

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

21 June 2013

English

Original: Spanish

Committee against Torture**Concluding observations on the combined fifth and sixth periodic reports of Guatemala, adopted by the Committee at its fiftieth session (6–31 May 2013)**

1. The Committee against Torture considered the combined fifth and sixth periodic reports of Guatemala (CAT/C/GTM/5-6) at its 1142nd and 1145th meetings (CAT/C/SR.1142 and SR.1145), held on 13 and 14 May 2013. At its 1161st and 1162nd meetings (CAT/C/SR.1161 and SR.1162), held on 27 and 28 May 2013, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee expresses its appreciation for the submission by Guatemala of its combined fifth and sixth periodic reports in response to the list of issues prior to reporting (CAT/C/GTM/Q/6). The Committee would like to thank the State party for following the optional reporting procedure, as this makes for closer cooperation between the State party and the Committee, and for a more focused consideration of the report and dialogue with the delegation.

3. The Committee also appreciates the frank dialogue with the State party's high-level delegation, as well as the additional information provided.

B. Positive aspects

4. The Committee notes with satisfaction that the State party has ratified or acceded to the following international instruments since the Committee's consideration of its fourth periodic report:

(a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (June 2008);

(b) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto (April 2009);

(c) The Rome Statute of the International Criminal Court (April 2012).

5. The Committee welcomes the measures taken by the State party to amend its legislation on matters related to the Convention, particularly:

(a) The adoption of the Prisons Act (Legislative Decree No. 33-2006);

(b) The adoption of the Act on Femicide and Other Forms of Violence against Women (Legislative Decree No. 22-2008);

(c) The adoption of the Act on Criminal Jurisdiction in High-risk Trials (Legislative Decree No. 21-2009), as amended by Legislative Decree No. 35-2009;

(d) The adoption of the Act on Strengthening the Criminal Prosecution System (Legislative Decree No. 17-2009);

(e) The adoption of the Act against Sexual Violence, Exploitation and Trafficking in Persons (Legislative Decree No. 9-2009).

6. The Committee also welcomes the State party's efforts to modify its policies and procedures so as to afford greater protection for human rights and to apply the Convention, particularly:

(a) The establishment in 2008 of the Unit for the Analysis of Attacks on Human Rights Defenders, and the decision to renew its mandate in 2012;

(b) The signing, on 12 December 2006, of the agreement between the State party and the United Nations on the establishment of the International Commission against Impunity in Guatemala, and the subsequent ratification of the agreement by Congress (Legislative Decree No. 35-2007);

(c) The establishment of rota criminal courts.

7. The Committee notes with satisfaction that the State party has extended a standing invitation to all special procedures mandate-holders of the Human Rights Council to visit the country. In this connection, the Committee notes that the State party has agreed to the request for a visit by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and encourages it to take the necessary steps to enable the visit to go ahead in 2013.

C.Principal subjects of concern and recommendations

Definition and offence of torture

8.The Committee notes with concern that the definition of the offence of torture set out in the State party's Criminal Code has not yet been brought into line with the provisions of the Convention in spite of the Committee's previous recommendations and Constitutional Court resolution 18-22 of 17 July 2012. In this respect, it notes that the State party intends to adjust its legislation as indicated by the delegation during the dialogue with the Committee (arts. 1 and 4).

The Committee reiterates its previous recommendation (CAT/C/GTM/CO/4, para. 10) and urges the State party to 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. The Committee also recommends that the State party ensure that acts of torture are not subject to any statute of limitations.

Allegations of torture and ill-treatment

9.The Committee is concerned at reports of the use of police violence, including ill-treatment, when a person is arrested and before they are brought before the competent judicial authority. The Committee also regrets that no specific record is kept of complaints of torture and ill-treatment (arts. 2, 12, 13 and 14).

The Committee recommends that the State party take effective measures to:

(a) Ensure that impartial and effective investigations into all reports of torture and ill-treatment are carried out without delay, and that those responsible are tried and, if found guilty, punished in accordance with the seriousness of their acts;

(b) Ensure that, in cases of alleged acts of torture or ill-treatment, the suspects are suspended immediately from their duties for the duration of the investigation;

(c) Ensure that all persons deprived of their liberty enjoy in practice, and from the very beginning of their detention, all fundamental legal safeguards, including those set out in the Committee's general comment No. 2 (2007) on the implementation of article 2 of the Convention by States parties;

(d) Ensure that the police receive training on the obligations and responsibilities deriving from the Convention;

(e) Ensure that all victims of torture or ill-treatment receive appropriate redress, including compensation and the means for their physical and psychological rehabilitation, in line with article 14 of the Convention and the Committee's general comment No. 3 (2012) on the implementation of article 14 of the Convention;

(f) Set up a centralized register of complaints, investigations, prosecutions and convictions in cases of torture or ill-treatment.

Investigation of acts of torture and other serious human rights violations committed during the internal armed conflict

10.The Committee notes with interest the information provided by the State party about the investigations carried out and the convictions obtained in some of the actions brought for serious human rights violations committed during the internal armed conflict. However, it remains gravely concerned about the impunity which exists for most human rights violations carried out during this period, which include, according to the Commission for Historical Clarification, 626 massacres and the deaths or disappearances of over 200,000 people. The Committee highlights that, again according to the Commission, over 90 per cent of the human rights violations and acts of violence committed during this period appear to be attributable to the State and over 80 per cent to have been committed against the indigenous population. The Committee emphasizes that this impunity is a violation of international human rights law, the peace agreements and national legislation. The Committee highlights, in particular, the conviction of the former Head of State, Efraín Ríos Montt, for genocide and crimes against humanity on 10 May 2013, but cannot fail to note also that the decision was overturned by the Constitutional Court, reportedly on procedural grounds. In addition, the Committee is concerned that in the course of this trial certain parties, including high-ranking executive government officials, made statements to the effect that there was no genocide in Guatemala, which could have influenced the judiciary's deliberations. The Committee is also concerned about reports that the Guatemalan army is not fully cooperating in the investigations. In addition, the Committee is concerned about reports of attacks and threats directed at people involved in the criminal proceedings, including those related to investigations into human rights violations (arts. 2, 12, 13, 14 and 16).

The Committee reiterates its previous recommendation (para. 15) that the State party should fully apply the National Reconciliation Act, which, among other things, explicitly excludes any amnesty for perpetrators of the crimes of genocide, torture and enforced disappearance, as well as offences not subject to statutory limitations or extinction of criminal liability, in accordance with national legislation and the international treaties ratified by Guatemala. In addition, the Committee recommends that the State party should:

(a) Redouble its efforts to ensure that serious human rights violations committed during the internal armed conflict, particularly the massacres and acts of torture and enforced disappearance, are investigated, and to bring to justice the perpetrators of such acts, including persons in the chain of command;

- (b) Ensure that the individuals accused of torture or similar acts do not benefit from a statutory time limit;**
- (c) Guarantee that all bodies involved in the investigations have the human, technical and financial resources needed to carry out their duties effectively;**
- (d) Ensure that all State agencies cooperate fully and promptly with the investigations;**
- (e) Prevent State officials from doing anything or making any public statement that might adversely affect the independence of the judiciary;**
- (f) Guarantee the safety of the victims, witnesses and all those involved in the criminal proceedings and, to this end, provide the bodies responsible for their protection with the human and financial resources they need to function effectively.**

Enforced disappearances during the internal armed conflict

11. The Committee notes with concern that, despite the years that have passed since the end of the internal armed conflict, the fate and whereabouts of over 40,000 alleged victims of enforced disappearance during this period are still unknown and, in this respect, regrets that no independent commission has yet been established to locate them. The Committee takes note of the information supplied by the delegation to the effect that the proposals submitted to Congress for this purpose have no chance of being adopted and that a new text is being negotiated (arts. 2, 12, 14 and 16).

The Committee recommends that the State party establish an independent commission to search for the victims of enforced disappearance during the internal armed conflict, which should meet international human rights standards and have the authority and resources it needs to perform its duties effectively. It also recommends that the State party set up a national register of disappeared persons to facilitate the search and ensure that all persons involved in the process receive due support.

National Reparations Programme

12. The Committee, while acknowledging the establishment and work of the National Reparations Programme, notes the reports indicating that, under the programme, financial compensation has apparently been given priority over other forms of redress. The Committee also notes that the programme is due to run until the second half of 2013 and takes note of the proposals to extend it (art. 14).

The State party should redouble its efforts to guarantee that all victims of human rights violations committed during the internal armed conflict receive appropriate redress that includes the means for their physical and psychological rehabilitation and that is culturally and gender sensitive. Accordingly, the State party should ensure that the National Reparations Programme is continued until all victims have received appropriate redress; ensure that legislative or other measures adopted meet international standards for reparation, including article 14 of the Convention; and provide the programme with sufficient resources to ensure that all forms of reparation, whether of an individual or collective nature, are implemented in full. The Committee calls the State party's attention to its general comment No. 3 (2012).

Violence against women

13. While it welcomes the legislative and other measures adopted by the State party to prevent and punish violence against women, particularly the definition of femicide as a specific offence, the Committee notes with deep concern that, despite its previous recommendation (para. 16) the level of violence against women, including murders, remains high. The Committee is very concerned to see that, according to the National Institute of Forensic Sciences, 709 violent deaths of women were recorded in 2012 and 200 between January and March 2013. Furthermore, while recognizing the progress made in terms of criminal investigations and prosecution, the Committee notes with concern the low number of convictions for offences related to violence against women (arts. 1, 2, 12, 13, 14 and 16).

The Committee urges the State party to:

- (a) Redouble its efforts to prevent and combat violence against women, including gender-related murder; ensure the full and effective application of the relevant legislation; and ensure effective coordination between the various bodies that have a role to play in tackling violence against women;**
- (b) Ensure that acts of violence against women are investigated promptly, effectively and impartially, and that the perpetrators are tried and punished in accordance with the seriousness of their acts;**
- (c) Ensure that victims obtain appropriate redress, including physical and psychological rehabilitation services, and have access to shelters to house and support them in every region of the country;**
- (d) Run extensive awareness campaigns for the general public and extend and strengthen existing training programmes to ensure that all police officers, judges, lawyers, social workers and health workers are ready to respond effectively to all cases of violence against women.**

Human rights defenders

14. The Committee remains concerned about the persistently high number of threats and attacks, including murders, targeting human

rights defenders, particularly those defending the rights of indigenous peoples and those working on issues related to the right to land, labour rights and the environment, despite the recommendations of numerous human rights monitoring bodies. In this connection, the Committee takes note with concern of the report that 15 human rights defenders were murdered between January and October 2012. It is also concerned about reports that only a limited number of convictions have been obtained for crimes against human rights defenders. Furthermore, the Committee notes with concern the reports that campaigns have been waged, including in the media, to discredit their activities and that the criminal justice system has been used to persecute them (arts. 2, 12, 13 and 16).

The Committee urges the State party to recognize publicly the essential role played by human rights defenders in helping it fulfil its obligations under the Convention, and to take the necessary steps to facilitate their work. Recalling its earlier recommendation (para. 12), the Committee urges the State party to:

- (a) Redouble its efforts to guarantee the effective protection, safety and physical integrity of human rights defenders in face of the threats and attacks to which they are vulnerable on account of their activities;**
- (b) Ensure the prompt, thorough and effective investigation of all threats and attacks targeting human rights defenders, and ensure that those responsible are tried and punished in accordance with the seriousness of their acts;**
- (c) Guarantee the continued existence of the Unit for the Analysis of Attacks on Human Rights Defenders.**

Violent deaths and lynchings

15. The Committee notes with concern the persistent levels of violence in the State party, which appear to be largely linked to organized crime, despite the measures taken to reduce this. It is concerned, in particular, about the large number of violent deaths — a large number of which are committed against women and children, the persistence of lynching and the reportedly low percentage of cases of violence that are investigated and of perpetrators who are tried and punished (arts. 2, 12, 13 and 16).

The Committee, recalling its previous recommendation (para. 16), urges the State party to redouble its efforts to prevent and punish all acts of torture or other cruel, inhuman or degrading treatment inflicted on persons within its jurisdiction. The Committee recommends that the State party ensure that all acts of violence, including killings and lynchings, are investigated promptly, effectively and impartially, that the perpetrators are tried and punished, and that the victims receive appropriate redress. The Committee also recommends that the State party step up its campaigns in schools, the media and elsewhere to raise awareness of lynchings.

Internal security

16. The Committee notes with concern that, despite its previous recommendations and the State party's efforts to strengthen the National Civil Police, the latter still does not have sufficient resources to perform its duties effectively. The Committee is also concerned about reports that the army is playing a greater role in civil security tasks, that it has even been called on in social conflicts related to, for example, the complaints of indigenous communities, and that its intervention has in some cases led to deaths or injuries. In this connection, the Committee deplores the events of October 2012 in Totonicapán, when soldiers fired on a group of indigenous demonstrators who had blocked a road, killing six of them and wounding more than 30, and hopes that progress is being made in identifying those responsible for these acts and bringing them to trial. The Committee takes note of the delegation's statement that cooperation between the army and the National Civil Police will continue until the latter has the number of officers it needs. The Committee is also concerned about the growing number of private security officers, who reportedly outnumber National Civil Police officers (art. 2).

The Committee:

- (a) Reiterating its previous recommendation (para. 11), urges the State party to redouble its efforts to strengthen the National Civil Police as soon as possible, in particular by allocating adequate human and financial resources to it, with a view to ensuring a prompt end to army intervention in public security activities; to ensure that there are no longer any legal provisions that 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;**
- (b) Recommends that the State party ensure that all private security firms are registered, as required by law, and that their activities are properly monitored and they are held accountable;**
- (c) Urges the State party to ensure that any cases where public servants or private security staff infringe or violate human rights are investigated promptly, independently and effectively; that the perpetrators are tried and punished in accordance with the seriousness of their acts; and that the victims receive appropriate redress, including the means for their physical and psychological rehabilitation.**

Pretrial detention

17. The Committee remains concerned about the large number of detainees — allegedly 51 per cent of all persons deprived of their liberty — held in pretrial detention, which contributes to prison overcrowding. The Committee notes the information provided by the delegation during the dialogue which indicates that the issue of pretrial detention and the use of alternatives to deprivation of liberty is now being addressed (arts. 2, 11 and 16).

The Committee, recalling its previous recommendation (para. 20), urges the State party to ensure that the necessary steps are taken to limit the use of pretrial detention by adopting alternatives to custodial sentences, in line with the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), General Assembly resolution

45/110 of 14 December 1990, and to ensure that people subject to this regime are tried quickly and impartially.

Detention conditions

18. The Committee is concerned about the poor conditions in detention centres, including centres for women, and, in particular, about the high levels of overcrowding, which reportedly exceed 200 per cent. It is also concerned about reports that recount incidents of inter-prisoner violence and indicate that numerous detention centres are controlled by organized groups of prisoners that, with the acquiescence of the authorities, allegedly force other prisoners to pay them not to hurt them or to get them out of various tasks, a practice known as *talacha*, and that they beat anyone who cannot pay up, sometimes to death. In this connection, the Committee notes with concern the deaths of Messrs. Víctor Rojas and Efraín Pérez in 2012 after they were beaten for not paying the *talacha*. The Committee takes note of the information supplied by the delegation, which said that steps are being taken to improve detention conditions and find a comprehensive solution to the problem of overcrowding (arts. 2, 11 and 16).

The Committee urges the State party to speed up and step up its efforts to reduce overcrowding, particularly through the use of alternatives to custodial sentences, in line with the Tokyo Rules. The Committee also recommends that conditions in prisons should comply with the Standard Minimum Rules for the Treatment of Prisoners, approved by the Economic and Social Council in resolution 663C (XXIV) of 31 July 1957 and resolution 2076 (LXII) of 13 May 1977, and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules, adopted by General Assembly resolution 65/229 of 21 December 2010). The Committee further recommends that the State party ensure its authority and responsibility for the humane treatment of prisoners in centres of detention and step up its efforts to eradicate the practice whereby organized groups of prisoners control these centres; ensure that all cases of prison violence, including torture and ill-treatment, are investigated thoroughly and impartially, and that the perpetrators are brought to trial and, if found guilty, are punished in accordance with the seriousness of their acts; and ensure that detainees have access to an independent complaints mechanism.

Detention centres and alternative-care centres for juveniles

19. The Committee notes with concern the poor conditions, including overcrowding, in juvenile detention centres. The Committee notes with particular concern the reports about the ill-treatment of minors in detention, including corporal punishment and locking them up for long periods. It is also concerned about reports that minors are ill-treated on admission to both public and private alternative-care centres (arts. 2, 11 and 16).

The Committee recommends that the State party should:

- (a) Ensure that the deprivation of liberty of minors is a last resort limited to the shortest possible period, and that it is reviewed periodically with a view to eliminating it;**
- (b) Take all necessary steps to bring juvenile detention centres into line with the relevant international standards and, in particular, to reduce overcrowding and avoid locking up inmates for long periods;**
- (c) Ensure that minors deprived of their liberty and those in public or private alternative-care centres receive an education and appropriate rehabilitation and reintegration services;**
- (d) Adopt without delay appropriate measures to prevent and punish any type of ill-treatment of minors deprived of their liberty or those in alternative-care centres;**
- (e) Ensure that all detention centres and alternative-care centres for minors are subject to regular, unannounced checks, and that the minors have access to independent complaints mechanisms.**

Private drug rehabilitation centres

20. The Committee is concerned about the reports of poor conditions in private drug rehabilitation centres and ill-treatment inflicted upon persons admitted to them. The Committee notes with satisfaction the State party's commitment to carrying out the relevant investigations, as indicated in the additional information provided (arts. 2, 11, 12 and 16).

The Committee urges the State party to carry out the relevant investigations without delay and to take all steps that might be necessary to prevent and punish ill-treatment in private drug rehabilitation centres. The Committee recommends that the State party conduct a survey of existing centres in the country and ensure that each is duly accredited by the competent authority and is subject to a regular inspection programme. It also recommends that the State party ensure the prompt, thorough and effective investigation of all complaints of ill-treatment in these centres and that the persons responsible are brought to trial and, if found guilty, receive penalties commensurate with the seriousness of their acts.

Federico Mora National Mental Health Hospital

21. The Committee is concerned about the poor conditions in the Federico Mora National Mental Health Hospital, which include inadequate access to basic services and a lack of proper medical treatment. It is also concerned about reports that persons with mental disabilities who have been deprived of their liberty and are admitted to this hospital share wards with ordinary patients, and that persons admitted to the hospital are abused by other patients or by police officers assigned to the hospital. The Committee takes note of the information provided by the delegation to the effect that the precautionary measures requested by the Inter-American Commission on Human Rights for the patients of the Federico Mora hospital have led the Government to address mental health issues

as a whole, besides implementing the precautionary measures. It also takes note of the delegation's statement that the hospital does not admit children, contrary to the reports the Committee received to this effect (arts. 2, 11, 12 and 16).

The Committee encourages the State party to step up its efforts to tackle the issue of mental health comprehensively. In addition, it recommends that the State party ensure that people admitted to Federico Mora National Mental Health Hospital are treated properly, and particularly that they receive appropriate medical care, and that complaints of their ill-treatment and abuse are investigated promptly and impartially, and that the alleged perpetrators are tried and punished in accordance with the seriousness of their acts. The Committee urges the State party to ensure that ordinary patients do not share wards with persons who have been deprived of their liberty and that persons in pretrial detention are separated from convicted prisoners. It also urges the State party to ensure that there are no minors in the hospital and that any children who might be there are separated from adults. The Committee urges the State party to take effective measures to guarantee full and prompt compliance with the precautionary measures requested by the Inter-American Commission on Human Rights (PM 370/12 – 334 Patients at the Federico Mora Hospital).

Lesbian, gay, bisexual and transgender community

22. While noting the delegation of the State party's statement that the problem is now being tackled, the Committee is concerned about reports of discrimination against lesbian, gay, bisexual and transgender persons (arts. 2, 10, 12, 13 and 16).

The Committee recommends that the State party adopt effective measures to protect lesbian, gay, bisexual and transgender persons from any discrimination or aggression, and ensure that all cases of violence are promptly, effectively and impartially investigated, tried and punished, and that victims obtain appropriate redress. The Committee refers the State party to section V, on "Protection for individuals and groups made vulnerable by discrimination or marginalization", of its general comment No. 2 (2007).

National preventive mechanism

23. The Committee welcomes the adoption in October 2010 of Legislative Decree No. 40-2010 establishing the national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment. However, it notes with concern that the mechanism is still not operational (art. 2).

The State party should speed up the implementation of the law establishing the national preventive mechanism by promptly appointing its members and should ensure that these appointments comply fully with the relevant provisions of the Optional Protocol to the Convention. The State party should also ensure that the mechanism has the necessary resources to fulfil its mandate independently and effectively throughout its territory.

Training

24. The Committee takes note of the information supplied by the State party on training activities in the field of human rights and the prohibition of torture for staff of the National Civil Police and the prison service, but regrets that it has received no detailed information about programmes for other State employees related to the prohibition and prevention of torture. It also observes that no information has been provided about the impact of training activities on the incidence of torture and ill-treatment (art. 10).

The State party should strengthen existing training programmes and ensure that all public servants, particularly police, army and prison officers, migration officials and members of the judiciary and the Public Prosecution Service, attend regular, suitable and compulsory training courses on the Convention, which include strategies for dealing with violence against children, women, indigenous peoples, human rights defenders and the lesbian, gay, bisexual and transgender community. The State party should also ensure that the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) is a compulsory topic in the training of all professionals involved in the investigation and documentation of cases of torture and ill-treatment, and that it is widely publicized and applied. It further recommends that the State party develop and apply a methodology to evaluate the effectiveness of training programmes in reducing torture and ill-treatment.

Death penalty

25. While noting with satisfaction the de facto moratorium on the use of the death penalty and the commutation of all death penalties into prison sentences, the Committee regrets that the death penalty remains on the statute book in the State party (arts. 2 and 16).

The Committee invites the State party to consider abolishing the death penalty and ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. In the meantime, the Committee urges the State party to maintain its de facto moratorium.

Other issues

26. The Committee invites the State party to consider acceding to the core United Nations human rights instruments to which it is not yet a party, namely, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

27. The State party is requested to disseminate widely the report submitted to the Committee and these concluding observations, in the appropriate languages, including indigenous languages, through official websites, the media and non-governmental organizations.

28. The Committee requests the State party to provide, by 31 May 2014, follow-up information in response to the Committee's recommendations related to: (a) ensuring or strengthening fundamental legal safeguards for detainees; (b) conducting prompt, impartial and effective investigations; and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 13, 14 and 18 of the present document.

29. The State party is invited to submit its seventh periodic report by 31 May 2017. To that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, given that the State party has agreed to report to the Committee under the optional reporting procedure.