



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

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

Conclusions and recommendations of the Committee against Torture

GUATEMALA

1. The Committee considered the fourth periodic report of Guatemala (CAT/C/74/Add.1) at its 701st and 704th meetings, held on 4 and 5 May 2006 (CAT/C/SR.701 and CAT/C/SR.704), and adopted at its 719th meeting, held on 7 May 2006 (CAT/C/SR.719), the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of Guatemala, as well as the oral information provided by the State party representatives during the consideration of the report. The Committee thanks the representatives of the State party for a frank and constructive dialogue.

3. The Committee also welcomes the information provided in writing by the Office of the Human Rights Procurator on the application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Guatemala.

B. Positive aspects

4. The Committee is pleased to note the efforts made to reform the State party's judicial system, and particularly welcomes the work carried out by the judiciary's Modernization Unit in this respect.

5. The Committee welcomes the declaration adopted by the State party on 25 September 2003 under article 22 of the Convention, whereby it recognizes the competence of the Committee to receive complaints of torture from individuals.
6. The Committee is pleased to note that the State party in April 2006 submitted a proposal to the Office of the Secretary-General to establish a Commission for the Investigation of Illegal Groups and Clandestine Security Organizations.
7. The Committee welcomes the establishment in September 2005 of an office of the United Nations High Commissioner for Human Rights in Guatemala, with a combined technical cooperation and monitoring mandate.
8. The Committee welcomes the ratification by Guatemala on 14 March 2003 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
9. The Committee welcomes the improvement of the human rights situation in the State party, including the fact that the practice of enforced disappearance as a State policy has ceased and that no further reports have been received of the existence of secret detention centres.

C. Subjects of concern and recommendations

10. The Committee reiterates its concern, as already expressed in its consideration of preceding reports, that the State party has still not brought the definition of the offence of torture contained in the Criminal Code fully into line with the Convention (arts. 1 and 4).

The State party should amend, as a matter of priority, the relevant provisions of the Criminal Code, particularly articles 201 bis and 425, in order to legally define torture in accordance with article 1 of the Convention, and criminalize it in accordance with article 4, paragraph 2, of the Convention.

11. The Committee also reiterates its concern about the existence of laws and practices which allow the army to be involved in matters that fall within the competence of the police, such as the prevention and repression of ordinary crime. Moreover, it takes note that the State party has assigned 3,000 military personnel to support the fight against ordinary crime, instead of strengthening the police force (art. 2).

The State party should adopt effective measures to strengthen the National Civil Police and should repeal all laws which allow the army to be involved in activities of law enforcement or the prevention of ordinary crime, which should be carried out exclusively by the National Civil Police.

12. The Committee is concerned about reports of an increase in acts of harassment and persecution, including threats, killings and other human rights violations, experienced by human rights defenders, and about the fact that such acts remain unpunished (art. 2).

The State party should adopt effective measures to strengthen and guarantee the independence of the unit for the protection of human rights defenders within the Presidential Human Rights Commission, as well as to prevent and protect human rights defenders from any further violence. Furthermore, the State party should ensure the prompt, thorough and effective investigation and appropriate punishment of such acts.

13. The Committee is concerned that the requirement regarding article 2, paragraph 3, of the Convention is expressed ambiguously in the State party's legislation (art. 2).

The State party should amend its legislation in order to explicitly provide that an order from a superior officer or a public authority may not be invoked as a justification of torture.

14. The Committee is concerned about the bill on military jurisdiction presented to Congress in 2005, which provides that military courts would have jurisdiction to try military personnel accused of ordinary crimes (arts. 2 and 12).

The State party should amend the above-mentioned bill in order to restrict the jurisdiction of military courts to the trial of military personnel accused of crimes of an exclusively military nature.

15. The Committee is concerned with the impunity that persists regarding most of the human rights violations committed during the internal armed conflict, with over 600 massacres documented by the Historical Clarification Commission still to be investigated. The Committee notes with concern that in practice the 1996 National Reconciliation Act has become an obstacle to the effective investigation of the 1982 case of the Dos Erres massacre, which is making no headway due to procedural delays without any legal justification (arts. 11, 12 and 14).

The State party should strictly apply the National Reconciliation Act, which explicitly excludes any amnesty for the perpetrators of acts of torture and other grave human rights violations, ensures the initiation of prompt, effective, independent and thorough investigations of all acts of torture and other grave human right violations committed during the internal armed conflict, and grants adequate compensation to the victims.

16. The Committee is seriously concerned about the numerous allegations concerning:

(a) The "social cleansing" and killings of children living in the street and in marginalized areas, which often involve acts of torture and ill-treatment, and the fact that such cases are not thoroughly investigated;

(b) The increase in violent killings of women, which often involve sexual violence, mutilations and torture. The fact that these acts are not investigated exacerbates the suffering of relatives seeking justice, who, in addition, complain of gender discrimination by the authorities in the course of investigatory and judicial proceedings; and

(c) The lynchings of individuals, which casts doubt on whether the rule of law is applied in the State party (arts. 2, 12, 13, 16).

With regard to these practices, the State party should:

(a) Take urgent measures to ensure that no persons within its jurisdiction are subjected to torture, or to inhuman or degrading treatment, and fully comply with its duty to prevent and punish such acts when carried out by private individuals;

(b) Ensure prompt, impartial and thorough investigations, free of any discrimination on gender, race, social origin or any other grounds, and bring alleged perpetrators to justice;

(c) Ensure the full implementation of the Law for the Integral Protection of Children and Adolescents, inter alia by providing sufficient funds to guarantee the security, well-being and development of all children;

(d) Carry out campaigns and training activities for police officers and members of the judiciary to make them duly aware of the existing social violence, in order to enable them to receive complaints and investigate them properly.

17. The Committee is concerned about reports of sexual violence against women in police stations (arts. 6 and 11).

The State party should take steps to ensure that all arrested women are brought immediately before a judge and then transferred to a detention centre for women, if so ordered by the judge.

18. The Committee is concerned that the functioning of the State party's prison system continues to lack a regulatory framework (art. 11).

The State party should adopt legislation on the prison system in conformity with international human rights norms such as the Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

19. The Committee expresses its concern about a provision in the Criminal Code currently being considered by the Constitutional Court, which exempts a rapist from any penalty if he marries the victim (arts. 4 and 13).

In the light of the grave nature of this crime, the State party should repeal this provision and ensure the prosecution and punishment, as appropriate, of all perpetrators.

20. The Committee is concerned about the large percentage of persons held in pretrial detention who, according to the State party, account for 50 per cent of all detainees (arts. 6 and 11).

The State party should step up its efforts to adopt effective measures, including legislative measures, to reduce the number of persons held in pretrial detention.

21. The Committee is concerned about reports of the use of excessive force by police officers during evictions in rural areas, which often result in the destruction of homes and other personal belongings, and sometimes even in violent deaths. (arts. 6, 10, 12 and 13).

The State party should adopt effective measures to prevent the use of excessive force during evictions, provide specific training on evictions for police officers, and ensure that complaints concerning forced evictions are thoroughly investigated and that those responsible are brought to trial.

22. The Committee expresses concern with the extension of the death penalty to new types of crimes. According to information provided by the State party itself, 12 persons have been sentenced to death, even though under regional and international instruments freely ratified by the State party it was legally bound to refrain from extending the death penalty to new crimes. The failure to revoke these sentences constitutes a form of cruel and inhuman treatment or punishment (art. 16).

The State party should bring its legislation on the death penalty fully in line with its obligations under international law.

23. The Committee requests that the State party in its next periodic report provide detailed statistical data, disaggregated by crimes, ethnicity and gender, 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. Information is further requested on any compensation and redress granted to the victims.

24. The Committee urges the State party to consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

25. In light of the assurances provided by the representatives of the State party that the necessary steps are being taken to ratify the Rome Statute of the International Criminal Court, the Committee encourages the State party to proceed with ratification of the Statute without delay.

26. The State party should widely disseminate its reports and the conclusions and recommendations of the Committee through official websites, the media and non-governmental organizations.

27. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 12, 15, 16 and 17.

28. The State party is invited to submit its next periodic report, which will be considered as the sixth report, by 3 February 2011 at the latest, the due date for the presentation of the sixth periodic report
