

## The State of Guatemala's Response to the Questionnaire on: "The protection to workers of Hazardous Substances"

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### I. Background

The State of Guatemala, received a communication from the Special Rapporteur, Mr. Baskut Tuncak, on human rights obligations related to the environmentally sound management and disposal of hazardous waste and substances, derived from resolution 36/15 of the United Nations Human Rights Council, where to develop recommendations for the integration of human rights standards, to ensure occupational health and safety.

The Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH), on behalf of the State of Guatemala, moved the following comments.

### II. Responses to the Questionnaire

1. Please provide the existing national laws and regulations that protect workers from hazardous substances and to establish the right of workers to safe and healthy working conditions. (May include, according to the definition proposed by the standards of the ILO and WHO, with the aim to: promote and maintain the highest degree of physical, mental and social well-being of workers of the deviations of the health caused by their working conditions; the use of the risks resulting from adverse health factors, and the placement and the maintenance of the worker in a working environment adapted to these physiological and psychological capabilities).

The State of Guatemala within its different bodies of law contains regulations in relation to the protection to workers of hazardous substances and to work in safe and healthy conditions, are described below:

- a) Indicate if there are specific rules for the protection of the health and safety in particular sectors of economic activity.
- Political Constitution of the Republic of Guatemala

Within the maximum guarantee law, and provides that the State shall ensure the health and welfare of all the inhabitants and to develop, through its institutions, actions of prevention, promotion, recovery, rehabilitation, coordination and follow-up in order to provide them with the most complete physical, mental and social well-being <sup>1</sup>

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<sup>1</sup> Articles 93 and 94.

Derived from the actions that should be undertaken according to what is established by the Constitution of the Republic of Guatemala, the following standards contain rules that must be followed to ensure the welfare of workers in different areas.

- **The Labor Code** <sup>2</sup>

The Labor Code, in its fifth title <sup>3</sup> regulates matters related to hygiene and safety in the workplace, stating that: "Every employer is obliged to take the necessary precautions to effectively protect the life, health and morality of the workers" <sup>4</sup> .

At the level of the area of labor dictates the following: "Are Unhealthy industries, facilities, or services which by their very nature can cause conditions able to threaten or harm the health of their workers, or due to the materials used, processed or dislodged, or to waste solid, liquid or gaseous fuels". "They Are work, facilities or hazardous industries or potentially damaging to immediate and serious mode of life of the workers, by its very nature or by the materials used, processed or dislodged, or to waste solid, liquid or gaseous fuels; or for the storage of toxic, corrosive, flammable or explosive atmospheres, in any way that this is done <sup>5</sup> .To the above, a regulation must determine what are the jobs - dirty, dangerous, substances which are prohibited, restricted or subject to certain requirements.

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This sets out a series of measures and definitions according to the management of different substances or products within the labor activities, as well as the authorisation of the management of these, starting with regulating occupational safety <sup>7</sup> , Indicating that actions need to be developed aimed at safe and healthy environments in the work for the prevention of occupational diseases, attention to the specific needs of workers and accidents at work, through the Guatemalan Social Security Institute and other institutions within the scope of its competence, with the collaboration of public and private enterprises.

It also establishes that the Ministry of Public Health and Social Assistance will be responsible for the medical surveillance and examination of persons that in a future for his work involving exposure to ionising radiations, the Ministry of Energy and Mines will be responsible for the monitoring and any person exposed to radiation shall be controlled by a system of personal dosimetry according to an opinion of the competent authority <sup>8</sup>

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<sup>2</sup> Decree 1441, the Congress of the Republic of Guatemala.

<sup>3</sup> Articles 197 to 205 of the.

<sup>4</sup> Article 197.

<sup>5</sup> Article 201".

<sup>6</sup> Decree 90-97 of the Congress of the Republic of Guatemala

<sup>7</sup> Article 44.

<sup>8</sup> Article 207 8.

With regard to the activities of import, export, manufacture, storage, transport, marketing, supply, maintenance, installation, operation, irradiation of food and other products, produce, use, handle, apply or work in other activities related to radioactive sources or equipment generator of ionizing radiation for medical purposes of industrial, commercial or research of defense, may do so with the permission of the Ministry of Energy and Mines and where appropriate with the authorization of the Ministry of Public Health and Social Assistance <sup>9</sup>

Exposure to radiation, provides that no person on the grounds of occupation, nor the general population must be submitted to the risk of exposure to ionizing and non-ionizing radiation in excess of the dose established internationally and laid down at national level by the Ministry of Energy and Mines <sup>10</sup>.

To institutions or establishments where workers handling radioactive substances or radioactive sources are operated and ionizing radiation generating equipment, will be responsible for making, in the establishment to his office, take the precautionary measures and protection of staff, by providing the equipment and means of protection, regular monitoring of health, as well as the capitacion continues in safety and hygiene of the ionising radiations <sup>11</sup>.

- **Social Security Act <sup>12</sup>**

The provision of this service in health and social security The Guatemalan Social Security Institute, an autonomous Government entity, in which workers who are affiliated to the same shall enjoy these benefits, it is for this reason that this law gives protection in relation to accidents at work and occupational diseases <sup>13</sup>; through the Department of Social and Vice Province <sup>14</sup> monitors that employers and affiliates to comply with the requirements of this body of law, in this case especially in consideration of the hygienic conditions of the places of work and personal security to provide workers and taking into account the provisions Related to the prevention of occupational accidents and diseases.

It also coordinates with the Ministry of Public Health and Social Assistance their actions that should give preference to the work of prevention and rehabilitation in the area of occupational risks and, in general, meet and stimulate all those work the same or similar which contribute directly or indirectly to lower costs or to increase the level of life and health of its affiliates <sup>15</sup>

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<sup>9</sup> Article 208 .

<sup>10</sup> Article 209.

<sup>11</sup> Article 110.

<sup>12</sup> Decree 295, the Congress of the Republic.

<sup>13</sup> Article 28 and 29.

<sup>14</sup> Article 50(d),

<sup>15</sup> Articles 64 and 64.

- b) Indicate if there are specific rules to protect workers against specific risks, such as exposure to radiation, toxic substances (including industrial chemicals, pesticides and materials of construction) and air pollution, among others.

Derived from the ordinary laws in the literal "a" is indicated, there are specific laws and regulations that govern what they have.

#### National standards:

- **Act for the Control, Use and application of radioisotopes and ionizing radiation** <sup>16</sup>  
Is intended to control, monitor and supervise all activities related to the use of radioisotopes and ionizing radiation in their various fields of application, in order to protect the health, property and the environment.
- **Regulation of** <sup>17</sup>  
Is intended to regulate the general conditions of occupational safety and health, they should run their private employer of workers, the State, municipalities and autonomous institutions, in order to protect the life, health and integrity in the provision of services.
- **Regulation of Safety and Radiation Protection** <sup>18</sup>  
Establishes the criteria aimed at achieving an adequate level of protection within the national territory, of workers, the public and the environment against the harmful effects of ionising radiation; and defines the obligations and responsibilities of individuals, institutions and others to develop practices that involve exposure to ionizing radiation.
- **Regulation of Radioactive Waste Management** <sup>19</sup>  
This aims to establish the necessary legal provisions and essential technical requirements relating to the stages of the management of radioactive waste in Guatemala, to ensure the safety and protection of people, property and the environment from the harmful effects of ionizing radiation, now and in the future.
- **Regulation of Physical Security of Nuclear and Radioactive Materials** <sup>20</sup>  
This sets out the principles and minimum requirements of physical security to be applied to nuclear and radioactive materials, according to the level of security and categorization of the same, in order to prevent access, the removal or unauthorized removal or sabotage of the same, reducing the possibility of improper use or malicious.

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<sup>16</sup> Decree Law 11-86, of the Congress of the Republic.

<sup>17</sup> Agreement No. 229-2014 and 199-2015 51-2015 and reforms.

<sup>18</sup> Agreement No. 55-2001.

<sup>19</sup> Agreement No. 176-2015.

<sup>20</sup> Agreement No. 469-2014.

- **Regulations for the establishment and control of ionizing radiation limits <sup>21</sup> and its reforms**  
Which aims to establish the limits and control mechanisms for the exposure of the general population and workers occupationally exposed to non-ionising radiation whose frequency is not greater than 300 300 Gigahertz (GHz), from the sources that emit these radiations.
- **Regulation of Assessment, Control and Environmental Monitoring <sup>22</sup>**  
This rule the preparation of environmental impact studies, prior to the completion of a project, work, industry or activity, in order to predict the environmental impact that may result from the execution of projects, as well as propose actions and measures to prevent, control or correct the effects.
- **National Policy for Radioactive Waste Management in Guatemala <sup>23</sup>**  
Has as its aim the protection of health, property and the environment of the inhabitants of the Republic in conditions of vulnerability to the harmful effects of radioactive waste.
- **Guatemalan strategy of training and entertainment in the field of Safety and Radiation Protection (08-2016) Ministerial Agreement**  
The aim of this strategy is the creation of competences in the field of safety and radiation protection, through training and the training of the people who use nuclear energy for peaceful purposes, to meet the training needs of existing in the country.

#### **International standards ratified by Guatemala:**

1. Convention on the physical protection of nuclear material (Decree-Law 24-85);
2. Convention on early notification of a nuclear accident (Decree 27-88);
3. Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (Decree 28-88);
4. Supplementary Agreement Concerning the Provision of Technical Assistance by the IAEA to the Governments of Guatemala (Decree 53-75);
5. Agreement signed by Guatemala and the International Atomic Energy Agency for the application of safeguards in relation to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Decree 50-81);
6. The Vienna Convention on civil liability for nuclear damage (Decree 38-93).

- c) To provide specific information on the levels of exposure of workers to these risks, including URL links (or other documentation) in levels set, and information on procedures for the establishment of such levels .**

<sup>21</sup> Agreement No. 08-2009 and Agreement No. 113-2011 (reforms).

<sup>22</sup> Agreement No. 431-2007.

<sup>23</sup> Gubernativo 67-2016 23 Agreement.

The Ministry of Environment and Natural Resources, has seven <sup>24</sup> for the management of chemicals and hazardous wastes, in each one of the guides describes each element or chemical and permissible exposure levels.

The Ministry of Public Health and Social Assistance, and the Committee on the Environment, who will establish the limits and environmental quality permissible to environmental contaminants, such as chemical, physical or biological, in coordination with the Ministry of Energy and Mines established exposure limits and environmental quality permissible, also determined in the respective Regulation the periods of work of the personnel working in sites exposed to these contaminants <sup>25</sup>

## 2. Please provide the main authorities responsible for supervising the application of the rules of health at work and a description of its mandate

- **Ministry of Labor and Social Welfare** is the institution of the State which is responsible for ensuring and promoting the efficient and effective enforcement of the legislation, policies and programs relating to labor and social security, for the benefit of society in general, and specifically how is the subject of this report, is to promote the development and improvement of the system of health and safety at work and the social forecast.
- **The Ministry of Energy and Mines**, institution of the energy and mining sectors, which promotes the appropriate exploitation of the natural resources of the country, participating in sustainable development for the benefit of society. As well as also is the responsibility of this Ministry, to study and promote the use of new and renewable sources of energy; promote their rational and to stimulate the development and rational utilization of energy in its different forms.
- **Ministry of Public Health and Social Assistance** , is responsible for formulating policies and enforce the legal regime concerning the health preventive, curative and protective actions, promotion, recovery and rehabilitation of physical and mental health of the inhabitants of the country and to the preservation of the environment; to the guidance and coordination of the technical and financial cooperation in health, ensure the observance of international treaties and conventions related to health in cases of emergencies caused by epidemics and natural disasters; and to govern in a decentralized system of training and development of human resources in health.
- **The Guatemalan Social Security Institute** , is the governmental institution, autonomous, dedicated to providing health services and social security to the population that has

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<sup>24</sup> [Http://www.marn.gob.gt/s/guias-quimicos-desechos](http://www.marn.gob.gt/s/guias-quimicos-desechos). 24 Guidelines

<sup>25</sup> Article 69, exposure limits and environmental quality of the Health Code.



membership at the same, being its main objective the protection to the insured population, against the loss or deterioration of the health and livelihood.

- 3. Please provide the national laws that establish the right to information and the instruments that set out the specific rights of workers to information on issues relating to their health and safety at work.**

The Code of Health <sup>26</sup> , Provides that the Ministry of Public Health and Social Assistance, the National Commission of the Environment and the Municipalities should collect and disseminate information relevant to the population, about the health risks associated with direct or indirect exposure of pollutants, which exceed the limits of exposure and environmental quality.

- 4. Please provide the national laws and regulations to provide protection to the complainants to share information about your work activity and the environment, in particular in relation to the disclosures about damage to the environment and public health .**

The Code of Health <sup>27</sup> , Stipulates that the Ministry of Public Health and Social Assistance, the National Commission of the Environment, the municipalities and the organized community with all other appropriate bodies whether public or private, shall promote the development of personal care programs and the reduction of health risks associated with environmental imbalances, or caused by chemical, physical or biological agents. The Ministry of Public Health and Social Assistance shall ensure the compliance with international agreements ratified by Guatemala, which prohibit the use of harmful substances to the environment and the human being.

- 5. Please provide information on the national laws that ensure that workers can realize their right to justice and an effective remedy for occupational exposure to hazardous substances .**

Within the Constitution of the Republic of Guatemala <sup>28</sup> , States that all people have the right to manage individually or collectively, petitions to the Authority, as well as the right of free access to the courts, agencies and offices of the State to exercise actions and to assert their rights in accordance with the provisions as determined by the law.

Following from the above <sup>29</sup> , provides that all disputes relating to Labor and Social Security are subject to the exclusive jurisdiction of the Courts of Labor and Social Welfare, it is their responsibility to judge and execute judgments.

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<sup>26</sup> Article 71, Right of Information.

<sup>27</sup> Article 72, Programs for the Prevention and Control of Environmental Risks.

<sup>28</sup> Articles 28 and 29.

<sup>29</sup> article 283.

**6. Indicate whether public officials regularly analyzed the situation of safety and health at work and how to publish these assessments.**

The Ministry of Labor and Social Security, through the General Labor Inspectorate is responsible for ensuring that employers, individual workers and organized, honor, respect the laws, collective agreements and regulations, which regulate the conditions of labor and social security in force or to be issued in the future.

By means of the section of the Labor Inspectorate of the Ministry, which is composed by a body of labor inspectors, who are in charge of carrying out visits to companies with the purpose of verifying compliance with the laws, regulations and agreements of labor and social security

There is also the only Protocol Inspection, is a document that is divided into two volumes containing a series of procedures of the system of inspection and a specific section as an accurate tool for verification of occupational health and safety conditions in the workplace, thereby generating effective inspection visits to the sustainability of the occupational safety and health of workers.

**7. Please indicate whether your Government considers the revision of its rules in force in the field of health and safety at work and the reasons for possible revision.**

In relation to the revision of existing standards in the area of safety at work, it is important that you take into account that different standards have been issued, which are described within the content of the report, which are complementary or extend the provisions of the ordinary laws, such as the