



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

Distr.
GENERAL

CAT/C/GTM/Q/4
24 February 2006

ENGLISH
Original: SPANISH

COMMITTEE AGAINST TORTURE
Thirty-fifth session
7-25 November 2005

**List of issues to be considered during the examination of the
fourth periodic report of GUATEMALA (CAT/C/74/Add.1)**

Article 1

1. In the light of the concluding observations of the Committee against Torture in 2000 (A/56/44, paras. 67-76), please indicate the current status of the proposed reform of article 201 bis of the Criminal Code, which defines the offence of torture. Give details of the scope of the reform.

Article 2

2. Please indicate the status of the prison system bill now before Congress. Explain why it has not been adopted and who is opposed to it and why.
3. Please indicate whether there is a specific, clear rule against invoking an order from a superior officer or a public authority as a justification for torture.
4. Please provide information on legislation and practice with regard to:
- (a) The duration of pretrial imprisonment;
 - (b) When and by whom the detainee's personal details are recorded and how long it takes to bring him or her before a judge;
 - (c) The rights of detainees and persons deprived of their liberty;
 - (d) What percentage of detainees have not been charged.

5. Please describe the mandate and functions of the Human Rights Office of the Ministry of Defence and the impact of the training provided by this Office for the armed forces on the prevention of torture and other cruel, inhuman and degrading treatment. Are all members of the armed forces obliged to take this training?
6. In the light of the observations of the Committee against Torture in 2000 (A/56/44, paras. 67-76), please indicate whether military personnel have powers to arrest and detain individuals.
7. Please provide information on the Guatemala Segura (“Safe Guatemala”) programme and on the involvement of troops and use of military facilities in it (number, role, ranks, etc.).
8. The peace agreements stipulate that police and military forces may be combined only in an emergency. What type of emergencies permit the establishment of combined forces? Do they include emergencies arising from natural disasters? Please give details of how the Safe Guatemala programme relates to the peace agreements.
9. Please indicate whether there is a register for compiling information from the domestic courts on cases of torture and ill-treatment in the territory of the State party.
10. According to information from various NGOs and the report of the Office of the Human Rights Procurator, lynching has become a widespread form of torture in Guatemala. What charges are brought against the perpetrators at trial? What investigations have been carried out into cases of this kind? How many convictions have been handed down? What are the penalties for lynching? What action has been taken to educate people about the penalties for lynching and to prevent this from happening?

Article 3

11. Please indicate how the State party guarantees in practice the exercise of an effective judicial remedy against administrative orders for the detention of foreigners, particularly asylum-seekers, with a view to their expulsion from the territory. Please also indicate whether such a remedy has suspensive effect. In addition, please state what steps Guatemala has taken to avoid excessive use of force and/or sedatives when deporting asylum-seekers.
12. Please provide statistics disaggregated by sex, age and ethnic origin on asylum-seekers and refugees in Guatemala, and the percentage of asylum-seekers whose applications are rejected.

Article 4

13. Please indicate what action the State party has taken to bring the penalty for instigating torture, as provided for in article 425 of the Criminal Code, into line with article 4 of the Convention.
14. Please indicate whether the free telephone hotline for complaints and allegations from migrants has received any information on cases of migrants being tortured. If so, please indicate the number of cases, their circumstances and what happened subsequently.

Article 5

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

Articles 6 and 7

16. Please indicate what measures have been taken in Guatemala to ensure that detainees are able to communicate promptly with a lawyer and, in the case of foreigners, with a representative of their State of origin. Please indicate whether a specified period must elapse before a detainee is allowed access to a lawyer.

17. What action has the Government taken to prevent harassment and abuse of women detainees? Is there legislation to prevent sexual harassment in prisons? If so, how many people have been charged and convicted under this legislation?

Article 10

18. Please provide information on the impact of the human rights training programmes dealing with torture that are provided for the Office of the Director-General of the Penitentiary System, the National Civil Police and the Armed Forces. Provide statistics, disaggregated by sex, age and ethnic origin, on the total number of officers in these institutions and the number of them who have received training. Please also provide information on what the courses cover, who gives the courses, whether non-governmental organizations are involved in them, and what the budget is for the programme.

19. Non-governmental organizations report that prosecutors and investigators charged with securing justice for victims of torture or inhuman treatment are very poorly trained and work with limited resources. What steps has Guatemala taken to train judicial officials properly? What qualifications are necessary to obtain the post of prosecutor or investigator, and what training do they receive on the job? Are there any plans to increase the budgets for prosecutors and investigators?

20. According to the report of the Office of the Human Rights Procurator, most young people in prisons belong to indigenous communities. What steps has Guatemala taken to address this situation?

21. Please provide information on proposals for the repeal or reform of the Code of Military Justice of 1878 with a view to bringing the Guatemalan legal system into line with the requirements of the Convention against Torture, paying particular attention to the adoption in 2004 of the so-called "new military doctrine".

Article 11

22. Bearing in mind that the Guatemalan Constitution gives precedence to international human rights law over domestic law, please indicate whether the Convention has been directly

invoked in the domestic courts. If so, please indicate the number of pending or closed cases in which this has occurred, and give some examples. Please also provide details of the methods used to maintain discipline in detention centres and prisons.

23. Please indicate how many allegations or requests for action have been submitted and what steps have been taken to deal with them by the Human Rights Office of the National Civil Police and the Office for Victim Care since they were set up. Please also provide information on the human resources of these offices and the budget allocated to them.

24. Please give details of the system for processing administrative complaints about torture filed against the National Civil Police and of how the process is completed. Also indicate how many complaints of this kind have been submitted and whether or not the proceedings led to the imposition of penalties.

25. Please provide information on the measures taken by the State party in response to the large number of violations of the right to physical integrity by the National Civil Police, as reported in paragraph 48 of the State party's report.

26. Please provide information on the "disciplinary committees" that perform disciplinary and monitoring tasks in prisons and their involvement in the events that took place recently, on 15 August 2005, in various detention centres.

27. Please provide information on the guidelines in the programme to crack down on gangs (Plan Antimaras) and the "Clean Sweep" programme (Plan Escoba) of the National Civil Police in connection with the interrogation of detainees. What rules are followed by the military police when interrogating prisoners in their custody? Please also provide more information about the interrogation guidelines for all detainees.

28. What measures has the State party taken to combat corruption in detention centres, such as protection rackets or payments for allowing firearms inside?

29. Non-governmental organizations report that the army and other State institutions are refusing to cooperate with investigations of former and serving military personnel. What measures has the State party taken to secure the cooperation of witnesses and thus prevent impunity? Can the State force witnesses to testify?

30. Please indicate whether detainees and persons deprived of their liberty have access to a doctor or, where necessary, to health services and legal assistance.

31. What is the situation of minors in prisons? Are they held in the same facilities as adults? The Committee has heard about the detention conditions for minors in Las Gaviotas detention centre (where rioting is alleged to have taken place on 2, 5 and 22 January 2002). Please indicate what policies are being implemented to address this problem.

Article 12

32. With regard to paragraph 96 of the State party's report, please indicate what measures have been taken to ensure that the National Civil Police complies with legal standards (the Constitution and the international human rights treaties ratified by Guatemala) when

investigating allegations of torture either on its own initiative or at the request of the party concerned. Are the same measures applied to military investigations into allegations of torture? Have there been any investigations into allegedly irregular or illegal operations linked to the military intelligence service reporting to the chiefs of staff? In particular, have there been any investigations into enforced disappearances that might be considered a form of torture?

33. Please indicate whether disciplinary proceedings for acts of torture or cruel, inhuman or degrading treatment are held concurrently with criminal proceedings for the same acts. Please also provide details of the number of complaints, their outcome and the administrative and/or penal consequences.

34. Please provide information on the investigations undertaken by the State party, and on compliance with the Convention, in relation to:

- (a) The escape of 78 dangerous prisoners from the high-security prison in Escuintla (June 2001);
- (b) The decapitation of seven persons in the pretrial detention centre in Zone 18 (February 2003);
- (c) The alleged practice of cannibalism among prisoners in Pavoncito (March 2003);
- (d) The simultaneous riots on 15 August 2005 in Precinct 31, El Hoyón prison, the Canadá prison farm, El Infiernillo prison (Escuintla), the Pavón rehabilitation farm (Guatemala City) and the pretrial detention centre in Mazatenango (Suchitepéquez).

Article 13

35. If a complaint about torture or inhuman treatment is submitted to a competent body, such as the Procurator's Office, and is not processed, is there any judicial remedy against the decision not to take up the complaint? How has the State party ensured that the complainant and witnesses are protected against ill-treatment or intimidation as a consequence of the complaint or any evidence given? Please give details of all the mechanisms and procedures normally used by the State party in such cases to protect victims and witnesses, as well as judicial officials, from reprisals or ill-treatment.

36. Please indicate what kind of protection the police and/or other security forces offer to judges, prosecutors and witnesses. How many cases of intimidation and threats have been reported? Is there any evidence to suggest that these threats were made by groups connected with State officials? Have these threats been investigated? With what outcome?

37. Is there any law to protect data concerning victims or witnesses, and can the latter apply for an order to guarantee the confidentiality of the data or, where necessary, have the data erased?

38. Is there any form of provision in Guatemala permitting Guatemalans to initiate criminal proceedings in the courts of other countries in respect of criminal acts alleged to have been committed in Guatemala?

39. According to reports from non-governmental organizations, the United Nations has documented 626 massacres, but only one case has been brought before the Guatemalan courts. What is the situation with regard to the other 625 massacres? How many of these cases have been referred to the judicial authorities?

Article 14

40. Please provide statistical information on the compensation awarded by the domestic courts and actually paid to the victims of torture or cruel, inhuman or degrading treatment.

41. In the light of the peace agreements, please provide information on the National Compensation Programme and on how it works, the cases it has accepted, the compensation claims finalized, the amount of compensation paid out and the number of victims compensated.

Article 15

42. Please describe the procedures in place to ensure that statements obtained under torture are not admissible as evidence.

Article 16

43. Please provide information on the situation of hospital patients, particularly with regard to the “forcible intervention” of the National Mental Health Hospital and the Experimental Psychiatric Teaching Centre, in the light of article 16 of the Convention.

44. What measures has the State party taken in relation to cases of excessive use of force by the police and army against indigenous people, especially in the context of political demonstrations and civil unrest?

45. Please give information on how the police handle and investigate cases of child abuse and domestic violence.

46. How does the State party ensure that children, particularly indigenous children, are prevented from undertaking the worst forms of child labour?

47. Please indicate the annual budget allocated by the State party to the prison system and detention centres to avoid overcrowding and malnutrition, as well as inhuman detention conditions.

Questions of a general nature

48. Please indicate what progress has been made in ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

49. Please give information on measures taken by the State party to include a gender perspective in the legislation banning torture. Please also describe specific measures taken to prevent acts of sexual violence. Please provide statistics on the number of investigations in this respect and on the penalties for those convicted of such acts.