



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

Distr.: General  
3 April 2012  
English  
Original: Spanish

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**Committee against Torture**

**Consideration of reports submitted by States parties  
under article 19 of the Convention**

**Combined fifth and sixth periodic reports of States parties due in  
2011, submitted in response to the list of issues (CAT/C/GTM/Q/6)  
transmitted to the State party pursuant to the optional reporting  
procedure (A/62/44, paras. 23 and 24)**

**Guatemala\* , \*\* , \*\*\***

[9 January 2012]

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\* The fourth periodic report of Guatemala is contained in document CAT/C/74/Add.1; it was considered by the Committee at its 701st and 704th sessions, held on 4 and 5 May 2006 (CAT/C/SR.701 and 704); for its consideration by the Committee, see document CAT/C/GTM/CO/4.

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

\*\*\* The annexes to the present document may be consulted in the files of the secretariat.

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## I. Introduction

1. The present report is in response to the list of issues (CAT/C/GTM/Q/6) and constitutes the sixth periodic report of the Government of Guatemala. For its preparation, the Presidential Commission for Coordination of Executive Policy on Human Rights (COPREDEH) adopted a participatory methodology involving various governmental institutions, which were consulted specifically and in thematic workshops, thereby providing forums for experience sharing and group analysis and enabling international instruments to be disseminated and distributed with a view to generating debate and encouraging fulfilment of the commitments undertaken by the State of Guatemala towards the international community. It is pointed out, by way of qualification, that, owing to space limitations, gender-inclusive language is not used.

## II. Replies to the list of issues

### Articles 1 and 4

**With reference to previous recommendations of the Committee, please indicate what steps have been made to amend article 201 *bis* of the Criminal Code in order to legally define torture in accordance with article 1 of the Convention. Give details of the scope of the reform (CAT/C/GTM/CO/4, para. 10).**

2. Article 201 *bis*<sup>1</sup> was added to the Criminal Code (Legislative Decree No. 17-73) by the amendment contained in article 1 of Legislative Decree No. 58-95 to bring it into line with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as can be seen from the current wording of that article of the Criminal Code.<sup>2</sup>

**Please indicate what action the State party has taken to criminalize torture and bring the penalty for instigating torture, as provided for in article 425 of the Criminal Code, into line with article 4, paragraph 2, of the Convention.**

<sup>1</sup> Article 201 *bis* reads as follows:

“Anyone who, acting on orders from or with the authorization, support or acquiescence of the State authorities, intentionally inflicts severe pain or suffering, whether physical or mental, on a person for the purpose of obtaining from him or from a third person information or a confession relating to an act which he has committed or is suspected of having committed or who seeks to intimidate a person or, by so doing, other persons shall be guilty of the crime of torture.

Members of organized gangs or groups having terrorist, insurgent, subversive or any other criminal purposes shall also be guilty of the crime of torture.

The perpetrator or perpetrators of the crime of torture shall be tried also for the crime of abduction.

The consequences of acts performed by the competent authority in the lawful exercise of its duties to safeguard public order shall not be deemed torture.

Any person or persons found guilty of the crime of torture shall be liable to between twenty-five and thirty years’ imprisonment.”

<sup>2</sup> The preamble to Decree No. 58-95 states: “Whereas the Assembly of the United Nations, of which Guatemala is a member, adopted on 10 December 1984 the Inter-American Convention to Prevent and Punish Torture, taking into consideration the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1984, and whereas it is necessary to adapt domestic law to the principles of the international instruments concerning the protection of the human person against any form of cruel or degrading treatment...”.

3. The criminal offence of torture is already established in the Criminal Code and the penalty has been brought into line under the terms of article 425 of the Criminal Code.<sup>3</sup>

## Article 2

**Please indicate what measures the State party has taken to repeal all laws and practices which allow the army to be involved in activities of law enforcement or the prevention of ordinary crime that exclusively fall within the competence of the National Civil Police in line with the conclusions from the consideration of the State party's previous report.**

4. Article 1 of the Civil Security Forces Support Act (Legislative Decree No. 40-2000) stipulates that the civil security forces may be supported by army units in their duties of preventing and combating organized crime and ordinary offences provided that national security circumstances so require, a position which is being maintained in light of the rise in organized crime and drug trafficking within the region. The civil security forces direct the relevant operations.

### **Do military personnel have powers to arrest and detain individuals?**

5. Article 6 of the Constitution states that a person may not be detained or placed in custody unless by reason of a crime or offence and under a warrant issued in conformity with the law by the competent judicial authority. Exceptions to this are cases of *flagrante delicto*, where article 257 of the Code of Criminal Procedure expressly authorizes any person (irrespective of status, whether civil or military) to make the arrest and prevent the punishable act from producing further consequences, handing over the individual concerned to the competent judicial authorities within the statutorily prescribed time limit.<sup>4</sup>

### **Has the State party amended the bill on military jurisdiction which would restrict the jurisdiction of military courts to the trial of military personnel accused of crimes of an exclusively military nature?**

6. The legislative bill referred to by the Committee against Torture was unsuccessful and has been shelved.<sup>5</sup>

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<sup>3</sup> Article 425 of the Criminal Code states: "Abuse of the person. Any public official or employee who orders undue coercion, torture, degrading punishment, harassment or measures not authorized by law against a detainee or person in custody shall be liable to between two and five years' imprisonment and general disqualification. The same penalty shall be imposed on any person who carries out such orders". Article 36 of the Criminal Code (Perpetrators) states: "The following shall be deemed perpetrators: 1. any person who directly participates in the commission of the specific acts of the offence; 2. any person who directly forces or incites another to carry out the offence; 3. any person who cooperates in the commission of the offence, whether in its preparation or its execution, through any act without which the offence could not have been committed; 4. any person who, having colluded with another or others to carry out an offence, is present at the time of its commission".

<sup>4</sup> It is the National Civil Police which carries out the arrest and subsequent imprisonment of persons accused of offences. Such persons are taken to places of detention, custody or confinement designated by law for that purpose.

<sup>5</sup> Article 219 of the Constitution states: "The military courts shall hear crimes and offences committed by members of the Guatemalan Army. No civilian may be tried by military courts". The Military Code (Decree No. 214-1878) lays down that "responsibility for trying army personnel shall lie with the military courts if the crime or offence of which a person involved is accused is of a military nature. Otherwise, military personnel shall be tried by the ordinary criminal courts." Also, Legislative Decree No. 41-96 amended article 2 of part two of the Military Code (Decree No. 214-1878), stipulating that "jurisdiction in the case of essentially military crimes or offences shall rest with the

**What amendments have been made to the Police Act, as announced by the State party, designed to strengthen such structural elements of the police force as internal checks and the police career structure?**

7. Congress has been debating a police reform proposal, including the strengthening of the police force structure, internal checks and police career development.<sup>6</sup> However, on 25 July 2011, Government Order No. 240-2011 was issued, setting out amendments to the Regulations on the Organization of the National Civil Police contained in Government Order No. 97-2009.

8. The amendments appearing in Government Order No. 240-2011 were centred on raising the organizational standards of the anti-narcotics police, with the establishment of various divisions in order to meet the obligations imposed by current legislation in regard to combating the illicit drug trade. The present divisions include the following: joint operations, markets, special police forces, personal protection and safety, supervision and oversight of private security enterprises, tourism safety, protection of nature and crime prevention.

**The Committee received reliable information regarding the extensive use of private guards for activities which are incumbent upon the State, with reported incidents of abuse, lack of accountability as well as of connections of private guards with organized crime. What norms exist to regulate the activities of private guards and have there been investigations of violations committed by them?**

9. The Private Security Services Regulation Act (Legislative Decree No. 52-2010), adopted on 23 November 2010, governs the operations of private guards and enterprises which provide private security services. As to the investigation of breaches, the Public Prosecution Service (*Ministerio Público*) is responsible for conducting inquiries in the event of reports of unlawful acts in which mention is made of private security enterprises or guards.<sup>7</sup>

**Please provide information on the status of the draft law to establish a national mechanism for the prevention of torture.**

10. Pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the National Office for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was set up under the Law on the National Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Legislative Decree No. 40-2010).

11. This legislative decree establishes a national mechanism in the form of an independent body whose purpose is to prevent torture and other cruel, inhuman or degrading treatment or punishment through a system of regular visits to places where

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military justice authorities”, that “the Code of Criminal Procedure shall apply in the case of ordinary crimes or offences or related acts committed by military personnel” and that such individuals “shall be tried by the ordinary courts referred to in the Judiciary Act”.

<sup>6</sup> The aim is to enhance the professional standing, technical expertise and institutional capacity of the National Civil Police in accordance with the principles of democratic security.

<sup>7</sup> In 2010, the National Civil Police Division for Supervision and Oversight of Private Security Enterprises, Entities and Individuals handed over to the competent courts 38 private security service operators (enterprise members and individual persons), who were in breach of the legal requirements for the provision of their services.

persons are deprived of their liberty, as provided for in article 1 of the decree.<sup>8</sup> Its members are to be elected in the legislative session commencing on 14 January 2012.

**What advances have been made in implementing the packages of legal reforms proposed by the International Commission against Impunity in Guatemala in October 2008 and in June 2009?**

12. In October 2008, the International Commission against Impunity in Guatemala (CICIG) submitted legislative reform proposals to Congress, which included amendments to the laws on preliminary procedures, *amparo*, habeas corpus and constitutionality; the regulation of interlocutory pleas in criminal proceedings; the use of audiovisual facilities for witness and expert statements during criminal trials; changes of identity and the relocation of witnesses and justice collaborators in criminal proceedings; effective collaboration and the regulation of privileges and protection mechanisms under the legislation on organized crime; and also firearms and ammunition.

13. The legislature has already adopted several of these proposals, such as the Firearms and Ammunition Act (Legislative Decree No. 15-2009); it has promulgated the Criminal Prosecution Enhancement Act (Legislative Decree No. 17-2009) and it has introduced amendments to the Organized Crime Act under Legislative Decree No. 23-2009.

14. A second package of proposals is concerned with human trafficking, including irregular adoptions and migrant smuggling; criminal law measures to curb corruption (criminalization of illicit enrichment and imposition of disqualification from public office); disciplinary regimes in the Public Prosecution Service, judiciary and National Civil Police; and international legal cooperation. These proposals were put before Congress in 2009.

15. It has also formulated legislative reform proposals on jurisdiction to guarantee the independence of the judiciary and the safety of trial participants, including a proposal that cases entailing a high risk to the safety of judges, prosecutors, defendants or witnesses should be heard and determined by specific courts. These proposals were put before Congress in 2009.

16. Congress has already adopted the Law on Criminal Jurisdiction in High-Risk Proceedings (Legislative Decree No. 21-2009) and, to supplement it (the Supreme Court being allocated responsibility for deciding which courts are competent to try high-risk cases), has promulgated Legislative Decree No. 35-2009 amending the Law on Criminal Jurisdiction in High-Risk Proceedings (Congressional Decree No. 21-2009).

17. It has promulgated Decree No. 18-2010 containing amendments to the Code of Criminal Procedure which relate to the regulation of interlocutory pleas in criminal proceedings.

18. Congress has also adopted the Sexual Violence, Exploitation and Human Trafficking Act (Decree No. 9-2009) and the Termination of Ownership Rights Act (Legislative Decree No. 55-2010).

**What is the current status of the Presidential Commission against Impunity announced on 3 March 2009?**

19. The Presidential Commission to Assist and Support the International Commission against Impunity in Guatemala (CPCI) was established under Government Order

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<sup>8</sup> Article 17 of this decree states: "Composition of the National Office for the Prevention of Torture: The National Office for the Prevention of Torture shall be composed of five (5) regular members and the same number of alternates. Alternates shall become regular members in the event of a vacancy or temporary absence of an officer and shall receive the corresponding remuneration upon assuming any such regular posts".

No. 65-2009 on a temporary basis as part of the executive. Its functions are to study, analyse and determine the causes of criminal impunity in the country and to support, assist and strengthen CICIG and the State institutions responsible for preventing, investigating and prosecuting criminal acts in Guatemala. Since 12 March 2009, the date of entry into force of this government order, it has comprised representatives of the Private Secretariat of the Office of the President, the Office of the Attorney-General, the Public Prosecution Service and the Public Criminal Defence Institute, the General Director of the National Civil Police and the Inspector-General of the Army. The Commission was set up for a three-year period.

**Has the Commission for the Investigation of Illegal Groups and Clandestine Security Organizations been established and, if not, why?**

20. The proposal to form the Commission for the Investigation of Illegal Groups and Clandestine Security Organizations (CICIACS)<sup>9</sup> came to an unsuccessful conclusion in 2004. In response to a consultative opinion sought by the President of the Republic, the Constitutional Court declared aspects of the proposal to be unconstitutional.<sup>10</sup> CICIG was set up in place of CICIACS. The main points of the Constitutional Court's findings are summarized in the annex.

**According to the information before the Committee, there are numerous attacks against human rights defenders, with a figure of 98 per cent of impunity for attacks reported by the Special Representative of the Secretary-General on human rights defenders (A/HRC/WG.6/2/GTM/2, para. 19). Please provide information about the Forum for Analysis of Attacks against Human Rights Defenders in this respect.**

21. The Forum for Analysis of Attacks against Human Rights Defenders in Guatemala was established by Ministerial Order No. 103-2008<sup>11</sup> with the role of conducting in-context analyses of patterns of attacks on human rights observers and defenders using a scientific methodology (defined, approved and agreed by the Forum's members). In this context, the Human Rights Prosecution Division of the Public Prosecution Service takes part on a weekly basis in the discussion and examination of cases where the victims are human rights defenders. The Human Rights Unit of the Special Criminal Investigation Division (DEIC) of the National Civil Police participates in the Forum.

22. The Forum has formulated initial measures for the protection of human rights defenders in risk situations. It is encouraging confidence-building measures between the Ministry of the Interior and its institutions, national and international organizations engaged in defending human rights and the Public Prosecution Service in order to address the

<sup>9</sup> The original primary objective was to set up an institution with responsibility for detecting and eradicating "death squads", including those allowed by the State under counter-insurgency policies during the internal armed conflict.

<sup>10</sup> The Constitutional Court's ruling stated that there would be a breach of the constitutionally delegated authority of the Public Prosecution Service in regard to criminal prosecution and criminal investigation procedures.

<sup>11</sup> On 10 January 2008, the Ministry of the Interior set up the Forum, which was composed of the Ministry of the Interior (which coordinates it), the General Directorate of Civil Intelligence (DIGICI) and the Human Rights Unit within the Special Criminal Investigation Division of the National Civil Police. In July 2009 COPREDEH became a member and the Public Prosecution Service participates as a guest through the Human Rights Prosecution Division. Also invited were national human rights organizations (represented by the Unit for the Protection of Human Rights Defenders of Guatemala (UDEFEUGUA) and the Institute for Comparative Studies in Criminal Sciences of Guatemala (ICCPG)) and to international human rights organizations (represented by the Dutch Platform against Impunity). The office of the United Nations High Commissioner for Human Rights in Guatemala participates as an observer. An agreement to strengthen the Forum was recently signed by the Ministry of the Interior, the Public Prosecution Service and COPREDEH.

problem of attacks against human rights defenders; it is developing joint methodologies to interpret acts constituting assaults on human rights defenders and it is promoting efficient mechanisms of communication between the Public Prosecution Service, the Ministry of the Interior and its institutions and civil society concerning cases involving human rights defenders.<sup>12</sup> The Ministry of the Interior and COPREDEH are also proposing the adoption of a government order to ensure the Forum's permanency.

**Please supply information on the status of the agreement on the Programme of Prevention and Protection Measures for Human Rights Defenders and Other Vulnerable Groups.**

23. The Programme for the Protection of Human Rights Defenders and Other Vulnerable Groups is related to article 52 of the National Agreement for the Advancement of Security and Justice. A proposal formulated by COPREDEH has been agreed with civil society organizations and is being discussed in the Ministry of the Interior with a view to its conversion into a government order.

**Please also provide information, including statistics, about the work of the Coordinating Unit for Protection established by the Presidential Human Rights Commission.**

24. In 2004 COPREDEH issued Internal Decision No. 11-2004 setting up the Coordinating Unit for the Protection of Human Rights Defenders, Justice Operators and Administrators, Journalists and Social Communicators. This unit was strengthened by COPREDEH Internal Decision No. 85-2008, under which it became a department.

25. Statistical data from the department indicate that, from 2008 to 2010, 618 persons (378 men and 240 women) were protected; there were 36 requests for precautionary measures, in response to which 75 measures of national protection, 112 provisional measures, 263 preventive measures and 132 urgent appeals were executed (see table 1 of the annex). During the same period, appropriate steps were taken in favour of non-governmental organizations or groups in response to requests for precautionary measures, comprising seven measures of national protection, one provisional measure, nine preventive measures and 17 urgent appeals (see table 2). From 2008 to 2010, 239 cases were dealt with, involving 97 preventive measures, 16 provisional measures, 66 urgent appeals, 44 measures of national protection and 16 requests for precautionary measures (see table 3 of the annex).

**Please provide detailed information about the ongoing work of the Unit for Special Cases, Human Rights Violations and Historical Clarification established in 2008.**

26. Under the restructuring of the Human Rights Prosecution Division to improve the handling of present cases involving human rights and the armed conflict, new regulations concerning its operation were drawn up with a view to the establishment of prosecuting agencies to deal with past cases, both those regarded as emblematic and those concerned with human rights violations and the internal armed conflict, as well as cases submitted under the National Reparations Programme and recorded in Guatemala City and the department of Chimaltenango.

27. In her report on her first year in office, the Attorney-General and Chief Public Prosecutor, Claudia Paz y Paz Bailey, states that progress is being made on cases involving serious human rights violations which occurred during the internal armed conflict, one

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<sup>12</sup> Article 52 of the National Agreement for the Advancement of Security and Justice states: "To establish programmes for the comprehensive protection of justice operators and human rights defenders". Such programmes will supplement the work of the Forum.

successful outcome being the conviction of four individuals for the Dos Erres massacre. Also significant are the convictions in the Cusanero and El Jute cases.

**Please provide information on numbers, legislation and practice with regard to:**

**(a) The duration of pretrial detention and the numbers of persons held in pretrial detention.**

28. The Public Prosecution Service points out that the duration of pretrial detention will depend on the complexity of the investigation and the handling of the parties' submissions but will not exceed the three-month period laid down in the Code of Criminal Procedure. According to statistical data from the Public Criminal Defence Institute (IDPP), preventive detention cases dealt with from 2006 to 2010 totalled 2,910 (see the annual figures in table 4 of the annex). As at the end of 2010, the number of persons held in preventive detention was 6,061, according to statistics from the Ministry of the Interior and the General Directorate for Prisons (DGSP). Their breakdown by centre of detention can be seen in table 5 of the annex.

**(b) When and by whom the personal details of detainees are recorded.**

29. The institutions entrusted with recording detainees' personal details are the Ministry of the Interior through the prison system and the General Directorate of the National Civil Police. According to the General Directorate for Prisons, when persons deprived of their liberty are admitted to detention centres, their general particulars are officially recorded in the prison service computer support system (SIAPEN) under the responsibility of the director of the detention centre concerned and the data entry officer. In addition, a record is kept by the judiciary's office responsible for the management of criminal matters.<sup>13</sup> This information is also recorded when there is a request for the services of the Public Criminal Defence Institute, with the use of a form within the case allocation unit, which in turn enters the general details of the detainee in the public defence computer support system (SIADep), from where the case allocation sheet is obtained. Subsequently, the public defendant's assistant inputs other data of relevance to the proceedings into the SIADep in the case follow-up module.

**(c) The percentage of detainees who have not been charged.**

30. Article 332 of the Code of Criminal Procedure lays down that, upon expiry of the investigation time limit, the prosecutor must file a charge and request initiation of the proceedings. The Public Criminal Defence Institute has stipulated that, in cases handled by its Departmental Coordination Office, public defendants are required to act as guarantors that statutorily imposed time limits are observed, in particular in cases involving persons in preventive detention.

**(d) The number of persons who have been acquitted by courts of first instance but have been retained in custody on orders of sentencing tribunals.**

31. There are no statistics in this connection.

<sup>13</sup> Article 73 of the Code of Criminal Procedure (Legislative Decree No. 51-92) states:

"Record of detentions. The judiciary shall maintain a record showing the names of all detainees together with full personal particulars, their address or residence, the place of detention, the judge who ordered their detention, the court in whose custody they have been placed and the names and addresses of their defence lawyer and of a person trusted by them. The police, the Public Prosecution Service and judges shall be obliged to communicate immediately the records of every arrest and detention made by them, together with the data available at that time. The judiciary shall regulate the service and be responsible for its effective operation.

"The record of detentions does not constitute a criminal record. Data entered in the record shall be preserved for six years."

(e) **The number of persons in preventive detention.**

32. According to data from the Ministry of the Interior and the General Directorate for Prisons, the number of persons in preventive detention was 6,061 as at the end of 2010. Their breakdown by centre of detention can be seen in table 5 of the annex.

**Please indicate how the State party ensures that detainees are able to communicate promptly with a lawyer and, in the case of foreigners, with a representative of their State of origin. Please indicate whether a specified period must elapse before a detainee is allowed access to a lawyer and an independent doctor.**

33. From the time arrested persons appear before the rota courts, assigned public defence lawyers follow the instructions issued by the Public Criminal Defence Institute regarding their obligation to ascertain how many individuals are being detained and the criminal acts for which they have been brought to court. It is also their duty to ask detainees whether they have their own counsel and if the latter is aware of their situation. If they have no counsel, they are informed about the free public criminal defence service.<sup>14</sup> The Public Criminal Defence Institute places emphasis on observance of the Vienna Convention, having issued instructions to all lawyers at its offices stating that, whenever they are allocated a case involving a foreign national, they must without delay inform the Public Criminal Defence Institute's Coordination Office for Human Rights with a view to making immediate contact with the relevant consulate.<sup>15</sup>

34. The Constitution protects persons from being detained except on a judge's orders or in cases of *flagrante delicto*, and stipulates that detainees have to be handed over to the competent authority within a time limit not exceeding six hours. Also, article 9 of the Constitution lays down that the judicial authority alone may conduct the interrogation of a detainee, whose initial statement must be given within a period not exceeding 24 hours following arrest.

35. In cases of human rights violations and if deemed necessary by the defence lawyer, medical assistance or an expert opinion is immediately requested. For that purpose, support is provided by the Public Criminal Defence Institute's Coordination Office for Human Rights.

**Please provide information about the maximum period before placing a detainee before judicial authorities.**

36. As stated above, the Constitution lays down a time limit of not more than six hours for appearance before the judge and 24 hours for the initial statement.

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<sup>14</sup> For such purposes, the Public Criminal Defence Institute immediately coordinates the assistance of public defence lawyers, who are required to aid detainees, interview them and ensure that they telephone their closest relative in order to be informed of their situation and be able to receive relevant help. In the case of foreign nationals, steps are taken in conformity with article 19 of the Constitution, which lays down that prisoners have the right to communicate, whenever they so request, with their relatives, defence lawyer, religious counsellor or physician and with the diplomatic or consular representative of their country of nationality.

<sup>15</sup> It serves as a link between the consulate and the person in custody. Consulates provide support with documentation and information necessary for the defence of foreign detainees. The Public Criminal Defence Institute also advises consuls in connection with their applications to the courts in cases handled by it. In cases where detainees do not have an accredited consulate or embassy in the country, the Institute contacts the nearest consular seat via the Internet or by telephone. The Directorate for Migration of the Ministry of Foreign Affairs, if so requested, locates the diplomatic mission present in Guatemala with a view to giving notification of cases involving its nationals and to requesting relevant consular assistance.

**Please describe the pilot project introducing rota courts and whether it applies only to women.**

37. The criminal rota courts in the municipality of Guatemala, department of Guatemala (which were included in the pilot project), were set up under Supreme Court Order No. 03-2006<sup>16</sup> with the aims of facilitating and expediting the administration of justice. They operate 24 hours a day, 365 days a year. Their effectiveness has prompted the establishment of further courts within the department of Guatemala in the municipalities of Villa Nueva and Mixco.

**Has there been an increase in the use of non-custodial measures?**

38. No.

**Has the use of custodial measures respected the criteria of necessity and proportionality?**

39. Yes. The Guatemalan Criminal Code lays down the punishments for all crimes and offences on the basis of the acts carried out by their instigators and perpetrators. Its article 65 stipulates that the penalty has to be kept within the minimum and maximum limits resulting from the legal determination of the punishment.<sup>17</sup>

**Please inform the Committee about the State party's compliance with article 2, paragraph 3, regarding orders from superiors that never can be invoked as a justification of torture, and indicate whether this is covered by a specific legal provision.**

40. Article 19 of the Constitution prohibits the torture, cruel treatment, coercion or harassment of persons deprived of their liberty, the assignment of labour incompatible with their physical condition, degrading treatment, duress and subjection to scientific experiments. It lays down that the infringement of any provision of that article entitles detainees to claim compensation from the State for the harm caused and the Supreme Court will order their immediate protection.

41. Also, article 156 of the Constitution states: "No civilian or military public servant or employee shall be obliged to obey orders which are manifestly unlawful or entail the commission of an offence". In the training of personnel with responsibility for the security of persons deprived of their liberty, emphasis is placed on the obligation to prohibit and punish torture and other cruel treatment in all circumstances.

**Please provide information regarding the selection criteria, including parameters and specific indicators, as well as the methodology employed in the election of judges to the Supreme Court of Justice during the plenary session of Congress on 30 September 2009.**

<sup>16</sup> Initially, the pilot project was designed for operation in Guatemala City at the Torre de Tribunales courthouse and was coordinated with the National Civil Police, the Public Prosecution Service, the judiciary and the Public Criminal Defence Institute. It was subsequently extended to other departments in the Republic. Rota courts currently function alongside other justice sector institutions, such as the Public Prosecution Service, the Public Criminal Defence Institute, the National Civil Police and the prison system, in order to expedite proceedings in the departments of Guatemala (municipalities of Villa Nueva, Mixco and Guatemala), Escuintla (municipality of Escuintla) and Sacatepéquez (municipality of Antigua Guatemala).

<sup>17</sup> The main criteria taken into consideration are the severity of the act (intensity of the harm caused), the personal history of the victim and related aggravating and extenuating circumstances. Account is also taken of the extent of the perpetrator's guilt, the motive for the crime and the level of danger posed by the guilty party.

42. The Nominating Committees Act (Legislative Decree No. 19-2009) establishes mechanisms and procedures for selecting lists of candidates for senior public posts in the State of Guatemala, such as Supreme Court justices, the Comptroller-General of Audit, the Attorney-General and the Human Rights Procurator. This process includes the establishment of profile criteria, convocation formalities for presentation of candidates' files, the preparation of applicant lists, the appraisal of applicants included on the list and the drawing up of the list of candidates to be presented to the appointing authority (the list being submitted to Congress in the cases of judges).

43. It also includes the determination of the phases for verification of applicants' particulars, interviews with applicants and social audits. The nominating committees' members<sup>18</sup> have to identify those profiles of applicants for public office which show suitable characteristics as regards ethical aspects (integrity, probity, rectitude, independence and impartiality), academic aspects (university training, academic qualifications, studies, essays, publications, participation in academic events and awards received), professional aspects (requirements laid down in the Constitution and laws applicable to the post) and human potential aspects (commitment to public service and leadership qualities). For assessment purposes, a score chart from 1 to 100 was devised in order to quantify those aspects. The nominating committees spent one month and one week carrying out the candidate convocation and selection process, the list of names being presented to Congress on 21 September 2009.<sup>19</sup>

**Please also describe what steps have been taken to strengthen the legal framework for the professional development of judges.**

44. During its ten years of existence, the judiciary's Legal Profession Board has developed entry, transfer, promotion and performance appraisal mechanisms.<sup>20</sup>

### Article 3

**Please provide statistics disaggregated by sex, age and ethnic origin on asylum-seekers and refugees in Guatemala, and the percentage of asylum-seekers whose applications**

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<sup>18</sup> The nominating committees were set up on 12 August 2009 with the task of proposing candidates for the posts of Supreme Court justices and Appeal Court judges.

<sup>19</sup> In accordance with the rules laid down, the nominating committees established candidate profile requirements, candidate documentation to be submitted, paperwork evaluation methods, assessment modalities and scoring formulae (specifically the points to be awarded for each of the attributes required by law).

<sup>20</sup> The rules and regulations relating to the legal profession in Guatemala include:

- (a) The Legal Profession Act;
- (b) General Regulations of the Legal Profession Act;
- (c) Regulations for the appraisal of lower-court judges under the judicial career system;
- (d) Manual for the appraisal of lower-court judges;
- (e) Regulations for the appraisal of magistrates under the judicial career system;
- (f) Manual for the appraisal of magistrates;
- (g) Regulations on transfers and promotions;
- (h) Regulations for the appointment of members of the judicial disciplinary boards by public lottery.

The following instruments also exist:

- (a) The Judicial Civil Service Act;
- (b) Implementation Regulations of the Judicial Civil Service Act;
- (c) Ethical Standards of the Judiciary;
- (d) Collective Agreement on Working Conditions of the Judiciary;
- (e) Amendments to the Judiciary Act;
- (f) General Regulations of the Courts.

**are rejected, as well as on all cases of extradition, return or removal that have taken place during the reporting period.**

45. Between 2002 and 2010, the State of Guatemala ruled on 19 asylum application cases (see table 6 of the annex, which lists the asylum-seekers' names and nationalities). According to records of the Ministry of Foreign Affairs and the General Directorate for Migration, 19 individuals were recognized as refugees during the period<sup>21</sup> (see table 7 of the annex). According to the National Migrant Support Council of Guatemala (CONAMIGUA), the records indicate that, as at 30 November 2010, there were 138 refugees in the country (see table 8 of the annex).<sup>22</sup>

**Please state what steps Guatemala has taken to avoid excessive use of force and/or sedatives when deporting asylum-seekers.**

46. The General Directorate for Migration reports that there have been no cases of removal of asylum-seekers or refugee applicants. If, however, a case arose, coordination would take place with the representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Guatemala with a view to removal to a country where the asylum-seeker or refugee applicant would not be at risk. The Regulations for the Protection and Determination of the Status of Refugees in the Territory of the State of Guatemala stipulate that anyone who applies for and is denied refugee status shall not be expelled. What happens is that applicants are granted a reasonable period to remain in the country so that they can request admission to another country or regularize their migration situation in Guatemala under a status other than that of asylee.

**How does the State party ensure that its obligations under article 3 of the Convention are always fulfilled?**

47. The Regulations for the Protection and Determination of the Status of Refugees in the Territory of the State of Guatemala constitute the legal instrument which enables the State to fulfil such obligations.<sup>23</sup> Where these regulations are applied (in cases of denial of refugee status), there is liaison with the representatives of UNHCR in Guatemala for the purpose of removing the individual to a country where there are no grounds for suspecting that the asylum-seeker or refugee applicant would be in danger.

## **Articles 5, 7 and 8**

**Please indicate whether the Guatemalan courts have the power to bring proceedings against foreigners present in Guatemala who are suspected of committing acts of torture abroad. Are there any precedents in this respect?**

48. The Criminal Division has not recorded any precedents in this regard. Should a case arise, the Supreme Court would await the action of the Public Prosecution Service (which is responsible for criminal prosecutions). In due course, the courts would exercise jurisdiction if the offence was committed against Guatemalans on foreign territory. In other cases,

<sup>21</sup> Articles 30 and 31 of the Regulations for the Protection and Determination of the Status of Refugees in the Territory of the State of Guatemala (Government Order No. 383-2001) stipulate that the General Directorate for Migration shall submit the corresponding files to the National Refugee Commission, which shall examine the cases and documentation and shall rule accordingly.

<sup>22</sup> During the period from 2006 to 2010, the National Refugee Commission rejected only the case relating to Osmani Manzano Ynerarity (recorded in 2007), under a decision rendered by the Commission pursuant to Government Order No. 383-2001 referred to above, but no extraditions, returns or removals took place during that period.

<sup>23</sup> This instrument established the National Refugee Commission, which operates within the organizational structure of the Office of the President.

requests for extradition made by countries with which related agreements exist are to be acted on.

**Please indicate whether, since the consideration of the previous periodic report, the State party has rejected, for any reason, any request for extradition by a third State for an individual suspected of having committed an offence of torture, and thus engaging its own prosecution as a result. If so, please provide information on the status and outcome of such proceedings.**

49. As at the end of 2010, the records of the Ministry of Foreign Affairs did not include any requests for extradition of individuals suspected of having committed crimes of torture.

**Have there been any requests for extradition from Guatemala of persons who may be liable to torture in the country seeking their extradition?**

50. According to information from the Ministry of Foreign Affairs, none of the requests for extradition received up to the end of 2010 indicates that the person sought may be liable to torture in the country seeking that person's extradition.

## **Article 10**

**Please provide updated information on the training programmes for the police, in particular with reference to the prohibition against torture.**

51. Studies at the Police Academy include courses on human rights observance. National Civil Police officers also receive human rights training. Of the 485 officers trained during 2010, 378 studied the topic "Human rights: promotion and dissemination of the Manual on torture and cruel, inhuman and degrading treatment" (see table 9 of the annex).

52. Pursuant to commitments 21 and 22 made on 4 March 2010 under the "Governing with the People" programme<sup>24</sup>, during the work of the "Governing with the Police" Council, on observance of the human rights of National Civil Police personnel and support for training, skills development and curricular reform in the Police Academy, COPREDEH had devised a programme for the advancement of the status of law enforcement officers based on respect for their human rights, and the related proposal has been submitted to the Ministry of the Interior. COPREDEH has also supported training and skills enhancement activities within the National Civil Police and formulated a proposal for curricular reform in the Police Academy.

53. Officers are also trained at the Prison Studies School. Details of Police Academy training on human rights and torture during the period from 2006 to 2009 are given in table 10 of annex 1.

**Please also indicate whether training has been provided to police officers and members of the judiciary to enable them to receive and investigate properly complaints of social violence, and in particular violence towards women and children.**

54. Under the "Governing with the People" programme, the "Governing with the Police" Council (3 March 2010) made possible the adoption of commitments to strengthen the National Civil Police, including commitments 29 and 30 by the National Coordination Office for the Prevention of Domestic Violence and Violence against Women (CONAPREVI) on organizing workshops to raise awareness of women's human rights

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<sup>24</sup> The "Governing with the People" programme was promoted with the aim of bringing the national authorities closer to communities and institutions at the local level. Within this forum, discussions take place among the different stakeholders on needs, requests and proposed solutions, and commitments are entered into regarding concrete and specific issues.

aimed at National Civil Police personnel and a campaign within the National Civil Police on sexual violence against women. As a result of these commitments, CONAPREVI has coordinated, designed and implemented an awareness initiative aimed at 200 female police officers. Training courses for law enforcement and justice personnel include human rights issues.

**Please indicate if there are programmes to train medical personnel and whether the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is part of this training.**

55. As part of its quality management and accreditation system, Guatemala's National Institute of Forensic Science (INACIF) has adopted an autopsy procedure whose objectives are the documenting of injuries on bodies, the gathering of evidence that may establish investigative links, the taking of biological samples useful for diagnostic purposes and the establishment of causes of death.

56. CONAPREVI, in coordination with the Ministry of Public Health and Welfare and other public and private sector institutions, has drawn up a protocol for the care of victims and survivors (2009), which is used for the provision of support to female survivors of sexual violence. It includes arrangements for comprehensive care services, prophylactic measures to prevent contagion of sexually transmitted diseases and emergency contraceptive means. The benchmark for these procedures, with regard both to deceased and to surviving victims, is the Istanbul Protocol.

**Has the Prison Studies School envisaged in the Prisons Act been established?**

57. Yes. One of the prison system's administrative bodies provided for under Legislative Decree No. 33-2006 (the Prisons Act) is the Prison Studies School, which was established on 17 November 1999 by Government Order No. 137-2001. The rules regulating its operation include the Agreement between the General Directorate for Prisons and the Prison Studies School, which is responsible for the training, appraisal and professional development and advancement of prison officers, and also the Disciplinary Regulations applicable to trainees studying at the School.

**What materials have been provided by the General Directorate for Prisons to the Prison Studies School in support of this training?**

58. The bibliographical material available at the Prison Studies School's documentation centre includes books dealing with the issues of preventing and addressing cruel, inhuman or degrading treatment in the country's prisons and the crime of torture, as well as international laws and instruments (the Convention against Torture and its Optional Protocol).

**Please provide information about the proportion of indigenous persons in the police force.**

59. There are no up-to-date and systematically organized statistical data.

## **Article 11**

**Please provide information about the National Agreement for the Advancement of Security and Justice set up by the State party on 15 April 2009.**

60. The present administration of Guatemala stated in its third report that the institutions which were signatories of the National Agreement for the Advancement of Security and

Justice (ANASJ)<sup>25</sup> took the strategic decision in June 2010 to prioritize their activities under 17 of the 101 commitments entered into, which were grouped into four key action areas: combating impunity, institutional reforms, public policies and human rights. Owing to limited space for replying, see annex 1.

**Has the replacement of a number of officials in the Public Prosecution Service and a restructuring of divisions been translated into more effective and consistent measures against impunity?**

61. The replacement of officials in the Public Prosecution Service is being undertaken in accordance with internal requirements, the main aim of the changes being the effective pursuit of policies that will contribute to improving investigations and prosecutions. Within this context, efforts are also being made to eliminate impunity.

62. In her report on her first year in office, the Attorney-General and Chief Public Prosecutor states, in connection with results-based management, that (a) viable goals and objectives have been defined for each prosecution division; (b) the targets of each prosecution division are reviewed monthly, problems are identified and solutions are sought; and (c) the performance of all prosecuting agents and assistants is assessed. There is also a performance evaluation office.

**Have independent external bodies and procedures been established to monitor the conduct of National Civil Police officials?**

63. The Office of Professional Accountability (ORP) of the National Civil Police is the body responsible for ensuring professionalism and compliance with the law and internal working procedures of the National Civil Police. Its functions are to detect and investigate or provide support in the investigation of all serious instances of abuse, corruption and inappropriate or criminal conduct in which members of the National Civil Police appear to be involved. Also, the Human Rights Unit of the National Civil Police arranges training and awareness-raising activities aimed at law enforcement personnel with a view to developing appropriate behaviour. The Office of the Human Rights Procurator investigates complaints of administrative conduct harmful to the interests of individuals within the scope of its work of administrative supervision. It has prepared reports on administrative supervision at National Civil Police stations.

**Have all governmental bodies not authorized to conduct investigations into criminal matters been prohibited by law from doing so?**

64. The Public Prosecution Service is the only institution legally empowered to carry out criminal investigations. It initiates criminal prosecutions and directs inquiries into actionable offences. It also ensures compliance with the country's laws. In the discharge of its functions, it seeks to uphold justice and acts with objectivity and impartiality and in conformity with the principle of the rule of law.

**Please provide information on whether, after the approval of the Prisons Act by Decree No. 33-2006 on 7 September 2006, regulations pursuant to the Act have been implemented. Please describe the role of the Consultative Commission on the Penitentiary System in this regard.**

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<sup>25</sup> The ANASJ, which was signed on 15 April 2009 by the Government of Guatemala, Congress, the Supreme Court and the Public Prosecution Service, is aimed at improving the conditions of security and justice in the country through actions directed at strengthening the rule of law and fostering a culture of peace and harmonious coexistence within Guatemalan society. It contains 101 commitments relating to security policies and institutions, reform of the police, the prison system, criminal investigation and anti-impunity policies, justice administration, arms control, private security enterprises and social participation and communication.

65. The implementing regulations of the Prisons Act (Legislative Decree No. 33-2006) are in process of being examined and discussed by the National Prison Commission (CONASIP). Once that process is concluded, they will be submitted to the Ministry of the Interior for it to continue the approval procedure. The observations made by the legal advisory team and consultative body of the General Secretariat of the Office of the President have already been complied with. It may be recalled that CONASIP prepared the draft regulations to this law in 2009.

**Has the General Directorate for Prisons been able to improve the conditions in prisons such as overcrowding, substandard detention and sanitary conditions and adequate medical care, in particular for women?**

66. The General Directorate for Prisons, with the support of the National Commission on Comprehensive Health, Education and Labour (CONSIET), has strengthened the mechanisms for the social rehabilitation of persons deprived of their liberty, working in the priority action areas of mental health and persons living with HIV/AIDS. As regards adequate medical care, in particular in the case of female prisoners, the General Directorate for Prisons takes steps to ensure that the right to regular, appropriate and cost-free medical care is observed.<sup>26</sup> It operates a literacy campaign aimed at inmates. Also, productive skills development activities are provided with the support of the Technical Training Institute.

67. One significant advance is the reorganization of prisoners according to their legal status with a view to easing congestion at detention centres with overcrowding problems and to improving the conditions in which prisoners are held and serve their sentence.

**Please provide an update about the systematic and periodic review of the rules, instructions, methods and practices governing interrogation and the arrangements for the treatment of persons deprived of their liberty, in conformity with the United Nations Standard Minimum Rules for the Treatment of Prisoners and as provided for in article 11 of the Convention.**

68. Extrajudicial interrogations are not only unlawful but also prohibited within the Guatemalan legal system, in conformity with article 9 of the Constitution, and are devoid of probative value in criminal proceedings. The judicial authorities alone are competent to interrogate detainees and persons in custody.

69. All training courses given to public defence lawyers by the Training and Skills Development Unit of the Public Criminal Defence Institute include, as a cross-cutting element, familiarization with the rules for protection of the dignity of the person and also legal standards, in particular with regard to individuals in vulnerable circumstances, such as persons deprived of their liberty. At the time of prison visits or interviews, all public defence lawyers check, at the place of detention, the situation of the person whom they are defending. If they encounter any human rights violations, they notify the Institute's Coordination Office for Human Rights.

**Please provide information on the percentage of the prison population which is of indigenous origin.**

<sup>26</sup> Places of detention of persons in preventive custody and of convicted offenders have permanent services for the provision of general medical, dental, psychological and psychiatric care, together with their respective facilities. Both paramedical and administrative personnel at detention centres work eight-hour shifts and deal with any emergency requiring their involvement. They are also responsible for liaising with the prison director or assistant director for the transfer of any patient to one of the country's health-care centres whenever necessary (subject to a favourable opinion from the forensic medical officer and from the Public Prosecution Service, and with the authorization of the competent judge).

70. Data from the General Directorate for Prisons indicate that the number of indigenous persons deprived of their liberty is 1,161, representing 10.72 per cent of all detainees (prison population percentages for detainees of indigenous origin can be seen in table 11 of the annex).

71. In recognition of the fact that Guatemala is a pluricultural and multilingual country, a letter of understanding has been signed by the Academy of Mayan Languages of Guatemala and the prison system with a view to ensuring that the practice of communication in the different Mayan languages is observed in the provision of prison services.

### **Articles 12 and 13**

**Please indicate whether there is a register for compiling information from the domestic courts on cases of torture and ill-treatment in the territory of the State party.**

72. Information is contained in table 12 of the annex on cases brought before the criminal courts of Guatemala concerning torture offences, enforced disappearances and crimes against humanity between 2006 and 2010. Data from the judiciary indicate that 27 cases were filed in 2006, there were 8 cases in 2007, no cases were recorded in 2008, 7 cases were presented in 2009 and the number of cases in 2010 totalled 20.

**Please provide detailed statistical data, disaggregated by crime, gender and ethnicity, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions and criminal and disciplinary sanctions imposed in each case.**

73. According to information from the Special Criminal Investigation Division, three complaints were recorded between 2000 and 2010, two concerning homicide and one concerning sexual abuse (see table 13 of the annex). The public officials convicted in the proceedings were four male police officers, of whom two were recorded as persons of mixed descent and two as belonging to the *q'eqchi'* and *mam* ethnic groups (see tables 13 to 15 of the annex).

**Please provide figures with regard to the number of members of the National Civil Police investigated, prosecuted and convicted as perpetrators of acts amounting to torture.**

74. According to data from the Special Criminal Investigation Division, four National Civil Police officers were handed over to the courts between 2007 and 2010 for acts deemed to constitute torture. However, they were not indicted on that basis but were charged with the crime of extrajudicial execution. It should be noted that there are no recorded cases of persons detained for torture up to 2010.

**Has there been an improvement in the performance of the Criminal Investigation Service of the National Civil Police whose members were alleged to be the main perpetrators of violations amounting to torture?**

75. The investigations conducted by personnel of the Special Criminal Investigation Division have been based on the law and, in directing the investigations, the Public Prosecution Service receives support from the National Civil Police in obtaining evidence to enable those guilty of criminal acts to be indicted before the relevant courts.

**Have the reorganization and internal clean-up of the National Civil Police been reflected in lower rates of crime and violence in custody?**

76. The present Government has made considerable progress in regard to security and the rule of law, particularly noteworthy being the establishment and operation of the Police Reform Commission<sup>27</sup> (one of the commitments under the National Agreement for the Advancement of Security and Justice). In his third government report (January 2011), the President of the Republic described the strengthening of the institutional framework of the national security system and the reduction in crime in general as significant areas of progress. Within the prison system, National Civil Police officers only have functions relating to perimeter security and the provision of support for special operations, such as searches or backup in crisis situations, under the direction of the General Directorate for Prisons.

**Have the some 4,000 vacancies amounting to almost half the personnel needed by the National Civil Police been filled in the course of 2009?**

77. The present Government has paid particular attention to providing the National Civil Police with increased staff and resources. As at 30 November 2010, there were 3,001 newly qualified police officers (twenty-fifth and twenty-sixth graduation classes), increasing the police force complement to 25,234 members (in Guatemala there is one police officer to every 750 inhabitants). The National Civil Police currently has a vehicle fleet of 4,075 patrol cars.

78. Data from the General Subdirectorate for Personnel of the National Civil Police indicate that, in 2009, the number of vacancies in the National Civil Police fluctuated and varied from month to month. The annual average was 965 vacancies, which contrasts with the 3,883 officers who graduated at the Police Academy during the year.

**Please provide information, with figures, about the results of the new criminal prosecution policy in which efficiency and respect for the victim occupy pride of place.**

79. Criminal procedure reform in Guatemala has not only meant the entry into force (on 30 June 1994) of a New Code of Criminal Procedure (Legislative Decree No. 51-92) but has also given rise to the implementation of a new criminal justice system. The inquisitorial model (written proceedings)<sup>28</sup> has been discontinued and the accusatorial model (oral proceedings) has been adopted.

80. The Constitution and the current criminal procedural law are interlinked. The Code of Criminal Procedure was founded on constitutional precepts<sup>29</sup> and mandates the application of constitutional criminal procedure centred on the requirement of a prior trial,

<sup>27</sup> Following its establishment, the Police Reform Commission has focused on five key programmatic areas, i.e. criminal investigation, crime prevention, human resource management and development, institutional planning, and internal controls, which will be pursued under three instruments: the immediate action plan 2010-2011, the strategic plan 2011-2020 and the programmatic management plan 2011.

<sup>28</sup> Under the written system, the receiving of evidence is delegated to clerks, officers and registrars, who hear accounts from witnesses, experts, victims and the accused. A transcript of such statements is then produced and incorporated in a document, which is signed by the judge (as if he had been present). It is on the basis of this document that the judge makes and supports his factual and legal conclusions on a case.

<sup>29</sup> It should be borne in mind that international human rights conventions and treaties ratified by the State of Guatemala have precedence over domestic law, in accordance with article 46 of the Constitution. Accordingly, Guatemalan criminal procedure is governed by the Constitution and those international instruments.

due process, the presumption of innocence, the right to a defence, the natural judge principle, the adversarial principle and the principle of judicial impartiality.

81. The present accusatorial system<sup>30</sup> is characterized by the interaction of direct, oral, consolidated, adversarial and public aspects of the proceedings. The principle of orality with its corresponding application as hearings in criminal trials offers the most appropriate form of operation of the accusatorial system. Also, a permanent criminal justice service has been created with the establishment of twenty-four-hour criminal courts. It is guaranteed that citizens apprehended by the National Civil Police will not be taken to police stations but will be brought before the duty judge within a time limit not exceeding six hours.

82. On 21 September 2010, Congress examined, in plenary, legislative bill No. 4273 submitted by the judiciary (amending the Code of Criminal Procedure, Legislative Decree No. 51-92), setting out aspects described as being of necessary and urgent procedural priority and aimed, *inter alia*, at increasing victims' access to justice, thereby creating conditions for effective judicial protection, and at overseeing the Public Prosecution Service's effective response to victims' requests. The bill was submitted to the Special Commission on Justice Sector Reform for review and a corresponding opinion. On 24 November 2010, that Commission issued a favourable opinion. The bill is to be returned to Congress for debate and a vote in plenary.

#### **Has the General Directorate for Civilian Intelligence been strengthened?**

83. The General Directorate for Civilian Intelligence (DIGICI) has formulated an institution-building plan incorporating three strategic objectives: training of human resources; strengthening of institutional infrastructure and compliance with intelligence directives. The execution of this plan and its ongoing monitoring and evaluation have resulted in the reinforcement of the institutional capacity of the DIGICI. In line with these objectives, notable advances include the implementation of a training, skills enhancement and professional development plan, the coordination of the national intelligence system, the adoption of specific planning arrangements (long-term plan, general directorate plan and annual operations plan), the implementation of institutional policies (administrative manuals), the redistribution of physical premises space and improvements in workplace conditions, and the acquisition of equipment and technology to strengthen the work of the institution, especially of the substantive bodies.

#### **Has the problem of coordination between the Criminal Investigation Division of the National Civil Police and the Public Prosecution Service improved?**

84. The Criminal Investigation Division is now the Special Criminal Investigation Division. According to the latter's assessment, coordination with the Public Prosecution Service is improving daily. This is demonstrated by, *inter alia*, the establishment of the Department for Crimes against Life, which provides each prosecuting agency with investigating officers of the Special Criminal Investigation Division, who jointly with prosecutors of the Public Prosecution Service conduct all crime scene investigations in a coordinated manner.

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<sup>30</sup> The changes relate to the framework for ensuring efficiency in the administration of justice and respect for the victim. To date, there are no studies or specialized statistics that show any link between the pride of place accorded to efficiency and respect for the victim and the results of the criminal prosecution policy whose implementation formally began with the entry into force of the current Code of Criminal Procedure. However, the value has been shown of public oral testimony of surviving victims, victims' relatives and witnesses during the oral stage of the proceedings in emblematic cases, such as Choatalum, which concluded with the first conviction for the crime of enforced disappearance (the former military commissioner Felipe Cusanero Coj being sentenced to 150 years' non-commutable imprisonment).

85. The Special Criminal Investigation Division enjoys good relations with the prosecutors in the Organized Crime Prosecution Division. It has also made personnel available to provide direct support to prosecutors of the Public Prosecution Service in the discharge of their responsibilities.<sup>31</sup> The recently signed Protocol on the Coordination of Operational Investigations contains clear and precise guidelines on the roles of all participants in criminal investigations.

**Has the Public Prosecution Service's investigative capacity been strengthened?**

86. The investigative capacity of the Public Prosecution Service has been strengthened through various training initiatives and amendments to the Manual on crime scene management, with which prosecutors and investigators in the Investigation Directorate of the Public Prosecution Service have been familiarized. Also, CICIG has an agreement on the training of prosecutors.

**Has an inspector-general's office been set up in the Ministry of the Interior?**

87. The organizational structure of the Ministry of the Interior does not provide for the post of ministerial inspector-general. The General Inspectorate of Police, whose functions are set out in the annex, operates within the General Directorate of the National Civil Police.

**Please provide information on the improved pace of investigations thanks to the use of scientific evidence since the National Forensic Science (Organization) Act was approved by Decree No. 32-2006.**

88. The National Institute of Forensic Science (INACIF) was established in response to the need to unify and strengthen forensic examination services in the country. Its role is to convert findings into useful evidence for submission in court through scientifically or technically based independent, transparent and objective medico-legal studies and analyses conducted using a teamwork approach.

89. In discharging its role, INACIF has performed its tasks within the statutorily established time limits and has acquired the necessary equipment to carry out its functions. Expert staff have been trained and, in 2010, 71 persons gained master's degrees in criminological sciences and forensic medicine. The assessment is that scientific evidence furnished by INACIF has been decisive in judges' establishment of sufficient grounds to convict persons charged.<sup>32</sup>

**Since the establishment of CICIG, has there been a cessation of parallel investigations tacitly authorized or agreed to by the State and conducted by bodies not legally authorized to do so or by clandestine structures in cases of human rights violations in which responsibility is attributed to government officials?**

90. CICIG has endeavoured to develop within Guatemalan institutions the prohibition of illegal parallel investigations. The State is looking to it to strengthen the investigative capacities of the relevant competent institutions.

<sup>31</sup> Personnel of the Special Criminal Investigation Division have been seconded to the prosecution divisions for women, money-laundering, corruption, drug trafficking, crimes against life, journalists, organized crime, vehicles, kidnapping and banks.

<sup>32</sup> For example, in April 2010 prison sentences of 163 years were handed down to Moroni Jared Silva Urbina, Luis Roberto Socorec Machac and Axel Noé Xo Aspuc, accused of the killing and rape, on 29 May 2009, of three sisters, Wendy (12 years), Heidi (7 years) and Diana (8 years), surname Suruy, in the village of El Manzanillo, municipality of San Lucas Sacatepéquez, department of Sacatepéquez. In reaching their verdict, the judicial authorities took into account the scientific evidence submitted by INACIF.

91. The Public Prosecution Service continues to investigate all cases of human rights violations reported to its Human Rights Prosecution Division.

**Has there been a reduction in the infiltration of organized crime structures, clandestine security organizations or apparatuses and other illegal groups into the security institutions and a decline in their activities?**

92. The records in the personnel section of the Special Criminal Investigation Division of the National Civil Police show that, since 2007, 26 officers have been handed over to the courts owing to their possible involvement in various offences and/or irregular acts. It is not tolerated that members of this Division who are guilty of criminal conduct go unpunished.

93. According to the operations section of the General Inspectorate of Police, 17 organized criminal groups which had been formed within the institution of the police have been dismantled. This has contributed to the decline in irregular activities (see table 16 of annex 1).

**Is there an independent commission with sufficient powers and resources to investigate circumstances of the kidnapping of disappeared persons on a case-by-case basis and to locate their remains?**

94. In Guatemala, the Anti-Kidnapping and Extortion Unit, which operates in the Organized Crime Prosecution Division, is responsible for handling the investigation of abduction offences. Also, significant progress has been made with the promulgation and implementation of the Alba-Keneth Alert System Act (Legislative Decree No. 28-2010), which provides for the coordination of inter-institutional activities for the tracing and immediate protection of stolen, kidnapped or missing children.<sup>33</sup> Upon the reporting of the disappearance or abduction of a minor, the Alba-Keneth Alert System Commission launches an immediate search, for which purpose it liaises with the National Civil Police, the Public Prosecution Service and the justice sector.

**Have there been any incidents in which persons responsible for human rights violations have been protected by their superiors? If so, have there been any administrative investigations?**

95. No information or report has been found to indicate that persons responsible for human rights violations have been protected by their superiors.

**To what extent has CICIG been able to prevent or unblock the patterns of obstruction of judicial proceedings (such as the filing of multiple legal actions) in order to prevent prosecutors' access to military information as well as procedural delays?**

96. CICIG has proposed two packages of legal reforms. The first included amendments to the *Amparo* Act. By December 2010, Congress was only examining legislative bill No. 3319, submitted by the Supreme Court. However, that process came to a halt and the bill has not been placed on the legislature's agenda for discussion in plenary. Nor have the amendments to the Preliminary Proceedings Act been adopted into law. Annex 2 contains the CICIG reports, which set out related achievements.

97. Progress has been made with the promulgation of Legislative Decree No. 18-2010, which refers to interlocutory pleas under the Code of Criminal Procedure,<sup>34</sup> and the Criminal Prosecution Enhancement Act (Legislative Decree No. 17-2009).

<sup>33</sup> The institutions responsible for overseeing compliance with this law are the Office of the Attorney-General, the General Directorate for Migration, the National Civil Police and the Social Communication Secretariat of the Office of the President.

<sup>34</sup> Article 66 of the Code of Criminal Procedure has been amended so that competence in cases of impediment, self-disqualification and challenge is regulated by the terms of the Judiciary Act. Also,

98. The outcome of the second package of CICIG proposals has been the promulgation of Legislative Decree No. 21-2009 (the Law on Criminal Jurisdiction in High-Risk Proceedings), Legislative Decree No. 35-2009 amending the Law on Criminal Jurisdiction in High-Risk Proceedings (Congressional Decree No. 21-2009), and Legislative Decree No. 55-2010 (the Termination of Ownership Rights Act).

**What specifically has been done to remove or modify those norms or laws which stall or paralyse the course of justice, as identified by CICIG?**

99. As stated in the previous reply, there has been progress in the adoption of proposals. With regard to legislation still to be passed, it is hoped that the related bills referred to will be included by Congress on its agenda for discussion.

**Have concrete positive results been registered in combating impunity since CICIG began operating?**

100. Among the positive and concrete results achieved in combating impunity, CICIG mentions, in particular, in its third year of operation:

(a) The creation of the Special Prosecution Unit attached to the International Commission against Impunity in Guatemala (UEFAC), which has been set up within the organizational structure of the Public Prosecution Service;

(b) Convictions in the Bus de Nicaragua, Smurf, Lemus (Mariachi Loco), Rosenberg, Amatitlán and Maskana cases, where the technical support provided by CICIG to UEFAC was a decisive factor in the effectiveness of the investigations and criminal prosecutions.

**Has there been more effective coordination in combating impunity on behalf of the Public Prosecution Service and the National Civil Police?**

101. There has been more effective coordination between the Public Prosecution Service and the National Civil Police in combating impunity, which has led to improvements in the results of investigations to elucidate cases of impunity. The Ministry of the Interior has stated that the aim of the Special Criminal Investigation Division is to improve the standard of investigations through training of its personnel and better coordination with the Public Prosecution Service. Attention to these aspects has brought about an increase in case resolution rates despite the shortage of human and logistic resources.

**Is there an effective system for the protection of victims and witnesses and other persons involved in criminal proceedings in keeping with article 13 of the Convention?**

102. The Law on the Protection of Trial Participants and Persons Involved in the Administration of Criminal Justice (Legislative Decree No. 70-96) arose out of the need to guarantee the integrity and safety of judges, prosecutors, defence counsel and other persons involved in judicial proceedings. This law provides for the establishment of a system to protect trial participants and facilitate the performance of their obligations by reducing the risks to which they are exposed.

103. The purpose of the system is to provide protection for officials and employees of the judiciary, civil security forces and Public Prosecution Service and also for witnesses, experts, consultants, co-claimants and other persons exposed to risks owing to their involvement in criminal trials. Protection is also to be made available to journalists who require it by being put at risk owing to the discharge of their reporting duties. The Witness

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amendments to other articles contain provisions relating to hearings, records of hearings and the general handling of interlocutory pleas.

Protection Office of the Public Prosecution Service is responsible for protecting trial participants who are at risk.

**Is there an independent commission with sufficient powers and resources to investigate circumstances of the kidnapping of disappeared persons on a case-by-case basis and to locate their remains?**

104. Legislative bill No. 3590 has been introduced with a view to the establishment of a national commission on the search for victims of enforced disappearances and other forms of disappearance. Under this bill, which is still to be approved in Congress,<sup>35</sup> the role of the commission would be to ascertain the whereabouts of persons who were victims of enforced disappearances or other forms of disappearance during the period from 1960 to 1996.

**Have the efforts to establish an effective witness-protection mechanism borne fruit? Has an agreement in this connection been established between the Public Prosecution Service and the Ministry of the Interior?**

105. The Crime Policy Secretariat of the Public Prosecution Service is of the view that the efforts made to establish a mechanism for the protection of witnesses have borne fruit although, following the promulgation of the related law and the Organized Crime Act, the Witness Protection Office has been engaged in providing protection for persons who undertake to collaborate in clarifying criminal acts and establishing the guilt of their perpetrators. Improved results have been achieved in proceedings involving organized groups. In coordination with the Ministry of the Interior, the Witness Protection Office of the Public Prosecution Service has set up a liaison unit to carry out joint operations for the protection of persons who have witnessed criminal acts and fully recognized their instigators or perpetrators and who are participants in criminal trials. A total of 90 National Civil Police officers, who are members of the Personal Protection and Security Division of the National Civil Police, have been assigned for the appropriate purposes.<sup>36</sup>

106. The Personal Protection and Security Division within the General Subdirectorate for Operations of the National Civil Police has seconded police officers to the Witness Protection Office of the Public Prosecution Service and to the CICIG Special Witness Protection Unit.

107. Channels of communication exist between the Head of the Personal Protection and Security Division and the operations section within the Witness Protection Office of the Public Prosecution Service to process, in line with areas of responsibility, requests made by the Witness Protection Office regarding the assignment of police officers to protect witnesses or arrange their rotation without knowing the identity of the persons admitted under the witness protection programme of the Public Prosecution Service. The Personal Protection and Security Division provides a personalized security service for witnesses receiving protection from the Public Prosecution Service, in compliance with orders issued by its higher authority.

**Please indicate whether the free telephone hotline (1-801-12345) for complaints and allegations from migrants has received any information on cases of migrants being tortured. If so, please indicate the number of cases, their circumstances and what happened subsequently.**

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<sup>35</sup> To date, legislative bill No. 3590 has received a favourable opinion from the Public Finance and Monetary Commission of Congress.

<sup>36</sup> It is the Witness Protection Office of the Public Prosecution Service which has direct control over and responsibility for the assignment of police officers to the different witnesses receiving protection from the Public Prosecution Service.

108. The Ministry of Foreign Affairs currently operates the free telephone hotline 1552, which was set up to deal exclusively with complaints from victims of human trafficking and which has not reported any calls relating to the torture of migrants.

**Has the Office of Professional Accountability of the Directorate for Migration reported any cases of torture and, if so, how have they been investigated and followed up?**

109. It has been established from the database of the Office of Professional Accountability of the General Directorate for Migration that no information of any kind was received during the period from 2006 to 2010 concerning cases of torture of migrants.

**Figures provided by the General Directorate for Prisons indicated an increase in the number of murders in custody in 2008 attributed, *inter alia*, to youth gangs in custody and in some cases prison guards. Has the number decreased in 2009 and since CICIG began operating?**

110. According to information from the Prosecution Division for Crimes against Life, there are no recorded cases of the death of any detainees attributable to members of youth gangs. Data from the Medical Services Department of the General Directorate for Prisons show deaths of persons in custody in 2009 (the dates of death, the identities of the deceased and the penal institutions where they were confined are indicated in table 17 of the annex).

111. Whenever the violent death of a detainee occurs, the General Directorate for Prisons provides the Public Prosecution Service with the necessary support in the conduct of the relevant investigations. Also, in cases where any such occurrence is suspected or reported, it submits a formal complaint in order that an investigation into the involvement of the alleged perpetrators is carried out.

**Have the General Directorate for Prisons and the Public Prosecution Service undertaken exhaustive and impartial investigations into the deaths of persons deprived of their liberty?**

112. Whenever it has had to investigate the deaths of persons deprived of liberty, the Public Prosecution Service has done so in accordance with the basic principles of impartiality, objectivity and the rule of law. Cases where prisoners are the victims are investigated exhaustively, impartially and with due diligence. Whenever the death of an inmate occurs, the General Directorate for Prisons provides the Public Prosecution Service with the necessary support so that it can perform its work efficiently at the crime scene and make it secure.

113. In observance of the law and to avoid the commission of an offence, the General Directorate for Prisons duly reports unlawful conduct in accordance with the provisions of article 285 of the Code of Criminal Procedure, which refers specifically to appropriate action in cases involving criminal acts that come to the knowledge of public employees or officials in the discharge of their functions. Accordingly, the prison authorities have an obligation to submit a formal complaint in order that the Public Prosecution Service, as the body responsible for initiating criminal prosecutions, can take steps to clarify the facts.

**Please explain exactly the follow-up procedure in cases in which it has been established that torture has taken place at the hands of the National Civil Police and when it was perpetrated at a detention centre and reported to the General Directorate for Prisons by its Inspections and Medical Services Department. What has been the role of the Office of the Ombudsman for Prisoners and Due Process of the Office of the Human Rights Procurator in this respect?**

114. The analysis subdirectorate and inspectorate subdirectorate, which operate within the organizational structure of the General Directorate for Prisons, are responsible,

*inter alia*, for the investigation of criminal acts allegedly perpetrated by personnel employed in the prison system or by persons held in penitentiary institutions.

115. With regard to the reporting of abuses affecting detainees, such as practices infringing their physical integrity, the action policy pursued by the General Directorate for Prisons is based on the undertaking to impose relevant disciplinary measures on administrative personnel who perpetrate acts contrary to the purposes laid down in the Prisons Act, notwithstanding any civil or criminal liability arising from the unlawful acts committed by them.

**Please provide information about the benefits of the opening of municipal and sectional prosecution offices.**

116. The Public Prosecution Service has 23 district prosecution offices, which are distributed over the 22 departments of the Republic, and 33 municipal prosecution offices in the same number of municipalities. One of the benefits of this situation is that the institution has more than one prosecuting office per department. This helps to facilitate access to the services provided by it since the prosecution premises are located in the departmental and municipal capitals. The functions of the district and municipal prosecution offices are indicated in box 1 of the annex.

**Please provide information about the outcome of the announced hearings in July 2009 concerning the Dos Erres massacre (as indicated in the State party's document dated 1 June 2009) and has article 8 of the National Reconciliation Act been applied effectively?**

117. On 2 August 2011, the First Court for High-Risk Cases sentenced the retired military officers Daniel Martínez, Manuel Pop and Reyes Collin Gualip to 6,060 years' imprisonment and Carlos Antonio Carías to 6,066 years' imprisonment for the perpetration of the Dos Erres massacre.<sup>37</sup>

**What is the status of investigation of the Rosenberg case?**

118. The Rosenberg case, which constitutes a typical example, gave rise to a complex situation in the country.<sup>38</sup> The investigations into it were conducted by CICIG, the outcome being the arrest of the instigators and perpetrators of the murder of Rodrigo Rosenberg and the filing of a lawsuit under seal. The oral and public deliberations were concluded on 15 July 2010.

<sup>37</sup> The proceedings in the Dos Erres case were initiated on 8 September 2010. A three-day hearing was held for the submission of evidence and in late 2010 the case reached the trial stage, with a date for commencement of the oral and public deliberations to be announced. An amnesty for those accused in the Dos Erres case was sought by reliance on the National Reconciliation Act, which meant the suspension of the proceedings for several years. However, by reason of a judgment rendered by the Inter-American Court of Human Rights, the Supreme Court could dismiss the amnesty petition and two *amparo* actions could be halted. Also, two outstanding arrest warrants were executed. Three members of the military were apprehended and, at the end of 2010, were awaiting trial.

<sup>38</sup> In his third government report to Congress, the current President of the Republic stated: "The previous year was marred by a political crisis stemming from the murder of the lawyer Rodrigo Rosenberg and the deliberate attempt to incriminate the President of the Republic, the First Lady and the Private Secretary of the Office of the President. In January 2010, CICIG made known the results of its investigation of the facts and fully exonerated those officials". Its representative noted: "The outcome of this case not only constituted a legal watershed with regard to the identification and prosecution of the real instigators and perpetrators of this crime but, more particularly, it also represented a triumph of the democratic institutional process and rule of law over the efforts of interested sectors to prevent the President of the Republic from completing his constitutional term of office".

119. The Court for High-Risk Cases handed down convictions against nine individuals involved in the murder of Rodrigo Rosenberg (which took place on 10 May 2009). William Santos, Edwin López, Lucas Santiago and José Ruano were sentenced to 38 years' imprisonment for homicide and conspiracy. José Ruano was sentenced to a further 10 years' imprisonment for illegal possession of firearms. Also, Samuel Girón, Byron Santos, Balmoris Guzmán and Miguel de Jesús Ordóñez were sentenced to eight years' imprisonment for conspiracy. Jesús Ordóñez was sentenced to a further 10 years and 8 months' imprisonment for the aggravating circumstance of having been a National Civil Police officer. The Court sentenced Jesús Manuel Cardona Medina (justice collaborator) to 12 years and 8 months' imprisonment for homicide and conspiracy (the initial penalty of 30 years for homicide was reduced to 10 years).

**Has the National Reconciliation Act, which explicitly excludes amnesty for the perpetrators of acts of torture and other grave human rights violations, been applied strictly? If not, please provide specific information about cases in which amnesty has been granted.**

120. By virtue of the judicial precedent set by the Inter-American Court of Human Rights, the State of Guatemala can properly apply the National Reconciliation Act. Guatemala's justice system does not currently allow the granting of amnesty for crimes against humanity or serious violations of international humanitarian law.

## **Article 14**

**Please provide information about measures of redress and compensation, including rehabilitation, provided to victims of human rights violations during the internal armed conflict, in particular to those affected by the numerous massacres in this period.**

121. The National Reparations Programme (PNR) was set up under Government Order No. 258-2003. Its specific objective is the award of individual and/or collective reparations to civilian victims of human rights violations and crimes against humanity committed during the internal armed conflict. It was conceived as a process incorporating a series of policies, projects and actions to ensure redress, compensation, restitution, indemnification, assistance, rehabilitation and restoration of dignity for victims of the internal armed conflict, with priority given to persons in situations of vulnerability. In conformity with public policy No. 51 of the Programme, the recommendations contained in the report of the Commission for Historical Clarification have been taken as the basis for achieving those ends.

122. The aim of measures of individual and collective redress is to foster national reconciliation. The National Reparations Programme provides for the following measures: (a) material compensation; (b) financial compensation; (c) psychosocial reparation and rehabilitation; (d) restoration of victims' dignity; and (e) cultural reparation. Beneficiaries under the Programme are victims who directly or indirectly suffered human rights violations, as individuals or groups, during the internal armed conflict,<sup>39</sup> such as enforced disappearance, extrajudicial execution, physical or psychological torture, forced displacement, forcible recruitment of children, sexual violence, child rape and massacres.

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<sup>39</sup> It is stipulated that, if the beneficiary has died or disappeared, the relatives within the first degree of kinship will receive the compensation. The award provided for will be distributed equally among the survivors.

123. Of the 50,582 cases submitted to its various offices,<sup>40</sup> the Programme has accorded priority, in line with the recommendations of the Commission for Historical Clarification, to those involving the communities most affected during the internal armed conflict. Table 18 of the annex indicates the number of cases of human rights violations submitted to the Programme's offices between 2003 and 2010 in response to the Commission's recommendations. Table 19 of the annex shows the number of persons in the 20 departments prioritized for the granting of redress by reason of rape cases. Table 20 of the annex indicates the number of survivors of massacres who were compensated between 2003 and 2010, disaggregated by department. Table 21 of the annex shows the number of torture survivors compensated between 2003 and 2010, disaggregated by department.

124. In 2010, the Programme registered 50,483 cases (representing a total of 91,786 victims) in its database. Its main activities were centred on the filing of 4,075 complaints with the Public Prosecution Service concerning human rights violations during the internal armed conflict. It has also monitored and reviewed the construction of 3,000 dwellings, in addition to memorial projects and intercultural centres, as well as the establishment of a human settlement in the capital city. Of the files submitted under the Programme, redress has been awarded in 1,326 cases for physical and/or psychological torture and in 1,366 cases for sexual violence.

125. The Human Rights Prosecution Division of the Public Prosecution Service has received requests for investigations in connection with reparation actions. The Programme has transmitted 380 complaints to it.

126. With regard to reparation measures in the areas of physical and mental health, the Ministry of Public Health and Welfare has undertaken activities such as strengthening the social support centre (*centro de convergencia*) in the village of Plan de Sánchez.<sup>41</sup> The centre currently has an undergraduate medical student, a nursing auxiliary and a psychologist. Also, the services of a basic health-care provider are made available once per month. These workers dispense comprehensive care to the inhabitants of Plan de Sánchez and the 12 village communities.

127. A comprehensive health service improvement plan was formulated in 2010, in conjunction with representatives from the communities, the Community Studies and Psychosocial Action Team (ECAP), the National Reparations Programme and the Ministry of Public Health and Welfare under the National Mental Health Programme, its execution being scheduled to commence in 2011. Also, the Ministry of Public Health and Welfare has implemented a continuing education programme aimed at psychology and psychiatry professionals nationwide in order to develop technical skills with a view to improving standards of care.

128. On 9 July 2010 an inter-institutional cooperation agreement was concluded between the Peace Secretariat, the National Reparations Programme and the National Institute of Forensic Science to strengthen the genetics section and to develop the genetic database, which will be useful in identifying persons who died or disappeared during the internal armed conflict and are still unidentified. Two cases have already been dealt with under this agreement, one in Agua Blanca, department of Huehuetenango, and one in Rabinal, department of Baja Verapaz.

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<sup>40</sup> The Programme's 15 regional offices are located in the departments of Chimaltenango, Sololá, Quiché, Huehuetenango, San Marcos, Zacapa, Alta Verapaz, Petén and Guatemala and in the municipalities of Mazatenango in the department of Suchitepéquez, Nentón and Barillas in the department of Huehuetenango, Nebaj and Ixcán in the department of Quiché and Rabinal in the department of Baja Verapaz.

<sup>41</sup> This community (located in the municipality of Rabinal, department of Baja Verapaz) suffered a massacre on 18 July 1982 during the internal armed conflict.

129. COPREDEH, as the body responsible for following up requests and cases involving human rights violations submitted to the Inter-American system organs, specifically in connection with amicable settlement agreements and agreements on compliance with recommendations, has carried out various activities, details of which are contained in the annex.

**What actions have been taken in the context of the National Reconciliation Programme?**

130. The State of Guatemala appreciates the recommendation of the Commission for Historical Clarification which refers to truth, justice, reparation and forgiveness as being the pillars of peacebuilding and national reconciliation. The efforts made and results achieved in the quest to achieve the realization of the right to truth, justice and reparation accordingly contribute to the process of reconciliation.

131. The present Government has promoted measures which are aimed at following up and implementing the recommendations of the Commission for Historical Clarification and which strengthen and support the work of the justice system in shedding light on the events that occurred during the internal armed conflict. One significant advance in 2009 was the issue of the presidential order to hand over the military archives containing information on counter-insurgency actions devised in 1982, namely Plan Sofía, Operation Ixil, Plan Victoria '82 and Plan Firmeza '83. The value of these documents lies in the fact that they can be used as evidence to support criminal proceedings against those who perpetrated human rights violations through genocide and torture.

132. With regard to the right to truth, the Peace Archives Directorate has made the information in its possession available to human rights organizations, relatives of victims and survivors and has prepared, printed and distributed useful details for clarifying matters concerning the recovery of historical memory.

133. In connection with the right to reparations, the comments made elsewhere in the present report in reply to issue 19 concerning convictions for enforced disappearance provide illustrative information.

**Please provide disaggregated data. Please also provide information on measures of redress provided to women exposed to sexual violence, mutilation and torture.**

134. The Ministry of Public Health and Welfare initially implemented the protocol for the care of victims of sexual violence at five of the country's hospitals (located in the departments of Izabal, Chimaltenango, Chiquimula, El Petén and Zacapa). There is a commitment to carry through the awareness and training initiative on the use and application of this protocol at 19 hospitals within the national network.

135. In the area of legislation, an important landmark is the Sexual Violence, Exploitation and Human Trafficking Act (Legislative Decree No 9-2009), whose stated purpose is to prevent, punish and eradicate sexual violence, exploitation and human trafficking and to provide victim support and protection as well as redress for the harm and damage caused.

**What compensation has been awarded by the domestic courts and actually paid to the victims of such acts?**

136. The notion of compensation here refers to financial redress, which is a measure provided for under the National Reparations Programme in cases related to the internal armed conflict. In other situations, compensation is determined as part of judicial verdicts.

## Article 15

**What procedures are in place to ensure that statements obtained under torture are not admissible as evidence? Please provide information of any case where evidence has been held inadmissible for these reasons.**

137. Part of the public defender's duty is to ensure strict compliance with international treaties and agreements relating to the human rights of persons deprived of their liberty. The Public Criminal Defence Institute is of the view that the establishment of rota courts (initially in the municipalities of Guatemala, Mixco and Villa Nueva in the department of Guatemala and subsequently in the departments of Escuintla and Sacatepéquez) has greatly contributed to preventing the use of torture to obtain self-incriminating confessions from detainees. The Institute's lawyers ensure that the statements of persons represented by them are made before the competent judge in the presence of defence counsel.

138. The principal legal basis is derived from the Constitution, whose article 9, which is cited earlier in this report, stipulates that the judicial authorities alone are competent to interrogate detainees and persons in custody. It is clear to justice institutions from the law that extrajudicial interrogations are devoid of probative value in judicial proceedings. Article 183 of the Code of Criminal Procedure unequivocally states that evidence obtained by prohibited means, such as torture, is inadmissible. If that stipulation is not observed, challenges may be made, relying not only on domestic law but also on international instruments relating to justice and human rights. In such cases, the filing of formal attestations against those involved in obtaining evidence by torture is also permissible.

## Article 16

**Please provide information on the impact of the adoption of the Organized Crime Act approved by Congressional Decree No. 21-2006 of 19 July 2006.**

139. One of the positive effects of the Organized Crime Act has been to encourage specific measures aimed at preventing and combating criminal associations. In security planning, the impact of organized crime is taken into account in the definition of action modalities and priorities.

**Pursuant to the approval of the Organized Crime Act, has a definition of criminal activity attributable to members of and/or participants in criminal organizations been made?**

140. According to the Public Prosecution Service, it has been possible, as a result of the promulgation of the Organized Crime Act, to define illegal conduct attributable to members of and/or participants in criminal organizations thanks to the criminalization provisions of this law.

**Have measures to prevent, combat, dismantle and eradicate organized crime in accordance with the Constitution and international treaties signed or ratified by the State party been adopted?**

141. Measures have been adopted by the State of Guatemala, in particular by its criminal prosecution and justice administration institutions, with a view to preventing, combating, dismantling and eradicating organized crime. One mechanism has been the establishment of special units within the Public Prosecution Service, where staff have received training in the acquisition of specific skills and techniques (for example, the ability to interview criminals and coax important information from them).

142. In the Ministry of the Interior, the General Subdirectorate for Operations of the National Civil Police maintains the general operational plan in force 24 hours a day nationwide. In 2010, the general annual security plan “*Tormenta 2010*” was established, its purpose being to serve the community by developing direct communication with the public and ensuring strict observance of the law in accordance with the Constitution and respect for human rights.

**Lynching as a form of torture continues to be widespread in Guatemala. Please provide disaggregated figures with regard to mob lynchings by department, age group, gender and ethnicity.**

143. According to data from the Ministry of the Interior, there were recorded cases of the lynching of 61 men and two women in 2010. Tables 22 to 26 of the annex give details of age, gender and place of occurrence and also the police precincts within whose jurisdiction the instances took place.

**Has there been an increase in the capacity of the National Civil Police to prevent this type of violence?**

144. The General Subdirectorate for Operations of the National Civil Police, through the Joint Operations Division, issued, in 2008, Service Order No. 08-20058 against Lynchings in Guatemala and, in 2009, Service Order No. 001-2009 against Lynchings in Guatemala (the latter is still in force), which have led to a reduction in instances of lynching from 70 in 2009 to 38 in 2010 and a fall in the number of victims of criminal acts of this kind from 105 persons in 2009 to 63 in 2010.

145. The Special Police Forces Division within the General Subdirectorate for Operations has been specially trained in crowd dispersal using authorized dissuasive means and proportionate force and is available to support local police units in dealing with specific cases of lynching.

**Have perpetrators been apprehended and brought to trial? What investigations have been carried out? What were the charges? How many convictions have been handed down? What is the penalty for lynching in the State party?**

146. The analysis and statistics section of the Special Criminal Investigation Division reports that the perpetrators of lynchings in most cases could not be apprehended since the persons responsible for these acts are protected within the actual communities and no one comes forward with information.<sup>42</sup>

**Please provide information about the campaign “*Ama la vida, no la destruyas*” (“Love life, don’t destroy it”). Please also provide information about the results of the implementation of the National Programme against Lynching operating under the slogan “For the right to life, not to lynching”.**

147. The campaign “*Ama la vida, no la destruyas*” organized by the judiciary involved the large-scale dissemination (primarily through advertisement panels on buses, radio spots and posters) of the message “Love life; don’t destroy it. Don’t be part of a lynching. Don’t become an accomplice; tomorrow it could be you”.

<sup>42</sup> In the case of the 36-year-old National Civil Police officer Miguel Ángel Curruchichi González, who died as a result of being lynched by a mob of some hundred people in front of the town hall of San Martín Jilotepéquez in the department of Chimaltenango, Sarvelio Ávila, Gabriel Augusto Guerra, Juan Girón Hernández, Tomás Pirir Contreras and Timoteo Patzan were arrested and detained for conspiracy and murder. The Public Prosecution Service was notified by official communication No. 617-2009 of 17 November 2009.

148. Prevention strategies, including awareness talks to community organizations, radio and television slots and leaflets outlining preventive measures, have been pursued by the Crime Prevention Division of the judiciary through the multiculturalism section (SEMULT) and its regional offices in the departments of Huehuetenango, Quetzaltenango, Quiché, Sololá, Alta Verapaz and Baja Verapaz.

**Please provide information about the educational process devised for 12 State institutions, including if it follows the guidelines contained in the Istanbul Protocol.**

149. The judiciary has called upon 12 official institutions, two civil society organizations and one international organization to form the National Commission in Support of the Educational Subprogramme for the Prevention of Lynchings. An inter-institutional cooperation agreement on developing educational initiatives to prevent violations of the rule of law, with emphasis on lynchings, was concluded by the Public Criminal Defence Institute, the Ministry of Education, the Office of the Human Rights Procurator, the Peace Secretariat, COPREDEH, the Guatemalan Tourism Institute, the Office of the Ombudsman for Indigenous Peoples within the Office of the Human Rights Procurator, the Ministry of the Interior, the Executive Secretariat of the Coordinating Authority for Modernization of the Justice Sector, the National Literacy Committee, the National Coordination Office for Disaster Reduction and the judiciary. Other signatories were the Ecumenical Forum for Peace, the Institute of Comparative Studies in Criminal Sciences of Guatemala and the United Nations Educational, Scientific and Cultural Organization (UNESCO) under its Peace Culture Programme.

150. This body coordinates preventive and guidance activities aimed at the public, with the objective of seeking legal mechanisms for the resolution of disputes. It holds monthly and ad hoc meetings in line with educational initiative programming or by reason of crisis situations relating to lynchings.

151. The judiciary coordinates this Commission<sup>43</sup> through the Educational Programme Coordination Office. The specific subprogramme is aimed at adults and community leaders and includes action planning by magistrates to provide information on how to prevent lynchings and what to do if one occurs and also awareness raising concerning the value of life, rights and obligations, crimes, offences and infringements of the law. The slogan of the subprogramme is “For the right to life, security and justice, not to lynchings”. The contents of its training activities include the study of international human rights instruments and, when issues such as torture and lynching are addressed, the examination and discussion of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

152. Under Instruction No. 13-2008 signed by the Attorney-General and Chief Public Prosecutor, the Istanbul Protocol was included by the Public Prosecution Service as a mandatory instrument to be used in the investigation of complaints of torture or ill-treatment. Its observance provides prosecutors with useful inputs for investigations and hypothesis building as well as guidance in their dealings with medical and psychological experts.

**What results have been obtained by the National Commission in Support of the Educational Subprogramme for the Prevention of Lynchings?**

153. The establishment of the National Commission in Support of the Educational Subprogramme for the Prevention of Lynchings has resulted in the development of channels of communication and coordination. The Commission has carried out training and

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<sup>43</sup> A list of the training initiatives supported by the National Commission in Support of the Educational Subprogramme for the Prevention of Lynchings is included in the annex.

awareness initiatives throughout the country. However, owing to the complexity of the phenomenon of lynching, in addition to structural problems, which hamper access to justice and its enforcement, it is regrettably not possible to affirm that the work of the Commission has led to the eradication of lynchings in the country. Nevertheless, the foundations for addressing this issue are being established through information dissemination and awareness raising aimed at official stakeholders and the population.

**Please provide information on the number of complaints and requests for protection and number of investigations since the entry into force of the Law on Femicide and Other Forms of Violence against Women.**

154. According to records of the Public Prosecution Service, there have been 76,050 investigations into cases involving violence against women since the Law on Femicide and Other Forms of Violence against Women entered into force. Data from the Public Criminal Defence Institute show that its National Coordination Office for Free Legal Aid to Victims and their Relatives received 1,446 requests between 2007 and 2008. The figure in 2009 was 1,826 and as at October 2010 stood at 712.

155. According to the same source, the number of investigations conducted since the entry into force of Legislative Decree No. 22-2008 has fluctuated. In 2008, 80 cases were investigated. In 2009 the figure was 276 cases and as at October 2010 stood at 171 cases.

156. The records of the victim support section within the General Subdirectorate for Operations of the National Civil Police show that 6,327 complaints were filed in 2008. The number of complaints in 2009 totalled 8,472 and as at November 2010 stood at 6,341.

157. The Presidential Secretariat for Women (SEPREM) reports that 16 complaints and requests for protection and support were submitted to it in 2010 in connection with cases coming under the Law on Femicide and Other Forms of Violence against Women.

158. In conformity with its mandate, the Office of the Ombudsman for Indigenous Women (DEMI) has dealt with 712 cases involving claims, complaints and requests for support in connection with security measures, rape, attempted rape, aggravated rape, violence against women, psychological abuse and domestic violence. In these cases, 25 per cent of the applicants completed the proceedings and 10 per cent withdraw their complaints, with 65 per cent of the cases still in process.

**Has the police increased its vigilance during the hours statistically proven to be the most dangerous for women: between 7 p.m. and 11 p.m.?**

159. The general instructions issued by the National Civil Police pursuant to the general annual security plan "*Tormenta 2010*" of the Ministry of the Interior are in force 24 hours a day, with greater emphasis on the times and places of most criminal activity in each of the police jurisdictions across the country. For this purpose, every unit formulates its own working plan for execution in accordance with requirements. The Ministry of the Interior has also implemented Operational Plan No. 40-2010 (Crime Control in the Central District Police Precincts), which deals with security arrangements at what are regarded as major crime hot spots within the police jurisdiction of the department of Guatemala in the periods from 5 a.m. to 8 a.m., 8 a.m. to 1 p.m., 1 p.m. to 6 pm. and 6 p.m. to 10 p.m. This is based on analyses and statistics which have made it possible to identify those times and places at which most crimes against life occur daily.

160. Also, police patrols (both motorized and on foot) have been stepped up at times and places at which unlawful acts against the integrity of the person, especially involving women, are statistically known to take place. The requirement of strict implementation of daily assignments is constantly reiterated (in writing) to all policing units in the jurisdiction. The plans concerning confiscation of unlicensed firearms and enforcement of the "Dry Act" (legislation on the sale and consumption of alcohol) are put into operation every weekend.

161. The Joint Operations Division of the National Civil Police has implemented various working plans to reduce the rate of offences against the physical integrity of the person, in particular Operational Plan No. 069-2010 (Fixed Security in Guatemala City's *Zona Viva*), which provides for policing operations specifically in zone 10 of the capital city, where attacks on members of the public, including several female victims, have taken place. To that end, the plan operates during two periods (from 11 a.m. to 1 p.m. and from 7 p.m. to 2.30 a.m.) with the aim of ensuring a peaceful and safe environment.

**Has there been any investigation or prosecution of the ten cases of femicide reported on 3 November 2008 by the judiciary?**

162. Between 3 November 2008 and the present time, there has been an increase in the number of investigations and criminal prosecutions relating to cases of femicide. According to statistical data from the judiciary, 214 cases of femicide were brought before the courts between 2008 and 2010. The ten cases mentioned in the list of issues and also the 214 cases recorded up to the end of the past year are undergoing the relevant procedures with regard to investigation, prosecution<sup>44</sup> and legal action.

**Has an effort been made to streamline statistics on femicide?**

163. According to information from the Ministry of the Interior, specific plans involving crime hot spots and particular periods have been implemented. These plans incorporate measures to combat offences and illicit conduct. They include the general annual security plan "*Tormenta 2010*", the Plan on Crime Control in the Central District Police Precincts and the Plan on Fixed Security in Guatemala City's *Zona Viva*. Box 2 of the annex shows the policing assignments provided for under these public safety plans.

164. All operational plans prepared in the General Subdirectorate for Operations have the primary aim of protecting the most vulnerable groups, including women. The impact of measures in the areas of prevention, investigation, prosecution and court proceedings can be assessed from a comparison of complaints, charges and convictions (see tables 27 and 28 of the annex).

**Please provide information and figures about the functioning of rota courts in relation to abuses against women.**

165. The functioning of the rota courts has helped to strengthen the justice system by contributing to the observance of statutory time limits for bringing arrested persons before the competent authority. They are also instrumental in efforts to prevent abuses and curb acts of torture (table 29 of the annex lists the courts set up and put into operation between 2006 and 2010, disaggregated by type).

166. The Office of the Ombudsman for Indigenous Women has achieved positive results with regard to the granting of security measures for indigenous women by the fourth and fifth mobile family courts.

**With regard to rota courts, to what extent has the maximum limit of six hours before bringing a detained person before a judicial authority been respected?**

167. Observance of the maximum limit of six hours for persons arrested to be brought before the competent judicial authority is reinforced by current law, specifically the Constitution and the Code of Criminal Procedure. Realization of the importance of this matter by those involved is also a contributory factor but there are insufficient facilities (for example, means of transport) to guarantee compliance in all cases of arrest or detention.

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<sup>44</sup> In order that specialized investigations can be carried out, four of the prosecuting agencies within the Prosecution Division for Crimes against Life are solely and exclusively responsible for investigating violent deaths of women.

According to the Ministry of the Interior, the National Civil Police endeavours to respect the time limit laid down in the Constitution. The period for appearance before the competent judge varies on average between two and five hours (from the time of arrest until the police report is received in the rota court).

**What action has the Government taken to prevent harassment and abuse of women detainees?**

168. The action taken relates primarily to the functioning of the rota courts and to training and awareness development aimed at members of the security forces on the topics of human rights, prohibition of torture and the rights of persons deprived of their liberty. According to information from the Ministry of the Interior, the General Directorate for Prisons has taken steps to prevent sexual harassment and abuse of female prisoners, including the provision of human rights training for administrative and security personnel. It also imposes disciplinary measures on administrative personnel who commit acts contrary to the purposes laid down in the Prisons Act (Legislative Decree No. 33-2006) irrespective of any civil or criminal liability arising from the acts of harassment or abuse suffered by women detainees.

**Is there legislation to prevent sexual harassment in prisons? If so, how many people have been charged under this legislation?**

169. Legislative bill No. 1576 against sexual harassment in employment and education and legislative bill No. 1580 on sexual harassment were put before Congress in 1995 and 1996. These bills provide for the criminalization of the offence of sexual harassment in any setting.

170. Currently, article 489 of the Criminal Code, where referring to offences, lays down penalties for cases of sexual harassment. This article is applicable generally to the benefit of all women, including female prisoners.

**Has the rate of violent deaths of women continued to increase, as was the case in 2008, since the entry into force of the Law on Femicide and Other Forms of Violence against Women?**

171. According to statistical data from the judiciary, 30 cases of femicide were brought in 2008. The number was 95 in 2009 and 89 in 2010. In table 30 of the annex, the figures for this crime can be compared with others.

**Has the provision in the Criminal Code which exempts a rapist from any penalty if he marries the victim been repealed to ensure the prosecution and punishment of all perpetrators?**

172. On 17 March 2006, the Constitutional Court upheld the unconstitutionality action filed by the Human Rights Procurator concerning article 200 of the Criminal Code, which stipulated that, in cases of rape, indecent assault, sexual abuse or abduction, the perpetrator's criminal liability or, as applicable, the penalty would be extinguished by the lawful marriage of the victim and the offender. In compliance with the Constitutional Court's ruling, that article has been repealed. Article 45 of the Sexual Violence, Exploitation and Human Trafficking Act states that the crime of rape is an actionable offence and that forgiveness expressed by the aggrieved party or by the aggrieved party's representative does not extinguish the legal action, the criminal liability or the penalty imposed.

**Please provide figures on domestic violence cases which are often solved by being removed from the judicial process.**

173. Information from the Public Criminal Defence Institute (the National Coordination Office for Free Legal Aid to Victims and their Relatives) shows that it is expressly

prohibited to participate in any act with the intention of removing cases of violence against women from the judicial process.

174. The Public Prosecution Service has knowledge of only two cases of violence against women which were solved by their removal from the judicial process.

175. The issue of a circular in 2007 by the judiciary, through the Coordinator of the Alternative Conflict Resolution Unit, to mediators and administrative assistants in the judiciary's mediation centres, advising that domestic violence cases should not be resolved through mediation or conciliation was described by the National Coordination Office for the Prevention of Domestic Violence and Violence against Women (CONAPREVI) as an important step. That circular is still valid. With a view to ensuring observance of this guideline, CONAPREVI's women's affairs and institutional skills development units, in coordination with the judiciary's Conflict Resolution Unit, undertake activities such as awareness and training initiatives for personnel at mediation centres on the issues of women's human rights, the gender perspective and violence against women, and joint visits by personnel from the Women's Affairs and Gender Analysis Unit and from the Conflict Resolution Unit are carried out to oversee compliance with the circular.

176. It has been established through these visits that cases of violence against women are not dealt with at mediation centres but are referred to the relevant courts, being deemed to constitute actionable offences that do not admit of mediation. With the entry into force of the Law on Femicide and Other Forms of Violence against Women, acts of violence against women are subject to public prosecution and the measures described in the Code of Criminal Procedure for the removal of cases from the judicial process may not be applied.

177. A proposal was submitted to the criminal division of the judiciary by CONAPREVI and the "No to Violence Against Women" Network (REDNOVI) for the preparation of an implementing protocol to the Law on Femicide and Other Forms of Violence against Women, whose drafting was undertaken through a participatory and inter-institutional process. The proposal was approved and presented publicly by the judiciary in September 2010.<sup>45</sup>

**Have any temporary shelters been established to accommodate and protect women victims of crime?**

178. Article 16 of the Law on Femicide and Other Forms of Violence against Women (Legislative Decree No. 22-2008) stipulates that it is the responsibility of the State to allocate resources for setting up and operating comprehensive support centres for women survivors of violence (CAIMUS) and that CONAPREVI is the body authorized to promote their establishment and to be responsible for assisting, advising and supervising specialized women's organizations in their administration of the centres. There are currently in operation five support centres,<sup>46</sup> situated in the departments of Guatemala, Quetzaltenango, Escuintla, Suchitupéquez and Baja Verapaz. They were initiated by women's organizations

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<sup>45</sup> It applies to specialized courts such as lower criminal courts and trial courts ruling on drug-trafficking offences and crimes against the environment. The protocol states that it is not permitted to take measures for the removal from the judicial process of cases relating to the crimes provided for in the above-mentioned law. This means that prosecutorial discretion may not be exercised, mediation may not be applied and suspended sentences may not be issued. Also, the protocol is binding in order to ensure that the law is properly interpreted and implemented.

<sup>46</sup> As at the end of December 2010, various schemes were being developed for setting up and operating such support centres (in the municipality of San Juan Sacatepéquez, department of Guatemala, and in the departments of Huehuetenango, Quiché, Jutiapa, Petén, Zacapa, Izabal, Sololá and San Marcos), with assistance, advice and technical and institutional support from CONAPREVI.

prior to the entry into force of the Law on Femicide and Other Forms of Violence against Women.<sup>47</sup> Box 3 of the annex shows the locations of the support centres.

179. CONAPREVI has approved the model for the provision of comprehensive support to women survivors of violence which is used at the support centres. It incorporates two strategies: support and intervention. The support strategy includes temporary shelters for women and their children. This model is the outcome of the experience acquired by the Guatemalan Women's Group (GGM) in offering direct support to women survivors of violence.

180. The Public Criminal Defence Institute does not have temporary shelters on its premises but provides the services of an emergency call centre (telephone 1571), through which the use of such shelters is coordinated. This telephone number is used both for cases dealt with by the Public Criminal Defence Institute and for those handled by other institutions.

**Please provide further information regarding the case of Mrs. Juana Méndez, who was raped and ill-treated while in police custody.**

181. Information updated to December 2010 by the Public Prosecution Service indicates that the complaint relating to this case was filed by Juana Méndez Rodríguez on 19 January 2005 at the 71st precinct police station (Santa María Nebaj, department of El Quiché). The investigation by the Prosecution Division for Administrative Offences was entrusted to Agency 2 and conducted by prosecuting assistant Sara Icarit Coronado Chacón, with responsibility for the ensuing phases assigned to prosecuting agent Rosa Orellana Arévalo up to the appeal court ruling. On 16 April 2008, the court of the department of El Quiché handed down a conviction for the crime of aggravated rape, which was upheld at appeal.

**Why did the Office of the Attorney-General request the arrest of only two of the three persons accused?**

182. The Public Prosecution Service states that it requested the arrest of two National Civil Police officers against whom a complaint had been lodged by Mrs. Juana Méndez Rodríguez. There was no knowledge of any complaint against another member of the National Civil Police. The Public Prosecution Service brought charges against two and not three National Civil Police officers since Mrs. Méndez Rodríguez's complaint had been filed against two.

**Has the second policeman, Nery Osberto Aldana Rodríguez, been apprehended?**

183. According to information from the Public Prosecution Service, the arrest warrant issued against Nery Osberto Aldana Rodríguez is still valid.

**What has happened with regard to the third person accused, whose name was not disclosed?**

184. It was indicated in the statement made by Mrs. Juana Méndez Rodríguez to the Public Prosecution Service that there had been only two National Civil Police officers; therefore, no other accused exists.

<sup>47</sup> These support centres operate through the efforts of women's organizations, which began this endeavour more than two decades ago. Pursuant to the above-mentioned law, CONAPREVI gathered all their experience of providing comprehensive support in order to formulate a strategy for establishing new centres across the country, which has given rise to a desire by more women's organizations to join the initiative. By the end of the past year, CONAPREVI was assisting 14 schemes to build, open and run support centres at the national level.

**What measures have been adopted to safeguard the lives and physical integrity of Juana Méndez and policeman Lázaro Dubón Cano, who testified?**

185. Mrs. Juana Méndez Rodríguez and policeman Lázaro Dubón Cano received protection from the Office for the Protection of Witnesses and Trial Participants. The Ministry of the Interior has stated that it does not know the whereabouts of police officer Lázaro Dubón Cano, who, according to checks in the 71st precinct personnel section, left the police service on 14 March 2006.

**Since this case, have there been any other cases reported and prosecuted regarding violations of the Convention committed by policemen against women deprived of their liberty?**

186. According to data from the Crime Policy Secretariat of the Public Prosecution Service, no further cases have been handled by that institution involving crimes of rape by National Civil Police officers where the victims were women deprived of their liberty.

**Has the Law on the Comprehensive Protection of Children and Young Persons been fully implemented?**

187. Proceedings against young persons in conflict with the criminal law are conducted in accordance with the Law on the Comprehensive Protection of Children and Young Persons (the PINA Law) (Legislative Decree No. 27-2003). The Public Prosecution Service applies this law as the yardstick for the specialized justice system and relevant training has been provided to prosecutors, judges and defence lawyers. Also, checks are made on all entities involved in the proceedings and the respective procedures are carried out in conformity with this decree.

188. Measures relating to the serving of sentences imposed on young persons in conflict with the criminal law are implemented by the Social Welfare Secretariat of the Office of the President through a specific subsecretariat. Juveniles and adolescents held at detention centres receive courses in literacy, computing, English and other subjects to provide them with opportunities for personal development and family and community reintegration. Juveniles and adolescents are kept separate from adult detainees. Steps are taken to ensure that they maintain contact with their relatives. A programme of specialized detention and custody centres and a programme of socio-educational measures are in operation.<sup>48</sup> The programme of socio-educational measures is designed for young persons ordered to serve non-custodial socio-educational sentences, with assistance and supervision provided by a multidisciplinary team of professionals. Its aims are to achieve the young person's integration into the family, community and society and to foster a sense of responsibility and respect for the law and the fundamental rights of others. It also encourages the acquisition of skills and aptitudes for personal and social development. The three socio-educational measures included in the programme are guidance and supervision orders, community service and probation. Table 31 of the annex gives a breakdown of offenders on whom socio-educational measures have been imposed.

189. The Centre for Comprehensive Training and Skills Development, which was established under these programmes, contributes to the education of young persons through employment opportunities gained from the personal development and skills acquisition

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<sup>48</sup> The centres covered by the first of these programmes (the Centre for Provisional Custody of Male Juveniles (CEJUDEP), the Detention Centre for Male Juveniles (CEJUPLIV) and the Detention Centre for Female Juveniles (CEJUPLIM)) function as an integrated programme whose objective is to provide comprehensive care for young persons in conflict with the criminal law who are serving custodial sentences. They encourage social, family and employment integration and reintegration through educational plans, the development of values and the provision of psychological support and vocational, pre-employment and employment training.

activities carried out during the serving of sentences handed down by the courts. This is the first centre for young persons in conflict with the criminal law that operates under the “semi-open” system. It is one of the most effective schemes for the social reintegration of young persons. As at December 2010, it was supporting 115 juveniles, who attended workshops on computing, baking, pastry-making, beauty treatment, cooking, manual skills and literacy at all levels.

190. The Prosecution Division for Women and Child Victims, which has been set up within the Public Prosecution Service, is of the view that the PINA Law has been implemented with regard to protection measures. Coordination is undertaken to ensure the presence of appropriate personnel from 8 a.m. to 4 p.m. to provide representation for juveniles. Also, telephone communication with the Public Prosecution Service is available twenty-four hours a day. In cases where young persons are accused of breaches of the criminal law, the file is submitted to the specialized prosecution office for juveniles in conflict with the criminal law for the purpose of application of specific special procedures.

**Please provide statistics with regard to the discovery of bodies with signs of torture and marks of execution resulting from extreme violence, in particular of children living in the street and in marginalized areas.**

191. The statistical report of the National Institute of Forensic Science (INACIF) gives information on autopsies carried out in 2008 and 2009 and from January to October 2010. The details refer to causes of death, lethal weapons and other characteristics. Tables 32 to 34 of the annex contain data disaggregated by INACIF departmental unit, case autopsy, cause, weapon and sex of the deceased.

192. Between 2006 and 2010, the Ministry of the Interior’s statistical section recorded a total of 1,195 cases relating to deceased male children. The number of deceased female children for the same period was 268. Table 35 of the annex gives an annual breakdown.

**Please provide information about efforts by the judiciary and the Public Prosecution Service to rationalize the use of deprivation of liberty and broaden the application of non-custodial measures, including by the juvenile justice system.**

193. Guatemalan law, one of whose objectives is to require the State not to prolong detention indefinitely, recognizes the individual’s right to be tried within a reasonable period or released. Specifically, article 268 of the Code of Criminal Procedure lays down that detention must cease: (a) if new evidence demonstrates that the grounds on which it was based do not exist or makes its replacement with a different measure appropriate; (b) if its duration is equal to or greater than the expected sentence; (c) if its duration exceeds one year or (d) if three months have elapsed since the issue of the commitment order. It should be borne in mind here that the main purpose of the limitation on the duration of preliminary procedures is to ensure that the slowness or absence of an investigation does not directly affect persons in preventive detention.

194. In the case of juveniles, the efforts of the Public Prosecution Service to rationalize the use of deprivation of liberty and broaden the application of non-custodial measures are underpinned by the Law on the Comprehensive Protection of Children and Young Persons. Article 182 of this law states that deprivation of liberty is an exceptional measure.<sup>49</sup> The

<sup>49</sup> It is appropriate if there is a risk of absconding and/or of impeding the ascertainment of the truth or if the act imputed constitutes an offence involving severe violence committed against the life, physical integrity or individual or sexual freedom of the person. Chapter VIII, which deals with socio-educational penalties, states: “Once the juvenile’s perpetration of or participation in an offence contrary to the criminal law is established, the judge concerned may impose punishments of the following kinds: (a) socio-educational penalties: 1. warning and reprimand; 2. probation; 3. community service; 4. reparation for the damage caused to the victim...”.

Public Prosecution Service points out that its prosecuting agents and assistants working in the prosecution divisions dealing with children and young persons are aware that deprivation of liberty is used as a disposition of last resort and only if all the requirements set out in the Law on the Comprehensive Protection of Children and Young Persons are met.

## **Other issues**

**Please provide updated information on measures taken by the State party to respond to any threats of terrorism and please describe if and how these measures have affected human rights safeguards in law and practice.**

195. The Division for Firearms and Explosives Investigation and Deactivation was established by the State of Guatemala, through the National Civil Police, under General Order No. 12-2010 of 28 September 2010. This police division has formulated Anti-terrorist Plan No. 002-2010 (Prevention of terrorism), drawn up Standard Assignment Service Order No. 004-2010 (Control of trafficking and illicit carrying of firearms, their parts and components, ammunition and explosives) and introduced mobile patrols on express highways in the capital city, main and alternate routes to the perimeter of the metropolis, and major and alternate routes in the interior of the country.<sup>50</sup>

196. Within the Public Prosecution Service, the Organized Crime Prosecution Division responds to the expressed needs of victims of terrorist acts caused by organized groups<sup>51</sup> and the Human Rights Prosecution Division undertakes its activities within the context of safeguarding and ensuring the observance of human rights. These measures are interlinked through the coordinated discharge of the functions of the institutions concerned.

**How has the State party ensured that those measures taken to combat terrorism comply with all its obligations under international law?**

197. The actions of the State of Guatemala to meet present-day challenges are underpinned by legal instruments<sup>52</sup> which combine the need to resolve security problems with respect for human rights. The State of Guatemala shares the world view that combating the scourge of terrorism must not mean breaching human rights. Guatemala is a party to various international treaties and conventions on defence and security at the global, regional and subregional levels. It participates in the regional security system under the Framework Treaty on Democratic Security in Central America, concluded in 1995, which identifies violence, corruption, impunity, drug trafficking, the illegal arms trade and terrorism as issues to be addressed.

198. An example of good practice by Guatemala with regard to combating terrorism is the promulgation of laws such as Legislative Decree No. 71-2001 adopting the International Convention for the Suppression of the Financing of Terrorism, concluded at United Nations Headquarters on 10 January 2000, and Legislative Decree No. 57-2005

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<sup>50</sup> All for the purpose of implementing measures for the control of trafficking in and seizure of firearms, their parts and components, ammunition and explosive devices and the detection of forged or counterfeit licences to carry firearms.

<sup>51</sup> Such groups are regarded as terrorist groups since they destabilize the country's development.

<sup>52</sup> One legal benchmark is the Constitution, whose article 149 provides as follows: "Guatemala shall regulate its relations with other States in accordance with international principles, rules and practices in order to contribute to the maintenance of peace and liberty, the observance, defence and promotion of human rights and the strengthening of international institutions and democratic processes to the mutual and equitable benefit of States".

adopting the Inter-American Convention against Terrorism, adopted at Bridgetown on 3 June 2000 and signed by the State of Guatemala on that date.

199. Also, article 21 (Mutual legal assistance), chapter VI (International Cooperation), of the Law<sup>53</sup> on Prevention and Punishment of the Financing of Terrorism (Legislative Decree No. 58-2005)<sup>54</sup> states that, with a view to facilitating judicial investigations and proceedings relating to offences referred to in this decree, the Public Prosecution Service and competent judicial authorities may provide assistance to and request assistance from the authorities of other countries.

200. Supplementary laws criminalizing terrorism-related offences and laying down corresponding penalties have been adopted in the past five years, such as the Law on Laundering of Money and Other Assets (Legislative Decree No. 67-2001) and the Organized Crime Act (Legislative Decree No. 21-2006). The sanctions and punishments provided for in these legislative instruments do not overstep the criminal law or depart from due process; they are intended to guarantee to persons accused of terrorism offences their fundamental rights.

**Please describe the relevant training given to law enforcement officers.**

201. Relevant training has been provided by the Public Prosecution Service through its Skills Development Unit and other institutions involved in enhancing the efficiency of criminal prosecution. Topics to develop specific areas of expertise and experience sharing have been addressed with a view to improving investigative strategies and achieving better results in cases against organized criminal groups. The Weapons and Explosives Division (DIDAE) of the National Civil Police has been entrusted with providing urban terrorism training for law enforcement officers, DIDAE technical staff and Police Academy personnel.

**Please indicate the number and types of convictions under anti-terrorist legislation and the legal remedies available to persons subjected to anti-terrorist measures.**

202. A report by the judiciary's Administrative Centre for the Management of Criminal Matters gives details of proceedings relating to terrorism offences from 1999 to 2004 (8 cases), general information on which appears in table 36 of the annex.<sup>55</sup>

203. With regard to legal remedies available to persons subjected to anti-terrorist measures, it should be noted that, in Guatemala, terrorism offences come under the ordinary criminal law; consequently, persons reported, charged, tried or punished are not subject to special regulations governing arrest, detention, interrogation, prosecution, conviction or serving of sentences. Considerable importance and value are placed on total observance of due process requirements, procedural guarantees and commitments arising from ratification of international instruments.

**Please indicate whether there are complaints of non-observance of international standards and the outcome of these complaints.**

<sup>53</sup> Article 2 of this law amended article 391 of the Criminal Code (Legislative Decree No. 17-73).

<sup>54</sup> In the preamble to Decree No. 58-2005, the financing of terrorism is described as being a crime against humanity and contrary to international law.

<sup>55</sup> Article 391 of the Criminal Code lays down that any person found guilty of the crime of terrorism shall be sentenced to non-commutable imprisonment from 10 to 30 years in addition to a fine of between 25,000 and 800,000 United States dollars or equivalent in local currency. It also stipulates that, if highly destructive explosives are used, the person or persons guilty of that offence shall be liable to double the penalty.

204. There are no records of complaints of non-observance of international standards in connection with convictions relating to any proceedings in which anti-terrorist legislation has been applied.

**General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention**

**Please provide detailed information on the relevant new developments in the legal and institutional framework within which human rights are promoted and protected at the national level that have occurred since the previous periodic report, including any relevant jurisprudential decisions.**

205. The main new development has been the adoption of the Law on the National Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Legislative Decree No. 40-2010). Information on other new advances appears throughout the present report.

**Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level that have occurred since the previous periodic report, including on any national human rights plan or programme, and the resources allocated to it, its means, objectives and results.**

206. The Coordination Office for Human Rights has been established within the Public Criminal Defence Institute. The Ministry of the Interior, the Public Prosecution Service and the National Civil Police have human rights units. The General Inspectorate Office of the Police Academy has been set up under Resolution No. 02-2010 issued by the General Directorate of the National Civil Police. It is pointed out that, as in the previous reply, the issues referred to here are discussed throughout the present document.

**Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the previous periodic report in 2006, including the necessary statistical data, as well as on any events that occurred in the State party and are relevant under the Convention.**

207. The Training and Skills Development Unit of the Public Criminal Defence Institute has undertaken various training activities on the topic of torture and ill-treatment. The titles, dates and venues of the workshops and number of participants can be seen in table 37 of the annex.

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