



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

Distr.
GENERAL

CAT/C/GTM/Q/6
19 January 2010

Original: ENGLISH

COMMITTEE AGAINST TORTURE
Forty-third session
2-20 November 2009

**List of issues prior to the submission of the sixth periodic report of
GUATEMALA (CAT/C/GTM/6)¹**

**Specific information on the implementation of articles 1 to 16 of the Convention, including
with regard to the Committee's previous recommendations**

Articles 1 and 4

1. With reference to previous recommendations of the Committee, please indicate what steps have been made to amend article 201 bis of the Criminal Code in order to legally define torture in accordance with article 1 of the Convention. Give details of the scope of the reform (CAT/C/GTM/CO/4, para. 10).
2. Please indicate what action the State party has taken to criminalize torture and bring the penalty for instigating torture, as provided for in article 425 of the Criminal Code, into line with article 4 , paragraph 2 of the Convention.

Article 2

3. Please indicate what measures the State party has taken to repeal all laws and practices which allow the army to be involved in activities of law enforcement or the prevention of ordinary crime that exclusively fall within the competence of the National Civil Police in line with the conclusions from the previous consideration of the State party's report. Do military personnel have

¹ The present list of issues was adopted by the Committee at its forty-third session, according to the new optional procedures established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

powers to arrest and detain individuals? Has the State party amended the bill on military jurisdiction which would restrict the jurisdiction of military courts to the trial of military personnel accused of crimes of an exclusively military nature? What amendments have been made to the Police Act as announced by the State party designed to strengthen such structural elements of the police force as internal checks and the police career structure? The Committee received reliable information regarding the extensive use of private guards for activities which are incumbent upon the State, with reported incidents of abuse, lack of accountability as well as of connection of private guards with organized crime. What norms exist to regulate the activities of private guards and have there been investigations of violations committed by them?

3. Please provide information on the status of the draft law to establish a National Mechanism for the Prevention of Torture.

4. What advances have been made in implementing the packets of legal reforms proposed by the International Commission against Impunity in Guatemala (CICIG) in October 2008 and in June 2009? What is the current status of the Presidential Commission against Impunity announced on 3 March 2009? Has the Commission for the Investigation of Illegal Groups and Clandestine Security Organizations been established and if not why?

5. According to the information before the Committee, there are numerous attacks against human rights defenders, with a figure of 98 per cent of impunity for attacks reported by the Special Representative of the Secretary-General on human rights defenders (A/HRC/WG.6/2/GTM/2, para. 19). Please provide information about the Forum for Analysis of Attacks against Human Rights Defenders in this respect? Please update the Committee on the status of the agreement on a Programme of Prevention and Protection Measures for Human Rights Defenders and Other Vulnerable Groups.

6. Please also provide information, including statistics, about the work of the Coordinating Unit for Protection of the Presidential Human Rights Commission. Please provide detailed information about the ongoing work of the Unit for Special Cases, Human Rights Violations and Historical Clarification established in 2008.

7. Please provide information on numbers, legislation and practice with regard to:

- (a) The duration of pretrial detention and the numbers of persons held in pretrial detention;
- (b) When and by whom the personal details of detainees are recorded;
- (c) The percentage of detainees who have not been charged;
- (d) The number of persons who have been acquitted by Courts of First Instance but have been retained in custody on order of Sentencing Tribunals;
- (e) The number of person in preventive detention.

8. Please indicate how the State party ensures 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 and an independent doctor. Please provide information about the maximum period before placing a detainee before judicial authorities. Please describe the pilot project introducing rota courts and whether it applies only to women. Has there been an increase in the use of non-custodial measures and has the use of custodial measures by the State respected the criteria of necessity and proportionality?

9. Please inform the Committee about the State party's compliance with article 2, paragraph 3 regarding orders from superiors that never can be invoked as a justification of torture, and indicate whether this is covered by a specific legal provision.

10. Please provide information regarding the selection criteria, including parameters and specific indicators, as well as the methodology employed in the election of judges to the Supreme Court of Justice (CSJ) during the plenary session of Congress on 30 September 2009. Please also describe what steps have been taken to strengthen the legal framework for the professional development of judges?

Article 3

11. 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, as well as on all cases of extradition, return or removal that have taken place during the reporting period. Please state what steps Guatemala has taken to avoid excessive use of force and/or sedatives when deporting asylum-seekers. How does the State party ensure that its obligations under article 3 of the Convention are always fulfilled?

Articles 5, 7 and 8

12. 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? Since the consideration of the previous report, please indicate whether the State party has rejected, for any reason, any request for extradition by a third State for an individual suspected of having committed an offence of torture, and thus engaging its own prosecution as a result. If so, please provide information on the status and outcome of such proceedings.

13. Have there been any requests for extradition from Guatemala of persons who may be liable to torture in the country seeking their extradition?

Article 10

14. Please provide updated information on the training programmes for the police, in particular with reference to the prohibition against torture. Please also indicate whether training has been

provided to police officers and members of the judiciary to enable them to receive and investigate properly complaints of social violence, and in particular violence towards women and children? Please indicate if there are programmes to train medical personnel and whether the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol), is part of this training. Has the Prisons Studies School envisaged in the Prison System Regime Act been established and what materials have been provided by the Penitentiary System College in support of this training? Please provide information about the proportion of indigenous persons in the police force.

Article 11

15. Please provide information about the National Agreement for the Advancement of Security and Justice set up by the State party on 15 April 2009. Has the replacement of a number of officials in the Public Prosecutor's Office and a restructuring of divisions been translated into more effective and consistent measures against impunity? Have independent external bodies and procedures been established to monitor the conduct of National Civil Police officials? Have all governmental bodies not authorized to conduct investigations into criminal matters been prohibited by law from doing so?

16. After the approval of the Prison System Regime Act by decree No. 33-2006 on 7 September 2006, please provide information on whether regulations pursuant to the Act have been implemented? Please describe the role of the Consultative Commission on the Penitentiary System in this regard. Has the General Directorate of the Prisons System (DGSP) been able to improve the conditions in prisons such as overcrowding, substandard detention and sanitary conditions and adequate medical care, in particular for women?

17. Please provide an update about the systematic and periodic review of the rules, instructions, methods and practices governing interrogation and the arrangements for the treatment of persons deprived of their liberty, in conformity with the United Nations Standard Minimum Rules for the Treatment of Prisoners, and as provided for in article 11 of the Convention?

18. Please provide information on the percentage of the prison population which is of indigenous origin.

Articles 12 and 13

19. 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. Please provide detailed statistical data, disaggregated by crimes, gender and ethnicity on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions and criminal and disciplinary sanctions imposed in each case. Please provide figures with regard to the number of members of the National Civil Police investigated, prosecuted and convicted as perpetrators of acts amounting to torture? Has there been an improvement in the performance of the Criminal Investigations Service of the National Civil Police whose members were alleged to be the main perpetrators of violations amounting to torture? Has the reorganization and internal cleanup of the NCP been reflected in lower rates of crime and violence in custody?

Have the some 4,000 vacancies amounting to almost half the personnel needed by the National Civil Police been filled in the course of 2009? Please provide information with figures about the results of the new criminal prosecution policy in which efficiency and respect for the victim occupy pride of place. Has the General Directorate for Civilian Intelligence (DIGICI) been strengthened and has its problem of coordination between the Criminal Investigation Division (DINC) of the National Civilian Police (NCP) with the Public Prosecutor's Office improved? Has the Public Prosecutor's Office investigative capacity been strengthened? Has an Inspector-General's Office been set up in the Interior Ministry? Since the National Forensic Science (Organization) Act was approved by decree No. 32-2006, please provide information on the improved pace of investigations thanks to the use of scientific evidence.

20. Since the establishment of CICIG, has there been a cessation of parallel investigations tacitly authorized or agreed to by the State and conducted by bodies not legally authorized to do so or by clandestine structures in cases of human rights violations in which responsibility is attributed to government officials? Has there been a reduction in the infiltration of organized crime structures, clandestine security organizations/apparatuses and other illegal groups into the security institutions and a decline in their activities. Is there an independent commission with sufficient powers and resources to investigate circumstances of the kidnapping of disappeared persons on a case-by-case basis and to locate their remains? Have there been any incidents in which persons responsible for human rights violations have been protected by their superiors? If so, have there been any administrative investigations? To what extent has CICIG been able to prevent/unblock the patterns of obstruction of judicial proceedings (such as the filing of multiple legal actions) in order to prevent prosecutors' access to military information as well as procedural delays? What specifically has been done to remove or modify those norms/laws which stall or paralyze the course of justice, as identified by CICIG? Have concrete positive results been registered in combating impunity since CICIG began operation and has there been more effective coordination in combating impunity on behalf of the Public Prosecutor's Office and the National Civilian Police?

21. Is there an effective system of protection of victims and witnesses and other persons involved in criminal proceedings exist in keeping with article 13 of the Convention? Is there an independent commission with sufficient powers and resources to investigate circumstances of the kidnapping of disappeared persons on a case-by-case basis and to locate their remains? Have the efforts to establish an effective witness-protection mechanism borne fruit? Has an agreement in this connection been established between the Public Prosecutor's Office and the Ministry of the Interior? Please indicate whether the free telephone hotline (1-801-12345) 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. Has the Office of Professional Accountability of the Migration Department reported any cases of torture and if so, how have they been investigated and followed-up?

22. Figures provided by the General Directorate of the Prison System indicated an increase in the number of murders in custody in 2008, attributed, inter alia, to youth gangs in custody and in some cases prison guards. Has the number decreased in 2009 and since CICIG began operation? Have the General Directorate of the Prisons System (DGSP) and the Public Prosecutor's Office

undertaken exhaustive and impartial investigations into the deaths of persons deprived of their liberty? Please explain exactly the follow-up procedure in cases in which it has been established that torture has taken place at the hands of the National Civil Police and when it was perpetrated at a detention centre reported to the Director-General of the Penitentiary System by its Inspections and Medical Services Department. What has been the role of the Office of the Ombudsman for Prisoners and Due Process of the Office of the Procurator for Human Rights in this respect? Please provide information about the benefits of the opening of municipal and sectional prosecutors' offices.

23. Please inform about the outcome of the announced hearings in July 2009 about the Dos Erres massacre (as indicated in the State party's document dated 1 June 2009) and has article 8 of the National Reconciliation Act been applied effectively? What is the status of investigation of the Rosenberg case? Has the National Reconciliation Act, which explicitly excludes amnesty for the perpetrators of acts of torture and other grave human rights violations, been applied strictly? If not, please provide specific information about cases in which amnesty has been granted.

Article 14

24. Please provide information about measures of redress and compensation, including rehabilitation provided to victims of human rights violations committed during the internal armed conflict, in particular to those affected by the numerous massacres in this period. What actions have been taken in the context of the National Reconciliation Programme? Please provide disaggregated data. Please also provide information on measures of redress provided to women exposed to sexual violence, mutilation and torture. What compensation has been awarded by the domestic courts and actually paid to the victims of such acts?

Article 15

25. What procedures are in place to ensure that statements obtained under torture are not admissible as evidence? Please provide information of any case where evidence has been held inadmissible for these reasons.

Article 16

26. Please provide information on the impact of the adoption of the Organized Crime Act approved by Congressional decree No. 21-2006 on 19 July 2006. Pursuant to the approval by Congress of the Organized Crime Act by decree No. 21-2006 on 19 July 2006, has a definition of criminal activity attributable to members of or participants in criminal organizations been made? Have measures to prevent, combat, dismantle and eradicate organized crime in accordance with the Constitution and international treaties signed or ratified by the State party been adopted?

27. Lynching as a form of torture continues to be widespread in Guatemala. Please provide disaggregated figures with regard to mob lynchings by department, age groups, gender and ethnicity. Has there been an increase in the capacity of the National Civilian Police to prevent this type of violence? Have perpetrators been apprehended and brought to trial? What investigations have been carried out? What were the charges? How many convictions have been handed down? What is the

penalty for lynching in the State party? Please provide information about the campaign “Love life, don’t destroy it” (“Ama la vida, no la destruyas”). Please provide information about the results of the implementation of the National Programme against Lynching operating under the slogan “For the right to life, not to lynching”. Please provide information about the educational process devised for 12 State institutions, including if it follows the guidelines contained in the Istanbul Protocol. What results have been obtained by the National Commission in Support of the Educational Sub-Programme for the Prevention of Lynchings?

28. Please provide information on the number of complaints and requests for protection and number of investigations since the entry into force of the Law against Femicide and Other Forms of Violence against Women. Has the police increased its vigilance during the hours statistically proven to be the most dangerous for women: between 7.00 and 11.00 p.m.? Has there been any investigation or prosecution of the ten cases of femicide reported on 3 November 2008 by the Judicial Organ? Has an effort been made to streamline statistics on femicide? Please provide information and figures about the functioning of rota courts in relation to abuses against women. With regard to rota courts, to what extent has the maximum limit of six hours before bringing a detained person before a judicial authority been respected? 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 under this legislation? Has the rate of violent deaths of women continued to increase, as was the case in 2008, since the entry into force of the Law against Femicide and Other Forms of Violence Against Women? Has the provision in the Criminal Code which exempts a rapist from any penalty if he marries the victim been repealed to ensure the prosecution and punishment of all perpetrators?

29. Please provide figures on domestic violence cases which are often solved by being removed from the judicial process. Have any temporary shelters been established to accommodate women and protect them from offences committed against women?

30. Please provide further information regarding the case of Mrs. Juana Méndez who was raped and ill-treated while in police custody: why did the Office of the Prosecutor General request the arrest of only two of the three persons accused? Has the second policeman, Nery Osberto Aldana Rodriguez been apprehended? What has happened with regard to the third person accused whose name was not disclosed? What measures have been adopted to safeguard the lives and physical integrity of Juana Méndez and policeman Lazaro Dubon Cano who testified confirming her allegations? Since this case, have there been any other cases reported and prosecuted regarding violations of the Convention committed by policemen against women deprived of their liberty?

31. Has the Law for the Integral Protection of Children and Adolescents been fully implemented? Please provide statistics with regard to the discovery of bodies with signs of torture and marks of execution resulting from extreme violence and the killing of children, in particular children living in the street and in marginalized areas. Please provide information about efforts by the judiciary and the Public Prosecutor’s Office to rationalize the use of deprivation of liberty and broaden the application of non-custodial measures, including by the juvenile justice system?

Other issues

32. Please provide updated information on measures taken by the State party to respond to any threats of terrorism and please describe if, and how, these measures have affected human rights safeguards in law and practice and how it has ensured that those measures taken to combat terrorism comply with all its obligations under international law. Please describe the relevant training given to law enforcement officers, the number and types of convictions under such legislation, the legal remedies available to persons subjected to anti-terrorist measures, whether there are complaints of non-observance of international standards, and the outcome of these complaints.

General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

33. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the previous periodic report, including any relevant jurisprudential decisions.

34. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level, that have occurred since the previous periodic report, including on any national human rights plans or programmes, and the resources allocated to it, its means, objectives and results.

35. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the previous periodic report in 2006, including the necessary statistical data, as well as on any events that occurred in the State party and are relevant under the Convention.
