representatives of government offices and bodies, the Office of the Human Rights Procurator and civil society organizations. The proposal that has emerged from this process of discussion, dialogue and consensus-building is currently with the Office of the President, awaiting final approval.

193. As the forced recruitment of children is not currently defined as an offence, the ordinary courts have to deal with illegal actions of this nature by invoking established offences such as forced disappearance, kidnapping and child abduction.

194. The criminal courts of first instance supervise the investigations conducted by the Public Prosecutor's Office, which brings charges against children and young persons. Trial courts hear the case and impose the sentence; enforcement courts monitor the execution of sentences; and magistrates courts deal with misdemeanours and offences punishable by prison terms of no more than five years.

195. The Public Prosecutor's Office has two special offices for handling trafficking in persons and trafficking in children and young persons. These offices conduct criminal prosecutions for offences committed against children and young persons.

196. The Act on the Comprehensive Protection of Children and Young Persons provides for the establishment of juvenile courts, which handle cases involving actual or potential violations of children's rights; special courts monitor and enforce the measures and punishments imposed on young persons. No juvenile may be deprived of liberty for more than three years.

197. Appeals in cases involving children and young persons are heard by the juvenile division of the appeal court.

198. With respect to the criminal responsibility of minors for offences committed while serving in the armed forces during the internal armed conflict, various elements of Guatemalan legislation are applicable: article 20 of the Constitution provides that minors who breach criminal laws may not be held criminally responsible; and article 6 of the Minors Code, which was repealed in 2003, contained the same stipulation. The new Act on the Comprehensive Protection of Children and Young Persons establishes judicial procedures for juveniles that differ from those for adults.

199. This Act is based on the Convention on the Rights of the Child and takes account of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules, 1985), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines, 1990), which recognize children as subjects of rights rather than objects of protection.

200. Under the Act on the Comprehensive Protection of Children and Young Persons, two separate procedures must be provided for children whose rights have been violated and for young persons in conflict with the law, while taking into consideration the best interests of the child.

201. Young persons in conflict with the law are responsible for their actions, but are immune from prosecution. The State is therefore not obliged to provide protective measures, but rather seeks a punishment for educational purposes. The juvenile is treated as an offender and, as such, may be deprived of liberty, provided that all the guarantees of due process are strictly observed.

202. However, under the principle of the rule of law, no person may be punished for acts that are not expressly categorized as offences or misdemeanours by legislation that predates their commission, nor shall a punishment be imposed that is not previously established by law. It must be borne in mind that in criminal matters, and in accordance with the constitutional principles of non-retroactivity and *extractividad* (where the legislation in force at the time the

offence is committed differs from a subsequent law), the provisions most favourable to the offender must apply even when a binding sentence has already been handed down and the offender is serving his or her sentence.

203. The Act on the Comprehensive Protection of Children and Young Persons establishes procedures for the treatment of young persons in conflict with the law, such as the magistrates courts, the juvenile courts and the juvenile division of the appeal court.

204. The juvenile courts hear cases against juveniles who have violated the criminal law.

205. The children's and youth unit of the Public Defender's Office is responsible for defending juveniles on trial for criminal offences.

206. In addition, the Government has drawn up a national policy for the prevention of juvenile violence, which contains principles, goals, policies and strategies for a coordinated campaign against the causes that lead youngsters to take to the streets and turn to crime.

Article 7

Measures to implement the Protocol; technical cooperation and financial assistance

Guidelines: *Technical cooperation and financial assistance for the implementation of the Protocol.*

207. The Government of Guatemala received technical and financial cooperation from the United Nations Children's Fund (UNICEF) for the preparation of this report. This involved training as well as the dissemination of the Protocol and this report on its implementation to various government bodies and sectors of civil society.

208. The United Nations Office of the High Commissioner for Human Rights in Guatemala (OHCHR-Guatemala) provides technical support and assistance to the Presidential Human Rights Commission for all activities related to monitoring the implementation of Guatemala's national and international commitments in the field of human rights under the covenants and conventions that have been signed and ratified by Guatemala.

209. In this connection, it should be mentioned that the commitment to implement the Protocol requires cooperation between the Executive and other State bodies. The Presidential Human Rights Commission has accordingly convened the Inter-Institutional Human Rights Forum, in which representatives of ministries, secretariats, social funds, and autonomous and semi-autonomous State bodies participate, with a view to designing human rights programmes and policies that will put into effect all of Guatemala's treaty commitments. To take this process forward, OHCHR-Guatemala has provided continuous technical assistance and advice.

210. Unfortunately, the Government does not at present have the resources to provide financial assistance, although it understands that bilateral and multilateral efforts at the regional level are important for ensuring the proper observance of human rights and strengthening peace and democracy in the region.

III. CLOSING REMARKS

211. The Government of Guatemala wishes the honourable members of the Committee on the Rights of the Child to know how important it was for the various bodies involved in the preparation of this report to have the opportunity to review the current situation in Guatemala with respect to the implementation of the Protocol. We are aware, moreover, that the legal and administrative measures adopted to date - while they attest to the Government's willingness to fulfil all its commitments under the Protocol - need to be reinforced with other measures to ensure that the young people of Guatemala are never again used in hostilities of any kind.

212. The review process also made it possible to identify the programmes and measures that still need to be implemented; from now on, they will gradually be put into effect with a view to the satisfactory implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

213. Although, thanks to the peace agreements, there is no imminent risk of Guatemalan children, men or women being involved in armed conflict, the Government is very concerned about other new types of threat - which Guatemala is not alone in facing - from increased drug-trafficking, national and international organized crime, youth gangs and international terrorism, all of which constitute potential dangers for children and young people. The Government is aware of their vulnerability to these dangers, and would therefore welcome further advice and assistance from the Committee in this respect. The Committee's experience and apt recommendations complement the efforts being made by all the institutions of the State, under the watchful eye and with the support of civil society organizations, to improve living conditions within a framework of security for all children and young people as well as for the population of Guatemala as a whole.

Notes

¹ Advisory opinion requested by Congress, *Official Gazette* No. 40, file No. 682 96, resolution 21 06 96.

² Constitution, art. 4.

³ Constitution, art. 51.

⁴ Constitution, arts. 135 and 136.
