



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

Distr.: General
11 June 2013
English
Original: French

Committee against Torture
Fiftieth session

Summary record of the first part (public)* of the 1142nd meeting

Held at the Palais Wilson, Geneva, on Monday, 13 May 2013, at 10 a.m.

Chairperson: Mr. Grossman

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* No summary record was prepared for the second part (closed) of the meeting.

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention

Combined fifth and sixth periodic reports of Guatemala (CAT/C/GTM/5-6; HRI/CORE/GTM/2012; CAT/C/GTM/Q/6)

1. *At the invitation of the Chairperson, the delegation of Guatemala took places at the Committee table.*
2. **Mr. Arenales Forno** (Guatemala) said that his Government was committed to restructuring and strengthening the body responsible for promoting and monitoring respect for human rights during the universal periodic review, by merging it with the Peace Secretariat; a body responsible for monitoring the peace agreements that had put an end to the internal armed conflict in 1996. He recognized that the definition of the crime of torture contained in the Criminal Code did not comply with the provisions of the Convention. However, the working group responsible for drawing up bills to bring internal law into line with the provisions of the Rome Statute of the International Criminal Court, to which Guatemala had recently acceded, had been devising legal rules to criminalize genocide, torture, enforced disappearance and extrajudicial execution, in accordance with the definitions contained in the relevant international treaties. The bills should be submitted to Congress by the end of 2013.
3. The armed forces' involvement in maintaining internal security, including the support which could be provided in exceptional circumstances, and on an ad hoc basis, to the civilian police in the event of its inability to carry out its functions, was governed by laws, regulations and administrative provisions. The involvement of the army was subject to civilian authority and the Ministry of Defence was accountable once a state of emergency had been lifted. The draft reform of the Constitution submitted to Congress in August 2012 contained provisions governing the armed forces' role in internal security as well as the jurisdiction of military courts, which, pursuant to the ruling of the Constitutional Court on 3 March 1997, did not extend to ordinary offences committed by military personnel.
4. Guatemala did not deny that serious, widespread human rights violations had occurred during the armed conflict: it accepted its responsibility as State; recognized victims' right to redress, including the right to compensation; and was not opposed to steps to establish the historical truth. However, it refuted the claim that violations described in the report of the Historical Clarification Commission had gone unpunished, particularly as the report's aim had not been to establish individual responsibility with a view to commencing prosecutions. The National Reparations Programme had paid compensation to almost 30,000 persons at a total cost of 600 million quetzales. Furthermore, the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH) had spent more than 400 million quetzales in friendly settlements and in applying the decisions of the Inter-American Court of Human Rights.
5. The amnesty contained in the National Reconciliation Act had been agreed as part of the peace agreement negotiations between the Government and the guerillas, to which the United Nations had been party, and the Act had been subject to approval by a democratically elected Congress. It remained the courts' and the Constitutional Court's responsibility to rule on the scope of the law and decide on a case-by-case basis, depending on the circumstances, whether or not certain acts were time-barred. Guatemala was not a party to the United Nations Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and had ratified the Rome Statute of the International Criminal Court only in 2012. In the case of the Dos Erres massacre, a

definitive sentence had been handed down. Some still questioned the legality of the sentence, arguing that the statute of limitation had expired and that criminal law did not apply retroactively.

6. The Guatemalan Government refuted the claim that it had been responsible for the persecution of and threats and other violations against human rights defenders, or that it would condone such acts. The country was willing to facilitate human rights defenders' work, as demonstrated by the establishment of a forum in 2008 specializing in the analysis of attacks against such groups, which was responsible for ensuring that all complaints were subject to investigation and, where necessary, prosecution. COPREDEH had proposed establishing a complaints mechanism in order to strengthen such protection measures for human rights defenders.

7. Guatemala continued to restructure and strengthen the police service, which was currently understaffed. It planned to hire an additional 10,000 police officers by January 2016. To increase efficiency, police training programmes had been updated, and newly established monitoring mechanisms had resulted in a large number of lay-offs and legal proceedings. Such increases should not be classified as a rise in criminal activity, but as a sign of effective monitoring mechanisms and the Guatemalan Government's desire to clean up the institution. The Government did not deny that civil security forces were constantly open to bribes from members of transnational criminal organizations linked to people smuggling and drug trafficking networks; it wanted to fight such evils and required the international community's help and cooperation in tackling the problem.

8. The rise in crime, fuelled in particular by gangs, combined with the increased efficiency of the police and judicial system had driven up the prison population. While waiting to be able to build new prisons, for which it had been attempting to raise funds, the Government had proceeded to set up renovation and refurbishment projects aimed at existing facilities in order to improve detainees' living conditions and hold prisoners deemed to be particularly dangerous or vulnerable separate from the rest of the prison population.

9. **The Chairperson**, speaking as Country Rapporteur, said that the rule of international law clearly set forth the exceptional circumstances under which armed forces had grounds for intervening in order to maintain internal security, it being borne in mind that the situation could quickly escalate, and excesses could lead to massacres. In view of the shortage of police officers in Guatemala, the Government should increase the share of the national budget it allocated to the police, which currently stood at 4 per cent (compared to 11 per cent for the army), thereby avoiding the need to call on private security companies. According to information before the Committee, 80 per cent of 626 massacres committed in Guatemala, resulting in almost 200,000 deaths, had been carried out by the army, while the remaining 20 per cent had been perpetrated by armed guerrilla groups. It was therefore essential that accountability should be established, notably by the Historical Clarification Commission. Recalling in detail the abuses perpetrated over the course of two days by a special commando of the national army, which had wiped out the population of Dos Erres in December 1982, he said it was regrettable that only five persons in the case had been convicted. In order to combat impunity, the State party had an obligation under international law to investigate the case, as with other massacres, and punish those found guilty regardless of whether or not the country had ratified the United Nations Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. The peace agreements signed in 1996 did not mean that the Government could shirk its duties. In that regard, he asked the delegation whether law enforcement officers were adequately paid and trained; what exceptional circumstances justified the army's involvement in upholding the rule of law, and the extent to which private security

companies had been involved in such operations and, lastly, what steps the State party had taken to restore public confidence in the police.

10. He stressed the need for the State party to bring the definition of torture contained in its Criminal Code into line with international rule of law, and in particular the Convention, so that there could be no possible confusion, particularly in regard to what constituted an act of torture or on the issue of obeying a superior officer. In terms of justice reform, he wished to know how far bills to combat corruption and to ensure respect for human rights in the administration of justice, submitted to Congress for consideration in 2009, had progressed and what steps the Government had taken to tackle the issue of lynchings, which had been the cause of violent deaths of 3,808 persons in 2011, most of them children.

11. Regarding the persecution of human rights defenders in Guatemala and other assaults against them, which had resulted in 159 complaints during 2011 alone, he wished to know how many persons had been detained in Guatemala for murdering a human rights defender, the number of investigations opened and convictions handed down for such offences and the length of the sentences imposed. The frequency of such attacks, as pointed to by the international community, was very real. It was not an attempt to discredit the Government of Guatemala at the international level, but rather to stress that the international community would not condone the subjection of human rights defenders to reprisals and would continue to monitor the situation closely.

12. He enquired about the status of several projects including those related to the jurisdiction of the military courts; the reform and strengthening of the police service; the inauguration of the National Mechanism for the Prevention of Torture; and the establishment of the International Commission against Impunity in Guatemala. He asked how many private security companies were registered and how many complaints had been filed, investigations conducted and convictions or acquittals issued in cases involving those companies. Noting the extent of prison overcrowding, he sought information on the actual length of pretrial detention, as well as clarification on the country's position on alternative measures to imprisonment.

13. **Ms. Sveaass** (Country Rapporteur) noted that the Guatemalan justice system had taken a clear stance against impunity by condemning Efraín Ríos Montt to a lengthy jail sentence for genocide and crimes against humanity. Regarding the delays in judicial proceedings, she asked what had been done to assist in the search for disappeared persons. She also wished to know what support had been provided to the families of disappeared persons, particularly in the context of exhumations, and what measures had been taken to protect witnesses from reprisals.

14. She would also welcome further details of the results of work carried out by the Forum for Analysis of Attacks against Human Rights Defenders in Guatemala. Regarding the murder of Rodrigo Rosenberg, she wished to know whether any further links to the former President of the Republic, Álvaro Colom Caballeros, had been unveiled in the case. Condemning the violations against human rights defenders, such as activist Lolita Chávez, she stressed the State's responsibility to prosecute, even when such acts were carried out by non-State actors.

15. She questioned the acts of violence against migrants and asked what measures had been taken to put an end to such situations. She also questioned the discrepancy between the prison figures provided by the various State departments and, noting the high number of prison deaths, wished to know whether investigations had been opened and whether measures had been taken to end the racketeering of organized criminal groups in prisons. She would like to learn more about the situation faced by children in detention, particularly those held in hospitals, and the compensation awarded to victims of the internal armed conflict.

16. **Mr. Bruni**, noting that the 2007 bill on victims of enforced disappearances had yet to be passed, asked whether a time frame had been established to that end. Citing the case of Erwin Sperisen, holder of joint Swiss and Guatemalan nationality and suspected of murdering detainees, he asked whether any mutual legal assistance agreements were in place between Switzerland and Guatemala.

17. **Ms. Belmir** noted that conscientious objectors had protested against the army's involvement in upholding the rule of law and that complaints suggested that there had been cases of forced recruitment and recruitment of minors. She would welcome a response from the delegation on the subject. Regarding the ill-treatment of children, particularly trafficking and sexual exploitation, the State party's legislation should be complemented by a comprehensive strategy and the allocation of substantial resources. The Government should also ensure the independence of the judiciary when tackling organized crime. It would be interesting to know more about the measures taken in that regard.

18. **Mr. Mariño Menéndez**, noting that the issue of land ownership was at the heart of many of the conflicts with indigenous communities, asked whether an effective land registry system had been established in Guatemala. He also wished to know whether the private security services operating in the country were run by Guatemalan or foreign companies. Regarding the recent conviction of General Ríos Montt, the former President of Guatemala, he requested confirmation that the General would not benefit from any amnesty measures. He also asked whether the murders of women were subject to special investigation procedures, under the Istanbul Protocol, whether a state of emergency was currently in force in Guatemala and if so, under which law it had been enacted.

19. It would be interesting to know whether the forensic medical examiners involved in criminal investigations were independent professionals or officials who were employed by the Executive. Regarding the illegal Guatemalan immigrants entering the United States of America via Mexico, the delegation could perhaps confirm whether Guatemala had signed an agreement with Mexico to ensure that group's protection. Had the Government cooperated with the Office of the United Nations High Commissioner for Refugees (UNHCR) in Panama on such matters? And were there any plans to set up a UNHCR office in Guatemala?

20. **Mr. Domah**, citing the procedural irregularities that had marked the trial of Generals Ríos Montt and Sánchez, questioned the quality of training judges and lawyers received and asked whether active and independent lawyers and judges' associations existed in Guatemala. Observing that article 201 bis of the Criminal Code, which defined the crime of torture, had been declared unconstitutional on 17 July 2012 by the Constitutional Court, he asked what had been done to bring the provision into line with the Convention against Torture and the Inter-American Convention to Prevent and Punish Torture.

21. **Ms. Gaer** asked whether measures had been taken to ensure that persons detained in police custody were brought before a judge in a timely manner and had access to a lawyer. Information on the safeguards in place for human rights defenders and the number of prosecutions brought against perpetrators of intimidation would also be welcome. Referring to paragraphs 154 and 159 of the periodic report, she sought clarification on investigations into cases of violence against women and the outcome of police measures to better prevent such violence. Given that anti-discrimination laws did not seem to concern the lesbian, gay, bisexual and transgender (LGBT) community, the delegation might comment on allegations that members of the community had been subject to police harassment.

22. **Mr. Gaye** said that there was a striking discrepancy between the content of the State party report and information from other sources. He requested clarification on the safeguards afforded to prosecutors and judges and whether the amount of resources

available to the courts had been evaluated. Referring to paragraph 63 of the report, he asked whether the Office of the Procurator for Human Rights had the power to instigate proceedings, or to have them instigated, against members of the National Civil Police suspected of committing acts of torture. He also wished to know whether asylum seekers who had been denied refugee status had access to remedies.

23. **Mr. Tugushi** wished to know whether the Government intended to adopt legislation prohibiting army involvement in upholding the rule of law or regular crime fighting. Regarding the prevention of inhuman treatment, he noted that there were very few instances of palliative care and treatment of pain in Guatemala. It would be interesting to know whether the State party intended to improve the training provided to medical staff on such matters. Information on Government strategies and measures to combat child labour would also be welcome.

24. **The Chairperson**, speaking as Country Rapporteur, invited the delegation to confirm whether it was true that, as reported by Amnesty International, the army had not fully cooperated with investigations into human rights violations committed during the armed conflict and that it had not furnished all the documents requested as part of the proceedings. The delegation could perhaps also comment on allegations that senior State officials, including the current President of Guatemala, had publicly stated on several occasions that no genocide had taken place during the armed conflict, thereby violating the neutrality of the proceedings against General Ríos Montt. He also sought clarification on measures taken or planned to reduce prison overcrowding; strengthen the protection of human rights defenders; establish a National Commission to Search for Victims of Enforced and Other Forms of Disappearance; and pass legislative reforms to avoid any slowdown or paralysis of the course of justice. He also asked the delegation to provide further information on the results of the investigation into the killing of protestors by soldiers in October 2012. Emphasizing how convictions could serve a valuable educational purpose, he asked whether Nery Osberto Aldana Rodríguez, a police officer accused of rape, had yet been arrested.

25. **Ms. Sveaass** asked whether officials involved in combating impunity had been trained in the subject. She also wished to know whether measures had been taken to ensure that the investigation and prosecution of enforced disappearances during the armed conflict were not hampered by the presence, within either the judiciary or the police, of persons suspected of involvement in such acts. The delegation could perhaps indicate whether courts had dismissed cases because evidence or testimony had been obtained through torture or ill-treatment. Regarding the trial concerning the disappearance of Efraín Ciriaco Bámaca Velásquez in 1992, she sought clarification on the current status of the proceedings, which should have resumed in 2012. Lastly, she wished to know what measures had been taken to apprehend the perpetrators of lynchings, given that such persons were often protected by their own community.

The first part (public) of the meeting rose at 12 p.m.