

COMMITTEE AGAINST TORTURE

36th session (Geneva, 1 to 19 May 2006)

Reports of States

Guatemala (3rd periodic report)

Information submitted to the Committee

The State of Guatemala submitted its third periodic report¹ to the Committee against Torture in December 2003. Regrettably, the State party did not submit updates to its report. The Committee produced a list of issues for the State² in late February 2006, to which the delegation allegedly provided answers the day prior to the examination of the report. These answers had not been made public at this time.

The State report highlights the ways in which the Guatemalan Government has implemented the recommendations provided by the Committee during its consideration of Guatemala's last periodic report. The report segregates continuing recommendations the Committee has made, such as the need to amend the penal code and to increase training programs for officials in the judicial system, from new recommendations, such as the need to modernise the justice system and to monitor the conduct of officials, in the National Civil Police, as well as other bodies. Additionally, the report highlights the legislative measures enacted regarding the separation of civilian and military authorities, the fortification of civil society, and the building up of civilian policing; reconciliation and reparations; the strengthening of national bodies and agencies responsible for the administration of justice; young persons in detention; abuses committed against migrants; witness protection; and assistance to people in indigenous communities who have suffered human rights violations. The report generally fails to address the implementation or effect of these legislative measures. There is very little statistical data given and the data provided is not disaggregated in any form.

Several NGOs produced shadow reports or provided the Committee members with press releases, including Amnesty International, the Rehabilitation and Research Centre for Torture Victims (RCT), the Human Rights Procurator of Guatemala, the International Federation for Human Rights (FIDH), and Casa Alianza. Issues raised in these reports included violence against women particularly sexual violence in police stations; violent forced evictions; the militarisation of society; a policy of social cleansing; various elements about the prison system; and violent killings of children.

Themes and Issues

The discussion was carried out in the framework of several developments relating to human rights in Guatemala, including the establishment of an office of the High Commissioner for Human Rights in September 2005 and a proposal submitted by the Guatemalan Government in early 2006 to the United Nations Secretary-General to establish a commission to investigate illegal groups and security forces in Guatemala. In describing these and other developments, the delegation noted the efforts and improvements made to improve the institutional and legal framework and acknowledged that there was still a great deal to be done.

Detention Facilities

In its list of issues and during the discussion, the Committee enquired about the length and conditions of **pre-trial detention**. Both the Committee on the Rights of the Child³ and the Human Rights Committee⁴ have expressed concern about this issue in their 2001 reports. From a legal standpoint, a person must be brought to a judge within six hours of detention and must be interrogated within 24 hours; however, the delegation noted that length of pre-trial imprisonment often extends for longer, particularly in detention facilities in rural areas where the average pre-trial detention period lasts for eight to 15 days. The delegation briefly mentioned the development of a program whereby judges would be available to consider cases 24 hours a day in Guatemala City; however, the Committee and the delegation failed to discuss programs addressing pre-trial detention issues in rural areas.

The Committee noted with interest that while the **death penalty** has not been abolished in Guatemala, it has not been applied in the past four years. Following this observation, the Committee asked: why the death penalty had not been abolished; why it has not been not been applied recently; and about the number of

¹ [CAT/C/74/Add.1](#)

² [CAT/C/GTM/Q/4](#)

³ [CRC/C/15/Add.154](#)

⁴ [CCPR/CO/72/GTM](#)

Guatemala

people who have been sentenced to the death penalty. One Committee member cited the 1983 case of the Inter-American Court of Human Rights, which found that extension of the death penalty would violate the *American Convention on Human Rights*. He then asked about the prison conditions for death row inmates. The delegation responded that the conditions are generally the same for death row inmates as other prisoners, although they are usually kept in separate areas of the prisons. The delegation said that there were a number of death sentences, which had been revoked recently. The delegation however failed to address the other questions posed.

Violence

In response to concerns raised by NGOs, several Committee members requested information regarding the **rise in violent deaths and alleged murders of women** since 2000. One Committee member asked why there are so few investigations and cases brought to justice. The delegation explained that statistics on this type of violence against women are hard to come by. It affirmed that the Guatemala is a party to the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*. The prosecutor's office has developed four units to specifically handle crime against women to implement its legal obligations incurred under this and other multilateral mechanisms. Cases of murdered women are transferred to the capital and resources are being allocated to these investigations. Since these actions are reactionary and do not focus on alleviating the root cause of the problem, the Committee member insisted that the Government develop an effective campaign to promote gender equality and women's rights.

In its list of issues, and working from information from NGOs and the Human Rights Procurator's Office, the Committee enquired about the **widespread use of lynching**, investigations into these deaths, charges brought against perpetrators, penalties, and educational campaigns addressing this subject. The delegation responded that lynching is not a crime under the penal code and therefore there are no statistics. Despite this, lynching can be prosecuted under other laws. States have taken preventative measures to prevent lynching. Additionally, the judiciary system has developed a private program in this area, which is coordinated by the judiciary's Modernization Unit and aims at building understanding between civil society and judiciary bodies. The program has held numerous workshops in the provinces of Guatemala where these crimes are the most frequent. The workshops have succeeded in developing a list of factors that might cause these types of crimes, including isolation and poor communications in communities, delinquency, a culture of violence, loss of moral values, a lack of sources of jobs and poverty, and a lack of knowledge of the legal system.

Armed Forces in Society

Committee members brought up a wide range of questions regarding the **involvement of the armed forces in civilian matters** and how military officials are held accountable for any violations of the Convention. One Committee member specifically commented on the budgetary increase in military funding for civilian activities and enquired why this funding had not been allocated directly to civilian forces. The Committee member also pointed to a finding of the Inter-American Court of Human Rights that the mandate of the military is not compatible with the enforcement of civil laws. Additionally, Committee members noted that the peace agreements stipulate that police and military forces may be combined only in an emergency and enquired as to whether this included emergencies arising from natural disasters. They expressed concern about the recent 3,000 reservists who had been recruited to assist the National Civil Police.

In response to the question about accountability, the delegation responded that there is no specific armed forces law penalising acts of torture committed by members of the army; however, torture is considered under common law. However, a proposal has been sent to the Congress to reform this under a new military doctrine. The delegation responded to the questions about the incorporation of the military into civilian force activities by saying that the civil police was confined by the length of its training programs, approximately 10 months, and therefore the country does not have enough police officers to properly ensure the security of the country. Regarding natural disasters, the delegation replied that indeed armed forces are responsible for emergencies resulting from natural disasters. Finally, the delegation addressed the subject of the reservists recently recruited. The reasons for this are tripartite: due to the increase in violence linked to the activities of common criminals, organized crime, drug traffickers and juvenile gangs; the shortage of staff of the National Civil Police Force, as well as corruption; and the fact that under the Constitution the Army is held responsible for the internal and external security of the State. The delegation noted that these reservists have special features which can help ensure their ability to uphold human rights standards: they undergo a special selection process; they receive special training on police techniques and procedures; and their term of duty is only nine months.

Guatemala

Other Issues

The Committee highlighted the fact that **Article 201 bis** of the Guatemalan Constitution hadn't been reformed to fall in line with the Convention. The delegation responded that this reform was currently in the works and was going to be submitted shortly. There was discussion on issues related to **victim care and reparations**, particularly regarding victims of the civil war. The Human Rights Procurator has established a commission to look for the disappeared. Additionally, there are rehabilitation programs for young people, and people who have been affected by forced disappearances, torture, displacement, sexual violence, and massacres. NGOs commented that both the reparations program and the rehabilitation programs target victims of the civil war with no such programs available for more recent victims. Additional discussion was held on **training programs** and statistics regarding **asylum seekers**.

Conclusions and next steps

The main positive steps announced by the delegation included the recent acceptance of the Committee's competency to receive individual complaints; the welcoming of various Special Procedures and other human rights mechanisms into the country; and the programs and policies addressing the issue of disappearances and reparations for acts committed during the civil war. Noticeably, the positive areas highlighted in the Committee's concluding observations⁵ mainly address the overall situation of human rights without touching upon specific steps to rectify abuses and violations under the Convention itself.

The delegation was responsive to the questions and recommendations of the Committee, and was well prepared for the session. Additionally, the delegation was critical of the State party's performance, saying that while the human rights situation of Guatemala had improved significantly since the end of the civil war, there is still a great deal of work to be done. The delegation also highlighted specific areas that need more work, such as the judiciary system. Nevertheless, the concluding observations and recommendations reflect many of the same concerns as in the previous examination, such as the need for a reform of the penal code, the use of the military in civilian matters, and the lack of disaggregated statistics. Several of the previous examination's concluding observations had been addressed by the State party, such as the establishment of investigatory bodies to look into disappearances during the civil war and various methods of addressing the problems of impunity. However, these improvements were offset to some extent by new concerns, such as the rising incidence of violence against women, issues related to social cleansing, violence against children, and lynching.

While many Committee members referred to NGO sources when asking questions, there were only very few allusions to other Treaty Bodies or Special Procedures, notably the Special Rapporteur on violence against women, its causes and consequences, and the Special Representative of the Secretary-General on human rights defenders.

⁵ [CAT/C/GTM/CO/4](#)