



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

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Committee against Torture

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Item 3 of the provisional agenda

Organizational and other matters

List of issues prior to the submission of the seventh periodic report of Guatemala, due in 2017*

Draft prepared by the Committee

The Committee against Torture at its thirty-eighth session (A/62/44, paras. 23 and 24) established a new optional procedure, consisting of the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic reports. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations¹

Articles 1 and 4

1. With reference to the Committee's previous concluding observations (CAT/C/GTM/CO/5-6, para. 8), please provide up-to-date information on the measures taken by the State party to criminalize and punish the offence of torture in accordance with articles 1 and 4 of the Convention.²

* Adopted by the Committee at its fifty-fourth session (20 April to 15 May 2015).

¹ Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee, issued as document CAT/C/GTM/CO/5-6.

² CCPR/C/GTM/CO/3, para. 23.



Article 2³

2. With reference to the Committee's previous concluding observations (para. 9 (c)), please provide up-to-date information on the measures taken to ensure that all persons deprived of their liberty have access — in practice and from the very beginning of their detention — to all basic legal safeguards, including those set out in the Committee's general comment No. 2 (2007), and in particular, that judicial and other remedies are available to detainees and persons at risk of torture and ill-treatment.⁴ Has a centralized register for complaints of torture and ill-treatment been established (para. 9 (f))? Has the State party considered the possibility of installing video surveillance systems in places of detention?

3. Please provide up-to-date information on the appointment process followed, in accordance with Legislative Decree No. 40-2010, for members of the national preventive mechanism against torture and other cruel, inhuman or degrading treatment or punishment. Please include information on the implementation of the rules on incompatibilities and conflicts of interest applicable to members of the national preventive mechanism. What measures have been taken to ensure that the mechanism has the necessary resources to implement its mandate independently and effectively (para. 23)? Has it developed a strategy for preventing reprisals or threats against persons it interviews during visits to places of detention and those who provide it with sensitive or critical information?⁵

4. Please provide detailed information on the measures taken to ensure the full impartiality of judges and prosecutors, by guaranteeing, inter alia, that appointments are made according to objective criteria. Please include information on the procedure for the appointment of judges, the rules governing their tenure and the procedure according to which they may be dismissed.⁶ Please also inform the Committee about the disciplinary proceedings instituted against Judge Yassmín Barrios and on the curtailment of the term of office of Attorney General Claudia Paz y Paz.

5. With reference to the Committee's previous concluding observations (paras. 15 and 16), please inform the Committee of measures adopted during the reporting period to combat acts of violence committed by criminal organizations in the State party.⁷ Please include information on measures taken to increase the ranks of the National Civil Police in an effort to put an end to the Army's intervention in activities related to public security. What specific measures have been taken to better regulate the activities and services of private security companies?

6. With reference to the Committee's previous concluding observations (para. 13), please provide data, broken down by the victims' age and ethnic origin or nationality, on the number of complaints, investigations, prosecutions, convictions and sentences in relation to cases of gender-based violence, including domestic violence and femicide, and violence against children, since the consideration of the State party's combined fifth and sixth periodic reports in May 2013. Please also provide

³ The issues raised under article 2 may also arise under other articles of the Convention, including, but not limited to, article 16. As stated in paragraph 3 of the Committee's general comment No. 2 on the implementation of article 2 by States parties (CAT/C/GC/2): "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are interdependent, indivisible and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. [...] In practice, the definitional threshold between ill-treatment and torture is often not clear." See also section V of the same general comment.

⁴ CAT/C/GC/2, paras. 13 and 14.

⁵ CAT/OP/1, para. 25.

⁶ A/HRC/25/19/Add.1, paras. 32 and 33.

⁷ *Ibid.*, paras. 41 to 44.

information on the implementation of the Act on Femicide and Other Forms of Violence against Women (Decree No. 22-2008),⁸ and on any other measures adopted with the aim of adequately addressing the concerns expressed by the Committee in relation to the occurrence of deaths resulting from gender-based violence and the impunity prevailing in these cases.⁹ Please also provide information on the support services available to victims of gender-based violence.

7. Please provide up-to-date information, broken down by the victims' age, sex and ethnic origin or nationality, on the number of complaints, investigations, prosecutions, convictions and sentences in relation to cases of human trafficking since the consideration of the State party's previous periodic report. Please also provide additional information on the following:

(a) The implementation of the Act against Sexual Violence, Exploitation and Trafficking in Persons (Decree No. 9-2009),¹⁰ and on any other measures taken to prevent, combat and punish trafficking in persons;

(b) The measures taken to ensure that victims of human trafficking have access to basic support and assistance services (housing, medical and psychological care, etc.), as well as to effective judicial remedies and redress;

(c) The signature of bilateral and subregional agreements with the countries concerned in order to prevent and combat trafficking in persons.

Article 3

8. Please provide detailed information on the legal and institutional developments that have taken place in the fields of refugee asylum and protection. Please describe the measures taken by the State party during the reporting period to prevent the expulsion to a third State of persons who risk being subjected to torture in that State. What procedure is followed when a person asserts this right? Are individuals facing expulsion, return or extradition informed that they have the right to seek asylum and to appeal those decisions? If so, do appeals have suspensive effect? Please provide information on existing mechanisms for the identification and referral of asylum seekers who have been subjected to torture and human trafficking.

9. Please provide detailed statistics on the number of requests for asylum received during the period under review, the number of requests accepted and the number of applicants whose requests were accepted because they had been tortured or were in danger of being subjected to torture if returned to their country of origin. Please include information, broken down by sex, age and country of origin, on the number of persons who have been returned, extradited or expelled since the consideration of the previous periodic report. Please provide details on the reasons for their return and a list of the destination countries. Please provide up-to-date information on the types of appeal mechanisms available and on any appeals that have been lodged and their outcome.

10. Please indicate how many cases of return, extradition and expulsion the State party has processed pursuant to the acceptance of diplomatic assurances or equivalent guarantees during the period under consideration, as well as the number of cases in which it has offered such diplomatic assurances or guarantees. What was the minimum content of such assurances or guarantees, whether offered or received, and what subsequent oversight was carried out in those cases?

⁸ CAT/C/GTM/CO/5-6, para. 5 (b); CCPR/C/GTM/CO/3, para. 4 (b).

⁹ CCPR/C/GTM/CO/3, para. 19.

¹⁰ CAT/C/GTM/CO/5-6, para. 5 (e); CCPR/C/GTM/CO/3, para. 4 (b); A/HRC/22/54/Add.1, para. 31.

Articles 5 to 9

11. Please indicate what legislative or other measures have been taken in order to give effect to article 5 of the Convention. Are acts of torture considered universal crimes under national law, irrespective of where they occur and the nationality of the perpetrator or victim? Please provide relevant examples of proceedings brought in such cases.

12. Please inform the Committee of any extradition treaties that have been concluded with other States parties and whether such treaties include the offences referred to in article 4 of the Convention as extraditable offences. Please indicate whether the State party also considers the Convention a legal basis for extradition in respect of such offences.

13. Please indicate what mutual legal assistance treaties or agreements Guatemala has concluded with other entities, such as countries, courts or international institutions, and whether these have given rise to transfers of evidence in trials for torture or ill-treatment. Please provide examples.

Article 10

14. With reference to the Committee's previous concluding observations (paras. 9 (d) and 24), please provide up-to-date information on training programmes in human rights and the prohibition of torture that have been developed by the State party in order to ensure that all public servants, in particular members of the armed forces, police officers, public security reserve units and other law enforcement personnel, and also migration and prison officials, are fully cognizant of the provisions of the Convention and of the fact that their violation will not be tolerated and will be investigated and that violators will be prosecuted. Please also indicate whether the State party has devised a methodology to assess the effectiveness and impact of the training programmes in reducing the number of cases of torture and ill-treatment, and, if it has, please provide information on the content and application of that methodology.

15. Please provide up-to-date information on training programmes for judges, prosecutors, forensic doctors and other medical staff who deal with persons in custody in the detection and documentation of the physical and psychological sequelae of torture. Do such programmes include specific training in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)?

Article 11

16. Please describe the procedures that have been set up in order to ensure compliance with article 11 of the Convention and supply information on any rules, instructions, methods or practices as well as arrangements for custody that have been introduced since the consideration of the previous report. Please also indicate how frequently these are reviewed.

17. With reference to the Committee's previous concluding observations (para. 17), please provide up-to-date statistics, broken down by sex, age group and ethnic origin or nationality, on the number of prisoners awaiting trial and those who have been convicted and the occupancy rate of all places of detention, including the holding facilities of the National Civil Police and military barracks that have been equipped as prisons.¹¹ Please provide information on measures taken to restrict the use of pretrial detention. What concrete measures have been taken to reduce overcrowding and

¹¹ A/HRC/25/19/Add.1, para. 38.

improve conditions of detention in prisons and places of deprivation of liberty for minors?¹² Please provide information on efforts made by the State party to meet the particular needs of minors, women and persons with disabilities who have been deprived of their liberty. What measures have been taken by the State party to ensure that prisoners awaiting trial are separated from those serving sentences, that children are held separately from adults and that women are guarded by female prison guards?¹³ Please also comment on reports received by the Committee indicating that women deprived of their liberty are often victims of sexual violence.¹⁴ Lastly, please indicate what measures have been taken to prevent the continuing detention of prisoners who have already served their prison sentence.

18. Please supply information on the incidence of inter-prisoner violence and, in particular, on all cases in which law enforcement personnel might be implicated for negligence, and on the number of complaints that have been lodged in this regard. What preventive measures have been established? Please also provide information on concrete measures taken to eliminate situations of inmate self-rule and extortion in prisons.¹⁵

19. Please provide statistics on the number of deaths in custody during the period under consideration, broken down by place of detention, sex, age and ethnic origin or nationality of the deceased and the cause of death. Please provide detailed information on the results of investigations into those deaths and on the measures taken to prevent the recurrence of such cases. Please indicate whether, in any of these cases, relatives have received compensation.¹⁶

20. Please provide information on the number of persons admitted to psychiatric hospitals and other institutions for persons with psychosocial disabilities. What is the situation with regard to the use of alternative forms of treatment, such as community-based rehabilitation services and other outpatient treatment programmes?

Articles 12 and 13

21. In the light of the Committee's previous concluding observations (paras. 9 and 19), please provide statistical information, broken down by sex, age, ethnic origin or nationality and place of detention, on the number of complaints of acts of torture or ill-treatment registered during the reporting period. How many ex officio investigations have been opened into alleged incidents of torture and ill-treatment? Please provide information on the judicial and disciplinary proceedings that have been initiated, convictions handed down and criminal penalties and disciplinary measures imposed. In this regard, please provide examples of relevant cases or judicial decisions.

22. With regard to the Committee's previous concluding observations (para. 10), please provide up-to-date information on progress with clarification of cases of torture and other serious human rights violations that were committed during the internal armed conflict.¹⁷ Please also comment on the status of the criminal trial under way against José Efraín Ríos Montt.¹⁸ Has the State party set up a witness protection programme? If so, please evaluate its effectiveness.¹⁹

¹² CAT/C/GTM/CO/5-6, paras. 18 and 19; CCPR/C/GTM/CO/3, para. 24.

¹³ CCPR/C/GTM/CO/3, para. 24; CAT/C/GTM/CO/5-6, para. 21.

¹⁴ CCPR/C/GTM/CO/3, para. 24.

¹⁵ CAT/C/GTM/CO/5-6, para. 18; A/HRC/25/19/Add.1, para. 39.

¹⁶ A/HRC/25/19/Add.1, para. 23.

¹⁷ CCPR/C/GTM/CO/3, paras. 6 and 21; A/HRC/25/19/Add.1, paras. 29 to 31.

¹⁸ CAT/C/GTM/CO/5-6, para. 10; A/HRC/25/19/Add.1, paras. 26 to 28 and 30.

¹⁹ CCPR/C/GTM/CO/3, para. 25.

23. Taking into account the Committee's last concluding observations (para. 11), please indicate whether the State party plans to establish an independent commission to search for the persons who were subjected to enforced disappearance during the internal armed conflict.

24. With reference to the Committee's previous concluding observations (para. 20), please provide information on the investigation of the alleged ill-treatment of persons admitted to private drug rehabilitation centres. Please also comment on recent reports of excessive sedation, detention in solitary confinement, humiliation and ill-treatment, including sexual abuse, of patients in the Federico Mora National Mental Health Hospital.²⁰ Please include information on the results of the investigations and on any disciplinary or criminal proceedings brought in connection with such allegations.

Article 14

25. With reference to the Committee's recommendations set out in its previous concluding observations (para. 9 (e)), and in accordance with its general comment No. 3 (2012) on the implementation of article 14 by States parties,²¹ please provide detailed information on the measures of redress and compensation, including rehabilitation, ordered by the courts and effectively awarded to victims of torture or their relatives since the consideration of the previous periodic report. Such information should include the number of claims submitted, the number of claims admitted and the amounts awarded and actually paid in each case. Please include information on the implementation of measures of redress ordered by international bodies, in particular the Inter-American Court of Human Rights.

26. With reference to the Committee's previous concluding observations (para. 12), please provide information on the measures taken by the State party to ensure the provision of redress to victims of human rights violations that were committed during the internal armed conflict, including fair and adequate compensation and the means for as complete a rehabilitation as possible.²² Have any specific positive measures that incorporate a gender perspective been adopted in order to ensure that victims of abuse, such as sexual violence, are able to seek and obtain redress? Please include up-to-date information on the activities of the National Reparation Programme during the reporting period.

27. Please provide information on programmes to provide reparation to victims of torture and ill-treatment, including treatment for physical and psychological trauma and other forms of rehabilitation, and on the allocation of adequate resources to ensure the effective implementation of such programmes. Please indicate the degree of cooperation maintained with specialized non-governmental organizations in this area and indicate whether the State party provides financial and/or other means of support for their proper functioning.

Article 15

28. Please provide examples of any cases that have been dismissed by the courts owing to the use of evidence or testimony obtained through torture or ill-treatment.

Article 16

29. In the light of the Committee's previous concluding observations (para. 14), please provide up-to-date information on the measures taken by the State party to ensure the safety and physical integrity of human rights defenders, journalists and

²⁰ CAT/C/GTM/CO/5-6, para. 21; A/HRC/25/19/Add.1, para. 40.

²¹ CAT/C/GC/3, paras. 45 and 46.

²² CCPR/C/GTM/CO/3, para. 7.

trade unionists against acts of intimidation or violence that they may face in the course of their activities.²³ How many complaints of acts of violence and intimidation have been lodged against human rights defenders, journalists and trade unionists during the period under consideration? Please provide detailed information on the results of criminal investigations and trials, including sentences imposed, in cases involving attacks and threats against human rights defenders, journalists and trade unionists. Has the State party evaluated the effectiveness of the Unit for the Analysis of Attacks against Human Rights Defenders?²⁴ Please supply information on the human, financial and material resources that have been allocated to ensure the effective functioning of this institution.

30. With reference to the Committee's previous concluding observations (para. 22), please indicate the concrete measures that have been taken by the State party to prevent homophobic and transphobic violence.²⁵

31. Please provide statistical information on the number of lynchings reported during the reporting period, broken down by the victims' sex, age and ethnic origin or nationality. What measures have been established to prevent such criminal acts? In this connection, please include an analysis of the causes and information on the prosecution of the alleged perpetrators.²⁶

32. Please indicate what measures have been taken to ensure that corporal punishment of children is explicitly prohibited in all settings, in particular in the home, juvenile detention facilities, shelters, day-care centres and schools.²⁷

Other matters

33. Taking into account the Committee's previous concluding observations (para. 25), please indicate whether the State party intends to abolish the death penalty and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.²⁸

34. Please provide up-to-date information on the measures taken by the State party to respond to threats of terrorism and describe whether, and how, those measures have affected safeguards for human rights in law and in practice and how the State party has ensured that measures to counter terrorism are consistent with all its obligations under international law, especially the Convention, in conformity with relevant Security Council resolutions, in particular resolution 1624 (2005).²⁹ Please describe the relevant training given to law enforcement officials, the number and types of convictions handed down in application of that legislation, the legal remedies available to persons subject to anti-terrorist measures, whether there have been complaints of failure to comply with rules of international law and the outcome of those complaints.

²³ Ibid., para. 22; A/HRC/25/19/Add.1, paras. 12 and 45 to 49.

²⁴ CCPR/C/GTM/CO/3, para. 22.

²⁵ Ibid., para. 11.

²⁶ Ibid., para. 18.

²⁷ CAT/C/GTM/CO/5-6, para. 19.

²⁸ Ibid., para. 25; CCPR/C/GTM/CO/3, para. 13.

²⁹ The State party has not submitted reports pursuant to paragraph 6 (c) of Security Council resolution 1624 (2005).

General information on other measures and developments relating to the implementation of the Convention in the State party

35. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the previous report to give effect to the provisions of the Convention or the Committee's recommendations. This may include institutional developments, plans or programmes, and in particular, resources allocated, statistical data or any other information that the State party considers relevant.
