

Job 21-03524 (communication from Guatemala regarding implementation of the International Convention for the Suppression of Acts of Nuclear Terrorism – fair copy)

Translated from Spanish

Ref. No. 595.20

The Permanent Mission of the Republic of Guatemala to the United Nations and Other International Organizations in Vienna presents its compliments to the secretariat of the United Nations Office on Drugs and Crime (UNODC) and refers to its request for information on the legislation implemented at the national level in compliance with the International Convention for the Suppression of Acts of Nuclear Terrorism (ICSANT).

The Government of Guatemala has informed the Mission that the legal framework currently in force in Guatemala in relation to the Convention includes the Terrorism Financing Prevention and Suppression Act, Decree No. 58-2005, adopted by the Congress of the Republic of Guatemala, the text of which is attached hereto.

The Permanent Mission of the Republic of Guatemala to the United Nations and Other International Organizations in Vienna avails itself of this opportunity to renew to the secretariat of the United Nations Office on Drugs and Crime [sic].

Vienna, 22 December 2020

Secretariat of the United Nations Office on Drugs and Crime

CONGRESS OF THE REPUBLIC OF GUATEMALA

DECREE NO. 58-2005

THE CONGRESS OF THE REPUBLIC OF GUATEMALA

WHEREAS:

Terrorism undermines the foundations on which society is built and leads to instability in the economy, politics, culture and, in general, the well-being of human beings; and whereas the number and severity of acts of international terrorism depend on the financing that terrorists are able to obtain, which is a matter of grave concern to the international community as a whole;

WHEREAS:

The State of Guatemala has signed and ratified international treaties and thereby committed to the development and adoption of effective and practical measures to prevent the financing of terrorism within the national territory and to suppress such financing by prosecuting and punishing its perpetrators in order to protect the stability and constitutional order of Guatemala;

NOW, THEREFORE:

In exercise of the powers conferred upon it by article 171 (a) of the Political Constitution of the Republic of Guatemala, the Congress of the Republic of Guatemala

HEREBY DECREES:

As follows:

TERRORISM FINANCING PREVENTION AND SUPPRESSION ACT

CHAPTER I

GENERAL PROVISIONS

Article 1. Purpose. The present Act is declared to be in the public interest and its purpose is to adopt measures for the prevention and suppression of the financing of terrorism.

The financing of terrorism is considered a crime against humanity and against international law.

Article 2. Article 391 of the Criminal Code, Decree No. 17-73 of the Congress of the Republic, is hereby amended as follows:

Article 391. Terrorism. Any person commits the offence of terrorism if that person, for the purpose of undermining the constitutional order or disrupting public order or coercing a legal person recognized under public, national or international law, carries out an act of violence or an attack against the life or bodily integrity of a person or against property or infrastructure or, for the same purpose, carries out an act intended to cause fire or destruction or to bring about a rail, sea, river or air disaster, commits the.

The person responsible for said offence shall be punished by a non-commutable prison term of ten (10) to thirty (30) years, plus a fine of between twenty-five thousand United States dollars (US\$ 25,000.00) and eight hundred thousand United States dollars (US\$ 800,000.00), or the

equivalent in national currency. If highly destructive explosive materials are used to commit this offence, the penalty for the offender or offenders shall be doubled.

Article 3. Default rules. The rules set out in the Criminal Code and the Code of Criminal Procedure shall be applicable to the provisions of the present Act, except where such provisions are in conflict with the Act.

In the criminal prosecution of the offences and the enforcement of the sentences established under the present Act, the procedure set out in the Code of Criminal Procedure for offences that are publicly actionable shall apply.

CHAPTER II

OFFENCES, OFFENDERS AND PENALTIES

Article 4. The offence of financing of terrorism. Any person commits the offence of financing of terrorism if that person, by any means, directly or indirectly, acting in person or through an intermediary, wilfully provides, supplies, collects, transfers, delivers, acquires, possesses, administers, negotiates or manages cash or any kind of asset with the intention that it should be used, or in the knowledge that it is to be used, in full or in part, for terrorism.

Any person also commits the offence of financing of terrorism if that person commits any of the acts defined as the financing of terrorism in any of the international conventions adopted and ratified by Guatemala.

The offender shall be liable to imprisonment for a term of six (6) to twenty-five (25) years, plus a fine of between ten thousand United States dollars (US\$ 10,000.00) and six hundred and twenty-five thousand United States dollars (US\$ 625,000.00), or the equivalent in national currency.

In order for the offence of financing of terrorism to be deemed to have been committed, it shall not be necessary for an act of terrorism to have been carried out, but the intention to commit such an act must be made manifest through external material signs; neither shall it be necessary for an act of terrorism to have been investigated or prosecuted or for any person to have been convicted.

Article 5. Special aggravating circumstance. Any person who, while serving as a public employee or official, commits the offence of financing of terrorism in the performance of his or her duties shall be liable to the same penalty increased by one third. In addition, the accessory penalty of special disqualification from public office or employment shall be imposed for twice the period of the term of imprisonment.

Article 6. Inapplicable justifications. The offence of financing of terrorism shall under no circumstance be deemed to be justified by considerations of a political, philosophical, ideological, racial, religious or similar nature.

Article 7. Liability of legal entities. Legal entities, irrespective of the criminal liability of their owners, directors, managers, administrators, officials, employees or legal representatives, shall be liable for the offences provided for in the present Act when such acts are carried out by their regular bodies.

In such cases, in addition to the penalties applicable to those responsible, the legal entity shall be fined in an amount equivalent to the value of the assets or cash associated with the offence and shall be warned that in the event of a repeat offence its legal personality shall be permanently revoked.

The legal entity shall also be sanctioned with the confiscation, loss or destruction of the proceeds derived from the commission of the crime or the instruments used for its commission and shall be ordered to pay procedural costs and expenses; in addition, the sentence shall be published in at least two of the most widely circulated written media in the country.

In the case of legal entities subject to the supervision and control of the Superintendency of Banks, the judge shall notify said supervisory body of the sentence imposed on the legal entity, so that it may proceed to apply the measures set out in the applicable laws.

Article 8. Movement of money. Any person commits the offence of movement of money if that person, failing to make the required sworn declaration at a port of exit from or entry to the country, using the forms required under the Anti-Money-Laundering Act, acting in person or through an intermediary, transports out of or into the Republic cash or negotiable bearer documents in an amount exceeding ten thousand United States dollars, or the equivalent in national currency.

The offender shall be punished by imprisonment 1 to 3 years.

The imposition of the applicable penalties for the commission of this offence shall be without prejudice to any protective measures that may be applicable in the event of failure to make the declaration or when the declaration is false.

Article 9. Confiscation of assets. Without prejudice to the principal penalties established for the offence of financing of terrorism, any money or other assets derived therefrom or the proceeds thereof shall be liable to confiscation in accordance with the provisions of the general legislation in force, except as otherwise provided in this article.

Property subject to confiscation for the offences established under the present Act may be returned in accordance with the provisions of articles 15, 16 and 17 of the Anti-Money-Laundering Act, to the extent that they apply.

Article 10. Civil forfeiture of assets. Without prejudice to the provisions of the preceding article, the Office of the Attorney General, on behalf of the State, may apply to the competent civil court to order the forfeiture of money or assets that have been, or will be, used for the financing of terrorism.

Such an action shall be heard in oral proceedings and shall be independent of any criminal proceedings in the matter. Where applicable, the judge who hears the case shall refer the matter to the competent criminal court.

Assets subject to civil forfeiture shall become the property of the State.

Article 11. Other degrees of the offence. Any person found responsible for participating in the proposal of or conspiracy to commit any of the offences established under the present Act, or for attempting to commit such an offence, shall be punished by the same prison sentence applicable to a completed offence reduced by one third and any other accessory penalties that may apply.

CHAPTER III

PROCEDURES AND PROVISIONAL MEASURES

Article 12. Procedures and provisional measures. The provisions of the Anti-Money-Laundering Act shall apply in respect of the procedures, the confidentiality of investigations and provisional measures relating to the offences established under the present Act, to the extent that they do not conflict with the present Act.

CHAPTER IV EXTRADITION, REFUGEE STATUS AND ASYLUM

Article 13. Extradition. The offences referred to in the present Act shall give rise to active or passive extradition in accordance with the Political Constitution of the Republic, the international treaties to which Guatemala is a party and the legislation in force.

Article 14. Refugee status and asylum. The competent authorities of Guatemala shall deny refugee status and asylum to any person who has committed an offence related to the financing of terrorism or who has knowingly collaborated in the commission of such an offence.

CHAPTER V

PROVISIONS RELATING TO OBLIGATED PERSONS AND ADMINISTRATIVE MEASURES

Article 15. Rules relating to obligated persons. For the purposes of the present Act, “obligated person” shall mean any person recognized as such under the Anti-Money-Laundering Act, its implementing regulations and other provisions on the matter. The same regime, duties, obligations, policies regarding knowledge of clients and prohibitions established under said regulatory framework shall be applicable to such persons.

The obligated persons referred to in the present Act who are already registered as such, who have appointed compliance officers and who maintain customer and employee registers in accordance with the regulations against laundering of money or other assets shall be required to apply to the prevention of the financing of terrorism all other prevention and control measures and other duties laid down in those regulations.

Compliance officers appointed by obligated persons in accordance with the legal provisions against laundering of money and other assets shall extend their functions and powers so as to comply with the legal provisions against the financing of terrorism.

The use of fines imposed in application of the present Act or other applicable provisions shall be governed by the legal provisions against laundering of money or other assets.

Article 16. Suspicious transaction report. Obligated persons shall report, promptly and with due diligence, to the Superintendency of Banks, through the Special Verification Office, any transaction that does not appear to have an obviously lawful purpose, or when there are suspicions or reasonable grounds to suspect that there are funds linked to, or that may be used for, the financing of terrorism.

Obligated persons shall apply the procedures laid down for such reporting in the implementing regulations for the present Act or, failing that, in the regulations on money-laundering, including those concerning the recording of unusual transactions that are not reported to the competent authority.

Article 17. Transfer of funds. In the case of systematic substantial wire or electronic fund transfers, and messages relating thereto, obligated persons shall collect relevant and significant information on the person originating the transfer, within or outside the national territory, in accordance with the provisions of the implementing regulations for the present Act. Such information must remain with the transfer or the message relating thereto throughout the payment chain.

Obligated persons shall pay special attention to any transfer that does not include all the information referred to in the preceding paragraph, and shall report to the Special Verification Office any transfer that is deemed to be a suspicious transaction.

Failure to comply with this provision shall be punished in accordance with the provisions of article 19 of the present Act.

Article 18. Special rules. Special rules shall be established for persons who, by the nature of their activities, shall be required to provide the Superintendency of Banks, through the Special Verification Office, with information and reports, when required to do so by the latter for the discharge of its functions. Such persons shall also allow the Superintendency free access to all their information sources and systems for the verification or amplification of the information supplied by them or when such information is necessary for the analysis of cases related to the financing of terrorism.

These special rules shall be applicable to individuals and legal entities that carry out any of the following activities:

- (a) Real estate development activities or purchase and sale of real estate;
- (b) Purchase or sale of self-propelled vehicles;
- (c) Activities relating to trade in jewellery, precious stones or precious metals;
- (d) Activities relating to trade in works of art and antiques;
- (e) Activities of notaries, public accountants and auditors, and accountants; and
- (f) Any other activity which by the nature of its operations may be used for the financing of terrorism, in which case the President of the Republic may extend the special rules established under the present article to any other type of activity.

In all other respects, the obligations laid down in article 16 of the present Act and in article 28 of the Anti-Money-Laundering Act shall apply, except in the case of the persons indicated in subparagraph (e) of the present article, who shall not be required to comply with the provisions of article 16 of the present Act.

Article 19. Penalties. The persons referred to in articles 15 and 18 of the present Act shall be liable for failure to comply with the obligations imposed on them by the Act, its implementing regulations, and other related provisions, and shall be sanctioned by the competent administrative authority with a fine of between ten thousand dollars (US\$ 10,000.00) and fifty thousand United States dollars (US\$ 50,000.00), or the equivalent in national currency, depending on the seriousness of the act, and shall be required to comply, within the period established by the competent authority, with the unfulfilled obligation giving rise to the sanction, without prejudice to any applicable criminal or civil liability.

Article 20. Role of the Special Verification Office. The Superintendency of Banks, through the Special Verification Office, shall be the body responsible for ensuring, strictly within the administrative sphere, compliance with the intent of the present Act; to that end, it shall have the same authority, functions and powers as those conferred upon it by the Anti-Money-Laundering Act, its implementing regulations, and other related provisions.

All public and private entities shall be required to provide any collaboration requested by the Superintendency of Banks through the Special Verification Office for the attainment of the objectives of the present Act.

In the event there are grounds to believe that any of the offences established under the present Act has been committed, the competent authorities shall be informed.

The Superintendency of Banks, through the Special Verification Office, shall provide collaboration and assistance to the Public Prosecution Service on matters relating to the financing of terrorism, a function which shall be strictly limited to the prosecution unit or service specifically designated for that purpose within the organizational structure of said institution and which shall be carried out strictly on the basis of

a request by the prosecution official in charge of the prosecution unit or service, which shall serve as a liaison between the Special Verification Office and the Public Prosecution Service.

CHAPTER VI

INTERNATIONAL COOPERATION

Article 21. Mutual legal assistance. With a view to facilitating judicial proceedings and investigations relating to the offences referred to in the present Act, the Public Prosecution Service and the competent judicial authorities may provide and request assistance from the competent authorities of other countries for the following purposes:

- (a) Receiving evidence or statements from persons;
- (b) Effecting service of judicial documents
- (c) Executing searches and seizures;
- (d) Examining objects and places;
- (e) Providing information and evidence;
- (f) Providing originals or certified copies of relevant documents and records, including bank, financial and business records;
- (g) Identifying or tracing proceeds, instruments or other items for evidentiary purposes;
- (h) Any other form of mutual legal assistance authorized by domestic law.

The competent authorities may also provide to and request assistance from the competent authorities of other countries in order to establish the identity, whereabouts and activities of persons where there are reasonable grounds to suspect that they are involved in the offence of financing of terrorism.

Article 22. Transfer of persons. Persons who are detained or serving a sentence in the national territory may be transferred to another State, subject to judicial authorization and provided that the person is transferred for the purpose of giving testimony or providing identification or assisting in obtaining evidence necessary for the investigation or prosecution of offences established under the international instruments to which Guatemala is a party. For that purpose, the following conditions must be met:

- (a) The person must freely give his or her informed consent; and
- (b) both States must agree, subject to such conditions as those States may deem appropriate, in particular with regard to the length of the period of transfer.

For the purposes of the present article, the competent authorities of Guatemala shall be strictly responsible for ensuring that the following requirements are met:

- (a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;
- (b) The State to which the person is transferred shall without delay fulfil its obligation to return that person to the custody of the State from which he or she was transferred;
- (c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

- (d) The person transferred shall receive, for time spent in the custody of the State to which he or she was transferred, credit toward service of the sentence being served in the State from which he or she was transferred;
- (e) The person shall not be subjected to any other restriction of his or her personal liberty in the territory of the State to which the person is transferred in respect of acts or convictions occurring prior to his or her departure from the territory of the State from which said person was transferred.
- (f) The cost of the transfer, custody and security of persons to be transferred shall be borne by the State to which they are to be transferred.

The competent authorities of Guatemala are empowered to promote the conclusion of agreements with other States in this area.

Article 23. Administrative assistance and exchange of information. Administrative assistance and exchange of information between the Special Verification Office and counterpart institutions in other countries on matters relating to the financing of terrorism shall be governed by the provisions of the Anti-Money-Laundering Act. For this purpose, memorandums of understanding or cooperation agreements concluded on the laundering of money or other assets may include provisions relating to the financing of terrorism.

Without prejudice to the foregoing, the Superintendency of Banks, through the Special Verification Office, may enter into memorandums of understanding for the exchange of information on the financing of terrorism.

CHAPTER VII

TRANSITIONAL AND FINAL PROVISIONS

Article 24. Implementing regulations. The implementing regulations for the present Act shall be drafted by the Superintendency of Banks, through the Office of Special Verification, and submitted to the President of the Republic for approval within one hundred and twenty days following the date on which the Act enters into force.

The implementing regulations for the Act shall be approved within thirty days after the date on which they are submitted to the President of the Republic for consideration.

Article 25. Memorandums of understanding. Memorandums of understanding and cooperation agreements relating to the laundering of money or other assets which have already been signed on the date of entry into force of the present Act may be expanded to include the financing of terrorism.

Article 26. Entry into force. The present Decree shall enter into force on the date of its publication in the Official Gazette.

BE IT SUBMITTED TO THE EXECUTIVE BODY FOR APPROVAL, PROMULGATION AND PUBLICATION.

DONE AT THE HEADQUARTERS OF THE LEGISLATIVE BODY IN GUATEMALA CITY ON THE THIRTY-FIRST DAY OF AUGUST IN THE YEAR TWO THOUSAND FIVE.

JORGE MÉNDEZ HERBRUGER, PRESIDENT

LUIS FERNANDO PÉREZ MARTÍNEZ, SECRETARY

FRANCISCO JAVIER DEL VALLE, SECRETARY

NATIONAL PALACE: Guatemala City, twenty-sixth day of September in the year two thousand five.

BE IT SO PUBLISHED AND ENFORCED

BERGER PERDOMO

CONGRESS OF THE REPUBLIC OF GUATEMALA

LEGISLATIVE DIRECTORATE

- LEGISLATIVE TRACKING SYSTEM -

Registration number

5239

DATE OF CONSIDERATION BY PLENARY: 23 FEBRUARY 2017.

BILL SUBMITTED BY REPRESENTATIVE CARLOS NAPOLEÓN ROJAS ALARCÓN

BILL PROVIDING FOR THE ADOPTION OF A COUNTER-TERRORISM ACT

STATUS: SUBMITTED TO THE HOME AFFAIRS COMMITTEE FOR STUDY AND OPINION.

9 February 2017

Mr. Lopez:

Please accept my greetings and allow me to inform you that, in accordance with the provisions of the Political Constitution of the Republic of Guatemala and the Organic Law of the Legislature, I am submitting, both in hard copy and electronically, a legislative proposal comprising a statement of intent and a draft decree relating to the Anti-Terrorism Act, and I am requesting that it should be submitted to the Honourable Plenary for consideration.

Please accept, Sir, the expression of my most respectful regards.

**Congressman Carlos Napoleón Rojas Alarcón
Union for National Change (UCN) Party Bench
Santa Rosa District Representative**

Mr. Luis Eduardo López
Head of Office
Legislative Directorate
Congress of the Republic

LEGISLATIVE PROPOSAL

STATEMENT OF INTENT

Honourable Plenary:

The attacks of 11 September 2001 against the United States demonstrate the challenge posed by terrorism. Subsequent to these attacks, there have been a number of occurrences that have heightened concern about the issue, in particular the proliferation of nuclear and other non-conventional weapons.

In this context, the United Nations and the Security Council adopted resolution 1373, which includes coercive provisions aimed at preventing the financing of terrorism, criminalizing the collection of funds for that purpose and freezing financial assets linked to terrorism. The Counter-Terrorism Committee was established to monitor the proper implementation of the resolutions.

Subsequently, the United Nations and other international organizations have carried out various actions to combat international terrorism, including the following:

In 2002, the adoption of resolution A/RES/57/83, which was the first text to describe measures to prevent terrorists from acquiring weapons and delivery systems. In the same year, the United Nations Office on Drugs and Crime (UNODC) launched the Global Project on Strengthening the Legal Regime against Terrorism to provide technical legal assistance to acceding countries for the implementation of the 12 universal counter-terrorism instruments.

During 2003, UNODC included strengthening of the legal regime against terrorism in its technical cooperation activities, providing countries with technical legal assistance on how to become States parties and implementing the universal counter-terrorism instruments.

Resolution 1540 was adopted in 2004 with the aim of compelling States to refrain from providing any form of support to non-State actors for the development, acquisition, manufacture, possession, transport, transfer or use of nuclear, chemical or biological weapons or their means of delivery. The International Convention for the Suppression of Acts of Nuclear Terrorism was adopted subsequently.

The United Nations General Assembly has adopted the following five conventions: (1) the International Convention against the Taking of Hostages, (2) the Convention on the Safety of United Nations and Associated Personnel, (3) the International Convention for the Suppression of Terrorist Bombings, (4) the International Convention for the Suppression of the Financing of Terrorism and (5) the International Convention for the Suppression of Acts of Nuclear Terrorism.

The various international legal instruments, conventions and agreements establish the obligation of States to combat crimes committed on board aircraft, the unlawful seizure of aircraft, acts against the safety of civil aviation and crimes against internationally protected persons, including diplomatic agents; ensure the physical protection of nuclear material; prevent acts against the safety of maritime navigation; and ensure the marking of plastic explosives for purposes of detection and tracing. There is also an obligation to enact laws on acts of violence carried out at international civilian airports and acts that threaten the security of fixed platforms.

In this international context, Guatemala must fulfil its international commitment in the fight against terrorism. In accordance with the recommendations made by the Financial Action Task Force of Latin America (GAFILAT) in the Mutual Evaluation Report on the Republic of Guatemala, published in November 2016, the following actions should be taken:

Enhance the provisions criminalizing the offence of financing of terrorism in order to improve the effectiveness of efforts to combat terrorism and enforce anti-terrorism legislation. This requires strengthening the legal framework in order to incorporate the obligations set out in the various international conventions, agreements and resolutions.

The main threats affecting Guatemala include the following: drug trafficking, illicit cross-border transport of cash, smuggling of goods and extortion. There are also deficiencies with respect to the criminalization of offences related to terrorism, especially the financing thereof.

Guatemala has enforced regulations and mechanisms allowing up to some extent the implementation of United Nations Security Council resolutions 1267, 1988, 1989 and 1373 regarding the financing of terrorism and United Nations Security Council resolutions 1718 and 1737 related to financing of the proliferation of weapons of mass destruction. However, significant improvements are required for the system to be effective. Financial and non-financial obligated subjects are not at the same pace regarding awareness of the update of listings, which deters freezing measures from being applied without delay.¹

Guatemala should implement legislation with a view to developing policies and activities to address the financing of terrorism and the proliferation of weapons of mass destruction and wage a frontal assault on terrorism. Threats and vulnerabilities with regard to terrorist financing include the geographical location of Guatemala, which could make it a bridge for suspected terrorists en route to the United States of America and also represent a potential threat of terrorism at the national level. With regard to national vulnerability to the financing of terrorism, there are deficiencies in the economic, legal and institutional environment that render the country vulnerable and therefore make it attractive for the commission of this type of offence.²

In the regulatory field, needs and opportunities for improvement have been identified in the areas of criminalization of the financing of terrorism and application of the anti-terrorism resolutions of the United Nations Security Council and other international organizations.

It should also be noted that Guatemala has been the victim of acts that have sown panic and terror in society and limited its citizens' right to movement, freedom, development, physical integrity and even life. These include the following:

1. On 3 January 2011, four people were burned to death and 18 others were injured in a fire caused by the explosion of a device in a public bus at 37th Avenue and Calzada San Juan, Zone 7.
2. On 16 May 2011, 27 workers were beheaded in the Department of Petén by members of the Zetas cartel.
3. On 24 May 2011, Rony Allan Stowlinsky Vidaurre, aged 36 years, an assistant prosecutor with the Office of the Public Prosecutor for Crimes against Life, was abducted in the afternoon while driving a vehicle he owned. His remains were later found in four bags in the corridors of the headquarters of the departmental government, across from the entrance to Las Verapaces history museum; his head was found in the vicinity of the central market. A piece of paper found near the bags contained a message presumably addressed to the authorities, which read: "This is for all those who are doing the wrong thing, one by one we are going to kill you, keep thinking you are gringos if you feel like fighting."
4. On Sunday, 6 March 2016 at 7.40 in the morning, a bomb exploded inside a bus on its way to Palencia. Two people died and 14 received third-degree burns.

¹ GAFILAT. Mutual Evaluation Report of the Republic of Guatemala, November 2016. Available at: <https://www.cfatf-gafic.org/documents/4th-round-meval-reports/7462-guatemala-4th-round-mer/file>.

² Ibid.

5. On Monday, 7 March 2016, two women arrived at the place where a family sells spare parts in Zone 6 of Guatemala City, and one of them got off the motorcycle and threw an explosive device into the premises; the device subsequently exploded and caused a fire.

Olivier Decottignies, a French diplomat and academic, explained, at a conference on “security and terrorism, from the Middle East to the Americas”, that Central American countries are battling another type of terrorism, one that is generated by gangs and drug trafficking; however, he also noted that Central America could be used by Islamic groups as a corridor for launching terrorist attacks on the United States.

The State of Guatemala must comply with its international obligations and address national needs in the fight against terrorist acts.

BILL SPONSOR(S):

Carlos Napoleón Rojas Alarcón

Union for National Change (UCN) Party Bench

Santa Rosa District Representative

DECREE NO. _____
THE CONGRESS OF THE REPUBLIC OF GUATEMALA

WHEREAS:

The Political Constitution of the Republic of Guatemala establishes that it is the duty of the State to guarantee life, liberty, justice, security, peace and comprehensive human development for the inhabitants of the Republic;

WHEREAS:

The State of Guatemala, as a party and signatory to international treaties and conventions on terrorism, reaffirms its commitment to prevent, combat, punish and eliminate terrorism in all its forms and manifestations, and the State therefore needs to update and standardize its legislation in order to regulate offences and penalties relating to terrorism;

WHEREAS:

Terrorism constitutes a global criminal phenomenon of concern to the State of Guatemala, endangers democracy, hinders the enjoyment of human rights and fundamental freedoms, threatens the constitutional order and the security of the State and destabilizes and undermines the foundations of society, seriously affecting the economic, political and social development of the country;

WHEREAS:

The Prevention and Suppression of the Financing of Terrorism Act, Decree 58-2005, and the Criminal Code, Decree 17-73, both enacted by the Congress of the Republic, include some isolated provisions on the subject, and it is therefore necessary to create a body of rules to regulate the matter in a comprehensive and up-to-date manner;

NOW, THEREFORE:

In exercise of the powers conferred upon it by article 171, paragraph (a) of the Political Constitution of the Republic of Guatemala, the Congress of the Republic of Guatemala

HEREBY DECREES

as follows:

ANTI-TERRORISM ACT

TITLE I
GENERAL PROVISIONS

CHAPTER 1
Purpose and Scope of the Act

Article 1. Purpose of the Act. The present Act is concerned with public order; its purpose is to regulate offences related to terrorism in all its forms and manifestations and to prevent, promote the investigation of and punish acts of a terrorist nature in order to secure the constitutional order, the rule of law, fundamental freedoms, peace, human rights and international humanitarian law, and in order to protect the safety of persons, ensure the permanence of the democratic institutions of the State and provide them with legal tools

and facilitate international cooperation mechanisms for the purpose of taking action against, combating and eliminating terrorist acts.

Article 2. Scope of application. The present Act shall be applied in accordance with the provisions of the Criminal Code.

Article 3. Default provisions. For any matter not covered by the present Act, the provisions of the Constitution of the Republic, the Criminal Code, the Code of Criminal Procedure, other security-related regulations in force and the international treaties to which Guatemala is a party shall apply.

CHAPTER 2

Definitions Applicable to the Act

Article 4. Definitions. For the purpose of the present chapter, the following definitions shall apply:

- (a) **Terrorist act:** Any action or omission that causes anxiety, alarm or fear in the population or a segment of the population, committed for economic, political or religious purposes or for the purpose of disrupting the constitutional order or public order, coercing society, governments or legal persons recognized under domestic or international public law, or executing acts of violence that threaten the life or physical integrity of persons, property or infrastructure, using organizations, such as corporations, religious, racist, pro-independence, or revolutionary groups, among others, to promote their objectives.
- (b) **Aircraft in flight:** An aircraft is considered to be in flight from the moment it begins to move in connection with the aeronautical operation that it is going to perform until it comes to a stop, thus terminating said operation.
- (c) **Grounded aircraft:** The temporary or permanent removal of an aircraft from flight for failure to comply with applicable civil aviation regulations.
- (d) **Landed aircraft:** An aircraft is considered landed when it is not in flight.
- (e) **Bacteriological and toxin weapons:** Bacteriological and/or toxin weapons are defined as follows:
 - (i) Microbial or other biological agents or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;
 - (ii) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.
- (f) **Chemical weapons:**
 - (i) Toxic chemicals and their precursors, except where intended for purposes not prohibited under the Chemical Weapons Convention, as long as the types and quantities are consistent with such purposes;
 - (ii) Munitions and devices specifically designed to cause death or other harm through the toxic properties of the toxic chemicals specified in subparagraph (i), which would be released as a result of the employment of such munitions and devices;
 - (iii) Any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (ii).
- (g) **Nuclear weapon:** A nuclear weapon is any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes. This definition excludes any instrument that may be used for the transport or propulsion of the device if it is separable from the device and not an indivisible part thereof.

- (h) **Explosive device:** Any material or substance that given the effect of an initiator causes the violent release of energy, accompanied by high temperatures or the release of gases and shock waves in the surrounding area.
- (i) **Maritime structure:** Any floating structure other than a ship that serves as an aid to, but is not intended for, navigation, although it can move on water for the fulfilment of its specific purposes. The term shall be understood to include, but shall not be limited to, fixed or non-fixed platforms, artificial islands, floating docks, pontoons and cranes which have no independent means of propulsion and can operate in marine, lake or river environments or are permanently attached to the bottom or are incapable of self-propulsion.
- (j) **Safe forced landing:** An unavoidable landing or ditching with a reasonable expectancy of no injuries to persons in the aircraft or on the surface.
- (k) **Onboard avionics:** Any electronic device, or its electrical parts, used on board aircraft, including radio equipment, automatic flight controls and instrument and navigation systems.
- (l) **Aeroplane:** A heavier-than-air, engine-powered, fixed-wing aircraft that is kept in flight by the dynamic reaction of the air on its supporting surfaces.
- (m) **Human performance:** Human capabilities and limitations that impact on the safety and efficiency of aeronautical, maritime or land operations.
- (n) **Airfield:** A defined area on land or water, including any buildings, installations and equipment, intended to be used wholly or in part for the arrival, departure and surface movement of aircraft, where there are no customs or immigration authorities.
- (o) **Aircraft:** Any machine that can derive support in the atmosphere from the reaction of air other than the reaction of the air against the surface of the earth.
- (p) **Airport:** Any airfield specially equipped and regularly used for air traffic passengers and cargo, where there are customs and immigration authorities.
- (q) **Aircraft accident:** Any occurrence associated with the operation of an aircraft that takes place between the time any person boards the aircraft with the intention of flying and the time when all such persons have disembarked, and in which: (1) any person is fatally or seriously injured, (2) in which the aircraft sustains damage or structural failure or (3) the aircraft goes missing or becomes completely inaccessible.
- (r) **Bioterrorism:** The use of biological technology or pathogens to spread disease, death, panic or fear in the population.
- (s) **Ship:** Under the present Act, “ship” means any vessel of any kind not permanently attached to the seabed, including hydrofoils, hovercraft, submersibles and all floating craft with their own means of propulsion, including warships.
- (t) **Cyberterrorism:** The use of information, communications, computer, electronic or similar technology with the intention of generating widespread fear in the population or in governments, thereby limiting the fundamental rights of persons, for purposes that may be economic, political, religious or military.
- (u) **Air navigation equipment:** Air navigation equipment includes all equipment used for the management and control of air operations on the ground and in flight, including automatic direction finders (ADFs), very high frequency omnidirectional range (VOR) systems, instrument landing systems (ILSs), radar systems, radar and navigation consoles, communications equipment and control towers and their equipment.
- (v) **Critical infrastructure:** Facilities, systems, networks and physical and technological information services and equipment the disabling or destruction of which would have a negative

impact on the population, public health, security, economic activity, the environment, freedom of movement, democratic governance or the effective functioning of the State.

- (w) **Nuclear facility:** Any facility, including associated buildings and equipment, in which nuclear material is produced, processed, used, handed, stored or disposal of.
- (x) **Crew member:** A person who is assigned by the operator to perform duties on board an aircraft during a period of service. “Flight crew member” means a crew member holding the relevant licence who is assigned to perform duties essential to the operation of an aircraft during a flight service period. “Cabin crew member” means a crew member who, in the interests of ensuring the safety of the cabin for passengers and crew, performs the duties assigned to him/her by the operator or the pilot in command of the aircraft.
- (y) **Fixed platform:** “Fixed platform” means an artificial island, installation or structure permanently or non-permanently attached to the seabed for the purpose of exploration or exploitation of resources or for other economic purposes.
- (z) **Injury:** “Injury” shall be defined in accordance with the provisions of the Criminal Code.
- (aa) **Lethal substance:** Any substance or material which, given its composition and effect, can cause the death of one or more persons.
- (bb) **Toxic chemical:** Any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all chemical substances, regardless of their origin or method of production.

TITLE II OFFENCES AND PENALTIES

CHAPTER I Crimes Against the Safety of Air and Maritime Navigation

Article 5. Offences involving the seizure of and acts against aircraft on the ground or in flight. Individuals, associations of persons and organizations or groups operating outside the law to which such persons belong shall be subject to criminal liability and prosecution, in accordance with the provisions of the present Act.

Any person who:

- (a) With the intention of seizing control or endangering the safety of an aircraft on the ground or in flight, causes the death of one or more persons on board shall be punished by imprisonment of 30 to 50 years.
- (b) With the intention of seizing control or endangering the safety of an aircraft on the ground or in flight, causes specific injury to one or more persons on board shall be punished by imprisonment of 20 to 30 years.
- (c) With the intention of seizing control or endangering the safety of an aircraft on the ground or in flight, causes severe injury to one or more persons on board shall be punished by imprisonment of 10 to 20 years.
- (d) With the intention of seizing control or endangering the safety of an aircraft on the ground or in flight, causes serious injury to one or more persons on board shall be punished by imprisonment of 8 to 10 years.
- (e) Unlawfully, by threat, coercion or force seizes or takes control of an aircraft on the ground or in flight shall be punished by imprisonment for 6 to 8 years.

- (f) Causes damage to an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight shall be punished by imprisonment for 10 to 20 years.
- (g) Destroys an aircraft on the ground shall be punished by imprisonment for 10 to 20 years.
- (h) Places or causes to be placed on an aircraft on the ground or in flight, by any means whatsoever, a device or substance which is likely to destroy the aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage which is likely to endanger its safety in flight, shall be punished by imprisonment for 10 to 20 years.
- (i) Destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight, shall be punished by imprisonment for 10 to 20 years.
- (j) Intentionally communicates false navigation information and/or authorizations, thereby endangering the safety of an aircraft on the ground or in flight, shall be punished by imprisonment for 3 to 5 years.
- (k) Deliberately changes the course of an aircraft in flight, or forces it to change course, thereby endangering the crew, passengers, other aircraft, or persons or infrastructure on the ground, shall be punished by imprisonment for 10 to 15 years.
- (l) Disables, damages or destroys air navigation equipment and/or services and as a result causes any incident or accident, whether or not there is loss of or damage to human life and/or material loss or damage, shall be sentenced to a prison term of 10 to 20 years.
- (m) Attempts to cause or causes the death of personnel operating air navigation equipment and as a result causes any incident or accident, whether or not there is loss of or damage to human life and/or material loss or damage, shall be sentenced to imprisonment for 15 to 30 years.
- (n) Impedes the operation of air navigation services and as a result causes any incident or accident, whether or not there is loss of or damage to human life and/or material loss or damage, shall be sentenced to a prison term of 10 to 20 years.

Article 6. Attacks on or against airports, airfields, air commands and aircraft not in flight. Any person who, using any device, explosive, substance or weapon, endangers the safety of an airport, airfield or air command serving civil or military aviation, by carrying out an act which:

- (a) Causes the death of one or more persons at an airport, airfield or air command serving civil or military aviation, and which by the nature of the act endangers the safety of the airport, shall be punished by imprisonment for 30 to 50 years.
- (b) Causes specific injury to one or more persons at an airport, airfield or air command serving civil or military aviation, and which by the nature of the act endangers the safety of the airport, shall be punished by imprisonment for 12 to 14 years.
- (c) Causes severe injury to one or more persons at an airport, airfield or air command serving civil or military aviation, and which by the nature of the act endangers the safety of the airport, airfield or air command, shall be punished by imprisonment for 10 to 12 years.
- (d) Causes serious injury to one or more persons at an airport, airfield or air command serving civil or military aviation, and which by the nature of the act endangers the safety of the airport, airfield or air command, shall be punished by imprisonment for 8 to 10 years.
- (e) Causes slight injury to one or more persons at an airport, airfield or air command serving civil or military aviation, and which by the nature of the act endangers the safety of the airport, airfield or air command, shall be punished by imprisonment for 6 to 8 years.
- (f) Causes damage to facilities or disrupts the services of an airport, airfield or air command serving civil or military aviation or an aircraft not in flight located at the airport, airfield or air command,

which by the nature of the act endangers the safety of the airport, airfield or air command or the aircraft, shall be punished by imprisonment for 3 to 8 years.

- (g) Destroys facilities in their entirety or disrupts the services of an airport, airfield or air command serving civil or military aviation or an aircraft not in flight located at the airport, airfield or air command, shall be punished by imprisonment for 7 to 12 years.

Article 7. Attacks on or against ships and maritime facilities. A manifest and/or proven intention to commit any of the offences established under the present Act shall be punishable by the same penalties.

Any person who:

- (a) Seizes a vessel or maritime facility, exercising control over it by means of threats, coercion or force, shall be punished by imprisonment for 4 to 6 years.
- (a) [sic] Commits an act that causes the death of one or more persons on board a ship or on a fixed or non-fixed platform, if the act endangers the safety of the ship or platform, shall be punished by imprisonment for 30 to 50 years.
- (b) Commits an act that causes specific injury to one or more persons on board a ship or on a fixed or non-fixed platform, if the act endangers the safety of the ship or platform, shall be punished by imprisonment for 12 to 14 years.
- (c) Commits an act that causes severe injury to one or more persons on board a ship or on a fixed or non-fixed platform, if the act endangers the safety of the ship or platform, shall be punished by imprisonment for 10 to 12 years.
- (d) Commits an act that causes serious injury to one or more persons on board a ship or on a fixed or non-fixed platform, if the act endangers the safety of the ship or platform, shall be punished by imprisonment for 8 to 10 years.
- (e) Commits an act that causes slight injury to one or more persons on board a ship or on a fixed or non-fixed platform, if the act endangers the safety of the ship or platform, shall be punished by imprisonment for 6 to 8 years.
- (f) Causes damage to a ship or to its cargo by placing thereon any kind of equipment, device or substance that might endanger navigation shall be punished by imprisonment for 3 to 8 years.
- (g) Destroys in its entirety a ship or its cargo by placing thereon any kind of equipment, device or substance that might endanger navigation shall be punished by imprisonment for 7 to 12 years.
- (h) Causes damage to a fixed or non-fixed platform or to its cargo by placing thereon any kind of equipment, device or substance that might endanger navigation shall be punished by imprisonment for 3 to 8 years.
- (i) Destroys in its entirety a fixed or non-fixed platform or its cargo by placing thereon any kind of equipment, device or substance that might endanger navigation, shall be punished by imprisonment for 7 to 12 years.
- (j) Causes damage to a maritime facility or seriously interferes with its operations, if any such act endangers navigation, shall be punished by imprisonment for 3 to 8 years.
- (k) Destroys in its entirety a maritime facility or seriously interferes with its operations, if any such act endangers navigation, shall be punished by imprisonment for 7 to 12 years.
- (l) Intentionally communicates false navigation information and/or authorizations, thereby endangering navigation, shall be punished by imprisonment for 3 to 5 years.

- (m) Intimidates, causes panic or terror in the population or coerces a government or an international organization shall be punished with imprisonment from 6 to 12 years any person who commits any of the following acts [sic]:
 - (i) Uses against or on a fixed or non-fixed platform any explosive or radioactive material or a nuclear, bacteriological or chemical weapon, oil, natural or liquified gas or other hazardous or noxious substances;
 - (ii) Discharges against or on a fixed or non-fixed platform explosive or radioactive material or nuclear, bacteriological or chemical weapons, oil, natural or liquified gas or other hazardous or noxious substances;
 - (iii) Threatens, with or without a condition, to commit any of the acts set forth in the preceding paragraphs.
- (n) If any of the acts described in subparagraph (n) [sic] results in the death of one or more persons, the penalty shall be imprisonment for 30 to 50 years.
- (o) If any of the acts described in subparagraph (n) results in specific injury to one or more persons, the penalty shall be imprisonment for 12 to 14 years.
- (p) If any of the acts described in subparagraph (n) results in severe injury to one or more persons, the penalty shall be imprisonment for 10 to 12 years.
- (q) If any of the acts described in subparagraph (n) results in serious injury to one or more persons, the penalty shall be imprisonment for 8 to 10 years.
- (r) If any of the acts described in subparagraph (n) results in slight injury to one or more persons, the penalty shall be imprisonment 6 to 8 years.

Article 8. Unlawful demands. Any person who through force or intimidation demands that another person do or refrain from doing any act that is likely to endanger the safety of maritime or air operations shall be punished with imprisonment from 8 to 12 years.

CHAPTER II Weapons of Mass Destruction

Terrorist Attacks with Nuclear, Chemical, Bacteriological or Toxin Weapons or their Means of Delivery

Article 9. Crimes committed with nuclear materials, chemical or bacteriological substances or toxins.

- (a) A prison term of 6 to 12 year shall be imposed on any person who with the intention of intimidating the population or compelling a government or an international organization to carry out an act:
 - (i) Uses radioactive material or a nuclear, bacteriological or chemical weapon against or on any means of land, air or sea transport;
 - (ii) Discharges without authorization from a ship, or transports by any means, oil, natural or liquified gas or other hazardous or noxious substances not covered by subparagraph (i) in an amount that could cause death or injury to one or more persons;
 - (iii) Uses any means of land, air or sea transport containing nuclear materials or chemical or bacteriological substances with the intention of causing death or injury to one or more persons;

- (iv) Transports on board any means of land, air or sea transport any radioactive material or nuclear, bacteriological or chemical weapon with the intention of threatening to cause death or injury to one or more persons.
- (b) If any of the acts described in subparagraph (a) results in the death of one or more persons, the penalty shall be imprisonment for 30 to 50 years.
- (c) If any of the acts described in subparagraph (a) results in specific injury to one or more persons, the penalty shall be imprisonment for 12 to 14 years.
- (d) If any of the acts described in subparagraph (a) results in severe injury to one or more persons, the penalty shall be imprisonment for 10 to 12 years.
- (e) If any of the acts described in subparagraph (a) results in serious injury to one or more persons, the penalty shall be imprisonment for 8 to 10 years.
- (f) If any of the acts described in subparagraph (a) results in slight injury to one or more persons, the penalty shall be imprisonment for 6 to 8 years.

Article 10. Unlawful discharge of nuclear material, chemical or bacteriological substances or toxins.

- (a) Any person who transports or discharges on any means of land, air or sea transport any material, especially fissionable material, equipment or material designed or prepared for the processing, use or production of fissionable material, with the intention of using it in a nuclear explosion or in any other nuclear activity which is not covered by any of the provisions included in any comprehensive safeguards agreement of the International Atomic Energy Agency, shall be punished by imprisonment for 20 to 25 years.
- (b) Any person who transports or discharges on any means of land, air or sea transport any material, especially fissionable material, equipment or material designed or prepared for the processing, use or production of fissionable material, with the intention of using it in a nuclear explosion or in any other nuclear activity which is not covered by any of the provisions included in any comprehensive safeguards agreement of the International Atomic Energy Agency, shall be punished by imprisonment for 20 to 25 years.
- (c) Any person who transfers or discharges on any means of land, air or sea transport any equipment, materials or software or related technological that significantly contributes to the design, production or use of a nuclear, chemical or bacteriological weapon shall be punished by imprisonment for a term of 15 to 20 years.

An exception to this provision shall be made when the transport of an item or material covered by this article, or relating to a nuclear weapon or other nuclear explosive device, is transported under the control of a State party to the Treaty on the Non-Proliferation of Nuclear Weapons, where:

- (i) The resulting transfer or receipt, including internal to a State, of the item or material is not contrary to such State party's obligations under the Treaty on the Non-Proliferation of Nuclear Weapons; and
- (ii) If the item or material is intended for the delivery system of a nuclear weapon or other nuclear explosive device of a State party to the Treaty on the Non-Proliferation of Nuclear Weapons, and the possession of such device is not contrary to the obligations of the State party under that Treaty.

Article 11. Control measures. The establishment of control measures for the development, production, preparation, conveyance, acquisition, transfer, import, export, transport, stockpiling, retention, distribution or use of toxic chemicals, biological agents or toxins and their delivery systems, as well as for facilities or equipment used for such purposes, shall be governed by the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction and the

Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction and other conventions that may be adopted in the future.

Article 12. Offences related to chemical, bacteriological and toxin weapons Any person who commits any of the following acts shall be punished with imprisonment of 6 to 8 years, irrespective of the penalties applicable to other offences:

- (a) Develops, produces, possesses, transports, otherwise acquires, stockpiles or retains chemical, bacteriological or toxin weapons;
- (b) Transfers, directly or indirectly, chemical, bacteriological or toxin weapons;
- (c) Uses chemical, bacteriological or toxin weapons for unlawful purposes;
- (d) Engages in preparations for the use of chemical, bacteriological or toxin weapons;
- (e) Assists, encourages or induces, in any way, anyone to engage in any activity prohibited to States parties to the conventions referred to in the preceding article.

Article 13. Offences committed through the use of nuclear material. A person who commits any of the following acts:

- (a) Receives, possesses, uses, transfers, transports, alters, disposes of or disperses nuclear material without the authorization of the competent authority, if such act causes the death of one or more persons, shall be punished by imprisonment for 30 to 50 years.
- (b) Receives, possesses, uses, transfers, transports, alters, disposes of or disperses nuclear material without the authorization of the competent authority, if such act causes specific injury to one or more persons, shall be punished by imprisonment for 12 to 14 years.
- (c) Receives, possesses, uses, transfers, transports, alters, disposes of or disperses nuclear material without the authorization of the competent authority, if such act causes severe injury to one or more persons, shall be punished by imprisonment for 10 to 12 years.
- (d) Receives, possesses, uses, transfers, transports, alters, disposes of or disperses nuclear material without the authorization of the competent authority, if such act causes serious injury to one or more persons, shall be punished by imprisonment for 8 to 10 years.
- (e) Receives, possesses, uses, transfers, transports, alters, disposes of or disperses nuclear material without the authorization of the competent authority, if such act causes slight injury to one or more persons, shall be punished by imprisonment for 6 to 8 years.
- (f) Receives, possesses, uses, transfers, transports, alters, disposes of or disperses nuclear material without the authorization of the competent authority, if such act causes substantial damage to property or to the environment, shall be punished by imprisonment for 4 to 9 years.
- (g) Acquires through theft or obtains nuclear material shall be punished by imprisonment for 6 to 12 years.
- (h) Acquires through robbery or obtains nuclear material shall be punished by imprisonment for 10 to 15 years.
- (i) Uses lawfully or unlawfully obtained nuclear material for purposes not authorized by law shall be punished by imprisonment for 3 to 10 years.
- (j) Commits an act involving the loading, shipping, transport or transfer of nuclear material into or out of a State without authorization by a competent authority shall be punished by imprisonment for 5 to 10 years.

- (k) Commits an act directed against a nuclear facility, or an act that interferes with the operations of a nuclear facility, intentionally causing, or knowing that the act may cause, the death of one or more persons, shall be punished by imprisonment for 12 to 14 years.
- (l) Commits an act directed against a nuclear facility, or an act that interferes with the operations of a nuclear facility, intentionally causing, or knowing that the act may cause, specific injury to one or more persons, shall be punished by imprisonment for 12 to 14 years.
- (m) Commits an act directed against a nuclear facility, or an act that interferes with the operations of a nuclear facility, intentionally causing, or knowing that the act may cause, severe injury to one or more persons, shall be punished by imprisonment for 10 to 12 years.
- (n) Commits an act directed against a nuclear facility, or an act that interferes with the operations of a nuclear facility, intentionally causing, or knowing that the act may cause, serious injury to one or more persons, shall be punished by imprisonment for 8 to 10 years.
- (o) Commits an act directed against a nuclear facility, or an act that interferes with the operations of a nuclear facility, intentionally causing, or knowing that the act may cause, slight injury to one or more persons, shall be punished by imprisonment for 6 to 8 years.
- (p) Commits substantial damage to property or to the environment through exposure to radiation or dispersal of radioactive substances shall be punished by imprisonment for 4 to 9 years.
- (q) Threatens to commit any of the offences described in the present article in order to compel one or more persons, international organizations or States to do or refrain from doing any lawful or unlawful act shall be punished by imprisonment for 2 to 6 years.

Article 14. Nuclear terrorism. Any person commits the offence of nuclear terrorism if that person:

- (a) Unlawfully possesses, manufactures or uses radioactive material or devices and thereby:
 - (i) Causes death shall be punished by imprisonment for 30 to 50 years;
 - (ii) Causes specific injury shall be punished by imprisonment for 12 to 14 years;
 - (iii) Causes severe injury shall be punished by imprisonment for 10 to 12 years;
 - (iv) Causes serious injury shall be punished by imprisonment for 8 to 10 years;
 - (v) Causes slight injury shall be punished by imprisonment for 6 to 8 years;
 - (vi) Causes damage to property shall be punished with imprisonment for 4 to 9 years;
 - (vii) Causes damage to the environment shall be punished by imprisonment for 4 to 9 years;
 - (viii) Threatens to use radioactive material or a device, under circumstances which indicate that the threat is genuine, shall be punished with imprisonment from 2 to 6 years.
- (b) Any person who causes damage to a nuclear facility in a manner which releases or risks the release of radioactive material and thereby:
 - (i) Causes death shall be punished by imprisonment for 30 to 50 years;
 - (ii) Causes specific injury shall be punished by imprisonment for 12 to 14 years;
 - (iii) Causes severe injury shall be punished by imprisonment for 10 to 12 years;
 - (iv) Causes serious injury shall be punished by imprisonment for 8 to 10 years;
 - (v) Causes slight injury shall be punished by imprisonment for 6 to 8 years;
 - (vi) Cause damage to property shall be punished with imprisonment for 4 to 9 years;
 - (vii) Causes damage to the environment shall be punished by imprisonment for 4 to 9 years;

(viii) With the intent to compel a person, an international organization or a State to do or refrain from doing any act shall be punished by imprisonment for 3 to 10 years.

- (c) Any person who, by threat or use of force, demands the delivery of radioactive material, equipment or devices, or a nuclear facility, shall be punished by imprisonment for 2 to 6 years.

CHAPTER III

Terrorist Attacks Committed with Explosive Devices

Article 15. Terrorist attacks committed with explosive devices or lethal substances.

Any person who delivers, sends, places, discharges or detonates an explosive or lethal device or substance in or against a place of public use, a government facility, means of transport or infrastructure shall be punished by imprisonment for 6 to 12 years.

- (a) If any of the acts described above results in the death of one or more persons, the penalty shall be imprisonment for 30 to 50 years.
- (b) If any of the acts described above results in specific injury to one or more persons, the penalty shall be imprisonment for 12 to 14 years.
- (c) If any of the acts described above results in severe injury to one or more persons, the penalty shall be imprisonment for 10 to 12 years.
- (d) If any of the acts described above results in serious injury to one or more persons, the penalty shall be imprisonment for 8 to 10 years.
- (e) If any of the acts described above results in slight injury to one or more persons, the penalty shall be imprisonment for 6 to 8 years.
- (f) If an act results in economic damage to any affected person as provided for in the preceding subparagraphs, the penalty shall be imprisonment for 3 to 8 years.

Chapter IV

Terrorist Attacks on Critical Infrastructure

Article 16. Acts of terrorism against critical infrastructure. Without prejudice to the penalties applicable to the commission of other offences, any person who commits a terrorist attack against critical infrastructure, thereby disabling or destroying it, shall be punished by imprisonment for 12 to 25 years.

CHAPTER V

Crimes Against Internationally Protected Persons and Headquarters

Article 17. Attacks against internationally protected persons and their property. Any person who attempts to kill or harm any of the following persons, in accordance with the nature of the present Act, shall be punished by imprisonment for 30 to 50 years:

- (a) A Head of State or Government and family members accompanying him or her;
- (b) A representative or official of a foreign State, or any official or other agent of an international organization who, at the time and in the place where the crime is committed, is entitled pursuant to international law to special protection, as well as members of his or her family accredited in Guatemala.

If the attack affects or damages only property assigned to the internationally protected official, the penalty shall be imprisonment for 4 to 9 years.

CHAPTER VI Taking of Hostages

Article 18. Taking of hostages. Any person who detains one or more persons in a public or private place with the intention of instilling fear, causing alarm, intimidating the population or compelling a State or government or national or international organization to do or refrain from doing any act as a condition for the release of the person or persons unlawfully deprived of their liberty shall be punished by imprisonment for 30 to 50 years.

CHAPTER VII Terrorist Groups, Recruitment and Support

Article 19. Promotion, formation and recruitment of terrorist groups. Any person who joins or promotes the organization or operation of associations or groups for the purpose of committing any of the offences established under the present Act shall be imprisoned for 8 to 10 years.

Article 20. Terrorist support and recruitment. Any person who conspires with, conceals, shelters, harbours or recruits persons or promotes or provides support for activities carried out by persons or organized groups for the purpose of committing any of the offences established under the present Act, even if that person does not participate in the commission thereof, shall be punished by imprisonment for 6 to 8 years.

Article 21. Financing. For the purposes of the present Act, in matters related to financing, the provisions of the Terrorism Financing Prevention and Suppression Act shall apply.

CHAPTER VIII Cyberterrorism and the Media

Article 22. Cybernetic terrorism or cyberterrorism. Any person commits this offence if that person, for economic, political or religious purposes, uses the media, computer or information technology or electronic or similar means with the aim of instilling fear, causing alarm, intimidating the population or coercing a State or Government or national or international organization, thereby causing a violation of the free will of other persons, shall be punished by imprisonment for 10 to 20 years.

Article 23. Illegal use of information. Any person who, using any means, obtains, intercepts or copies information of any nature which is used for the commission of any of the offences established under the present Act shall be punished by imprisonment for 6 to 8 years.

CHAPTER IX Aggravating Circumstances

Article 24. Aggravating circumstances. The penalties provided for under the present Act shall be increased by one third if the offences are committed:

- (a) By a public official or employee by reason of or in the exercise of his or her duties;
- (b) Through the recruitment or use of minors.

**TITLE III
SPECIAL PROVISIONS AND THEIR APPLICATION**

**CHAPTER I
Procedure**

Article 25. Principle of prosecutorial discretion. The principle of prosecutorial discretion shall not be applied in respect of any offence established under the present Act.

Article 26. Alternative measures. Alternative measures shall not under any circumstances be applied in respect of the offences established under the present Act.

Article 27. Forfeiture. Usable assets seized in connection with terrorist activities shall be permanently transferred to the State for administration and use; where applicable, items the use of which is prohibited and which constitute a risk or danger shall, in accordance with the procedures established by law, be handed over to the competent authority, depending on their nature, for immediate destruction. Seized aircraft and vessels shall be handed over to the air or naval forces of the Ministry of National Defence.

**CHAPTER II
Cooperation**

Article 28. International cooperation. The State shall promote international technical and economic cooperation through its competent bodies in order to strengthen programmes for the prevention, investigation and suppression of all activities related to terrorism.

Article 29. Training. The State shall promote regular technical training for officials responsible for internal and external security controls. To that end, close cooperation shall be promoted with the countries of the region to provide technical support and training for those who require it in order to achieve the common objective of gradually harmonizing the training and qualification of personnel responsible for security.

Article 30. Customs, immigration, police and military control. Customs, immigration, police and military control of borders, territorial waters, airspace, ports, airports, airfields, air commands and border crossings shall be optimized so as to prevent and impede international trafficking in arms, explosives or hazardous substances without documentation proving their lawful origin and destination.

Article 31. Communications network. The State shall seek to strengthen its controls, proposing the creation of a technological network in the region comprising security, immigration and customs authorities, in order to optimize control procedures without affecting the flow of trade. This communication network will be essential for the prevention of terrorist activities.

Article 32. Inter-agency meetings. The State shall promote inter-agency security meetings at the national and international levels.

Article 33. Quality of documents. The State shall take the necessary measures to improve security in the issuance and extension of identity and migration documents.

The State shall also coordinate and share with the countries of the region the measures needed to prevent the duplication, falsification or fraudulent use of identity and migration documents.

CHAPTER III Joint Operations

Article 34. Exchange and flow of information. The State may periodically or continually exchange information on persons and organizations linked to criminal investigation processes, in accordance with domestic laws and regulations adopted to prevent, investigate and punish any terrorist activity. Such exchanges may be carried out with those countries with which Guatemala has concluded the respective agreements.

Article 35. Comprehensive policy. The President of the Republic shall harmonize or establish the national and international security, customs and immigration policies and procedures necessary to combat these offences.

Article 36. Vehicles, vessels and aircraft. Operations to combat terrorism and illicit trafficking shall be directed against persons, vehicles, vessels and aircraft of any flag or nationality in respect of which there is information indicating that they may be or are being used for the commission of any of the offences established under the present Act, including vessels and aircraft without identification of nationality which are within the limits of the national territory.

Article 37. Pursuit of vehicles, vessels and aircraft. In the event of pursuit of vehicles, vessels or aircraft within authorized areas, the security forces shall inform the authorities of the country presumed to be their destination with a view to their capture.

Article 38. Interception and/or detention of vehicles, vessels and aircraft. When vehicles, vessels, aircraft or any other means of transport are intercepted and/or detained, and there are indications of the existence of the commission of any of the offences established under the present Act, law enforcement officials may apprehend the persons involved and place them at the disposal of the competent authorities.

Article 39. Mechanisms and procedures. The State shall develop mechanisms and procedures that will enable it to obtain immediate information making it possible to identify organizations and/or persons who have committed or are conspiring to commit any of the offences established under the present Act and to make the applicable arrests.

Article 40. Information and intelligence. The development of early warning and information- and intelligence-sharing systems shall be encouraged in order to monitor the movements of, prevent the passage of and apprehend suspected terrorists.

Article 41. Consultation on accused persons. The State shall have the obligation to consult with other States on the status in police and judicial proceedings of persons accused of committing any of the offences established under the present Act.

TITLE IV INTERNATIONAL JUDICIAL COOPERATION

CHAPTER I Extradition

Article 42. Applicability. The offences established under the present Act shall be deemed to be extraditable offences. Extradition may be granted on the basis of the international treaties to which Guatemala is a party. The extradition procedure shall be carried out in accordance with the provisions of Decree No. 28-2008, the Extradition Procedures Act, under the principle of reciprocity.

Article 43. Agreements. Guatemala shall seek to conclude bilateral and multilateral agreements to carry out or enhance the effectiveness of extradition.

CHAPTER II Mutual Legal Assistance

Article 44. General principle. The State of Guatemala may enter into formal agreements with other States, in accordance with international practice, for the provision of mutual legal assistance in investigations, prosecutions and judicial proceedings relating to offences established under the present Act, in conformity with domestic law and the international instruments to which Guatemala is a party.

Article 45. Applicability of extradition rules. The rules on extradition provided for in chapter I of the present title shall apply, as appropriate, to mutual legal assistance.

Article 46. Dual criminality. The dual criminality requirement shall not apply to the provision of mutual legal assistance, except in the case of measures of a coercive nature.

Article 47. Freezing of assets.

- (a) The Public Prosecution Service, where appropriate, shall request, through a competent judge, financial institutions to prevent operations involving persons who are suspected of being linked to criminal organizations associated with any of the offences established under the present Act. Such decisions shall be immediately communicated to the competent Judge, who, considering the circumstances of the case, shall determine if it is appropriate, without prior notification, to freeze the assets of the persons concerned, as provided for under the present Act.
- (b) The provisions of the preceding subparagraph shall apply to any person or entity included in the lists drawn up by the United Nations Security Council pursuant to resolution 1267 (1999) and subsequent resolutions.

CHAPTER III Provisions in Common

Article 48. Inapplicability of the political nature of offences. For the purposes of the present title, none of the offences established under the present Act or the offences set forth in Decree-Law No. 58-2005 shall be regarded as a political offence or as an ordinary offence connected with a political offence or an offence inspired by political motives.

Article 49. Inapplicability of the fiscal nature of offences and bank secrecy. For the purposes of the present title, none of the offences established under the present Act or the offences set forth in Decree-Law No. 58-2005 shall be regarded as a fiscal offence.

Bank secrecy shall not be invoked to deny a request for mutual legal assistance in relation to any of the offences established under the present Act or the offences set forth in Decree-Law No. 58-2005.

Article 50. Asylum and refugee status. Neither asylum nor refugee status shall be granted to any person who commits any of the offences set forth in the present Act. The relevant rules of national and international law shall apply in respect of the present article.

Chapter IV Protective or Interim Measures

Article 51. Protective or interim measures. For the application of protective or interim measures applicable to the offences established under the present Act, action shall be taken in accordance with the

provisions of the Code of Criminal Procedure, the Code of Civil Procedure, the Commercial Code and other applicable laws.

**TITLE V
REPEALING AND FINAL PROVISIONS
SOLE CHAPTER**

Article 52. Repealing provisions. Article three hundred ninety-one (391) of the Criminal Code, Decree 17-73 of the Congress of the Republic of Guatemala and the amendments thereto, and any other provisions that contravene the present Act, are hereby repealed.

Article 53. Order of intervention. When any of the present offences is committed, the Executive shall establish the order of intervention by law enforcement authorities in accordance with the Political Constitution and the Public Order Act.

Article 54. Inter-agency coordination. When any of the offences established under the present Act is committed, the Executive shall convene the Anti-Terrorism Cabinet, which shall consist mainly of the Minister of National Defence and the Minister of the Interior; the President of the Republic may appoint other public authorities, officials or employees as he or she deems appropriate.

All government institutions and citizens shall be obligated to comply with any orders issued during the period and in accordance with the provisions of the Public Order Act, excluding the judiciary, the legislature, the Constitutional Court and the Office of the Human Rights Ombudsman, which shall ensure that human rights and the provisions of the Political Constitution of the Republic of Guatemala are upheld.

Article 55. Implementing regulations. The Executive shall issue the implementing regulations for the present Act within one hundred and twenty days of its entry into force.

Article 56. Entry into force. The present Decree shall enter into force twenty-eight days after its publication in the Official Gazette.

BE IT SUBMITTED TO THE LEGISLATIVE BODY FOR APPROVAL, PROMULGATION AND PUBLICATION.

ISSUED AT THE HEADQUARTERS OF THE LEGISLATIVE BODY IN GUATEMALA CITY, ON THE _____ DAY OF _____ IN THE YEAR TWO THOUSAND SEVENTEEN.