



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

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COMMITTEE AGAINST TORTURE

Thirty-sixth session

SUMMARY RECORD OF THE 701st MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 4 May 2006, at 10 a.m.

Chairperson: Mr. MAVROMMATIS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Fourth periodic report of Guatemala

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Fourth periodic report of Guatemala (CAT/C/74/Add.1; CAT/C/GTM/Q/4)

1. At the invitation of the Chairperson, the members of the delegation of Guatemala took places at the Committee table.

2. The CHAIRPERSON invited the delegation to introduce the fourth periodic report of Guatemala (CAT/C/74/Add.1).

3. Mr. RAMIRO MARTÍNEZ (Guatemala) said that information would be provided on the progress achieved and obstacles faced by his country since 2002. In pursuance of the peace agreements, efforts had been made to strengthen the rule of law and to reform the justice system. Despite those efforts, the 10-year period that had followed the signing of the peace agreements had been trying, and a number of challenges still had to be met. However, the genuine political will that existed to promote specific activities to that end had prompted coordinated action for the benefit of the population as a whole.

4. One of the main achievements in the area of human rights had been the 2005 enactment of Framework Law on the Peace Agreements, by which the agreements had been given the necessary binding character. Other major developments included the formulation of a national human rights policy and a human rights education policy, and human rights monitoring activities. An office of the United Nations High Commissioner for Human Rights (OHCHR) had been set up in Guatemala. Proposals had been made for the establishment of a commission to investigate illegal bodies and clandestine security structures, and of a national plan for the investigation of disappearances of persons during the conflict. The policy of recognition of State responsibility for serious human rights violations had resulted in moral and financial reparations for the relatives of victims. A public policy for the prevention of juvenile violence had been introduced, together with a national programme for a culture of peace. The provision of human rights training within the Ministry of Defence had been strengthened.

5. In the area of security and justice, the judiciary, the Public Prosecutor's Office, the National Civil Police and the Public Criminal Defence Institute had made significant progress, laying the necessary foundations for the consolidation of the entire justice system. Major initiatives included the adoption of a policy plan for criminal proceedings which regulated, *inter alia*, the use of coercion measures and the conduct of investigators, and established an obligation on prosecutors to reduce procedural constraints on exhumations. Other measures included the establishment of an office for the investigation of human rights violations during and after the armed conflict, and an office for the investigation of crimes against life and safety.

6. Logistics had been improved within the Public Prosecutor's Office and the introduction of new technology had improved the gathering of evidence. An inter-agency agreement had been signed to establish a criminal justice system for Guatemala City which would be able to resolve the legal situation of detainees immediately. Inter-agency coordination had been strengthened with a view to the better immediate protection of justice officials whose personal

safety was at risk. The penitentiary system had undergone sweeping changes, resulting in improvements in conditions and security in prisons. A detainee rehabilitation policy was currently being implemented with the support of the OHCHR office in Guatemala and the Presidential Human Rights Commission (COPREDEH).

7. His delegation welcomed the Committee's interest in the human rights situation in Guatemala and counted on its valuable experience and observations to provide further guidance to his Government.

8. Mr. RIVERA WOLTKE (Guatemala) said that a bill for the reform of article 201 bis of the Criminal Code (question 1), drawn up in consultation with the Ministry of the Interior, Congress and the National Civil Police, was about to be submitted to Congress.

9. The Guatemalan Constitution established that persons were not bound by orders that were not in conformity with the law; therefore, an order from a superior officer or public authority could not be invoked as justification for torture (question 3). Furthermore, article 423 of the Criminal Code stated that prison sentences and fines would be imposed on officials executing orders at variance with the provisions of the Constitution.

10. In accordance with the Constitution and the Criminal Code, detainees must be brought before a judge within a six-hour period (question 4). The inter-agency agreement establishing first-instance courts in Guatemala City would be extended to the rest of the country with the aim of preventing human rights violations. Particular importance was attached to oral proceedings in criminal cases, by virtue of which detainees must be interrogated within a 24-hour period.

11. The Supreme Court was in the process of reforming the portion of the Criminal Code relating to the penalty for instigating torture, in pursuance of article 4 of the Convention (question 13).

12. Ms. ÁLVAREZ ORTÍZ (Guatemala) said that the Ministry of the Interior could not guarantee a judicial remedy against administrative orders for the detention of foreigners to be expelled from the country (question 11), since that was within the remit of the Supreme Court. Detainees were made available to the judicial authority - which took the relevant decision - unless they were refugees under the terms of the relevant convention. No asylum-seekers had been, or could be, deported until the appropriate procedures had been followed.

13. She was able to provide the following statistics for asylum-seekers (question 12): 11 applications had been made in 2002; 12 in 2003; 15 in 2004; 28 in 2005; 16 thus far in 2006. The majority of asylum-seekers had been men, and applications had been received from citizens of Cameroon, China, Colombia, Cuba, El Salvador, Honduras, Mexico, Nicaragua, Nigeria, Peru and the United States. Since 2002, eight people had been granted refugee status, with 90 per cent of applications being abandoned by the applicants themselves.

14. No complaints or allegations of torture had been received from migrants (question 14), but should any complaints arise, appropriate measures would be taken and the diplomatic mission of the country of the complainant would be informed immediately.

15. Details concerning the type of emergencies permitting the establishment of combined police and military forces (question 8) would be submitted to the Committee electronically. Information was also being compiled on human rights training programmes for the National Civil Police (question 18). All police cadets had to pass a six-month basic human rights course given by qualified human rights instructors.

16. In connection with question 23 no torture allegations had been reported. The Office for Victim Care provided a comprehensive service, with a specialized unit for women and children.

17. No complaints of torture had been recorded concerning National Civil Police officers (question 24). In the event of such a complaint, an administrative inquiry would be set in motion in accordance with current legislation. If it transpired that there had been an offence, the case would be transferred to the Public Prosecutor's Office for further action.

18. Measures taken in response to the large number of violations of the right to physical integrity by the National Civil Police (question 25) had included human rights training and the establishment of a sub-directorate for the prevention of crime which would if necessary initiate disciplinary proceedings.

19. As to the "Plan Antimaras" and "Plan Escoba" (question 27), operations had been spearheaded by the Public Prosecutor's Office, interrogation being authorized by competent judges in areas in which gangs were known to exist. Identifying criminality under that programme was essential since belonging to a gang did not constitute an offence.

20. The National Civil Police had set up an advisory body which conducted inquiries with a view to combating corruption in detention centres (question 28). The same police force had been restructured to ensure the protection of judges, prosecutors and witnesses (question 36).

21. Public safety planning was undertaken in the context of demonstrations and other events of a national character (question 44). In cooperation with the Office of the Human Rights Procurator, bilingual agents and interpretation were provided in indigenous areas, and the use of force was restricted to circumstances in which it was absolutely necessary in the interest of national security.

22. The Office for Victim Care was responsible for providing psychological support to victims of child abuse and domestic violence (question 45). Statistics showed that girls were more at risk, and the police were responsible for providing protection to victims and initiating proceedings.

23. Mr. de LEÓN (Guatemala) said that the prison system bill currently before Congress was in its second reading (question 2). It had not been approved immediately because other laws had been given precedence, but he did not foresee any obstacles to its adoption. It was a progressive bill establishing the rights and obligations of detainees, and principles governing the organization of the prison system, with a view to harmonizing its activities. It was consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners. Issues addressed included the treatment and right to communication of detainees, their participation in the community, and access to medical assistance.

24. Prison authorities endeavoured to ensure that the rights of detainees were observed without any restrictions. For instance, the project “Encuentro con el Bien” laid the foundations for their social, educational and vocational rehabilitation. Regrettably, eight facilities were still under the control of organized crime rings, and as long as the authorities did not have full control over all facilities, the rights of each detainee could not be guaranteed. No statistics were available for the percentage of detainees who had not been charged, because under the Constitution an individual could not be detained without a prior judicial order (question 4 (c) and (d)).

25. As a means of preventing harassment and abuse of women detainees (question 17), all prison staff in direct contact with women detainees had received appropriate training. In accordance with the terms of the Constitution, any punishment involving inhuman treatment or violence was prohibited, and the use of force against women must be restricted to cases of assault on staff or other inmates. Female detention centres administered exclusively by women had been set up, operating on the basis of the security regulations in force in each centre. No data were available on the number of persons who had suffered or been charged with sexual harassment in prisons.

26. Human rights training programmes were targeted first and foremost at prison guards, the people who had the closest contact with prisoners (question 18). They formed part of the curriculum of the School for Penitentiary Studies and were given by staff from the Office of the Human Rights Procurator. The training focused on how to deal in practice with prisoners and ensure realization of their human rights. No specific budget was allocated for such training.

27. Guatemala was a multi-ethnic, multicultural and multilingual society, and the Penitentiary System was obliged to safeguard all persons deprived of their liberty without ethnic, cultural or linguistic discrimination (question 20). No statistics on the exact numbers of prisoners belonging to indigenous communities were currently available, but the situation would be remedied in future.

28. More than two decades previously, the authorities had lost control in many prisons to the so-called “disciplinary committees” (question 26). As part of its efforts to combat crime in general, his Government was now waging a battle to regain control of the prisons by breaking up the “committees”, which were composed of prisoners elected from among themselves and had been intended to maintain order and discipline. However, they had actually been used for purposes of drug-trafficking, putting pressure on the prison authorities and establishing protection rackets. The incidents of 15 August 2005 had taken place in institutions which, with the exception of Pavón, had not had “disciplinary committees”. They had been organized with the aim of attacking members of a gang in other prisons. Following investigations by the Public Prosecutor’s Office and the National Civil Police, the persons responsible had been transferred to high-security institutions.

29. Guatemala planned to implement a series of legislative reforms to improve security and combat corruption in prisons (question 28). They entailed an increase in the wages of prison guards and special training in ethics and morals so that staff would be less susceptible to

corruption. Allegations of corruption among staff were thoroughly investigated, and dealt with in the courts if necessary. A system of rotating all administrative and security staff throughout the Penitentiary System had also been introduced to prevent staff becoming too familiar with prisoners.

30. All prisons had medical and paramedical staff, who worked an eight-hour day and were on call round-the-clock for emergencies (question 30). Prisons also had basic medical supplies, although they were often not sufficient to meet all requirements. All prisoners had a medical file and could consult medical staff even when they were not ill. Persons suffering from serious illnesses could request to be treated by a doctor of their choice. A prison staff member was assigned to provide legal assistance to prisoners and maintain contact with their defence lawyers.

31. The National Mental Health Hospital had sufficient human and financial resources to meet the basic needs of patients (question 43). There were proposals to set aside two wings of the hospital for prisoners suffering from mental illness.

32. The Penitentiary System had a budget of 152 million quetzales (Q), which was supplemented by Q 10 million from the budget of the National Civil Police to cover the recommended 50 per cent increase in wages (question 47). An additional Q 20 million had been allocated for the construction of two prisons in one year from the 2006 budget of the Ministry of Communications, Infrastructure and Housing with a view to reducing overcrowding. The Penitentiary System provided a balanced and nutritious diet for inmates, for which Q 72 million had been set aside in the 2005 budget. Each prison also had a rotating fund for the purchase of perishable foodstuffs.

33. Mr. de LEÓN (Guatemala) said that there was no specific rule against invoking an order from a superior (question 3). However, in accordance with article 156 of the Constitution, no public official, civilian or member of the armed forces was obliged to obey an order which was clearly illegal or entailed the commission of an offence.

34. The Human Rights Office of the Ministry of Defence had been set up in 2003 (question 5). Its functions were to advise the Ministry on human rights issues, to carry out publicity activities, to ensure due respect for human rights in the armed forces and to cooperate with relevant national and international NGOs. Its positive impact was borne out by the fact that thus far no complaints had been received of torture or ill-treatment by military personnel.

35. Military personnel only had the power to arrest and detain persons who had committed a minor offence (falta) or who were caught flagrante delicto (question 6).

36. With a view to guaranteeing peace, and the freedom and security of Guatemalans, under article 244 of the Constitution and a number of other legislative instruments, the national plan to combat delinquency (“Safe Guatemala”) had been drawn up (question 7). It entailed the participation of 1,000 members of the armed forces and 583 National Civil Police officers in joint operations to combat, *inter alia*, organized crime, and drug and arms-trafficking. All the support provided by the armed forces came under the supervision of civilian authorities, including the Ministry of the Interior and the Public Prosecutor’s Office.

37. Emergencies that could be dealt with through combined police and military operations included natural and man-made disasters, violent disturbances and crimes that could not be controlled by civilian security forces, security measures in prisons and assistance to judicial authorities for the purpose of evictions. In the light of rising crime, all Governments since the signing of the peace agreements in 1996 had implemented legislation providing for the armed forces to assist civilian security forces. In such cases, the role of the armed forces was clearly defined in accordance with national law.

38. Providing disaggregated data on the armed forces, he said there were four categories of military personnel: cadets, officers, specialists and troops (question 18). Among the cadets 284 were women and 28 were men; 68 per cent were of indigenous origin and 32 per cent of mixed race. There were 273 male and 59 female officers; 54 per cent were of indigenous origin and 46 per cent of mixed race. Of the specialists 3,105 were men and 648 were women; 72 per cent were of indigenous origin and 28 per cent of mixed race. Some 8,700 troops were men and 242 were women; 92 per cent were of indigenous origin and 8 per cent were of mixed race. A total of more than 14,000 men and 970 women in the armed forces had received human rights training.

39. The training courses covered the history of human rights and core international and regional human rights instruments, including the Universal Declaration of Human Rights and the American Convention on Human Rights, and institutional and legal protection. They were taught by Guatemalans and international experts. There was no specific budget for the training courses, whose costs were largely covered by external funds, including from the Inter-American Commission on Human Rights. The training had had a positive impact, as shown by the decrease in the number of complaints of ill-treatment within the armed forces in recent years (question 5).

40. Draft legislation relating to military justice did not prescribe penalties for members of the armed forces who committed acts of torture (question 21). That offence was covered by article 201 bis of the Criminal Code; persons responsible for such acts were liable to prison sentences of between 25 and 30 years. As part of the reform of the Military Code, it was proposed to make provision for military matters in the Code of Criminal Procedure, *inter alia* to ensure that military offences were tried in military courts.

41. The new “military doctrine” had entered into force on 30 June 2004 and laid emphasis on preventive measures. According to the doctrine, the armed forces should promote and ensure respect for human rights, in accordance with the Constitution and international human rights instruments. It was promoted in all military training centres.

42. The armed forces cooperated and responded to requests for information from NGOs or other groups when they were submitted through the appropriate channels (question 29). The Ministry of Defence had provided the information requested on former military personnel to the competent judicial authority, where such requests were in line with relevant legislation. The Ministry was not empowered to conduct any investigations. The armed forces could not force or put pressure on witnesses to testify.

43. The competent judicial authorities had not received any complaints of excessive use of force against indigenous people by members of the armed forces (question 44). In order to maintain such positive attitudes, there were rigorous training programmes on ensuring respect for the rights of the civilian population.

44. Ms. SALAZAR (Guatemala) said that lynching was not classified as an offence under the Criminal Code but could be covered by article 201 bis relating to grievous or moderate bodily harm and murder (question 10). The Public Prosecutor's Office nonetheless investigated all reports of such acts so as to ensure that they did not remain unpunished. There were no statistics on cases of lynching.

45. The Public Prosecutor's Office had an ongoing training programme for its staff coordinated by a permanent training unit. It organized numerous courses, seminars and conferences aimed at strengthening the investigative skills of prosecutors, including in cooperation with other government agencies. In 2005, 273 courses with 5,320 participants had been held on a wide variety of subjects, including the International Criminal Court, forensic photography, conflict management, interrogation techniques, human trafficking and sexual exploitation, and collecting evidence at a crime scene.

46. The current Government had made efforts to strengthen the Office for the Care of Crime Victims through the preparation of four training modules, with the assistance of the Inter-American Development Bank. She had distributed copies of the modules to the members of the Committee for their information. The purpose of the modules was to create greater awareness of victims' needs so as to provide them with better support. One way of achieving that was to strengthen cooperation between governmental and non-governmental agencies working in the area of victim care, and a special network had been set up for that purpose.

47. She provided statistics relating to the district and municipal prosecutor's offices, and outlined what was being done in each office to recruit more staff. Various awareness-raising measures had been taken, including the appointment of human rights procurators, preparation of a manual on forensic anthropology, and new methodology to improve the conduct of investigations (question 19).

48. Each State institution had a special department to receive complaints about torture or inhuman treatment, which were forwarded to the Public Prosecutor's Office, and various campaigns had been conducted to raise awareness of human rights law (question 35).

49. Ms. STALLING (Guatemala) said that the Criminal Code provided for a pretrial detention period of three months (question 4). To address the many problems of abuse encountered during pretrial detention, which had been acknowledged by the judicial authorities, an EU-sponsored programme was being implemented under which a large number of prosecutors, judges and defence lawyers had been recruited to staff a court of first instance operating 24 hours a day in Guatemala City. Approximately 4,000 individuals were held in pretrial detention, accounting for approximately 50 per cent of the total number of detainees. Under the Constitution, the security forces were responsible for recording detainees' personal details.

50. Guatemalan courts did have the power to bring proceedings against foreigners suspected of committing acts of torture abroad (question 15).

51. Under the Constitution, detainees were entitled to access to a lawyer as soon as they were charged or detained. In order to guarantee that right, a public criminal defence institute had been set up. There was also a plan for defence lawyers to work in police stations and in conjunction with justices of the peace. Those measures applied to Guatemala City only. In the provinces detainees had to wait 8 to 15 days before being allowed access to a lawyer, in view of resistance on the part of police to implementing the instructions they had been given in that respect. There were no established procedures to ensure that foreign detainees were able to communicate with a representative of their State of origin. Frequently such communication took place via a public or private defence lawyer, or through a friend (question 16).

52. Deficiencies in the academic training and background of judicial officials were being discussed with deans of the different law faculties in order to try and find solutions. Other measures to address the problem included: grants and fellowships for judges to study for higher degrees in human rights; specialized training units in all judicial institutions; training courses run by the judicial coordination unit; establishment of career patterns for judges and prosecutors; and reinforced supervisory units to implement disciplinary procedures. No courses in human rights were provided on an ongoing basis in the training units of judicial institutions (question 19).

53. Guatemala had no unified statistics relating to allegations of torture. According to the data available, however, there had been seven cases in 2003, seven in 2004 and one in 2005. No information was available on the status of the trials. A total of 28 cases had been reported to the public authorities in 2002 and were currently under investigation. Some 11 cases had been brought before the domestic courts in 2006, and 1 before the Inter-American Court of Human Rights in 2004. There were 10 further cases in which the following had been established: poisoning by the police; death as a result of injuries sustained; loss of a limb resulting from beatings by police; solitary confinement in inhuman and degrading conditions. As to methods used to maintain discipline in detention centres and prisons, she reiterated that discipline in prisons was the responsibility of the detainees themselves. She highlighted the need for new legislation on reform of the penitentiary system, and for Guatemala to ratify the Optional Protocol, which would enable it to set up the necessary mechanisms to monitor the situation in prisons (question 22).

54. The situation regarding minors had improved in recent months, since detainees had been separated into three groups: 13 to 15-year-olds; 15 to 18-year-olds; and those aged over 18. Efforts were being made by the Secretary for Social Welfare to develop training programmes in that area, but resources were scarce (question 31).

55. Disciplinary proceedings involving members of the National Civil Police were held concurrently with criminal proceedings (question 33).

56. Ms. CORZO (Guatemala) said that compensation had not been awarded by domestic courts, but in specific cases relating to the period of internal armed conflict compensation had been awarded by virtue of international court judgements (question 40).

57. The National Compensation Programme had provided reparation for violations, *inter alia* in the following spheres: forced disappearances; extrajudicial execution; physical and psychological torture; forced displacement; forced recruitment of minors; sexual violence and violence against children; massacres. The means of reparation included: restoring dignity to victims; psychosocial reparation and rehabilitation; material restitution; and economic rehabilitation. To date 338 people had benefited from those programmes and, 22 had received financial compensation in their capacity as victims of torture. In 2005 and 2006 a sum of approximately Q 3,225,000 had so far been disbursed (question 41).

58. State authorities had drawn up a national plan for the prevention and eradication of child labour and the protection of teenagers in employment. A national commission, on the exploitation of child labour, had been established under the Ministry of Employment. Special units had been set up within the Ministry to implement preventive plans and programmes, and an inspection system existed to establish whether employers known to hire children complied with labour legislation. An inter-agency technical committee had also been set up for the prevention and eradication of domestic child labour, and of migration of children for that purpose. The Ministry of Employment had recently drawn up draft regulations for the implementation of the ILO Worst Forms of Child Labour Convention, which it was hoped would shortly be approved (question 46).

59. Ratification of the Optional Protocol to the Convention was currently undergoing consideration (question 48).

60. Mr. GROSSMAN, Country Rapporteur, thanked the delegation for its presentation and highlighted the value of constructive dialogue in accelerating the consolidation of the peace agreements. He noted the progress described in reinforcing the National Civil Police in the context of demilitarization and the strengthening of civilian power, and asked which civil society representatives had been involved in drawing up the national defence policy described in paragraph 20 of the report. In the area of combating impunity and strengthening justice, he noted the information on steps taken to set up the Commission for the Investigation of Illegal Bodies and Clandestine Security Structures. Would the commission be set up soon? The issue of impunity was an important one, not only for Guatemala but also for Latin America as a whole.

61. Information on follow-up to allegations of human rights violations served as a barometer of a country's human rights situation in general. In that connection, he expressed concern at reports from NGOs of a number of attacks against human rights defenders that had apparently gone unpunished. He noted that amnesty provided under the peace agreements excluded amnesty for international crimes, including torture. Nevertheless, the Constitutional Court, which was competent to try such cases, had refused to apply the Convention against Torture directly, requiring allegations to be examined first through the mechanisms provided under the national reconciliation law. The Inter-American Court had already addressed that problem in 2000, in connection with a well-documented massacre in which over 250 people had been killed. Little progress seemed to have been made since then. What was the delegation's view on that matter? And had there been any steps to initiate legislation to improve the situation?

62. After commending the important commitment made by Guatemala in September 2003 in acknowledging the competence of the Committee against Torture to hear individual complaints, he referred to the need for a standard definition of the various offences in the area of torture in order to prevent any possible confusion.

63. With reference to paragraph 81 of the report, what follow-up by the Guatemalan Government had there been to the instances of abuse reported by MINUGUA? He was encouraged to learn of the work being done for the modernization of the police force, a difficult task that seemed to him to be yielding good results.

64. He noted that there had been a substantial increase in reports of the killing of women. References in that connection to "women of ill repute" were unacceptable: it was not considered relevant when a man was murdered whether he was of good or bad repute, and the same should hold true for women. The Inter-American Court of Human Rights had established that such gender discrimination on the part of the police or judiciary could be considered inhuman or degrading treatment towards the family of the victim. The provision of training, with the participation of civil society, was very important in that regard.

65. The figures for abuse relating to children likewise gave grounds for concern. In 2005, over 800 children - a majority of them female - had been killed in Guatemala City. While phenomena such as teenage gangs constituted a very real problem, recourse to drastic measures frequently proved counterproductive. Respect for children's rights must clearly be paramount, and there should be no impunity in that regard.

66. Another key issue concerned the derogations authorizing the military to intervene in the realm of public security and delinquency. Experience had shown that confusion of the roles of law enforcement agencies and the military created more problems than it solved. Moreover, the figures provided by Guatemala suggested that new posts had been created in the army to enable it to handle internal security matters. Why not use the corresponding resources to strengthen the police force, which was better able to deal with problems specific to internal security?

67. With reference to paragraph 48 of the report, the establishment of a National Commission to Search for Missing Children - as recommended by the Historical Clarification Commission - was a positive development. However, it was not clear whether that Commission had begun its work, when it had been set up and what its budget was. It was essential to take advantage of the consensus in Guatemala to press ahead with practical action in the human rights field.

68. Concerning paragraphs 56 and 57 of the report, it constituted inhuman treatment under international treaties ratified by Guatemala to broaden the scope of the death penalty. How many of the 87 death sentences passed between 1999 and 2002 had been the result of an extension of the scope of the death penalty subsequent to Guatemala's ratification of the American Convention on Human Rights? It was worth noting that the death penalty had not in fact been carried out in the country for some time. What was the situation of prisoners condemned to death? Were they in isolation? Could they receive visits? In particular, how many found themselves in an inhuman situation as a result of the extension of the scope of the death penalty?

69. With reference to complaints of torture, ill-treatment and other abuses reported by MINUGUA (report, para. 69), what had been the official response to those complaints? How many of the violations had been taken up by the Public Prosecutor's Office? Monitoring and supervision of prison conditions were essential in reducing the incidence of torture. Extensive periods of pretrial detention, significantly linked to poverty, were an important risk factor in that regard. In the case of Guatemala, the record of investigating and punishing cases of torture and mistreatment was unimpressive.

70. In relation to internal security, COPREDEH had reported the existence of "social cleansing" activities by agents of the State. How many of the 217 complaints made in the first half of 2005, involving murder and other violations, had led to convictions? What was the proportion of those convicted, bearing in mind that even a single conviction had an important exemplary effect.

71. In paragraph 73 of the report, it was stated that Guatemala could refuse to expel, return or extradite a person when there were substantial grounds for believing that he or she might be subjected to torture. That statement was not in accord with article 3 of the Convention, which stipulated that no State "shall" expel, return or extradite a person under those circumstances. Paragraph 82 reported that it had not been possible to obtain information about human rights violations involving acts of torture and other abuses from the records of the Office of the Human Rights Procurator. Did that mean that the Public Prosecutor's Office had the option of refusing requests for such information? As to the draft legislation referred to in the report establishing military jurisdiction over acts of torture committed by the military against civilians, it should be clearly understood that such a provision, if adopted, would violate the American Convention on Human Rights.

72. In conclusion, he wished to express his appreciation for the changes that had taken place in Guatemala and the readiness of the authorities to engage in dialogue with the Committee on the issues concerned.

73. Mr. KOVALEV, Alternate Country Rapporteur, asked whether the Commission for the Investigation of Illegal Bodies and Clandestine Security Structures (CICIACS), referred to in paragraph 47 of the report, had already been established and, if not, when it was scheduled to become operational.

74. Paragraph 66 stated that minors under 18 years of age, who were not normally criminally liable, could be prosecuted under a special procedure incorporated in the 2003 Children and Adolescents (Comprehensive Protection) Act. There might be a case for reviewing that provision and for lowering the age of criminal liability in the Criminal Code to 15 or 16 to take account of the widespread trend towards more precocious offending.

75. Article 425 of the Code, referred to in paragraph 79 of the report, would also seem to require revision. It was not enough to restrict criminal liability to the person giving an order to perpetrate torture. Anyone carrying out an order blindly, as tended to occur in the military, must also bear a measure of responsibility.

76. If it was true, as stated in paragraph 92, that previous extradition treaties between Guatemala and other States had not covered torture, then it was clearly not sufficient to incorporate the relevant provision in future treaties. Existing treaties, particularly with other Latin American States, should be reviewed and amended.

77. It was said, in paragraph 72, that the Guatemalan Constitution recognized the primacy of international human rights law. Why, then, had Guatemala not yet ratified the Rome Statute of the International Criminal Court, of which it was a signatory?

78. Ms. GAER asked, with regard to reported failures to investigate the killing of women, why so few cases had been brought to trial. On the issue of the exemption from prosecution of a rapist who subsequently married his victim, she understood from a United States State Department report that a recent change in Guatemalan law would not apply to cases dating from before the adoption of the new law. Could the delegation clarify that point and say whether there were any plans to revise the relevant provision?

79. The Guatemalan reply to question 10 stated that, since lynching was not a crime under Guatemalan law, no statistics were available in that regard. She noted that MINUGUA seemed to have more information than the Government on the subject. She would also appreciate a response to the question as to action taken to educate people about the penalties for lynching and to prevent it from happening.

80. In view of reports that sexual violence against women was prevalent in police stations, what measures were envisaged to provide special facilities for female detainees, to ensure that they appeared immediately before a judge or were transferred to a women's detention centre, and to arrange for the presence of doctors at first-instance tribunals to monitor any signs of abuse?

81. Ms. BELMIR asked for clarification as to which authority, whether the Minister, the Public Prosecutor's Office or the judiciary, decided questions of penal policy in Guatemala. The special procedures for dealing with young offenders mentioned in paragraph 66 of the report were disquieting. How far did they respect the Convention on the Rights of the Child, and what measures were being taken to re-educate and reintegrate the young people concerned? Finally, what was the impact of the extended role of the military in law enforcement in Guatemala?

82. Mr. MARIÑO MENÉNDEZ asked for a response to reports by Amnesty International of forced evictions and population displacements in Guatemala and questioned why complaints by the Human Rights Procurator to the Public Prosecutor seemed to have produced no results. He also enquired about the legislative situation concerning possession of weapons in Guatemala. Was there any control over the issuing of licences and what control was exercised over those already possessing licences?

83. Information given to the Committee concerning proposed legislation on the organization and functioning of military justice suggested that the scope of the military's jurisdiction was in the process of being extended. Was it the case that, under the legislation in preparation, military

personnel accused of offences against civilians would be tried by a military rather than a civil court? With reference to paragraph 68 of the periodic report, it was very important to make it clear that article 2 of the Convention did not establish that “illegal orders need not be carried out” but rather that there was an obligation not to carry them out. What were the constitutional provisions in that regard?

84. Finally, he would appreciate clarification on reports that 90 per cent of appellants against extradition and related orders in Guatemala ultimately withdrew their appeals.

85. Ms. SVEAASS welcomed the number of training programmes designed to reduce the level of human rights abuse within the State apparatus. She particularly appreciated the focus on gender issues, which were difficult to address in a context of violence and torture against women and of lack of investigation of such crimes. What systems were now being introduced to monitor the effectiveness of those programmes and what action was being taken where they proved ineffective? Lastly, in relation to question 39, what measures were being taken to investigate the 625 massacres in respect of which no charges had been brought?

86. The CHAIRPERSON commended the tremendous efforts made by Guatemala to improve its human rights situation and its frankness in acknowledging failings. However, the existence of a right to complain was not sufficient in the case of the harassment, rape and murder of women. What was being done to put an end to such violations? The same question could be asked in connection with the problem of street children. What progress was being made in countering the truly horrendous violence to which they were subjected?

The meeting rose at 1.05 p.m.