



**International Convention on the
Protection of the Rights of
All Migrant Workers and
Members of Their Families**

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**Committee on the Protection of the Rights of All
Migrant Workers and Members of Their Families**

**Consideration of reports submitted by States
parties under article 73 of the Convention**

Initial report

Guatemala*

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

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I. Introduction

1. In view of its obligations as a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the State of Guatemala launched an inter-agency consultation process with a view to the preparation of this initial report.
2. The consultation was conducted through data collection forms sent to the bodies involved in the implementation of the Convention and, as a complement, through personal interviews with the civil servants directly or indirectly in charge of the question of migrant workers. The information obtained was systematized by the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH), responsible for drawing up and presenting reports under the Convention.
3. The consultation procedure has included municipalities, especially border-area communities with a stake in the implementation of the Convention. In the municipalities consulted, COPREDEH regional offices have interviewed the mayors or the civil servants whose work is related to migration.
4. The systematized information was validated at an inter-agency workshop, which the bodies directly consulted were invited to attend in order to review the first draft and study the analysis of the situation of migration in the country. Moreover, that exercise served to fill some information gaps in the report. In fact, as it will be seen, a major challenge currently facing the State is the development of statistical and qualitative databases allowing to discern clearly the factors affecting migration issues.
5. Direct consultations with all relevant agencies made it possible to determine at what level, in what manner and, above all, from what perspective the question of migration is dealt with. The collective inter-agency validation exercise was instrumental in identifying the relevant key challenges confronting the State.
6. The report describes the current state of implementation of the Convention in the country, and the national legal and regulatory framework governing the issues considered. As discussed in the report, much of that framework antedates the Convention and therefore a review of domestic legislation on migration is a major task for the State.
7. In the report, the State recognizes that the Convention has not been effectively implemented. This crucial challenge, however, should not overshadow the substantial progress achieved, especially at the legislative and institutional levels, as discussed in detail in this document.
8. In March 2008, the United Nations Special Rapporteur on the human rights of migrants visited Guatemala at the invitation of the Government. The purpose of the mission was to examine the status of the human rights of migrants for whom Guatemala is a country of origin or destination and especially of transit through an analysis of the national and international legal framework for the protection of migrants and of the public policies and programmes put in place by the Government. As an outcome of the visit, the Special Rapporteur formulated various recommendations and conclusions and called upon the State to adopt the necessary measures to bring Guatemalan domestic legislation into line with the Convention and to submit this initial report.

II. Information of a general nature

A. Constitutional, legislative, judicial and administrative framework governing the implementation of the Convention

9. In accordance with article 140 of the Constitution, the Republic of Guatemala is a free, independent and sovereign State, so organized as to guarantee that its inhabitants can exercise their rights and freedoms. Its system of government is republican, democratic and representative. Sovereignty is vested in the people, who delegate its exercise to the legislature, the executive and the judiciary.

10. *Executive* power is exercised by the President of the Republic, who is the Head of State and Commander-in-Chief of the Army, acting together with the Vice-President, the Ministers and their subordinate officials. They form the executive and may not favour any political party¹. The President and Vice-President are elected as a team for a four-year term.

11. *Legislative* power is exercised by the Congress, which consists of deputies elected directly by secret universal suffrage for a four-year term.

12. *Judicial* power is exercised exclusively by the Supreme Court and the courts created in accordance with the law. The courts are responsible for hearing cases and ensuring the enforcement of the judgements.

13. The powers and duties of the branches of government are regulated by specific legislation, namely the Act on the judiciary, the Act on the legislature and the Act on the executive.

14. As a result of its geographic location, Guatemala not only is the origin of substantial migratory flows, but also serves as a country of transit and destination for persons who, in their effort to reach other countries, such as the United States, transit through or settle temporarily in Guatemala². Guatemala's role with regard to migration has become one of a receiving and a sending country, while the country bears the burden of deportations, particularly of Central Americans expelled from Mexico and the United States.

15. According to the 2005 Annual Report on the implementation of the Social Development and Population Policy, drawn up by the Presidential General Secretariat for Planning and Programming (SEGEPLAN), migratory flows are driven mainly by the quest for more and better employment opportunities at the economic level; and, over and above economic and social considerations, are influenced by such factors as a feeling of insecurity among the citizens and the disasters that have struck the country.

16. The Committee may get a detailed view of the administrative structure of the State through the circumstantial reports submitted to the Committee of Human Rights in the past.

1. Legal framework

17. The question of migration is addressed by various instruments which, although they do not directly refer to the protection of the rights of migrant workers, are applicable as explained below.

¹ Article 182 of the Constitution.

² "The situation of migrants and the violations of their human rights". Report of the Human Rights Advocate to the United Nations Special Rapporteur on the human rights of migrants, p 37.

(i) *Constitution*

18. Article 46 of the Constitution establishes the general principle that, in the field of human rights, the treaties and agreements approved and ratified by Guatemala have precedence over domestic law. That should be taken into account in assessing the place of the Convention within the country's legal framework. Subsequent to its ratification, the Convention became part of the domestic body of laws.

19. Under article 1 of the Constitution, the State of Guatemala is organized to protect the person and the family. Accordingly, under article 4 of the Constitution, in Guatemala all human beings are free and equal in dignity and rights. Regardless of their civil status, men and women have equal opportunities and responsibilities. No person may be subjected to slavery or any other condition detrimental to his or her dignity.

20. Article 26 of the Constitution, referring to freedom of movement, is worded as follows: "All persons are free to enter, stay in, transit through and leave the national territory and change domicile or residence subject to no restrictions other than those established by law. No Guatemalan may be exiled from or barred from entering the national territory or denied a passport or other identity documents. Guatemalans may enter or leave the country without a visa." Referring to the nationality of Central Americans, article 145 of the Constitution stipulates that nationals of the republics concerned must be considered of Guatemalan origin, if they establish their domicile in Guatemala and state before the competent authorities that they wish to be Guatemalan.

(ii) *Act on the judiciary*

21. Article 5 of the Act on the judiciary, Decree No. 2-89, referring to the scope of the Act, provides that the Act applies to any national or foreigner, resident or in transit, save for international law provisions which have been accepted by Guatemala, and to the national territory as a whole.

(iii) *Labour Code*

22. The first Guatemalan Labour Code was adopted in 1947 by Congressional Decree No. 330 and took effect on 1 May of the same year. Of the various amendments made to the Code, the most significant ones were introduced by Presidential Decree No. 570 of 28 February 1956, which amended 97 and repealed seven articles of the Code. Those amendments are contained in Congressional Decree No. 1441 of 29 April 1961, which practically replaced the entire Code. Accordingly, the Labour Code is referred to as "Decree No. 1441".

23. The Labour Code is ordinary legislation regulating the rights and obligations of the employers or owners and of the workers with regard to work, and setting up dispute resolution mechanisms.

24. Article 13 of the Labour Code establishes the percentage of Guatemalan and foreign workers in enterprises as follows: "Employers may not employ fewer Guatemalan workers than 90 per cent of their personnel or pay them less than 85 per cent of the total wage bill of the enterprise unless special laws are adopted on this issue."

25. According to the same article, these percentages may be modified under the following circumstances:

(a) When considerations related to the protection and promotion of the national economy, to the shortage of Guatemalan technicians in a given activity, or to the defence of national workers of demonstrable capabilities evidently so require;

(b) When immigration is authorized and controlled, or contractually agreed upon, by the executive, and the immigrants enter or have entered the country in order to work on the establishment or development of agricultural or cattle-raising settlements or in social-assistance or cultural institutions, or are of Central American origin. In all such cases, the extent of the respective modification shall be determined by the executive at its discretion but the decision issued through the Ministry of Labour and Social Security must clearly state the reasons, limit and duration of the modification.

26. Article 14 of the Labour Code provides as follows:

"This Code and the regulations thereunder shall be statutory rules of a public nature, and all enterprises, whatever their character, which already exist or may hereafter be established in Guatemala, and also all the inhabitants of the Republic, without distinction of gender or nationality (with the exception of the legal entities under public law referred to in article 2 (2)), shall be subject to their provisions.

Moreover, the provisions contained in this Code for the protection of the worker shall apply to nationals hired within the country in order to perform services abroad.

This shall not affect any exceptions arising out of the principles of international law or treaties."

27. In order to protect Guatemalan workers who perform services abroad, article 34 of the Labour Code prohibits the conclusion of contracts with Guatemalan workers for performing services or carrying out work outside the national territory, without prior authorization from the Ministry of Labour and Social Security.

28. The Ministry of Labour and Social Security may not authorize the recruitment, boarding or departure of Guatemalan workers unless the following requirements are met:

- The recruiting agent or commissioning enterprise must undertake the obligation to have a representative permanently domiciled in the capital of the country during the period of validity of the contract(s). That representative must have a power of attorney that authorizes him or her to settle any claim made by the workers or their family regarding the implementation of the agreement.
- The recruiting agent or commissioning enterprise must pay the costs of transport of the workers from their habitual place of residence to the place of work abroad, including expenses connected with crossing borders, with migration provisions or with any other related factor, and also including the costs of transport of persons or relatives allowed to accompany the worker.
- The recruiting agent or commissioning enterprise must deposit with a national banking establishment, to the order of the Ministry of Labour and Social Security, a reasonable amount determined by the latter, or, failing that, must provide adequate security, in order to guarantee the payment of the costs of repatriation of the workers or, where appropriate, of the persons or relatives allowed to accompany them, and the settlement of any justified claims filed with the national labour authorities, which alone may order the payment of the appropriate remuneration or benefits.
- Repatriation to the initial place of residence of the persons concerned must take place upon termination of the given contracts for any reason, unless the workers or the persons or relatives accompanying them state formally, before a diplomatic or consular representative of Guatemala or, failing that, by means of a certified or official document addressed to the Ministry of Labour and Social Security, their intention not to return to the country.
- The recruiting agent or commissioning enterprise must conclude with the workers in question written contracts in four copies, one for each party and two that the agent or

enterprise must file with the Ministry of Labour and Social Security at least five days before the boarding or departure of the persons concerned.

- One of copies is transmitted to the diplomatic representative of Guatemala at the place where the contracts are to be carried out or, failing that, to the appropriate consular representative, with instructions for the civil servants concerned to monitor the execution of the contracts as effectively as possible. The contracts must contain a clause stating that all costs mentioned shall be borne by the recruiting agent or commissioning enterprise and the relevant Labour Code provisions. They should also specify the manner in which the workers are to be lodged, transported and repatriated.

29. Articles 35 and 36 of the Labour Code complement the above rules. Article 35 specifies cases, in which the above contracts must not be authorized, for instance when the workers are under age, essential to the national economy, stripped of their dignity by the contracts or in breach of their obligation to ensure the sustenance of their dependents. Under article 36, the restrictions stipulated in the two articles described do not apply to degree-holding professionals or highly qualified technicians.

(iv) *Migration Act and the related Regulation*

30. The Migration Act is contained in Congressional Decree No. 95-98. The related Regulation was adopted by Government Decision No. 529-99 of 20 July 1999.

31. The Migration Act aims at ensuring an effective migration system governing the nationals' and foreigners' entry into and departure from the national territory and the foreigners' stay therein. Its provisions are of a public nature and apply to all nationals and foreigners save for other States' representatives and civil servants accredited in the country.

32. The Migration Act defines the following migratory categories for foreigners entering the country:

- Residents, classified into temporary and permanent residents;
- Non-resident persons, comprising persons in transit and tourists.

33. Under the Act, persons granted tourist or visitor status may not occupy any public or private sector post or establish a business.

34. Temporary resident status is granted to foreigners authorized to stay in the country for two years in order to engage in a lawful activity on a temporary basis. Foreigners in this category may be gainfully employed or invest in the country, provided that the capital stems from legitimate activities.

35. Permanent residents are foreigners who take up residence in the country, subject to the fulfilment of legal requirements. Permanent resident status is reserved to:

- Pensioners or rentiers;
- Investors;
- Spouses and young or unmarried children of the above persons;
- Such foreign relatives of Guatemalan citizens as may not meet the legal criteria for Guatemalan nationality;
- Temporary residents;
- Persons distinguished for outstanding performance in science, technology, the arts or sport.

36. In this migratory category, pensioners and rentiers may not perform remunerated work unless they are:

- Guatemalans who are in or will return to the national territory and receive retirement or other pensions from Governments or enterprises of other countries, and those not in that group who can prove that they receive income from property or investment under conditions established by the law;
- Persons who invest in productive activities through projects, with the approval of the Ministry of the Economy and the General Directorate of Migration (DGM);
- Persons providing professional services, such as advisers to State organizations, autonomous bodies, universities and higher technical or artisan education establishments.

37. Under article 43 of the Migration Act, "foreigners who obtain a temporary or permanent residence permit and wish to work as wage earners must do so in lawful activities and obtain appropriate authorization from the Ministry of Labour and Social Security".

38. The Migration Act defines the crimes and other offences that may be committed with regard to migration. The following criminal characterizations are provided:

- (a) Illegal entry of persons;
- (b) Illegal transit of persons;
- (c) Transport of illegal persons;
- (d) Concealment of illegal persons;
- (e) Employment of illegal persons.

39. The penalties for these offences are increased by one third if the offences affect minors or are committed by civil servants. Moreover, a foreigner's entry into or stay in the country without DGM authorization or without meeting the legal requirements is considered to be an offence.

(v) *Civil Service Act*

40. The Civil Service Act, approved by Congressional Decree No. 1748, governs the relations between public administration and civil servants with a view to promoting the latter's efficiency, ensuring them fair treatment and providing them with incentives in their work; and lays down rules for the implementation of a personnel management system. Article 7 of the Act provides as follows: "The public servants concerned by this Act must be Guatemalan citizens. Foreigners may be employed solely when there are no Guatemalans capable of carrying out the work in question efficiently, subject to a National Civil Service Bureau decision based on appropriate information".

(vi) *Social Development Act*

41. Congressional Decree No. 42-2001 contains the Social Development Act, which aims to create a legal framework for the implementation of legal procedures and public policies for the programming, planning, coordination, execution, monitoring and evaluation of governmental and State action designed to develop the human person in social, family, human and environmental terms, with emphasis on groups with special needs such as children and adolescents in risk situations. Section IV of the Act contains the Social Development and Population Policy on Migration, aimed at promoting the comprehensive development of family groups living in rural areas and encouraging their continued stay in

their place of origin through the creation and promotion of employment, productive activities and education and health services.

42. Under article 33 of the Act, the executive, through the Ministry of Labour and Social Security and other related public agencies, shall take measures to ensure that migrant workers receive the remuneration and benefits and enjoy the rights established by the law for the work accomplished. It is also provided that the migrants and their families shall have access to health, education and other basic services improving their living conditions at the places where they temporarily reside.

43. In order to provide the State with inputs for the development of sustainable human development strategies, the act provides for the conduct of studies and diagnostic surveys on internal migratory flows and for the promotion of studies on international migration and transmigrants.

44. The Act is complemented by the Social Development and Population Policy, adopted by the Government in April 2002 and having resulted from the work of various public and private bodies, coordinated by SEGEPLAN, pursuant to article 50 of the Act.

45. The Policy states that "the national and international human rights instruments recognize a person's right to migrate or to stay in his or her country of origin in dignity and security, namely not to migrate and to enjoy the right to development in his or her country of origin. Migration, even in the case of undocumented persons, is not an offence and foreigners must not be punished or sanctioned with deprivation of liberty for being undocumented".

46. The Policy affirms that domestic and international migration, when not caused by internal violence, armed conflict or natural disasters, is usually the result of poverty, unemployment and, generally speaking, unsatisfied basic needs whose fulfilment is a prerequisite for living with dignity.

47. The Policy established two comprehensive goals related to employment and migration, and two respective policy instruments, namely (a) the Rural Employment Programme and (b) the Migration Programme.

48. The Migration Programme set the following six specific objectives:

- Encouraging and strengthening decentralization and devolution, taking advantage of the sustainable development potential of municipalities and departments through broad social participation;
- Promoting the use of remittances for local development through a community funds system;
- Enhancing research and information procedures for decision making regarding migration issues;
- Promoting mechanisms for the protection and defence of the human rights of migrants;
- Sensitizing, informing and educating the population with regard to migration issues;
- Establishing mechanisms for coordinating the action of the Government, Guatemalan migrant communities and civil organizations working with them with a view to prompt and effective support.

(vii) *Act on the National Council for Assistance to Guatemalan Migrants*

49. The Act on the National Council for Assistance to Guatemalan Migrants (CONAMIGUA) is contained in Congressional Decree No. 46-2007, adopted after the ratification of the Convention.

50. CONAMIGUA is the governmental body responsible for coordinating, defining, supervising and monitoring the actions and activities of State organs and entities designed to provide protection, assistance and care to Guatemalan migrants and their families in Guatemala and to migrants in the national territory.

51. The Council was put in place on Thursday, 9 October 2008, and the election of the Executive Secretary and Deputy Secretary by the plenary of the Congress followed. CONAMIGUA includes the Minister of Foreign Affairs, who chairs it; a deputy elected by the plenary of the Congress; the Secretary of Planning and Programming in the President's Office; the Deputy Human Rights Advocate, entrusted with participating in the Council; the Deputy Minister of the Economy responsible for Guatemala's foreign economic policy; the Deputy Minister of Labour and Social Security; and the General Manager of the Bank of Guatemala.

52. Decree No. 46-2007 also created the Advisory Board for the coordination of international, inter-agency and regional assistance to Guatemalan migrants and their families in Guatemala. The Board has not yet been organized and the implementation of its responsibilities is therefore in progress. The provisions of Decree No. 46-2007 are developed by the Regulation related to the Act, adopted through Government Decision No. 106-2009.

(viii) *Act against Sexual Violence, Exploitation and Human Trafficking*

53. The Act against Sexual Violence, Exploitation and Human Trafficking, adopted by Congressional Decree No. 9-2009, aims "to prevent, repress, punish and eradicate sexual violence, exploitation and human trafficking, and ensure caress and protection for the victims and payment of compensation for any damages and prejudice caused".

(ix) *Act Regulating the Extradition Process*

54. Congressional Decree No. 28-2008 regulates the procedure for extraditing persons, complementing the related ordinary legal framework and establishing a procedure in line with constitutional principles and international instruments.

(x) *Decree No. 37-2007 on the Single Central American Visa*

55. This Congressional Decree approved the Agreement on the Creation of a Single Central American Visa for the Free Movement of Aliens between El Salvador, Guatemala, Honduras and Nicaragua (CA-4), concluded in Honduras on 30 June 2005.

(xi) *Government decision No. 528-2003 on the Regulation for authorizing foreigners to work for private sector employers*

56. This Decision governs the administrative procedure to be followed in order that foreigners who enter the country legally obtain an authorization from the Ministry of Labour and Social Security prior to working as wage earners performing services for an employer in the private sector.

- (xii) *Government decision No. 384-2007 on the jurisdiction of the Committee on the Protection of All Migrant Workers and Members of their Families*

57. One of the main advances in respect of the protection of migrant workers and the effective implementation of the Convention has been the Government Decision of the President of the Republic recognizing the jurisdiction of the Committee to receive and examine communications in which a State Party to the Convention considers that another State Party is not fulfilling its obligations under the Convention, and communications from individuals subject to the jurisdiction of a State Party, who claim that their rights under the Convention have been violated.

- (xiii) *Government decision No. 383-2001 on the Regulation regarding the protection and determination of the status of refugees in the national territory*

58. This decision established, inter alia, the National Commission for Refugees (CONAPARE).

59. The itemized description of the legal framework reveals that one of the main challenges facing the State is the review of the relevant domestic legislation, which to a large extent antedates the ratification of the Convention. In that connection, DGM, in the Ministry of the Interior, is reviewing the Migration Act in order to propose to the Congress a draft Act amending the Migration Act by adapting and updating its provisions.

2. Institutional framework

60. As already indicated, the executive acts through Ministries, Departments, Secretariats and other bodies. The Government agencies directly related to the question of migration are described below. In fact, the State institutions as a whole are responsible for guaranteeing and ensuring compliance with the rights enshrined in the Convention.

- (i) *Ministry of the Interior*

61. The Ministry of the Interior is the highest authority in the area of migration and acts in that connection through the General Directorate of Migration (DGM), which is subordinate to this Ministry.

General Directorate of Migration

62. Under articles 4, 110 and 111 of the Migration Act, the main functions of DGM include the following activities: Ensuring that nationals and foreigners enter, stay in and leave the Guatemalan territory in accordance with the Migration Act and the related Regulation; keeping records necessary for an effective control of the migratory movement of nationals and foreigners; imposing appropriate sanctions on violators of the Migration Act, the related Regulation and other provisions regarding migration; proposing to the Ministry of the Interior the creation, elimination or relocation of migration control posts; initiating investigations aimed at establishing the identity, origin and nationality of foreigners who enter or stay in the country without proper authorization; accommodating foreigners lacking the travel documents required by law in centres specifically set up for that purpose.

63. DGM operates a shelter for migrants in the country's capital.

- (ii) *Ministry of Foreign Affairs*

64. The Ministry of Foreign Affairs, acting through the Overseas Service and the relevant directorates and departments, is the authority responsible for the implementation of the Migration Act and the related Regulation abroad. To that end, the Ministry cooperates

closely, through the General Directorate of Consular and Migration Affairs, with DGM and assists Guatemalans abroad through the consular service.

(iii) *Ministry of Labour and Social Security*

65. The Ministry of Labour and Social Security is the State agency entrusted with ensuring and promoting the efficient and effective implementation of legislation, policies and programmes related to labour and social security for the benefit of society. One of its functions, performed through the General Directorate of Employment, consists in authorizing the gainful employment of foreigners within the Guatemalan territory.

Protection, assistance and care policy regarding Guatemalans abroad

66. This policy was formulated by the Ministry of Foreign Affairs in January 2007 and is aimed at implementing support procedures addressing the needs and interests of Guatemalans abroad, the problems that they face in transit and destination countries and their aspiration to a decent life.

(iv) *Ministry of Public Health and Social Assistance*

67. The National Programme for the Migrant Population, created within the Ministry of Public Health and Social Assistance (MSPAS) and a member of the National Board on Migration in Guatemala (MENAMIG), is a civil society entity which facilitates the coordination of efforts undertaken by member agencies or organizations and individual members for the provision of care in relation to migration and for the defence of the human rights of migrants and their families.

(v) *Presidential Commission for Coordinating Executive Policy in the Field of Human Rights*

68. The Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH) was created by Government decision No. 541-91 of 12 July 1991.

69. One of the functions of COPRADEN is defined as follows: "Coordinating the activities of the ministries and agencies of the executive in order to guarantee the effective enjoyment and protection of human rights, and ensuring communication and cooperation between the President of the Republic, the judiciary and the Office of the Human Rights Advocate in relation to such rights".

70. Moreover, COPREDEH is responsible for following up on human rights issues in order to meet the reporting requirements of international bodies. That function has included the conduct of the inter-agency consultation process culminating in the systematic presentation of the information contained in this report. The Commission is chaired by a representative of the President of the Republic.

(vi) *Office of the Human Rights Advocate*

71. The Office of the Human Rights Advocate includes the Displaced and Migrant Population Defence Unit, which addresses social issues related to the groups concerned in order to coordinate at various levels the efforts to defend, safeguard, promote and disseminate their human rights.

(vii) *Social Welfare Secretariat*

72. The Social Welfare Secretariat has implemented a programme entitled Decent Repatriation of Migrant Children and Adolescents, which contributes to such persons' decent, prompt, safe and orderly repatriation by land through the Consulate of Guatemala in

Tapachula, Chiapas State, Mexico. The programme offers accommodation and care in the "Casa Nuestras Raíces" shelter, where the children and adolescents may remain for 72 hours until they are placed with a relative. During their stay, they are provided with nutritional support, room and board and basic necessities.

(viii) *National Council for Assistance to Guatemalan Migrants*

73. The activities carried out by CONAMIGUA, one of the bodies recently created for the protection of migrants, have been referred to earlier in this report.

(ix) *Inter-agency Commission for Combating Trafficking in persons*

74. The role of the Commission, created in 2002 and formally established by Government Decision No. 246-2007, consists in advising, management, development of initiatives and promotion of consensus in connection with the combat against human trafficking, in accordance with international law.

75. Upon the creation of the Secretariat against Sexual Violence, Exploitation and Human Trafficking (SVET), the Commission joins that body by decision No. 02-2009 of the Secretariat. Renamed Inter-agency Commission against Human Trafficking (CIT), it will report directly to the Secretariat and will be convened by the Ministry of Foreign Affairs.

76. The main role of the Commission consists in advising, management, development of initiatives and promotion of consensus in connection with the combat against human trafficking, in accordance with international law.

(x) *Secretariat against Sexual Violence, Exploitation and Human Trafficking*

77. SVET, created in 2009 in the framework of the Act against Sexual Violence, Exploitation and Human Trafficking, is attached to the Office of the Vice-President of the Republic. To fulfil its main functions, namely advising, prevention, protection, care and sanctioning, it must design and implement effective, strategic, ongoing and systematic measures, plans, programmes and initiatives for information and awareness-raising at the national and local levels, taking into account gender, cultural and ethnic diversity, factors of vulnerability in specific regions of the country, and the age, culture and language of the persons and communities targeted by the information activities.

(xi) *Congress Committee on Migrants*

78. As all other Congress committees, this body functions as a technical organ for study and research on issues to be considered by the Congress, in this case migrants.

(xii) *National Board on Migration in Guatemala*

79. MENAMIG is a civil society initiative aimed at ensuring cooperation among various NGOs and non-governmental drives aimed at coordinating action and efforts related to migration.

80. Guatemala's legal framework for dealing with migration has been enriched with new provisions, while the corresponding institutional framework has been enhanced with new bodies and by reinforcing the existing agencies and programmes. That legal and institutional structure is strengthened by the international agreements detailed below.

3. International agreements related to migration

(i) *Bilateral, regional or multilateral agreements*

81. Guatemala has concluded bilateral and multilateral agreements with a view to establishing procedures for monitoring, promoting and protecting the rights of migrant workers and their families. The international agreements and arrangements ratified by Guatemala may be grouped thematically as follows:

Health

Table 1

Agreement regarding health in border areas

<i>Title of the agreement</i>	<i>Signature</i>	<i>Ratification</i>	<i>Entry into force</i>
Agreement between the Government of the Republic of Guatemala and the Government of the United Mexican States regarding the establishment of a binational Guatemala-Mexico Border Health Commission	12 May 2003	20 June 2003	26 March 2004

Source: Data provided by the Ministry of Foreign Affairs and processed by COPREDEH.

82. This agreement provides for the coordinated development of action plans aimed at making medical services available to migrant workers crossing over to the neighbouring State for temporary agricultural employment, and for health care for the border area population as a whole. The Guatemala-Mexico Border Health Commission and its rules and regulations were established on 28 July 2006. In that meeting and a subsequent one, held in October 2007, both States committed themselves to cooperating in the border area. The commitments, ratified in a meeting held in Guatemala in April 2008, concerned five high-priority areas or measures, namely migrants' health; binational health-care weeks, vaccination and nutrition; vector-borne diseases; epidemiological monitoring; and health care security.

Trafficking in human beings

Table 2

Agreements regarding combating human trafficking

<i>Title of the agreement</i>	<i>Signature</i>	<i>Ratification</i>	<i>Entry into force</i>
Memorandum of understanding between the Republic of Guatemala and the Republic of El Salvador on the protection of victims of human trafficking and smuggling of immigrants	18 August 2005	2 November 2005	17 September 2005
Memorandum of Understanding between the Government of the Republic of Guatemala and the Government of the United States on establishing a framework of cooperation in human-trafficking prevention, monitoring and repression	2 November 2004	No ratification required in view of the nature of the agreement	

<i>Title of the agreement</i>	<i>Signature</i>	<i>Ratification</i>	<i>Entry into force</i>
Memorandum of Understanding between the Government of the Republic of Guatemala and the Government of the United Mexican States for the protection of women and underage victims of human trafficking at the Guatemala-Mexico border	23 March 2004	11 January 2005	22 February 2005
Accession of the Government of Guatemala to the Protocol to Prevent, Suppress and Punish Trafficking in persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime	15 November 2000	Accession: 4 February 2004	1 May 2004
Accession of the Government of Guatemala to the Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime			

Source: Data provided by the Ministry of Foreign Affairs and processed by COPREDEH.

Consular and migration-related cooperation

Table 3

Agreement regarding consular and migration-related cooperation

<i>Title of the agreement</i>	<i>Signature</i>	<i>Ratification</i>	<i>Entry into force</i>
Agreement between the Republic of Guatemala and the Republic of Peru regarding consular and migration-related cooperation	25 August 2004	30 August 2004	23 February 2005

Source: Data provided by the Ministry of Foreign Affairs and processed by COPREDEH.

Regularization of immigrants

Table 4

Agreements regarding the regularization of immigrants

<i>Title of the agreement</i>	<i>Signature</i>	<i>Ratification</i>	<i>Entry into force</i>
Agreement between the Government of Guatemala and the French Republic regarding the readmission of persons in an irregular situation	11 November 1998	2 June 1999	2 December 1999

<i>Title of the agreement</i>	<i>Signature</i>	<i>Ratification</i>	<i>Entry into force</i>
Memorandum of understanding between the Republic of Guatemala and the Republic of El Salvador on implementing the migration mechanism for temporary protection and regularization of Guatemalans and Salvadorans in an irregular situation who demonstrably own property in the country of destination	18 August 2005		

Source: Data provided by the Ministry of Foreign Affairs and processed by COPREDEH.

Establishment and opening of frontier posts

Table 5

Agreements on the establishment of border crossings

<i>Title of the agreement</i>	<i>Signature</i>	<i>Ratification</i>	<i>Entry into force</i>
Agreement by Exchange of Notes between the Government of Guatemala and the Government of the United Mexican States regarding the establishment of the "El Ceibo" border crossing post	12 May 2003	16 May 2003	30 July 2003
Agreement by Exchange of Notes between the Government of Guatemala and the Government of the United Mexican States regarding the establishment of the "Fronteras Corozal-Bethel" border crossing post	12 May 2003	22 May 2003	30 July 2003
Agreement by Exchange of Note between the Government of Guatemala and the Government of the United Mexican States regarding the establishment of the "Carmen Xhan Gracias a Dios" border crossing post	12 May 2003	22 May 2003	30 July 2003

Source: Data provided by the Ministry of Foreign Affairs and processed by COPREDEH.

Repatriation of migrants

Table 6

Agreements regarding the repatriation of migrants

<i>Title of the agreement</i>	<i>Signature</i>	<i>Ratification</i>	<i>Entry into force</i>
Technical and Financial Cooperation Agreement between the Government of the Republic of Guatemala, through its Ministry of Foreign Affairs, and the International Organization for Migration (IOM) concerning the decent and safe repatriation of deceased or vulnerable Guatemalans abroad	13 October 2004	10 January 2005	22 July 2005

<i>Title of the agreement</i>	<i>Signature</i>	<i>Ratification</i>	<i>Entry into force</i>
Memorandum of understanding between the Governments of the United Mexican States, the Republic of El Salvador, the Republic of Guatemala, the Republic of Honduras and the Republic of Nicaragua regarding the decent, orderly, prompt and safe repatriation by land of migrant Central American nationals	5 May 2005		

Source: Data provided by the Ministry of Foreign Affairs and processed by COPREDEH.

83. As a follow-up to the above agreement with OIM, Guatemala created the Fund for the Repatriation of Deceased or Highly Vulnerable Guatemalans, namely persons who have emigrated abroad and need the consulates' immediate assistance and protection in order to return to Guatemala in view of their condition. The Fund is coordinated by the Ministry of Foreign Affairs.

84. Use of the Fund presupposes that the deceased or vulnerable Guatemalan must be outside the national territory and his or her family must lack the funds necessary for the repatriation. In the case of a deceased person, the burial must take place in the national territory and the payment is made directly to the undertaker.

Immigration status of temporary workers

Table 7

Agreement on the immigration status of temporary workers

<i>Title of the agreement</i>	<i>Signature</i>	<i>Ratification</i>	<i>Entry into force</i>
Instrument of Ratification of the Binational Group on Migratory Affairs related to Guatemalan migrant workers in Mexico	18 August 1989	20 April 1990	

Source: Data provided by the Ministry of Foreign Affairs and processed by COPREDEH.

85. Moreover, note should be made of ILO Convention No. 97 concerning Migration for Employment, ratified on 28 January 1952; and of the Agreement on the Creation of a Single Central American Visa for the Free Movement of Aliens between El Salvador, Guatemala, Honduras and Nicaragua, allowing CA-4 nationals to enter, transit through and stay in Guatemala for a period not exceeding 90 days, without payment of any entry or exit fees and subject solely to the requirement of an identity document. This agreement was signed by the Heads of State of the countries belonging to the Central American Integration System (SICA) on 30 June 2005, entered into force on 28 November 2007 and, by relaxing the entry requirements, has led to an increase in the number Central American nationals migrating to Guatemala.

86. In addition to the international conventions and agreements concluded, Guatemala participates in various migratory policy coordination initiatives, including the Regional Conference on Migration (RCM), the Central American Commission of Migration Directors (OCAM) and the High-Level Mexico-Belize Border Security Group (GANSEF).

87. RCM was created in 1996 on the initiative of the Government of Mexico in order to promote dialogue on migration among the member States and the exchange of information useful to the development of the various national policies on migration issues.

88. RCM comprises Belize, Canada, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and the United States; and is attended by the following countries and international organizations having observer status: Argentina, Colombia, Ecuador, Jamaica, Peru, OIM, the Office of the United Nations High Commissioner for Refugees (UNHCR), the Economic Commission for Latin America and the Caribbean (ECLAC), the Inter-American Commission on Human Rights, SICA and the Ibero-American General Secretariat (SEGIB).

89. The main goals of RCM are the protection of and respect for the rights of migrants, the promotion of the management of migratory flows with a view to security and order, the promotion of dialogue among member States and the strengthening of cooperation with civil society. The Conference implements an Action Plan addressing the following three areas: migration policies, human rights, and linkages between migration and development.

90. Within the framework of RCM, a workshop on "Migration Management and Cooperation among States" and a seminar on "Migration and Health" were held in Guatemala on, respectively, 28 October 2002 and 18-19 October 2004.

91. Although not binding on the member States, RCM recommendations have become a regional frame of reference with regard to migration. Guatemala is currently chairing RCM. At the domestic level, the relevant activities are developed through the coordinated work of the Ministry of the Interior, DGM and the Ministry of Foreign Affairs.

B. Nature of migratory flows in Guatemala

92. According to the protection, assistance and care policy regarding Guatemalans abroad, implemented by the Ministry of Foreign Affairs, migratory flows in Guatemala have various origins. Initially, persons from the western part of the country emigrated to Mexico and the United States as a result of political unrest connected with the internal armed conflict. Later, in the 1980s, some migratory flows prompted by economic factors began to be observed. It is, however, mainly since the 1990s that Guatemalans migrate in search of a better standard of living and with a view to family reunification.

93. In view of the significant increase in the number of migrant Guatemalans in various parts of the world, the phenomenon of migration should be looked at from a development perspective and efforts should be made to ensure that migration takes place under conditions of dignity and with respect for human rights, including rights of a civil, political, economic, social and cultural nature.

94. According to the "Updated diagnostic analysis of procedures for the arrest, detention, deportation and reception of migrants in Guatemala" conducted by MENAMIG in August 2007, Guatemala, as a result of its geographic characteristics, is a country of origin, transit and destination of migrants; experiences an increase in the number of undocumented emigrants, mainly to the United States; and currently receives large groups of undocumented migrants in transit, who, generally speaking, come from Ecuador, Peru, Cuba, Asia and Africa.

95. According to a MENAMIG study entitled "The age of deportations: a journalistic survey", the States of Central America, including Guatemala, have become transit countries for international undocumented labour migration, which is the current trend; while Guatemala is also a country of destination, especially for nationals of Central American countries, particularly El Salvador, Honduras and Nicaragua.

96. According to the 2005 National Human Development Report, an estimated total of 1,136,175 Guatemalans resided abroad, while the departments of the country with the highest emigration rates - more than 100,000 emigrants each - were Guatemala, San Marcos

and Huehuetenango. Such figures suggest that Guatemala is also a country of origin of migrants.

97. Lastly, Guatemala is a country of return of migrants as a result of deportations from the United States and Mexico. According to DGM data, in 2008 the United States deported to Guatemala 28,051 persons by air and 78,247 persons by land. Of the deportees by land, only 36,546 were Guatemalan.

1. Migrant children and adolescents

98. The total number of deported children and adolescents recorded by the Social Welfare Secretariat was 1,575 in 2004, 2,806 in 2005 and 2,113 in 2008.

99. The Social Welfare Secretariat provides care to migrant children and adolescents attempting to transit through the national territory or having chosen Guatemala as country of destination, implementing, while repatriation procedures are in progress, protection measures decided by a children's and adolescents' judge. The Secretariat is responsible for ensuring such children's and adolescents' well-being, coordinating the relevant activities and reporting to the Prosecutor-General's Office (PGN).

100. The Social Welfare Secretariat acts through the Decent and Safe Repatriation of Migrant Children and Adolescents Unit in the Social Risk Directorate and, in order to attain its goals, uses the "Casa Nuestras Raíces" shelter for migrants in the Quetzaltenango department. The shelter provides accommodation, temporary protection, legal support, search for an appropriate family resource centre, recreation, and informal informational and motivational talks.

101. Casa Nuestras Raíces assisted in total 2,806 children and adolescents in 2005, 3,979 in 2006, 3,563 in 2007 and 2,113 in 2008.

102. According to Social Welfare Secretariat information, migrant children up to 8 years of age may travel either alone or accompanied to join a relative who works in the United States. Generally speaking, children aged up to 3 are accompanied, save for certain cases, such as when they are victims of trafficking. Migrant children or adolescents aged 9-17 usually travel alone, to get to the United States, work and send money to their relatives in Guatemala.

103. Assistance to the migrant group in question is provided through activities based on inter-agency coordination among the Social Welfare Secretariat, the Ministry of Health, the judiciary, the Public Prosecution Service, the National Civil Police (PNC), the Guatemalan Consulate in Chiapas, the Prosecutor-General's Office, the National Council for Disaster Reduction, the Ministry of Foreign Affairs and DGM.

III. Part I of the Convention

A. General principles

1. Articles 1 (1) and 7: Non-discrimination

(i) Legal framework

104. Under article 4 of the Constitution, all human beings are free and equal in dignity and rights. According to the interpretation of the Constitutional Court³, this equality principle means that similar situations must be legally dealt with in the same manner; but, for it to be really effective, the principle also means that different situations must be treated differently, in accordance with their differences.

105. The responsibilities of State institutions related to the provision of care, protection or assistance to migrant workers and their families must include the promotion of non-discrimination. Not only non-discrimination constitutes a right under Guatemalan legislation, but also discrimination is an offence under Congressional Decree No. 57-2002, which added to the Criminal Code in force article 202 bis, worded as follows: "Discrimination shall cover any distinction, exclusion, restriction or preference based on gender, race, ethnic group, language, age, religion, economic situation, disease, disability, civil status or any other grounds, factor or circumstance, preventing or making it difficult for a person or group of persons or associations to exercise a legally established right, including by customary law, in accordance with the Constitution and the international human rights treaties."

106. Under the law, this offence may be committed by action or omission, and the penalty incurred is increased by one third if the act was based on language-related, cultural or ethnic grounds or was committed by a civil servant.

107. According to Public Prosecution Service statistics, in the period 2006-2008 eight complaints for discrimination were filed in the country by a foreigner. However, the statistical system does not provide information on the number of victims that may be considered to be migrant workers.

Table 8

Complaints for discrimination against foreigners - Number of complaints filed in the country for discrimination against foreigners, 2004-2008

<i>Month</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>Total</i>
February	0	1	2	3
March	1	1	0	2
April	0	0	1	1
May	0	0	1	1
August	0	0	1	1
Total	1	2	5	8

Source: Data provided by the Public Prosecution Service and processed by COPREDEH.

³ The Constitutional Court is a standing tribunal with exclusive jurisdiction, the essential function of which is to uphold the constitutional order. It acts as a collegiate tribunal independent of the other State institutions (article 149 of the *Amparo*, Habeas Corpus and Constitutionality Act).

108. Various provisions confirm this right at the administrative level. Thus, under article 12, paragraphs 1 (b) and 2 (a) of the National Police Act, PNC, which reports to the Ministry of the Interior, must, as a basic principle, "act with full political neutrality and impartiality and without any discrimination based on race, religion, gender, age, colour, language, origin, nationality, financial status, birth or other social condition or view" and "avoid in its professional activities any abusive, arbitrary or discriminatory practice" against the population.

109. In addition, the State of Guatemala is a party to international treaties and conventions regarding work-related discrimination, including ILO Conventions No. 111 concerning Discrimination in Respect of Employment and Occupation, 1958, and No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, 1989.

(ii) *Activities carried out*

110. In accordance with its mission of guaranteeing the exercise of the right of the country's inhabitants to health without any type of discrimination, MSPAS provides medical care for migrant workers and their families residing in the area along the frontier with Mexico, in the framework of the Agreement between the Government of the Republic of Guatemala and the Government of the United Mexican States regarding the establishment of a binational Guatemala-Mexico Border Health Commission.

111. For the implementation of that agreement, MSPAS develops action plans addressing the following health issues in Guatemalan border areas:

- (a) Health of migrants:
 - (i) Awareness-raising and training (for health workers, employers, users, temporary agricultural workers and persons in transit) regarding the migrants' access to health services;
 - (ii) Detection, diagnosis and treatment for the benefit of migrants and the population in border areas: both States are committed to ensuring care for the migrant population, regardless of nationality and status;
 - (iii) HIV/AIDS detection, diagnosis and treatment in specific areas serviced by prophylaxis, diagnostic and treatment centres;
 - (iv) Care for women and underage victims of violence through the Mental Health Programme;
- (b) Binational health-, vaccination- and nutrition-weeks:
 - (i) Basic vaccination plan for children under 5, adolescents and women of childbearing age; and counselling activities regarding tetanus and neonatal tetanus:
 - Strengthening the cold chain;
 - Training, monitoring and evaluation;
 - (ii) Provision of information to mothers on acute respiratory infections and acute diarrhoeal diseases;
 - (iii) Distribution of packets of oral rehydration salts;
 - (iv) Administration of vitamin A and deparasitization (albendazol) in high risk areas;
- (c) Vector-borne diseases (VBD):
 - (i) Strengthening of epidemiological monitoring;

- (ii) Vector and parasite control;
- (iii) Monitoring, training, evaluation and operational research;
- (iv) Promoting the elimination of the transmission of onchocerciasis in border areas where the incidence of the disease is concentrated;
- (d) Epidemiological monitoring and information systems:
 - (i) Epidemiological training;
 - (ii) Systematic exchange of epidemiological information on ailments of interest to both countries;
 - (iii) Organization of a computer-based platform for epidemiological monitoring;
- (e) Health care security:
 - (i) Strategies for providing care to disaster-affected groups, including through the Mental Health Programme;
 - (ii) Exchange of experience and influenza outbreak simulations between Mexico and Guatemala;
 - (iii) Training in the detection and management of diseases subject to monitoring in agreement with the International Health Regulations.

112. The staff of the Social Welfare Secretariat, which provides care to migrant children and adolescents, receives ongoing training in social relations with a view to providing equal treatment to all target groups. The children and adolescents receive standardized attention aimed at their well-being. When necessary, a translator is made available to them in order to facilitate communication, particularly the provision of personal information so that the appropriate family resource centre for the individual children or adolescents may be contacted.

113. The attention offered to children and adolescents victims of human trafficking is not discriminatory. On the contrary, the goal is to support this particularly vulnerable group, and help the victims to return promptly to their families and avail themselves of judicial protection measures.

114. Since 2009, through free public education, all children, regardless of their social and cultural condition, have access to schools. Moreover, a citizen care hotline has been made available for denouncing any type of discrimination committed within the Ministry of Education.

115. Free public education means that entrance, enrolment and attendance at the level of pre-school, primary and secondary education establishments are not subject to, dependent on or connected with any type of obligatory or voluntary payment, including the cost of a uniform, which is optional in such establishments. Free education encourages the children and adolescents to enrol and stay in the national education system.

2. Article 83. Right to an effective remedy

116. The Ministry of Labour and Social Security is the national agency tasked with receiving complaints regarding violations of the rights of migrant workers employed in the Guatemalan territory. The Ministry acts through the General Labour Inspectorate, which implements the same procedure used for complaints filed by national workers, namely designating a labour inspector to examine the complaint and summon the denounced party in order to resolve the dispute through conciliation with the worker. If the worker is still employed, an inspector of the inspections department visits the worker and the employer to

verify the allegations. If the dispute is resolved through conciliation, the Ministry's role ends.

117. If the conciliation procedure fails to resolve the labour dispute even after granting the employer a reasonable time limit for abiding by labour legislation, a record of non-compliance with the warning issued is drawn up, and the party affected is informed of his or her right to address the appropriate authority. However, filing the complaint with the competent court for the imposition of legal sanctions against the violator is the responsibility of the labour inspector.

118. If the infringement of the rights of a migrant worker and his or her family is broader than a labour matter and the commission of a criminal act is presumed, the complaint must be filed with the Public Prosecution Service with a view to launching a criminal investigation.

119. Migrant workers in a regular situation are subject to the country's labour legislation, are therefore entitled to request the application of the relevant procedures on an equal footing with national workers and may bring action or seek remedy for violations committed against their rights.

120. In any case, workers may initiate proceedings in order to obtain work-related compensation or damages for injury or prejudice occasioned by the commission of a criminal act against them.

121. Through the appropriate consulates, mainly in Mexico and the United States, the Ministry of Foreign Affairs is the agency responsible for assisting Guatemalan migrant workers. The consular staff advises such workers of their rights and supports them in filing complaints with the appropriate bodies in accordance with the procedures of the host country.

122. The consulates receive telephone calls and visits by workers whose rights have been violated, for instance through unwarranted dismissal or non-payment of remuneration or benefits. Upon receiving such complaints, the consulates act as mediators, contacting the employers to request the outstanding payments or the fulfilment of work-related rights.

123. Conciliation and arbitration boards created in Mexico ensure, through the mediation of Guatemalan consulates, that employers and workers respect their established rights and obligations. In view of the mediatory character of the procedure and the expeditious resolution of most of the cases thus treated, no statistics are kept on complaints received and handled by the various consulates abroad.

124. If a Guatemalan worker has already returned to his or her country of origin by the time that an employer makes a payment, the consulates endeavour to contact and transmit the funds to the worker through the Ministry of Foreign Affairs.

125. At a Legal Counselling for Migrants Fair was held in Los Angeles, United States, in August 2009, legal assistance was provided through a lawyers' firm contracted by the Ministry of Foreign Affairs of Guatemala. The General Consulates of Guatemala, Honduras, Nicaragua, Costa Rica and El Salvador participated in the event.

126. The Ministry of Foreign Affairs of Guatemala has organized mobile consulates providing public services and carrying out passport and consular identity card extensions, registrations and authentications. The following table shows the number and locations of mobile consulates.

Table 9
Mobile consulates

<i>Consulates in the United States, Canada and Mexico</i>		<i>2005-2008</i>	<i>First half of 2009</i>
1	Consulate General of Guatemala in Atlanta, Georgia, United States	31	7
2	Consulate General of Guatemala in Chicago, Illinois, United States	43	5
3	Consulate General of Guatemala in Denver, Colorado, United States	30	6
4	Consulate General of Guatemala in Houston, Texas, United States	45	5
5	Consulate General of Guatemala in Los Angeles, California, United States	44	5
6	Consulate General of Guatemala in Miami, Florida, United States	51	7
7	Consulate General of Guatemala in New York, United States	59	7
8	Consulate General of Guatemala in Phenix, Arizona, United States	43	8
9	Consulate General of Guatemala in Rhode Island, United States	31	7
10	Consulate General of Guatemala in San Francisco, California, United States	34	6
11	Consulate General of Guatemala in Washington, D.C., United States	51	8
12	Embassy of Guatemala in Canada	4	0
13	Consulate General of Guatemala in Ciudad Hidalgo, Mexico	1	0
Total		467	71

Source: Data provided by the Ministry of Foreign Affairs and processed by COPREDEH.

Table 10
Total number of mobile consulates

<i>United States</i>				<i>Canada</i>	<i>Mexico</i>	<i>United States</i>	<i>Total number of consulates set up as at 20 July 2009</i>
<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2005-2006</i>	<i>2008</i>	<i>2009</i>	
67	105	161	129	4	1	71	538

Source: Data provided by the Ministry of Foreign Affairs and processed by COPREDEH.

3. Article 84. Obligation to implement the provisions of the Convention

Implementation of the Convention in Guatemala

127. As already mentioned, the Convention is part of the country's legal system and, under article 46 of the Constitution, has precedence over domestic law. It must therefore be implemented and complied with by all Guatemalan civil servants.

128. The staff of Guatemalan consulates in States parties to the Convention base their efforts to ensure respect for the work-related rights of Guatemalan migrant workers on that instrument. Although lacking budgetary sufficient allocations to meet the needs of Guatemalans abroad for effective protection and support, the Guatemalan consulates assist those in their area regardless of immigration status.

129. The following progress should be noted:

- The MSPAS National Programme for the Migrant Population was created.
- In 2008, the above programme drew up a proposal for a new version of the "Reference manual for the implementation of care standards", in which the

Convention and the rights of migrant workers and their families are taken into account. The challenges of explaining the contents of the Convention to medical services workers and promoting the use of the manual ere taken up.

- Within the framework of the meetings of the Ad-hoc Group on Guatemalan temporary workers in the southern states of Mexico, it was requested to regularize, in line with the Convention, the return of Guatemalan workers temporarily employed in that country. The request is under negotiation with the Mexican authorities.
- The civil servants directly involved in the implementation of the Convention have received training in and learned the provisions of the Convention but need further training in implementing it effectively.

130. The following obstacles to the implementation of the Convention have been identified:

- Lack of statistical data allowing to establish the way in which the Convention should be implemented and to measure the results of the implementation. Most agencies have no disaggregated statistics on migration. The existing data reflect the situation of foreigners but not their migration status.
- Shortage of budgetary resources in State agencies. This affects the organization of dissemination and training campaigns regarding the Convention, and the collection and processing of data on migrant workers and their families.
- Insufficient review and adaptation of the relevant domestic legislation, most of which was enacted before the Convention entered into force.

131. The various challenges encountered, as a result of the circumstances referred to above, in connection with an adequate implementation of the Convention include the need for statistical data reflecting the migration status of the persons who enter or leave the country and are assisted by State agencies.

Dissemination and promotion of the Convention and cooperation with civil society

132. The following activities have been carried out for the dissemination and promotion of the Convention:

- Through the Human Rights Office of the General Inspectorate, the National Police (PNC), implements an in-house training plan with the support of specialized social organizations, the Office of the Human Rights Advocate and the Latin American Faculty of Social Sciences (FLACSO). The plan aims at awareness-raising and guidance of police work with a view to promoting respect for and the protection of the rights of migrants.
- The police personnel seconded to border posts at Malacatán, El Carmen, Ciudad Pedro de Alvarado, Agua Caliente and Atescatempa has received training through seminars and workshops on various topics, including migration, human rights, national and international legislation on migration, and refugees.
- A challenge specifically faced by PNC consists in training all middle-level officers and basic personnel. Difficulties in this connection are compounded by inadequate human resources and the transfer of the personnel trained.
- Ministry of Labour and Social Security staff holds talks with groups of workers before they are admitted into Mexico, providing guidance regarding labour legislation and their rights and obligations.

- Radio advertisements referring to workers' rights and obligations are broadcast in the border areas near Mexico in various Maya dialects.
- Information pamphlets on the rights of border-area Guatemalan workers have been prepared through bilateral negotiations between Guatemala and Mexico. The staff of Guatemalan consulates contributes to disseminating the Convention by explaining workers' rights enshrined therein.

133. Through informal talks in the "Casa Nuestras Raíces" shelter, migrants receive information on the Convention and the procedures for obtaining temporary permits.

IV. Part III of the Convention

Human rights of all migrant workers and members of their families

A. Article 8. Right to leave any country, including one's country of origin, and to return to the latter

134. Under the Migration Act, foreigners who obtain a temporary or permanent residence permit and wish to work for a wage may do so in lawful activities, provided they obtain an appropriate authorization from the Ministry of Labour and Social Security. By complying with these regulations, the migrant workers in question may freely enter and leave the country.

135. Measures taken in order to guarantee the above right to Guatemalans who are within the national territory include the prompt forwarding of passports and DGM units accessible online on a 24-hour basis.

136. The consular service of the Ministry of Foreign Affairs provides assistance and guidance to Guatemalans abroad; and, as already mentioned, a protection, assistance and care policy regarding Guatemalans abroad has been developed.

137. As already mentioned in relation to part I of the Convention, there no specific statistical data on migrant workers, which, in particular, would reveal the degree to which this group exercises the right in question. However, according to existing DGM statistics, 1,461,821 persons left and 932,515 persons entered the country in the period 2006-2008.

1. Situation of repatriated Guatemalans

138. The State of Guatemala receives nationals repatriated by air from the United States and by land from Mexico. Generally speaking, repatriates from Mexico have not been temporary workers there but migrants in transit on the way to the United States.

139. Guatemalan consulates in the United States use the legal advice of lawyers specialized in migration issues and provide support in cases of detention and possible deportation, or clarify the immigration status of Guatemalans.

140. Guatemalan consulates in Mexico, especially the Consulate in Tapachula, are notified of the impending repatriation of Guatemalans by land, and, when there are doubts about their nationality, as it often happens, meet them in order to ascertain it. Consular civil servants accompany repatriated children in order to ensure their protection until they are formally turned over to the Social Welfare Secretariat.

141. Since the signature, in May 2006, of the Memorandum of understanding between the Governments of the United Mexican States, the Republic of El Salvador, the Republic of Guatemala, the Republic of Honduras and the Republic of Nicaragua regarding the decent, orderly, prompt and safe repatriation by land of migrant Central American nationals, it has

been possible to regularize and order the repatriation of Guatemalans in an irregular situation in Mexican territory and to provide better care for unaccompanied minors who are repatriated or for underage victims of human trafficking. The main difficulties encountered in implementing the memorandum of understanding concern the need to notify the consulates in time and to comply with the timetable for the entry of repatriates and their delivery to the local authorities.

142. Documentation for persons detained without any identity document is provided through the Ministry of Foreign Affairs, while Guatemalans arriving by air receive comprehensive care through inter-agency coordination.

143. In 2008, the Ministry of Foreign Affairs provided Guatemalans returning to the country with assistance of approximately 0.5 million quetzales for food and, in the case of persons unable to pay their fare, land transport to their place of origin.

B. Articles 9 and 10. Right to life; prohibition of torture; prohibition of inhuman or degrading treatment

144. According to Public Prosecution Service statistics, three complaints for torture inflicted on a foreigner were filed in the period 2004-2008. However, the electronic registration system does not indicate whether the victims were migrant workers.

1. Measures implemented in relation to the prevention of torture in general

145. One of the legislative measures taken by the State with a view to the prohibition of torture and cruel, inhuman or degrading treatment has been the adoption by Guatemala of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment through Decree No. 53-2007 of 7 November 2007, published in the *Diario de Centro América* (the official journal) on 5 December 2007.

146. The Optional Protocol was adopted in the city of New York on 18 December 2002 and was signed by the Republic of Guatemala on 25 September 2003. The Guatemalan adoption decree specifies that the executive, through the Ministry of Public Finance, must ensure that the State budget for every fiscal year contains the allocations necessary for implementation.

147. As a consequence, the State of Guatemala committed itself, together with the international community and the Guatemalan society, to creating or designating one or more independent mechanisms for the prevention of torture at the national level.

148. According to the commitment, the National Preventive Mechanism should be in place by July 2010. Civil society organizations and State agencies have participated in the creation process, while the establishment, at the highest level, of a technical and a political body has been decided in that connection. The mechanism has not yet been defined or established, but a draft Act has been drawn up to be adopted by the Congress.

149. Currently, the crime of torture is treated in Criminal Code article 201 bis, worded as follows:

"The crime of torture is committed when one, by order of the State authorities, or with their authorization, help or acquiescence, intentionally inflicts on another person severe pain or suffering, whether physical or mental, for the purpose of obtaining information or a confession from that person or a third party relating to an act he or she may have committed, or persecutes another person for the purpose of intimidating him or her or, by those means, other persons. The crime of torture is also committed by members of groups or gangs organized for the purposes of terrorism, insurgency, subversion or any other criminal purpose. The perpetrator(s) of the crime of torture shall also be tried for the crime of abduction. The

consequences of acts carried out by a competent authority in the legitimate exercise of its duty and to protect public order do not constitute torture. The crime of torture carries 25 to 30 years' imprisonment."

150. In relation to the Convention articles considered, it should be noted that, under articles 9 and 10 of the National Police Act, PNC is responsible for protecting the life, physical integrity, security and assets of persons and the free exercise of their rights and freedoms. By extension, such protection covers the foreign migrant workers who reside in the country, their families and the Guatemalan migrant workers and their families, when they return to the country.

151. DGM coordinates efforts to ensure that Guatemalans repatriated by deportation receive any necessary medical care and are provided with food and the possibility to communicate with their families.

152. Foreigners who violate the Migration Act and the related regulation or must have their immigration status determined are sent to DGM shelters, while their status is clarified or procedures for their expulsion or repatriation are in progress, as appropriate.

153. In the shelters, foreigners are segregated by gender, are helped by interpreters if necessary and enjoy freedom of religion and worship.

154. As these shelters are designed for migrants of all types, not only migrant workers, no statistical data specific to that group are available. However, the total number of sheltered migrants recorded by DGM was 1,376 in 2008 and 289 in the period January-May 2009.

155. In order to ensure that underage migrants are not mistreated or tortured while in the shelter, the Social Welfare Secretariat sees to it that they are turned over to a family resource centre, requests protection measures for children or adolescents whose rights have presumably been violated by their parents or seeks to have the children institutionalized in order to determine their legal status. They are placed only by order of a judicial authority.

156. Regarding the protection of Guatemalan migrants abroad, it should be noted that, upon being notified of the disappearance of a Guatemalan national, consulates launch a search in hospitals, detention centres and morgues and, if located near the borders with Mexico or the United States, send staff to the border areas or the desert to find possible traces of the missing person.

C. Article 11. Prohibition of slavery and forced labour

157. Over and above the prohibition in question, contained in the Convention, article 4 of the Constitution establishes the principle that "no person may be subjected to slavery or any other condition detrimental to his or her dignity". In that context, the State of Guatemala has implemented the following measures:

1. Trafficking in human beings

Legal framework

158. Human trafficking has been one of the issues addressed recently as a high-priority item on the country's legislative agenda and, as a result, Congressional Decree No. 9-2009 contains the Act against Sexual Violence, Exploitation and Human Trafficking, promulgated on 20 March 2009 and having entered into force 15 days thereafter. Various provisions of the Act, related to human trafficking, are discussed below.

(i) Secretariat against Sexual Violence, Exploitation and Human Trafficking

159. As already mentioned, SVET is administratively attached to the Office of the Vice-President of the Republic and is the unit in charge of safeguarding and implementing the Act which created SVET, and the related policies and plans. Its functions include the following activities⁴:

- Serving as an advisory organ and recommending measures to be taken by State agencies or organizations in combating sexual violence, exploitation and human Trafficking;
- Recommending rules and procedures to the State organizations; following up on and studying the impact of rules, programmes and related measures; and recommending relevant readjustments;
- Designing and implementing effective, strategic, ongoing and systematic awareness-raising measures, plans, programmes and initiatives at the national and local levels, taking into account gender, cultural and ethnic diversity, factors of vulnerability in specific regions of the country, and the age, culture and language of the persons and communities targeted by such information activities;
- Promoting studies to identify, quantify and evaluate factors conducive to sexual violence, exploitation and human trafficking, focusing on, inter alia, migration policies and procedures;
- Promoting the conclusion and implementation of bilateral or multilateral agreements for international protection.

(ii) Prevention, protection and assistance to victims

160. Title III of Congressional Decree No. 9-2009 provides definitions for the terms "prevention", "protection", "assistance" and "victim", as employed in the Act, and establishes the victims' minimum rights, including the following:

- Confidentiality in respect of the identity of the victim and his or her family.
- Physical, psychological and social recovery,
- Legal and technical assistance; availability of an interpreter during protection and assistance in order to provide the victim with access to information in a language that he or she understands; and appropriate treatment in shelters. In the case of underage victims, the Prosecutor-General's Office designates lawyers attached to the Office.
- Stay in the receiving country during assistance procedures.
- Full compensation for the damage suffered.

161. Congressional Decree No. 9-2009 provides that, notwithstanding international commitments regarding the free movement of persons, migration authorities must strengthen border controls in order to prevent and detect human trafficking, inter alia by ascertaining that identity, travel and vehicle documents are genuine.

⁴ Congressional Decree No. 09-2009, Act against Sexual Violence, Exploitation and Human Trafficking, Title II.

(iii) Repatriation procedures for human trafficking victims

162. Under article 16 of Congressional Decree No. 9-2009, human trafficking victims must be repatriated only after official communication has been established with country of origin representatives, to whom the victims are delivered under protection. Repatriation procedures, laid down in the Act, must be coordinated by the State of Guatemala without prejudice to the right to asylum.

163. The Ministry of Foreign Affairs assists Guatemalan victims of human trafficking abroad through the consulates, which provide legal counsel, ensuring protection by the State of Guatemala in the host country.

(iv) Provisions regarding trafficking in human beings

164. The crime of human trafficking used to be dealt with in article 194 of the Criminal Code. However, Congressional Decree No. 9-2009, containing the Act against Sexual Violence, Exploitation and Human Trafficking, repealed that article, adding article 202 ter, which establishes the crime of human trafficking, and 202 quater, which introduces the crime of remuneration for human trafficking.

165. According to the records of the Public Prosecution Service, 606 complaints for human trafficking were filed in the period 2004-2008.

Table 11

Complaints filed with the Public Prosecution Service for human trafficking, 2004-2008

<i>Month</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>Total</i>
1 January	2	5	8	12	8	35
2 February	3	15	4	6	15	43
3 March	7	27	2	4	7	47
4 April	8	7	6	9	11	41
5 May	5	16	4	16	27	68
6 June	17	10	3	8	22	60
7 July	16	5	2	18	12	53
8 August	12	9	2	25	30	78
9 September	21	5	3	5	19	53
10 October	12	2	6	3	19	42
11 November	16	3	5	14	15	53
12 December	6	6	0	10	11	33
Total	125	110	45	130	196	606

Source: Data provided by the Public Prosecution Service and processed by COPREDEH.

166. According to the records of the Public Defender's Office (IDPP), 13 persons accused of human trafficking were defended by public defenders in the period January 2008-July 2009.

2. *Activities and measures implemented*

167. The Inter-agency Commission for Combating Trafficking in persons was created in 2002 and formally established by Government Decision No. 246-2007. Its role consists in advising, management, development of initiatives and promotion of consensus in

connection with the combat against human trafficking, in accordance with international law. The Commission comprises representatives of the three branches of Government, NGOs and international organizations, and is currently attached to SVET.

168. The Government Policy against Trafficking in persons and for the Comprehensive Protection of the Victims and a related strategic action plan, 2007-2017, were developed as part of Inter-agency Commission activities. The governing principles of the policy are: respect for and guarantee of human rights; the best interests of children and adolescents; presumption of minority of the victims; non-discrimination; immediate and comprehensive protection of the victims; family reunification; medical and psychological care; and social reintegration. The policy comprises the following five main thrusts: institution building; prevention; comprehensive care for human trafficking victims; protection and administration of justice; and foreign policy and international cooperation.

169. In 2005, the Ministry of Foreign Affairs organized workshops on the issue of "Victims of human trafficking and smuggling of migrants and vulnerable children and adolescents". The objective was information exchange among national agencies involved in the repatriation of the vulnerable population in question with a view to creating mechanisms for providing them with optimal protection and care. As an outcome of these meetings, a "National Protocol for the repatriation of child and adolescent victims of human trafficking" was drawn up.

170. In 2006, a meeting was organized with the consuls-general of Guatemala in the United States and Mexico in order to sensitize them to the issue and have the National Protocol put into operation. As a result, the consuls ensured the provision of assistance adapted to vulnerable Guatemalans, victims of human trafficking.

171. In 2007, bilateral workshops were held with representatives of the Government of El Salvador on "Mechanisms for the implementation of the Memorandum of understanding between the Republic of Guatemala and the Republic of El Salvador on the protection of victims of human trafficking and smuggling of immigrants". These meetings served to review and evaluate the commitments contained in the Annual Programme of Work for the implementation of the bilateral instrument in question and best practices were exchanged in the areas of prevention, assistance and action against smuggling of migrants and human trafficking. In the same year and with Organization of American States (OAS) support, a seminar-workshop was organized on "Legislation concerning human trafficking in Central America" with a view to information exchange among countries with national human-trafficking legislation and promotion of the implementation of similar legislation in the countries lacking such instruments. This event was attended by legislators from the countries of Central America.

172. In 2008, a workshop was held for the liaison staff of the agencies participating in the Inter-agency Commission for Combating Trafficking in persons with a view to putting into operation the activities provided for in the Strategic Action Plan, 2007-2017, of the Government Policy against Trafficking in persons and for the Comprehensive Protection of the Victims. In that workshop, the activities and commitments incumbent upon the national agencies involved in the fight against human trafficking were identified. Moreover, a workshop was organized under the heading "Consular staff training programme regarding human trafficking" for the above liaison staff and civil servants of the Ministry of Foreign Affairs.

173. The following activities have been carried out in order to prevent and disseminate information regarding misleading recruitment practices possibly aimed at human trafficking:

(a) In 2006, launching of a campaign for the promotion of human trafficking prevention through radio and television advertisements, brochures, posters, comic strips,

billboards and banners. Priority is given to the areas of greatest incidence of the scourge in question and to border crossings. The material is distributed through, inter alia, State agencies and Guatemalan diplomatic and consular missions abroad.

(b) Opening of a helpline. The centre, accessible to the country's population by dialling 1552 free of charge, can provide information on human trafficking and guidance to the victims of that crime. Of the 10,393 calls processed in the period January-March 2009, none has yet concerned a case specifically involving a human trafficking victim.

174. In March 2004, a human trafficking Section was established in the PNC Criminal Investigation Service. Through this section, PNC participates in the Multisectoral Commission, coordinated by the Ministry of the Interior and constituting an inter-agency cooperation mechanism. Other participants are the Prosecutor-General's Office (PGN), the Municipality of Guatemala, the departmental governments, DGM, the Tax Administration Superintendency (SAT) and the Ministry of Public Health. These agencies carry out operations aimed at detecting deals involving trafficking in women and children in brothels in the Metropolitan Area⁵. The Commission has coordinated operations and searches that have led to the rescue of adolescent and adult victims of commercial sexual exploitation, mostly of Central American origin.

D. Articles 12, 13 and 26. Freedom of opinion and expression; freedom of thought, conscience and religion; right to join a trade union

175. Under article 212 of the Labour Code, all workers over 14 years of age, including migrant workers in a regular situation who have obtained an authorization from the Ministry of Labour and Social Security, may join a union. The sole restriction on this right is the requirement contained in Labour Code article 223 (b), according to which the members of the executive committee must be of Guatemalan origin.

E. Articles 14 and 15. Prohibition of arbitrary or unlawful interference with privacy, the home, correspondence and other communications; prohibition of arbitrary deprivation of property

176. Under Article 23 of the Constitution, the home is inviolable. No one may penetrate someone else's dwelling save by written order of a competent judge, in which the grounds for the proceedings are specified, and never before 6.00 a.m. or after 6.00 p.m. Such an act must always be carried out in the presence of the interested party or his or her representative.

177. Under Article 24 of the Constitution, the constitutional rights include the inviolability of correspondence, documents and books. They may be inspected or seized only by virtue of a definitive decision issued by a competent judge in accordance with the appropriate legal formalities.

178. Under Article 40 of the Constitution, the State has the legal right to expropriate private property for reasons of duly proven collective utility, social benefit or public interest, and the person affected must receive compensation. In that connection, the Constitutional Court, in case No. 97-86, ruled that "that right is legally indisputable but its exercise is subject to meeting the requirements that the people has imposed, namely not to infringe upon individual freedoms and rights and that the measure is necessary in the interests of the community".

⁵ The Metropolitan Area consists of the municipality of Guatemala City and the municipalities of the suburbs of Mixto, Villa Nueva and Chinautla.

179. As mentioned in the general Section of this report, the process of implementation of the Convention has been gradual and, as a result, the related data that have been recorded contain certain gaps. That makes it difficult to obtain specific and reliable information regarding the implementation of certain provisions of the Convention.

F. Article 16, paragraphs 1-4. Right to liberty and security of persons; safeguards against arbitrary arrest and detention; recognition as a person before the law

180. The Guatemalan legal framework provides for these rights and for the protection of persons within the national territory against arbitrary arrest and detention; and the State has a duty to guarantee to the inhabitants of the Republic life, liberty, justice, security, peace, and the integral development of the person⁶. Moreover, domestic ordinary law lays down the procedures to be respected and implemented for an adequate guarantee of these rights. For instance, under article 12 (3) (a-b) of the Act on the National Police, police staff must properly identify themselves when proceeding with an arrest. They must also safeguard the life and physical integrity of the persons detained or in their custody, respect their honour and dignity and inform them of the grounds for the measure taken.

G. Articles 16 (paragraphs 5-9), 18 and 19. Right to procedural guarantees

181. The Supreme Court respects the physical integrity of the human person without any distinction based on nationality. Where charges are brought against a foreigner, the embassy of the accused person's country of origin in Guatemala participates in the judicial proceedings. Moreover, under the Code of Criminal Procedure, a person who is accused or connected with criminal proceedings and does not speak Spanish is entitled to assistance by an interpreter. The proceedings are governed by the principle of territoriality of criminal law, in compliance with the guarantees enshrined in international human rights treaties.

182. Foreigners without private defence counsel are assisted by IDPP, which functions without any discrimination between foreigners and Guatemalans. When handling a case involving foreigners, IDPP informs the respective embassies and consulates and, if necessary, provides them with specific information on the matter.

183. When a trial court sentences a foreigner and his or her expulsion from the Guatemalan territory, once the sentence has been served, is ordered, the national executive coordination body of IDPP designates a defence counsel specialized in sentence enforcement, who provides assistance throughout the sentence and helps and advises the sentenced person when he or she petitions the enforcement judge to grant a request or ensure the application of a rightful advantage. IDPP communicates as appropriate with the consul or diplomatic official of the country of origin of the person concerned.

184. With regard to minors liable under Guatemalan legislation, the Act on the Comprehensive Protection of Children and Adolescents, which lays down a special procedure to be followed in the case of adolescents in conflict with criminal law, provides that the age and identity of such adolescents must be established through their birth record or certificate and, if they are foreign, such information must be requested from the embassy or delegation of their country of origin.

185. Persons deported to Guatemala erroneously are helped to communicate with their local embassies or consulates with a view to returning to their country of origin. This type of case is frequent inasmuch as, when intercepted, non-Guatemalan migrants in transit, especially those heading for the United States, prefer to state that they are from Guatemala,

⁶ Article 2 of the Constitution.

which is close to their destination, so that they, if deported there, may more easily make a new attempt.

186. When the migrant's country of origin does not have a consulate or accredited office in Guatemala, procedures are often complicated and sending the migrant home is difficult.

H. Article 20. Prohibition of imprisonment, deprivation of authorization of residence and/or work permit and expulsion merely on the grounds of failure to fulfil a contractual obligation

187. As mentioned earlier in this report in connection with the legal framework, migrant worker status is not granted in Guatemala. The relevant migration category is that of a permanent or temporary resident with authorization to work in the national territory. Persons meeting the legal requirements for such status may not be expelled and have the right to remain in the country until the validity of the residence permit expires.

188. Residents forfeit their status if they fail to pay the taxes assessed, if they submit forged or altered documents, by decision of a competent judge or for unjustified or unauthorized absence from the national territory for a period longer than one year⁷.

189. If permission for a foreigner to work in the country has been granted to an enterprise and the employment relation is subsequently severed, the enterprise may request the annulment of the permission.

I. Articles 21, 22 and 23. Protection from confiscation and/or destruction of identity and other documents; protection against collective expulsion; right to recourse to consular or diplomatic protection

190. Upon establishing that a foreigner's stay in the country is illegal, DGM sets a ten-day time limit for the foreigner to regularize his or her stay, failing which the foreigner is subject to expulsion from the national territory.

191. Under article 42 of the Criminal Code, a foreigner legally residing in the country may be expelled when found guilty of an offence and the sentence includes expulsion as an ancillary penalty.

192. If the magistrate supervising the investigation accepts the inclusion of such ancillary penalty in the sentence, the General Directorate of the Penitentiary System must take the necessary measures for communicating that decision to the migration authorities so that procedures may begin for the transport of the person concerned to the country of which he or she is a national.

193. Guatemalan migrants must travel with their passport. In the framework of the programme for Guatemalan temporary workers which is implemented with Canada, the workers must travel with their passport and temporary worker visa, which ensures them the same work-related rights that Canadian nationals enjoy.

194. Upon presentation of a residence card and a job offer from a Mexican employer, Mexican immigration authorities provide Guatemalans working temporarily in the southern Mexican states with a migrant frontier worker pass (FMTF), which is valid for one year and authorizes them to enter and stay in Mexican territory.

195. Guatemalans working temporarily in the United States travel with their passport, which must contain a temporary agricultural (H2A) or non-agricultural (H2B) seasonal worker visa, as appropriate, issued by the United States consulate.

⁷ Article 44 of the Migration Act.

196. When complaints of retention of migrant workers' documents are brought to their attention, Guatemalan consulates contact the employers and immigration authorities to protest and demand the restitution of the identity documents.

197. Since June 2002, Guatemalan consulates in the United States issue consular identity cards, which serve as identity documents for Guatemalans residing in that country and are accepted by certain local authorities and financial or other service providers.

1. *Collective expulsions of migrant workers and their families*

198. The Ministry of Foreign Affairs has no record of collective expulsion. Deportations are either requested voluntarily by the persons concerned or are carried out after detention and investigation of the persons to be deported.

2. *Assistance by consular and diplomatic authorities*

199. Since already mentioned, Guatemalan migrant workers are assisted through the consulates, which provide guidance, support and legal assistance to Guatemalans abroad. In that connection, language is a problem. when the Guatemalan concerned does not speak Spanish but a Maya dialect. In such cases, translation is ensured by consular staff or with the help of the Ministry of Foreign Affairs or civil society representatives. Support is also provided by community leaders residing in the United States, the Guatemalans' main country of destination.

200. The Migrant Support Centre, created within the Ministry of Foreign Affairs in October 2006 in order to improve assistance to Guatemalan migrants and their families and to migrants within the country, offers protection, legal assistance and free Internet services, including a videoconference room. Recently, the centre established a branch office at Huehuetenango.

J. Articles 25, 27 and 28. Principle of equality of treatment in respect of: remuneration and other conditions of work and terms of employment; social security; and right to receive urgent medical care

201. Referring to seasonal labour migration, the Social Development Act provides as follows: "Through the Ministry of Labour and Social Security and other relevant public sector agencies, the executive shall ensure that migrant workers receive the remuneration and benefits and enjoy the rights established by the law for the work carried out."

202. Under article 100 of the Constitution, "the State recognizes and guarantees the right to social security for the benefit of the inhabitants of the Nation... The application of the system of social security is the responsibility of the Guatemalan Social Security Institute, an autonomous entity with a legal personality and its own assets and functions".

203. In relation to the right to receive emergency medical attention, the Constitution, in articles 93-95, provides for the obligation of the State to safeguard the health of all inhabitants, without any type of discrimination.

204. Article 35 of the Social Development Act provides as follows: "Through the Ministry of Public Health and Social Assistance, the Ministry of Education and other relevant public sector agencies, the State shall ensure that migrant workers and their families have access to health, education and other basic services improving their living conditions at the places where they temporarily reside".

205. Accordingly, MSPAS ensures the availability of emergency medical care to nationals and foreigners. No identity card is necessary for receiving care in Health Offices and Centres, although general hospitals require identity documents for hospitalization or exit.

206. Guatemalan Social Security Institute (IGSS) units provide emergency medical assistance to any person regardless of affiliation with the Social Security System or immigration status and without any formalities other than the attending physician's assertion that the patient needs such assistance. The patient is requested to show an identity document for purposes of record keeping, not as a prerequisite for medical assistance. This IGSS policy is based on article 43 of the Regulation regarding protection in relation to disease and maternity, IGSS Executive Board decision No. 410; articles 11, 53, 55, 62, 63, 65, 72, 73 and 123 of the Regulation regarding medical assistance, IGSS Executive Board decision No. 466; and article 20 of the Guidelines for processing and using the service certificate, IGSS Management decision No. 5/90.

207. IGSS monitors compliance with the legislation in force with a view to ensuring equal treatment in respect of health care. Benefits are provided to both social security system affiliates and to non-affiliates in an emergency situation, regardless of nationality.

208. Health coverage for foreign migrant workers' children is the same as for national workers' because the applicable IGSS regulations draw no distinction based on the nationality of the affiliated worker. This IGSS policy is based on articles 7, 20, 23-25, 29, 38 and 39 of the Regulation regarding protection in relation to disease and maternity, IGSS Executive Board decision No. 410; articles 15 bis, 17-20 and 128 of the Regulation regarding medical assistance, IGSS Executive Board decision No. 466; and article 3 of the Regulation regarding protection in respect of accidents, IGSS Executive Board decision No. 1002.

K. Articles 29, 30 and 31. Right of a child of a migrant worker to a name, registration of birth and nationality; access to education on the basis of equality of treatment; respect for the cultural identity of migrant workers and members of their families

209. Guatemala recently created the National Registry of persons (RENAP), which replaced the Municipal Civil Registers. RENAP is responsible for organizing and maintaining a single register of individuals and of the facts and acts related to their civil status. Measures and procedures are in progress to ensure adequate performance of the functions of the newly established body. The requirements stipulated in the Regulation for registration in RENAP are currently the same for Guatemalan citizens and foreigners

210. Migrant workers living in Guatemala may have the birth of their children who are born in the country registered, since a valid identity document is the sole official paper required of the parents for that purpose. Their immigration status, as a basis for their residence in the country, is not a direct input into RENAP. Any one of the following identity documents suffices: residence card, if they are foreigners domiciled in the country; valid passport or temporary passport; a basic personal details card issued by their consulate, if they are Central American; and an identity document, if they are Salvadoran (Single Identity Document or DUI) or Honduran (identity card), by virtue of an agreement concluded with RENAP.

211. Moreover, to register a birth, parents must submit a medical birth certificate established by a physician or a midwife previously entered in the Civil Register, or, failing that, an authenticated certificate signed by a midwife and the parents or only the mother; and a record of payment of a municipal fee, the "urban maintenance tax" (Regulation for registration in RENAP, RENAP Directorate decision No. 176-2008, Decree No 90-2005, Article 17 (1); Congressional Decree No. 121-96, Act on municipal maintenance tax).

212. Moreover, the law establishes the right of foreign migrant workers to recognize their children who are born in Guatemala. Such children are identified by the same procedures which apply to birth registration, as stipulated in the Regulation for registration in RENAP,

RENAP Directorate decision No. 176-2008, Decree No 90-2005, Article 17 (1); Congressional Decree No. 121-96, Act on municipal maintenance tax.

213. With regard to Guatemalan migrant workers residing in other States, the Act on RENAP provides for the right to consular birth registration and establishes procedures for implementing that right, as follows: "The RENAP headquarters are located in the national capital but, to perform its functions, RENAP must establish offices in all of the municipalities of the Republic; and may organize mobile units in any part of the national territory and act abroad through the consular offices."

214. As already mentioned, a free public education programme is in place.

L. Articles 32 and 33. Right to transfer to one's State of origin one's earnings, savings and personal belongings; right to be informed on the rights arising from the Convention, and dissemination of information

215. The Guatemalan legislation does not include specific provisions on the transfer of income from or to Guatemala in connection with migrant workers. However, such transfers are subject to no restrictions other than those stipulated in the Act against the transfer of illegally obtained money (money laundering) or other assets, particularly articles 19-26 and 28, which refer to persons who must comply with the Act and detail their obligations; and in the Act on preventing and repressing the financing of terrorism, particularly articles 15-17, which refer to the rules applicable to the persons who must comply with the Act and who are those specified in the first Act.

216. The consular staff has a duty to safeguard and protect the work-related human rights of Guatemalan migrant workers. In that connection, the consular staff provides guidance to Guatemalans on all matters for which consular help is solicited. The methods of remitting funds to Guatemala vary depending on the place where the funds are sent from. Generally speaking, the persons concerned use remittance agencies because they consider them less expensive than other options. Some deposit the funds to bank accounts, their own or a relative's, or, less and less frequently, send them with a friend or relative.

217. Family remittances constitute a foreign currency inflow into the country. In 2006, that inflow amounted to US\$3,609,813.1, according to the 2007 Annual Report drawn up by SEGEPLAN on the implementation of the Social Development and Population Policy. That document reports meetings held between the Ministry of Foreign Affairs and organized groups of Guatemalans in the United States on the importance of channelling the remittances to long term and/or productive projects. The following table shows the foreign currency inflow of family remittances in the period January 2008 – January 2010.

Table 12

Foreign currency inflow of family remittances, 2008-2010
(US\$ thousand)

	2008	2009	2010
January	314 606.7	290 240.3	246 129.3
February	318 307.0	281 951.4	
March	340 459.5	344 145.6	
April	385 252.4	339 687.3	
May	397 982.9	332 603.3	
June	384 331.8	348 577.8	
July	409 667.1	365 551.1	
August	373 536.2	337 449.4	

	2008	2009	2010
September	371 836.0	332 103.7	
October	367 727.7	327 523.1	
November	311 685.4	287 928.3	
December	339 337.9	324 525.5	
Total	4 314 730.6	3 912 286.8	246 129.3

Source: Data provided by the Institutional Currency Exchange System and processed by COPREDEH.

V. Part IV of the Convention

Other rights of migrant workers and their families who are documented or in a regular situation

A. Article 37. Right to be informed before departure about the conditions of admission to the State of employment and about one's remunerated activity

218. The Ministry of Foreign Affairs participates in worker selection and recruitment procedures in the framework of the programme for Guatemalan temporary workers which is implemented with Canada. The workers selected participate in a talk, in which their rights and obligations are explained and the employment contracts are read. The contracts are transmitted to the appropriate consulates and communicated to the Ministry of Labour and Social Security and the Ministry of Foreign Affairs by IMO. They are reviewed and evaluated annually.

219. The consulates assist the Guatemalan workers in Canada, meet them at the airport, provide them with a telephone number accessible 24 hours a day, visit the workers' places of work and homes to ascertain that the employment contracts are respected, help with translation and in the resolution of disputes, and assist the workers when they visit a physician.

220. Guatemalan migrant workers in Mexico are assisted by the consulates, which refer complaints as appropriate and, in the case of Chiapas, attend, with the worker, the meetings of the conciliation and arbitration boards.

B. Articles 38 and 39. Right to be temporarily absent without effect upon authorization to stay or work; right to freedom of movement and choice of a place of residence in the territory of the State of employment

221. Under article 43 of the Migration Act, foreigners who obtain a temporary or permanent residence permit and wish to work as wage earners must do so in lawful activities and obtain appropriate authorization from the Ministry of Labour and Social Security. Under article 44 of the same Act, residents forfeit their status:

- (a) If they fail to pay the taxes assessed;
- (b) If they submit forged or altered documents;
- (c) By decision of a competent judge;
- (d) For unjustified or unauthorized absence from the national territory for a period longer than one year.

222. Article 45 of the Migration Act provides as follows: "Permanent and temporary residents have an obligation to communicate to DGM any change to their personal details or identity documents. Failure to comply with this obligation constitutes grounds for forfeiting one's immigration status."

C. Articles 40, 41 and 42. Right to form associations and trade unions; right to participate in public affairs of one's State of origin and to vote and be elected at elections in that State; procedure and institutions taking care of the needs of migrant workers and possible enjoyment of political rights in the State of employment

223. Draft amendments to the Electoral and Political Parties Act were submitted to the legislature on 4 December 2008. For lack of a technical analysis, the draft does not provide for the right of Guatemalans residing abroad to vote. However, Guatemalans living abroad may participate in all public affairs of the country, save for matters whose complexity precludes such involvement from abroad.

D. Articles 43, 54 and 55. Principle of equality of treatment with nationals of the State of employment in relation to the issues indicated; equality of treatment as to protection against dismissal, unemployment benefits and access to public work schemes and alternative employment; equality of treatment in the exercise of a remunerated activity.

224. Upon being authorized to work in Guatemala, foreign residents enjoy the same rights and have the same obligations as national workers. Guatemalan legislation contains no provision that justifies unequal conditions or treatment. The sole distinction consists in the difference in the procedures that must be followed in order to obtain a work permit.

E. Articles 44 and 50. Protection of the unity of the families of migrant workers and reunification of migrant workers; consequences of death or dissolution of marriage

225. The Labour Code imposes on the employers obligations and prohibitions in respect of these rights, for instance granting leave with pay to the workers for birth of a child, marriage or death of their spouse, children or parents. In the event of death of a worker without social insurance or if his or her dependents lack access to IGSS benefits, the Labour Code obliges the employer to grant to the dependents a benefit equivalent to one month's wages for each year worked, up to a maximum of 15 months, or 10 months for enterprises with fewer than 20 workers, payable in monthly instalments.

F. Articles 45 and 53. Enjoyment of equality of treatment for members of the families of migrant workers in the indicated aspects and measures taken to guarantee integration of children of migrant workers in the local school system; right to freely choose a remunerated activity for members of a migrant worker's family

226. In order to be gainfully employed in Guatemala, migrant workers and members of their families must obtain an authorization. They may freely choose their activity, provided only that it is legitimate. However, given the limited employment opportunities in Guatemala, what remunerated activity they ultimately choose depends on what jobs are available.

G. Articles 46, 47 and 48. Exemption from import and export duties and taxes in respect of particular belongings; right to transfer earnings and savings from the State of employment to the State of origin or any other State; imposition of taxes and avoidance of double taxation

227. According to Ministry of Foreign Affairs information, there are currently no agreements with other States regarding these rights concerning specifically migrant workers.

H. Articles 51 and 52. Right to seek alternative employment in case of termination of the remunerated activity for migrant workers not authorized to freely choose their remunerated activity; conditions and restrictions for migrant workers who can freely choose their remunerated activity

228. The question of rights related to remunerated activities when the activity for which the foreign workers received authorization is terminated has been addressed earlier in this report. As stated in paragraph 226, the remunerated activity must be lawful and, as already mentioned, there is no further restriction other than the required authorization to exercise it. This matter is also related to the information provided in paragraph 241 below.

I. Articles 49 and 56. Authorization of residence and authorization to engage in a remunerated activity; general prohibition and conditions of expulsion

229. The issues addressed here have been discussed earlier in this report in view of their close connexion with provisions regarding immigration status and the requirement of an authorization for gainful employment in Guatemala. Reference is made to the information provided in paragraphs 37 and 56 above.

VI. Part V of the Convention

Provisions applicable to particular categories of migrant workers and members of their families

230. The existing agreements regarding migration issues were discussed earlier. Regarding temporary workers, it should be noted that Guatemalans working temporarily in Canada have medical insurance which covers, inter alia, medical visits, medication, hospitalization, medical examinations, indemnity for industrial accidents and life insurance. A new measure, which has been implemented, consists in the purchase by the worker of medical insurance for his or her family in Guatemala to cover health care while the worker is abroad.

VII. Part VI of the Convention

Promotion of sound, equitable, humane and lawful conditions in connection with the international migration of workers and members of their families

A. Article 65. Establishment of appropriate services to deal with questions concerning the international migration of workers and members of their families

231. Through the consulates, the Ministry of Foreign Affairs provides personalized and differentiated assistance and care to the temporary workers of the programme implemented with Canada. Moreover, the Ministry assists and seeks to regularize and guarantee the work-related rights of temporary workers who travel to other countries on their own.

232. The measures implemented include the following activities:

- As discussed in Part I of this report, the Act on the National Council for Assistance to Guatemalan Migrants (CONAMIGUA) and the related regulation were adopted in, respectively, October 2007 and April 2009.

- The Programme for Workers' Registration and Supervision of Employment Counsellors (contractors, recruiters and enlistsers of Guatemalan workers for employment abroad) is aimed at informing migrant workers moving intermittently to Canada and Mexico about their rights and work-related obligations, which should be equal to those of the nationals of the host State. This information is provided when the workers register at the respective offices. This programme helps to regularize rural migrant workers and thereby to control and monitor not only the migratory flow of labour, but also the registration of workers, employers, contractors, employment centres, children and adolescents, taking into consideration the issues of transit and legal security.
- The Public Defender's Office (IDPP) supports the country's consulates and embassies in assisting Guatemalans detained abroad. It also directly supports Guatemalans seeking to serve their sentences in Guatemala under the Inter-American Convention on Serving Sentences Abroad.
- The Consulate of Guatemala in California implements a temporary programme for the renewal of the driving licenses of Guatemalans residing in that state. There are plans to expand that service to the Consulates in Oklahoma, New Mexico; Georgia; and San Rafael, California.

233. Mobile consulates have been discussed above.

B. Article 66. Authorized operations and bodies for the recruitment of workers for employment in another State

234. Under article 34 of the Labour Code, authorization by the Ministry of Labour and Social Security is necessary for recruiting Guatemalan workers for employment abroad. This procedure contributes to ensuring that the workers travel in an orderly manner, on the basis of an actual job offer and conditions and wages that are in conformity with the labour legislation of the country of destination.

C. Article 67. Measures regarding the orderly return of migrant workers and members of their families to the State of origin, their resettlement and cultural reintegration

235. One of the main challenges related to the protection of migrant workers returning to the country consists in ensuring that they do not do so on their own, thereby becoming a vulnerable population. Accordingly, at the fifth meeting of the Mexico-Guatemala Ad Hoc Group on Guatemalan Temporary Migrant Workers, consideration was given to establishing mechanisms whereby the return of workers at the end of the employment period is guaranteed by the sector having employed them.

236. When workers return to the country, the Ministry of Labour and Social Security offers them the services of the General Directorate of Employment, which provides information on employment opportunities in the country.

237. The air fare of migrant workers returning from Canada at the end of their contract is covered by the employer, who in fact must pay for a two-way trip. Workers of this type travel alone. Guatemalans working in other countries return in groups and in some cases by their own means, although the return trip is in many cases paid by the employer. Many of the Guatemalans who work in Mexico travel with their family.

D. Article 68. Measures aimed at the prevention and elimination of illegal or clandestine movements and employment of migrant workers in an irregular situation

238. Campaigns have been launched to encourage Guatemalan workers temporarily employed in southern Mexico to enter Mexico documented properly with a migrant frontier worker pass (FMTF).

239. At the domestic level, steps are taken in the Metropolitan Area through the Multisectoral Commission to identify establishments where undocumented migrant workers are employed or human trafficking victims may be found.

240. Migrant workers violating the Migration Act by lacking the required documents are transferred to DGM or to the appropriate shelters. If detained for a crime or other offence, they are brought before the competent judge.

E. Article 69. Measures taken to ensure that migrant workers in an irregular situation do not persist in this condition within the territory of a State party and circumstances to take into account in case of regularization procedures

241. The irregular situation of migrant workers may be rectified through the regularization of their immigration status and the obtention of an authorization to work from the Ministry of Labour and Social Security. Accordingly, regularization procedures should begin with filing the required request.

242. Under article 89 of the Migration Act, a foreigner's stay in the national territory is considered illegal in any one of the following cases:

- (a) Having entered the country at a place not designated as an entry point;
- (b) Having entered without submitting to immigration control;
- (c) Failing to comply with the provisions governing entry or stay in accordance with the Act and the related regulation;
- (d) Staying in the country beyond the authorized period.

243. As already mentioned, upon establishing that a foreigner's stay in the country is illegal, DGM sets a ten-day time limit for the foreigner to regularize his or her stay, failing which the foreigner is subject to expulsion from the national territory.

F. Article 70. Measures taken to ensure that living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity

244. As already mentioned repeatedly in this report, migrant workers and their families have the same rights as Guatemalan workers.

G. Article 71. Repatriation of the bodies of deceased migrant workers or members of their families and compensation matters relating to the death

245. As already mentioned in the Section of this report on Part I of the Convention, the Ministry of Foreign Affairs coordinates the Fund for the Repatriation of deceased or highly vulnerable Guatemalans. This fund is accessible to Guatemalan migrant workers.

246. The number of persons whose remains were repatriated was 4 in 2004, 88 in 2005, 110 in 2006, 245 in 2007 and 279 in 2008.