



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

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Fourth periodic reports of States parties due in 2003**

**Addendum**

**GUATEMALA\* \*\***

[8 December 2003]

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\* The initial report submitted by the Government of Guatemala is contained in documents CAT/C/12/Add.5 and 6; for its consideration by the Committee, see documents CAT/C/SR.232, CAT/C/SR.233/Add.1-3, CAT/C/SR.234/Add.1, CAT/C/SR.237/Add.1 and *Official Records of the General Assembly, Fifty-first Session, Supplement No. 44 (A/51/44, paras. 42-57)*. For the second periodic report, see CAT/C/29/Add.3; for its consideration, see CAT/C/SR.324 and 325 and *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44, paras. 157-166)*. For the third periodic report, see CAT/C/49/Add.2; for its consideration see CAT/C/SR.450, 453 and 456 and *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 44 (A/56/44, paras. 67-76)*.

\*\* The annexes to this report are available at the Committee secretariat.

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## **Introduction**

1. The State of Guatemala hereby submits its fourth periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Convention against Torture") to the honourable members of the Committee against Torture. This report covers the period from 1999 to October 2003.
2. The report consists of five sections. The first section describes the procedure for the preparation and conclusion of this report; the second gives the current background to the human rights situation in Guatemala; the third reports action taken on the Committee's comments and recommendations made during its consideration of the third periodic report of Guatemala (CAT/C/49/Add.2); the fourth section describes activities and obstacles to the implementation of each article of the Convention according to the Committee's guidelines; a fifth section contains a general conclusion and challenges. Lastly, there is a list of the annexes\* to this report.

### **I. PROCESS OF PREPARATION OF THE FOURTH PERIODIC REPORT OF GUATEMALA**

#### **A. Background**

3. In 1994, the Presidential Human Rights Commission (COPREDEH), established in 1992 on the recommendation of the independent expert on the situation of human rights in Guatemala, Mr. Christian Tomuschat, was appointed by the then President of the Republic and former Human Rights Procurator, Mr. Ramiro De León Carpio, as the institution responsible for preparing the treaty and non-treaty reports to be submitted by the State of Guatemala to the various international mechanisms for the protection and supervision of human rights.
4. Since being assigned this function, COPREDEH has made major efforts to establish and systematize appropriate machinery to enable Guatemala to meet its international reporting commitments adequately.
5. One of COPREDEH's main actions, in August 1997, was to establish the Inter-institutional Forum, comprising representatives of government ministries, secretariats and departments; representatives of the judiciary, the legislature and the Office of the Human Rights Procurator were invited to take part. The aim in establishing the Forum, coordinated by COPREDEH, was to have a permanent inter-institutional body to systematize a mechanism for the preparation of reports and expedite the flow of information between its members and COPREDEH, thus enabling the latter to obtain all necessary inputs for drafting State reports.
6. Good use has been made of the Forum to train public officials on its staff in human rights and to circulate texts and information for the appropriate implementation of the various international human rights instruments to which Guatemala is a party. Special emphasis is placed on training for public officials working for the armed forces, the civilian security forces

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\* These annexes are available for consultation in the files of the secretariat of the Committee against Torture.

and the administration of justice. Unfortunately, it has not yet been possible to arrange for the judiciary, the legislature or the Office of the Human Rights Procurator to attend and take part. Since its inception, therefore, the Forum has been attended only by government departments.

## **B. Current context**

7. On 24 July 2002, Guatemala, represented by the General Secretariat for Planning and Programming (SEGEPLAN) and COPREDEH, signed a cooperation agreement with the Office of the United Nations High Commissioner for Human Rights (OHCHR) Office in Guatemala and the United Nations Development Programme (UNDP) for the implementation of a project to strengthen national capacity for the promotion and protection of human rights; one component of the project specifically concerned the strengthening of institutional capacity to produce reports for United Nations committees.

8. In accordance with the foregoing, COPREDEH and OHCHR began their joint task of strengthening institutional capacity to produce reports for United Nations committees in the second quarter of 2003; some of the reports were somewhat overdue for submission. One concrete result of this cooperation was that two COPREDEH officials attended the fourth course on the preparation of reports for United Nations committees, held in Tegucigalpa, Honduras, in June 2003.

9. For the actual preparation of the reports, two national consultants were recruited to support COPREDEH in drafting the fourth periodic report to the Committee against Torture. A woman consultant was also recruited to assist in coordination with COPREDEH and the Presidential Secretariat for Women in drafting the sixth periodic report to the Committee on the Elimination of Discrimination against Women. A consultant, either male or female, is currently being recruited to assist in drafting a consolidated version of the eighth, ninth and tenth reports of Guatemala to the Committee on the Elimination of Racial Discrimination. It is important to point out that the recruitment of independent consultants to assist in drafting reports is regarded as a temporary device for the sole purpose of reinforcing the human resources side of the process; once the consultancy contract ends, the capacity must remain within the body responsible for the country report.

10. For the purposes of this report, this systematic approach has been distilled into a work plan covering topics ranging across information-seeking mechanisms and data collection, the compilation of a directory of contacts between the different sectors of society, the design of indicators directly relating to the articles of the Convention and survey guidelines, the documentation of mechanisms for the physical and electronic data recording and storage, plans for meetings, seminars and/or workshops to analyse, circulate and discuss the preliminary and final reports in all sectors which have contributed information, a timetable setting a date and time for the various things to be done at different points, down to the revision and delivery of the final report. It should be mentioned that this report is a first attempt at systematizing and unifying the reporting processes in a cooperation setting. Some experience has been acquired in the process, including a series of lessons learned that will help in overcoming obstacles and furnishing the best possible results for other reports currently being prepared.

11. For this report in particular, the aspects of participation, cooperation and consensus are especially pertinent. Within the lessons learned there is still much to be done to bring about greater trust, participation and cooperation between civil society organizations and the Government overall. Efforts by the Government, which have included support for the project of the Office of the High Commission for Human Rights to bring national human rights organizations, the legislature and judiciary and the Office of the Human Rights Procurator closer together, have not had the expected results.

12. This attitude is a matter for particular concern, mainly because the State shares the unease expressed by the Special Representative of the Secretary-General on the situation of human rights defenders, Ms. Hina Jilani, during her visit to Guatemala in 2002 when she stressed the need for the Government “to make greater efforts to gain the trust of civil society”. It must not be forgotten that on numerous occasions the Government has expressed its interest in complying with this recommendation and its political willingness to do so. A pertinent example is this report, in the preparation of which support and cooperation was sought from several civil society human rights organizations, the judiciary and the Office of the Human Rights Procurator; unfortunately, they did not rise to an occasion which, in our opinion, represented an opportunity to open up areas of cooperation and coordination between the Government and other State bodies and with civil society through the national human rights organizations.

13. We consider that participation by the Human Rights Procurator, the judiciary and legislature and the main civil society human rights organizations is a fundamental and necessary part of this process and that United Nations backing through the project of the OHCHR Office in Guatemala should provide a framework of trust within which these bodies can participate openly and actively in preparing national reports like this one which, although drafted by a government department specializing in human rights, COPREDEH, is overall the responsibility of the State as a whole.

14. The State regards the submission of reports to committees as a valuable opportunity to reflect on progress in and obstacles and challenges to the proper exercise of human rights in Guatemala, although civil society organizations have an opportunity to engage in such an exercise through the alternative reports which the United Nations system allows them to produce; the Government agrees with recommendations by some United Nations committees that official State reports should be the outcome of an open, participatory process between the Government and civil society. This section thus concludes with an appeal to the Committee against Torture to call for a change of heart among the various civil society organizations, other State bodies and the Office of the Human Rights Procurator so that combined efforts can be made to promote, protect and exercise human rights in Guatemala.

## **II. CURRENT BACKGROUND TO THE HUMAN RIGHTS SITUATION**

15. This report is submitted against a background of supreme importance for Guatemala: on 9 November last the country’s citizens had an opportunity freely to exercise their right to vote in the country’s first general election. This act of democracy is of special importance because the people of Guatemala are on the eve of consolidating the third democratically elected Government since the signing of peace and the end of the armed conflict in 1996.

16. Experiences that countries like Guatemala have had to undergo have gone down in history on account of the war, the segregation, the discrimination, the confrontation, the injustice and the consequent underdevelopment they inflict. We believe, nevertheless, that history has and must have faith in the great efforts and steadfast will of a people which, through its Government, desires to overcome all these challenges.

17. That is why, in the glare of reality, the actions described here may probably not reflect the sort of progress and impact that might have been expected nationally and internationally; we firmly believe, however, that substantial qualitative improvements have been made, creating good and suitable scenarios for short-, medium- and long-term progress.

18. The peace agreements, adopted by the present Government as State policies, created an important framework which has been worked on for the past four years. The result is the opening-up of areas of dialogue and collaboration between the Government and civil society, the strengthening of the institutions responsible for providing security and administering justice, the adoption of major laws that establish a legal framework for specific activities and the establishment of bodies and institutions to reinforce the rule of law, combat impunity, eliminate discrimination and inequality and ensure respect for human rights in Guatemala.

19. Although many of these activities are set out in detail in this report, an overview of some of them may find a place here.

### **Demilitarization and strengthening of civilian power**

20. In the context of demilitarization and strengthening civilian power, progress has been made in reinforcing the National Civil Police and making it more professional, and the reductions in army personnel and the military budget promised by the peace agreements have been exceeded; many facilities formerly under army control have been handed over to the civilian population for conversion into educational and training centres, such as primary schools and basic and technical training institutes. Recently, the Presidential General Staff was completely dissolved by Government Agreement No. 694-2003 of 28 October 2003 and responsibility for presidential and vice-presidential security was transferred to the Administrative and Security Affairs Secretariat, an entirely civilian body. Progress has been made in designing and drawing up a defence policy in consultation with civil society.

### **Combating impunity and strengthening justice**

21. One must not overlook the Government's political will to combat impunity and strengthen justice, or the steps it has taken to bring into being the Commission for the Investigation of Illegal Bodies and Clandestine Security Structures (CICIACS) that is now being set up and special units within the Public Prosecutor's Office to prosecute ordinary and organized crime and combat impunity. Of note is the Office of the Special Prosecutor for Human Rights.

**National reconciliation**

22. The drafting of the National Plan for Reconciliation and the establishment of the National Reparations Commission under Decree No. 258-2003 of 7 May 2003 are moves towards national reconciliation, as is the founding of a commission to search for children who disappeared during the armed conflict.

**Combating racism and racial discrimination**

23. Moves to combat racism and racial discrimination and promote harmonious intercultural relations include the recognition, in Decree No. 19-2003 dated 7 May 2003, of indigenous languages as national languages, the establishment of the Presidential Commission to Combat Racism and Discrimination against the Indigenous Peoples by Government Agreement No. 390-2002 dated 8 October 2002, the appointment of a third Deputy Minister for bilingual intercultural education in the Ministry of Education (Government Agreement No. 526-2003, September 2003), the creation of the Indigenous Peoples' Department within the Ministry of Labour, the strengthening of the Office of the Ombudsman for Indigenous Women, work by the Indigenous Peoples' Unit of the judiciary to facilitate access to the justice system by the Maya, Garifuna and Xinca peoples while respecting their own forms of organization, the recognition of indigenous municipalities in a new Municipal Code and more room for participation through the new Development Councils Act and, lastly, the concession of a television channel to promote the Maya, Garifuna and Xinca cultures.

**Development and social and economic protection**

24. As regards development and economic and social protection, the following measures were taken: approval under Legislative Decree No. 27-2003 dated 4 June 2003 of the Children and Young Persons (Comprehensive Protection) Act; the General Decentralization Act; the Urban and Rural Development Councils Act; the Municipal Code, the poverty reduction strategy and its national ratification, the social development policy and the housing policy.

**Legal underpinnings for human rights**

25. In order to expand the legal framework for the respect, promotion and observance of human rights, a human rights policy was planned and approved by the Executive and a plan of action proposed. Major international human rights instruments were ratified, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (14 March 2003) and the (Hague) Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (14 August 2003). Where the Convention against Torture is concerned, the declaration by Guatemala on 25 September 2003 acknowledging and accepting the competence of the Committee against Torture to consider individual complaints as provided in article 22 of the Convention is of great importance. The declaration was made following its acceptance by the Government in Government Agreement No. 539-2003 of 18 September 2003.

### **III. IMPLEMENTATION OF THE RECOMMENDATIONS OF THE COMMITTEE AGAINST TORTURE**

26. Information is given below on steps taken to comply with the reiterated and new recommendations made by the Committee on concluding its consideration of the third periodic report of Guatemala (CAT/C/49/Add.2 and A/56/44, paras. 75 and 86).

#### **A. Reiterated recommendations**

“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” (para. 75 (a)).

27. On 8 July 2003 the Presidential Human Rights Committee (COPREDEH) transmitted a new proposal to the General Secretariat (Office of the President) for the reform of article 201 bis of the Criminal Code, which defines the offence of torture, to bring it more into line with the Convention. The General Secretariat has already ordered its transmission to the legislature for discussion and subsequent approval.

“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” (para. 75 (b)).

28. A start has been made on recruiting and training professionals in the Logistical Support Secretariat of the Public Prosecutor’s Office as part of its process of restructuring and implementing its democratic crime policy.

“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” (para. 75 (c)).

29. Here we note that laws promulgated in recent years include the Judicial Career Act of October 1999 and the associated regulations, while a start was made on assessing the performance and conduct of judges and magistrates in 2000-2001, including complaints and hearings by the Board of Judicial Discipline.

30. In the case of the Public Prosecutor’s Office, a training unit was set up and service as a prosecutor was made a career option. In the National Civil Police, 18,852 officers have been trained in the past four years; a support coordination unit was set up in the National Civil Police Academy, basically composed of non-governmental organizations such as the Guatemalan Institute of Comparative Studies in Criminal Sciences, Casa Alianza, Madres Angustiadas, Familiares y Amigos contra la Delincuencia y el Secuestro (Concerned mothers, relatives and friends against crime and abduction), and the Instituto de Enseñanza para el Desarrollo Sostenible (Educational institute for sustainable development) (IEPADES), with support from international agencies such as UNESCO, UNICEF and UNDP. Its mission is to promote the training of Police Academy instructors in the culture of peace, human rights, criminology and multiculturalism. The Community Police Office, the Multicultural Office, the Gender Equity

Office and the Human Rights Office have been established within the National Civil Police with a view to training and the drafting of internal policies. These all operate centrally; the Gender Equity and Multicultural Offices have a number of regional branches.

31. Two complementary studies were used for the analysis of the justice system; both were prepared by MINUGUA and concern the functioning of the system of justice (March 2000) and judicial decisions in Guatemala, published on the same date. Both studies diagnose the situation in the justice system on the basis of cases prepared by prosecutors and action taken by the Public Defender, a discussion of the results obtained by judges in competitive examinations, and a study of judgements formulated by Guatemalan judges. They single out many of the obstacles encountered in the administration of justice and their repercussions on the use of torture and cruel, inhuman or degrading treatment. Of note in the first of these studies is a paper by Luis Pásara which hints at significant changes in the judiciary once a competitive examination for would-be judges has been introduced.

32. Two studies were published by MINUGUA on the National Civil Police; these were “La Policía Nacional Civil: un nuevo modelo policial en construcción”(The National Civil Police: a new model under construction), published in April 2001 and “La Policía Nacional Civil - Tres aspectos estratégicos: formación, capacitación de investigación y presupuesto” (The National Civil Police - three strategic aspects: training, investigation and budget), published in July 2003.

“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, Guatemala is invited to make the declaration in question” (para. 75 (d)).

33. Guatemala made the declaration to which article 22 of the Convention refers, recognizing the competence of the Committee to receive individual complaints, on 25 September 2003.

## **B. New recommendations**

“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” (para. 76 (a)).

34. The five-year plan 1997-2002 for the modernization of the judiciary has been carried out; the judiciary has approved the general regulations governing the Judicial Career Act. A Civil Service Act establishing the Judicial Career Council has been passed. Regulations to govern the College of Legal Studies and general supervision of the courts have been issued.

35. Major work has been done by the judiciary’s Modernization Unit, including in particular the assessment of community courts in an effort to improve the quality of service, incorporating local customs and usages and facilitating access to justice for indigenous communities; the Unit has been part of the Intersectoral Board for Dialogue on Indigenous Peoples; it has produced

technical opinions on the introduction of the regionalized judicial interpreters' service: up to August 2002 the judiciary employed 550 bilingual persons among its judges, prosecutors, interpreters and administrative personnel. It has also taken part in the awareness-raising project and in the appointment of justices of the peace, providing communities with more training about their rights and more opportunities for participation. In coordination with the Academy of Mayan Languages and other State and university bodies, it is encouraging the production of glossaries of legal terms, so as to promote a multicultural approach in the administration of justice, and the translation of the Basic Guide to the Criminal Justice System.

36. To allow better public access to the administration of justice, the Modernization Unit has strongly supported the mobile magistrates' courts which have been in operation since May 2003 in an effort to provide the poor with prompt settlements at no cost, by means of mediation and conciliation. This, together with the establishment of Justice Administration Centres which centralize coordination of the sectors and institutions involved in the administration of justice (judiciary, Public Prosecutor's Office, the Public Criminal Defence Institute), has improved access for indigenous peoples in the geographical areas and regions concerned.

37. In August 2002 the plan known as the "Democratic Crime Policy for the Public Prosecutor's Office" was put forward to guide the work of public prosecutors' offices, seeking a unified approach to crime, criminal prosecution and the maintenance of legal order. A four-year work plan was prepared, covering three central issues: (a) restructuring the Public Prosecutor's Office, radically changing the way it goes about its current duties of prosecution, investigation and administration by promoting effectiveness and efficiency, institutional security, computerization and telecommunications, infrastructure and human resources, professional accountability and consideration of victims and witnesses, and by upgrading prosecutors' offices; (b) investigation: rebuilding the related infrastructure by redesigning the Criminal Investigation Department and setting up the Criminal Investigation Agency; (c) better training in criminal justice for prosecutors and the establishment of the University Centre for Justice and Prosecutors (CENUJ). In another context, COPREDEH and the Public Prosecutor's Office signed a cooperation agreement in 2003 on training for prosecutors in the metropolitan area and the hinterland in matters pertaining to the international human rights agreements to which the State is party and the various mechanisms for supervising and monitoring human rights under the United Nations and regional systems.

38. Currently, 22 district prosecutor's offices are operating, one in each department of the Republic. In 2002 three new municipal prosecutor's offices were opened and 14 now operate throughout the country.

39. Two new divisional prosecutor's offices have been established, one to be known as the office of the divisional prosecutor for money and asset-laundering the other as the office of the divisional prosecutor for the indigenous peoples, and staff have been recruited and trained for legal work in public Prosecutors' offices: between 2002 and 2003 the number of prosecutors was boosted from 199 to 236, while the number of assistant prosecutors increased from 538 to 552.

40. Important moves by the Public Prosecutor's Office relating to criminal investigations include the signing of an inter-institutional agreement on the optimization of criminal investigation by the Attorney-General and the Ministry of the Interior (July 2002). The same two institutions signed an inter-institutional agreement on regulations for handling evidence in criminal proceedings in March 2003.

“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” (para. 76 (b)).

41. It must be admitted that repeal, though perhaps unwelcome, was essential. People are aware that, to the extent that efforts to strengthen the civilian security forces bear fruit, it will become possible to do without the support legally provided by the army to the civilian security forces in times of need or emergency to maintain order and public safety, and this is necessary to ensure respect for the fundamental rights of all Guatemalans. It is worth mentioning that an undertaking was made under the peace agreements to dissolve the Presidential General Staff and assign responsibility for the security of the President and the Vice-President of the Republic and their families to a civilian body. In fulfilment of this undertaking, the Presidential General Staff was officially dissolved by a Government Agreement on 31 October 2003 and responsibility for the security of the President and Vice-President was assigned to the Administrative and Security Affairs Secretariat, which is staffed by civilians.

“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” (para. 76 (c)).

42. With regard to the monitoring mechanisms for monitoring the conduct of National Civil Police officials both inside and outside the institution, the study on police activity and human rights in Guatemala by Manuel M. García Morales and Leonel C. Anderson, published by the Guatemalan Institute of Comparative Studies, has been taken as a reference. It says that there are six external monitoring mechanisms: legislative control by the passage of legislation; executive monitoring through the Ministry of the Interior; monitoring by the Office of the Human Rights Procurator through constant surveillance of police officers' conduct and the receipt of complaints from individuals affected; monitoring by the Public Prosecutor's Office through reports of criminal acts committed by police officers; monitoring by the judiciary, through the proceedings brought and the penalties handed down by the courts; and monitoring by the community at large, by observing and reporting the actions of police officers.

43. Guatemala does have the safeguards required to give teeth to the monitoring process; it is important that the authorities, civil servants and the general public make use of them to keep the activities of the National Civil Police under proper control.

44. Mention may also be made of the internal monitoring of police conduct by the Office of Professional Accountability and the Office of Disciplinary Affairs which, over the past four years, has undergone severe restructuring, purging and professionalization to ensure it functions properly.

45. A review committee at the Ministry of the Interior is now considering a proposal to set up an Inspector-General's Office. This would be an umbrella body for all the existing internal monitoring bodies in the National Civil Police. In its turn it would become under the control of the Office of the Director-General.

“All government bodies not authorized to conduct investigations into criminal matters should be strictly prohibited from doing so” (para. 76 (d)).

46. Although in the past there were many reports of illegal parallel investigations into matters that are the province of the civil authorities responsible for the administration of justice, over the last four years no specific instances have been reported of such behaviour by institutions such as the Presidential General Staff, which in the past was singled out and severely criticized for its alleged investigations. As reported above, the Presidential General Staff was dissolved in October 2003.

47. Mention should also be made of an agreement between the Office of the Procurator for Human Rights and the Ministry of Foreign Affairs, with human rights organizations as honorary witnesses, to set up a Commission for the Investigation of Illegal Bodies and Clandestine Security Structures (CICIACS). The Commission is in the process of being put together; once in place, it is considered that it will be of great importance in combating impunity and strengthening the rule of law.

“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” (para. 76 (e)).

48. As recommended by the Historical Clarification Commission which arose out of the peace agreements, a National Commission to Search for Missing Children has been set up. It is supported by the Office of the Procurator for Human Rights and is made up of a number of bodies that work in coordination, including: the Human Rights Office of the Archdiocese of Guatemala, the Office of the Children's Ombudsman, the Asociación Casa Alianza Guatemalteca, the Liga Guatemalteca de Higiene Menta (Guatemalan mental health league), the Grupo Monseñor Romero, the Legal Action Centre for Human Rights, the Widows' National Coordinating Committee, the Mutual Support Group, the Rigoberta Menchú Foundation, the Asociación Dónde están los Niños y las Niñas (Where are the children association) and the Centro de Investigación Internacional de Derechos Humanos (International human rights research centre). The commission's mission is to support, promote and reinforce efforts to document cases, track down children and reunite families; it will also give impetus to efforts to obtain justice, assistance and reparation, and to legal actions to help along the searches for missing children.

49. The Presidential Human Rights Commission has set up an internal Unit for the Follow-up and Search for Missing Persons: the staff is responsible for receiving applications and information from relatives and domestic and international organizations concerned to establish the whereabouts of relatives or persons who disappeared during the armed conflict, or for other unrelated reasons.

“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” (para. 76 (f)).

50. Please refer to section IV, paragraphs 106 to 114, of this report where this recommendation is explicitly discussed.

#### **IV. INFORMATION ON MEASURES TO IMPLEMENT THE CONVENTION**

##### **Article 1. Definition of the term “torture”**

51. The third periodic report (CAT/C/49/Add.2) described the various legislative measures, in particular those in the Constitution and ordinary legislation. It must be made plain that, under article 46 of the Constitution, international human rights treaties take precedence over Guatemalan law. In accordance with this constitutional principle, the Convention against Torture and the Inter-American Convention to Prevent and Punish Torture take precedence over any ordinary statute in force.

52. Based on this principle, the formulation of national law has been guided by the definitions given in the Inter-American Convention and the Convention against Torture.

53. Article 18 of the Constitution of Guatemala stipulates that, in respect of persons under sentence of death, “all relevant legal remedies against the death sentence are admissible, including cassation”.

54. The executive has prepared a proposal to amend the definition of the crime of torture, which will be put before Congress. The idea is to offer a better identification of the perpetrators of torture, since article 201 bis of the Penal Code says that any person acting on orders from or with the authorization, support or acquiescence of a public official or other person acting in an official capacity can be a perpetrator. The Convention against Torture, on the other hand, identifies the public official or other person acting in an official capacity as the perpetrator thus narrowing the definition.

55. The death penalty in Guatemala remains in force, although no executions have been carried out in the past four years. The fact that no one has been executed is mainly due to the current President’s decision to suspend this form of punishment in the absence of specific regulations for handling of such cases.

56. The United Nations Verification Mission in Guatemala has reported that 87 people were sentenced to death between 1999 and 2002, and 5 of them were executed.

57. Article 201 bis of the Penal Code does not provide for capital punishment for torture.

**Article 2. Legislative, administrative, judicial or other measures to prevent acts of torture**

58. At the administrative level, the National Civil Police, which operates under the Ministry of the Interior, has set up a Human Rights Office by Order No. 03-2002 of 28 May 2002. The Office is mandated to ensure compliance with and respect for human rights, both for members of the force and for individuals who consider that their rights have been violated, including the rights enshrined in the Convention against Torture, since members of the National Civil Police may themselves suffer violations of Convention rights.

59. By Order No. 02-2003 of 28 May 2003, a victim-care unit was also established within the National Civil Police; its mandate includes “facilitating access to restorative justice for crime victims by providing prompt and comprehensive care to deal with the immediate effects of the incident, identify what care victims need and start the rehabilitation process”. It offers services such as emergency psychological support for victims, basic legal assistance and social assistance, all support and training. Staff are trained by a multidisciplinary team of practitioners working in various fields.

60. It should be underlined that, by virtue of Government Order No. 420-2003 of 28 July 2003, which took effect on 28 November 2003, new disciplinary regulations have been introduced in the National Civil Police to streamline disciplinary proceedings, which are the responsibility of the Office of Professional Accountability. Lastly, the National Civil Police has provided human rights training for its staff through the Police Academy.

61. Another key department of the Ministry of the Interior is the Office of the Director-General of the Penitentiary System, which has been pressing for policies to enhance the technical capacities of prison staff and improve prison facilities. The Office has also submitted the Prison Regime bill to the Congress; the bill is in third reading and is expected to be approved soon. Furthermore, a Consultative Commission on the Penitentiary System (composed of non-governmental organizations and government institutions) has been established to recommend improvements to the effectiveness of the Office’s work. The Commission has also initiated the formulation, discussion and adoption of a bill to govern the Office.

62. The work of the School for Penitentiary Studies attached to the Office of the Director-General of the Penitentiary System in particular the training it offers in human rights and better treatment of detainees, is also noteworthy. An important administrative development in the Penitentiary System has been the elimination of internal security groups, which limits privileges and reduces ill-treatment inflicted by detainees themselves. Furthermore, the Office of the Inspector-General of the Penitentiary System has established a supervisory regime.

63. On the subject of administrative measures adopted by governmental institutions, mention must also be made of the work carried out by the Department of Migration, which is part of the Ministry of the Interior. The Department has launched a migration policy aimed at guaranteeing migrants’ rights and established a migrant-care unit to monitor respect for those rights and the conditions under which migrants enter the country. Further measures to improve the protection of migrant workers and their families will be introduced once the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has been rectified. For the time being, the Ministry of Foreign Affairs and the Office of the International

Organization for Migration in Guatemala have worked together to disseminate the contents of the Convention. To complement these efforts, a free telephone hotline (1-801-12345) has been created to receive complaints and reports from migrants.

64. Another positive development has been the creation of special human rights units and directorates within some government departments, including the establishment of a Human Rights Office in the Ministry of Defence by Government Order No. 253-2003 of 20 June 2003. This Office is expected to make human rights training standard for members of the army and, in particular, to prevent the commission of human rights violations by the Armed Forces in the exercise of their functions. The Office is also expected to centralize human rights-related information and prevent possible violations, such as abuse and ill-treatment, among military personnel.

65. The Presidential Office for Social Welfare has produced an organizational manual on the Programme for the care, training and rehabilitation of youth in conflict with the law, which lays down how Programme staffs are supposed to perform.

66. On 4 June 2003, the Children and Adolescents (Comprehensive Protection) Act was adopted. This has become the main legal instrument for the promotion of children and young persons' full and sustainable development within a democratic framework based on strict respect for human rights. Article 11 of the Act, which protects the physical integrity of children and young persons, is of particular relevance to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: "*All children and adolescents have the right to be protected against all forms of neglect, abandonment or violence, and the right not to be subjected to torture or other cruel, inhuman or degrading treatment.*" Minors under 18 years of age in Guatemala are not criminally liable, but the new Act stipulates that young persons between 13 and 18 years of age accused of having committed a characteristic unlawful, punishable and culpable offence must undergo a special procedure while enjoying all the due process rights provided to adult offenders, including the guarantee that confessions and information obtained by unlawful means have no probative value.

67. With regard to the prohibition in article 2, paragraph 2, it should be mentioned that Guatemalan legislation, on the principle that international human rights law takes precedence over domestic law, allows article 2, paragraph 2, of the Convention against Torture and article 5 of the Inter-American Convention to Prevent and Punish Torture to apply.

68. The requirement in article 2, paragraph 3, of the Convention is dealt with by article 156 of the Constitution, which establishes that illegal orders need not be carried out. Similarly, article 25.4 of the Penal Code states that due obedience can be invoked as an extenuating circumstance only if the order was not manifestly illegal.

69. Unfortunately, there are still reports of conduct prohibited under the Convention in Guatemala. Between 1999 and 2002, the National Civil Police received a total of 14 reports of torture to deal with. During the same period, the Office of the Human Rights Procurator received and dealt with 10 complaints of torture, 376 of violations of physical or mental integrity, 138 of violations of dignity, 1,273 of abuse of authority, 25 of forced disappearances and 4 of cruel, inhuman and degrading treatment. As stated in its reports on the situation of human rights in Guatemala, in the last four years MINUGUA has received 86 complaints of

violations involving torture, 244 involving ill-treatment, 199 involving cruel, inhuman or degrading treatment, and 62 involving excessive use of force. It reported all these violations as having been checked and confirmed.

70. According to a document on torture in Guatemala prepared by the MINUGUA human rights advisory office in March 2003, the institution with the highest incidence of violations of individuals' integrity is the National Civil Police. The National Civil Police for its part indicated that most perpetrators of torture are found among the lower ranks (officers, deputy inspectors and inspectors) and junior officials.

71. Some non-governmental organizations have drawn attention to the numerous cases of torture and other grave human rights violations that occurred in the 1980s (these are not discussed in this report). Many such cases have been documented by the Clarification Commission.

### **Article 3. Measures relating to expulsion, extradition of persons at risk, and monitoring of human rights violations by another State**

72. Article 46 of the Guatemalan Constitution recognizes the primacy of international human rights law. Accordingly, article 3, paragraph 1, of the Convention against Torture and article 13 of the Inter-American Convention to Prevent and Punish Torture override national legislation to ensure respect for Guatemala's obligation not to extradite any person who might be in danger of being tortured in the country of destination.

73. Accordingly, the State of Guatemala could refuse to expel, return (refouler) or extradite a person when there are substantial grounds for believing that he or she would be in danger of being subjected to torture. To date, however, there have been no cases where this provision applies or should be applied.

74. The Migration Department invokes the provisions of the 1951 Vienna Convention relating to the non-return (refoulement) of refugees in such cases.

### **Article 4. Ensuring that all acts of torture are offences under national law**

75. Article 201 bis of the Penal Code defines torture as an offence; article 14 of the Code defines attempted offences thus: "an attempt occurs when physical action begins to be taken to commit the offence but is not completed for reasons outside the perpetrator's control".

76. Article 201 bis of the Penal Code also establishes a penalty of 25 to 30 years' imprisonment, which article 41 of the Code regards as the main penalty, accompanied by accessory penalties such as general or specific disqualification. Those comprise the loss or suspension of political rights; the loss of employment or public office held by the convicted person, even if held by popular election; a ban on holding public office, posts and functions; the suspension of voting rights and the right to stand for election; and the suspension of parental rights and the right to be a legal guardian or subrogate-tutor. General disqualification extends to all these provisions, while specific disqualification comprises one or several of them.

77. Attempted torture would be punished in accordance with article 63 of the Penal Code, which sets the penalty at two thirds of that imposed on perpetrators of the completed crime.
78. Articles 35, 36 and 37 of the Code describe the various possible degrees of participation in crimes.
79. Under article 425 of the Code, anyone giving the order to commit torture is liable to two to five years' imprisonment, which is inconsistent with the gravity of the crime and the penalty for actual perpetrators of torture set in article 201 bis. It is important to note that everything depends on how the Public Prosecutor, the supervising magistrate and the trial bench categorize the characteristic unlawful, punishable and culpable act.
80. Torture allegations were confirmed in only 3 of the 14 reports received by the National Civil Police between 1999 and 2002. No information has been received on instances of cruel, inhuman or degrading treatment.
81. During the same period - 1999 to 2002 - MINUGUA reported as checked and confirmed a total of 86 instances of torture, 244 of ill-treatment, 199 of cruel, inhuman or degrading treatment and 62 of excessive use of force.
82. Although enquiries have been made, unfortunately it has not been possible to obtain information about the human rights violations involving acts of torture, violations of physical integrity or dignity or abuse of authority on the records of the Office of the Human Rights Procurator. Although a number of publicly available documents issued by the Office were examined, they contain no information about the cases in which violations were confirmed.

#### **Article 5. Jurisdiction over offences of torture**

83. Guatemala's domestic legislation clearly establishes jurisdiction in article 5 of the Judiciary Act. It also incorporates the principle of territoriality and extraterritoriality. The issue of extradition is mainly addressed in the following legal instruments: articles 18 and 27 of the Constitution; articles 4, 5 and 8 of the Penal Code, Decree No. 17-73; article 53 of the Code of Criminal Procedure; article 583 of the Military Code; and the international agreements Guatemala has concluded with other countries. Furthermore, article 38 of the Code of Criminal Procedure provides that "criminal jurisdiction extends to criminal acts committed in Guatemala territory or part thereof and to acts which produce effects on Guatemalan territory, except as otherwise provided by other legislation or international treaties".
84. Currently, there is no information available on cases where the aforementioned legislation has been applied, or on relevant judgements.

#### **Article 6. Arrest of a person alleged to have committed torture**

85. Article 27 of the Constitution states that extradition shall be governed by international treaties; article 46 provides that, in human rights matters, ratified treaties and conventions take precedence over domestic law. Accordingly, where Guatemala's commitments under the Convention against Torture are concerned, article 6 of the Convention applies.

86. Thus anyone who is thought to have committed a crime and to be liable to extradition must be investigated, arrested - if applicable - and granted opportunities to communicate in conformity with the judicial norms and guarantees set forth in Guatemalan legislation and the Convention against Torture. The right to due process enshrined in the Guatemalan Constitution and Code of Criminal Procedure applies to all detained torture suspects facing extradition.

87. During the period covered in this report, the Ministry of Foreign Affairs reports that it has received no extradition request.

#### **Article 7. Extradition of a person alleged to have committed torture**

88. The authority competent to institute criminal proceedings in Guatemala is the Public Prosecutor's Office. This is an independently functioning institution which, as mentioned earlier, can bring charges and conduct investigations of criminally actionable offences on the strength of the Constitution, the Judiciary Act, the Public Prosecutor's Office (Organization) Act, the Penal Code and the Code of Criminal Procedure, among others. Each of these texts lays down criteria for initiating the investigation, prosecution and trial of persons accused of a characteristic unlawful, punishable and culpable offence. The entire process by which the responsibility of an alleged lawbreaker is determined is governed by the contradictory principle of criminal proceedings, with a supervisory magistrate during the initial phase of the procedure and a collegiate bench at the trial stage, and with a material or technical defence conducted by one or two lawyers, either private or court-appointed. Thus the rights of persons standing trial deriving from the Constitution and ordinary legislation are guaranteed all times.

89. The legal authority for the above comes from article 37 of the Penal Code: "... courts have exclusive authority to take up criminal proceedings, to rule on them, and to enforce their rulings". Article 46 states that "The Public Prosecutor's Office, through its designated representatives, shall be competent to investigate those offences over which this Code gives it jurisdiction, with trial court judges supervising the proceedings. It shall also bring criminal actions in accordance with the terms of this Code."

90. Article 5 of the Penal Code enshrines the principle of extraterritoriality of criminal law, while article 53 of the Code of Criminal Procedure establishes that trial court judges have jurisdiction offences committed outside Guatemalan territory at the initial phases of investigation, pretrial and intermediary proceedings. For the trial phase, a sentencing court takes up case and pronounces the appropriate judgement.

91. Under article 345 of the Code of Private International Law, if Guatemala does not extradite one of its nationals it is required to try him or her on Guatemalan territory. Likewise, the accused is considered to be entitled to judicial safeguards by virtue of articles 368 and 369 of the same Code.

#### **Article 8. Torture in extradition treaties**

92. According to information from the Ministry of Foreign Affairs, previous extradition treaties concluded between Guatemala and other States have not covered torture. However, steps have been taken to ensure that this article of the Convention will be examined and incorporated, as appropriate, in future treaties.

93. With regard to article 8, paragraph 2, the Ministry of Foreign Affairs has reported that no cases of persons subject to torture after extradition have been recorded. It has also indicated that extradition can be allowed only for ordinary offences and offences covered by international treaties concluded by the State of Guatemala.

#### **Article 9. Assistance in criminal proceedings**

94. To date, Guatemala has not signed any international treaty of reciprocal legal assistance with other countries apart from the Treaty of Cooperation on Mutual Legal Assistance between the Government of the Republic of Guatemala and the Government of the United States of Mexico. The Treaty allows for the application of this article of the Convention, although there are no records of its being applied in torture cases.

95. It should be noted that according to article 338 of the Code of Private International Law, to which Guatemala is party, relations on criminal matters shall be effected by means of letters requisitorial or letters rogatory, although there are no records of their use in connection with the offences covered by the Convention.

#### **Article 10. Education on the prohibition of torture in the training of law enforcement personnel**

##### **A. Office of the Director-General of the Penitentiary System**

96. According to the Penitentiary System College, which comes under the supervision of the Office of the Director-General of the Penitentiary System, basic courses are currently provided for prison guards, the directors and assistant directors of detention centres, prison governors and security chiefs; the curriculum includes human rights, the Handbook of Good Prison Practice, constitutional law, criminal law, criminal procedure, penitentiary law, comprehensive security, multiculturalism, pluriculturalism and personal development. There is also a three-month course for persons applying to enter the College, which lays emphasis on the Standard Minimum Rules for the Treatment of Prisoners. The college could not supply any material in support of training courses it says it has run.

##### **B. National Civil Police**

97. The National Civil Police Academy runs courses on human rights for its staff, which cover basic aspects of the Convention against Torture (see annexes). It is reported that 18,852 members of the Academy received training between 1999 and 2003. In addition, a letter of understanding has been signed with the Academy's support coordinator to carry out a further series of training courses.

##### **C. Presidential Human Rights Commission (COPREDEH)**

98. In 2002 and 2003 COPREDEH ran 41 courses for prison guards, prosecutors, members of the army and other institutions on human rights-related topics including basic aspects of the Convention against Torture.

#### **D. Presidential Office for Social Welfare**

99. The Presidential Office for Social Welfare has given refresher and specialist training courses on human rights in cooperation with non-governmental organizations including the Guatemalan Institute of Comparative Studies in Criminal Sciences.

100. The International Day in Support of Victims of Torture is celebrated on 26 June each year; public institutions and non-governmental organizations participate in this event.

#### **E. Office of the National Procurator-General**

101. The Office of the National Procurator-General works in close cooperation with the National Commission against Child Abuse, a non-governmental organization, to provide training and information on the rights of the child to staff at the Office. The two bodies also work together in dealing with complaints concerning human rights violations and in providing legal advice services in the departments of Huehuetenango, Quiché, Chimaltenango, Guatemala and Escuintla.

#### **F. The Office of the Human Rights Procurator**

102. The Office of the Human Rights Procurator cooperates with human rights NGOs on human rights education programmes in various bodies throughout the country. In cooperation with the non-governmental Mutual Aid Group, it has organized training courses in the departments of Sololá, Jutiapa, Jalapa, San Marcos, Cobán and Santa Rosa.

#### **G. Department of Migration**

103. The Department of Migration reports that various types of training courses have been run by the embassies of the United States and of Canada and by the Spanish cooperation agency.

#### **H. Public Prosecutor's Office**

104. This institution has a training unit which runs courses and conferences aimed at improving the knowledge of prosecutors and assistant prosecutors on specific topics that are useful for the investigations they conduct. The main courses run have related to human dignity, the originating process of criminal proceedings and alternative solutions to criminal proceedings; moreover, specific courses have been run recently by the COPREDEH Department of Study and Analysis on the Convention against Torture, as a result of which 35 prosecutors have so far received training and have signalled their interest in further study of the topic so that they can apply it to their work. There is an agreement between the Public Prosecutor's Office and COPREDEH to offer these important courses regularly for as many prosecutors and assistant prosecutors as possible.

105. The training relating to the Convention against Torture covers its creation and historical development, background, bases and principles, the substantive and procedural features it embodies and an analysis of its application in practical cases that prosecutors can apply and use in their investigative work. The most important conclusion to be drawn from the courses is the motto "Torture is not investigation"; a motto which prosecutors have become aware of the need and obligation under domestic law to follow.

**Article 11. Review of interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment**

106. The constitutional and ordinary law provisions defining the procedure for the custody of detainees or prisoners appear in articles 6, 10, 13 and 19 of the Constitution. The procedure for taking a statement from or interrogating the accused is clearly defined in the Code of Criminal Procedure (Decree No. 51-92), articles 81, 85, 86, 87, 88 and 90. Attention is drawn to the contents of article 85, according to which:

*“The accused shall not be placed under oath, but simply warned to speak the truth. He shall not be subjected to any form of coercion, threat or promise, except in the form of warnings as explicitly authorized under criminal or procedural law. No measures shall be used to compel, induce or oblige him to make a statement against his will and no charges or counterclaims shall be brought with the aim of obtaining a confession.”*

107. The rights and guarantees of prisoners are laid down in articles 10, 13 and 19 of the Constitution, and article 36 of the Executive (Organization) Act (Decree No. 114-97).

108. The National Civil Police reports that it keeps a constant watch on police stations and special units so as to ensure the lawfulness of arrest, and has referred to the human rights training courses given to staff who carry out arrests, with special emphasis on the need to abide by constitutional and ordinary law provisions.

109. The Office of the Director-General of the Penitentiary System indicates that it continually inspects penitentiary centres and ensures that persons handed over by the National Civil Police have not been beaten and show no signs of torture upon admission: prisoners are referred to the Office’s forensic experts and representatives of the Public Prosecutor’s Office so that they can document the type of injuries and assess the harm done, and the findings may be used as evidence in determining the guilt of the possible culprits.

110. On the subject of monitoring mechanisms to prevent police abuse against minors, the Office of the National Procurator-General reports that minors undergo a cursory examination when they are handed over by the National Civil Police; when they are subsequently transferred to the custody of a guard at the detention centre a more thorough examination is carried out. On 4 June 2003, Congress approved Decree No. 27-2003, entitled the Children and Young Persons (Comprehensive Protection) Act, which lays down the procedure for dealing with minors in conflict with the law and grants them the same procedural and constitutional guarantees as others. For *flagrante delicto* cases, article 195 of the Act lays down the procedure for taking the initial statement from the minor.

**V. GENERAL CONCLUSION**

111. There is no systematic practice of human rights violations or of torture, cruel, inhuman or degrading treatment in Guatemala. On the contrary, the measures described in this report have been implemented in keeping with a policy of respect for and promotion of human rights. Steps

are being taken to strengthen the national bodies and agencies responsible for the administration of justice and the protection of human rights. This process is accompanied by human rights training for public officials, with the ultimate objective of helping the State to fulfil its constitutional role as the guarantor of Guatemalans' basic rights.

112. Legal provisions to govern the care of young persons in detention, set forth in the Organizational Handbook on the Programme of Care, Training and Rehabilitation of Young Persons in Conflict with the Law, were approved recently by the Social Welfare Department. The specific purpose of the Handbook is to establish rules governing the administrative duties of those responsible for the rehabilitation and retraining of young persons held at centres run by the Social Welfare Department.

113. The Ministry of Defence reports that when the National Civil Police hands over a person summoned by the military courts, it checks that the person has not been beaten. However, it offers no information about the methods used for this purpose.

114. With a view to checking and monitoring the arrest, detention and interrogation of persons accused of offences by the State security forces, on 25 May 2000, the Public Prosecutor's Office issued agreement No. 02-2000, article 2 of which amends article 11 of the duty system regulations for district and municipal prosecutors' offices:

“The District Prosecutor, the Assistant District Prosecutor, the Prosecuting Officer, prosecutor's assistants and officials of the Prosecutor's Office, the latter always in the company of prosecutors or assistant prosecutors, shall at any time of the day or night, visit without prior warning, National Civil Police stations and substations. During their visits they shall go over the records and check whether persons held in detention have been duly registered in the arrivals book. They shall also check the detention facilities and the state detainees are in. If they find cases of illegal detention, they shall act in accordance with the law. Officials from the Public Prosecutor's Office may be accompanied during visit by a forensic physician.”

**Article 12. Each State party is obliged to carry out a prompt and impartial investigation when it is informed of an offence under its jurisdiction**

115. According to article 251 of the Guatemalan Constitution: “The Public Prosecutor's Office is an auxiliary institution of the public administration and the administration of the courts which functions independently, whose main purposes are to ensure strict compliance with national laws. Its organization and operation shall be governed by the Organization Act ...”. Article 1 of the Public Prosecutor's Office Organization Act provides that: “The Public Prosecutor's Office is an institution which functions independently; it conducts the prosecution in criminal offences and directs the investigation of publicly actionable offences; it also ensures strict compliance with national laws.” It also indicates that the Public Prosecutor's Office shall seek to ensure that justice is done and shall act with objectivity and impartiality, observing the principle of legality as provided by law. Under ordinary law, the Office is responsible for prosecuting offences and acts for the State in criminal cases, as provided by articles 8 and 24 of the Code of Criminal Procedure.

116. The Office of the Director-General of the Penitentiary System reports that its Inspections and Medical Services Department investigates alleged abuses in detention centres.

117. Concerning procedures for investigating cases of torture, the Legal Advisory Service of the Penitentiary System has indicated that when a prisoner is handed over by the National Civil Police he or she is examined by the medical team at the detention centre in question. If torture occurs at the centre, once it has been reported to the director of the centre, the Director-General of the Penitentiary System or the Office of the Human Rights Procurator, the prisoner is heard, the witnesses are interviewed, a medical examination is carried out and the related investigation is coordinated with the Public Prosecutor's Office.

118. The Presidential Office for Social Welfare reports that abuses are investigated by the director of the centre and the programme coordinator. It also reports the following procedure for investigating acts of torture:

- (a) The young person's version of events is heard;
- (b) The staff's version of events is heard;
- (c) A physical examination is carried out by the centre's doctors;
- (d) An investigation is carried out by the director of the centre;
- (e) Background inquiries are made;
- (f) The authorities are notified;
- (g) Information is forwarded to the juvenile justice authorities.

119. According to the National Civil Police, the criteria for conducting the investigation are those established by the Constitution and international human rights treaties ratified by Guatemala, and the investigations may be launched automatically or on the application of the party concerned. However, during a meeting with members of the Disciplinary Board and the Office of Professional Accountability it was ascertained that it is the Director of the National Civil Police who ultimately decides whether an investigation is to be held.

**Article 13. Each State party shall ensure that victims of the offence of torture are free to complain and shall protect the victim against ill-treatment or intimidation as a consequence of that complaint**

120. Guatemala has specific legislation enabling complaints to be filed in the event of torture, which is a publicly actionable offence. These provisions include those contained in articles 116, 117, 297, 298 and 300 of the Code of Criminal Procedure and articles 13 and 14 of the Congressional Commission on Human Rights. The legislation refers to complaints that may be filed with the police, the Public Prosecutor's Office, the courts or the Office of the Human Rights Procurator. Each of these institutions has special offices for receiving complaints.

121. The Migration Department has a free-phone service for receiving complaints of abuses committed against migrants, and the Office of Professional Accountability is responsible for conducting investigations into such cases.

122. Under the Witness Protection Act, the Public Prosecutor's Office is empowered to protect anyone who may have undergone or witnessed an unlawful act such as torture. The procedure followed by its Logistic Support Department provides support for both victims and witnesses from a multidisciplinary team comprising psychologists, psychiatrists, general practitioners and security staff. The victims or witnesses are transferred to a safe place, provided with the requisite security measures, and, if necessary, moved outside the country.

123. The Presidential Office of Social Welfare reports that as a safety measure it ensures that information supplied to the authorities is anonymous and confidential, the person concerned is transferred to another, safer centre, the judge is informed that he or she is in charge of the detainee's case, visits to the child are monitored to prevent possible attacks and security at the centre is stepped up.

124. The Office of the Director-General of the Penitentiary System reports that the victim or witness is transferred to a special sector of the centre for protection. It says it has provided protection for witnesses on orders from the Public Prosecutor's Office, but not for specific torture cases.

125. According to the National Civil Police, the Office for the Care of Crime Victims protects victims against intimidation of themselves, their families and witnesses, offering legal, social and psychological assistance. The Office of Professional Accountability investigates the conduct of members of the National Civil Police on its own initiative or on application from a party concerned.

**Article 14. Each State party undertakes to compensate victims of torture**

126. Legal provisions governing the question of compensation for crime victims include those contained in article 155 of the Constitution and articles 124 and 134 of the Code of Criminal Procedure.

127. Various government bodies and non-governmental organizations have agreed that the establishment of the National Reconciliation Programme represents progress. Its purpose is to identify, provide reparation and compensation for, to return property to, to assist and to rehabilitate the victims of armed conflict. Following the political agreement which formed the basis of the National Reconciliation Programme, Government Agreement No. 258-2003 established the National Reconciliation Commission, which comprises five government representatives and five representatives of civil society. The government representatives are members of COPREDEH; a representative of the Ministry of Public Finance; the head of the Peace Secretariat; a representative of the Ministry of Agriculture, Livestock and Food and a personal representative of the President of the Republic who serves as chairman. The non-governmental representatives are two representatives of organizations for the victims of human rights violations that occurred during the armed conflict; a representative of Maya organizations; a representative of women's organizations and a representative of human rights

organizations. The specific purpose of this Commission is to provide compensation to victims of the human rights violations that took place during the internal armed conflict which ended on 29 December 1996.

128. The United Nations Development Programme (UNDP) reports that it runs the Programme for Dignity and Psychosocial Help for Armed Conflict Victims (DIGAP), which consists of:

- (a) Mental health care for the community and for victims of torture in the areas most affected by the armed conflict;
- (b) Legal advice to facilitate forensic investigations;
- (c) Efforts to expand and to improve mental health programmes in the Ministry of Public Health and Social Welfare.

129. Participating in the UNDP Programme are various human rights NGOs including Community Study and Psychosocial Action Teams, the Mutual Support Group and the Human Rights Office of the Archdiocese of Guatemala in the capital city; they work to rehabilitate and to provide psychological assistance to victim of torture, both individually and in communities that suffered grave human rights violations during the armed conflict.

130. The Peace Secretariat reports that it is implementing a pilot project offering moral and material assistance to people in the indigenous communities who have suffered violations, principally those in which, according to the Historical Clarification Commission, massacres occurred. Most of the beneficiaries suffered torture or cruel, inhuman or degrading treatment. In addition, it is running reconciliation workshops which have given rise to psychosocial, legal and moral support activities and moves to return property.

**Article 15. Each State party shall ensure that statements made as a result of torture shall not be invoked in proceedings**

131. Article 183 of the Code of Criminal Procedure (Decree No. 51-92) defines inadmissible evidence as evidence obtained by prohibited means, such as torture, in the following terms:

“Inadmissible evidence. ... evidence must relate directly or indirectly to the matter under investigation and must help to establish the truth. Courts may restrict the evidence submitted to demonstrate a fact or an event, if there is a large amount of it. Inadmissible evidence includes, in particular, *evidence obtained by prohibited means such as torture*, invasion of the privacy of the home or residence ...”.

**Article 16. Each State undertakes to prevent any cruel treatment or torture**

132. Guatemala’s ordinary criminal law, the Criminal Code, has two provisions of relevance to article 16 of the Convention. Article 418 of the Code defines the abuse of power, which is used by some institutions to refer to ill-treatment or cruel, inhuman or degrading treatment, as in the case of the Office of the Human Rights Procurator. The article reads as follows:

“Public officials or employees who, to the detriment of the Government or *private individuals*, abuse their office or responsibilities by ordering or committing *any arbitrary or unlawful act* not specifically covered by the (Criminal) Code shall be liable to one to three years’ imprisonment. Officials and employees who use *unlawful or unnecessary coercion* shall be liable to the same penalty.”

133. Article 425 of the Code couches the prohibition in the following terms:

“Any public official or employee who orders *undue coercion*, torture, degrading *punishment, harassment or measures not authorized by law* against a prisoner or detainee shall be liable to two to five years’ imprisonment and general disqualification. Any person who carries out such orders shall be liable to the same penalty.”

134. The measures described above, mainly in the introduction, including those relating to respect for human rights and physical integrity, are in line with the current Government’s efforts to strengthen the civil security forces and the bodies responsible for the administration of justice, and to promote and enforce laws and policies in the political, social, economic and cultural spheres.

Torture and cruel, inhuman or degrading treatment are not institutionalized practice or a matter of systematic policy within the State structure.

## **Challenges**

Facing the fact, Guatemala is aware that although it has already overcome some obstacles, major challenges lie ahead not only for the Government but also for the nation: there is a strong national trend in favour of participatory, consensual public policies, these being, people believe, the only means of shaping policies of the State, not the political party in power. Some of the major challenges include:

(a) Strengthening the judiciary and the Public Prosecutor’s Office, particularly their investigative capacity;

(b) Passing an act and regulations governing the penitentiary system;

(c) Further professionalizing and strengthening the National Civil Police;

(d) Giving effect to the amendments to article 201 bis;

(e) Implementing the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

(f) Bringing the current Migration Act into line with the main relevant international human rights instruments.

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