



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

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Summary record of the 1145th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 14 May 2013, at 3 p.m.

Chairperson: Mr. Grossman

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention *(continued)*

Combined fifth and sixth periodic reports of Guatemala (continued)
(CAT/C/GTM/5-6)

1. *At the invitation of the Chairperson, the delegation of Guatemala took places at the Committee table.*
2. **Mr. Arenales Forno** (Guatemala) said that the Government rejected the notion that the amnesty, the statute of limitations and the non-retroactivity of the law amounted to impunity for those who had violated human rights during the internal armed conflict. Forced disappearance and extrajudicial execution had been criminalized in 1995, as had the offences covered in the Rome Statute of the International Criminal Court. The only exceptions to the amnesty resulting from the Esquipulas Accords were genocide, forced disappearance and torture, which remained subject to the statute of limitations. The recent first-instance decision in the trial of General Ríos Montt was appealable and 14 constitutionality claims and over 10 *amparos* were still under way.
3. The case of Mr. Rosenberg Marzano had been resolved by the International Commission against Impunity in Guatemala, whose investigations had proved that he had planned his own death. The perpetrators of and accomplices in the murder of Bishop Gerardi Conedera had either served, or were serving, their sentences. In the case of Mr. Bámaca-Velásquez, the Inter-American Court of Human Rights had ordered compensation for the victim's family, while the case had been definitively dropped by the national courts. Mr. Sperisen, as a Swiss national, was being tried in Switzerland because the country had refused to extradite him.
4. Regarding the events in Totonicapán, the perpetrators were being tried for extrajudicial execution, dereliction of duty and homicide. As a result of those events, the legal provisions governing the cooperation of the military with the police had been amended, although cooperation would continue as long as the National Civil Police was understaffed. The budget allocated to the armed forces was higher than that of the civil security forces owing to the long postponed purchase of new equipment. However, the commitment to enhance the police force was firm and its budget had risen substantially.
5. Human rights groups, the Presidential Human Rights Commission, the National Civil Police and the United Nations Development Programme were negotiating a new bill on the search for those who had disappeared during the internal armed conflict. The Presidential Commission advocated that the search should continue without charges being laid. Provision had been made for the establishment of a national preventive mechanism and a list of candidates had been submitted to Congress. An inter-agency group responsible for implementing the Rome Statute was also working on aligning the definition of torture with the Convention. The Constitution and the Public Order Act defined the states of exception, namely, the states of prevention, alert, disaster, siege and war. The Act also stipulated which guarantees were suspended in each case. A state of exception must be decreed by Cabinet and ratified by Congress, except for the state of prevention, which was currently in effect in four towns.
6. As a result of the experience of the patients at the Federico Mora mental hospital, the Government had undertaken a comprehensive approach to mental health. The hospital was being remodelled to meet international standards and no minors were treated there. An agreement had been signed with the Pan American Health Organization to draft a health act and regulations, while a multi-agency agreement had been reached to monitor the cases of mentally-ill offenders.

7. The activities of human rights defenders were in no way outlawed and only a few who had committed offences while taking part in demonstrations had been prosecuted. Security measures, on the other hand, had been provided for 89 human rights defenders and 13 human rights institutions. Pursuant to hearings at the Inter-American Commission on Human Rights, the Presidential Human Rights Commission had spearheaded the establishment of an inter-institutional group on discrimination against members of the lesbian, gay, bisexual and transgender (LGBT) community.

8. Pretrial detention should not exceed one year but could be extended in three-month increments in the event of conviction or trial delays. Increased transnational crime had led to prison overcrowding and the cohabitation of convicted offenders with those held in pretrial detention. However, steps were being taken to resolve the problem, such as transferring inmates, remodelling facilities and building new detention centres. The 2009 Security and Justice Agreement had been replaced by the broader Security, Justice and Peace Covenant, which maintained inter-institutional coordination between the Judiciary and the Public Prosecution Service. Part of the mandate of the International Commission against Impunity in Guatemala was to deprive unlawful and clandestine groups of access to financial and political resources.

9. **Mr. Herrera** (Guatemala) said that strategies had been developed as part of the National Reparations Programme to provide community-based psychosocial care for victims of the international armed conflict, with a focus on empowering vulnerable groups such as women and persons with disabilities. The Government acknowledged that the care previously provided to victims had not had any significant impact; therefore, a clinic for victims had been established at the Programme's headquarters and a series of women's health activities had been held regionally, in cooperation with health-care facilities and NGOs. Community outreach personnel were being trained with a view to ensuring permanent local assistance. The Programme also aimed to preserve human dignity in the exhumation process by defining measures to be taken before, during and after the exhumation, including visits to burial grounds, psychosocial care for the victims' families, culturally-sensitive ceremonies and commemorative plaques.

10. Since its launch, the National Reparations Programme had dealt with 31,035 direct victims of human rights violations, 63 per cent of whom were women, and more than 630 million quetzales in reparations had been disbursed between 2005 and 2013. Most of the funds had been allocated to departments with sizeable indigenous populations. Some 1,522 surviving victims of torture and 1,563 female victims of sexual violence had received financial compensation or psychosocial care. The programme took account of the principles and recommendations of the Istanbul Declaration of the International Rehabilitation Council for Torture Victims regarding interview techniques, the definition of physical and psychological torture, the identification of victims and the determination of reparations. The Government had undertaken steps to extend the programme.

11. **Mr. Vela** (Guatemala) said that Guatemala was a party to the Framework Treaty on Democratic Security in Central America. Any cooperation or participation of the military in police operations was regulated and remained under the supervision of the National Civil Police. The armed forces only intervened in a supportive capacity and never took over police operations. Four officers of the National Civil Police were being tried before the Second Criminal Court of Quetzaltenango for the murder in pretrial detention of Gaspar Efraín Pérez. Former officer Matías López was serving 20 years in prison for the sexual torture of Juana Méndez Rodríguez and an arrest warrant had been issued for his co-accused, who was thought to have left the country.

12. Regarding violence and organized crime, he said that the Ministry of the Interior had set up thematic task forces to address the main problem areas, namely, contract killings, homicide, femicide, abduction and robbery. The homicide rate had been trending

downwards since 2010. Some 141 private security companies were registered with the Department of Private Security Firms, which oversaw private security agents serving as auxiliaries of the National Civil Police. In 2012, there had been 23 complaints against private security agents, 18 investigations and 5 convictions. There had been closer coordination between the National Civil Police and the Public Prosecution Service with respect to the murder of bus drivers. Joint working groups, including representatives of transport companies, had conducted arrests and prosecutions. In addition, a special security unit had been established to patrol public transport in Guatemala City; a general operational plan had been adopted in January 2013 and strategies had been devised in accordance with each district's specific situation.

13. Officials of the Migration Directorate had attended a course on the rights of migrants and refugees provided by the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration. There were also plans to sign a memorandum of understanding with the University of Guatemala on designing post-secondary courses on a broad range of migration issues.

14. **Mr. Aldana** (Guatemala) said that almost 300 police officers had been prosecuted for illegal activities as a result of investigations by the General Inspectorate of Police. The Office of the Human Rights Procurator, several NGOs and police disciplinary tribunals also monitored the activities of the police. The National Commission for Police Reform, which had been established in 2010, was working to modernize the police force, raise its professional standards, clamp down on police crime and activate internal controls. The police academy and various police training schools had been brought under the umbrella of the Sub-Directorate-General for Study and Doctrine. All police officers were obliged to familiarize themselves with the new police doctrine, which emphasized their duty to safeguard human rights and the principles of the Constitution.

15. In order to obviate the need, hitherto unavoidable, for deployment of the armed forces to assist the police, 6,000 new police officers had been recruited in 2013. A further 4,000 would bring the total to 36,300. One of two new police academies had already opened. An array of specialist police training courses had also been introduced. All new recruits received training in human rights, the police code of conduct and its disciplinary regulations, which were focused on the prevention of torture. Around 7,500 police officers had so far been trained to deal with violence against women and minors and to assist victims.

16. Special task forces had been set up to tackle organized crime, including kidnappings, murder, extortion, violence against women and human trafficking. A special unit comprising 800 police officers had been set up to combat drug trafficking. Lynchings still took place in the State party. In 2011, 44 such crimes had been committed, 13 in 2012 and 8 to date in 2013. The police focused on the prevention and 1,500 new recruits had been deployed in areas where women were especially vulnerable. A task force had been set up to prevent attacks on drivers of public buses and CCTV cameras had been installed at bus stations. Persons could be held in police custody for a maximum of 6 hours before being brought before a judge, who had 24 hours in which to question a suspect and decide whether charges should be laid.

17. **Mr. Fisher** (Guatemala) said that the level of prison overcrowding was currently 245 per cent and could reach 394 per cent by 2015 if the Government undertook nothing to prevent it. Of 22 prison establishments, 20 were currently operational. Around 51 per cent of inmates were held in pretrial detention. The construction of more prisons was planned and space was being optimized in three prison farms to accommodate more inmates. Three further cell blocks would also be built on those prison farms. In particular, it was hoped that around 1,000 prisoners could be moved from the especially overcrowded Zone 18 prison.

More was also being done to prepare prison inmates who had completed their sentences or were entitled to early release for their return to civilian life.

18. A commission for penitentiary reform was looking at ways to improve prison conditions. Higher qualifications were currently required of new prison staff members, who received human rights training. The possibility of installing productive workshops in prisons was being looked at and efforts were being made to step up security through thrice-weekly checks in all prisons. Technological modernization was also planned, including improvements to CCTV systems, the selective blocking of telephone reception and development of the prison service computer support system (SIAPEN), including a network to link all prisons. There were plans to study the advanced prison computer system in place in the neighbouring country of El Salvador.

19. **Ms. Rodríguez Mancía** (Guatemala) said that 25 per cent of complaints received by the Public Prosecution Service related to violence against women. In order to intensify efforts to combat such violence, seven branches of the Office of the Special Prosecutor for Women and Child Victims had been set up around the country. They each operated around the clock and brought together judges, prosecutors, forensic doctors, psychologists and social workers in one location. A special prosecutor's office had been set up to deal with human trafficking.

20. A legal centre with two courts focusing on femicide and other forms of violence against women had begun to operate in October 2012. Similar centres would be set up in parts of the country marked by a prevalence of such crimes. Seven support centres for women and child victims of violence provided temporary shelter and legal, medical and psychological support. Three more centres were planned. Victims were monitored in order to establish how many subsequently managed to break free of the cycle of violence. Public and private bodies were involved in a national plan to eliminate domestic violence.

21. The State party was implementing a national plan to prevent and eliminate child labour. The minimum age for work in the State party was 14 years. Work that could endanger the health, safety and morals of persons aged between 14 and 18 was also prohibited. Employing minors under such conditions was punishable under the Criminal Code. The National Commission for the Elimination of Child Labour endeavoured to return working children to school and provide social assistance to their families. Abortion was only possible in Guatemala in cases where the life of the mother was at risk.

22. **The Chairperson**, speaking as Country Rapporteur, reiterated that the Committee remained concerned about the possible application of amnesties to perpetrators of violations of international humanitarian law and about reports of continued harassment in the State party of human rights defenders. One report had noted that the murder of various human rights defenders in 2012 had failed to result in prosecutions. The Committee was concerned that the activities of human rights defenders appeared to be treated as criminal offences. Several persons in the State party had appealed for protection to the Inter-American Commission on Human Rights, which had granted them interim measures. It was a source of concern that, during the trial for genocide of the country's former leader, Mr. Ríos Montt, members of the current Government, including the president, had expressed the view that acts carried out when Mr. Ríos Montt had been in power had not amounted to genocide.

23. He welcomed efforts to increase police numbers and relieve the army of police duties. Prison overcrowding and the failure of the State party to provide statistics requested of it by the Committee remained matters of serious concern.

24. **Ms. Sveaass** (Country Rapporteur) asked whether there had been any change with regard to the moratorium on the death penalty. She requested information regarding reports of sexual abuse in the cases of 334 patients, including children, in the Federico Mora

psychiatric hospital. Information was lacking on whether or not adults and children were separated in such institutions. The State party had failed to reply to questions concerning the monitoring of four institutions to which children were sent when removed from the care of their parents or guardians.

25. She asked for more information on which NGOs were involved in the monitoring of police activities and whether police disciplinary tribunals were impartial and independent. She also wished to know more about Pentecostal rehabilitation centres in the country, which did not appear to meet even minimal international standards.

26. In the context of exhumations of victims of the country's civil war, she asked whether their families received financial assistance to give the victims a decent burial. Noting that collective redress was being provided under the National Reparations Programme, she asked whether redress and support was available to individuals. Had medical staff been trained to assist victims? She also asked what was taught in schools about the civil war and discrimination against the country's indigenous peoples.

27. She asked whether police officers were sufficiently well trained to know where to send rape victims and women victims of violence for support and protection. Very young women left pregnant were often prone to suicide. On that basis, abortion in such cases should be seen as permissible because the life of the mother was at risk.

28. **Mr. Bruni** asked why it had taken the State party so long to set up the national preventive mechanism required under the Optional Protocol to the Convention. It would be useful to know when that body would be operational. He wished to know what measures had been taken to address the alarming situation in the State party's prisons, which were often controlled by gangs and drug dealers, resulting in many acts of violence and other abuses of inmates.

29. **Ms. Belmir** said that, while the State party had clearly examined other States' practices in declaring amnesties, it should recall the principle of *erga omnes* in international human rights law, according to which there could be no amnesty for crimes against humanity. She asked whether the State party's efforts to uphold the right to the truth were ongoing and in particular, whether exhumations were still being conducted and compensation provided to victims. It would be useful to know whether the Government was confident that drafting in the army to help the police combat crime was not a violation of the rule of law.

30. **Ms. Gaer** drew attention to the testimony of Hugo Ramiro Leonardo Reyes, a former soldier, during the Ríos Montt trial in April 2013, who had claimed that the current president, Otto Pérez Molina, had ordered soldiers to burn and loot villages and execute people as they had fled to the mountains, while Mr. Pérez Molina had served as an army officer commanding troops in the Ixil area under Ríos Montt's rule. She wished to know whether that testimony had been investigated, or whether it was assumed that those actions were subject to amnesty. She would welcome clarification of the command responsibility in those circumstances. Did the amnesty include acts of genocide and, if so, did that mean that individual military officers of all ranks could be prosecuted for specific acts of genocide that were part of what the court had defined as constituting genocide in the Ríos Montt case? It would be useful to know whether acts of genocide had to have been associated with torture in order to be investigated and prosecuted.

31. **Mr. Gaye** asked whether individuals whose application for refugee status had been refused could appeal that decision and if so, what type of appeal was available to them.

32. **Mr. Mariño Menéndez** asked whether there was an investigation and documentation protocol in place for the crime of femicide. It would be useful to know whether forensic doctors were independent or had links to the Government. Given the

precarious situation of the thousands of Guatemalans who crossed the border into Mexico in an attempt to reach the United States of America, he wished to know what steps the Government took to protect them.

33. **Mr. Tugushi** requested additional information on the widespread problem of child labour in the State party. He asked why gender-based violence had increased by 34 per cent over the previous three years, and why so little was done to punish the perpetrators of such violence. Given the number of people who suffered from serious health problems in the State party, it would be useful to know whether there were plans to develop a fully-functioning palliative care system.

34. **The Chairperson** asked which offences fell under military jurisdiction. He would appreciate clarification of whether the search for those who had disappeared during the internal armed conflict would continue without charges being laid. It would be useful to know whether the definition of states of exception in the Constitution and the Public Order Act was fully compatible with the relevant provisions of the American Convention on Human Rights and the International Covenant on Civil and Political Rights. He asked whether the case concerning events in Totonicapán had been tried by a military or a civil court and requested updated information on that case. The Committee would appreciate details of the cases that had been brought against private security agents. He wished to know whether data were available on the number of private security agents currently working in the State party, whether civil society organizations were involved in their training and if so, how were they selected?

35. **Ms. Sveaass** asked whether the State party planned to introduce any alternative punishments to deprivation of liberty for pretrial and convicted prisoners.

36. **Mr. Arenales Forno** (Guatemala) drew attention to the 2007 report of the United Nations Working Group on Enforced Disappearances. It explained that the armed conflict in his country which had begun in 1960 had not originated as a result of inter-ethnic conflict, but in the framework of the cold war (A/HRC/4/41/Add.1, para. 9). The Government did not deny that there had been human rights violations during that period, nor did it contest the responsibility of the perpetrators or the victims' right to compensation. The debate within the Government had focused on purely legal issues such as the validity of the amnesty, exceptions to it and whether genocide had taken place. The amnesty had been negotiated in the presence of representatives of the United Nations, Mexico, Norway, Spain, the United States and Venezuela. Despite the fact that none of the country's peace agreements made reference to the crimes of torture, genocide and enforced disappearance, Congress had listed them as exceptions. In any case, the courts were responsible for deciding on the applicability of the amnesty and the exceptions to it. All the interpretations of amnesty and genocide remained within the context of international human rights instruments. In the future, all the acts that had been committed during the armed conflict would be imprescriptible. They would not be covered by an amnesty and there would be no means of avoiding criminal prosecution. In 1996, his country had still not ratified many of the international human rights instruments to which it had since become a party, which is why that had not been the case when the peace agreements had been negotiated.

37. The death penalty was not applicable to women or children and could be used only in exceptional circumstances. However, the courts had commuted all the death sentences that had been passed to the maximum period of imprisonment. Although attempts to abolish the death penalty had not yet been successful, the de facto moratorium would remain in place.

38. There were no children among the 334 patients in the Federico Mora psychiatric hospital. Plans were being drawn up to provide better comprehensive, inter-institutional care for mental health patients.

39. The national preventive mechanism had been set up in 2010, and 15 candidates selected. The Presidential Human Rights Commission (COPREDEH) was making every effort to expedite the formal election of the candidates in Congress in order to enable the mechanism to start work.

40. **Mr. Fisher** (Guatemala) said that the Government was striving to ensure that the prison building project was totally transparent, as previous attempts to implement it had failed owing to bureaucratic complications. Plans were being made to introduce alternative punishments for pretrial detainees, but legislative amendments would need to be introduced before they could be implemented. Efforts to improve prison conditions had included increasing the number of staff employed by the general inspectorate of prisons and providing more and better resources to prison staff. Criminal gangs had been identified and split up by transferring them to different prisons. Working in cooperation with the regular security forces, prison staff had helped to break up drug cartels that had been operating from within prisons. Inquiries had revealed that the four gunmen who had killed the newly-appointed director of El Infiernito prison, Mr. Amilcar Corado, in July 2012, had not been prison gang members, as had been widely reported.

41. **Mr. Vela** (Guatemala) said that some 41,000 private security agents were currently registered in the country. An additional estimated 100,000 had not registered. The Department of Private Security Firms had begun operating in 2011 and was working alongside the police to monitor private security agents. Civil society organizations were involved in the training of private security agent instructors, and the best organized, such as NGOs, were selected.

42. **Mr. Arenales Forno** (Guatemala) said that some 89 human rights defenders in three institutions currently benefited from protection measures. The Presidential Human Rights Commission had proposed a new mechanism to handle complaints concerning human rights defenders, which would be channelled through the Commission in order to expedite the implementation of protection measures.

43. **Mr. Aldana** (Guatemala) said that the member of the police disciplinary board that dealt with administrative offences committed by members of the police force was appointed by civil society. The crime prevention unit was in charge of providing care for victims of violence against women.

44. **Mr. Herrera** (Guatemala) said that some communities had received financial assistance for coffins and mausoleums from the National Reparations Programme. In other cases, applications for reparations were pending and communities had applied elsewhere for financial aid. The programme had implemented many measures to provide reparations. Plans were under way to open a mobile clinic that would provide sexual and reproductive health services and assistance to persons with disabilities in the relevant communities. Education in schools on the internal armed conflict focused on the need to avoid a repetition and to recover historical memory. The case concerning events in Totonicapán had been tried by a civil court. Some 20 million quetzales had been allocated as a compensation fund for the families of the victims.

45. **Mr. Arenales Forno** (Guatemala) added that military courts could only try military offences that had been committed by members of the armed forces. The testimony of Hugo Ramiro Leonardo Reyes in the Ríos Montt trial had been shown to lack credibility.

46. **Ms. Rodríguez Mancia** (Guatemala) said that there were currently seven shelters available for women and child victims of violence and there were plans to open an additional three. The shelters provided comprehensive care from doctors, psychologists, police officers and lawyers, who were on call 24 hours a day. There was a zero-tolerance approach to child labour, and efforts to eradicate that scourge included the private sector and trade unions. An inter-institutional approach was taken to protecting the rights of

Guatemalan migrants abroad, in cooperation with the Governments of Mexico and the United States as well as UNHCR and IOM. There were many Guatemalan embassies and consulates in Mexico.

47. **Mr. Arenales Forno** (Guatemala) said that data on the number of refugees and asylum seekers in Guatemala would be sent to the Committee in writing within 24 hours, together with responses to the questions his delegation had been unable to provide.

The meeting rose at 5.55 p.m.