



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

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Committee against Torture

Information received from Guatemala on follow-up to the concluding observations on its seventh periodic report**

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** The present document is being issued without formal editing.



I. Introduction

1. The Committee against Torture considered the seventh periodic report of Guatemala (CAT/C/GTM/7) at its 1689th and 1692nd meetings (see CAT/C/SR.1689 and CAT/C/SR.1692), held on 16 and 19 November 2018, and adopted its concluding observations (CAT/C/GTM/CO/7) at its 1711th meeting, held on 3 December 2018.
2. Under the follow-up procedure, the Committee requested the State of Guatemala to provide information on “the national mechanism for the prevention of torture; deaths and ill-treatment occurring in shelters and detention centres for adolescents; investigation of acts of torture and other serious violations committed during the internal armed conflict; and violent deaths, evictions and internal security (see paras. 15 (b), 25 (a) and (b), 27 (a) and 33 (d) and (e) above)”.
3. Accordingly, the Presidential Commission for the Coordination of Human Rights Policy submits the following information on behalf of the State of Guatemala.

II. Follow-up information

A. Follow-up information relating to paragraph 15 of the concluding observations

4. In accordance with article 21, “Selection and appointment of rapporteurs”, of the Act on the National Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the process of appointing rapporteurs to the National Office for the Prevention of Torture was conducted as follows:
 - On 6 May 2019, a preliminary vetting of the candidates for rapporteur was completed.
 - On 10 June 2019, the Human Rights Commission of the Guatemalan Congress finished ranking the candidates on the basis of their academic qualifications, professional experience and suitability for the role.
 - On 11 July 2019, the assessment and ranking of the 17 candidates’ applications were finalized.
 - On 17 July 2019, the Commission concluded the interview phase, in which the candidates were asked about their experience in the area of human rights.
 - On 14 August 2019, the Commission finalized two candidate lists, each consisting of three nominees, for the positions of rapporteur and alternate rapporteur.
 - On 28 August 2019, the Congress held its forty-eighth regular meeting. The record of the meeting (No. 048-2019) indicates, under item four, that “the following citizens have been elected to the positions of rapporteur and alternate rapporteur of the National Office for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the term ending 25 March 2024: as rapporteur, Gloria Margarita López Rodas de Corado, and, as her alternate, Hilario Roderico Pineda Sánchez; as rapporteur, Carlos Alberto Solórzano Rivera, and, as his alternate, Mónica Liseth Solórzano Perusina”. In accordance with the relevant legal framework, the successful candidates were sworn in at that same meeting and their appointment was officially declared in decision No. 9-2019 of the Congress of the Republic.

B. Follow-up information relating to paragraph 15 (b) of the concluding observations

5. Article 13 of the Act on the National Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establishes the mechanism's powers and responsibilities, which include:

- Unrestricted access to all places of deprivation of liberty, detention or restriction of freedom of movement and their installations and facilities.
- The authority to interview any person deprived of his or her liberty, without witnesses, either personally or with the assistance of a translator or other professional if deemed necessary, in a confidential setting.

6. Rapporteurs are thus guaranteed free and unrestricted access to places of deprivation of liberty and their facilities.

C. Follow-up information relating to paragraph 25 (a) of the concluding observations

7. The Fourth Criminal Court of First Instance and the Seventh Criminal Trial Court have jurisdiction over investigations into the former public officials accused in connection with the deaths of the 41 minors who perished as a result of the fire.

8. Three criminal cases have been opened:

- The first case is against the former secretary of the Social Welfare Secretariat, a former under-secretary of the Secretariat and the former director of the shelter, who are awaiting trial for failing in their responsibility to protect the minors. They are currently being held in pretrial detention and have been charged with abuse of authority, manslaughter, ill-treatment of minors, dereliction of duty and unintentional injury. A deputy inspector of the National Civil Police has been charged with manslaughter, ill-treatment of minors and unintentional injury, and a deputy superintendent has been charged with abuse of authority and ill-treatment of minors.
- The second case is against the Advocate for Children and Adolescents of the Counsel General's Office and the former head of the Department for Special Protection against Ill-treatment in the Virgen de la Asunción Shelter, who are both currently under house arrest, having been charged with manslaughter, ill-treatment of minors, dereliction of duty and unintentional injury. The former Ombudsperson for Children and Young Persons of the Office of the Human Rights Advocate has also been charged with dereliction of duty.
- The third case involves a justice of the peace, Rocío Murillo; a former clerk of the court; the warden of Los Gorriones detention centre; and the former coordinator of the "Mi Hogar" area of the shelter, who are awaiting the conclusion of their arraignment hearing.

9. The following hearings are due to take place as part of the proceedings:

- A hearing to gather the testimony of 7 of the 15 surviving girls in advance of court proceedings.
- A hearing on the presentation of evidence in respect of the Advocate for Children and Adolescents of the Counsel General's Office, the deputy police inspector, the former director of the Department for Special Protection against Ill-treatment in the Virgen de la Asunción Shelter, the former Ombudsperson for Children and Young Persons of the Office of the Human Rights Advocate and the deputy police superintendent, scheduled to take place on 19 December 2019.
- An arraignment hearing in respect of the justice of the peace and the former court clerk, both of whom served in the same court, as well as the prison warden and the former coordinator of "Mi Hogar", scheduled to take place on 7 and 8 January 2020.

- A hearing to gather testimony and evidence in respect of a motion for disqualification put forward by the defence counsel of the former under-secretary of the Social Welfare Secretariat, scheduled to take place on 31 January 2020 in the second chamber of appeals.

D. Follow-up information relating to paragraph 25 (b) of the concluding observations

10. The Social Welfare Secretariat allocated 29,597,947.00 quetzales to the budget of the Office of the Under-Secretary for the Reintegration and Social Rehabilitation of Adolescents in Conflict with the Law for the 2019 fiscal year, of which 15,918,034.36 quetzales – or 53.78 per cent – has been implemented as of August 2019.

11. A total of 23,000,000.00 quetzales were allocated to the budget line “Support for adolescents in conflict with the criminal law”, of which 22,789,339.70 quetzales – or 98 per cent – has been implemented as of August 2019.

12. Between 2017 and 2019, the average rate of overcrowding fell by 17 per cent. In 2017, the average rate of overcrowding in juvenile detention centres was 58 per cent; this figure fell by 7 per cent in 2018 and, as of 10 September 2019, had fallen by 17 per cent compared to 2018. Detailed information is presented in the tables below:

<i>Population Directorate of Specialized Detention Centres (18 October 2017)</i>				
<i>Centre</i>	<i>Capacity</i>	<i>Population</i>	<i>Overcrowding (as a percentage)</i>	<i>Occupancy rate (as a percentage)</i>
Gaviotas	144	448	304	211
Gorriones	55	125	70	127
Anexo	115	100	-15	-13
Etapa	192	63	-129	-67
Total	506	736	58	258

Source: Social Welfare Secretariat.

<i>Population Directorate of Specialized Detention Centres (22 October 2018)</i>				
<i>Centre</i>	<i>Capacity</i>	<i>Population</i>	<i>Overcrowding (as a percentage)</i>	<i>Occupancy rate (as a percentage)</i>
Gaviotas	144	186	42	29
Gorriones	55	96	41	75
Anexo	115	139	24	21
Etapa	192	302	110	57
Total	506	723	54	182

Source: Social Welfare Secretariat.

<i>Population Directorate of Specialized Detention Centres (10 September 2019)</i>				
<i>Centre</i>	<i>Capacity</i>	<i>Population</i>	<i>Overcrowding (as a percentage)</i>	<i>Occupancy rate (as a percentage)</i>
Etapa	144	161	12	112
Gaviotas	155	316	104	204
Anexo	115	129	12	112

<i>Population Directorate of Specialized Detention Centres (10 September 2019)</i>				
<i>Centre</i>	<i>Capacity</i>	<i>Population</i>	<i>Overcrowding (as a percentage)</i>	<i>Occupancy rate (as a percentage)</i>
Gorriones	55	93	69	169
Casa Intermedia	60	28	0	47
Total	529	727	41	128

Source: Social Welfare Secretariat.

“Casa Intermedia” halfway house

13. As of mid-2019, 36 young adult and adolescent offenders aged 13 or above are serving custodial sentences in this semi-open facility. It is staffed by multidisciplinary teams offering comprehensive services to the adolescents through the elaboration and execution of individual plans and educational projects; the production of progress reports; and attendance at the review hearings required by the relevant courts.

14. While in detention the young people receive psychological, psychiatric, medical and educational services and benefit from occupational therapy and social work by means of different activities with a view to their reintegration into the family environment, society, education and work. These activities include:

- Enrolment of adolescents in primary and basic education at the Centre for Extramural Education: Since its inauguration, Casa Intermedia has been ensuring the education of its adolescent residents at various levels. Reading circles are organized once a week by the teaching team.
- Occupational therapy: The following workshops were held at the facility this year:
 - A workshop on dissociating from gang life, organized with the Division for the National Programme against Criminal Gang Activity
 - A course in the use of office technology, taken by 20 residents and organized by the Technical Institute of Training and Productivity
 - A course intended to reinforce moral and spiritual values through recreational activities, taken by 27 adolescents and organized by the Guatemalan Sports Coalition
 - An English course, taken by 20 residents and taught by a representative of the Bureau of International Narcotics and Law Enforcement Affairs
 - Workshops on employment-related subjects, taken by 18 adolescents and organized by Rafael Landívar University
 - A workshop on agricultural field practices, taken by 18 adolescents and organized by the Ministry of Agriculture, Livestock and Food
 - A workshop on good practices, taken by 10 adolescents and organized by the Guatemalan Chamber of Construction
 - Workshops on personal hygiene and sexually transmitted infections, organized by the doctor assigned to the facility
 - Training courses in cooking, breadmaking, baking and computing for the adolescents
 - Outings to the military museum for 18 adolescents as a reward for good behaviour during their internment at the facility.

15. Informative talks and information sessions on the internal rules of the facility have been offered to parents since mid-2019.

16. The National Adoption Council makes monthly supervisory visits to all temporary shelters under the responsibility of the Social Welfare Secretariat, during which the shelters' coordinators and multidisciplinary teams are offered guidance on the need to implement the Quality Standards for the Care of Children and Adolescents in Temporary Shelters and the Guidelines for the Alternative Care of Children.

17. These supervisory visits are conducted in coordination and conjunction with the Social Welfare Secretariat. All of the children and adolescents who survived the tragedy at the Virgen de la Asunción shelter have been placed under collective and individual protection arrangements, which are permanently monitored by the courts.

18. An inter-institutional committee has been set up to prepare a guide for the comprehensive care of children and adolescents with disabilities who are served by the Social Welfare Secretariat's shelter programmes.

19. The Social Welfare Secretariat has taken a number of other measures, of which the following four are particularly relevant:

- (a) In accordance with the principle of non-repetition, which is both preventive and restorative in nature, the Secretariat's macroinstitution has been broken down into smaller residential units as an initial preventive measure;
- (b) These residential units function in accordance with a system of profiling applied to each adolescent resident based on four different profiles: persons gradually becoming independent, victims of any kind of ill-treatment, persons with a history of substance abuse or high-risk behaviour, and persons with disabilities;
- (c) Specific profile-based models and cross-cutting programmes encompassing all multidisciplinary services have been drawn up and are being implemented;
- (d) Psychosocial support is provided to children and adolescents who have been reunited with their families in their places of origin (currently 15 departments nationwide). Support is offered locally and with respect for the best interests of such children, and specialized, differentiated services are provided to survivors of the fire.

20. In accordance with the principle of non-repetition, the macroinstitutional model has been replaced with a residential model, an alternative system under which children and adolescents receive basic services that are tailored to each residential unit. Although there were initially eight residential units, the number of units has been doubled in order to prevent overcrowding and guarantee non-repetition, decent treatment and comprehensive care; there are now 16 units, which provide shelter to 343 children and adolescents – 173 girls and 170 boys – with an average of 21 children and adolescents per unit.

Population of residential units managed by the Directorate of Special Residential Protection Virgen de la Asunción Shelter as at 30 August 2019

No.	Residential unit	Female	Male	Total
1	Nidia Martínez 1	23	22	45
2	Nidia Martínez 2 a.p.	6	2	8
3	Asociación Esperanza de Vida	10	18	28
4	Onice 1 (Quetzaltenango)	22	0	22
5	Onice 2 (Quetzaltenango)	0	17	17
6	Onice 3 (Quetzaltenango)	0	24	24
7	Casa San Cristóbal (hostel)	0	1	1
8	“Paso a Paso” rehabilitation centre, Jocotenango	0	8	8
9	Diamante 1 (zone 12 residence)	0	6	6
10	Diamante 2 a.p.	0	12	12
11	Diamante 3 building 2 zone 14	0	25	25

Population of residential units managed by the Directorate of Special Residential Protection Virgen de la Asunción Shelter as at 30 August 2019

No.	Residential unit	Female	Male	Total
12	Diamante 4 zone 11	0	23	23
13	Diamante 5 (Quetzaltenango) (Luna de Xelajú)	0	12	12
14	Zafiro 1	45	0	45
15	Zafiro 2	28	0	28
16	Zafiro 3	26	0	26
17	Zafiro 4 a.p.	13	0	13
	Total	173	170	343

21. The roll-out of the residential model has resulted in the following achievements:

- Profiling on the basis of residents' most salient characteristics: a history of ill-treatment, substance abuse or high-risk behaviour; disability; or readiness for the transition to independence
- Definition of the populations served by each residential unit
- Staff training on the specific profile-group to which they have been assigned
- Regular supervisory visits by a coordination team and the administrative authorities
- Specific models and programmes based on profiling
- Guidelines for multidisciplinary assessment and resident profiling
- Recruitment of new staff whose academic background and experience are better suited to work with the profiles established
- Efforts to encourage deinstitutionalization in an appropriate and organized fashion
- Introduction of extraresidential activities as part of the therapeutic and recreational process.

22. Between 9 March 2017 and May 2019, 279 of the 600 children and adolescents who had been living in the Virgen de la Asunción shelter were reunited with their immediate or extended families.

23. Among those who have been reintegrated, 266 children and adolescents have been referred for psychosocial follow-up under the restitution plan established by the Counsel General's Office.

24. As a guarantee of non-repetition, follow-up is provided by multidisciplinary teams in the form of outpatient psychosocial and educational services for each child or adolescent and his or her immediate or extended family through decentralized programmes and services managed by the Social Welfare Secretariat, including family allowances and tools for assertive child-rearing in families, as well as support and guidance for families on the services of other institutions such as health centres, schools and municipal offices for the protection of children and adolescents.

25. Below is a detailed breakdown, by department, of the geographical distribution of the 266 children and adolescents who have been reintegrated after the tragedy at the Virgen de la Asunción shelter.

No.	Department	<i>Children and adolescents referred by the Counsel General's Office since May 2017</i>	Gender	
			Male	Female
1	Alta Verapaz	9	3	6
2	Baja Verapaz	8	5	3

No.	Department	Children and adolescents referred by the Counsel General's Office since May 2017	Gender	
			Male	Female
3	Chimaltenango	8	2	6
4	Escuintla	34	19	15
5	Guatemala	106	72	34
6	Huehuetenango	8	5	3
7	Izabal	16	9	7
8	Jutiapa	17	12	5
9	Petén	3	1	2
10	Quetzaltenango	12	10	2
11	Quiché	2	2	0
12	Sacatepéquez	8	2	6
13	San Marcos	9	5	4
14	Suchitepéquez	11	8	3
15	Zacapa	15	6	9
Total		266	161	105

Source: Social Welfare Secretariat.

26. Of the 266 persons being monitored in 15 departments nationwide, 112 are now adults and are receiving support in their transition to adult life, each according to his or her particular situation.

27. Through the adoption of Decree No. 16-2018, the Congress declared 8 March a national day of remembrance of the victims of the tragedy and granted life annuities to the 15 survivors.

28. To allow survivors to remain in their home settings, as a guarantee of non-repetition and to ensure that children and adolescents who have been reunited with their immediate or extended families are not institutionalized or revictimized as a result of factors that caused them to be placed in a shelter in the first place, the Social Welfare Secretariat issued Decision No. 247-2018 on 18 September 2018, thereby adopting regulations on the granting of family allowances to child and adolescent victims of the tragedy of 8 March 2017. The allowances may be granted for a maximum period of four years, during which time the authorities will see to it that the money is used by its designated administrator for the benefit of the child or adolescent in question. Allowances expire when the child or adolescent reaches the age of majority.

E. Follow-up information relating to paragraph 27 (a) of the concluding observations

29. In October 2019, the Public Prosecution Service presented its policy for the criminal prosecution of human rights violations, the aim of which is to protect the rights of victims and to facilitate the investigation and criminal prosecution of grave violations of human rights and international humanitarian law.

30. The policy is intended to strengthen the Public Prosecution Service, in particular the Office of the Prosecutor for Human Rights, which investigates cases involving offences against human life. The Office has five special units responsible for investigating: (a) human rights violations; (b) special cases related to the internal armed conflict; (c) offences against trade unionists; (d) offences against human rights activists, justice officials and journalists; and (e) discrimination offences. These units were established to ensure the continued pursuit of effective, efficient investigations into offences against human rights

defenders and activists, journalists, justice officials and trade unionists, cases of discrimination and crimes committed in the context of the internal armed conflict.

31. The policy is implemented through a strategic framework and a plan of action structured around three main priorities:

- Investigation and criminal prosecution of violations of human rights and international humanitarian law
- Action on cases related to the internal armed conflict
- Victims' rights.

32. The policy reflects a human-rights and gender-based approach and is grounded in the principle of non-discrimination and the rights to truth, justice, full reparation and guarantees of non-repetition.

33. The National Civil Police assists in the investigation process in accordance with the requirements of the investigating body. Police officers and officials carry out their tasks under the orders and direct supervision of the Public Prosecution Service, which sees to it that the police and other security forces properly perform their auxiliary role in the conduct of investigative tasks. The prosecutors in charge of the investigation may give police officials instructions in this regard, while taking care to respect the administrative organization of the police force.

34. The National Institute of Forensic Sciences assists the justice system by conducting forensic investigations; its main purpose is to provide an independent scientific investigation service that includes issuing scientific expert opinions.¹

F. Follow-up information relating to paragraph 33 (d) of the concluding observations

35. In December 2016, the National Security Council adopted an operational plan for the gradual withdrawal of the Guatemalan army from public safety operations as of 2017. The Ministry of the Interior was responsible for overseeing the plan, which was launched in January 2017 and implemented in three phases.

- Phase one: Beginning on 6 January 2017, steps were taken to adapt and reorganize the Public Security Special Reserve Corps, which from then on was to act only at the request of and in cooperation with the National Civil Police in 5 departments and 30 municipalities that had been identified as red zones.
- Phase two: On 1 April 2017, 50 per cent of the personnel of the Public Security Special Reserve Corps were discharged from their support duties, with the remaining personnel acting only at the request of the National Civil Police and only in 11 municipalities of departments that had been identified as red zones.
- Phase three: On 1 January 2018, the remaining 50 per cent of the personnel of the Public Security Special Reserve Corps were discharged, and full responsibility for public safety operations was left with the National Civil Police.

36. Military police brigades continue to maintain discipline, law and order in military units, to assist other State institutions and, at the request of the National Civil Police, to provide support during operations to ensure public safety and well-being.

37. The Guatemalan army provides support to the Ministry of the Interior, as the entity responsible for the area of public safety, only at the request of the National Civil Police.

38. In consequence, changes were made to programme 12, "Prevention of offences against property", in 2018 to transfer personnel from the Public Security Special Reserve Corps to the various mission areas under a new activity included in programme 11, "Defence of sovereignty and territorial integrity".

¹ Congressional Decree No. 32-2006.

G. Follow-up information relating to paragraph 33 (e) of the concluding observations

39. The Ministry of the Interior has reported the following information relating to private security firms (figures are for 2019).

Training

40. Five training sessions were organized for 53 employees of the General Directorate of Private Security Services.

41. Training was also organized for 39 persons from other institutions (National Civil Police, Weapons and Explosives Investigation and Disposal Division).

42. Three training sessions were held for directors and instructors.

Accreditation of private security officers

Classification	Total
Private security guards	3 238
Guards tasked with protecting rural estates	43
Private bodyguards	53
Training centre instructors	40
Training centre directors	26
Total	3 400

Regulation

43. Total number of firms with operating licences as of August 2019:

Entities authorized by governmental decision in accordance with Decree No. 52-2010	9
Entities authorized by ministerial decision in accordance with Decree No. 52-2010	31
Entities in accordance with Decree No. 52-2010	98
Entities authorized by Decree No. 52-2010	65
Total number of authorized entities	203

Licensing

44. The number of valid operating licences as of August 2019 is presented below.

Total number of valid licences									
A	B	C	D	E	F	G	H	I	Total
132	55	50	22	11	22	2	42	4	340

Auditing and oversight

45. The regular operations of 91 private security firms underwent specialized auditing and oversight.

46. Six training centres were audited.

47. There were 99 instances of specialized auditing and oversight of materials and equipment.

48. The total number of preliminary checks conducted on new and first licences, licence renewals, changes of premises and branches is set out below.

<i>Auditing and oversight</i>	<i>Total</i>
Checks on new and first licences	32
Checks on licence renewals	23
Compliance checks	8
Checks on changes of premises	6
Checks on branches	1
Total	70

49. A total of 30 checks on commissioned private security services were carried out.

Violent deaths, evictions and internal security

50. The Ministry of the Interior reports that between January and 31 October 2019, the homicide rate per 100,000 inhabitants was 24.3; this represented a decrease from the rate of 26.3 recorded for the same period in 2018.

51. According to statistical data made available by the National Civil Police, there has been a 6.2-point decrease in the rate of persons injured by acts of violence, which fell from 29.8 in 2018 to 23.6 in 2019.



Source: Ministry of the Interior.

52. More than 44,550 persons were arrested for various offences between 1 January and 1 September 2019, an increase of 450 over the 44,100 persons arrested over the same period in 2018.

Evictions

53. Through Decision No. 18-2018, the National Civil Police adopted a protocol on evictions setting out responsibilities and standardized measures that all police officials must observe and practise when carrying out an eviction, in accordance with the law and human rights. It also adopted General Order No. 11-2019, which sets out guidelines on the use of force in the course of police activities.

Internal security

54. The Ministry of the Interior has more than 42,000 police officers, of whom 35,000 are men and more than 6,700 are women, distributed among 896 police stations. There are

2,787 radio patrol cars, 1,091 private vehicles and a fleet of motorcycles and specialized bicycles for accessing hard-to-reach areas.
