

GUATEMALA

CAT A/51/44 (1996)

42. The Committee considered the initial report of Guatemala (CAT/C/12/Add.5 and 6) at its 232nd and 233rd meetings, on 16 November 1995 (CAT/C/SR.232 and 233/Add.1 and 3), and has adopted the following conclusions and recommendations:

1. Introduction

43. The Committee thanks the Government of Guatemala for its report. It also listened with great interest to the informative oral statement made by its representatives. The Committee wishes to thank them for their replies and for the spirit of openness and cooperation in which the dialogue took place.

2. Positive aspects

44. The Committee welcomes the honesty and frankness of the report acknowledging that torture occurs in Guatemala.

45. The Committee considers that the present peace process and the Government of Guatemala's cooperation with the United Nations are signs of progress.

46. The Committee welcomes the legal changes that have been made by the State party, including the definition of torture and penalties associated with that crime which are incorporated into the penal law. The Committee is also pleased to note that the Government of Guatemala has amended the Code of Criminal Procedure to deal with human rights breaches, and that it has abolished the military commissioners.

47. The Committee also welcomes the creation of various organs to reinforce human rights, including the Procurator for Human Rights, the Presidential Coordinating Committee for Government Human Rights Policy and national human rights committees.

48. The Committee is pleased to note Guatemala's commitment to human rights education.

49. The Committee is pleased to learn that Guatemala has begun the process of making the declaration under article 22 of the Convention and that its representatives do not see any obstacle to such a declaration.

3. Factors and difficulties impeding the application of the Convention

50. The Committee acknowledges that Guatemala is in a difficult situation since the civil democratic Government is obstructed in its action by a deeply entrenched army and police culture.

51. The Committee also takes note of the wide disparity in the distribution of the economic wealth in the country creating conditions that may tend towards confrontation between the law enforcement organs and those parts of the population which are at the lowest end of the economic and social scale. In this respect, the Committee wishes to underline that the individual recourse procedure provided for under article 22 of the Convention would constitute a useful preventive measure once it has been accepted by the Government.

52. The Committee considers that the right of the citizens to carry fire-arms, which is enshrined in the Constitution, may be regarded as a potential obstacle to a full implementation of the Convention.

4. Subjects of concern

53. The Committee notes with deep concern that torture and other cruel, inhuman or degrading treatment or punishment appear to be endemic in Guatemala, and to include many children among its victims.

54. The Committee is equally concerned at the State's continued failure promptly and impartially to investigate and prosecute those responsible for an act of torture and ill-treatment.

55. The de facto impunity for perpetrators of torture resulting from the above-mentioned facts and the weakness shown by the judicial, administrative and police authorities in enforcing the law is likewise a matter of deep concern to the Committee.

56. The Committee is also concerned at the fact that paramilitary groups and private defence patrols still exist and operate in Guatemala.

5. Recommendations

57. The Committee recommends that the Government of Guatemala take the following measures:

(a) Strengthening, in a more significant manner, the activities of the Procuracy of Human Rights;

(b) Organizing intensive programmes of technical training for the police, prosecutors and judges;

(c) Providing means and material resources that are necessary for public law enforcement officials to fulfil their mandates;

(d) Adopting measures providing for an effective coordination between the police and the prosecutors;

(e) Protecting witnesses, judges and prosecutors from threats and intimidations;

(f) Imposing severe sanctions for those public officials who do not comply with their duty of applying the law;

(g) Completely abolishing the so-called Voluntary Committees of Civic Defence;

(h) Changing the legal provisions concerning the military jurisdiction, in order to limit the jurisdiction of military judges exclusively to military crimes;

(i) Reducing the authorization to carry fire-arms to the minimum strictly indispensable.

CAT A/53/44 (1998)

157. The Committee considered the second periodic report of Guatemala (CAT/C/29/Add.3) at its 324th and 325th meetings, on 7 May 1998 (CAT/C/SR.324 and 325), and adopted the following conclusions and recommendations.

1. Introduction

158. Guatemala acceded to the Convention on 5 January 1990. It has not submitted the declarations provided for under articles 21 and 22 of the Convention.

159. Guatemala is also a State party to the Inter-American Convention to Prevent and Punish Torture.

160. The report was submitted on 17 February 1997 and covers the period between 31 July 1995, when the first report was submitted, and 30 August 1996. During the Committee's consideration of the report, the Guatemalan delegation gave updated information in its oral presentation and submitted an addendum containing information covering the period between 1 January 1997 and 31 March 1998.

161. The Committee's work was complicated by the fact that the report does not adhere to the general guidelines adopted by the Committee on the form and content of periodic reports, which stipulated that reports should follow the order of the articles of the Convention (arts. 1 to 16).

2. Positive aspects

162. The Committee is pleased to note the following positive aspects:

(a) The Agreement on a Firm and Lasting Peace, signed on 29 December 1996, which ended the prolonged armed conflict;

(b) The elimination of all State-promoted policies that violate human rights;

(c) The stated wish of the State authorities to promote a thorough reform of the administration of justice and of public security, with a view to rectifying the shortcomings of the Judiciary, the Public Prosecutor's Office and the National Police;

(d) The demobilization of the Voluntary Civil Defence Committees, whose members were reported in the past to have committed the most serious violations of human rights;

(e) The restriction of military jurisdiction to essentially military crimes and misdemeanours and the consequent transfer to ordinary courts of all proceedings against members of the armed forces for ordinary crimes and similar acts;

(f) The demilitarization of the police forces and the start made on restructuring them into a single

National Civil Police with the disbandment of the Mobile Military Police and the professionalization of the police function through the establishment of the Police Academy where anybody wishing to join the force, obtain promotion or specialize must undergo training. The Committee notes with satisfaction that the training of members of the police will henceforth include, as a priority subject, the study of human rights and the analysis of the principal international instruments in this sphere, in accordance with the provisions of article 10 of the Convention;

(g) The implementation of intensive training programmes in substantive criminal law for serving judges and the strengthening of the College of Legal Studies to ensure that posts are filled by the best-qualified judges, through a selection process based on objective technical criteria;

(h) The process of purging the National Police and the Financial Police through the dismissal of members suspected of involvement in human rights violations;

(i) The raising of the minimum age for bearing firearms to 25 years;

(j) The numerical reduction in the strength of the armed forces.

3. Factors and difficulties impeding the application of the provisions of the Convention

163. The application of the Convention is being hindered by:

(a) Continued grave qualitative and quantitative weaknesses in the Judiciary, the Public Prosecutor's Office and the Police, which are the State institutions responsible for ensuring the safety of persons and laying the foundations for the functioning of a State which will respect and guarantee human rights;

(b) The repeated instances of intimidation of judges, prosecutors, witnesses, victims and their relations, human rights activists and journalists, which largely account for the absence of decisive action by the bodies that should investigate and try crimes and for the continuance of impunity. Article 13 of the Convention makes States responsible for the protection of victims and witnesses;

(c) The delay in putting into operation the Service for the Protection of Persons involved in Proceedings and Persons connected with the Administration of Justice;

(d) The inadequacy of the funds allocated by the State to the Human Rights Procurator, which limits his activities in the investigation of alleged human rights violations by State agents, and in the promotion of a culture of tolerance and respect for these rights, at a time in the country's history when particular importance should be attached to those functions;

(e) The spread in Guatemalan society of a deep-rooted culture of violence, which it has not proved possible to reverse.

4. Subjects of concern

164. The Committee is concerned about the following:

- (a) The persistence of impunity for crimes, particularly grave human rights violations;
- (b) The fact that, although the number of reports of torture has declined, there are still problems resulting from incompetence in the Public Prosecutor's Office, the Judiciary and the Police, which are the State bodies responsible for investigating such reports, identifying and arresting the perpetrators and bringing them to trial;
- (c) The increase in the number of reports of cruel, inhuman or degrading treatment by State agents;
- (d) The proliferation of the unlawful possession of weapons by private individuals, which is largely responsible for the high levels of criminal violence that seriously jeopardizes the safety of citizens and undermines confidence in the institutions of the rule of law;
- (e) The faulty definition of the crime of torture in article 201-A of the Penal Code, which is not consistent with article 1 of the Convention.

5. Recommendations

165. The Committee recommends to the State party that the following actions be taken:

- (a) Intensification of efforts to elucidate past grave violations and to ensure that such situations do not recur. Articles 11 and 12 of the Convention require the State to proceed ex officio to a prompt and impartial investigation of any report of torture;
- (b) Completion of the process of setting up a single National Civil Police, with the disbandment or demobilization of the Financial Police;
- (c) Continuation of the process of reducing the number of permits to carry firearms to the strictly essential minimum;
- (d) The putting into operation as soon as possible of the Service for the Protection of Persons involved in Proceedings and Persons connected with the Administration of Justice;
- (e) The allocation to the Human Rights Procurator of the necessary funds for effectively carrying out, throughout the national territory, the functions and duties assigned to and enjoined upon him under the Constitution and the law;
- (f) Harmonization of article 201-A of the Penal Code with the definition of torture contained in article 1 of the Convention;
- (g) The prompt submission, if possible during the coming year, of the third report, the form and content of which should comply with the previously mentioned guidelines on the presentation of reports.

166. The Committee reminds the State authorities that their representatives informed it, during its consideration of the initial report, that the process of preparing the declaration referred to in article

22 of the Convention had been initiated and that in their view no obstacles existed to completing the process.

CAT A/56/44 (2001)

67. The Committee considered the third periodic report of Guatemala (CAT/C/49/Add.2) at its 450th, 453rd and 456th meetings, held on 21, 22 and 24 November 2000 (CAT/C/SR.450, 453 and 456), and adopted the following conclusions and recommendations.

A. Introduction

68. The Committee notes that although Guatemala has been a State party to the Convention since 5 January 1990 it has not made the declarations provided for in articles 21 and 22 of the Convention, and that it is also a party to the Inter-American Convention to Prevent and Punish Torture.

69. The report, submitted on 3 February 2000 and covering the period from 1 April 1998 to 31 December 1999, was updated by the head of the delegation of Guatemala in his introduction. The report generally follows the Committee's guidelines for the form and contents of periodic reports.

70. The Committee thanks the delegation for its replies and for its frankness and cooperation during the dialogue.

B. Positive aspects

71. The Committee takes note with satisfaction of the following positive aspects:

(a) The announcement by the President of Guatemala, repeated by the head of the delegation during his introduction, that the question of human rights will figure prominently in government policy and that there is an acknowledged need to transform the administration of justice and put an end to impunity;

(b) The recognition by the State of its responsibility in emblematic cases of human rights violations substantiated under the inter-American system for the protection of human rights, and the announcement of willingness likewise to recognize its responsibility in other pending cases;

(c) The adoption of the Career Judicial Service Act, which governs the activities of judges and magistrates with a view to protecting their independence and ensuring professional excellence in the exercise of their functions;

(d) The consolidation of the College of Legal Studies as an initial in-service training institution responsible for the objective and impartial selection of new members of the judiciary;

(e) The demobilization of the Treasury Police and conclusion of the process of constituting a single National Civil Police;

(f) The establishment within the Office of the Procurator for Human Rights of the Office of the Ombudsman for Prisoners and Due Process, which is authorized to monitor judicial and prison officials in order to protect individuals in situations where violations of human rights and judicial

guarantees frequently occur;

(g) The conclusion by the Government and the United Nations Human Rights Verification Mission in Guatemala of an agreement on the implementation of the Prison Modernization Programme and, as part of the Programme, the opening of the Penitentiary System College in November 1999;

(h) The decision by the Government, announced to the Committee by the President of the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH) and head of the delegation, to propose amendments to articles 201 bis and 425 of the Penal Code in order to define the offence of torture in terms that are fully in accordance with article 1 of the Convention.

C. Factors and difficulties impeding the application of the Convention

72. The Committee points to the existence of the following:

(a) The increase in acts of intimidation, harassment and death threats against judges, prosecutors, complainants, witnesses and members of human rights bodies and victims' and journalists' organizations, which continue to prevent the submission of complaints of human rights violations and to impede progress in politically sensitive cases involving members of the military or government officials and relating to the organization and activities of the intelligence services. The fear to which such acts give rise seriously affects the freedom of action of individuals and organizations involved in the protection of human rights, as well as the autonomy of the administration of justice;

(b) Legislative provisions which allow the army to take part in public security and crime prevention activities and which hinder the demilitarization of society, weaken the civil power of the State, and are a legacy of the militarization of the country during the armed conflict;

(c) The repeated protection of persons responsible for human rights violations by their superiors, made possible by the lack of administrative investigations and the failure to adopt the necessary disciplinary measures, who in some cases themselves acquiesced or even directly participated in the commission of violations;

(d) Parallel investigations tacitly authorized or agreed to by the State and conducted by government bodies not legally authorized to do so or by clandestine structures in cases of human rights violations in which responsibility is attributed to government officials; these parallel investigations jeopardize the autonomy and independence of the judiciary and the Public Prosecutor's Office and defeat the purpose of and hamper investigations of these crimes;

(e) The lack of statistics on the prison population disaggregated by ethnic group which might show that persecution in prison is based on racial discrimination;

(f) The inadequacy of the Service for the Protection of Persons involved in Proceedings and Persons connected with the Administration of Justice in providing effective protection and security for persons involved, in various capacities, in criminal proceedings. The Committee recalls that in its

observations on the second periodic report, it drew attention to the impact of such inadequacy on continuing impunity and pointed out that the protection of victims and witnesses is a duty imposed on the State by article 13 of the Convention.

D. Subjects of concern

73. The Commission expressed concern with respect to:

(a) The deterioration of the human rights situation in Guatemala and, in particular, the increase in proven cases of torture and other cruel, inhuman and degrading treatment or punishment as compared with the situation at the time the Committee considered the second periodic report. The fact that the main perpetrators of these violations are officials of the National Civil Police, particularly its Criminal Investigations Service, has frustrated hopes that a renewed, single police institution under civilian command would not have the defects that characterized police bodies in the past;

(b) The continuing existence of impunity for offences in general and for human rights violations in particular, as a result of repeated dereliction of duty by the government bodies responsible for preventing, investigating and punishing such offences. Impunity exists for most of the violations committed during the internal armed conflict and those committed after the Peace Agreements were signed;

(c) Serious quantitative and qualitative shortcomings in the system of the administration of justice with regard to criminal investigations and guarantees of due legal process;

(d) The inadequate definition of the offence of torture in article 201 bis of the Penal Code, as already pointed out by the Committee during its consideration of the second periodic report;

(e) The lack of an independent commission with wide powers and extensive resources to investigate the circumstances of the kidnapping of disappeared persons on a case-by-case basis and to locate their remains. Uncertainty about these circumstances causes the families of disappeared persons serious and continuous suffering;

(f) The lack of systematic procedures for the periodic review of the practical implementation of the rules, instructions, methods and practices governing interrogation and the arrangements for the treatment of persons deprived of their liberty. The treatment of persons detained in prison, including high security prisons, must be in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

E. Recommendations

74. The Committee recalls that the initial report was considered at a time when the armed conflict taking place and the second, when the Peace Agreements had just been concluded. The third was considered four years after the conclusion of the Peace Agreements. The Committee nevertheless must reiterate most of the recommendations made following its consideration of the preceding reports.

75. The Committee reiterates the following recommendations:

- (a) The relevant provisions of the Penal Code, especially articles 201 bis and 425, should be amended to bring the definition of the offence of torture and its punishment into line with articles 1 and 4 of the Convention;
- (b) Sufficient human and material resources should be provided to enable the Service for the Protection of Persons involved in Proceedings and Persons connected with the Administration of Justice to operate effectively;
- (c) Technical training programmes for law enforcement officials, prosecutors, judges and National Civil Police officials, with particular emphasis on their obligation to respect and protect human rights, should be continued;
- (d) Bearing in mind that, during the introduction of the initial report and the second periodic report, the representatives of Guatemala said that the process leading up to the formulation of the declaration under article 22 of the Convention had begun, a statement repeated during the consideration of the third report, the Committee invites Guatemala to make the declaration in question.

76. The Committee recommends:

- (a) The system of the administration of justice should be modernized and measures adopted to eliminate its weaknesses and shortcomings and to strengthen the autonomy and independence of the judiciary and the Public Prosecutor's Office, including those already recommended by the Historical Clarification Commission and the Commission for the Modernization of Justice;
- (b) The provisions authorizing the army's involvement in public security and crime prevention, which should be the exclusive prerogative of the police, should be repealed;
- (c) Independent external bodies and procedures should be established to monitor the conduct of National Civil Police officials, with broad powers to investigate and impose disciplinary penalties, without prejudice to the powers of the Public Prosecutor's Office to investigate and of the courts to punish misconduct constituting a crime;
- (d) All government bodies not authorized to conduct investigations into criminal matters should be strictly prohibited from doing so;
- (e) An independent commission should be established to investigate the circumstances of the kidnapping of disappeared persons and to determine what happened to them and where their remains are located. The Government has an obligation to spare no effort to find out what really happened in such cases and thus give effect to the legitimate right of the families concerned, provide compensation for the loss or injury caused and prosecute the persons responsible;
- (f) Procedures should be established for the systematic and periodic review of the rules, instructions, methods and practices governing interrogation, as provided for in article 11 of the Convention.

