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**Replies from the Government of Guatemala to
the list of issues (CCPR/C/GTM/Q/3) to be taken
up in connection with the consideration of the
second periodic report of Guatemala
(CCPR/C/GTM/3)*, ****

[7 April 2011]

* 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 annex can be consulted in the files of the Secretariat.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–3	3
II. Replies to the list of issues.....	4–199	3
Annex		
Table 1. Judiciary: Statistics on violent deaths of women, cases brought before judicial bodies, 2008–2009		
Table 2. Public Prosecution Service, Office of the Prosecutor for Women’s Affairs Complaints, accusations and sentences, 2005–2008		
Table 3. Public Prosecution Service, Office of the Prosecutor for Women’s Affairs: Complaints, accusations and sentences, 2008–2010		
Table 4. Analysis and Statistics Division, Criminal Investigation Division, National Civil Police: Reported crimes, 2000–2010		
Table 5. Analysis and Statistics Division, Criminal Investigation Division, National Civil Police: Ethnic background of accused persons, 2000–2010		
Table 6. Analysis and Statistics Division, Criminal Investigation Division, National Civil Police: Sex of accused persons, 2000–2010		
Table 7. Judiciary: Courts created and instituted, competence distributed, 2006–2010		
Table 8. Department for the Coordination of Mechanisms to Protect Human Rights Defenders, Presidential Human Rights Commission: Total number of persons protected, by sex, 2008–2010		
Table 9. Department for the Coordination of Mechanisms to Protect Human Rights Defenders Presidential Human Rights Commission: Measures taken, by sex, group or organization, 2008–2010		
Table 10. Department for the Coordination of Mechanisms to Protect Human Rights Defenders, Presidential Human Rights Commission: Number of cases handled, by protection measure, 2008–2010		
Table 11. Ministry of the Interior: Support from the analysis unit regarding patterns in the attacks on human rights defenders, cases 2010		

I. Introduction

1. The Government of Guatemala herewith submits the following replies to the list of issues (CCPR/C/GTM/Q/3) concerning its third periodic report (CCPR/C/GTM/3) to the Human Rights Committee, in accordance with article 40 of the International Covenant on Civil and Political Rights.
2. The preparation of the replies presented here by the Government of Guatemala was a participatory process coordinated by the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights, with various governmental institutions.
3. This participatory process provided an opportunity to assess the situation and engage in dialogue with the main bodies responsible for upholding Covenant rights, by identifying most recent progress made and the challenges and difficulties the State encountered in the promotion and guarantee of human rights in Guatemala.

II. Replies to the list of issues

Replies to question 1

Statistical information system

4. With a view to obtaining, organizing, analysing, processing, updating and supplying official social, economic and demographic statistics as input for socio-economic development activities, a Monitoring and Evaluation Directorate was established under Government Order No. 271-2010, which sets forth the internal regulations of the Planning and Programming Secretariat of the Office of the President, to facilitate the provision of statistics to the Secretariat's in-house teams, as well as other Government agencies and the general public.
5. The Secretariat is currently consolidating the National Planning System,¹ which treats strategic analysis and the generation of information on development as input for decision-making.
6. The Monitoring and Evaluation Directorate is responsible for processing the information used to build up indicators and perform comprehensive analyses to support planning and policymaking and help to optimize social investment and use of resources. It also provides technical advisory services to different public agencies, thus helping to promote and improve statistical record-keeping.

Application of the Covenant by the Guatemalan courts

7. When sentencing, Guatemalan courts take into consideration the domestic legislation in force and the commitments assumed by the State through its ratification of international instruments, a case in point being the sentence handed down in the El Jute case, in which article 9, paragraph 1, of the Covenant is among the factual and legal grounds on which the court based its decision (the main elements of this case are presented in the replies to paragraph 2 of the list of issues).

¹ The National Planning System is written into the Government's Plan for 2008–2012, mainly its solidarity and productivity programmes, the outcome of which will strengthen governance and regional development programmes.

Funds needed to implement the Covenant

8. When submitting the State budget to the Congress of the Republic for approval each year, the aim of the Government of Guatemala is to ensure that resources are distributed in such a way that all the population's needs are addressed.

9. In 2009 the funds allocated from the State budget to the judiciary totalled 897,889,456 quetzales (\$116,609,020).² In 2010 the Congress failed to approve the proposed State budget for that year and, therefore, in accordance with the Budget Act (Legislative Decree 101-97), the budget from the previous year continued to apply. In fiscal year 2011, State budget funds allocated to the judiciary totalled 858,080,535 quetzales (\$111,439,030).

10. In 2009 Government funding of the Office of the Human Rights Advocate totalled 101,359,680 quetzales (\$13,163,594). The allocation did not change in 2010 since the legislature did not approve the State budget for that fiscal year. In 2011, the Office of the Human Rights Advocate was allocated 106,000,000 quetzales (\$13,766,233) under Legislative Decree 54-2010 approving the State budget for fiscal year 2011.

11. The Public Prosecution Service (*Ministerio Público*) was allocated 611,500,000 quetzales (\$79,415,580) by the State for 2009. In 2010 Congress did not approve the State budget, so that the previous year's budget continued to apply. In 2011 the funds allocated to the Public Prosecution Service totalled 593,500,000 quetzales (\$77,077,922).

12. The impact of revenue collection problems on the fluctuation of budget allocations should not be underestimated, since it has a bearing on the availability of resources for State funding of public institutions.

Replies to question 2

Court settlement of cases of serious human rights violations perpetrated during the armed conflict

13. The latest information for 2009–2010 shows that the judiciary has brought about significant achievements in the Guatemalan justice system. First was strengthening of the Supreme Court with the introduction of an electoral process involving the establishment of appointments commissions governed by a new law³ making the process wholly transparent

² The exchange rate used throughout this document is the one in force on Monday, 14 March 2011, namely 7.7 quetzales per dollar. Source: Central Bank of Guatemala.

³ The Constitution of Guatemala sets out how members of the Supreme Court and the Court of Appeals are to be elected. Article 215 of the Constitution states: "The magistrates of the Supreme Court of Justice shall be elected by the Congress of the Republic for a period of five years from a list of twenty-six candidates proposed by a nominating commission composed of a representative of the Rectors of the Universities in the country, who shall preside, the Deans of the Law or Juridical and Social Sciences Departments of each university in the country, an equivalent number of members elected by the General Assembly of the Bar and Notaries Association of Guatemala and by an equal number of representatives elected by the titular judges of the Court of Appeals and other tribunals referred to in article 217 of this Constitution." This aspect of the process had been called into question since it had been carried out in secret, away from public scrutiny. Opinions of the process changed, however, when the Congress passed the Act on Appointments Commissions (Decree 19-2009, published on 3 June 2009 in the official gazette *Diario de Centroamérica* and came into force on 4 June 2009). The new appointments commissions applied criteria covering not only aspects of the candidates' professional qualifications but also their personal integrity. The commissions also reported publicly on their activities and made it easier for civil society organizations and ordinary citizens to file objections to candidacies.

and enabling civil society to participate. The new Supreme Court has handed down three historic sentences involving enforced disappearances (the Cusanero, El Jute and Fernando García cases), which are briefly summarized below.

14. The sentences in the three aforementioned cases were historic in that the respective courts took the following into account during sentencing:

(a) The permanent and continuous nature of the crime of enforced disappearance, which established legal precedents that will facilitate prosecution of other cases;

(b) The fact that the crime of enforced disappearance is a crime against humanity involving considerable cruelty; that the victim is not only the disappeared person but also his or her relatives and friends and society at large;

(c) The right to truth and its importance in preventing a recurrence of those acts;

(d) The application of justice as an incentive in the fight against impunity;

(e) Trampling of cultural and spiritual values when victims were not allowed to be buried in accordance with their families' and communities' religious beliefs and funeral customs;

(f) That proof of the crime of enforced disappearance had been provided; the witness statements were found to have probative value since they were consistent and voluntary;

(g) The importance of historical, scientific and forensic expert reports, as well as historical documents;

(h) The grounds set forth in the Constitution of the Republic of Guatemala, the Judiciary Act, the Criminal Code and the Code of Criminal Procedure;

(i) The following international instruments: the American Convention on Human Rights (Pact of San José, Costa Rica); the International Covenant on Civil and Political Rights; the 1949 Geneva Conventions and the additional protocols thereto; the Universal Declaration of Human Rights; the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity; the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

15. The achievements of the Guatemalan justice system include the following convictions against perpetrators of enforced disappearance.

16. **The Cusanero case:** on 5 April 2010, the Regional Mixed Chamber of the Court of Appeals of Sacatepéquez upheld the conviction of the former military officer Felipe Cusanero, who was sentenced to 150 years' imprisonment for the enforced disappearance of six persons⁴ between 5 November 1982 and 28 October 1984 from the village of Choatalum in the San Martín Jilotepeque municipality of the Department of Chimaltenango. The accused was convicted on 31 August 2009 by the Trial Court of Chimaltenango.

17. **The El Jute case:** the First Criminal Court for Narcotics-Related Offences and Crimes against the Environment of the Department of Chiquimula, in its judgement of 3 December 2009, imposed a non-commutable prison sentence of 43 years on Colonel Marco Antonio Sánchez Samayoa, retired,⁵ for the crime of enforced disappearance, which was

⁴ Lorenzo Ávila, Alejo Culajay, Filomena López, Encarnación López, Santiago Sutuj and Mario Augusto Tay.

⁵ Served as the Commander of the Zacapa military zone between 1 July 1978 and 22 March 1982.

increased by one third (to 53 years and 4 months of deprivation of liberty).⁶ That Court also imposed the same sentence for the same crime⁷ on former military commissioners José Domingo Ríos Martínez, Gabriel Álvarez Ramos and Salomón Maldonado Ríos.⁸

18. **The case of Fernando García:** On 28 October 2010 the Eighth Court of Guatemala City sentenced the former agents of the now defunct national police force, Héctor Ramírez Ríos and Abraham Lancero Gómez,⁹ to 40 years in prison for the enforced disappearance of Edgar Fernando García. This was the first time in Guatemala that documents from the Historical Archive of the disbanded National Police were used as evidence.¹⁰ An audio tape of a statement by Danilo Chinchilla, who was with Edgar Fernando García when he was illegally detained on 18 February 1984, was also admitted.

Reparation for victims as recommended by the Commission for Historical Clarification

19. The National Reparations Programme¹¹ establishes five measures for ensuring full reparation for relatives of victims and survivors of human rights violations, including enforced disappearance. These are: (a) material compensation; (b) monetary compensation; (c) psychosocial reparation and rehabilitation; and (e) restoration of victims' dignity. Reparation measures are applied on the basis of respect for gender equity and cultural affiliation in accordance with the characteristics and needs of the individual and the community.¹²

20. The offices set up in selected geographically and politically strategic locations pursue the National Reparations Programme's institutional aim to make full reparation to persons affected by the internal armed conflict. The Programme currently has 15 regional head offices in the following municipalities: Barillas (Huehuetenango), Chimaltenango, Cobán (Alta Verapaz), Guatemala, Huehuetenango, Ixcán (Quiché), Mazatenango (Suchitepéquez), Nebaj (Quiché), Nentón (Huehuetenango), Petén, Quiché, Rabinal (Baja Verapaz), San Marcos, Sololá and Zacapa.

⁶ Marco Antonio Sánchez Samayoa is serving a sentence for the crime that receives the highest penalty, in this case 40 years' non-commutable imprisonment for the crime of enforced disappearance, increased by one third, bringing the total sentence to 53 years and 4 months.

⁷ Enforced disappearances and crimes against humanity perpetrated against: Jacobo Crisóstomo Chegüen, Miguel Ángel Chegüen Crisóstomo, Raúl Chegüen, Inocente Gallardo, Antolin Gallardo Rivera, Valentín Gallardo Rivera, Santiago Gallardo Rivera and Tránsito Rivera.

⁸ These officers were engaged in surveillance of civilians. They reported suspicious activities during the internal armed conflict to the military authorities and participated in repressive action.

⁹ Two other former members of the national police force, Alfonso Guillermo de León and Hugo Rolando Gómez Osorio, currently fugitives from Guatemalan justice, are accused of the same offence.

¹⁰ The Historical Archive of the National Police, discovered in July 2005, contains about 80 million documents, many from the period of the internal armed conflict. The files reveal the organization of the disbanded National Police and its joint operations with the intelligence services of the Guatemalan Army, as well as with military units, in the framework of the counter-insurgency policy. The Archive is currently deposited with the General Archive of Central America.

¹¹ Created to comply with the recommendations of the Commission for Historical Clarification.

¹² In its recommendations, the Commission for Historical Clarification said that truth, justice, reparation and forgiveness are the pillars of peacebuilding and national reconciliation. It stressed that it is for the Guatemalan Government to develop and implement a policy of reparation to victims and their relatives. The main objectives of the policy must be to restore the dignity of victims, guarantee that the human rights abuses and violence associated with the armed conflict never recur and ensure respect for national and international human rights law.

21. The following violations give rise to reparation under the Programme: enforced disappearance, extrajudicial execution, physical and psychological torture, forced displacement, forced recruitment of minors, sexual violence, child rape, and massacres.
22. The Programme's Legal Affairs Directorate has given legal support to relatives of victims of enforced disappearances in the form of assistance with pre- and post-exhumation procedures. The legal team has also advised on the creation and registration of victims associations.
23. The Programme has approached the prosecutors of the Public Prosecution Service and personnel of the Attorney General's Office (*Procuraduría General de la Nación*) to establish special prosecution units to handle the cases of enforced disappearances during the internal armed conflict.
24. On 7 July 2010, members of the Crime Policy Unit, the Office of the Prosecutor for Human Rights of the Public Prosecution Service, and the Presidential Human Rights Commission met at the Public Prosecution Service to establish mechanisms for processing the 2,783 complaints of enforced disappearances that the United Nations Working Group on Enforced or Involuntary Disappearances had referred to the Commission in 2009.
25. At the meeting, information was also requested on the status of the investigations into each of the 2,783 cases that the Commission had transferred to the Public Prosecution Service. The Commission was told that the Service had opened investigations into 86 of the complaints.
26. According to the information from the Public Prosecution Service to the Commission, the 2,783 complaints had been classified by region in order to expedite the investigations, especially those of cases not registered with the Public Prosecution Service. The latter told the Commission that it would be starting the process by registering the complaints through its Administrative Affairs Office.
27. The Commission, for its part, informed the Public Prosecution Service that it had translated the 2,783 complaints it had received from the Working Group on Enforced or Involuntary Disappearances from English into Spanish and that it had classified the complaints by department and prepared an annex comprising a list of cases in which the location of the disappearance was unknown.
28. Progress was also achieved in the investigation of enforced disappearances with the presentation to the Public Prosecution Service of 3,385 case files of human rights violations and crimes against humanity committed against 5,908 victims of the internal armed conflict¹³ by the National Reparations Commission, comprising 13 members, 6 of them permanent high-ranking government officials (in accordance with Government Order No. 258-2003¹⁴ and Government Order No.188-2004,¹⁵ article 4).

¹³ Presentation made to mark the tenth anniversary of the delivery of the report of the Commission for Historical Clarification. Of those case files, 1,557 involve enforced disappearances.

¹⁴ Agreement on the establishment of the National Reparations Programme, issued on 7 May 2003.

¹⁵ Amendment to Government Order No. 258-2003, issued on 6 July 2004.

Progress towards the adoption of the bill on the National Reparations Programme and the bill on the National Commission on the Search for Victims of Enforced and Other Forms of Disappearance and towards ratification of the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute of the International Criminal Court

29. The National Council for Compliance with the Peace Accords conducted a comparative analysis of the various government orders on the National Reparations Programme and agreed to establish a technical committee¹⁶ to formulate recommendations on a bill before Congress.

30. On the basis of the report of the technical committee, presented by the National Council for Compliance with the Peace Accords to the legislature, the Congressional Committee on Peace and Demining decided to seek support for the establishment of a second technical committee to review and evaluate the Council's proposal. The National Reparations Programme bill is currently before the Congressional Committee pending approval.¹⁷

31. According to the legislative proposals register kept by the Legislation Directorate of the Congress of the Republic, the full legislative Assembly heard bill No. 3590 (on the National Commission on the Search for Victims of Enforced and Other Forms of Disappearance) on 18 January 2007 and referred it to the Congressional Committee on Constitutional Legislation and the Congressional Committee on Public Finance and Currency.

32. On 29 August 2007 Bill No. 3590 was approved by the Committee on Public Finance and Currency. It has yet to be approved by the Committee on Constitutional Legislation.

33. The Presidential Human Rights Commission continues to support the aspirations and efforts of victims and human rights organizations for the creation of the National Commission to Search for Victims of Enforced and Other Forms of Disappearance. In September 2010 the Committee on Constitutional Legislation issued a draft opinion, which it submitted to civil society organizations for comment. A discussion forum on the matter was set up in November of that year.

Strengthening the National Reparations Programme

34. To ensure that full reparations are made to the victims of the internal armed conflict, the National Reparations Programme has carried out a number of internal reforms under the present Government.¹⁸ With a view to improving reparation procedures and support and legal advice for relatives of victims of enforced disappearances, the Programme has worked

¹⁶ Senior representatives of a wide range of institutions sat on the committee, which received support from the National Reparations Programme, the Presidential Human Rights Commission, the Congressional Committee on Peace and Demining, the Congressional Committee for Indigenous Communities and Human Rights, the Public Prosecution Service, the Office of the Human Rights Advocate, the United Nations Development Programme (UNDP) and the International Committee of the Red Cross (ICRC), and from organizations, individuals and experts.

¹⁷ See www.gtcit.com/publicaciond.php?PublicacionId=3362&lang=es. (Spanish only.)

¹⁸ The main achievements so far include improved contracting and monitoring of the specialized agencies that provide support services for the reparations process, such as exhumation and psychological counselling. Administrative resources have also been provided for the creation of posts, among them the exhumations unit, and for lawyers and psychologists to be available at all head offices.

with several civil society organizations on coordination of case files on enforced disappearances to determine whether applicants are eligible for financial compensation.

35. Manuals, rules and procedural guidelines have been published, including rules for governing beneficiaries of the National Reparations Programme, which lay down the qualification criteria and procedures for individual and collective Programme beneficiaries.

36. The National Reparations Programme has been allocated a budget of 300 million quetzales (\$38,860,103.62) to meet its reparation and compensation commitments.

Measures for recognizing the permanent nature of enforced disappearances in all jurisdictions

37. The subject of enforced disappearances is covered in the Manual on human rights and international humanitarian law, prepared by the Ministry of Defence for the Guatemalan Army and published in 2008. The training on national legislation and human rights given to military personnel by the Ministry of Defence stresses that enforced disappearance is an offence under the Criminal Code (Decree No. 17-73) and that it is for the Public Prosecution Service to prosecute all perpetrators of such disappearances.

38. In point of fact, the State withdrew military jurisdiction over such matters with the repeal of article 546 of the Code of Criminal Procedure by article 3 of Decree No. 41-96. Article 2 of this decree states that, in the case of ordinary offences or crimes and similar acts committed by military personnel, the perpetrators shall be judged by the ordinary courts referred to in the Judiciary Act.¹⁹

39. The permanent nature of the crime of enforced disappearance was taken into account in the Cusanero, El Jute and Fernando García cases mentioned above. Article 201 ter of the Criminal Code (on enforced disappearances) states "... the crime is considered ongoing for as long as the victim is not released".

Replies to question 3

Violence against women, justice and sentences

40. Support centres for women survivors of violence have been created and will be promoted by the National Coordination Office for the Prevention of Domestic Violence and Violence against Women (CONAPREVI), which will also support, advise and monitor the specialized women's organizations that will run the centres. Five support centres have been set up so far, in Guatemala, Quetzaltenango, Escuintla, Suchitepéquez and Baja Verapaz

¹⁹ Initially, the Military Code (Decree No. 214-1878 of the War Secretariat) provided that the establishment of military jurisdiction meant the establishment of military courts with competence to judge cases of both ordinary and strictly military crimes committed by soldiers. Subsequently, article 546 of the Code of Criminal Procedure amending the Military Code created the Court of Inquiry of First Instance to hear cases involving ordinary crimes and offences. The Court of Inquiry was in operation until the enactment of Decree No. 41-96, which annulled the aforementioned article 546, establishing that the military jurisdiction covered solely military crimes and offences and that, ordinary crimes and offences or similar acts committed by members of the military fell under the Code of Criminal Procedure and that the perpetrators must be judged by the ordinary courts referred to in the Judiciary Act. The Court of Inquiry operated for only 13 months and, when it ceased to operate, all the cases it was handling were referred to the Supreme Court, which distributed them among the ordinary courts of first instance. As a result of these reforms, the military courts today handle only purely military offences, such as desertion, abuse of authority, insulting a senior officer, poor administration of army assets, theft of military property, insubordination, etc.

(Rabinal). The aforementioned Femicide Act advocates the creation of prosecution units specializing in crimes against women's right to life and physical integrity. This initiative is currently being pursued within the Public Prosecution Service.

41. CONAPREVI, aware of the impact that inadequate access to justice has on women, is monitoring implementation of the National Plan for the Prevention and Eradication of Domestic Violence and Violence against Women (PLANOVI 2004–2014) and coordinates its action with various agencies.

42. The Act has been complemented by the adoption of the Enactment Protocol to the Act on Femicide and Other Forms of Violence against Women.²⁰ Male and female judges, magistrates and personnel from various institutions in the justice system participated in the drafting of the Protocol.

43. Legal assistance is provided by the Public Criminal Defence Institute. In addition, the post of presidential commissioner on femicide has been established for a woman.

44. Tables 1, 2 and 3 of the annex provide statistics relating to the Act on Femicide and Other Forms of Violence against Women.

Training for public officials on women's rights and laws on violence against women

45. CONAPREVI has organized training within the framework of PLANOVI 2004–2012 for people working in the justice sector, as well as other national stakeholders.

46. With the modernization of the judiciary, training in women's human rights became an integral component of its staff training and continuous career development policy.

47. The judiciary's School of Legal Studies mainstreams the gender perspective and women's human rights as cross-cutting subjects in all its training programmes. To ensure that this approach is closely followed, its work is coordinated with the judiciary's Women's Affairs and Gender Analysis Unit.

48. Under the inter-agency cooperation agreement between CONAPREVI and the judiciary, a diploma course entitled "Update and specialization in femicide and other forms of violence against women within the framework of human rights" was offered to justice administrators. The course was delivered partly through distance learning.

49. The Presidential Secretariat for Women, as the agency responsible for advising on and coordinating public policies for women, coordinates, in keeping with the national policy for the advancement and comprehensive development of women, policy line 1 of elimination of violence against women. Accordingly, it creates, promotes and develops training programmes for women and adolescent girls on the right to a life free from violence. The Presidential Secretariat for Women also runs programmes to raise awareness of international women's human rights instruments, the Act on Femicide and Other Forms of Violence against Women and the Act on the Prevention, Punishment and Eradication of Domestic Violence.

50. The Presidential Human Rights Committee's training products include a module on Women's human rights – right to a life free from violence. Training products focusing on that right have also been designed and delivered.

²⁰ The gist of the Act is, in accordance with its stated purpose and aims, to guarantee the life, liberty, integrity, dignity, protection and equality of all women before the law, particularly when, because of their gender and through relationships of power or trust in the public and private domains, women's rights are ignored and they are subjected to discrimination, aggression or physical, psychological or economic violence.

51. In 2009–2010, the following training activities were carried out:

(a) A diploma course entitled “Women: full citizenship and rights, with emphasis on sexual and reproductive health” was offered in Jutiapa to staff of the Presidential Secretariat for Women, municipal women’s affairs offices, the national civil police, the Office of the Human Rights Advocate, the departmental government, the Ministry of Public Health and Welfare, female members of the Departmental Development Council and well-established and emerging women leaders;

(b) A diploma course in Petén on women’s human rights and public administration, women’s health as a human right for staff of the Ministry of Public Health and Welfare;

(c) Methodology and arrangements for delivery of the first module of the political training programme for women leaders in Zacapa and El Progreso, to staff of the Presidential Secretariat for Women and members of the National Women’s Forum;

(d) Methodology and arrangements for the series of workshops on human rights and the prevention of violence against women and girls for media personnel in the departments of Alta Verapaz, Chiquimula, Izabal, Totonicapán, Chimaltenango and Escuintla.

52. The diploma courses given by the Presidential Human Rights Commission include modules on gender issues, and a manual on mainstreaming human rights with equity has been published. Also, information booklets, Government reports and the conventions that Guatemala has ratified have been made available to the public.

Replies to question 4

Abortion legislation

53. The legislation criminalizing abortion in Guatemala has not been amended. CONAPREVI signed agreements with other agencies, such as the Memorandum of Understanding with the Ministry of Public Health and Welfare,²¹ to strengthen the implementation of PLANNOVI 2004–2014. As a result of these agreements and this coordination of efforts, a protocol for the treatment of victims and survivors of sexual violence was drawn up in less than a year.

54. CONAPREVI, together with the Ministry of Public Health and Welfare and other public and private agencies, completed the drafting of the protocol in 2009, and it is now applied in appropriate cases.

55. The Congress of the Republic enacted Decree No. 87-2005, Act on Universal and Equitable Access to Family Planning Services and their Integration in the Reproductive Health Programme, which contains provisions to ensure access to family planning services through the provision of information, counselling and education on sexual and reproductive health, as well as the provision of contraceptives.

56. In October 2009, the implementing regulations of the Act on Universal and Equitable Access to Family Planning Services and their Integration in the Reproductive Health Programme were enacted through Government Order No. 279-2009. These regulations include provisions on the dissemination of relevant information on the subject, starting in the formal education system.

²¹ Signed on 3 July 2008.

57. The Congressional Commission on Women asked the Ministry of Education to comply with the implementing regulations of Congressional Decree No. 87-2005, the Act on Universal and Equitable Access to Family Planning Services, whose purpose is to reduce maternal mortality rates and prevent unwanted pregnancies and, therefore, unsafe abortions.

58. In 2010, the Presidential Secretariat for Women issued national guidelines for family planning (including a family planning guide), as part of the family planning and contraceptives component of the National Reproductive Health Programme. The Secretariat held six training workshops on the subject to familiarize health service providers with the correct use of family planning methods, as well as logistics and counselling.

59. The Secretariat works with traditional midwives and has developed a set of tools for obtaining information on each health district. It has held workshops for 781 health service providers in 17 districts on use of the methodological guidelines to improve midwives' competence in family planning. It has also distributed educational material in 20 districts (the aforementioned guidelines and the Act on Universal and Equitable Access to Family Planning Services).

60. Meetings have been held with different sectors (the education sector, local government, health authorities, municipalities, civil society) in nine of the country's departments to disseminate the Act on Social Development and Population Development Policy, and the Act on Universal and Equitable Access to Family Planning Services and monitor their enforcement. Police and prison officers have also been involved in training and sensitization programmes.

Replies to question 5

Measures to guarantee that women working in the maquila industry enjoy equal rights

61. A tripartite committee (Ministry of Labour, Congressional Committee on Women, and sector representatives)²² was established to agree on the reforms to the Labour Code (Legislative Decree No. 14-41) proposed in bill No. 4075.

62. The reforms aim to: regulate agricultural work, with emphasis on equality between men and women; regulate work in the maquila industry; amend articles on maternity and breastfeeding; and add articles on domestic work, in keeping with bill No. 4075 submitted to Congress at its plenary session on 18 August 2009.²³

63. Congress referred the bill to the Congressional Commissions on Women and Labour for their review and opinion. The Committee on Women has already issued its opinion on the bill.

²² The Presidential Human Rights Commission sits on the Legislative Board for Women's Affairs convened by the National Office for Women, attached to the Ministry of Labour. The Board comprises representatives of Government agencies and civil society organizations.

²³ The study by the International Labour Organization (ILO) entitled *Enhebrando el hilo: mujeres trabajadoras de la maquila en América Central. Contexto económico y social del empleo en la maquila textil y de vestuario* highlights the problems and needs of female maquila workers in the clothing and textile industry in Central America.

64. On 28 December 2010, Álvaro Colom Caballeros, President of Guatemala, announced an increase in the minimum wage for 2011.²⁴

Replies to question 6

Measures to bring the Public Order Act into line with article 4 of the Covenant

65. No measures have thus far been taken to bring the Public Order Act into line with the Covenant.

Measures to guarantee the compatibility of states of emergency with the provisions of the Covenant

66. National civil police officers go through a basic training course at the police training academy including training on the laws and statutes covered by the Constitution. With this training the Ministry of the Interior seeks to ensure that those laws and statutes are upheld and enforced during states of emergency.

67. As the human rights section of the national civil police has indicated, the police as an institution is responsible for maintaining order and protecting public safety and, accordingly, endeavours to ensure that its officers are properly trained. Each cadet in the national civil police receives academic training, including in the law, and efforts are made to sensitize trainees to prevent them from mistreating citizens or perpetrating violations and/or abuses against them, regardless of the circumstances they face.

Replies to question 7

Status of the ratification process for the Second Optional Protocol to the Covenant

68. According to information provided by the Treaties Department of the Ministry of Foreign Affairs, the formal procedure has been initiated.

Judgements of the Inter-American Court of Human Rights on the Raxcacó Reyes and Fermín Ramírez cases

69. On 20 June 2005, the Inter-American Court of Human Rights issued its judgement in the *Fermín Ramírez v. Guatemala* case. On 15 September 2005, the same court issued its judgement in the *Raxcacó Reyes v. Guatemala* case. In the wake of these judgements, the Presidential Human Rights Commission drew up a bill to amend articles 131 (Parricide) and 132 (Murder), 132 bis (Extrajudicial executions), 210 (Abduction or kidnapping) and 201 ter (Enforced disappearances) of the Criminal Code, and article 52 of the Anti-Narcotics Act, with a view to eliminating the death penalty for these offences.

70. The bill was submitted to the General Secretariat on 20 August 2007 but, as set forth in Opinion No. 596-2007 of 28 September 2007, it was decided that it should not be submitted for consideration by Congress.

²⁴ The increase for the agricultural and non-agricultural sectors is 13.75 per cent and for the maquila sector 14.88 per cent. Rural and urban minimum wages will thus rise from 56 to 63.7 quetzales a day, which corresponds to a monthly minimum wage of 2,161 quetzales, including a bonus of 250 quetzales. The minimum wage in the maquila sector will rise from 51.75 to 59.45 quetzales, giving workers in the sector a monthly income of 2,033.50 quetzales.

71. In 2008, another bill was drawn up to amend the same articles in order to commute the sentences of all those facing the death penalty to the maximum prison term.

72. Opinions were sought from the Attorney-General's Office, the Public Criminal Defence Institute and the judiciary. The bill was submitted to the General Secretariat on 8 December 2008 and, on the basis of Opinion No. 088/2009/sjml of 12 March 2009, it was not submitted for consideration by Congress.

73. The President of the Republic vetoed the pardons bill and on 14 January 2011 submitted a bill to Congress to abolish the death penalty.

74. Bill No. 4327 is presented as: amendments to Decree No. 17-73 of the Congress of the Republic, the Criminal Code and its amendments Congressional Decree No. 51-92, the Code of Criminal Procedure and its amendments, and Congressional Decree No. 48-92, Anti-Narcotics Act and its amendments.

75. The preamble to the bill states that "the United Nations and several States have considered suspending executions, with a view to abolishing the death penalty completely in the interests of human dignity, and gradually improving the human rights situation by strengthening the justice system through the imposition of more severe penalties on offenders. To this end, the laws that impose the death penalty need to be amended."

76. On 26 August 2010, the Presidential Human Rights Commission visited the detention centre where Mr. Fermín Ramírez is being held (Sector 11 of the Zone 18 Preventive Detention Centre) to assess the food, education, work, health, family and exercise conditions.

Replies to question 8

Assessing the performance of members of the security forces (National Civil Police) and holding them to account

77. The National Civil Police authorities use a variety of indicators and monitoring and oversight measures to assess the performance of their staff and have punished disciplinary offences with administrative sanctions ranging from minor to severe in proportion to the seriousness of the offence and based on the Internal Disciplinary Regulations (420-2003).

78. Penalties depend on the circumstances of an act and whether or not it constitutes a crime. If it does, the case is brought before the relevant authorities, and the administrative penalty of separation and dismissal from the National Civil Police is imposed. In January 2010, a police reform commission, headed by Ms. Helen Mack, was established with a view to restoring dignity to service in the National Civil Police personnel.

79. The work of the Inspectorate-General and Human Rights Section of the National Civil Police is also worthy of note.

Human rights training for security forces

80. Education, training and awareness-raising activities by the Human Rights Section of the National Civil Police cover the following: human rights of displaced persons and migrants; the offence of torture under article 201 bis of the Criminal Code, emphasizing the fact that this carries a penalty of 25 to 30 years' imprisonment; and the offence of discrimination, as defined in article 202 bis of the Criminal Code.

81. The National Civil Police has also distributed a manual on torture, drafted by the Institute of Comparative Studies in Criminal Sciences, to its staff across the country. The Presidential Human Rights Commission has implemented educational, informational and awareness-raising measures for National Civil Police officers and prison staff.

82. The following activities were carried out in 2009: methodological and pedagogical support for the human rights course offered by the Police Academy to the 2009 graduating class and for the course taught by the Prison Studies School to its tenth graduating class, consisting of students from the School and staff of the Ministry of the Interior.

83. The following activities were carried out in 2010: a five-module human rights course for National Civil Police officers of the 43rd precinct in Huehuetenango; methodological and pedagogical support for the human rights course given by the Police Academy to graduating classes 25 and 26; by the Prison Studies School; and by the prison system for internal career development.

84. The Presidential Human Rights Commission has worked at a very high level to institutionalize the progress made on training and education courses. It has supported the Police Academy's curriculum reform by setting up the Curriculum Reform Committee and instituted diplomas for human rights instructors.

85. In conjunction with the Prison Studies School, the Presidential Human Rights Commission signed an agreement with the Directorate-General of Prisons to advise it on mainstreaming human rights in institutional management. It also designed the basic curriculum of the human rights course for aspiring prison guards. The Education Oversight Office of the Ministry of Education, through resolution No. 73-2009 of 26 January 2009, also approved the inclusion of a mandatory human rights module in the adult secondary education diploma course for prison guards.

Replies to question 9

Measures taken to ensure that the armed forces are answerable to the civilian authorities during joint patrols

86. Article 1 of the Civil Security Forces Support Act (Decree No. 40-2000) stipulates that the civil security forces, when working to prevent and combat organized and minor crimes, may be supported by the appropriate units of the Guatemalan armed forces when the country's security so dictates or when normal civil security resources are deemed insufficient.

87. The National Civil Police Act (Decree No. 11-97), establishing the National Civil Police, stipulates that public security is an essential service over which the State has exclusive jurisdiction. The President of the Republic, through the Ministry of the Interior, is commander-in-chief of the National Civil Police, while the operational side falls to the Director-General under the Ministry's direct and exclusive authority.

88. The National Civil Police is responsible for public security. Ministry of Defence personnel merely provide support or reinforcements and intervene only in the event of an imminent threat to the lives of citizens, their own lives or those of National Civil Police officers.

89. The Presidential Human Rights Commission has addressed the topic in training activities, such as the first and second phases of the accreditation programme for human rights instructors, carried out in September to December 2009 and 2010, with the support of San Carlos University in Guatemala City, for staff of the Ministry of the Interior, the National Civil Police, the Police Academy, the Prison Studies School, the Ministry of Public Health and Welfare and the Commission.

Enforcement of human rights during joint patrols

90. The Ministry of Defence said that military personnel who participate in such operations have been trained in domestic law and human rights.

91. The Human Rights Section of the National Civil Police stressed that the latter was responsible for public security and that Ministry of Defence personnel played only a supporting and back-up role.

Duration of joint patrols

92. Under article 4 of the Civil Security Forces Support Act (Decree No. 40-2000), special assistance and cooperation include, but are not limited to, monitoring and combating the production, manufacture, use, possession, trafficking and sale of narcotics, psychotropic substances and other illicitly trafficked drugs.

93. The Minister of the Interior, Carlos Menocal, has stated that Guatemala needs no fewer than 60,000 National Civil Police officers in order to meet public security needs.

94. Police officers number a mere 24,522, in other words 1 officer per 750 inhabitants, while the international standard is 1 per 350.

95. For his part, the President of the Republic has said that joint patrols supported the fight against organized crime and drug trafficking.

Complaints of human rights violations by joint patrols

96. Neither the Ministry of Defence nor the Human Rights Section of the National Civil Police has received official notification of complaints against military or police officers for human rights violations during joint patrols.

97. The Ministry of the Interior denies all knowledge of any such complaints, as does the Public Prosecution Service.

Replies to question 10

Steps taken to ensure respect for human rights in the context of military action in new military outposts and areas of considerable social unrest

98. In November 2009, the Ministry of Defence recorded nearly 100 requests for new military outposts in violent areas. Mayors, individuals and neighbourhood associations from the department of Guatemala City submitted 50 requests for military patrols in the settlements of Mixco, Villa Nueva and zone 18 of the capital and the central zone.

99. In April 2009, the Ministry of Defence expected new military outposts to be established in the departments of Izabal, San Marcos and Quiché. A further 2,000 soldiers would join the security brigades, which would be located in San Marcos and also operate in the departments of Quetzaltenango, Alta Verapaz, Baja Verapaz and Izabal and in Playa Grande in the department of Quiché. One of the arguments for these measures was the need to boost action to fight organized crime.

100. During a tour of the department of Petén in July 2010, the President of the Republic announced the establishment of six military outposts in strategic locations of the Maya Biosphere Reserve.

101. The Ministry of National Defence pointed out that training of military personnel in domestic law, human rights, international humanitarian law and interpersonal relations was one of the measures adopted to ensure respect for human rights in the new military outposts.

Replies to question 11

Legal framework for private security companies

102. Private security companies in Guatemala are regulated by Decree No. 52-2010 (Private Security Services Act) which stipulates contracting requirements, the obligation of companies to pay labour benefits, and the revocation of a company's operating licence, among other administrative penalties.

103. Article 3 of the Act, which sets out the legal framework, states that: "Individuals and moral persons who provide private security services shall be governed by the Constitution of the Republic of Guatemala, human rights treaties in force in the country and the provisions of this Act."

104. The Directorate-General of Private Security Services was established under the Ministry of the Interior for effective monitoring of private security services. Article 4, paragraph 2, of the Private Security Services Act stipulates that: "Individuals and private entities that provide investigation, protection or security services for persons or privately or publicly owned goods and services shall be subject to active monitoring by the Directorate-General, in conjunction with the National Civil Police, and shall cooperate and provide information which may help to prevent crimes."

Status of proposed legislation on security and justice (bills on private security companies and preliminary proceedings for judicial misconduct, and amendments to the Act on Arms and Ammunition and to the Amparo, Habeas Corpus and Constitutionality Act)

105. In November 2010, more than seven years after the first bill on private security companies was submitted, the requisite number of approvals was reached in the legislature to adopt Decree No. 52-2010. The international community, the International Commission against Impunity in Guatemala, and civil society were instrumental in the lead-up to the adoption of the Decree.

106. The draft bill on preliminary proceedings for judicial misconduct has been sanctioned by the Congressional Committee on Constitutional Legislation and taking into account bills No. 3778 and 3943. Inclusion of the bill on the agenda of the legislature is pending.

107. Regarding amendments to laws on the bearing and use of firearms, Congress has promulgated the Act on Arms and Ammunition (Decree No. 15-2009). The process that led to its adoption was largely spurred by civil society, which had identified legislative weaknesses on the possession and use of firearms as a contributing factor to increased violence and acts leading to violent death.

108. Bill No. 3319, concerning the Amparo, Habeas Corpus and Constitutionality Act (amending Decree No. 1-86 of the Constituent National Assembly), as formulated by the Supreme Court of Justice and presented to Congress in August 2005, was sanctioned by the following legislative entities: the Special Committees for Amendments to the Justice Sector; and for Constitutional Legislation. Plenary debate in Congress is pending.

Replies to question 12

Amendments to General Order No. 11-99 establishing local security committees

109. The Deputy Minister for Community Support and the National Civil Police have collaborated with organizations and other stakeholders in the security field on the proposal

to restructure General Order No. 11-99, to standardize criteria and align it with domestic law and the International Covenant on Civil and Political Rights.

Steps taken to prevent and punish violations of the Covenant by neighbourhood patrol groups

110. The Ministry of the Interior endeavours to prevent inappropriate acts by neighbourhood groups carrying out patrols. It promotes dialogue with them in order to enhance communication and coordination between the National Civil Police and residents and to implement mechanisms and measures to deter human rights violations. It must be noted, however, that the relevant authorities believe that illegal armed groups must be punished.

111. Measures adopted by the Ministry of the Interior include awareness-raising and training for community organizations and National Civil Police personnel on public security, community organization and the role of local security committees. One of its goals is the prevention of lynching and other unlawful acts.

Replies to question 13

Comment on the improper functioning of the Educational Subprogramme for the Prevention of Lynching

112. On 6 April 2005, the Office of the President of the Judiciary signed the Inter-agency Cooperation Agreement for the Development of Educational Measures to Prevent Violations of the Rule of Law, which makes particular mention of lynching.²⁵

113. Subsequent to the Agreement, the following topics were discussed: local security committees in the department of Sololá; the course given to the National Civil Police in the department of Quetzaltenango, covering alternative methods of conflict resolution; community organization; and the prevention of lynching.

114. The following bodies participated in the fourth meeting of the National Commission in Support of the Educational Subprogramme for the Prevention of Lynching: the police academy, the Multiculturalism and Crime Prevention Units of the National Civil Police, the Guatemala Institute of Comparative Studies in Criminal Sciences, the Presidential Human Rights Commission, the Coordinating Authority for the Modernization of the Justice Sector, the office of the United Nations High Commissioner for Human Rights in Guatemala, and the judiciary.

115. The judiciary developed two training courses on prevention of lynching, designed for community leaders and municipal justices of the peace of the department of Sololá.

116. At the fifth working meeting of the National Commission in Support of the Educational Subprogramme for the Prevention of Lynching, the working method and the plan and methodology for journalist training in the department of Quiché were revised. The judiciary was the best represented and most prominent driving force behind the work of the National Commission.

117. The department of social communication of the Office for the Coordination of the Education Programmes of the Judiciary stressed that another function of the National

²⁵ The institutions party to the Agreement are: the judiciary, the Ministry of the Interior, the Public Criminal Defence Institute, the Ministry of Education, the Human Rights Advocate, the Presidential Human Rights Commission, and the Peace Secretariat.

Commission was to collaborate on awareness-raising campaigns via the media, and design educational materials for various population groups.

118. Pursuant to article 2, paragraph 2, of the International Covenant on Civil and Political Rights, the National Commission proposed a bill to amend the Criminal Code in order to criminalize lynching. The proposal is currently before the Supreme Court of Justice for review and examination.

Replies to question 14

Definition of the offence of torture and cruel, inhuman or degrading treatment

119. Article 201 bis of the Criminal Code (supplemented by article 1 of Decree No. 48-95, as amended by article 1 of Decree No. 58-95) states that:

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

Access to complaints mechanisms

120. Persons concerned may have recourse to the police, judicial authorities and the Public Prosecution Service. Information provided by the Special Criminal Investigation Division of the National Civil Police on complaints for acts of torture and ill-treatment allegedly committed by law enforcement officers is summarized in table 4 (see Annex). Tables 5 and 6 (see Annex) highlight the gender and ethnic origin of the complainants.

Replies to question 15

Steps taken to improve detention conditions

121. On the basis of international commitments and the importance of human rights in a prison context, the Directorate-General of Prisons, in compliance with the provisions of Decree No. 33-2006 (Prisons Act), began executing its mandate by putting in place a smart system that included the effective and efficient use of resources, state-of-the-art information and communication management technology, monitoring procedures, and adaptation to needs.

122. The Directorate-General, with the support of the National Commission for Comprehensive Health, Education and Labour, was allotted additional resources for the social rehabilitation of persons deprived of their liberty and is working on areas of priority action, such as mental health and individuals living with HIV/AIDS.

123. In the field of education, the Directorate-General runs an ongoing literacy programme for persons deprived of their liberty, and also provides technical training with the support of the Technical Training Institute.

124. As stated in the report submitted in March 2011, overcrowding has decreased in prisons. Progress has been made on the health of the prison population and the zone 18 prison is equipped with a clinic.

125. The ambit of the Office of the Under-Secretary for the Reintegration and Social Rehabilitation of Adolescents in Conflict with the Law, under the Social Welfare Secretariat of the Office of the President,²⁶ is to carry out all actions pertaining to the execution of penalties handed to adolescents in conflict with the law.

126. The Social Welfare Secretariat provides training in centres of deprivation of liberty, with a focus on the human rights of adolescents and youths deprived of their liberty and on literacy, computer, English and other classes which give them opportunities for personal development and reintegration into their families and communities. Moreover, the Secretariat advocates for separation from adult inmates.

127. The structure of the Office of the Under-Secretary for the Reintegration and Social Rehabilitation of Adolescents in Conflict with the Law includes: the Directorate for the Programme on Deprivation of Liberty, the Directorate for the Socio-Educational Penalties Programme, and the Security Directorate.

128. The Directorate for the Programme on Deprivation of Liberty is responsible for the special detention centres which function as an integrated programme with the objective of providing comprehensive care for adolescents in conflict with the law who are serving a custodial sentence. Integration and reintegration of the residents into their social, family and work environment is promoted through education plans, values training, psychological support and pre-work and occupational training.

129. Programme participants are: the Juvenile Centre for Provisional Detention, known as "Gaviotas"; the Juvenile Centre for Boys (Stage II); the Juvenile Centre for Female Prisoners, known as "Gorriones"; and the Juvenile Centre for Boys II (Annex). The objective of the Training Centre for Adolescents in Conflict with the Law is to contribute to training adolescents while they serve their sentence, through work opportunities related to their existing training and education. It is one of the most effective programmes aimed at this group and currently benefits 115 adolescents.

The right to humane treatment of persons deprived of their liberty

130. The Directorate-General of Prisons, regulates the right of persons deprived of their liberty to regular, timely and free medical check-ups. Pretrial detention centres and prisons offer general medical, dental, psychological and psychiatric services, with all attendant staff and equipment.

131. Detention centres also have administrative staff responsible for managing medical emergencies which require the transportation of an inmate to a specialized facility.

132. The Public Criminal Defence Institute, through its Enforcement, Gender and Multiculturalism Units, conducts a range of actions to ensure proper treatment of persons deprived of their liberty. The First and Second Enforcement Courts received 61 requests in 2010 regarding access to health by prison inmates.

²⁶ The Social Welfare Secretariat of the Office of the President is a State administrative body, answerable to the executive branch, and responsible for formulating, coordinating and implementing the policies for the comprehensive protection of children and adolescents. Its role is to coordinate the actions rolled out by the National Commission on Children and Adolescents, as well as spurring and implementing all actions for the social welfare of families and most vulnerable groups, without discrimination.

133. Concerning access to education and work programmes in centres of deprivation of liberty, on 17 November 2010 the Enforcement Unit of the Public Criminal Defence Institute requested the prison system, specifically its Subdirectorate of Rehabilitation, to approve and disseminate the prison labour handbook.

134. Regarding the right to be informed of the progression of the judicial process during both the trial phase and the enforcement and serving of a sentence, the men's pretrial detention centre in zone 18 of the capital has made a space available where public defenders of the Public Criminal Defence Institute and private defence lawyers can conduct visits with persons in pretrial detention and inmates serving their sentences.

135. Individuals in pretrial detention or serving their sentence receive assistance in their mother tongue through the Multiculturalism Unit of the Public Criminal Defence Institute.

136. As to right of the children of female detainees to an identity and a name, the Directorate-General of Prisons, in response to efforts by the Gender Coordination Unit of the Public Criminal Defence Institute, signed an agreement whereby staff of the National Registry Office would register the children of female detainees in the detention centres in Santa Teresa, zone 18 and the Women's Training Centre. As a result, 11 children were registered at Santa Teresa prison and 5 at the Women's Training Centre in Fraijanes.

137. Concerning access by persons serving custodial sentences to the benefits provided under the Prisons Act, in 2010, 510 applications were brought before the First and Second Enforcement Courts for early release on grounds of remission of sentence, early release on parole, early release for good behaviour or work, and reduced sentences and fines for work or good behaviour, with the object that the same number of prisoners can benefit from early release.

138. In 2010, 58 applications were filed before the Enforcement Court of Quetzaltenango for release on grounds of remission of sentence, early release on parole and early release for good behaviour, with the object that the same number can benefit from early release arrangements.

139. As to coordination of care for adolescent detainees, the Public Criminal Defence Institute increased the number of public defenders specialized in defending adolescents in conflict with the law. The number of adolescents who have benefited from such legal defence services has risen since the establishment of the juvenile courts in Mazatenango, San Marcos and Huehuetenango.

140. Given the growth of the inmate population, the Public Criminal Defence Institute assigned an extra lawyer to the sentence enforcement stage; therefore two people are now responsible for overseeing adolescents' rights at this stage. As to the trial phase, there are 20 defence lawyers for adolescents in 16 courts across the country.

141. Adolescents must immediately be brought before the roster court by the National Civil Police to give their initial statement. At this stage, adolescents are taken in hand by court-appointed defence lawyers who are responsible for ascertaining whether they have suffered ill-treatment or humiliation during arrest.

142. In the event of a rights violation, defence counsel may petition for a writ of habeas corpus on behalf of the adolescent and/or request an official attestation that the arresting officers did not immediately bring the adolescent before the judge or that they handed him over to a police station, which is then communicated to the Coordination Office for Adolescent Affairs for follow-up at the start of business on the following day and subsequently transmitted to the Coordination Office for Human Rights of the Public Criminal Defence Institute.

143. Once an adolescent has been placed in a detention centre, the Coordination Office for Adolescent Affairs of the Public Criminal Defence Institute, the enforcement court judge and the Prosecutor's Office communicate continuously through meetings with the officials of the Social Welfare Secretariat of the Office of the President, with a view to monitoring and improving youth care.

General comment on the implementation of article 10 and related actions

144. The Coordination Office for Human Rights of the Public Criminal Defence Institute displays and sells crafts made by inmates in classes given by the rehabilitation unit of the Directorate-General of Prisons.

145. The Public Criminal Defence Institute established the Human Rights Unit, through Decision No. 16-2007 (supplemented by Decision No. 06-2009), which records, checks and follows up on complaints lodged by public defenders regarding human rights or due process violations against defendants.

146. Among its activities, the Human Rights Unit encourages defence lawyers to insist on forensic medical tests for persons deprived of their liberty, irrespective of age or gender, if requested by the person or his or her relatives or if the lawyer deems it necessary.

147. The Public Criminal Defence Institute has received complaints from detainees that, due to overcrowding, they were being held in bathrooms and trucks. The Institute has followed up on such cases until the detainees were placed in cells.

Replies to question 16

Plan for instituting a crime policy, strengthening criminal investigation capacity and improving coordination between the Public Prosecution Service, the security forces and the judiciary

148. Theme IV (Policies and institutions for investigating crime and fighting impunity), item 41, of the National Agreement for the Advancement of Security and Justice (signed in April 2009) states that: "Framing the crime policy of the State of Guatemala should be a coordinated task of the executive, legislative and judicial branches, the Public Prosecution Service, the National Institute of Forensic Sciences and the Public Criminal Defence Institute.

149. The Ministry of the Interior noted the considerable improvement of coordination between the senior management of the Special Criminal Investigation Division of the National Civil Police and the Public Prosecution Service. For instance, the Department for Offences against Life was established under the Public Prosecution Service and allocated investigative personnel to each prosecution agency to cooperate with the prosecutors of the Public Prosecution Service on every crime scene investigation.

150. The Criminal Investigation Division and the prosecutors of the Organized Crime Division of the Public Prosecution Service also enjoy good relations. Personnel from the Special Criminal Investigation Division have been seconded to provide direct support for the prosecutors in the execution of their mandate.

151. Concerted action is taken by the Public Prosecution Service (responsible for criminal investigations), the Ministry of the Interior, the latter's Directorate-General of Civil Intelligence, and the International Commission against Impunity in Guatemala to strengthen criminal investigation.

152. The investigations conducted by the Special Criminal Investigation Division units have improved considerably. Their investigation methods are established by law and supported by the Public Prosecution Service.

153. Constant staff changes have contributed to building up the Division, with the dismissal of many investigators involved in unlawful activities.

154. Records kept by the Division's human resources department show that 26 employees have been prosecuted since 2007 for allegedly participating in various offences and/or irregular acts.

155. In conjunction with the operations section of the Inspectorate-General of the National Civil Police, groups involved in organized crime within the police have been disbanded, contributing to fewer irregular activities.

Replies to question 17

The legal and regulatory framework for the judicial profession

156. In the 10 years since it was created the Judicial Career Council has established instruments for admission, transfer, promotion, and performance evaluation.²⁷

157. Since the entry into force of the Judicial Service Act in 2000, a proper career structure for justice system officials (justices of the peace and lower court judges) has been set up on the basis of: (a) appointments; (b) transfers; (c) promotions; and (d) performance evaluation.

Bringing the Judiciary Act into line with the Judicial Service Act

158. The Judicial Career Council does not have information on progress on amendment of the Judiciary Act to bring it into line with the Judicial Service Act.

Replies to question 18

Action taken to protect judges, prosecutors and witnesses

159. The Security Unit of the Judiciary has a security protocol for the protection of justice officials which goes into effect as soon as there is knowledge of any threat, intimidation or other behaviour that poses a danger to the safety of judges and magistrates.

160. Implementation of the protocol does not preclude prompt notification of the Office of the President of the Judiciary and the Supreme Court justice who coordinates the Committee on the Security of Judges and Magistrates. When crowds put a justice official, his staff or facilities at risk, the protocol is followed, where applicable, and the necessary action is taken in accordance with security protocols and, where relevant, the Human Rights Advocate.

²⁷ These instruments are: the Judicial Service Act; the General Regulations for the Judicial Service Act; the Evaluation Regulations for Lower Court Judges under the judicial career system; the Evaluation Guide for Lower Court Judges; the Evaluation Regulations for Justices of the Peace under the judicial career structure; the Evaluation Guide for Justices of the Peace; the Regulations on Transfers and Promotions; the Regulations on appointing members of the Board of Judicial Discipline by public lottery; the Judiciary Civil Service Act; the Regulations for the Judiciary Civil Service Act; the judiciary code of ethics; the collective agreement on working conditions in the judiciary; amendments to the Judiciary Act; and the General Court Regulations.

161. Judiciary security guards provide executive or personal security to 55 judges and magistrates and in courts across the country. Security equipment includes walk-through and hand-held metal detectors and closed-circuit television to enhance personal safety in certain courts. The National Civil Police also contributes by providing executive security for 43 judges and magistrates at the national level, including judges with broad or high-risk mandates.

Progress in implementing the Act for the Protection of Persons Involved in the Conduct of Judicial Proceedings and Persons Linked to the Administration of Justice

162. Complaints, filed by judges and magistrates, of threats to persons involved in the conduct of judicial proceedings are transferred to the Prosecution Unit for Offences against Justice Officials.

Replies to question 19

Geographical coverage of the justice system

163. In its 2006–2010 Five-Year Plan, the Planning and Institutional Development Secretariat of the Judiciary stressed that one of its objectives was expansion of geographical coverage and access to justice.

164. Another useful and distinctive form of access to justice are the Centres for the Administration of Justice, established to concentrate in a single location all the main justice institutions, such as the National Civil Police, the Public Criminal Defence Institute, the Public Prosecution Service and the courts.

165. Also worthy of mention are efforts to provide services in local languages through jurors and defence lawyers who are proficient in the various indigenous languages and work permanently at judicial proceedings and trials.

Replies to question 20

Indigenous law in the national legal system

166. The judiciary conducted a study on the specificities of rural and urban communities in the context of the courts, which informs mediation proceedings. Preliminary documents looked at customary and alternative law, traditional means of conflict resolution, and the degree of acceptance of judicial bodies and mediation centres.

Training courses for judicial officials on the cultural significance of indigenous peoples

167. The judiciary introduced the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) to judges and court staff, priority being given to predominantly Maya departments, through eight training sessions on implementing the aforementioned agreement. Posters on the topic were also distributed to all judicial bodies, and administrative and support units.

Interpreters working in indigenous languages for the courts and prosecution services

168. The Planning and Institutional Development Secretariat of the Judiciary noted that, in 2006–2008, it examined the possibility of establishing regional associations of interpreters. It was, however, decided that it was better to hire bilinguals who spoke the local language to fill a vacancy or new position in the court system. Thus, 137 candidates

for bilingual legal assistant positions have been assessed and there are currently 389 bilingual agents. In addition, the language proficiency of 67 official judiciary interpreters was tested by the Academy of Mayan Languages. The Public Criminal Defence Institute also employs bilingual staff proficient in indigenous languages.

Replies to question 21

Election process of the Prosecutor-General

169. The purpose of the Act on Appointments Commissions (Decree No. 19-2009) is to regulate and set up unbiased and concrete mechanisms and procedures for appointments to key public office (Supreme Court justices, Appeals Court judges, the Comptroller General of Public Accounts, the Prosecutor-General and Head of the Public Prosecution Service, and the Human Rights Advocate).

170. The current Prosecutor-General and Head of the Public Prosecution Service, Claudia Paz y Paz, was appointed in December 2010 by the President, following a process compliant with the Act on Appointments Commissions which is meant to set the constitutional norms governing appointments commissions.

171. There were changes of attitude throughout the process that led to the appointment of Ms. Paz y Paz. At first, civil society did not wish to express an opinion on candidates when asked to do so, but then lobbied for Conrado Reyes to be replaced.

172. Later, civil society organizations voiced their satisfaction with the appointment of Ms. Paz y Paz, who came from a civil society background.

173. It should be pointed out that the nomination process stemmed from the dismissal of the previous Prosecutor-General, Conrado Reyes, thus breaking with established procedure.

174. The International Commission against Impunity in Guatemala played an important role by recommending transparent processes for electing the Prosecutor-General and Head of the Public Prosecution Service.

Replies to question 22

Steps taken to criminalize xenophobia and violent acts targeting indigenous peoples

175. The Presidential Commission on Discrimination and Racism against Indigenous Peoples, in application of article 298 of the Code of Criminal Procedure and its Establishment Agreement (No. 390-2002), has channelled complaints to the Public Prosecution Service and the judiciary for the offence of discrimination on ethnic grounds.

176. Article 202 bis was added to the Criminal Code (Congressional Decree No. 17-73), through Legislative Decree No. 57-2002, and defines discrimination as any distinction, exclusion, restriction or preference based on gender, race, ethnicity, language, age, religion, economic status, illness, disability, marital status or any other cause which prevents a person from exercising a legally established right.

177. On 7 March 2011, in compliance with its international obligations, Guatemala presented its periodic report to the Committee on the Elimination of Racial Discrimination on its implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/GTM/12-13). In response to paragraph 22 of the Committee's concluding observations (CERD/C/GTM/CO/12-13), Guatemala provided information on the specific actions it had taken from 2009 onward to implement the recommendations made by the Committee.

Replies to question 23

Protection of human rights defenders in carrying out their work

178. Based on the records of the Department of Defenders of the Presidential Human Rights Commission, cases of attacks on and threats against human rights defenders for the period 2008–2010 can be found in table 8 (see Annex).

179. Table 9 (see Annex) shows the measures taken by gender and group or organization, for 2008–2010.

180. Table 10 (see Annex) shows the number of cases recorded per type of measure between 2008 and 2010.

Steps taken to strengthen the Unit for the Analysis of Attacks against Human Rights Defenders

181. The Unit for the Analysis of Attacks against Human Rights Defenders²⁸ does not protect human rights defenders; its main function is to examine, in context, the pattern of attacks against this group. The Unit comprises representatives of the Ministry of the Interior, the Directorate of Civilian Intelligence and the Special Criminal Information Division with whose consent the Office of the Prosecutor for Human Rights of the Public Prosecution Service, two representatives of national human rights organizations and one representative of international human rights organizations may be invited. The Presidential Human Rights Commission was invited to participate in August 2009.

182. The Unit serves as an advisory body to the Ministry of the Interior, aiming to adopt preventive and protective measures commensurate with the threat and risk to efforts to defend, promote, protect and ensure human rights.

183. It is of utmost importance to the Government that the Unit and its subsidiaries strengthen their analytical techniques and methods of collating information and identifying perpetrators.

184. The Ministry of the Interior and the Presidential Human Rights Commission have undertaken activities, such as promotion of a stronger legal framework to ensure the durability of the mechanism for analysing attack patterns. The mechanism should be converted into a source of information on the patterns and contexts of the threats and risks facing human rights defenders and other vulnerable groups, in order to adjust protection programmes to fit the risk, degree of vulnerability and threats they purport to offset.

185. The United States Government has cooperated by awarding a two-year, \$2 million grant to enhance the capacity of the Special Criminal Investigation Division and the Public Prosecution Service to investigate offences committed against human rights activists.

186. In 2004, the Government approved internal Decision No. 11-2004 of the Presidential Human Rights Commission, establishing the Coordination Unit for the Protection of Human Rights Defenders, Justice Administrators and Operators, Journalists and Social Communicators.

187. Immediately thereafter, the establishment of a protection programme for defenders and other vulnerable groups was put forward with a view to providing more complete and comprehensive responses. On 2 November 2004, the Government submitted a prevention

²⁸ The Unit for the Analysis of Attacks against Human Rights Defenders was established in 2008 through Ministerial Agreement No. 103-2008 of the Ministry of the Interior which came into force on 24 January 2008.

and protection policy for human rights defenders, parties to judicial proceedings, journalists and social communicators, in addition to a national plan of action for protection and a list of protection measures.²⁹

188. The Coordination Unit for the Protection of Human Rights Defenders, Court Administrators and Operators, Journalists and Social Communicators was strengthened through Internal Agreement No. 85-2008 of the Presidential Human Rights Commission, raising it to the rank of department.

189. Once the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights and Rapporteurs of the universal and Inter-American systems of human rights have heard individuals' requests for preventive, provisional or security measures, it is the Presidential Human Rights Commission that liaises with the executive bodies responsible for granting and implementing those measures in order to ensure their effective implementation.

190. To this end, the Presidential Human Rights Commission plans, organizes and coordinates the protection measures provided by the State.

191. The national prevention and protection policy for human rights defenders and other vulnerable groups formulated in 2009 demonstrates that the Government of Álvaro Colom Caballeros laments, rejects and publicly condemns any actions that directly or indirectly impede the efforts of institutions or bodies that promote, defend, protect or guarantee human rights and fundamental freedoms.

192. The policy also reflects the Government's recognition of human rights defenders, individually or collectively promoting and defending civil, political, economic, social and cultural rights.

193. Pursuant to the National Policy on Human Rights (Government Order No. 552-2007) and the National Action Plan on Human Rights (approved by the Presidential Human Rights Commission), a draft national prevention and protection policy for human rights defenders and other vulnerable groups was formulated and includes a framework of dynamic and effective mechanisms, with the basic aim of strengthening national protection systems and programmes and establishing others that may be needed.³⁰

194. The Presidential Human Rights Commission, the gold standard for prevention and protection activities for journalists and social communicators, has carried out joint actions with the *Centro de Reportes Informativos Sobre Guatemala* (Guatemalan News Centre), such as publication of documents aimed at journalists, addressing the occupational risks they face, and their rights and the mechanisms for exercising them.

Information on recorded cases of attacks on and threats against human rights defenders (prosecutions and/or convictions)

195. The statistics on penalties kept by the judiciary are not disaggregated by victim profile. The Ministry of the Interior, for its part, keeps specific registers on the topic, as can be seen in table 11 (see Annex).³¹

²⁹ The documents were discussed and agreed upon by various State bodies and human rights organizations.

³⁰ The draft policy is on its way to becoming a Government order.

³¹ The Protection Unit for Human Rights Defenders, a non-governmental organization, states in the "Report on the situation of human rights defenders in Guatemala, January–December 2009" that: "The Unit looked into 1,779 attacks over the past decade, or one attack every two days. Burglary, threats (in person, written or telephonic), murder, intimidation and stalking have been the preferred

Replies to question 24

Consultations with indigenous peoples

196. On 23 February 2011, the Government publicly unveiled the “Preliminary proposal for regulating the consultation process with indigenous peoples”, in accordance with ILO Convention No. 169.

197. The purpose of the presentation was to announce that the executive branch was seeking to regulate consultations with indigenous peoples and avoid the implementation of projects without prior consultation. Interested parties were given a period of 30 working days from the date of the presentation to provide input on the proposal for use in the final version.³² Any input will be forwarded to the Ministry of Labour.

Replies to question 25

198. The National Coordination Body for the Prevention of Domestic Violence and Violence against Women includes international human rights instruments, particularly those related to women’s rights, in its education modules for justice officials.

199. Among its activities, the Presidential Human Rights Commission contributes to the dissemination of international human rights instruments in its training for armed forces personnel. Similarly, the aforementioned diploma courses cover Guatemala’s international commitments under the conventions and treaties it has ratified. A project is also under way to publish abridged versions of relevant international instruments and reports.

methods of offenders in that period.”

³² Under the proposal, regulations would include the purpose of consultations, their lead agency, financing and appeal mechanisms.