



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

Distr.: General
19 May 2006
English
Original: French

COMMITTEE AGAINST TORTURE

Thirty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 704th SESSION

Held at the Palais des Nations, in Geneva on Friday, 5 May 2006, at 3:00 p.m.

President: Mr. MAVROMMATIS

SUMMARY

CONSIDERATION OF REPORTS SUBMITTED BY THE STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (cont'd)

Fourth periodic report of Guatemala (cont'd)

* The summary record of the second part (private) of the session was published under the reference number CAT/C/SR.704/Add.1.

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The session was called to order at 3:10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY THE STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION (item 7 on the agenda) (*cont'd*)

Fourth periodic report of Guatemala (CAT/C/74/Add.1;CAT/C/GTM/Q/4; written responses distributed during the session, in Spanish only) (*cont'd*)

1. *At the invitation of the President, the Guatemalan delegation took their places at the Committee table.*

2. The PRESIDENT invited the Guatemalan delegation to respond to the questions posed by the members of the Committee.

3. Mr. RIVERA (Guatemala) said that because the practice of lynching had spread since the signing of the peace accords, the modernization unit of the judicial branch had decided since 1999 to implement a program of prevention, which consisted in organizing sensitivity workshops for members of the judiciary, national civilian police officers (PNC), leaders of the native communities, and religious leaders. Between April 2001 and July 2003, 442 workshops had thus been organized in 14 provinces to ensure that the participants would understand that the settlement of differences must proceed on the judicial path and to encourage them to promote a culture of peace in Guatemala. These workshops had also made it possible to elucidate the deeper causes of the problem, among which were delinquency and the absence of rehabilitation programs for delinquents, the aftermath of armed conflict, the culture of violence and the spreading of hate messages in certain media, the existence of paramilitary groups, institutional deficiencies, the lack of communication between communities, economic disparities, illiteracy, and ignorance of judicial institutions. Throughout the country, brochures were distributed promoting awareness of the problem of lynching and emphasizing not only prevention but also the steps to be taken in the event of a lynching.

4. Ms. ALVAREZ ORTÍZ (Guatemala) affirmed vigorously that the Guatemalan state was not carrying out any policy of "social cleansing." It was sparing no efforts to combat delinquency, criminality, and corruption, but it had above all chosen to act in the area of prevention and rehabilitation by instituting a program of promoting a culture of peace and of sports for young people and by collaborating closely with organizations in civil society which work with rehabilitating young people.

5. Article 20 of the Constitution established the immunity of persons younger than 14 years of age and, by Decree No. 27-2003, the Congress of the Republic had created a system of judicial administration especially for minors.

6. With respect to the situation of the lack of safety in the country, Ms. Alvarez directed the members of the Committee to the Internet site of the Ministry of the Interior (www.mingob.gob.gt) where they would find statistics concerning the different crimes committed in the country. They would also be able to see that this site offered all citizens the opportunity of lodging a complaint online.

7. Responding to a question raised at the preceding session, Ms. Alvarez emphasized that 90 requests for asylum had effectively been nullified because the persons lodging the requests had left the country. In effect, a large number of the requests for asylum came from persons who were only traveling through Guatemala

on their way to the United States and who were simply making use of this possibility to stay a few days on its territory.

8. Mr. DELEÓN (Guatemala) said that personnel of the specialized detention centers were strictly prohibited from mistreating the minors who were incarcerated. All administrative measures (inspections, transfers, etc.) were carried out under the control of the Public Prosecutor for Human Rights so as to guarantee respect for the fundamental rights of minor detainees. Furthermore, every two months a report was sent to the judge who was carrying out the sentence to inform him of the situation of each minor. Observers frequently visited the detention centers to permit the minor detainees to be able to file complaints if they were victims of ill treatment. Guatemala had implemented many programs for the rehabilitation and re-adaptation of young people. In the area of education, minor detainees were able to make up for missed schooling by pursuing programs of televised lessons or accelerated education for adults with the Ministry of Education; in the area of work, everything was being done to facilitate the subsequent re-socialization so that they would be able to help their families economically. Other programs were being implemented to permit young delinquents to renew solid and lasting ties with members of their families and with their communities. Finally, they were being provided psychological support and were being encouraged to cultivate spirituality.

9. Every prison guard accused of acts of torture was made the subject of an investigation of the Inspector General, who submitted a detailed report establishing guilt or innocence. If the guard were judged to be guilty, he was immediately removed from his position. In any case, the prison administration had no precise information at its disposal which would permit it to assess the number of prison guards who had been dismissed due to acts of torture.

10. Mr. ESCOBAR (Guatemala) explained the reasons for which the Army had recruited 2,400 men who were charged with supporting the civilian national police, namely the growing insecurity and rise in acts of violence associated with organized crime, narco-trafficking, and youth gangs; the lack of availability of national civilian police officers and overall corruption; and the obligation incumbent on the Army to guarantee domestic security in the country under article 244 of the Constitution. The new recruits had gone through a detailed selection process, had received specialized training on techniques and police procedures, and had only been hired for a period of nine months, which came to an end in November 2006. Although they were connected to the Ministry of Defense, these men were obliged to obey the national civilian police.

11. In the context of elaborating the white paper on defense policy, the Guatemalan Government had undertaken long-term consultations with many organizations: the superior joint committee, the executive committee, groups of observers, national and international experts, and public representatives from the universities and native communities.

12. The draft law ensuring that soldiers who had committed common-law crimes would be judged by military courts had been presented in 2003 to the Congress of the Republic, but it had not yet passed. The Commission charged with reforming military justice had presented very clear recommendations and had requested that they be examined by the Supreme Court of Justice, the Bar Association of Guatemala, and representatives of civil society.

13. The department for monitoring arms and ammunition maintained a registry of all persons who requested a permit to carry arms, and it verified the legality and validity of these permits.

14. Ms. SALAZAR (Guatemala) said that her country had set up three specialized agencies which were charged with objectively investigating cases of the murder of women, the number of which unfortunately remained high. The Congress of the Republic was working on a draft law designed to establish an institute of forensic medicine which would not be under the judicial branch or within the Public Ministry but which would undertake independent investigations. Since studies were showing that many murders of women were the result of domestic violence, the decision had been taken to strengthen the application of the law in this area. Both a law for advancing the cause of women as well as a law for preventing, eliminating, and suppressing domestic violence were on the books. The national commission for preventing violence against women had implemented a plan for preventing violence. Furthermore, the national civilian police had a department for promoting the equality of the sexes and for assisting victims of violence.

15. The Public Prosecutor for Human Rights had been restructured and been provided with greater resources. It had strengthened its cooperation with nongovernmental organizations in order to obtain more information on criminal cases. Furthermore, it was working together with the Ministry of the Interior to assure the protection and safety of human rights defenders.

16. Ms. STALLING (Guatemala) said that 26 persons were currently sentenced to death. In sum, 15 persons had been condemned to capital punishment for kidnapping in cases where the victim had not been killed, which constituted a violation of the Inter-American Convention of Human Rights. Consequently, three guilty verdicts had been dismissed. Those sentenced to death were accorded the same treatment as other prisoners and had the right to receive even more visits from their loved ones. They were held separately from other prisoners but were dispersed in different detention centers and lived in the same conditions. A specialized psychologist had been hired to provide support to those condemned to death.

17. Judicial professionals clearly were aware of the abuses that existed regarding provisional detention. Measures had been taken to remedy this, including the promotion of the oral preceding during the preparatory stages of the trial; a ruling with respect to this matter had previously been handed down by the Supreme Court. Furthermore, the Public Ministry had promulgated directives recommending measures of de-judicialization; the reform of the functioning of the judiciary was well underway; the center charged with monitoring cases of the Supreme Court was being restructured and the number of lawyers engaged in cases involving crimes committed by minors had grown. Judicial professionals moreover had been sensitized to other mechanisms for regulating ongoing conflicts. The number of prosecutors had increased in many cities across the country. Nevertheless, it remained difficult for judicial offices to obtain the resources necessary to effectively accomplish their task.

18. Ms. SALAZAR (Guatemala), with reference to the judicial steps following the massacre of Las Dos Erres, indicated that the case had been transferred to the Prosecutors' office that specialized in cases of human rights violations. Unfortunately, the persons who had been indicted had filed an appeal in *amparo* and had invoked the law on national reconciliation in order to escape from justice. To

fight against the abusive appeals in *amparo* proceedings, the Supreme Court had prepared a draft law designed to change the modalities for the application of such procedures to prevent their use for dilatory ends. Additional information would be communicated later to the Committee to inform it regarding the progress of this reform and its effects.

19. Ms. CORZO (Guatemala) said that a new suggestion regarding the creation of a commission of investigation for illegal groups and the secret security apparatus (CICIAKS), prepared with the cooperation of different sectors of civil society and of governmental agencies, had been submitted to the Secretariat of the UN in New York in April 2006, which had not yet commented on it. Apart from the efforts regarding the establishment of this commission, measures had been taken to clearly implement the Convention of the United Nations against transnational organized crime to which Guatemala had been a party since 2003. The Rome Statute of the International Criminal Court was currently being examined by a legislative commission preparatory to being proposed for ratification.

20. The national commission for the search for disappeared children was created in June 2000 through the cooperation of the mediator charged with human rights for Guatemala and various specialized organizations in this area. The task of the commission was to shine light on the disappearances of children which had occurred during the armed conflict and to make public the results of these investigations, to promote activities for the documentation, investigation, and reunification of families, and to aid the victims in obtaining compensation before the bar of justice. The commission was currently handling 1,280 cases, of which 324 had been resolved. The search for persons who had disappeared was based on the recommendations made by the commission for historic clarification, by virtue of which the President had charged the Presidential Commission on Human Rights (COPREDEH) to establish, with the cooperation of various sectors of civil society, a national mechanism for investigating persons who had disappeared. A draft governmental decree was currently being studied which, after being passed, would confer juridical status on said mechanism.

21. Ms. CHÁVEZ (Guatemala), returning to the question of extradition treaties, indicated that in this area Guatemala was applying the provisions of the international agreements in conformity to article 27 of the Constitution of Guatemala. Bilateral extradition treaties that had been concluded by Guatemala with Great Britain, Spain, Belgium, and the United States contained a list of crimes constituting reasons for extradition, among which Guatemala had not considered it necessary to expressly include acts of torture since they were naturally included in every extradition treaty by virtue of article 8 1) of the Convention against torture and other cruel, inhuman, or degrading punishments or treatment. In recent bilateral agreements, as well as in future agreements, Guatemala, as a formulation for determining cases for extradition, opted for acts constituting crimes under the laws of both parties, even when said laws were different as to the designation of the crimes. Multilateral extradition treaties concluded with the countries of Latin America were in conformity with the Inter-American Convention on Extradition. The latter did not contain a list *per se* of crimes constituting extradition cases but was limited to designating as such all acts constituting a crime that was punishable by the respective laws of the requesting as well as the requested state. However, Guatemala was a party to the Inter-American Convention on Mutual Assistance in criminal cases, and in this context it maintained relations of cooperation with all the

other state parties. Also a party to the Treaty of Mutual Judicial Assistance in criminal cases of the Central America States, Guatemala favored the creation of any agreement that was designed to improve cooperation in this area.

22. Mr. GROSSMAN (Rapporteur for Guatemala), returning to the question of lynchings, insisted on the necessity of putting an end to this practice, not only because it constituted in itself a violation of fundamental human values, but also because the tolerance of such actions was contrary to current law. As regards "social cleansing," the experience of the Committee against Torture showed that this kind of strategy did not resolve problems but rather promoted the corruption of institutions such as the police, which had dramatic consequences. Furthermore, the Rapporteur noted with surprise that it was the personnel and the budget of the army and not those of the police that had been increased to fight against common-law crimes. In effect, the fact that the army had been assigned the functions of that by definition fell to the police risked not only discrediting the latter while making it clear that they were incapable of fighting effectively against criminality, but also costing the army some of its prestige in distracting it from its primary mission of defending the territory.

23. The Rapporteur expressed his concern at the fact that under the draft law on military justice, common-law crimes committed by members of the armed forces outside of the exercise of their functions could be brought before military justice, in violation of international law, which stipulated that they could only be crimes committed by military personnel in the exercise of their functions. Recalling that Guatemala had ratified the Inter-American Convention on Human Rights, the Rapporteur encouraged the state party to take advantage of the possibility offered by this agreement to request from the Inter-American Court an advisory opinion regarding the compatibility of a draft law with the human rights laws.

24. The provision contained in the Peace Accords according to which crimes such as torture could not be amnestied seemed contradicted by a decision in 2000 of the Constitutional Court, which stipulated that such crimes were to be brought before a special proceeding. It would be useful to know what attitude had been adopted by the state party since 2000 with regard to questions of impunity, given the fact that in this area the greatest possible intransigence was the only effective option. Another worrisome subject revolved around the treatment of the human rights defenders. In effect, the latter were an essential indicator for the situation of human rights in a country, and any action directed against them was a sign that that situation was deteriorating. With respect to capital punishment, it was certainly encouraging that the state party had taken measures guaranteeing to those condemned to death conditions of detention that were equivalent to those of other prisoners and that certain death sentences had been nullified, but the delegation had indicated that 12 death sentences were still in effect although their implementation had been suspended, which indisputably constituted a violation of international law which, if it didn't expressly prohibit the death penalty, still prohibited the application of certain conditions that violated human rights law. The Committee was furthermore extremely concerned by the continued increase in the number of deaths of women since 2000. Unfortunately, this was not a new phenomenon in the region. Draconian measures needed to be undertaken immediately. Acts such as these could not be tolerated for any reason.

25. Mr. Grossman noted with interest the reforms that had been successfully carried out within the judicial system, specifically the opening of several sectors to civil society. One theme in any case had not been broached, that of the criminalization of social debate, which worried the Committee inasmuch as labor leaders could be subjected, if not to acts of torture, at least to cruel, inhuman, or degrading treatment.

26. Mr. KOVALEV (Corapporteur for Guatemala) declared himself as satisfied by the responses of the delegation to these questions, except with regard to the justification, hardly convincing in his opinion, which had been advanced regarding the differences in punishments applied to persons guilty of acts of torture and to persons at whose instigation such acts had been committed. It would be useful to know whether the state party had the intention of modifying its legislation or its practice in this regard.

27. Mr. MARIÑO MENÉNDEZ returned to the question of "due obedience." The delegation had allowed it to be understood that no official was obliged to carry out an order contrary to the law, but was such an official under an express obligation not to carry out such an order? On the other hand, certain information had indicated the existence of numerous decisions for forced expulsion without providing for measures of follow-up and social protection for persons thus deprived of housing. On this subject, the Committee, in a case that placed the Roma people in opposition to Serbia and Montenegro, had concluded that expulsions which were not matched by appropriate support measures constituted inhuman and degrading treatment. Therefore, it would be useful to know whether such practices were effectively ongoing, in which case they could constitute a form of inhuman treatment. Regarding the bearing of arms, the delegation had indicated that the permits were regularly examined to verify their validity. Supplemental information regarding the modalities of this procedure, the frequency with which it was applied, the criteria governing the validity of the permits, and the restrictions applied to the sale of arms would be welcome.

28. Ms. GAER asked the Guatemalan delegation to indicate whether the presence of the Verification Mission of the United Nations in Guatemala (MINUGUA) continued to be justified in the country and to specify in which areas the Mission could usefully contribute to preventing torture and ill-treatment. Furthermore, she wished to know the position of the Guatemalan Government with regard to the punishments administered according to the native peoples' custom for punishing acts against the social order (such as the lack of respect to elders and adultery) which consisted in subjecting the guilty party to public flagellation. Did the State encourage or condemn such practices?

29. Noting that the Guatemalan delegation had admitted that in regions far from the capital a prisoner could be kept in police custody for 8 to 15 hours before being brought before a judge, and that the police had hesitated in placing prisoners in contact with a lawyer and in assisting aliens in alerting the consular authorities of their countries in cases of arrest, Ms. Belmir wished to know what the state party was doing to remedy these violations of the Convention and other international agreements on human rights. Furthermore, she wondered whether the fact that members of the army participated in operations for maintaining security and fighting against criminality -- areas that should be exclusively the domain of the

police -- was compatible with the objective pursued by the Guatemalan Government, which was to place the law on healthy foundations.

30. Ms. SVEAASS asked the Guatemalan delegation to indicate whether the families of disappeared persons were receiving support during the investigations and whether, in the context of the activities under way of exhuming common graves, investigations should be opened regarding the massacres that had not yet been made the subject of investigations.

31. Ms. ALVAREZ ORTÍZ (Guatemala) indicated that Guatemalan labor law did not permit the direct dismissal of members of the police from their positions, the Constitutional Court having suspended the application of an article of the law authorizing the direct revocation of members of the security forces on the basis of a disciplinary proceeding. With respect to the participation of the army in the operations of the fight against criminality, it was appropriate to indicate that the police were cruelly lacking in personnel, and since the State did not have the 5 million quetzales that would be necessary to train new police officers, it had been decided, in view of the Constitution and the pertinent domestic legislation, to temporarily integrate 2,400 soldiers trained in this manner within the police forces, who would fall directly under the Ministry of the Interior. Further sufficient information was available on the website of the Ministry (www.mingob.gob.gt).

32. With regard to the question of amnesty for those who have committed war crimes and acts of torture, the State was required to respect the decisions handed down by the Constitutional Court before the reform of April 2006, even if they were marred by contradictions. In any case, victims and the relatives of victims who were dissatisfied by these decisions could file an appeal for a new trial with the new Constitutional Court.

33. As regards protection for defenders of human rights, Ms. Alvarez Ortíz indicated that the Public Ministry and the Vice Minister of Justice were jointly organizing all the activities associated with protecting the parties to a proceeding, including defenders of human rights. Currently, 550 members of the division of the national police charged with the close protection of the parties to a trial were trained in this type of task. The Public Ministry and the Ministry of the Interior had recently created a human rights office charged with following up on this question.

34. Mr. WOLTKE (Guatemala) indicated that in Lima, justices of the peace and judges of the courts of first instance guaranteed a presence day and night so that suspects who were arrested by the police and placed in police custody could be brought before a judge around the clock, in conformity with the Constitution. With regard to the native peoples' custom of subjecting a party who is guilty of minor infractions to public flagellation, Mr. Woltke recalled that in Guatemala, the native peoples' custom and the written law coexisted, and that it had been these native communities themselves that required that the custom be applied before the written law. Inasmuch as this presented problems of applying the written law in certain regions, the Supreme Court has created a commission composed of judges and representatives of native peoples and had concluded arrangements with the interested communities so as to regulate conflicts among existing laws.

35. Ms. ALVARZ ORTÍZ (Guatemala) indicated with regard to capital punishment that a draft law seeking to regulate stays of execution in death penalty cases had been submitted to Congress for approval. However, in response to the increase in

the number of female victims of crimes and of homicide and considering that this problem should be approached from all angles at the same time, the Government had charged the presidential Secretariat for Women to coordinate the activities of the executive, legislative, and judicial agencies as well as those of nongovernmental organizations, the Human Rights Prosecutor, and the relevant public and private institutions with a view towards achieving a deeper analysis of the situation and preparing a draft overall policy to resolve this alarming problem.

36. With respect to the allegations of ill-treatment inflicted especially on labor leaders in the context of social conflicts, Ms. Alvarez Ortíz indicated that the victims had had the opportunity of filing a complaint anonymously on the website of the national police or of making use of the emergency telephone line set up for this purpose. Nevertheless, for the reasons described above, it was still difficult to dismiss members of the police who had committed this type of violation or who were implicated in cases of corruption.

37. With respect to the penal system regarding material and moral responsibility for a crime, Ms. Alvarez Ortíz indicated that a draft law on organized crime seeking to punish more severely the instigator of the crime had been submitted to the Congress, which had not yet passed it, judging as too mild the penalties that had been proposed by the Ministry of the Interior. Thus, for the moment, the material perpetrator and the instigator of a crime were not distinct in domestic law, but it was planned to establish such a distinction. With respect to the question of due obedience, nothing required obedience to orders that violated the law and, according to jurisprudence, due obedience did not constitute a reason for exoneration of guilt. Under the law, whoever committed illegal acts, whether acting on their own accord or in obedience to the orders of a superior, was criminally responsible for their acts.

38. Succinctly describing the context in which the forced expulsions of peasants had taken place, Ms. Alvarez Ortíz indicated that the State was constrained to assist the native communities in having access to land and had created for this purpose a Secretariat for Agrarian Affairs. Moreover, it was providing subsidies making it possible to sell land to them at a symbolic price so that they could set up community development projects. Nevertheless, the coffee sector had been powerfully affected by the collapse in prices, and as a consequence many enterprises had gone bankrupt and had been forced to sell their agricultural lands. The transfer of these property assets had been the object of judicial decisions, whose implementation the State was required to guarantee. When such decisions had to be carried out, the native populations living on these lands were first of all invited by a conciliation group originating in civil society to leave them voluntarily. In the case of the failure of these negotiations, the Minister of the Interior, in coordination with the Ministry of Justice, called on the security forces, who were instructed to avoid an excessive use of force. A representative of the Prosecutor for Human Rights was invited to be present at these operations as a witness.

39. With respect to flagellation, Ms. Alvarez Ortíz recalled that the native custom was recognized by the Constitution and by the Convention No. 169 with regard to indigenous peoples and tribes by the International Labor Organization, to which Guatemala was a party, and she emphasized that domestic law often stipulated more severe punishments than the native customs, which principally sought to preserve social harmony while privileging measures for re-adaptation at the expense of punishment. However this might be, the State was in no way encouraging corporal

punishment and reacted in cases of violation, but for this purpose it was necessary that the victim lodge a complaint herself with the competent jurisdictions.

40. With respect to police custody, the Constitution stipulated that the prisoner must be brought before a judge beginning in the sixth hour after his arrest and no later than 24 hours thereafter. Prison institutions were prohibited from admitting prisoners whose placement in detention had not been ordered by a judge. It was appropriate to indicate that due to the efforts made by the judges charged with carrying out the punishments, the number of detainees awaiting judgment had fallen, from 8,500 in November 2005 to 7,100 in May 2006. When a suspect was apprehended outside of the working hours of the judicial administration, the decision to place a person in provisional detention could be taken by a justice of the peace in the case of a minor infraction, but with respect to serious infractions, the prisoner had to be brought before a judge of the first instance on duty, who was authorized to make such a decision. Finally, when the detainee was a non-citizen, the Guatemalan authorities were required to contact the ambassador of his country and to place an interpreter at his disposal, without which his detention would be illegal.

41. Mr. DE LEÓN (Guatemala), with respect to the control of arms and ammunition, explained that when a person requested a permit to carry a weapon, the judicial documents provided by the Supreme Court and by the Ministry of the Interior were systematically compared in order to reduce the risk of errors.

42. Ms. SALAZAR (Guatemala), responding to a question raised by a member of the Committee, explained that there currently was no draft law seeking to resolve the problem of amnesty. With respect to the investigation into persons who had disappeared, the families of the victims and the NGOs assisting them had been consulted in the context of the investigation.

43. Ms. STALLING (Guatemala), with respect to resorting to flagellation, explained that a judgment of the Supreme Court recognized the native peoples' rights of administering this traditional punishment. However, the Special Rapporteur on the situation of human rights and of fundamental freedoms of native peoples was currently engaged in establishing whether it really was a question of a traditional practice, inasmuch as certain native chiefs had asserted that this punishment did not have a Mayan origin but rather a Spanish one. With regard to police custody, the law stipulated the time limit for appearing before a judge and provided that no one could be imprisoned without a decision of the latter. However, in certain cases, detainees were often jailed on the order of a justice of the peace while waiting to be heard by a judge of the first instance. In the interior of the country, since there were not enough magistrates, often several days went by before a person placed in police custody was brought before a judge.

44. Ms. CORZO (Guatemala), responding to a question of Ms. SVEAASS, confirmed that the figures that she had provided came from the national commission on investigating disappeared children.

45. The PRESIDENT thanked the delegation for having contributed to a fruitful dialogue with the Committee.

46. *The Guatemalan delegation retired.*

The first part (public) of the session came to an end at 5:25 p.m.