

Human rights violations in Guatemala

ALTERNATIVE REPORT TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE

INCLUDING THE COMMITTEE'S CONCLUDING OBSERVATIONS

36th Session

MAY 2006

A project presented by



And coordinated by



Human Rights Violations in Guatemala

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The research and publication of this report was made possible with the financial support of the European Union and the Swiss Confederation.

The views expressed in this report are solely those of the NGO coalition.

First Printing: November 2006

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UNTB/CAT/36/2006/GUA/EN

ISBN 2-88477-145-X

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The World Organisation Against Torture (OMCT) coordinates the activities of the SOS-Torture Network, which is the world's largest coalition of non-governmental organisations fighting against torture and ill-treatment, arbitrary detention, extrajudicial executions, forced disappearances, and other serious human rights violations. OMCT's growing global network currently includes 282 local, national, and regional organisations in 92 countries spanning all regions of the world. An important aspect of OMCT's mandate is to respond to the advocacy and capacity-building needs of its network members, including the need to strengthen the participation of the non-governmental organisations in the work of the United Nations Treaty Bodies and to advocate for full implementation of human rights treaties. OMCT also ensures that children's and women's rights are fully integrated in the work of these bodies.

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Foreword

Writing alternative reports to the United Nations Treaty Bodies (in particular the Human Rights Committee and the Committee against Torture) is an essential activity of OMCT which complements direct assistance to victims of torture and other cruel, inhuman or degrading treatment or punishment.

These reports are an important source of information for the independent experts of the various committees, charged with the evaluation of the implementation of the United Nations human rights treaties. The reports present, as objectively as possible, a general picture of the situation in the country concerned and contribute a critical examination of government action to eradicate torture and other cruel, inhuman or degrading treatment or punishment.

With the financial support of the European Union and the Swiss Confederation, OMCT's "United Nations Treaty Bodies Programme" together with its "Children's Rights" and "Violence Against Women" programmes, has coordinated the writing and submission of this report on human rights violations, with particular focus on the practice of torture and ill-treatment in Guatemala, on the occasion of the 36th Session of the Committee against Torture, held from 1 to 19 May 2006. During this Session, the Committee reviewed the Guatemalan State Report regarding the implementation of the rights contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

This report was jointly prepared with four non-governmental organisations (NGOs) active in the defence of human rights*. Representatives from these NGOs were present in Geneva for an information session during which, in addition to presenting this report, they shared their observations and concerns regarding this issue with members of the Committee against Torture.

This publication will be of great use in lobbying efforts at both the national and international levels. It includes the List of Issues, Concluding Observations and Recommendations adopted by the Committee against Torture at the close of the session.

* Casa Alianza Guatemala, Institute for the Comparative Study of Criminal Law in Guatemala, National Movement for Human Rights and the Human Rights Office of the Archbishop of Guatemala.

Additionally, a follow-up mission to Guatemala is planned, with the purpose of helping to ensure compliance with the Committee's Recommendations and to carry out human rights training activities. This mission will take place within six months of the Committee's adoption of its Concluding Observations.

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1. General introduction

The Guatemalan Government has presented four periodic reports to the Committee against Torture. The fourth report covers the period from 2000 to 2003 and was submitted on 27 May 2005. The situation has not changed, as this report reveals, because many of the conditions that facilitate the persistence of torture and other ill-treatment continue to be in place, without substantial changes. The State has taken some action but has done so without a systematic plan that conforms to the obligations established by the CNUT and the Recommendations of the United Nations Committee against Torture. This is evidenced by a series of recommendations that continue to await concrete action on the part of the Guatemalan Government.

For this reason, the World Organisation Against Torture and a group of Guatemalan human rights organisations have prepared the present report for submission at the May 2006 session of the Committee against Torture.

1.1 Report Authors

National Movement for Human Rights (Movimiento Nacional por los Derechos Humanos – MNDH)

Ruth del Valle Cobar, Executive Director

The National Movement for Human Rights is a national network of human rights organisations and was integrated in 2000. MNDH is currently processing its legal status. The organisation works in the human rights field applying an integral focus, with offices in 12 of the country's 22 departments. Its mission is *"to construct a solid movement for the defence and promotion of human rights, and to construct a space where community organizations and local institutions, both regional and national, come together to develop proposals and actions in order that Government institutions implement the Peace Accords and the recommendations of the Historical Clarification Commission"*¹,

1 The Historical Clarification Commission (Comisión de Esclarecimiento Histórico – CEH) was established by the United Nations in fulfilment of the Peace Accords that created it, with the purpose of investigating and documenting acts of violence which affected the Guatemalan population during the 36 years of civil war (1960-1996). The Commission operated for approximately two years and presented its report "Guatemala: Memory of Silence", on 25 February 1999.

develop public policy related to human rights and comply with international treaties and agreements which it has signed”.

Casa Alianza

Arturo Echeverría, National Director, and Claudia Rivera (Communication and Development)

Casa Alianza is an independent, non-profit non-governmental organisation dedicated to the rehabilitation and defence of children and adolescents who live in the streets of Guatemala. Its mission is to serve abandoned children and to protect and safeguard children from physical and psychological abuse, sexual exploitation and addiction. It was founded in Guatemala in 1981.

Casa Alianza has presented complaints against the Guatemalan Government in response to violations of the rights of the child before the Inter-American Commission on Human Rights in Washington and the Inter-American Court of Human Rights in Costa Rica.

Institute for the Comparative Study of Criminal Law in Guatemala (Instituto de Estudios Comparados en Ciencias Penales de Guatemala – ICCPG)

Claudia Paz y Paz Bailey, Executive Director

ICCPG is an academic non-governmental organisation working in the area of human rights and criminal justice policy. It promotes investigation, training, consultation, public relations and disclosure, in order to contribute to the construction of a political, democratic movement of thought and action that respects human rights. The Institute employs two strategic axes of intervention: structural reform and vulnerability. The latter encompasses three areas of intervention: 1) criminal justice and deprivation of liberty, 2) human rights and 3) children and violence. In each area the Institute's objectives include the prevention of torture and other ill-treatment of women and children, as well as of men deprived of their liberty.

Human Rights Office of the Archbishop of Guatemala (Oficina de Derechos Humanos del Arzobispado de Guatemala – ODHAG)

Bishop Gonzalo De Villa, General Coordinator and Nery Estuardo Rodenas Paredes, Executive Director

The Human Rights Office of the Archbishop of Guatemala (ODHAG) was conceived on 15 January 1990, and was created by a decree of the Archbishop on 8 May 1990. The institution's human rights experience dates to 1989, when the Catholic Church, observing events in the nation, identified the need for legal consultation and accompaniment of Guatemalans with nowhere to seek help and no resources to obtain legal services, particularly in cases of rights violations by the State. Currently, the Office collaborates with the Danish Rehabilitation and Research Centre for Torture Victims, which provided research support prior to the drafting of this report.

1.2. Methodology

Following OMCT's call for participation, the selected organisations met to define and discuss the issues that the report would address. Representatives from each organisation agreed to focus on particular issues, which the organisation itself subsequently approved. The issues were assigned according to specialisation:

- MNDH: general issues relating to human, civil, political, economic, social and cultural rights; general context; human rights defenders; forced disappearance commissions; reparations; social cleansing and gangs; femicide.
- Casa Alianza: all aspects of issues relating to children and adolescents: torture and cruel treatment, deprivation of liberty, social cleansing of youth, etc.
- ICCPG-ODHAG: adults deprived of liberty.
- ICCPG: legal issues related to the Convention; issues related to women.

Testimonies utilised were taken directly by the organisations.

A political analysis of current events in Guatemala was undertaken, strengthened by the contributions of organisation members.

Monitoring and analysis of the role of media in Guatemala was also undertaken in order to identify some of the issues explored in the report.

Ultimately, we presented our analyses, which were then integrated by a single individual (MNDH) for the drafting of the final document sent to OMCT.

2. General Context

2.1. Historical context and the general human rights situation

At the end of 1996, Guatemala overcame its internal armed conflict which had lasted more than 36 years. Today, nine years following the signing of the *Agreement for a Firm and Lasting Peace*, the problems that provoked the conflict remain to be resolved; they are structural problems resulting from the lack of fully effective human rights in our country.

In respect of civil and political rights, the situation in the country leaves much to be desired. We face persistent impunity for human rights violations committed both during the war and in the present day.

With regard to Civil Defence Patrols (Patrullas de Autodefensa Civil), the CAT Recommendations to the Government of Guatemala (A/51/44, Paras. 42-57) call for their total abolition (57 g). It is important to point out that Civil Defence Patrols (PACs) emerged at the end of 1981² as a part of the counterinsurgency strategy of General Romeo Lucas García's government, though they were legally recognised by Government Agreement (Acuerdo Gubernativo) 222-83, on 14 April 1983. Following the *coup d'état* led by General Efraín Ríos Montt (22 March 1982), the PACs worked in coordination with Army campaigns *Victoria 82* and *Firmeza 83*. The activity of the PACs was united with that of the Military Commissioners, as civilians collaborating with the Army's counterinsurgency effort. The first human rights violations committed by these forces date to this time period³, with the "*military objective of saturating the armed conflict area with civil patrols, prioritising the departments designated by the army as 'red' or 'pink zones'*"⁴

"General Efraín Ríos Montt institutionalised the civil patrol system as an additional element of the socio-economic development plan, in support of the 'guns

2 The Historical Clarification Commission indicates that it was General Benedicto Lucas García, brother of then President of Guatemala Romeo Lucas García, and Chief of Defence, who initiated the organisation of the PACs, forcing the population to collaborate with the army. See: CEH, Guatemala: Memory of Silence, Book II, p. 182.

3 CEH, Op. Cit., p. 184.

4 *Idem*, p. 185. Red zones were highly dangerous areas; pink zones were moderately dangerous areas.

and beans” counterinsurgency operation under campaign Firmeza 83-I, which was implemented during the de facto government period.”⁵

The PACs were legally disbanded following approval of the Constitution of the Republic of Guatemala in 1985. Article 34 of the Constitution established that “*No one is obliged to associate nor be a part of self-defence groups or associations or similar groups*”. The PACs were therefore renamed Voluntary Civil Defence Committees (Comités Voluntarios de Defensa Civil, CVDCs), according to Decree-Law 19-86 of 10 January 1986⁶, a week before the first civilian president elected by popular vote, Vinicio Cerezo, took office. According to the CEH⁷, the CVDCs performed the same functions that the PACs had carried out in the Army’s counterinsurgency struggle.

The years 1993 and 1994 saw social movements as well as statements by the Human Rights Ombudsperson calling for the repeal of Law 19-86 in order to dissolve these groups. International experts, such as Christian Tomuschat (1992) and Mónica Pinto (1995), also made statements against the PACs. The PACs were officially dissolved in 1996, and at that time 2,643 CVDCs were reported to exist⁸. Demobilisation primarily took place in Colotenango, Huehuetenango on 9 August 1996. By December 1996, 270,906 PAC members were reported demobilised⁹.

Nevertheless, it is clear that the PACs continued in many regions. The governments – that of Portillo (2000-2004) as well as that of Berger (2004 until today) – together with leaders of these groups, have negotiated compensation for services rendered to the army during the war. This has generated not only a strengthening of the patrols’ belligerent and aggressive position in the communities, but also the deception and frustration of the victims upon seeing those who acted as victimisers alongside the army receive compensation for having done so. To carry out this plan, the Government created a trust within the Ministry of Agriculture, called “Forests and Waters for Harmony” (Bosques y Aguas para la Concordia). In exchange for planting

5 *Ibid.*, p. 187.

6 According to the CEH Report, at that time the number was reduced to 600,000 persons. See p. 232.

7 *Ibid.*, p. 231.

8 *Ibid.*, p. 234.

9 *Ibid.*, p. 234.

trees, beneficiaries will receive 445 million quetzales as compensation. This began on 20 December 2005¹⁰.

Lynchings of minors during 2005

“The defence of one’s person and one’s rights is inviolable. No one may be sentenced or deprived of his/her rights without having been charged, heard and convicted in a lawful trial before a competent and previously established Judge or Tribunal”. (ARTICLE 12, Political Constitution of the Republic)

Lynching has been another significant problem in recent years. Lynching occurs primarily in the interior of the country. These acts occur with greater frequency against adults accused of crimes, rapes, or even child kidnapping. However, the fact that lynchings are also committed against minors reflects a grave loss of the value of human life.

We therefore mention some of the cases of lynchings against minors, such as Juan Juárez Guico, 14 years old, who was beaten and sprayed with gasoline by residents of Joyabaj, Quiché, on 21 May 2005¹¹. The same occurred to Josué Abiel Zepeda, 15 years old, who was lynched and burned by residents.

2.2 Socio-economic context

Conflict regarding land use and possession is a very sensitive issue in the country. A clear policy exists not to modify the concentrated distribution of

10 On 31 January 2006, the newspaper *La Hora* reported, “The government has paid 50 million quetzales to former Civil Defence Patrollers, as of today”. This information was provided following an interview with Efraín Oliva, undersecretary of the President’s Executive Coordinating Secretariat, who headed the commission that negotiated with the patrollers. It is presumed that 45,000 patrollers will immediately be compensated, although the total number of patrollers to be compensated is 544,620. On 18 February 2006, the newspaper *Prensa Libre* also confirmed that payment took place in the region of Poptún, Petén.

11 Source: *Nuestro Diario*.

land; this concentration deprives the farm worker population from principal benefits. The State disregards the proposals of social organisations for sustainable rural development, and instead pursues a proposal based on the rules of the market. The conflict manifests itself not only in the misery in which the majority of Guatemalan farm workers live. It is also evident in confrontations with security forces during violent evictions by the State of farm workers occupying land because of lack of resources or in order to claim their labour rights in response to landowners who do not comply with them. The security forces have acted violently in all such cases, and capture orders against farm worker leaders and the attorneys who assist them (including the Land Ministry of the Catholic Church) are increasing.

The land problem is truly a time bomb in Guatemala. By offering no real solutions, the State contributes to problems instead of resolving them. It has created entities such as the Land Fund (FONTIERRAS), which farm workers say is inoperative, and the Secretary of Agrarian Concerns (formerly CONTIERRA), which has not demonstrated the capacity to resolve existing conflicts.

The struggle against land evictions has been strong throughout the country, especially in regions where land tenure is concentrated in the hands of a few, or where large expanses are dedicated to crops for export. In the Alta Verapaz region, the labour relationship with farm workers is a colonial one; even today, the workers work in mediaeval slavery conditions. Organisations such as UVOC in Alta Verapaz, and others in the Southern Coast of the country, as well as the Catholic Church's Land Ministry offices, have been persecuted, maligned and attacked for their work for the rights of farm workers facing evictions. These reports have been presented before international fora, though not before the International Labour Organisation or the Inter-American Commission on Human Rights.

We can affirm that there is no effective policy of environmental protection. The policies of the current government have permitted the handing over of non-renewable natural resources to transnational corporations, pursuant to a grant law that significantly disfavours Guatemala and guarantees the State no profits. An example is the case of the strip mining industry; various regions of the country will be affected by the extraction of gold, but the benefits that Guatemala will receive scarcely reach 1%. This is because the communities have not been heard nor have popular proposals been considered, even though Agreement 169 of the International Labour Organisation (ILO) mandates their consideration.

In terms of problems generated by the approval and implementation of the Free Trade Agreement (FTA) with the United States, it is important to point out that civil society organisations asked to participate and be heard throughout the negotiation process. They repeatedly received a negative response from the State. The only parties heard were large corporations, without regard to the significant problems the FTA creates for small and medium producers.

The studies undertaken demonstrate that neoliberal globalisation and free trade agreements, principally the FTA CAFTA-DR, which entered into force in 2006, will negatively impact living conditions of the general population. Opening the market under conditions that disadvantage Guatemala, through the inequality of economies and without provisions for competition, tends to aggravate poverty and negatively influence economic, social and cultural rights. Agricultural production, particularly basic grains, is at great risk due to the high subsidies imposed by the U.S. on agricultural products for export. For this reason very poor farm workers who are dependent on agricultural production may find their nutritional self-sufficiency and security seriously affected.

Guatemala has high unemployment rates. In an Economically Active Population (EAP) of 4,990,230 persons, unemployment has risen to 39%. Of those who are employed, formal employment is up to 24.6%, while 75.4% work in the informal sector; this rate also tends to rise.

The situation of women factory workers (*maquilas*) has worsened due to the effects of the FTA, which has caused competition, changes in production systems and methods, restriction of labour rights and an increase in the ranks of unemployed persons willing to accept working conditions inferior to those established by labour laws, primarily in terms of salaries and length of work days.

The Guatemalan Government, in its weakness, tends to forge alliances with transnational corporations though it does not have the capacity to negotiate the rules of the game. This is to the clear detriment of the living conditions of Guatemalans. An important example is transnational medical corporations' opposition to the sale of generic medications that would benefit the low-income population.

In this unfavourable context, an increased wave of migrants toward the U.S. is foreseeable. The rights of migrants are profoundly vulnerable. However,

in economic terms our country increasingly depends on remittances sent by migrants in the U.S., which this year will reach three billion (mil millones) quetzales. According to reports from the Human Rights Legal Action Centre (CALDH), for the month of October 2005 remittances to Guatemala from migrants totalled US\$ 2,455,600,000, 18% more than in 2004. This makes such remittances the second source of the country's revenue, exceeded only by coffee exports. Remittances generate much more revenue than do the tourism, textile and sugar industries. Increasing obstacles to labour migration to the U.S., and deportations from the U.S., will therefore spell disastrous consequences for the domestic finances of the Guatemalan people. These aspects were not taken into account during the FTA negotiations, and there is no expectation of a United States policy that would benefit migrants. Indeed, the difficulty of passing laws in the U.S. demonstrates the imposing character of the current North American government.

The tendency of basic need basket prices to rise due to increased petroleum prices will persist without addressing decreased worker buying power through a higher minimum wage. The minimum wage is currently at 42.46 quetzales (the agricultural minimum wage, approximately US\$ 5.58) and 43.64 quetzales (non-agricultural wage, approximately US\$ 5.74) per day, which is not enough to cover the basic necessities of one person, let alone of a family. The government and business sectors are resistant to a minimum wage increase, and insist on establishing a *productivity-based salary*. This measure would only increase the ranks of the unemployed.

In terms of nutritional security, according to information obtained by CONGCOOP-CIIDH¹² in April 2005, the Minister of Agriculture “*had identified 848 communities facing nutritional risk*”. These communities are located in 113 municipalities, in 16 of the country's 22 departments. In April 2005, Congress approved Decree 32-2005, which established the National Alimentary and Nutritional Security System. Participants in the November 2005 International Conference on the Challenges of the Right to Food pointed out that the problem of hunger is a problem of “*inequality, social exclusion, marginalisation and the concentration of land and wealth*”¹³.

12 CONGCOOP-CIIDH, Economic, Social and Cultural Rights. A challenge to peace. Social Spending Observatory. 5th report, January - December 2005. Guatemala, p. 47.

13 Idem, p. 48.

Concerning investment, a policy to stimulate foreign investment predominates. This means the creation of free trade zones, exempt from taxes, and a general policy of exemption. The policy produces capital flight: the same actors who invested in the opening of the market are now withdrawing their investments.

In terms of social issues, it is interesting to note that four months after tropical storm *Stan* devastated 824 towns, the Government has still not presented a real plan for their reconstruction nor for the prevention of future disasters. This is despite having already identified the possibility of future hurricanes in the region.

The conflict between the government and the national teaching profession worsened in the first months of 2006 with serious criticisms of the ministerial office. Among the criticisms are the ministry's unwillingness to engage in dialogue or to consider the positions of various actors. The lack of access to education, as well as to health and housing, are grave problems that persist in the country.

With regard to economic, social and cultural rights, in 2005 civil society organisations presented an alternative report to the CDESCR. The report describes the State's lack of attention to the problems of land, food, housing and services, as well as insufficient attention to sanitation and educational needs, among others. It is important to recall that in its examination of the Guatemalan Government's initial report, the CAT (A/521/44, paras. 42-57) identified one of the impediments to the application of the Convention in Guatemala as the "wide disparity in the distribution of the economic wealth in the country creating conditions that may tend towards confrontation between the law enforcement organs and those parts of the population which are at the lowest end of the economic and social scale." (para. 51). This reality continues in the country and is reflected in persistent social conflict. Notable examples include demonstrations demanding better salaries, and demonstrations demanding an end to violent evictions of farm workers demanding land, violent evictions of farm workers demanding benefits from employers who do not comply with the law and evictions of homeless persons. Additionally, constant protests respond to the rise in basic needs basket and transportation costs, with no State response that would regulate prices or benefits for the neediest sector of the population.

In summary, the human rights situation in Guatemala has changed somewhat significantly since the time of the war. Although there is no longer an

institutional policy of rights violations by the State, there is no response or guarantee of the protection and promotion of rights, while economic conditions have deteriorated considerably and social conflicts have intensified. Natural disasters have made obvious the great inequalities that exist in the country.

2.3. Guatemala's Political Structure

Articles 140 to 143 of the Political Constitution of Guatemala set forth the State's form of government. The government consists of three powers: executive, legislative and judicial, none of which may be subordinated to any other.

The executive is composed of the president, vice president, ministers, secretaries and departmental governments. The single-chamber legislature comprises 158 members. The judiciary is formed of the Supreme Court of Justice, courts, appellate courts, the exchequer and the contentious administrative court.

In addition, the political-administrative division of the country consists of 22 departments, which include 332 towns ("municipios"), which are subdivided into smaller units called *aldeas*, *caseríos* or *cantones*, depending on the number of inhabitants. Each department has a governor, who is appointed by the President of the Republic. Each town has a municipal council, elected by universal suffrage and consisting of a mayor, trustees and council members.

The Constitution also mandates the existence of a Human Rights Ombudsperson (PDH) (National Human Rights Institution, Ombudsman) and a Constitutional Court to monitor compliance with the National Constitution. The members of this Court include five senior judges and five substitute judges, selected by the Bar Association, the Congress of the Republic, the Superior Council of San Carlos University of Guatemala, the President of the Republic and the Supreme Court of Justice. The Human Rights Ombudsperson is selected by the Congress of the Republic, from a group of three candidates presented by the Human Rights Commission of the same institution. The Ombudsperson presents an annual report before this Commission. This Ombudsperson defends women's rights, the rights of the child, labour rights, migrant rights and adults' rights. There is also a

Victims' Office, which employs a sound methodology of attention to victims, but few resources are made available for its operation.

WOMEN'S RIGHTS

Various bodies address issues related to women's rights¹⁴.

The Presidential Women's Secretariat - SEPREM:

Feminist and women's organisations worked to create a national women's institute, and a proposal was made to the previous government. At that time, the legislative climate did not favour approval of such a proposal. For that reason, the creation of an executive secretariat was agreed upon. Among its functions is support for the creation of a National Women's Institute (INAM). Currently, SEPREM is the coordinating and advisory body that addresses public policies for the integral advancement of women. The President of the Republic appoints its Secretary, selecting from a list of ten candidates proposed by the coordinating committees of women's organisations (a necessary condition). The Secretary serves for an unspecified term. The Secretariat's budget was negotiated by representatives from women's organisations, as was the selection process and the founding agreement. Currently the Secretariat budget is 13 million quetzales, 1.5 million of which are allocated to CONAPREVI. It must be noted that currently two million quetzales have been arbitrarily allocated to an entity called the Domestic and Sexual Violence Survivor Network Foundation.

A collaborative effort to coordinate recently proposed public policies resulted in the National Policy for the Promotion of Development of Guatemalan Women and the 2001-2006 Equal Opportunity Plan. The goals are continuity in the face of government changes and an outline of attainable State policy goals. The coordination process became possible through the participation of the coordinating committees of women's organisations and representatives of State institutions. Despite its clear political mandate, SEPREM has not respected the historical agenda of the women's and feminist movement, which has requested a coordination mechanism, and has received no response.

14 Information supplied by women's organisations.

Social Works Secretariat of the First Lady - SOSEP:

Created under the Álvaro Aarhus government (1996-2000), this office supports family-focused women's projects with a very conservative vision. It operates with a budget of 132 million quetzales, and with the Social Welfare Secretariat's 2006 budget of almost 182 million quetzales.

National Commission for the Prevention of Intrafamily Violence - CONAPREVI:

CONAPREVI is a consensus effort among State organisms which are responsible under Law 97-96 for the prevention, sanction and eradication of violence against women, together with feminist and women's organisations. Its strategy was elaborated by member organisations of the Network Against Violence Against Women, and later assumed by broader components of the women's and feminist movement nationwide. The Network also conducted the negotiation, with political backing from the organisations. After many years as a proposal on the agendas of presidential candidates, CONAPREVI came into being on 5 January 2001.

CONAPREVI is a commission at the highest level of the State, composed of various bodies. From the public sector it is composed of the President of the Republic, represented by SEPREM; the Attorney General of the Republic or his or her representative; the president of the judicial organism or his or her representative; the president of the board of directors of the INE (Ministry of the Economy) and the director of PROPEVI (an agency of SOSEP for the prevention of violence). The private sector members are three representatives of the Network Against Violence Against Women (acting as representatives of the women's and feminist movement).

CONAPREVI is responsible for the coordination, assessment and support of public policy to prevent, address, sanction and eradicate intrafamily violence and violence against women. Its strategy derives from the National Plan for Prevention and Eradication of Intrafamily Violence and Violence Against Women (PLANNOVI 2004-2014), and therefore entails investigation, prevention, sensitisation and holistic attention to survivors of violence, as well as strengthening organisations committed to the same objectives.

National Office for Women - ONAM:

ONAM is the oldest office that addresses women's issues. It was created about 25 years ago and is a part of the Ministry of Labour. Its role has always been a marginal one, and it has no budget or specific strategic plan.

Office of the Advocate for Indigenous Women - DEMI:

Created following the Peace Accords, this office addresses issues specific to indigenous women. Its head is appointed by the President of the Republic.

Special Prosecutor for Women, Public Prosecutor's Office:

This prosecutor specialises in issues affecting women. We note, however, that cases of femicides were withdrawn and assigned to a special office.

Office of the Advocate for Women, of the Human Rights Ombudsperson's Office (PDH):

The PDH has a women's ombudsperson, who addresses similar issues.

2.4. The situation of human rights defenders

The situation of human rights defenders is a determinative factor in the construction of democracy in any country. The Special Representative of the UN Secretary General visited Guatemala to investigate this situation and has clearly indicated the gravity of the risks that defenders must face in Guatemala in order to carry out their work.

It is also clear that civil insecurity is more serious than before for all Guatemalans. According to statistics from the National Civil Police, the average number of violent deaths rose from 12.3 per day in 2004 to 14.6 in 2005¹⁵. The rate of violent deaths of women also increased, as did reports of social cleansing. Without a doubt, the situation of human rights defenders indicates the general deterioration of the rule of law in Guatemala. For this reason the problem of human rights defenders should inform any analysis of the general situation in the country.

15 See *Prensa Libre*, 24 January 2006, "Mueren 16 cada día" ("16 die every day"), p. 5.

Attacks have been directed at those who defend the right to justice and the struggle against impunity. However, in 2005 attacks against defenders of economic, social and cultural rights also increased. This was the same year which saw major struggles against the imposition of the Free Trade Agreement with the U.S., and against the granting of contracts for mining and for the construction of hydroelectric power stations to foreign companies. These contracts were granted without consulting the population (as required by ILO Agreement 169, to which Guatemala is a signatory) and without heeding the voice of the potentially affected population.

It is alarming to note that the previously predominant practice of phone threats is being replaced by direct personal threats. This shift indicates that aggressors no longer try to conceal their identities from the victims. At the same time, there has been an increase in attacks by parties identified as belonging to the local power elite (whether official authorities or the economic power elite). Various burglaries of organisation offices as well as theft of electronic and paper information have also occurred. Of greatest concern, however, is the manner in which judicial procedures are utilised against human rights defenders. Not only are human rights defenders held responsible for public disorder during their organised demonstrations, but criminal charges are also brought against them. This is deemed the *criminalisation* of the social conflict, and in this way many defenders are criminally prosecuted for their work.

It is also worrisome that, according to the records of the Human Rights Defenders Protection Unit, 77% of cases investigated in 2005 revealed prior planning; in other words, the attacks were not accidental or impromptu.

In terms of investigation of and criminal prosecution for the attacks, impunity persists despite the clearly identified responsibility of authorities who encourage criminal persecution of defenders (31), farmers (15) and police (12). All of these cases and information have been presented to the Public Prosecutor's Office.

Although the Presidential Human Rights Commission (COPREDEH) includes a defender protection unit, its work leaves much to be desired. It has been incapable of promoting the prevention of attacks against defenders. COPREDEH also has not efficiently carried out or monitored compliance with precautionary measures, for example, those that the Inter-American Commission on Human Rights has requested for some defenders.

3. Relevant legal framework

3.1. International legal framework

<i>Human rights organs</i> (Status of ratification) Entry into force	Report	Due	Received	Examined	Past due reports
CAT (05/01/90) 04/02/90	Initial Second Periodic Report Third Periodic Report Fourth Periodic Report	03.02.1991 03.02.1995 03.02.1999 03.02.2003	23.11.1994 13.02.1997 18.01.2000 08.12.2003	16.11.1995 07.05.1998 24.11.2000 Pending	0
CCPR (06/05/92) 05/08/92	Initial Second Periodic Report Third Periodic Report	03.08.1993 03.08.1998 01.08.2005	07.12.1994 06.10.1999	28.03.1996 18.07.2001	1
CEDAW (12/08/82) 11/09/82	Initial & Second Periodic Report Third & Fourth Periodic Report Fifth Periodic Report Sixth Periodic Report Seventh Periodic Report	11.09.1983 11.09.1991 11.09.1999 11.09.2003 11.09.2007	02.04.1991 20.03.2001 15.01.2002 07.01.2004	26.01.1994 12.08.2002 12.08.2002 Pending	0

Human Rights Violations in Guatemala

CERD (18/01/83) 17/02/83	Initial	17.02.1984	15.02.1984	01.08.1984	
	Second, Third, Fourth, Fifth, Sixth Periodic Report	17.02.1986	25.05.1994	14.03.1995	
	Seventh Periodic Report	17.02.1996	01.02.1996	06.03.1997	
	Eighth, Ninth, Tenth, Eleventh Periodic Report	17.02.1998	22.03.2005	27.02.2006	0
CESCR (19/05/88) 19/08/88	Initial	30.06.1990	04.01.1995	08.05.1996	
	Second Periodic Report	30.06.1995	27.03.2002	14.11.2003	
	Third Periodic Report	30.06.2008			0
CRC (06/06/90) 02/09/90	Initial	01.09.1992	05.01.1995	04.06.1996	
	Second Periodic Report	01.09.1997	07.10.1998	29.05.2001	
	Third, Fourth Periodic Report	01.03.2006			1
CRC OP on the Sale of Children, Child Prostitution and Child Pornography (09/05/2002) 09/06/2002	Initial	09.06.2004			1
CRC OP on the Involvement of Children in Armed Conflict (09/05/2002) 09/06/2002	Initial	09.06.2004			1
CMW (09/05/2002) 09/06/2002	Initial	01.07.2004			1

Total past due reports: 5

Other treaties	Ratification	Entry into force
Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment		
Only signed: 25.09.2003		
Optional Protocol to the International Covenant on Civil and Political Rights		
	(28.11.2000)	28.02.2001
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women		
	(09.05.2002)	09.08.2002

CONCLUDING OBSERVATIONS	
CAT	A/56/44, paras.67-76 (2000)
CCPR	CCPR/CO/72/GTM
CEDAW	A/57/38, Part III, paras. 172-208
CERD	CERD/C/304/Add.21
CESCR	E/C.12/1/Add.93
CRC	CRC/C/15/Add.154

3.2. Domestic legal framework

In respect of the hierarchy of these norms in domestic law, article 44 of the Constitution clearly enshrines the “*favor libertatis*” principle, in establishing that “*the rights and guarantees that have been established in the Constitution do not exclude others that, although not expressly mentioned in the Constitution, are inherent to the human person*”. It also establishes that “*in the matter of human rights, treaties and conventions accepted and ratified by Guatemala have pre-eminence over internal law*” (article 46). Despite this textual clarity, the Constitutional Court has indicated that international treaties do not prevail

over the Constitution and therefore “*do not constitute a standard for determining constitutionality*”. On this basis the Court has rejected claims of unconstitutionality in which the violation of international norms are directly invoked¹⁶. In this sense, the Convention against Torture may be directly applied by a judge.

On 18 December 1996, the Law of National Reconciliation was approved with the issuance of Decree 145-96. The law was promulgated pursuant to an agreement reached in the peace negotiations¹⁷ regarding the legal reincorporation of groups that had taken up arms against the State, and whose participation in political life was necessary to give legitimacy to the Guatemalan democratic process. This law expressly excludes the possibility of granting amnesty for the crime of torture (article 7).

Nevertheless, serious problems in its practical application arise from Constitutional Court decisions that refuse to apply directly the UN Convention against Torture, as well as other international instruments that prohibit obstacles to the investigation and prosecution of offences that are considered international crimes. In more than three consecutive rulings, which are precedential jurisprudence for the lower courts, the Constitutional Court has held that before initiating a criminal proceeding regarding incidents related to the internal armed conflict, the special proceedings created by the National Reconciliation Law should be completed, to determine whether the incident falls under an exception to this law. The Constitutional Court so ruled in the *Dos Erres* case, which addressed the massacre of 260 persons in the Department of El Petén. The Court’s ruling required that the case be submitted to the special proceedings under the National Reconciliation Law. Incidents attributed to members of the Guatemalan Army in this case include rapes, torture and the murder of women and children. The Constitutional Court judgements were issued in 2000, and the special proceeding in the *Dos Erres* case is still pending; the Law of Reconciliation (article 11) has not yet been applied to this case. In this way, the National Reconciliation Law has presented a procedural

16 Principle among these judgements one in which the Court refused to apply article 4.1 of the American Convention on Human Rights, where the death penalty was extended to the offence of plagiarism or kidnapping not resulting in the death of the victim. Gazette No. 60 file No. 872-00, page No. 362, judgement 28-06-01.

17 Point 20 of the Agreement, dealing with bases for the legal incorporation of the Guatemalan National Revolutionary Unity.

obstacle to the investigation of incidents related to torture and other of the most severe human rights violations¹⁸.

Article 2 of the Constitution guarantees the integrity and security of the person and establishes safeguard guarantees through the process of “amparo” and habeas corpus. Article 263 establishes that *“Any person illegally imprisoned, detained, or otherwise prevented from enjoying their personal liberty, threatened with the loss thereof, though his detention or imprisonment be based on the law, is entitled to request their immediate exhibition before the courts of justice, be it in order to have his liberty restored or guaranteed, to put an end to mistreatment, or to cease the coercion to which they might have been subjected”*.

RIGHTS OF THE CHILD

Article 11 of the Law of Integral Protection of Children and Adolescents (decree 27-2003) establishes that every child has the right not to be subjected to torture, cruel, inhuman or degrading treatment.

In respect of children and young people, article 56 of this law provides that children and adolescents must be protected from all forms of sexual exploitation or abuse, and article 76 sets forth the state obligation to ensure that public and private institutions assist children whose rights are threatened.

18 See in this sense the Report elaborated by RODRIGUEZ A. y ORTIZ, M.J. Impunity in Guatemala. ICCPG. Guatemala, 2004.

4. Definition of torture (Article 1 of the Convention against Torture) and relevant penal legislation prohibiting torture and ill-treatment (Article 4 of the Convention against Torture)

4.1. Analysis of legal provisions prohibiting torture (Constitution, Penal Code, Code of Criminal Procedure, etc.)

The Penal Code prohibits torture (article 201 bis) and cruel, inhuman or degrading treatment (article 425). In addition, Penal Code articles 14, 36 and 37 punish attempt, participation and complicity in acts of torture.

The CAT has issued a specific recommendation related to this issue: “The relevant provisions of the Penal Code, especially articles 201 bis and 425, should be amended to bring the definition of the offence of torture and its punishment into line with articles 1 and 4 of the Convention”.

In respect of compliance, the State declared that on 8 July 2005, the Presidential Human Rights Commission (COPREDEH) presented the Secretary General of the Presidency with a proposed reform of article 201 bis of the Penal Code, which defines the offence of torture in order to harmonise it with Convention provisions. Currently, the Secretary General of the Presidency has ordered the transmittal of the proposal to the legislature for its analysis and subsequent approval.

This is a repeated recommendation of the CAT, directing that the definition of torture be more precise, because according to the Convention against Torture, those contemplated in the crime of torture (201 bis) are public officials or other persons acting in an official capacity who inflict torture or who consent or acquiesce to the infliction of torture. The law regarding “abuses against individuals” (425) also addresses elements of torture, and should be repealed in order to rectify contradictions with article 201 bis, which expressly defines the offence of torture. Another aspect which contradicts the Convention against Torture is the penalty for the offence of abuses against individuals, which equally penalises the intellectual author and the material author. Lastly, the range of penalties is inadequate at two to five years, if one considers it is for cruel punishment and degrading

treatment. In some cases such treatment may result in physical and psychological injury, which would warrant, for example, a penalty of two to ten years (articles 144 to 148).

In terms of its non-compliance with its obligations, the lack of political will on the part of the Guatemalan Government is evident. The United Nations Committee against Torture has recommended this reform since 27 May 1998¹⁹. In May 2005²⁰ the Secretary General of the Presidency issued a favourable decision; however, this proposal has not been transmitted to the legislature for discussion and approval. In other words, the executive's analysis and decision-making process has taken seven years, a clearly unreasonable period of time.

4.2 The due obedience exception in cases of torture

In Guatemala due obedience regulations are lax and do not clearly prohibit the order of a superior officer or a public authority as a justification for torture. The Political Constitution of the Republic (Article 156) and the Penal Code (Article 25) demand, among other requirements, that the illegality of an order or command be “demonstrated”. This permits arbitrary interpretations in a context of recent repression and military participation in torture and massacres, and in a time when efforts to remilitarise internal security are strong.

WOMEN'S RIGHTS

Violence against Women

In terms of provisions that protect women's rights, in accordance with the text of Penal Code article 201 bis, rape as a form of torture is only contemplated in the provision that: *“torture is committed on orders from or with the authorisation, support or acquiescence of the State authorities”* and with the purpose of *“(...) obtaining from that person or a third person information or a confession concerning an act he has committed or is*

19 Concluding Observations of the Committee against Torture, Guatemala, 27/05/98. A/53/44, paras.157-166.

20 CAT/C/74/Add.1, 27 May 2005, para. 27.

suspected of having committed, or to intimidate or coerce him or other persons". The purposes enumerated in the Convention, which the CAT has emphasised as deficiencies to be corrected, are not contemplated: namely, the aim of "punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind". For this reason, legislative reform is imperative for the harmonisation of the criminal definition of torture with the definition contemplated by the Convention against Torture.

Rape and indecent abuses are prohibited in the legislation (Penal Code articles 173 to 180). Nevertheless it is important to note the provision of the Guatemalan Penal Code (article 200) permitting the abdication of criminal responsibility of the person who commits rape if he marries the raped woman. This rule has been impugned as unconstitutional, but the Court has not definitively resolved the issue²¹.

RIGHTS OF THE CHILD

The Guatemalan Penal Code does not establish a specific definition in its treatment of the torture of children.

An increased penalty for offences committed against minors is issued in the majority of cases. Regardless, the current Penal Code does not sufficiently define torture because it does not intensify when applied to minors.

Because the torture of minors is not specified, penalties apply depending on the type of offence. The majority of violent acts are classified as injury, serious injury, very serious injury, homicide, extrajudicial execution and murder.

When broadening the definition of torture, in accordance with recommendations of the CAT, the State should also impose a heavier penalty when the torture is committed against children and adolescents.

21 File 2818-2005, submitted 22 November 2005 by the Human Rights Ombudsperson. This is the situation as of May 2006.

As regards sentencing, there are cases in which penalties increase because the victim is a minor. This is the case especially in offences against decency and against sexual liberty and security. Also, if the victim of an extrajudicial execution is younger than twelve years old, the aggressor receives the death penalty. Aggravating circumstances also exist in the law. The Penal Code sets these forth in article 27, which provides that such circumstances exist upon *“executing the offence with disregard for advanced age or childhood, sex, illness or physical disability...”*. In addition, article 28 of this Code establishes that *“agents charged with public order who commit any offence against persons or their property, will receive twice the usual penalty for the offence committed.”* These articles make it possible to increase the seriousness of the offence where it is committed against a minor and in abuse of authority. Nevertheless, the Code does not establish increased penalties where the victim of injury or homicide is a minor.

In terms of intrafamily violence, in some cases of corporal punishment of minors in the care of their families (question 45), the authorities must intervene pursuant to articles 52, 53, and 54 of the Law of Integral Protection of Children and Adolescents. These articles establish that all children and adolescents must be protected from all forms of mistreatment, physical abuse, sexual abuse, neglect or negligent treatment and emotional abuse. They further provide that the State must create the necessary agencies for their physical and emotional recuperation.

5. The practice of torture and other cruel, inhuman or degrading treatment

After the signing of the peace agreements in 1996, torture has persisted as one of the most serious human rights violations in Guatemala. In the post-conflict era this practice is no longer an instrument of political repression directed by state authorities against those it considers dissidents. It is now principally a mechanism to obtain information about alleged criminal activity. The Inter-American Commission on Human Rights (CIDH) stated in its 2001 report:

“1. One of the deep concerns of the Commission during the armed conflict was the utilization of torture as a practice intended to sow terror not only in those directly targeted, but also in the population in general. That pattern and practice have, since the conclusion of the conflict, been transformed into a violation of the past. As is the case with other basic rights, the full implementation of the terms of the peace accords, in particular those concerning the security forces and the administration of justice, would support important additional advances in the protection of the right to personal integrity...”

“4. Further concerns about the right to personal integrity revolve around three principal issues. The first relates to the persistence of reports concerning the use of torture or inhumane treatment by agents of the security forces for the purpose of extracting information or ‘confessions’ from detained suspects. The second concerns threats to personal security arising in relation to the prison system.”²²

Civil security: repression and the evil known as *social cleansing*

The state approach to civil security and crime is not a preventive vision but a repressive one. For example, no programs for the prevention of juvenile delinquency exist; instead, the Ministry of Governance has implemented various plans designed to combat violence, which centre on the persecution of young people with certain physical and socio-economic characteristics.

22 CIDH, Fifth Report on the Situation of Human Rights in Guatemala, 6 April 2001.

Some of these include: “... *Plan Tornado, Plan Saturation and (...) Plan Clean Sweep, which share a common denominator: demonstrated ineffectiveness in reducing violence, persecution and judgement of those responsible for criminal acts, jointly implemented by the National Civil Police and the Army.*”²³

The plan “Safe Guatemala” includes various activities as reported by the PNC, such as the following: Operation Shell; security measures to implement in the case of possible unemployment in the health and hotel security sectors; large-scale anti-crime operations in the department of Petén; security for the area granted for the Rubelsanto exploitation of oil (in the north of the country); tourist security during “agostinas” (religious celebrations in the country); street patrols for transportation security, at the level of national security; securing roads via control posts in Shell operations; operations for civil security in zone 3 of Guatemala City (considered a *red zone* and controlled by drug traffickers, especially the area known as El Gallito); regional action against gangs and maras, known as Operation Angels; a special unit of the central Police staff; disarmament operations verification of government accords; security support during town fairs in various departments; disarmament and verification operations in the interior; security during the International Culture of Peace Festival; security for tourist groups dispersed among various points, especially Antigua, Cobán, Chichicastenango and Panajachel (places with great tourist affluence), with political backing; disarmament and verification compliance operations; a regional operation against gangs and maras known as Operation Oveja; presidential security; security during visits from vice presidents and other figures.

During the compilation of information completed in 2005 by ODHAG, 451 complaints of torture and cruel, inhuman or degrading treatment were documented. Of these, 270 were confirmed during interviews with the PNC Professional Responsibility Office, of the PNC Human Rights Office. The police, in particular the Criminal Investigation Service (SIC), committed the majority of the violations. While complaints of cruel, inhuman or degrading treatment carried out by the police grew by 128%, complaints of torture rose by 57%. The PNC sometimes punished excessive or illegal use of force on the part of police officials²⁴, but frequently the aggressors were merely transferred to a different post. There was credible evidence that on

23 Human Rights Ombudsperson –PDH–, Characteristics of Violent Deaths in the Country, electronic document, presented February 2006.

24 IMASP (Public Security Monitoring Agency) and the PNC Human Rights Office.

various occasions police officers and their superiors altered documentation, falsified evidence, bribed and intimidated their victims and witnesses, or in some form obstructed the investigation and filing of a law suit through their poor conduct. Flagrant detentions prevailed. Congress questioned the Ministry of Governance, which provided different information which confirmed the high rate of violence and repression²⁵.

The Constitution of the Republic establishes that:

“No one may be detained or arrested except for a crime or misdemeanour and by virtue of a warrant issued in accordance with the law by a competent judicial authority. Exceptions are made for those caught in flagrante delicto or in the act of committing a misdemeanour. Detained persons must be brought before a competent judicial authority within a period not exceeding six hours and may not be subject to any other authority”.

“The official or agent of authority that infringes the provisions of this article will be punished according to the law, and official courts will initiate the appropriate procedure”. (Article 6).

The Code of Criminal Procedure contemplates that “the police will be required to apprehend a person surprised in flagrante delicto or pursue immediately following the commission of a punishable crime”.

“In the same case, any person is authorised to effect the apprehension and prevent subsequent consequences of the punishable act. The apprehended party must be brought immediately, together with collected items, to the Public Prosecutor’s Office, the Police or the nearest judicial authority” (Article 257).

25 During 2003 there were 1210 homicides, 5410 injuries, 366 rapes, 18605 damages to property, for a total of 27,278 criminal acts (Source: Diagnostic investigation of torture in prisons; Legal consultant Byron García, ODHAG). In 2004 homicides rose to 4346, injuries to 5,798, rapes to 472, and damage to property to 17,553, totalling 28,169 cases. This demonstrates an increase in the rate of criminality in our country. Idem. In 2004 3,819 people were murdered: 3,819 men and 527 women. In Guatemala an average of 10 men are murdered per day, and 3 women every two days. At the end of 2005, there had been 3,650 murders, of which 548 were women. Idem.

“The duty and ability contemplated in the preceding article apply to the apprehension of a person whose detention has been ordered or who escapes from the establishment where he is serving his sentence” (Article 258).

In concluding its 4th Periodic Report to the CAT, the Guatemalan Government avers that:

111. There is no systematic practice of human rights violations or of torture, cruel, inhuman or degrading treatment in Guatemala. On the contrary, the measures described in this report have been implemented in keeping with a policy of respect for and promotion of human rights. Steps are being taken to strengthen the national bodies and agencies responsible for the administration of justice and the protection of human rights. This process is accompanied by human rights training for public officials, with the ultimate objective of helping the State to fulfil its constitutional role as the guarantor of Guatemalans’ basic rights.

In relation to this assertion, civil society organisations are especially concerned that, although it cannot be demonstrated that there is a state policy of human rights violations, there is obvious State inaction to confront these violations and to guarantee that all citizens may fully enjoy their rights. Monitoring by human rights institutions, or by the national press itself, makes clear that not only has violence increased, it also reveals certain characteristics. There is reason to believe that members of the security forces participate in extrajudicial executions of Guatemalan women, children and adolescents, which is virtual proof that organised groups of hired assassins murder with impunity.

The Guatemalan Government does not fulfil its role as protector of the life and integrity of persons. For this reason, it is co-responsible for deaths, murders and violations of citizens’ fundamental rights. Usually, when corpses indicating torture or death by a firearm or knife appear, the Public Prosecutor’s Office hastens to declare them acts of vengeance among gangs, and therefore closes the case. By failing to clarify the facts, the Government is continually responsible in its omission.

On various occasions, the Human Rights Ombudsperson has exposed acts of social cleansing in the country²⁶. The President of COPREDEH has also recognised that this occurs, although he has rejected the possibility of a State

26 Diario La Hora, 4 August 2005. Diario la Hora, February 2006.

policy to commit these acts²⁷. Interestingly, the PDH reported that during the first 6 months of 2005, it received 217 complaints against State security elements for various acts (from illegal detention to murders and rapes). The received complaints which implicate 287 agents (added to 425 reported in 2004)²⁸.

Various studies of this issue have been conducted. In a study by the Human Rights Ombudsperson (PDH), it was “determined that recently ‘social cleansing’ operations dedicated to the extermination society’s ‘undesirables’ have occurred”. Although it recognised that there is not a State policy, it determined that Police agents were involved in these deaths²⁹. Descriptions of the victims’ characteristics (clothing, appearance, place of residence, etc.) generally indicate that they come from very low economic strata, possibly with low levels of education, some of indigenous origin, especially the youth. In some cases the statements of the families who identify their bodies reveal that the victims worked in positions such as construction, shop assistants, bus driver attendants and others.

CASES:

Date: 7 September 2004
Name: Josué Israel Noj
Age: 19
Source: Casa Alianza

Josué Israel Noj was killed by gun shots on 15th Street and 6th Avenue “A”, zone 1 (centre of the city) by three unknown individuals who shot him without uttering a word. A group of the deceased’s young friends detained two of the perpetrators and brought them to the authorities. The detained persons belonged to an agency of the National Civil Police. In the testi-

mony of the witnesses it was noted that one of the individuals was found with the weapon allegedly used to kill Josué. The murderer lives in impunity.

Date: 5 February 2006
Fecha: 5 febrero 2006
Name: Jorge Mario Puac
Age: 25
Source: Casa Alianza

On Saturday, 5 February, the young man Jorge Mario Puac was found in front of Pollo Campero restaurant located at The Terminal

27 Diario La Hora, 8 August 2005 and Radio Emisoras Unidas, 13 February 2006.

28 Diario La Hora, 6 February 2006.

29 Idem.

(for extra urban and market buses), in zone 4, together with the young man Gerson Misael Baron. Both were asking pedestrians for money. Gerson requested money of one man who passed, and the man responded, “What I’m going to give you is a couple of shots,” and revealed a firearm at his waist. At the same time, Jorge Mario asked another pedestrian for money. Seeing this, the man carrying the weapon positioned himself in front of Jorge Mario and began to shoot him, seriously injuring him. He had to be transported to San Juan de Dios National Hospital, where he died half an hour following his arrival.

Jorge Mario’s body was taken to the hospital morgue, where Public Prosecutor’s Office “Group 7” arrived to gather evidence. The case was registered under file No. 347-05 of Public Prosecutor’s Office Agency 01. Upon transporting the victim’s body, the morgue personnel of the judicial body erroneously noted that he was 45 years old, apparently by clerical error. He was buried as NN (“not named”) at the La Verbena Cemetery. It bears mention that the body remained only 24 hours in the judicial morgue, though according to law he should not have been buried until after 72 hours. The death of Jorge Mario was confirmed thanks to photographs taken in the morgue,

which are located at 6-17 4th Street, zone 1, an agency of the Public Prosecutor’s Office.

A case that illustrates the State’s aims and response to torture is that of **Tirso Román Valenzuela Ávila**, which was registered with the Inter-American Commission on Human Rights as Case No. 12,452.

The facts demonstrate common characteristics of torture currently seen in Guatemala, and the case exposes the impunity of those responsible, in particular due to lack of criminal investigation.

Three incidents of torture are alleged: on 27 May 1988, the victim was detained in the city of Quetzaltenango by 4 plainclothes agents of the National Civil Police. He was taken to an unknown location and tortured for an hour: *“beaten in the stomach and ribs, subjected to asphyxiation with Gamexan, beaten again so that he would confess his alleged guilt in the murder of the attorney general of the Public Prosecutor’s Office”*. He was later taken to his house for a judicial procedure.

He was later transported to an unknown location where he was subjected to prolonged sessions of torture: *“they began to interrogate him with blows and insults, in order*

that he confess to the attorney general's assassination (...). As the alleged victim refused to confess, they placed him in the 'pieza de hule' (a rubber hood used for semi-asphyxiation) various times, which caused him to faint repeatedly. After this session they took him to torture him by introducing an oily stick into the anus, until he lost consciousness." In this case, despite the fact that Mr. Román reported the torture, the competent authorities did not investigate.

The third incident of torture occurred on 11 July 2001. After he was recaptured, he was subjected to torture by agents of the

National Civil Police Criminal Investigation Service (SIC), who proceeded to "burn his testicles with a cigarette; lift him by the testicles; run a hot iron along one of his hands, from one side to the other. He was also confined under inhuman conditions, including deprivation of electricity and sunlight, and provision of food in a state of decomposition that caused him gastrointestinal illnesses, as well as preventing conjugal and family visits." All these acts of torture were reported and were the basis for a habeas corpus petition served on 11 July 2001. The petition was dismissed on 30 July in the same year.

In response to the persistence of violations of the right to personal integrity, principally in the form of acts of torture and other cruel, inhuman or degrading treatment, and by repeated non-compliance with its recommendations, the Commission declared in its 2002 report:

"140. The Commission was informed that between mid-2001 and mid-2002, cases of cruel, inhumane, and degrading treatment inflicted by police officers on detainees increased by 128 percent. Specifically, MINUGUA reported that it received 551 complaints of alleged violations of that kind, of which it was able to corroborate 270, most of which were committed by members of the National Civil Police.. (...)"

"143. The Commission must also emphasize the need for measures to investigate and, if appropriate, punish those guilty of making abusive use of force or of abusing their authority."³⁰

30 Inter-American Commission on Human Rights. Annual Report 2002. 7 March 2003.

In its final report MINUGUA stated that the practice of torture persists in Guatemala. The Mission confirmed police responsibility in *“an average of 66 cases of torture and 165 cases of ill-treatment and excessive use of force a year, between 1999 and 2002”*³¹.

The Human Rights Ombudsperson has systematically reported violations of the right to personal integrity. In 2001, its annual report reflected 168 complaints of violations of the right to integrity, of which five amounted to torture³². It also cited 62 reports of violations of the right to personal liberty, 53 of which corresponded to illegal detention and nine to forced disappearances.

In 2002, the PDH annual report contained 56 complaints of violations of the right to integrity, among which 3 correspond to reports of torture and 29 to violations of personal liberty³³.

In 2003 the PDH annual report cited 166 complaints of violations of the right to integrity, of which 16 reflect cruel, inhuman or degrading treatment or punishment, six forced disappearances, 56 violent deaths, and four violations of other rights³⁴.

Finally, in 2004, the PDH annual report referenced 41 complaints of violations of integrity, including one case of torture, two cases of inhuman or degrading treatment or punishment, four cases of forced disappearance, one case of incommunicado detention and 33 violations of other rights. Sixty complaints related to violations of the right to personal liberty, 54 of which corresponded to unlawful detention, four to arbitrary detention and the rest to violations of other rights³⁵.

31 MINUGUA, Fourteenth Human Rights Report of the United Nations Verification Mission in Guatemala (July 2002 – June 2003), November 2003.

32 Substantiated Annual Report, Human Rights Ombudsperson, 2001. January 2002 p. 57.

33 Substantiated Annual Report, Human Rights Ombudsperson, 2002. January 2003 pp. 587- 588.

34 Substantiated Annual Report, Human Rights Ombudsperson, 2003. January 2004 p. 542.

35 Substantiated Annual Report, Human Rights Ombudsperson, 2004. January 2005 p. 594.

WOMEN'S RIGHTS

Torture and other ill-treatment of women

Violence against women takes different forms, including intrafamily violence³⁶ and femicide. We return to question 49 of the CAT's List of Issues for the Guatemalan State: *Please give information on measures taken by the State party to include a gender perspective in the legislation banning torture. Please also describe specific measures taken to prevent acts of sexual violence. Please provide statistics on the number of investigations in this respect and on the penalties for those convicted of such acts.*

It is important to begin by noting that the Guatemalan State approved CEDAW on 29 June 1982, by means of Decree-Law 49-82 and ratified it on 8 July of the same year. The treaty entered into force on 13 September 1982. The Law to Prevent, Punish and Eradicate Intrafamily Violence (Decree 97-96 of 24 October 1996) established a series of bodies to report violence and to protect victims: in the Public Prosecutor's Office: the Women's Prosecutor, the Victim's Office, the Office of Permanent Attention; in the National Attorney General's Office: the Women's Rights Protection Unit; the National Civil Police, bar associations, Family Courts, Regular Magistrate's Courts, Criminal Magistrate's Courts. These bodies must remit complaints received to a family court or a magistrate's court within 24 hours, to allow the courts to order measures to protect the victims. These reports are registered in a bulletin that not all institutions adequately use.

The measures contemplated by the law include: an order that the alleged victimiser leave the common residence, obligatory provision of assistance by crisis centres, searches, prohibition of weapons in the residence, decommissioning of weapons in the alleged aggressor's possession, suspension of guardianship or custody of children, suspension of visits with the children, prohibition of the alleged aggressor's access to the home, provisional alimony, preventive embargo of assets, exclusive authorisation of household goods to the victimised person, order of non-interference in the use and enjoyment of tools for work, order of

36 The elements corresponding to Intrafamily Violence are based on the study "Violence against women. Treatment by the Guatemalan criminal justice system", of the Institute of Comparative Studies of Guatemala (check name), ICCPG, 2004.

monetary reparation for the victim's damages. These measures may continue for a period of one to six months.

The measures must be transmitted to the Public Prosecutor's Office within 24 hours. Acts of intrafamily violence are classified as either misdemeanours or crimes, according to the number of days of recuperation that the victim requires, as determined by the forensic physician. Nevertheless, because it is not defined as a crime, many judicial personnel pursue the civil procedure instead of the criminal procedure, in which case the harm should be classified as injury (mild, specific, serious or very serious), according to Penal Code articles 145 to 148.

ICCPG's research reveals that *"just as in sexual crimes, there is a lack of adequate space to guarantee victim privacy as well as a lack of interpreters. There are no protocols for assistance or the first interview of a person who has been the victim of intrafamily violence in the Public Prosecutor's Office, Courts and the PNC. The Victim's Office of the Public Prosecutor's Office and that of some police stations rely on these agencies, as do the Human Rights Ombudsperson and the bar associations"*.³⁷

It has also been reported that some Magistrate's Courts refuse to receive complaints regarding intrafamily violence. They contend that intrafamily violence does not constitute a crime under the Guatemalan Penal Code, because there already exist crimes of homicide (simple, committed in a state of emotional violence, premeditated, criminal), inducement to or abetting suicide, infanticide, parricide, murder, premeditated abortion, aggression, injuries (specific, aggravated, mild), rape and qualified rape, venereal contagion, rape of a minor, indecent abuses, kidnapping, corruption of minors, coercion, trafficking in persons, among other crimes. Intrafamily violence is considered a "private" matter and not a public concern.

Another important element is that the majority of victims do not report violence, not only for fear of reprisals from the abuser, but also because they are intimidated by the officials or judicial personnel (their insensitivity, lack of intervention, partiality, excessive paperwork) or because they do not receive adequate information about their rights or relevant procedures. The latter is the most serious concern because victims are not informed that they must undergo a forensic examination, which is

37 ICCPG, "Violence against women...", p. 41.

necessary if they wish to continue a criminal proceeding. In some cases safety measures are ordered for the victims, but many times this generates more violence and vengeful animus on the part of the abuser.

The situation related to violent deaths of women is not much different. The PDH indicates that the phenomenon has been *“aggravated by evidence of behaviour attributable to misogyny, manifested in torture, mutilation and rape prior to the murder. According to PNC information, 9.7% of homicide victims in 2005 were women. Of the 305 corpses reported to bear signs of torture, 18.03% were women”*.³⁸

Additionally, the investigation conducted by CALDH³⁹ indicates that *“The conceptualisation of violence against women has its origin in feminist theories that have analysed this phenomenon in terms of relationships of power and domination exercised by men toward women, within a historically patriarchal structure and which has been perpetuated, nourished and sustained by societies and men throughout history”*⁴⁰, for which reason they conclude that *“gender-based violence is a key social mechanism for the perpetuation of the subordination of women, because power is considered the male birthright; masculine hegemony is based on social control of women”*⁴¹.

The Guatemalan Women’s Group – part of the Network against Violence against Women – reports an increase in murders of women, rising from 307 in 2001, to 317 in 2002, then to 383 in 2003, 527 in 2004, and 255 between January and May of 2005⁴². The Institute for the Comparative Study of Criminal Law reports: *“Between 1 January and 18 December 2003 358 women were murdered. Of those deaths, only 32 have been investigated and only one has reached judgement. During the first four months of 2004, 174 cases were registered; and lastly, of the total cases from 2003, 306 remain pending”*.⁴³

38 PDH, Op. Cit.

39 CALDH, “Murders of Women: expression of femicide in Guatemala”, 2005b. CALDH utilises the term femicide to include foeticide (utilised in 1976 by Diana Rusell regarding crimes against women for the sake thereof, which operate as a form of domination, power and control over all women. See p. 10. Note that femicide does not have to result in death (see pp. 11-13).

40 CALDH, 2005b, pp. 8-9.

41 Idem, p. 10.

42 Cited in CALDH, 2005b, p. 43.

43 ICCPG, “Violence against Women ...” p. 24.

The number of women murdered is important, and it continues to be lower than that of men. Also important are the rage and violence that accompany these acts. Women are tortured, their throats are slit, they are victims of rape, they are mutilated, victimised prior to their murder; in other words, hatred is apparent in their deaths⁴⁴.

In the study conducted by CALDH (2005b) various interesting facts emerge, such as the victims' occupation (in a study of 160 cases completed by the Guatemalan Women's Group, GGM). Although the occupations of 66 of the women were unknown, 44 were homemakers and 20 were students. At the same time, the Approved Report of the PDH (2005) indicates the PNC statistic that in 63% of cases the motive of the crime is ignored. This reveals the fundamental absence of investigation. There is no prevention effort for this type of crime, despite the existence of a law to prevent intrafamily violence. Moreover, sexual crimes are also considered private crimes, for which reason there is little impetus for prevention campaigns.

THE RIGHTS OF THE CHILD

1) Youth and violence

The authorities' solution to common crime is the promulgation of iron fist laws, such as the Anti-Gang Law, similar to that of other Central American countries. This law attempts to harden the struggle against crime by directing all problems at the "*maras*" (gangs). The Patriot Party presented this law to Congress in February 2005. It attempted to legalise massive detentions of youth solely based on membership in a gang, or suspicion of gang membership. It also sought to decrease the criminal age to twelve years. The law received a negative response from the Commission on Minors and Governance, and it was rejected by Congress.

43 ICCPG, "Violence against Women ..." p. 24.

44 There are various reports on the issue, such as that of the Human Rights Ombudsperson, 2004; Amnesty International, 2005, Congressperson Albra Estela Maldonado, 2005, among others.

It is important to understand the difference between *maras* and gangs (“pandillas”). The term *mara* has its origin in the Hindu word “mara”, which means the death of the soul. Also, in Brazil there is a very destructive ant called the marabunta. The word *mara* refers to young gang members with a well established hierarchy: there is a leader, veteran or boss, as well as initiation and promotion rituals. The majority of its members are adolescents (between 13 and 25 years old), and many of them were deported from the United States or have come from other Central American countries. They support one another and develop codes of conduct, loyalty and honour. They dress to identify their membership, using tattoos and hairstyles to identify themselves. Their body language includes codes. Members engage in criminal acts, take drugs and traffic in drugs and weapons. In addition, these groups offer their members a source of identity and support.

In Guatemala many youth are believed to join *maras* because of poverty and other social and family conditions (overcrowding, broken homes, intrafamily violence, discrimination, abandonment, marginalisation, lack of opportunities for education, fun and work). According to the Guatemalan Study Centre⁴⁵, joining *maras* is a response to poverty and *“the massive migration from rural areas to urban centres, the lack of social alternatives, such as systems of prevention, the lack of state control over the possession of arms, drug use, a weak justice system, corruption and the increasingly alarming incidence of drug trafficking and organised crime in the region”*. It is important to note that although youth gangs proliferate in Guatemala, currently there are three large *maras*: Mara 18, Mara Salvatrucha and Los Cholos. The first two extend from the United States all the way to Honduras.

The gangs are groups of children and young people from broken homes seeking “substitute families” to give them protection and emotional support. Gangs (“pandillas”) have neither the structure nor organisation of the *maras*, nor do they establish codes of conduct. Therefore not all gang members belong to *maras*.⁴⁶

45 Special Report: Maras... threat to security?

46 Source: The Young Martyrs... The Condemnation of the State of Guatemala for the Extra-Judicial Execution of Street Children, Casa Alianza, Swiss Embassy.

According to the Human Rights Observatory of the Centre for Legal Action in Human Rights (CALDH), a non-governmental organisation: “... *the rise in violence [against young people] has been accompanied by inactivity and inefficiency of the security agencies and criminal prosecution by the State, who have found a scapegoat in the increase of “mara and pandilla” organisations, blaming them for the reality in the country, the atmosphere of civil insecurity. The State also uses the rise in gangs to discredit human rights organisations that seek opportunities for these young people*”⁴⁷. As the CEG indicates in its above-mentioned report: “*To assume that the maras are committing the crime of unlawful association is to criminalise a social problem that requires a well-balanced solution and which is primarily the responsibility of the affected States*”.

It is also important to note that gang members have been used “... *to commit criminal acts, principally by organised crime elements, who believe that their activities won't be watched or investigated, or better, that these groups will be accused*”⁴⁸.

Additionally, “*Deportation of gang members from the United States has intensified the problem. The United States Homeland Security Department announced that since March, “120 gang members have been deported to Mexico, Guatemala, El Salvador, and there will soon be another 80. Six hundred more face the possibility of being returned*”⁴⁹. Upon returning to their countries of origin, such as Guatemala, these youth cannot integrate into the labour market, much less the education system. Many of the deportees have broken their family connections⁵⁰. The *maras* are not responsible for all violence in Guatemala; the violence results from “*conflicts among maras, the practice of social cleansing, the various expressions of organised crime, common crime, the absence or inefficacy of security policies, etc.*”, as reported in the PDH study. Nevertheless, these explanations do not capture the fact that security policies are directed not at strengthening citizen security, but at repressing alleged perpetrators of violence.

47 CALDH, “Analysis of the Situation of Human Rights Violations of Young Persons”, 2005a.

48 Idem.

49 Virtual. Nuevo Herald, New War in Central America (“Nueva Guerra en Centroamérica”), 31 August 2005, p. 1.

50 See CALDH, 2005a.

There is a visible difference in *maras* activity and acts of social cleansing:

a. *Maras* generally use the most direct method of taking life, the least complicated means possible. In cases of social cleansing there is an infrastructure and a use of methods that prolong death, generally accompanied by torture.

b. Social cleansing operations seek to generate terror by leaving signs of torture. The purpose is to warn other potential victims of what could happen to them. For *maras* the objective is usually the elimination of the individual victim.

c. Unlike the activity of *maras*, in cleansing operations victims' bodies are usually abandoned in specific locations that are not necessarily gang territories.

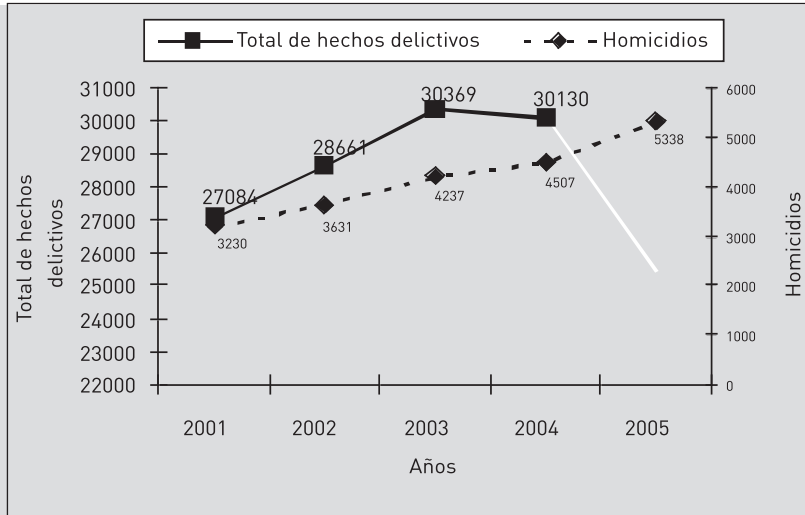
d. In deaths among gang members, age is determinant, and such deaths are generally related to do with disputes among young people. Cleansing operations usually span a broader range of ages. According to available information, 40% of victims belonging to gangs are between 16 and 20 years old. Among victims presenting signs of torture, only 11.8% fall in the same age range.

e. In deaths caused by *maras* there is less utilisation of resources and methods. In cleansing operations there is a demonstrated use of automobiles, places of confinement, means of communication and other techniques and resources.

f. As social cleansing processes increase, there is an attempt to garner favourable public opinion. Banners, flyers, prints and posters for this purpose are seen in Guatemala⁵¹.

The following graphic illustrates the increase in criminal acts and homicides, since 2001. The increase in homicides has been steady, while criminal acts decreased in 2004.

Human Rights Violations in Guatemala



In 2004 there were reported 2,425 deaths of young people⁵² (2181 men and 244 women) of which 130 were considered to be gang members⁵³. The Human Rights Ombudsperson received 2,452 reports of criminal acts against minors⁵⁴. The year 2005 saw a 40% increase in murders⁵⁵, primarily committed against alleged gang or *mara* members. The PDH reports that between January and October 2005, 327 minors were violently and intentionally killed, and 60% of the murder victims in 2005 were under 30⁵⁶. The majority of murder victims showed signs of torture, messages painted on their bodies, paper messages, mutilation, coups de grâce, etc., all of which suggest premeditation.

52 Statistics provided by the General Director's Office of the National Civil Police, cited in the CALDH Report, 2005a.

53 Information supplied by the Public Prosecutor's Office, cited in the CALDH Report, 2005a.

54 Diario La Hora, 6 February 2006.

55 El Periódico, 22 August 2005.

56 Diario La Hora, 6 February 2006.

Cause of death	Men	Women	Total
Firearm	1897	163	2060
Knife	191	39	230
Blunt object	58	24	82
Explosive device	1	0	1
Strangulation	29	18	47
Lynching	5	0	5
TOTAL	2181	244	2425

Graphic supplied by the General Director's Office of the National Civil Police, at the request of CALDH⁵⁷

The hatred manifested in these murders is clear. For example, in the case of *El Campanero* (Mixco, Guatemala), 6 young people (5 men and one pregnant teenaged woman) were murdered after being tortured. They had been taken from their homes by force two days before the crime, at the hands of 15 men armed with assault weapons. The men identified themselves as the National Police Criminal Investigation Service (SIC). When their homes were invaded, a relative asked why they were taking the young people, to which the men responded that it was related to vengeance against gang members (“*mareros*”)⁵⁸. The young people were students, bus driver assistants, mechanics’ assistants and one was unemployed. The bodies were carefully arranged. Some witnesses stated that the abductors wore uniforms of the El Ebano Private Security Company.

A group called “Defensores del Pueblo” (People’s Defenders) operates in the department of Sololá (western region of the country), to cleanse the area of “*mareros*”. On 27 September 2005, an alleged “social cleansing” group arose in Coatepeque: “*An alleged group to eliminate gang members,*

57 Idem.

58 Prensa Libre, 15 January 2005.

called “City Guardians”, has arisen in Coatepeque, Quetzaltenango, where unknown persons put out pamphlets in the street, which claim responsibility for the deaths of six gang members in the last four days. ‘We come to stop the rabies killing the dog’, the anonymous letter reads⁵⁹”.

In another case, in the afternoon of 13 October 2005, three men descended from a white, double cab pick-up truck, with plates 211 BBD. With a grand display of force they took three teenagers who were playing football at 4th Street and Seventh Avenue in Colonia el Mezquital⁶⁰. The three abducted youth were Breyner Alexandro Roldán López, 16, Jorge Adolfo Gutiérrez García, 17, and José Arnaldo Arrecis López, 15. Their bodies appeared the following Friday, showing signs of torture, in Obrejuelo, Villa Canales township.

2) Street children

Article 3 of the Guatemalan Constitution provides that “The State guarantees and protects human life from the time of conception, as well as the integrity and security of the person”. However, the reality is otherwise. An enormous number of youth and children live in the streets of Guatemala. Casa Alianza, an organisation which works for their rights, has compiled a series of testimonies which identify cases of torture, social cleansing and violations of the rights of this population. The accounts speak for themselves.

59 Siglo XXI, 27 September 2005.

60 El Periódico, 16 October 2005. According to press information a witness observed that one of the three men wore a vest “with ‘SIC’ on the back”.

CASES:

Date: 20 April 2005

Name: Delfina Elizabeth Chocoj Ruiz

Age: 17

Source: Casa Alianza

The young woman Delfina Elizabeth was found with her friend José Geovany Hernández, a Honduran national and 17 years old. He was hiding from a person who had pursued him with a firearm. This person had fired at both of them, causing the immediate death of Delfina Elizabeth and seriously wounding José Geovany. The aggressor fled, leaving his wallet behind, which contained a license to carry arms, with the following information: Fidelino Lemus Flores, Identity Document U-22 74166, Defensive No. 107903, Code 117369, pistol, Mark Magnum Research, Model Desert Tagle, Calibre 9x19. Nevertheless, this person has not been detained or brought to justice.

Date: 28 November 2005

Name: Erick Alexander Fajardo Rosales

Age: 17

Source: Casa Alianza

On the night of 28 November 2005, Erick Alexander was shot 5

times while inside the store La Bendición, located at 2nd Street and 10 Avenue “A” 10-53, zone 1. Carmen García, the deceased’s partner, stated that the person who shot him works for the National Civil Police Criminal Investigation Section, where he is known by the nickname “El Chino”. Carmen says that she can identify him. The agency of the Public Prosecutor’s Office which handled the case is Homicide Section No. 3, but it has not moved forward in its investigation.

Date: 24 November 2005

Names: Karla Yanida Bautista and a young man known as “El Grillo”⁶¹

Source: Casa Alianza

Two street youth who live in the El Amate park, located in zone 1 of the capital, stated that three weeks ago the owner of a stall, named Vivi, contracted three men who appeared to be police. The men rode in a green Toyota Tercel with polarised windows. The men have assaulted various young people with a firearm. The most recent attack occurred on 22 November, when they shot at two young people. One of them, Abraham Eleazar, received a bullet in his left leg, and another uniden-

61 “El Grillo” is a street youth who asked not to be identified.

tified youth was taken to hospital. The witnesses stated that the three men usually arrive at 18:00 to drink liquor at Vivi's stall, and

later accuse the youth of robbery or attacks on transients, in order to assault them.

3) Murders of children

Guatemalan society currently faces a time of increased violence and insecurity. Children and adolescents make up one of the most vulnerable sectors of society, and they have been seriously affected. The Guatemalan Constitution, the Convention on the Rights of the Child, the Penal Code and the Law of Integral Protection of Children and Adolescents impose a moral and legal obligation to protect children on the State and on society in general.

During 2005, 334 children and minors under 18 were killed in Guatemala City. It is estimated that nationwide, the rate rose to more than 400. The causes of death are varied; the majority are carried out with firearms or knives. The death rate rose by 14% in 2004, due to 48 more killings of boys and 2 more killings of girls.

The media have publicised moving stories of murdered children and young people. The following is an example of how the wave of violence has affected hundreds of children and youth in the capital city, and in the country's interior.

February 2005 saw the murders of Ludsvin Sut, 10 years old, who was strangled with wire and burned with cigarettes, after being abducted in Mazatenango. Also that month, Adolfo Gustavo Miranda, 8 years old, was also strangled and found in a bag in San Marcos. In the same month, Yanci Abigail, 7 years of age, was killed together with her mother in a hotel in the capital⁶².

One of the most memorable deaths was that of Heidy Marisol Ruano, 14, who was stabbed 76 times with a knife. Her body was found in a hotel in zone 1. Days before she had escaped from the Casa Hogar Vid Verdadera, located in Zona 13. She was killed on 9 March 2005.

62 Source: La Nana.

On 24 April 2005, the body of Mario Estuardo Esquivel, 17, was found decapitated in a plastic bag.⁶³ On 21 May of the same year, Marlene Valdez, 17, was shot and tortured. Her body was found in kilometre 88 on the Route to Las Verapaces⁶⁴. On 30 May, Julio Ortiz, 15, died after he was tortured and strangled⁶⁵.

On 5 June of that year, the body of Wilber Gregorio Tojil, 17, was found tied with electrical wire, with his hands behind his waist, tortured with a coup de grâce⁶⁶. On the twelfth day of the following month, Arnoldo García and Benedicto Díaz, both 17, died in the explosion of a grenade which was found a few metres from the military base in Aldea Cerro Gordo, Jutiapa⁶⁷. Two days later, Catarina Chox, 15, was killed with a knife in the department of Sololá⁶⁸. Finally, on 25 June, the body of Obdulio Canté, 17, was found with an electrical cable tied around his neck, in a river of sewage.

During August, two youth, 16 and 17 years old, were bombarded at short range while awaiting a bus in the town of Coatepeque; both died. That month Jusén Rivas died after he was shot in the town of Boca del Monte. He had more than 12 bullet wounds⁶⁹. Also, Luis Fernando Canté, 17, died of strangulation, and his body was found tied at the hands and feet, in his undergarments, in kilometre 14.5 in Villa Nueva.⁷⁰

In September 2005, after they had been missing for ten months, the remains of the following children were discovered: Astrid Jeanineth, 10 years old, and Jefferson José, 8 years old, Erickson Steven, 6, and Jefry Giancarlo, two years old⁷¹. In the same month, in the old rubbish dump of Poptún, Petén, there appeared the bodies of Lesvion Obdulio, 17, Carlos Emanuel, 16, and Otmar Joaquín, 17. All the bodies revealed multiple bullet wounds⁷².

63 Source: Al Día.

64 Source: Al Día.

65 Source: Al Día.

66 Source: Nuestro Diario.

67 Source: Prensa Libre.

68 Source: Prensa Libre.

69 Source: Nuestro Diario.

70 Source: Nuestro Diario.

71 Source: Nuestro Diario.

72 Source: Al Día.

6. Measures to prevent acts of torture (Articles 2 and 10 of the Convention against Torture)

6.1. Effective legislative and administrative measures for the prevention of torture (Article 2.1)

6.1.1 Administrative measures

The Committee against Torture has recommended three administrative measures: one related to army intervention in internal security, another related to investigations conducted by unauthorised government bodies and a third related to the establishment of a commission to investigate the fate of disappeared persons⁷³. The following is an analysis of each of these recommendations, the State response and the current situation.

a) The repeal of provisions authorising the army's involvement in public security and crime prevention, which should be the exclusive domain of the police (para. 76 b).

With respect to this recommendation, the State submitted the following observations:

“41. It must be admitted that repeal, though perhaps unwelcome, was essential. People are aware that, to the extent that efforts to strengthen the civilian security forces bear fruit, it will become possible to do without the support legally provided by the army to the civilian security forces in times of need or emergency to maintain order and public safety, and this is necessary to ensure respect for the fundamental rights of all Guatemalans. It is worth mentioning that an undertaking was made under the peace agreements to dissolve the Presidential General Staff and assign responsibility for the security of the President and the Vice-President of the Republic and their families to a civilian body. In fulfilment of this undertaking, the Presidential General Staff was officially dissolved by a Government Agreement on 31 October 2003 and responsibility for the security of the President and Vice-President was assigned

73 Concluding Observations of the Committee against Torture, Guatemala, 27/05/98. A/53/44, paras. 157-166.

*to the Administrative and Security Affairs Secretariat, which is staffed by civilians.*⁷⁴

It is important to make clear that the State, far from complying with the agreements, has strengthened the army's participation in police activities, both high-level and low-level personnel. Army participation includes support operations, supervision, training of the national civil police and defining public security policies.

The Guatemalan Government has repeatedly authorised the army to support the PNC, and by means of government agreements army participation has increased. Instead of fortifying the PNC, this participation has weakened it, because instead of assigning more resources to the selection of new agents, resources are used in the mobilisation of military forces for joint operations. The military forces have only a basic understanding of criminal investigation and have not undergone the necessary screening process.

The integration of military and ex-military agents in internal security violates the peace agreements, which restrict the role of the army in public security (Agreement for the strengthening of civil power and the participation of the army in a democratic society). Government Agreement No. 83-2006, of 28 February 2006, formalised the current situation by repealing agreement No. 178-2004, which had prohibited increasing public security forces through the mobilisation of reserves⁷⁵.

The army is directly involved in the prison system. In 2000, the army's ability to provide perimeter security to penal institutions was formalised. Currently the army also participates in the training of prison guards. On 14 November 2005, a course for those aspiring to be prison guards was initiated under the charge of the School of Military Police (BPMGH). This course was conducted in the facilities of the Third Infantry Brigade, headquartered in the department of Jutiapa.

This arrangement violates articles 19 and 244 of the Political Constitution, which limit army participation in the penitentiary system. The Inter-American Commission on Human Rights has stated that the involvement of the army in this field violates human rights and is inappropriate: "*The*

74 <http://daccessdds.un.org/doc/UNDOC/GEN/G05/421/40/PDF/G0542140.pdf?OpenElement>.

75 Considering second GOVERNMENT AGREEMENT No. 83-2006.

*military mission is not intended to be compatible with civilian law enforcement; it has a different object, and employs different means. This is clearly recognized in the peace accords, which call for a redefinition and separation of these vital functions. (...)*⁷⁶. Therefore, army participation in any aspect of the prison system specifically violates the right of the person to social readaptation and re-education, directed by specialised civil personnel, in conformity with article 19 of the Constitution.

b) The absolute prohibition of any government body from conducting investigations into criminal matters if it is not authorised to do so (para. 76 d)).

In respect of this recommendation, the State declared:

46. Although in the past there were many reports of illegal parallel investigations into matters that are the province of the civil authorities responsible for the administration of justice, over the last four years no specific instances have been reported of such behaviour by institutions such as the Presidential General Staff, which in the past was singled out and severely criticised for its alleged investigations. As reported above, the Presidential General Staff was dissolved in October 2003.

There is credible evidence that the army still participates in criminal investigations, especially military intelligence. For example, in the recent investigation into the mass escape from the Escuintla high security prison in October 2005, the Defence Minister indicated that military intelligence would investigate, a declaration which in the end caused his dismissal from office. Military participation with the purpose of conducting investigations has also been apparent in abduction cases⁷⁷.

It is important to note that the information (intelligence) required for the execution of acts of social cleansing can only be provided by the State, because it alone has access to such information. In many cases of attacks against human rights defenders, there are indicators of intelligence gathering. The question is what State elements perform the intelligence gathering work formerly in the charge of the Presidential Staff?

76 CIDH – Annual report 2002 March 2003 - see <http://www.cidh.org/countryrep/Guate01eng/chap.8.htm>

77 Prensa Libre, 29/10/05, p. 4.

It is also important to examine the *remilitarisation* of the country, which is manifest in government actions aimed at the recruitment of three thousand military personnel with the purpose of assigning them to public security functions. This is despite a demonstrated lack of a preventive vision or vision of security within military training curriculum. These actions not only increasingly militarise public security, but they also assign to military professionals a mission for which they have not been trained. It has been repeatedly demonstrated that army participation in security actions does not offer a solution to the crisis of insecurity, nor has it reduced the country's crime rates.

These actions flagrantly violate the Peace Agreements as well as the principles and legal norms for the training of police forces. At the same time, they fail to comply with fundamental training procedures for public security agents.

The reform of agreement 178-2004, which regulated the reduction of military forces, made clear that the publicised process of reduction was a mere propagandistic scheme. In reality, the military ranks and the military budget have increased.

In addition, we must emphasise the signing of an agreement between the Human Rights Ombudsperson and the Foreign Relations Ministry, to which human rights organisations served as witnesses. The agreement creates a Commission for the Investigation of Illegal Bodies and Clandestine Security Organisations (CICIACS). This Commission is in the process of being formed. It is expected to be a very important factor in the struggle against impunity and in strengthening of the rule of law.

The process of negotiating the CICIACS ended in 2004, with the signing of a covenant between the UN and the Guatemalan Government. Congress did not approve the initiative, and it received a negative advisory opinion from the Constitutional Court (10 August 2004). Despite the urgent need for a commission to investigate such structures of impunity, the Government revisited the issue only in January 2006, in the form of a new proposal. The course that the Government will follow in negotiating the CICIACS is worrisome. For example, the proposal's modifications address issues that were not declared unconstitutional, such as the conflation of the phrase "illegal bodies and clandestine security organisations" with "illegal groups". This language misrepresents the nature of these intelligence and operation structures, and it fails to recognise the complexity of the two

phenomena. The new proposal effectively diminishes the role of the CICIACS that was envisioned with input from civil society organisations. It appears that the Commission will not be authorised to investigate and dismantle CIACS, but will only cooperate in investigation. The objective of the proposed law is no longer to create a body to investigate the CIACS as entities that promote impunity and affect the general population. Instead, it establishes a mechanism and procedure only for the protection of human rights defenders, which limits the range of its activities.

The proposal also reduces the range of activities the CICIACS will undertake by limiting the investigation only to those groups that are responsible for attacks on certain human rights defenders and judicial personnel; this function is only vaguely defined in the document. The original proposal sought the individualisation in cases in which the victims were human rights defenders and persons involved in the criminal justice system, but it did not limit the investigation only to those CIACS involved in these types of attacks.

In terms of criminal prosecution, the new proposal prevents the CICIACS from initiating criminal procedures by reporting possible crimes to the Public Prosecutor's Office as a third party. The Constitutional Court referenced the possibility of reforming article 116 of the Code of Criminal Procedure in order that the CICIACS could bring suit, which would reduce objections to its existence. The new proposal, however, implies that the CICIACS must first demonstrate that the case relates to a human rights violation.

The weakness of the proposal can be overcome if the national government has the desire will to see results. Currently the situation is more serious than it was in 2003, when the creation of the CICIACS was first negotiated.

c) The establishment of an independent commission to investigate the circumstances of the kidnapping of disappeared persons and to determine what happened to them and the location of their remains. The Government has an obligation to spare no effort to discover what happened in such cases and thus give effect to the legitimate rights of the families, provide compensation for loss or injury caused and prosecute the responsible persons (para. 76 e).

In response to this recommendation, the State declared:

48. As recommended by the Historical Clarification Commission which arose out of the peace agreements, a National Commission to Search for Missing Children has been set up. It is supported by the Office of the Procurator for Human Rights and is made up of a number of bodies that work in coordination, including: the Human Rights Office of the Archdiocese of Guatemala, the Office of the Children's Ombudsman, the Asociación Casa Alianza Guatemalteca, the Liga Guatemalteca de Higiene Menta (Guatemalan mental health league), the Grupo Monseñor Romero, the Legal Action Centre for Human Rights, the Widows' National Coordinating Committee, the Mutual Support Group, the Rigoberta Menchú Foundation, the Asociación Dónde están los Niños y las Niñas (Where are the children association) and the Centro de Investigación Internacional de Derechos Humanos (International human rights research centre). The commission's mission is to support, promote and reinforce efforts to document cases, track down children and reunite families; it will also give impetus to efforts to obtain justice, assistance and reparation, and to legal actions to help along the searches for missing children.

In 2003 a covenant of cooperation among the PDH and civil society organisations created the National Search Commission. However, this was done without permanent allocation of state funds, which weakens its operation.

It is important to clarify Guatemalan Government's assertion above, because it does not reflect the reality of the situation.

First, the Guatemalan Government has not developed a policy of searching for disappeared persons that incorporates factual investigation, delivery of the remains or the search for justice. Cases in the Inter-American Commission and the Inter-American Court have pointed to the importance of delivery of the remains, and the State has failed to comply. The clearest illustration emerges in the Inter-American Commission case of Azmitia Dorantes, as well as the Inter-American Court cases of Molina Theissen and Plan de Sánchez, among others.

Second, the National Disappeared Children Search Commission, CNBND, was created due to civil society initiative and pressure – the multi-institutional effort for peace and harmony – and the Ombudsperson's Office, which participates by means of its Office of the Children's Defender.

The legal concept adopted by the CNBND as a part of the Agreement with the PDH, arises from Congress' refusal to approve a legal initiative that would create the Commission. The CNBND does not rely on State financing because, although the National Compensation Commission approved financing to support the search in November 2004, governmental members of the Commission have always blocked the signing of the covenant.

Additionally, the State asserts that:

49. The Presidential Human Rights Commission has set up an internal Unit for the Follow-up and Search for Missing Persons: the staff is responsible for receiving applications and information from relatives and domestic and international organizations concerned to establish the whereabouts of relatives or persons who disappeared during the armed conflict, or for other unrelated reasons.

This is another of the isolated efforts undertaken by the central government. One must compare it with the Human Rights Ombudsperson's strategy, which is broader and coordinated with civil society organisations, for the creation of a commission and national program of search for disappeared persons, as recommended by the Historical Clarification Commission. This project is realised in consultation with the Public Prosecutor's Office, the Supreme Court of Justice and COPREDEH. The result is a legal initiative that is expected to be proposed in 2006.

It is important to mention that the Public Prosecutor's Office has created a unit for prosecuting cases of past human rights violations. This unit investigates forced disappearances, massacres and extrajudicial executions that occurred during the war, though none of its cases has been resolved to date. For this reason, victims and survivors have directed their expectations toward the Inter-American and international mechanisms. The State has also made commitments to make reparations in the context of friendly settlements before the Inter-American Commission, and the State is obligated to comply with Inter-American Court rulings. However, according to victims' statements, the process of compliance is very slow, partial and not conducive to full justice.

6.1.2. Legislative measures

The Committee against Torture has made two recommendations and one inquiry regarding legislative measures. One recommendation concerns the

law governing the Penitentiary system. The other addresses a norm that clearly prohibits invoking the order of a superior officer or a public authority as a justification for torture (paragraph 46 of the report⁷⁸). The CAT inquiry concerns the Code of Military Justice.

a. Approval of the penitentiary system law

In terms of the first recommendation, the need to provide a legal framework for the Guatemalan prison system is a priority, in conformity with article 19 of the Constitution, which obligates the State to comply with minimum standards regarding persons deprived of their liberty. Subsection *a)* provides:

“(..) They must be treated as human beings; they must not be discriminated against for any reason, nor may they be subject to cruel treatment, physical, moral or psychological torture, coercion or harassment, work incompatible with their physical state, acts that degrade their dignity, extortion or scientific experiments.*(...)”*

The lack of a normative penitentiary framework facilitates the occurrence of acts of torture and other ill-treatment. Currently, the prison system is in precarious condition, especially PNC detention centres. Infrastructure has been improvised to function as prisons, and it is in a state of deterioration. The majority of structures are old adobe houses with limited access to water, sanitation, electricity and telephone services. Women and gang members are the principal victims of discriminatory treatment and human rights violations, which primarily occurs at the hands of other persons deprived of liberty who are assigned duties normally performed by prison guard personnel.⁷⁹

The Prison Law must incorporate constitutional principles of humanity, equality, minimal impact, community participation, judicial control and human rights. These principles are contemplated in national laws and in international instruments ratified and signed by the Guatemalan State. The law must regulate the rights and responsibilities of persons deprived of liberty, as well as the prison administration and the training of prison personnel.

78 Committee against Torture, 35th session, List of Issues regarding the fourth periodic report of Guatemala.

79 First Report of the Guatemalan Prison Observatory, Human Rights Ombudsperson, 2004, pp. 35 and 44.

The law must permit civil society participation in the form of proposals and follow-up to prison policies. The aim must be to limit the arbitrary exercise of prison personnel functions.

The current legislative proposal for the prison system is currently at a standstill in its second reading. The principal opposition is the ruling party, GANA, which has proposed changes that restrict rights and guarantees and eliminate the disciplinary and progressive system in the current version. The greatest opposition to the proposal has come from ex-general Sergio Camargo Muralles, Congressional representative of GANA.

b. Military legislation

In respect of this issue, the CAT requested that the government:

“21. Please provide information on proposals for the repeal or reform of the Code of Military Justice of 1878 with a view to bringing the Guatemalan legal system into line with the requirements of the Convention against Torture, paying particular attention to the adoption in 2004 of the so-called ‘new military doctrine’”.⁸⁰

In 2005, the GANA party presented initiative 2794 (legislative proposal for the organisation and functioning of the military jurisdiction) to Congress. This initiative violates various constitutional precepts, and its approval would mark a shift away from the Peace Agreements. Specifically, the law would contradict Peace Agreement references to strengthening civil power and to the army’s role in a democratic society, and the agreement that judicial reform must prevent the generation or concealment of a system of impunity and corruption.

The military jurisdiction initiative (articles 1, 2, 3, 4, 11, 15, 16, 17, 18, 19) proposes to install military judges. These judges must be army officials, retired military or persons in active military service. This provision would violate article 205 of the Constitution, which enshrines judicial independence. The army by definition is an obedient and non-deliberating institution; judges would not be able to remove themselves from the military hierarchy when issuing rulings, and this would significantly compromise their independence and impartiality.

80 Committee against Torture, 35th session, List of Issues regarding the Fourth periodic report of Guatemala.

The initiative (article 26) establishes that “military tribunals will have competence to examine crimes and misdemeanours contained in the ordinary legislation, when these are committed by military personnel”. This would not only violate article 4 of the Constitution, which establishes the principle of equality before the law, but it would also perpetuate the existence of privileged classes, as two people who commit the same crime would be judged by different courts, attending to their position within the State.

The military prison proposal would violate article 19 of our Magna Carta, which requires a civil prison system staffed by specialised personnel. Permitting penitentiary centres to be managed by administrative military personnel would thoroughly invalidate the constitutional provision.

Congress approved the proposal in its first round of voting, but must still be approved in the second and third rounds, as well as the final round for articles. Disagreement among various actors has blocked its movement through the process.

6.2. Education and information (Article 10 of the Convention against Torture)

The Inter-American Commission recommended that the Guatemalan Government include education regarding the prohibition of torture in the training of law enforcement and judicial personnel. One such recommendation requests that the government “*Further strengthen training programs for security and prison personnel, to develop an institution-wide knowledge of and respect for human rights norms*”⁸¹.

The State response referenced various courses offered in the Penitentiary System School, the National Civil Police Academy, the Secretary of Social Welfare and the Public Prosecutor’s Office Training Unit, among others.

The Penitentiary School has been steadily weakened, almost to the point of its total disappearance. A massive escape of inmates occurred on 20 October 2005, and in the following month, prison guard training was entrusted to the Guatemalan Army. Fifty people attended a prison guard training course at the Military Police School, headquartered at the Military Brigade in

81 CIDH. Fifth Report on the Human Rights Situation in Guatemala. 6 April 2001.

Jutiapa. Military School personnel administered the course under the command of Captain Erick Pantaleón. It must be added that the head of security in the prison system is a retired military officer, Colonel Edgar Méndez. Inmates have implicated him in their reports of illegal extortion. The Human Rights Ombudsperson has begun investigating these allegations, based on the right to social readaptation in detention centres and based on specialised personnel requirements (article 19 of the Constitution).⁸²

There are no training programs for doctors, psychologists or social workers that address penitentiary rehabilitation, prisoners' rights, international norms prohibiting torture or compliance with minimum standards.

In addition, the State reports the completion of a series of isolated trainings for its agents and employees. However, these trainings do not follow a systematic training plan. They instead represent isolated activities supported by civil organisations. Although civil organisations have the ability to provide such training, the State offers them no opportunity to participate in an active or systematic manner. There is no evidence of any tangible results of the trainings. Neither are there monitoring mechanisms that can report a decrease in torture and cruel treatment as a result of these training sessions.

The training offered by the Public Prosecutor's Office does not include a course addressing the prevention of torture. It also fails to instruct prosecutors as to how they should handle reports of torture.

RIGHTS OF THE CHILD

Measures for the integral protection of children

The Guatemalan State ratified the Convention on the Rights of the Child in 1990. By doing so, the Government assumed a series of international obligations, including the obligation to harmonise its legislation with what was then the New Holistic Protection Doctrine. Various attempts have been made to create legislation that would protect children's fundamental rights. For example, the Children and Young People's Code would introduce reforms to protect children from child abuse, sexual abuse, illegal adoption and other rights violations. Various

82 Report memorandum dated 11 November 2005 and PDH Resolution of 23 November 2005, released in January 2006.

sectors of society rejected this Code, and Congress raised a number of obstacles to its approval and implementation. Ultimately, in 2003 the Law of Integral Protection of Children and Adolescents was passed as Decree 27-2003. The current struggle is therefore to make this law operative. Its implementation is important not only because it requires the Guatemalan Government to take action, but also because it calls on general society to assume its responsibility for the protection of children and adolescents.

Article 11 of the law provides that “Every child and adolescent has the right to be protected from all forms of neglect, abandonment and violence, as well as the right not to be subjected to torture, cruel, inhuman or degrading treatment”. Article 53 requires protection of children from all forms of ill-treatment. The major obstacle to the law’s implementation is lack of resources. The State fails to invest in the rights of children and young people, and the mere existence of special courts is insufficient.

In respect of prevention, there is no state budget for sensitisation campaigns, training or implementation. The law created a National Children’s Commission, but without an adequate budget, its functioning has been minimal. For the entire year of 2006 the Commission budget was approximately US \$7,500.

The Law (art. 100) also requires training of justice system personnel in the rights specific to children and adolescents. However, there is no culture of protection of the rights of children and adolescents. To make the law effective, society must understand the law, and justice system personnel must administer it in a just and humane manner.

In May 2005, Congress decreed that 13 March of every year would be a “Day against Violence against Children and Adolescents”. This decree arose in response to an initiative of the Human Rights Ombudsperson and Casa Alianza. Congress has therefore recognised the need to take concrete action to prevent the violence plaguing many Guatemalan children and adolescents. However, the State has taken no such action. The situation worsens every day, and murders continue with impunity. The State has taken no steps to bring responsible parties to justice or to develop policies of protection.

Police training

When the police force learns of maltreatment against minors, it must protect the victim and bring her to court to seek protection and shelter. The Children and Adolescents Specialisation Unit of the National Police was created to train agents to offer real protection to children. However, abuses committed by some police officers are due to the corruption pervading the majority of government agencies.

7. Arrest, detention and imprisonment (Article 11 of the Convention against Torture)

7.1. Practices related to apprehension, detention and preventive custody

Duration of preventive custody⁸³

Preventive custody is to be used only exceptionally and its duration is limited. Article 264 of the Code of Criminal Procedure violates the principle of exceptional use. It prohibits, by operation of law, the authorisation of alternative measures in cases of murder, parricide, abduction, theft and aggravated theft, among others. In all such cases the judge must order preventive custody by law, without considering whether there is a risk of flight or obstruction of justice. This law undermines the precautionary nature of preventive custody and makes it an anticipated penalty. One of the most common bases for preventive custody orders is the accusation of drug possession for consumption.

Article 268 of the Code of Criminal Procedure establishes that:

“the period of incarceration may not exceed one year, but if the individual is convicted and awaiting appeal, the incarceration may continue for three additional months.” The article’s second paragraph establishes that *“The Chambers of the Court of Appeals of the Republic, in the cases submitted for its review at the request of magistrates, judges, Sentencing Courts or the Public Prosecutor’s Office, will review and where appropriate authorise the extension of preventive custody periods provided for by the Code, as many times as necessary, fixing a set time period for each extension. In no case brought before the magistrates’ courts may the extension referred to in this article be authorised more than twice. Where there has been a conviction, preventive custody may be prolonged during the processing and resolution of the special appeal procedure. The Supreme Court of Justice in the cases submitted for its review, by appointment or at the request of the Chambers of the Court of Appeals or the Public Prosecutor’s Office, may authorise extensions as many times as necessary,*

83 Committee against Torture, 35th session, List of Issues for examination of the Fourth periodic report of Guatemala.

fixing a set time period for each extension. It may order such measures as are necessary to expedite the procedure, and it will meanwhile continue to review the custody”.

In practice, preventive custody continues for an average of 16.5 months⁸⁴, or more than one and one half years. This prolonged detention increases the possibility of torture and other ill-treatment. In addition, given the precarious conditions of detention and the prevalence of discriminatory treatment, prolonged preventive custody in itself constitutes degrading treatment.

In 2004, 45,098 persons were detained,⁸⁵ 86 and 45,395 were detained in 2005.⁸⁷ Approximately 81.1% represents a floating population that enters and leaves the system quickly. This large percentage is due to the fact that the majority of detentions by the national civil police do not comply with legal requirements. Instead they are based on flagrant allegations which lack the requisite supporting evidence⁸⁸.

In October 2005, the Guatemalan prison system⁸⁹ contained a population of 8,247 (of which 381 were women). Of this total, 3,742 (45.37%) were convicted and serving a sentence (156 women, 41%). There were 4,334 (52.55%) persons who had been charged, and 171 (2.07%) were detained for misdemeanours.⁹⁰ 7,421 were in the custody of the General Directorate of the Prison System, 826 were in PNC custody. Forty-two penal centres housed this population⁹¹, 36 preventive custody centres and 6 for convicts. Of these centres, 18 are under the charge of the General Directorate of the Prison System (DGSP), and 24 are overseen by the National Civil Police.

84 PDH/ICCPG First Report of the Guatemalan Prison Observatory, Guatemala, 2004.

85 This figure corresponds to the period from 1 June 2003 to 30 June 2004, and pertains only to the department of Guatemala.

86 Svendsen, Kristin, Detention and Legal Processes for the Crime of Possession for Consumption. ICCPG, 2004. p. 2

87 Source: Crime Statistics Report, National Civil Police, 11 December 2005.

88 Source: information reflecting detentions for the crime of possession for consumption, which constitute 49.3% of the total detained.

89 This includes centres in the charge of PNC and the General Directorate of the Prison System.

90 Source: General Directorate of the Prison System, October, 2005.

91 There are eight additional prisons in the police stations which house apprehended persons, source: General Directorate of the PNC, March 2005.

The steady growth of the population in preventive custody makes clear that the Government has failed to comply with the *exceptional use* principle. Available information reveals that arbitrary detention is one factor that fundamentally affects the rise in prison violence. Prison personnel themselves have acknowledged this fact.

In October 2005, 131 young people were deprived of their liberty: 76 were in preventive custody (6 women) and 55 were serving a sentence (2 women)⁹².

The CAT and the Inter-American Commission have made various recommendations regarding the circumstances of apprehension, detention and preventive custody. The CAT urged the State to conduct a “*Review of interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment*”.

The Inter-American Commission has made three such recommendations: “*Take the measures necessary to ensure that all detainees are immediately informed of their rights, including to a lawyer and to bring complaints in event of mistreatment, and to ensure that any detention is subject to prompt judicial supervision*”.

Adopt additional measures of training, oversight and enforcement to ensure that agents of the National Civil Police follow the procedures established by law in effectuating arrests, and, in particular, to ensure that arrests are only carried out pursuant to judicial order or in legitimate situations of flagrant offences. The Commission particularly highlights the need to strengthen the internal system for monitoring and oversight within the National Civil Police.

...Undertake concerted measures to ensure that any person deprived of liberty is subject to judicial oversight within the 6 hour period provided for in the Constitution. As one safeguard, the Commission recommends that additional measures of training, oversight and enforcement be adopted to ensure that prison authorities do not accept detainees without a judicial order authorizing their detention, as required by law. ...”⁹³.

92 Information obtained by ICCPG’s Children and Violence Programme, Guatemala, October, 2005.

93 CIDH. Fifth Report on the Situation of Human Rights in Guatemala. 6 April 2001.

Despite constitutional and other norms and the various recommendations, the rights of persons from vulnerable sectors are not respected in their apprehension or detention by police. The conditions of preventive custody also fail to respect the rights of vulnerable persons. Three consecutive studies, conducted by the Institute for the Comparative Study of Criminal Law, confirm this assertion.

The first study was undertaken in 2003 to document human rights violations during the implementation of Plan “Clean Sweep”. The research reveals that the majority of those detained were poor, uneducated youth from marginalised areas. In 70% of the cases, these youth were apprehended for possession of drugs for consumption. The National Civil Police planted false evidence in many of these cases in order to justify the detentions⁹⁴.

Oversight of the detentions by other justice system agencies was minimum or nonexistent. Magistrates did not verify whether detainees had been informed of their rights. This was especially true of the rights to communicate the fact of one’s detention with a family member and to contact a defence attorney. Not one magistrate ordered the release of the detainees, despite clear indications of unlawful detention in the framework of the study (this is evidenced by the high number of judges’ dismissals based on lack of merit). It must be added that detainees did not personally appear before the magistrates, which prevented verification of their physical condition. Furthermore, police confined detainees without court orders, thereby evading judicial oversight⁹⁵.

The first appearance before a magistrate occurs only to inform the person of his or her rights. However, it is evident that constitutional guarantees were not enforced. In fact, the majority of detainees did not contact defence attorneys until much later, and only 40% had a defence attorney for the first appearance before a judge. Detainees therefore spent their first days of confinement without the support of an advocate and presumably unable to communicate with relatives. This indefensible situation exposes the detainee to potential torture and illegal extortion at the hands of the PNC. On average, persons are detained without appearing before a competent judge for a period between 6 and 10 days, and in some cases for as long as 23 days⁹⁶.

94 ICCPG, Exposing Plan “Clean Sweep”, Guatemala, 2003.

95 Ibid.

96 Ibid.

Police oversight by the Public Prosecutor's Office is very weak. In general the PNC imposes its own policies of selectivity and determines the work of the prosecutor. The PNC in this way becomes the principal *director* of the criminal justice system, inverting constitutional principles that entrust the direction of criminal prosecution to the Public Prosecutor's Office.

The second study was conducted in June 2004 to establish the legality of detention and proceedings in cases of alleged drug possession for consumption. Thirty judicial proceedings were examined, involving 41 detainees. The cases were selected at random. As in the previous study, the majority were single, poor and uneducated young men.

All cases were found to be in violation of the law. The required 24-hour period in which a detainee must have the opportunity to make an initial statement was violated (the average was 6 days, three hours and 42 minutes). The 6-hour period in which to bring a detainee before a judge, as mandated by the Constitution, was doubled. The police determined that 24 of the cases lacked merit. Among these cases, the length of detention varied from 3 to 14 days.

According to CALDH's report, "...throughout 2004 the number of detainees between the ages of 14 and 29 rose to 32,676⁹⁷: 31,089 men, 1,587 women and an average of 5,000 gang members. The principal reasons for detention were robbery, public intoxication and scandal, drug possession, quarrelling, carrying a firearm. A smaller number of persons were detained for murder and rape. Various human rights and justice organisations have established that most detentions of gang members and suspected members are illegal and irregular. In these cases, crimes are alleged without corroborating evidence, or without an identifiable victim"^{98 99}.

97 Statistics supplied by the General Directorate of the National Civil Police.

98 The Institute for the Comparative Study of Criminal Law of Guatemala investigated detainees during Plan "Clean Sweep" and determined that "in many cases, the police did not actually confiscate drugs. Instead, police fabricated the evidence. This was reported by the public defenders in Guatemala City and Villa Nueva, who stated that many times the drugs did not exist or had been planted. This was confirmed in the study of proceedings, in which the only evidence offered by the Police was "police prevention". Drugs did not appear as evidence in any of the proceedings". Exposing Plan "Clean Sweep". Guatemala, 2004, p. 35.

99 CALDH, 2005a.

Detainee statement	Yes	No	Not mentioned	Total
Beating of the detainee by police agents	7	-	25	32
Threatening of the detainee by police agents	5	-	27	32
Theft of detainee's personal belongings by police agents	8	-	24	32
Destruction of detainee's identification documents by police agents	2	-	30	32

The third study took place in 2005 and sought to identify police abuses against detained women¹⁰⁰. The results reveal a situation similar to that of men. The following table summarises specific abuses:

100 ICCPG, Rates of impunity in police crimes against women. Guatemala, 2005.

Chronology as required by the Guatemalan criminal justice system:	Chronology as dictated by social, police and judicial practice:
Normally a person may only be detained with a court order. Constitution, Article 6.	130 women interviewed (84%) were detained without a court order.
The person must be informed of her rights. Constitution, Article 8.	143 women (93%) were not informed of their rights.
The inherent dignity and integrity of the person must be respected. American Convention on Human Rights, Article 5.	152 women (99%) were victims of abuse and violations of their fundamental rights.
A person's body may only be searched for a justifiable reason, and only by a person of the same sex. Constitution, Article 25.	95 women (62%) were searched by male police officers.
The security forces are prohibited from presenting captured persons to the media before bringing them before a competent judicial authority. Constitution, Article 13	71 detainees (46%) were presented to the media before they were heard by a competent judge.
Each person must be brought before a competent judge within a maximum of 24 hours in order to determine the legality of her detention. Constitution, Article 9.	85 women (55%) were brought for their first statement before a judge after the constitutionally required period had lapsed.
Every person has a right to a defence. Constitution, Articles 8 and 12.	45 women (29%) had no professional defence assistance during their capture and detention in police institutions

7.2. Practices related to police interrogation

Article 9 of the Constitution of the Republic prohibits extrajudicial interrogations. It also states that such interrogations lack probative value. Despite the clarity of the Constitutional provision, detainees are frequently tortured for the purpose of obtaining information to solve crimes. This occurs especially in cases of murder, abduction, drug trafficking and other serious crimes. There are various judgements in which confessions given by the accused during police interrogations have been the principal basis for a conviction. An example is the case of Tirso Román Valenzuela, in which the sentencing court of Quetzaltenango gave value to the statement given by agent Chalí Chacach, who narrated that the accused spontaneously confessed his participation in the murder of a prosecutor in the Public Prosecutor's Office¹⁰¹. Mr. Tirso Román was sentenced to death for this crime. There is also the case of Santos Pio Oron; in this case presiding judge of the court of Chimaltenango dissented. He concluded, based on medical evidence supplied by the defence, that the defendant had been tortured¹⁰².

No person who has reported being subjected to torture has been evaluated by a forensic physician immediately thereafter. The evaluations usually occur within a period of five to fifteen days after the fact. By this time, some evidence of torture will disappear. However, in the case of Pio Oron, for example, the forensic medical report concluded that the accused had erosions and contusions (bruises); this evaluation was conducted eight days after the detention and five days before recovery¹⁰³.

The lack of a forensic physician assigned to each judge causes such delays. For this reason it is necessary that the State implement a system of forensic physicians in police stations or in the relevant courts. Such a system would make possible an immediate statement and a complete physical examination of the detainee's condition.

It is rare to find a defence attorney present during police interrogations. This situation has improved with the programme of the Public Institute of

101 See the case of Tirso Román Valenzuela, part 5.

102 Sentence of accused number six stroke two thousand two (06-2002) in the charge of the second officer who, for the crimes of Plagio or Abduction and Murder, cargo del oficial segundo que, por los delitos de Plagio o Secuestro y Asesinato, se instruyó en contra de Edgar Pio Oron, Francisco Mixtum Reyes and Ruben Ajmac Santos.

103 Ibid.

Criminal Defence which appoints public defenders to the police stations. The programme assigns special attorneys to minor acts: misdemeanours and minor crimes. They generally do not intervene in more serious crimes, such as murder or abduction; it is in these cases that the largest number of incidents of torture occurs. In addition, the attorneys encounter significant obstacles in accessing all precincts. This lack of access enables illegal detention.

In some cases torture is practised on radio patrols, or in open and remote places, to avoid inspection by the public defenders¹⁰⁴.

7.3. Transfers

There is a high rate of transfers of preventive custody detainees. This is especially so following the violent events of 15 August 2005. These events took the lives of 37 people and left 60 wounded in Commissariat 31, in the southern city of Escuintla. The prison authorities responded with the closure of Commissariat 31 and the transfer of its prisoners to the city of Mazatenango, to the Boquerón Prison in Cuilapa, Santa Rosa, and to the Maximum Security Centre in Escuintla.

These transfers presume that detainees may be housed more than 70 kilometres from the site of judicial proceedings. The majority of these detainees are subject to the courts of Guatemala City. Some detainees were transferred 160 kilometres away, to centres such as the Mazatenango prison. In none of these cases were medical examinations performed before or after the transfer¹⁰⁵.

The majority of transfers occur without a court order. Unauthorised transfers contribute to a lack of judicial oversight. Judges stated in interviews that in some cases they did not know the location of detainees under their jurisdiction¹⁰⁶.

Lastly, some vehicles used for transfers do not meet minimum safety standards for the physical integrity of the detainees. They are extremely small

104 See the case of Tirso Román Valenzuela.

105 Information supplied by the prison system regarding the fate of detainees in Commissariat 31. Interviews with judges.

106 Interviews with judges conducted by ICCPG, in February 2006.

and have very little space for ventilation. The lack of adequate vehicles causes detainees to miss court hearings, which in turn delays the proceedings. This problem also causes detainees to miss medical appointments.

Currently, SBS is responsible for transporting adolescents to scheduled hearings. However, human and material resources are scarce. On various occasions there have been attempts to solve the problem by coordinating specific days in each special court for hearings. As of today, this has not been possible¹⁰⁷. The situation puts adolescents at risk of failing to comply with judicial summonses, which unnecessary delays their judicial proceedings.

7.4. Conditions of detention for the incarcerated population

The human rights situation of persons deprived of their liberty in Guatemalan prisons is increasingly grave: there are dangerous conditions of confinement as well as degrading treatment. The conditions result primarily from population growth, deteriorating detention conditions, corruption of prison agents, abuses of discipline and order committees, budgetary abandonment by the State, absence of a prison law, increased conflict between rival groups and social cleansing within the prisons.

Until October 2005, the population deprived of liberty in Guatemala was 8,247 persons¹⁰⁸, confined in 41 penal centres: 35 preventive centres and 6 for convicts. There is no separation of convicted persons and persons in preventive custody. In the High Security Centres of Escuintla, Puerto Barrios and Cantel, persons in preventive custody are housed with convicted persons. In Zone 18 of the Preventive Custody Centres, persons sentenced to death are confined to a specific area and cannot leave their cells.

In violation of the order of the Inter-American Commission on Human Rights, the government does not maintain a central registry of detained persons. This failure makes judicial oversight of detention conditions impossible.

107 Information collected by the Children and Violence Programme of the ICCPG, Guatemala, October 2005.

108 Directorate, General Directorate of the Prison System of Guatemala, 04 October 2005.

In terms of the legal situation of the population, 52.5% are in preventive custody; 45.4% are serving sentences and 2.1% have been found guilty of misdemeanours. Overcrowding is one of the structural problems (23.65%)¹⁰⁹; there are 114.5 people for every 100 spaces. In Commissariat 31 in Escuintla¹¹⁰, overcrowding reached 106.8%. Individuals held there have a space of 0.32 m² in which to sleep. There is one shower for every 175 inmates and one bathroom for every 37 inmates.

The population is primarily young (between 18 and 35 years)¹¹¹, and includes Guatemalans, persons of mixed race, literate persons, those who did not complete primary school, those with incomes between 500.00 and 2,000.00 quetzales, and those who have a public defender¹¹². In the case of persons convicted in the first degree, the process from detention to sentence can last approximately 16.5 months.

With the exception of COF, the centres do not have disciplinary regulations. It is the inmates themselves, those placed in charge of specific blocks, who administer disciplinary sanctions. One of the most serious problems is the existence of punishment cells or blocks used arbitrarily by those left in charge. The majority of the centres visited have isolation cells.

Preventive custody:

1. Preventive custody in zone 18, sector 11: 18 isolation cells of approximately 1x2.5 m, with a 1x1.75 door. 2 or 3 persons inhabit each cell.
2. Preventive custody in Mazatenango: one cell of 2x1 metres, with a barred window of approximately 0.50 x 0.75 m, lacking a board or bed to sleep on, lacking water and washroom facilities. At the time of the visit no one was confined there; it is reserved exclusively for men.¹¹³

109 Prisons under the charge of the General Directorate of the Prison System house 90.3% of the detained population.

110 The majority of those confined in this prison are gang members.

111 According to a report by MINUGUA-UNDP in 1999, the percentage of the population between 18 and 35 years of age has grown from 51.24 % to 67.38%.

112 Prison Observatory Database, PDH-ICCPG 2005.

113 Verification file, 2004.

3. Preventive custody in El Quiché: 2x1 m cells used for isolation and conjugal visits. They have no board to sleep on nor windows. They have one light bulb. They function as isolation cells but when unoccupied they are used for the conjugal visits of more than forty-five detainees. It is reserved exclusively for men.
4. Commissariat 31: one isolation block on the second floor of the centre.
5. Jalapa: one isolation block.
6. Cobán: Alta Verapaz, 6 isolation cells.
7. Huehuetenango: one isolation cell; the women's block has one dark room measuring 2x1 m.
8. Santa Elena Petén: one isolation cell in the women's sector; it measures 2x1 m, has washroom facilities but no potable water.
9. El Boquerón, Cuilapa Santa Rosa: three isolation cells; one houses three young gang members; the others housed one person each; there is no washroom facility or potable water.
10. Coatepeque: one isolation cell which is used for men and/or women without distinction; it measures approximately 2 x .75 m. It does not have potable water and has a barred door of 1.75 x 1 m and one barred window of 0.5 x 0.5m.
11. Preventive custody in Sololá: the centre has only one block; its conditions constitute permanent isolation for the entire population; the block measures 8x13 metres and houses approximately 46 individuals.

Centres for convicted persons:

12. Puerto Barrios: Isolation block on the second level, approximately 8x8 m, with a barred door for ventilation and natural light measuring 0.75 x 1.25; three rooms of 2x1.5 m. Occupied by 6 persons at the time of the visit; running water for 2 hours a day, and one shower.
13. Cantel Rehabilitation Farm, Quetzaltenango: one isolation cell known as the "20"; it is a dark room measuring 2x3 metres, no windows; it has washroom facilities but no potable water.
14. Women's Orientation Centre, COF: one maximum security block (block E), which has four rooms, two of 4 x 4 metres and two of 2 x 3 metres, approximately. In this block there is a cell of 3x2 metres with electricity,

washroom facilities and windows measuring approximately 1x2 metres. Inmates in this block are prohibited from leaving for work¹¹⁴.

In respect of guaranteed exercise of the rights of persons deprived of liberty, the security of life and integrity is inadequate. All centres lack security plans and/or protocols for the resolution of conflicts¹¹⁵. The availability of guards is also very low, at a ratio of one guard for every 19.2 persons.

It is also important to note that groups of inmates in positions of authority extort, threaten and coerce their fellow inmates. They also apply arbitrary punishments, primarily isolation, and in recent cases they also commit injuries or homicides. As stated by an individual housed in the Cantel Penal Farm: *"In here, the person with money gets everything; the person who doesn't will suffer"*.

As regards the disciplinary regime, the First Prison Observatory indicates: *"None of the fourteen centres visited has disciplinary regulations. In thirteen of them it is the detained population itself, those in charge of the block, that applies disciplinary sanctions"*; those belonging to the committees of order and discipline, which generate countless abuses¹¹⁶.

Conjugal visits are permitted for men, although the majority of penal centres do not offer decent conditions for visits. Conjugal visits must be improvised in the general visiting rooms. Without a doubt, one of the most serious violations of this right is the fact that women in preventive custody are not permitted conjugal visits.

There is also discrimination against persons of indigenous origin. No registry exists to quantify the indigenous population in each centre, or the centres' related programmes. This is a grave omission considering that at least 24% of the penal population is indigenous.

Although the majority of the Guatemalan population is indigenous (question 20), and although specific peace agreements strengthen the identity and activities of indigenous communities, in reality they are at a disadvantage in exercising these rights. This reality is evident in the cases of two detained indigenous minors, who suffer discrimination and humiliation in detention.

114 PDH/ICCPG. First Report of the Prison Observatory. Guatemala, 2004.

115 Ibid. Verification File, for the period between January 2004 and September 2005.

116 Ibid.

7.5. Murders in prison in 2005¹¹⁷

The precarious situation of the prison system and the lack of State will to reform it have permitted the emergence of conflicts within the penal centres. The most serious and most recent conflict resulted in the deaths of young gang members in various prisons of the country. On 15, 16 and 17 August 2005, 37 young people were executed while detained at Escuintla's Commissariat 31, the Pavon Rehabilitation Farm, the Mazatenango Preventive Custody Centre in Suchitepéquez, the Canadá Rehabilitation Farm in Escuintla, the Escuintla High Security Centre and the Provisional Juvenile Detention Centre.

The deaths increased in the days that followed: 18 more murders were registered, 12 of which occurred in a centre for minors.

At least 15 of the young people murdered on 15 and 16 August were detained for crimes without a direct victim (drug possession for consumption, drug trafficking, carrying arms). One was detained in the Mazatenango prison for misdemeanours. An inmate at the Pavón Rehabilitation Farm had paid a fine to suspend his sentence for encouragement of a crime. Another had already received a release order that had not yet been executed. The majority of the murdered youth belonged to the M18 gang.

The events of 15 August occurred consecutively: Commissariat 31, 8:30 in the morning; Pavón Penal Farm, 9:00 in the morning; Canadá Penal Farm, 10:00 in the morning; Mazatenango Preventive Custody Centre, 11:00 in the morning. The timing indicates careful planning of the incidents.

The most serious incident resulted in 19 deaths and occurred at Commissariat 31, in the department of Escuintla. Responsibility for security at the Commissariat 31 prison was shared by the Prison System and the National Civil Police, and the largest portion of the population belonged to "*maras*" or gangs. A large number of inmates were wounded at this prison, 121 according to the medical office of the Prison System. It is notable that Commissariat 31 was already the subject of precautionary measures issued by the Inter-American Commission on 31 October 2003, due to the deplorable situation in which its inmates were living.

117 This chart is based on the Report on the Prison Deaths of 15 and 16 August 2005, elaborated by the Institute for the Comparative Study of Criminal Law of Guatemala.

Commissariat 31, 15 August 2005

DECEASED INMATES	ORIGIN	AGE	CATEGORY	CRIME	GANG
Barríos Bámaca, Juan Carlos		22	Accused	Rape	M18
Casia, Mario Ricardo		19	Accused	Drug possession for consumption	M18
De la Cruz Hernández, Edwin Rolando		19	Accused	Drug possession for consumption	M 18
Estrada Dueñas, Bryan Emanuel		24	Accused	Robbery	M18
Gámez Mayen, Mynor Aroldo	Salamá con resident of Sacatepéquez	20	Accused	Aggravated robbery, carrying an illegal firearm	M13
Gatica Hernández Mario Leonel	City, resident of Colonia Cipresales Zone 6	22	Accused	Illegal trade drug trafficking and storage	M18
Hernández Samayoa, César Augusto		19	Accused	Illegal trade drug trafficking and storage	M18
Herrera Ical, Tony Edwin	City, resident of Zone 8	21	Accused	Drug possession for consumption, robbery	M18
López Ambrosio, Luis Alberto	Native and resident of Colonia, z. 18	20	Accused	Drug possession for consumption	M18
López Rafael, Nelson Israel	Guatemala City, Piedra Parada El Rosario, Santa Catarina Pinula	20	Accused	Illegal carrying of a firearm, of a firearm, for consumption	M18
Magaña Mayén, José Eleazar		20	Accused	Carrying a firearm	M18
Ramírez Navarro, Cristofer Bladimir		19	Accused	Homicide	M18
Ramírez Rivera, Edy Geovany		23	Accused	Encouraging the commission of a crime, drug addiction, carrying an offensive firearm	M18

Rodríguez Castellanos, José Humberto		24	Accused	Portación ilegal arma fuego	M18
Rodríguez Marcos, Jorge Rolando	native and resident of Colonia Esperanza zone 18	21	Accused	Injury, illegal carrying of a firearm, encouraging the commission of a crime, drug addiction	M18
Vásquez Castillo, Uber Rodolfo	Native of Barberena, Santa Rosa, resident of Colonia Paraíso II z. 18	18	Accused	Drug possession for consumption	M18
Vásquez Mijangos, Edgar Estuardo	Native and resident of colonia Limón, zone 18	19	Accused	Carrying explosives and drug possession	M18
Vargas Orantes, Miguel Ángel		23	Accused	Aggravated robbery	M18
Mendoza Sáenz, Cristofer José		25/27	Accused	Homicide	M18

The chronology of events reveals that the attack was coordinated. MS members¹¹⁸ received their arms in three suitcases; according to the inmates' account, they were thrown inside through the main entrance. Reunited in their cells, they divided up the arms and planned the attack. When M18 members began their routine exercises, the MS members attacked them. Taking advantage of the confusion, MS members returned to their sectors without a problem. The M18 members responded by taking shelter from the attack, gathering at the prison entrance.¹¹⁹

A Commissariat 31 staff member, when asked what happened that day, responded that "they just locked them up, and who knows what happened inside". There was also a delayed response from the security forces in lending assistance to the prison system to prevent further escalation of the violence. According to the report of the PDH auxiliary in Escuintla, at ten in the morning the PNC managed to control the situation at Commissariat 31; the disturbance had begun around 8:30.

118 Mara Salvatrucha.

119 Siglo XXI, 17 August p. 8.

Four of the eight persons killed at the Pavón Penal Farm were in isolation. This means that, in theory, only prison authorities had access to their cells. Every inmate killed in Pavón displayed craneoencephalic injuries produced by a firearm.

Pavón Penal Farm

DECEASED INMATES	ORIGIN	AGE	CATEGORY	CRIME	SENTENCE	MARA
Chaj Siguantay, Carlos Humberto	Capital	20	Convicted	Encouraging commission of a crime, drug addiction	2 years, incommutable, Q5,000 fine. Suspended sentence upon payment of fine.	MS
Guerra Esquit, Fulgencio	Caserío la Unión, Aldea El Molino, San Martín Jilotepeque, Chimaltenango	30	Convicted	Indecent, violent acts	8 years, incommutable	
Jiménez Rodríguez, Jorge Alfredo		19	Convicted	Homicide and attempted homicide	40 years, incommutable	
Ruano Rodríguez, Ever Orlando			Convicted	Homicide	30 years, incommutable	Ex-MS
Ruiz, Hugo Alexander						
Sales Boch, Rafael Ranferí	Colomba Costa Cuca, Coatepeque	25	Convicted	Illegal possession of offensive firearms	6 years incommutable	
Tezén, Pablo Elías (sole family name)	Mixco	20	Convicted	Aggravated robbery, rape and indecent acts	36 years, 8 months incommutable	
Valdez Barahona, David Reginaldo						

Another incident occurred in the Canadá Farm, a centre for convicted persons. Two Canadá inmates died in a grenade explosion. In Mazatenango, a preventive custody centre, two persons were attacked with a knife and killed.

Canadá Penal Farm

DECEASED INMATES	AGE	CATEGORY	CRIME	SENTENCE	MARA
Aris Flores, Erick Bernabé	25	Convicted	Homicide, aggravated robbery, serious injury, mild injury	48 years	Two of these three persons belonged to M18, but it is not known who
Estrada Martínez, Héctor Geovany		Convicted	Aggravated theft	3 years	
		Convicted	Aggravated robbery	6 years	
Méndez Cardona, Jimmy Isaac	19	Convicted	Aggravated robbery	6 years	

Mazatenango Preventive Custody Centre

DECEASED INMATES	ORIGE	AGE	CATEGORY	CRIME	MARA
Calderón, Cristian Vinicio	Patulul	22		Aggravated robbery	M18
Peña Contreras, Gerson Eliú	Patulul	20		Indecency (misdemeanour)	M18

The weapons used in the events of 15 August 2005 were grenades, firearms (9 millimetres) and knives.

Press reports stated that what occurred had been a mutiny. In reality, however, despite poor conditions, especially in Commissariat 31, there were no prior inmate petitions requesting improvements. None of the inmate commissions had requested, for example, an interview with the director, nor

made a request for the transfer of an undesirable inmate. Neither had inmates requested any special services. In addition, with the exception of the guard who was injured in Commissariat 31, it seems that no authorities intervened to stop the violence, although ultimately tear gas was used for evacuation purposes.

Investigations of these events have been highly inefficient. The crime scene was not reconstructed, because prosecutors did not dare enter. Evidence was incorrectly handled. An investigation was only opened for the guards of Commissariat 31 and in CEJUDEP¹²⁰; in the two other cases, the only judicial proceedings were against the young gang members.

It is necessary to highlight that the incidents could have been avoided. There was an early warning, especially in Commissariat 31, but governing authorities ignored the report of the director of the Criminal Public Defence Institute, Blanca Stalling, that the gang members had brought grenades into the commissariat. This report was presented on 2 August 2005, based on information that some inmates provided to their public defenders. The director recommended a requisition, but it is not certain whether her proposal had been realised. The public defenders asked her whether, given the reports, they could continue their prison visits. Stalling agreed, and attorneys visited Commissariat 31 on 11 August. On that date the inmates repeated the information. As mentioned above, two deaths occurred at this centre.¹²¹

In the Chimaltenango and Cobán prisons, attempted fights among gang members threatened the order. According to the prison system spokesperson, there were also attempts in Antigua and Puerto Barrios¹²².

On 19 September, three more people were murdered in the Puerto Barrios prison. Ramiro Lima García had been sentenced to 33 years for aggravated robbery, and Leonel Omar Seijas and Edy Daniel Panjoj to 15 years for homicide.¹²³ An MS member shot the three M18 members with a .38 pistol, causing their deaths¹²⁴.

120 Provisional Juvenile Detention Centre.

121 Interview with Blanca Stalling, Director of IDPP, 13/9/2005.

122 Interview with the Prison System spokesperson, 30/8/2005.

123 *Idem*.

124 *El Periódico*, 20 September 2005, p. 8.

Two more persons were killed by a knife on 20 September in Commissariat 31: two M18 members, Vinicio Dávila Villatoro¹²⁵, 20, had been detained for rape and illegal possession of weapons, and Félix Alfonso Archiva, 19, detained for possession of drugs and a firearm. It was rumoured that there were disagreements between the two, but the prison system director *“stated that the two convicts’ deaths was an act to protest visit restrictions”*¹²⁶.

Concerning torture, in January and February 2006 the Institute for the Comparative Study of Criminal Science in Guatemala and the Human Rights Office of the Archbishop of Guatemala conducted an investigation in: the Men’s Preventive Custody Centre of zone 18, Santa Teresa, the Men’s Preventive Custody Centre of Quetzaltenango, the Women’s Preventive Custody Centre of Quetzaltenango and the Commissariat of Villa Nueva. In these locations 323 persons were chosen at random and interviewed, 91 of which confirmed having suffered ill-treatment, and among those at least four reported suffering acts of torture¹²⁷.

The study’s main conclusions affirm that Guatemala City registers the highest number of victims (72), at 79.1% of the registered cases. The parties most often accused are members of the National Civil Police: 47 cases (51%) implicated the PNC, and 32 cases (35.2%) the Criminal Investigation Service (SIC) of the PNC (currently renamed DINC). Together, these make up 86% of the total reported acts of torture and ill-treatment.

125 If this refers to the same person in the report of the PDH Auxiliary in Escuintla, he was wounded as a result of the confrontation on 15 August 2005.

126 Prensa Libre, Wednesday, 21 September 2005, p. 36.

127 See Psychiatric Report on Torture, elaborated by the Human Rights Office of the Archbishop of Guatemala.

The most frequent methods of torture and ill-treatment are:

Blows to different parts of the body (including genitals) with cables or clubs	81 cases	89% ¹²⁸
Torture by asphyxiation	42 cases	47.2%
Electric shock	7 cases	7.7%
Burning	4 cases	4.4%
Sexual torture	2 cases	2.2%
Threats of death or torture	45 cases	49%
Mock execution	9 cases	9.9%
Nakedness	9 cases	9.9%
Insults and verbal abuse	50	54.9%

Below, this information is provided according to the crime of which the detainee was accused:

Aggravated robbery	13	14.3%
Murder	6	6.6%
Drug possession for consumption	7	7.7%
Kidnapping or abduction	8	8.8%

128 This information is not cumulative due to the fact that some victims suffered multiple types of torture and ill-treatment.

WOMEN'S RIGHTS

Torture and other ill-treatment of detained women

A report elaborated by the Institute for the Comparative Study of Criminal Science suggests a pattern of sexual torture against women detainees¹²⁹. In July 2005, 154 of the 205 women¹³⁰ in preventive custody in the Santa Teresa detention centre were interviewed.

The results were as follows: in 94% of the cases, women were admitted to Police stations or other installations of the National Civil Police. 49% of the reported abuses occurred in these locations. A total of 52 women reported having been victims of acts of torture; in other words, 34% of all women interviewed. Of these acts of torture, 73% were directly related to sexual violence, and the remaining 27% of cases were acts of torture to obtain information; in some cases sexual violence was one element of other acts such as hanging, electric shock, asphyxiation, etc.¹³¹. Twenty-two interviewed women (29%) stated that they were stripped and underwent anal and vaginal searches, and they were photographed naked¹³². One of the interviewed women described her treatment by the police agents thus: *"I was shackled with my hands behind me. He told me that I was carrying drugs. He took off my trousers and my underwear and inserted his finger in my vagina three times"*¹³³. The majority of abuses were perpetrated by policemen, in only one case was a prison guard implicated.

The following accounts illustrate the practices:

*"They took me to the DG¹³⁴. They locked me up with four men in a room. They sat me down and tape-recorded me and said what they wanted to hear. They pushed me and pulled my hair. They pointed a shotgun at my head (Woman detained for kidnapping)"*¹³⁵.

129 ICCPG, Rates of impunity in police crime against women. Guatemala, 2005.

130 The majority of detained women are Guatemalan, "ladinas", young, poor, single mothers, without formal education.

131 Ibid.

132 Ibid.

133 Ibid.

134 General Directorate of the National Police.

135 Ibid.

“When the police took me they kicked me, put a bag on my head and put me into a wash basin full of water and told me to bring them the boys who were in hiding. And when I said I knew nothing, they pushed me further into the basin. They stripped me and searched me. (Woman detained for homicide)¹³⁶”.

“A policeman in the commissariat stripped me to see if I had tattoos, and said that if I didn’t confess they would take me to Santa Teresa, or if they wanted they would leave me there dead. They tightened a chain around my neck and shouted at me, ‘talk, thief!’ They asked for 250.00 quetzales, or else they would leave me there dead; I begged them. (Woman detained for stealing a blouse from a factory)¹³⁷”.

Forty-five women reported having suffered cruel, inhuman or degrading treatment or punishment. This number represents 29% of the women interviewed. In these cases, the violence took the form of sexual harassment: obligatory nudity, sexual touching and groping, sexual comments or propositions.

Those responsible for these acts are agents of the National Civil Police, especially those in Police stations 11, 12, 14, 15 and 16, the Security Department of the City of Perrona, and the General Directorate of the National Civil Police.

Sixty-three women (43%) lodged complaints, and only one of which is being investigated by the Public Prosecutor’s Office. In none of these cases have the authorities been administratively or judicially sanctioned.

RIGHTS OF THE CHILD

1) Legislation and its application

Concerning children, article 34(b) of the Convention on the Rights of the Child establishes that no child shall be illegally or arbitrarily deprived of liberty. Detention, incarceration or imprisonment of a child must be performed in conformity with the law, only as a last resort and for the shortest appropriate period. In addition, every child deprived of

136 Ibid.

137 Ibid.

liberty has the right to prompt access to legal assistance and to adequate general assistance. Article 23 of the Penal Code establishes that minors cannot be charged with crimes or misdemeanours; in other words, no punitive action can be taken against them.

The Law of Integral Protection, Decree 27-2003, was created to comply with these principles. This law contains general provisions of rights and guarantees in the processing of minors under the penal law. It also clearly defines the form in which different state bodies must offer holistic protection to children and young people.

Currently the Law of Integral Protection has made some advances in child protection, but there remains a long path to full compliance with the human rights of children. This is particularly true where individual actions are brought against children, a practice which continues in impunity because of the inefficiency of the justice system. The law establishes that children deprived of liberty must be protected and housed in specific locations separate from adults (question 31). However, the reality is very different because children suffer humiliating treatment and violent acts. Many of them have died in detention centres, as happened in the events of September 2005 in the Las Gaviotas Centre¹³⁸.

In terms of adolescent women, 415 were deprived of their liberty in 2001. In 2002 there were 265 detained, in 2003, 162 were detained, in 2004, 103, and in 2005, only 76 were detained.¹³⁹

The conditions of adolescents deprived of liberty are better than those of adults. A primary factor is the lack of overcrowding, reduced by programmes that provide alternatives to imprisonment (probation and community service). However, all centres need more personnel, materials and tools to carry out their functions. New training areas, structural reparations and improvement in the water supply are also necessary¹⁴⁰.

138 In January 2002, the young people detained at Las Gaviotas Centre rioted, causing chaos and destruction. No deaths or injuries were reported, only material damage. Because of the material destruction, the European Union offered economic assistance for the Centre's reconstruction, which was renamed the Provisional Juvenile Detention Centre, abbreviated as CEJUDEP.

139 Information compiled by the Children and Violence programme of ICCPG, Guatemala, October 2005.

140 Ibid.

In respect of question 27, regarding the “Anti-mara Plan”: How are young gang members investigated? It is important to mention the “Clean Sweep” programme, by means of which authorities have conducted mass arrests of young people in particular high-risk sectors. The young people are stigmatised for having tattoos on any part of the body; in practice, the tattoos are the reason they are detained and deprived of their liberty. Additionally, the media presents them to society as delinquents, solely because they have tattoos. This situation clearly violates the principle of “Presumption of Innocence and Public Process” established in article 14 of the Political Constitution of the Republic. Article 14 deems every person is innocent until judicially declared guilty in a duly executed judgement.

2) Murdered minors

On the afternoon of 15 August 2005 in the Provisional Juvenile Detention Centre, CEJUDEP, two youths of 17 years, MS members, were murdered by M18 members who had learned of the morning’s incidents at Commissariat 31¹⁴¹.

Provisional Juvenile Detention Centre, CEJUDEP

DECEASED YOUTHS	ORIGIN	AGE	CATEGORY	CRIME	SENTENCE	MARA
1. Medrano Ortiz Melvin		17				MS
2. Sacrab Xol Edwin Alberto		17				MS

Despite the gravity of the situation, the violent events continued. On the morning of 16 August, three persons were found with their throats slit in the maximum security prison in Escuintla: Jorge Joaquín Chales Ramos, Giovanni Alexander Zelaya Caneses and José Roberto García, MS members. Of these, two had been “convicted of killing, by means of

141 Interview with the Coordinator of the Adolescents in Conflict with the Penal Law Programme, Secretariat of Social Welfare, 7/9/2005.

decapitation, the minor Rocío Quetzalí Estrada, and they were also implicated in the murder, by the same method, of Sergeant Obdulio Villanueva during a riot that occurred in the Preventive Custody Centre, in 2003¹⁴².

On 6 September 2005 on the second floor of the Juvenile Deprivation of Liberty Centre, a new conflict occurred, leaving one dead, a young man of MS, Cristian López Castellón. According to press information, *“At 8:30 in the morning, approximately 30 young people, who allegedly belong to mara 18, completed a round of exercises. After some minutes, they rushed toward the block that housed the Mara Salvatrucha members, threw two explosive devices and fired. Later they tried to enter the enemy gang’s block, but it was impossible due to the dividing screen, and because of the reaction of the guards ... The ten wounded young people were taken to the emergency room at San Juan de Dios hospital... Cristian López Castellón died... four are stable and two are classified as out of danger...”*¹⁴³.

On 19 September 2005, another 12 youth were murdered in the same centre. The list of deceased young men follows: José Raúl Barrios, Carlos Cortez¹⁴⁴, Nefy de León, William Guevara¹⁴⁵ (decapitated), Noe de Jesús Quej Nay, Josué Sánchez, Abelardo Alquijay Vega, Nery Cuyuché, Oslín Tach, José Daniel Lach, Víctor Teodoro Reyes, César Asiel Rojas (decapitated)¹⁴⁶.

At night, around 20:20, a group of MS entered the Centre from the back via the mountain. They attacked with firearms, knives and grenades, leaving behind 12 dead and more than 10 injured. The inmates were in blocks A and E, which only housed M18 members. They were reportedly attacked with machetes, AK-47 rifles, 9 millimetre pistols and grenades.

142 Siglo XXI, Wednesday, 17 August 2005, p. 8

143 El Periódico, Wednesday, 7 September 2005, p. 10.

144 If the same Carlos Estuardo Cortéz González, 19 years of age, M18 member, he was being investigated for the attack on the MS on Tuesday, 6 September 2005, in the Juvenile Deprivation of Liberty Centre. Al Día, Thursday, 8 September 2005, p. 8.

145 If this refers to the same William Guevara Cruz, 18, Skipper or Vago, of M18, he was identified as the person who threw grenades inside the Juvenile Deprivation of Liberty Centre (6/9/05). Al Día, Thursday, 8 September 2005, p. 8.

146 Prensa Libre, 20 September 2005, p. 2.

The negligence on the part of the prison authorities must be stressed. The authorities in this situation were incapable of controlling the violence and protecting the life and integrity of the minors confined there. In addition, the presence of every type of weapon inside detention centres was once again confirmed.

3) Adolescents deprived of liberty in state centres

In October 2005 the Institute for the Comparative Study of Criminal Science of Guatemala¹⁴⁷ interviewed the entire adolescent population detained in state centres (CEJUDEP, CEJUPLIM and CEJUPLIV) to assess treatment at the time of apprehension and detention by National Civil Police agents. The population deprived of liberty at the time of the interviews was 133 adolescents (eight women and one hundred twenty-five men).

Of the eight adolescent women interviewed, six reported having been victims of some type of abuse¹⁴⁸.

Abuse reported by interviewed adolescent women

Type of abuse	Brief description	Threats	Sexual suggestion	Accusation or charge
Physical	Blows to the face, face covered with Gamexan-coated hood	YES	YES	NO
Physical	Torture by placing the head in a barrel of water	YES	NO	NO
Physical	Blows	YES	YES	YES
Verbal	Not indicated	NO	YES	NO
Physical	Blows all over the body	YES	YES	NO
Physical	Pulling	NO	NO	NO

¹⁴⁷ The Children and Violence Programme at the Institute for the Comparative Study of Criminal Science in Guatemala, ICCPG, conducted this investigation to identify police abuses against young people. It is still in the process of revision.

¹⁴⁸ Two indicated that they belonged to a gang.

Asked about what occurred following the abuse, four of the interviewees indicated that they were verbally threatened. In addition, upon asking them if the agents carried out any type of sexual suggestion, four responded in the affirmative.

The young woman who was willing to report stated that she would do so in order that the authorities could not continue to commit these acts. When the remaining four women were asked about their reasons for not filing a report, one did not respond, two indicated that they did not know who had assaulted them, another indicated that reporting was unimportant, and the other said she would not report in order to avoid problems.

Of the six young women, one indicated that she had been detained by members of the Criminal Investigation Service of the PNC. The other five were detained by National Civil Police agents. According to the interviewees, the reported abuses occurred in a PNC substation, despite an express prohibition of bringing minors to these locations.

Of the 125 adolescent men interviewed, 95 reported having been victims of some type of abuse. Of those only four were verbally mistreated, and the remaining 91¹⁴⁹ were physically mistreated. Of those, 70 suffered blows, 4 received death threats, 13 reported being hooded and 4 reported electric shocks.

As in the case of the women, the men were questioned about what occurred following the abuse. Of the interviewees, 71 said they were threatened, and three revealed that agents had made sexual suggestions.

When asked if they were willing to file reports, 56 responded that they would not do so. The rest affirmed that they would do so, fundamentally because they considered the abuse to be very severe and because they did not want the abuses to continue.

149 Fifty-two indicated that they were members of a gang.

The interviewees reported that they were apprehended by the following elements:

National Civil Police	62
SIC Agents	13
Special Police	7
FEP Agents	5
Civilians	5
NS/NR	2
Other security force	1

Investigation of the locations to which interviewees were taken immediately following their apprehension revealed that 67 were transported to PNC installations, despite the express prohibition of bringing minors to such locations. Eight were brought to Court, and twenty reported that they were brought to other locations.

Casa Alianza received a report from Johana, a young woman of 16, who came to the El Manchén State Home seeking shelter and protection. The young woman explained that in the Centre she had sexual relations with a policewoman who worked as a guard there. The policewoman later offered to let her live in her house, where Johana stayed for approximately one month. During this month of cohabitation, the policewoman prevented her from leaving and interacting with anyone; she constantly pressured her out of jealousy.

The purpose of El Manchén State Home is to offer protection to high-risk minors, because young people are generally vulnerable to psychological problems. The damage caused by such a situation leaves a profound mark on the future development of girls and teenaged women. Children are always more vulnerable than adults, due to their young age and limited life experience. Children must be protected from any act taken against them because such acts generally cause them more serious harm than adults.

Street children are affected most by acts of torture and inhuman, cruel or degrading treatment. This is because they live without protection and

are marginalised by society. In general, these children come from poor, disintegrated homes and have had little access to school. They have often been abused by their own families. Their parents' employers commonly do not address the family's economic situation, which leads the children to lend some support, though often their parents require them to do so. For this reason they are also more vulnerable to exploitation by criminals or sexual abuse.

8. Investigation, remedies and reparations (Articles 12 to 14 of the Convention against Torture)

8.1. Investigation (Article 12)

Investigation of reports of police abuse by the Public Prosecutor's Office is deficient. In 2004, 700 reports of police abuse were lodged, and only 12 cases were brought to judgement¹⁵⁰. According to information supplied by the Public Prosecutor's Office, there were 10 cases of torture in 2004, and seven in 2005. It is unknown whether any of these cases has resulted in a final conviction.

A principal obstacle to investigation is the intimidation of witnesses and victims by those responsible. Some who complain and receive protection at the request of the PDH have been killed. As indicated above, the witness protection programme suffers from serious weaknesses. The fear of reprisals extends to special attorneys, who fear bringing these cases because of police intimidation.

The highest authorities of the Ministry of Governance collaborate very little in these investigations and do not provide security for victims and witnesses. Judges regularly give no credence to victims' statements because they are accused or charged with crimes. In cases in which a judge orders the Public Prosecutor's Office to investigate, the investigation does not occur due to lack of will and negligence.

It is important to reiterate that the lack of timely medical reports prevents the collection of adequate evidence. Lastly, there are no protocols for providing general services to these victims.

In cases brought to the attention of the authorities, the implicated officers are not suspended from duty, despite a report to his or her superior authorities, and with the knowledge that inaction could place the victim's safety in danger.

150 This information was provided by the prosecutor of administrative crimes.

*Protection of Victims, Witnesses and Others (para. 75b of the List of Issues*¹⁵¹⁾

The State response to this issue is as follows:

“28. A start has been made on recruiting and training professionals in the Logistical Support Secretariat of the Public Prosecutor’s Office as part of its process of restructuring and implementing its democratic crime policy”.

The Logistical Support Secretariat of the Public Prosecutor’s Office does not have basic resources for the protection of witnesses. The person responsible in the Secretariat reports a scarce capacity to protect victims or others subject to proceedings¹⁵². This is worrisome because though there is a need to protect witnesses from torture, no state structure ensures effective criminal prosecution.

8.2. Persistent impunity: lack of justice and attacks against justice system personnel

8.2.1. Past cases

In the Third Periodic Report presented by the Guatemalan Government on 3 February 2000, examined on 21, 22 and 24 November 2000, the CAT valued as a positive aspect:

71. The Committee takes note with satisfaction of the following positive aspects:

a) The announcement by the President of Guatemala, repeated by the head of the delegation during his introduction, that the question of human rights will figure prominently in government policy and that there is an acknowledged need to transform the administration of justice and put an end to impunity;

b) The recognition by the State of its responsibility in emblematic cases of human rights violations substantiated under the inter-American system for the protection of human rights, and the announcement of willingness likewise to recognize its responsibility in other pending cases;

151 CAT/C/GTM/Q/4.

152 Statements to the press, Prensa Libre, 27 February 2006.

The Guatemalan Government has recognised its responsibility for human rights violations during the internal armed conflict. However, this recognition is not evident in the handling of reparations or the advancement of justice, which perpetuates a climate of impunity. An example is the case of *Dos Erres*, in which there are statements from participants in the massacre themselves. In this proceeding, legal recourse has been abused in order to obstruct justice. The petitioners have only been able to obtain the monetary compensation ordered by the Inter-American Commission.

8.2.2. Present cases

In examining the third report, the CAT was also concerned by:

72. a) The increase in acts of intimidation, harassment and death threats against judges, prosecutors, complainants, witnesses and members of human rights bodies and victims' and journalists' organizations, which continue to prevent the submission of complaints of human rights violations and to impede progress in politically sensitive cases involving members of the military or government officials and relating to the organization and activities of the intelligence services. The fear to which such acts give rise seriously affects the freedom of action of individuals and organizations involved in the protection of human rights, as well as the autonomy of the administration of justice.

In relation to this concern, there are cases which persist in impunity, such as that of businessman Edgar Ordoñez Porta. Porta was allegedly murdered by members of the military intelligence in May 1999. Their investigation and conviction were obstructed. Many justice system personnel complain that they experience pressure, telephone calls demanding certain action, threats, intimidation or bribes to leave the matter alone.

In some cases, justice system personnel have suffered murder attempts and even death. This does not in any way foster strengthening of the administration of justice.

In this context, one must recall the concern expressed by the CAT, number 73:

b) The continuing existence of impunity for offences in general and for human rights violations in particular, as a result of repeated dereliction of duty by the government bodies responsible for preventing, investigating and punishing such offences. Impunity exists for most of the violations

committed during the internal armed conflict and those committed after the Peace Agreements were signed.

We also believe that it is impossible to modernise the administration of justice without also protecting justice system personnel. It is therefore necessary to analyse the Government's non-compliance with this recommendation in terms of modernisation of the administration of justice, the adoption of measures to overcome its weaknesses and deficiencies and measures to strengthen the autonomy and independence of the judiciary and the Public Prosecutor's Office. This would include measures previously recommended by the Historical Clarification Commission and the Commission for the Modernisation of Justice (para. 76(a)).

8.3. Remedy (Article 13)

The CAT has asked the State to indicate *"whether disciplinary proceedings for acts of torture or cruel, inhuman or degrading treatment are held concurrently with criminal proceedings for the same acts. Please also provide details of the number of complaints, their outcome and the administrative and/or penal consequences"*¹⁵³.

National Civil Police disciplinary procedure is a fundamental mechanism for the prevention and punishment of torture. A new disciplinary process was approved in 2003. This regulation was proposed by the civil society organisations which compose the Public Security Monitoring and Support Body, IMASP¹⁵⁴, to decrease the risk of administrative impunity and guarantee due process.

Its principal characteristics, especially for very serious offences, are: the creation of special regional courts to judge administrative offences, designed by a commissioner general, an attorney from the Ministry of Governance and a civilian designated by the local Development Council; the founding of a specific unit responsible for bringing charges within a set time; public hearings; the right to a defence and the possibility of administrative review.

¹⁵³ Committee against Torture, 35th Session. List of Issues to be considered during the examination of the fourth periodic report of Guatemala.

¹⁵⁴ This body is composed of Relatives and Friends against Abduction and Crime (FADS) and the Institute for the Comparative Study of Criminal Science of Guatemala (ICCPG).

The proceeding should be conducted orally in order to guarantee the immediacy and publicity necessary to ensure transparency.

Article 30 contemplates the following aggravated circumstances: “commission of the offence against minors, women, elderly persons, individuals with manifest mental disorders or any person who is disabled”.

This regulation entered into force at the end of 2004. Within a few months, despite little support from the Ministry of Governance, it made significant advances. Notably, there has been a reduction in the duration of the procedure to four months; the previous procedure took approximately three years. There has also been a sanction of PNC high command. Generally speaking, the implementation of the new regulation has borne fruit; during 2004 and 2005 around 500 resolutions were issued.

Despite these advances, the investigative mechanism continues to suffer serious deficiencies. Few personnel are assigned. Few material, logistical or financial resources are available to develop its operations. Many interviews are conducted by telephone, and professional training is lacking and under the supervision of former military. This institutional weakness illustrates the minimal political will on the part of the current Ministry of Governance. It has developed a process of police purges within the newly established legal framework. Its political position relies on mass purges, through the dismissal of many police officers who are, by means of their dismissal, accused of participating in offences. Those dismissed resort to courts of justice which verify the illegality of the dismissal and order their restitution.

8.4. Reparation (Article 14)

8.4.1. State actions

Among the legal provisions regulating compensation of victims of crimes are article 155 of the Political Constitution and articles 124 and 134 of the Code of Criminal Procedure.

The Guatemalan Government reports that:

127. Various government bodies and non-governmental organizations have agreed that the establishment of the National Reconciliation Programme represents progress. Its purpose is to identify, provide repara-

tion and compensation for, to return property to, to assist and to rehabilitate the victims of armed conflict. Following the political agreement which formed the basis of the National Reconciliation Programme, Government Agreement No. 258-2003 established the National Reconciliation Commission, which comprises five government representatives and five representatives of civil society. The government representatives are members of COPREDEH; a representative of the Ministry of Public Finance; the head of the Peace Secretariat; a representative of the Ministry of Agriculture, Livestock and Food and a personal representative of the President of the Republic who serves as chairman. The non governmental representatives are two representatives of organizations for the victims of human rights violations that occurred during the armed conflict; a representative of Maya organizations; a representative of women's organizations and a representative of human rights organizations. The specific purpose of this Commission is to provide compensation to victims of the human rights violations that took place during the internal armed conflict which ended on 29 December 1996.

The executive issued Government Agreement 188-2004 on 6 July 2004, which modified Agreement 258-2003, altering the composition of the Commission in the following way: one representative of the President of the Republic, the Secretary or Under Secretary of Peace, the President or Executive Director of COPREDEH, the Secretary or Under Secretary of the General Secretariat for Planning and Programming (SEGEPLAN), one representative from the Ministry of Agriculture, one representative from the Ministry of Finance, three representatives from victims' organisations, one representative from women's victim organisations, two representatives from indigenous peoples' organisations and one representative from human rights organisations.

The executive also issued Government Agreement 43-2005 on 3 February 2005, the National Search Programme Regulation. Because civil society organisations' representatives had relentlessly urged the creation of a trust for the Programme, so that it would no longer rely on the SEPAZ trust, Government Agreement 68-2005 was issued on 23 February 2005. This agreement created such a trust. However, as of November of the same year, nothing had been done to make it implement the Agreement.

Because of pressure and proposals by civil society representatives, this Search Commission approved the majority of policies relating to reparations. These policies recognise the need for holistic reparation. It has been established

that monetary compensation cannot be issued unless accompanied by other dignifying measures which represent psychosocial reparation, in order to avoid the revictimisation of survivors.

Ultimately, the executive issued Government Agreement 619-2005 on 29 November 2005, which excludes civil society representatives from the National Search Commission. The Commission continues to be composed of: the President of COPREDEH, the Secretary of Peace, one presidential delegate, the Ministry of Finance and the Secretary of SEGEPLAN. It also creates an Advisory Council of five individuals from civil society, “including representatives of female victims, indigenous peoples and human rights organisations”. This Council has a voice but no vote.

Government representatives – Commission members only as of the last reform – have nullified the policies approved by the previous Commission, undermining a holistic reparation policy. At the end of 2005, some monetary compensation checks were issued, but they did not represent the full amount approved by the Commission. They also did not benefit all the victims registered in the case. This act of discrimination was not explained to the beneficiaries and could lead to unrest among them. In other cases, local committees of victims have reported that they have not been consulted in the organising of search activities, which implies a clear violation of the National Search Programme mandate.

The National Search Programme has been a point of contention among civil society organisations, due to varied interests. The debate has been used by the government to state that “the search for victims has not advanced because civil society cannot reach an agreement”. Instead of contributing to reconciliation, the situation has become a source of discord and confrontation.

Furthermore, the Guatemalan Government presents the DIGAP Programme of the United Nations and civil society organisations as an achievement of the State:

128. The United Nations Development Programme (UNDP) reports that it runs the Programme for Dignity and Psychosocial Help for Armed Conflict Victims (DIGAP), which consists of:

(a) Mental health care for the community and for victims of torture in the areas most affected by the armed conflict;

(b) Legal advice to facilitate forensic investigations;

(c) Efforts to expand and to improve mental health programmes in the Ministry of Public Health and Social Welfare

129. Participating in the UNDP Programme are various human rights NGOs including Community Study and Psychosocial Action Teams, the Mutual Support Group and the Human Rights Office of the Archdiocese of Guatemala in the capital city; they work to rehabilitate and to provide psychological assistance to victim of torture, both individually and in communities that suffered grave human rights violations during the armed conflict.

This is not a Government program but a program financed by UNDP and carried out by civil society organisations. These are the same organisations that point to constant problems and limitations in their efforts to collaborate with the Government.

RIGHTS OF WOMEN

Impunity for acts of violence against women

1) Abuses in preventive custody

In an investigation conducted by ICCPG in July 2005, 75% (154) of the women in preventive custody in the Santa Teresa centre were interviewed. The Santa Teresa centre is located in the Department of Guatemala (and houses approximately 90% of the country's female detainees). Ninety-nine percent of the women said they had suffered abuses by agents or officers of the National Civil Police. Fifty-seven percent did not report the abuses they suffered. The majority of women who did report, did so in their first statements to the judge (63%) and to the Public Prosecutor's Office (19%).

In only 9% of the cases reported have the authorities given the appearance of investigating, and none of the cases has resulted in a decision. In the remaining 91% of cases, the women indicated that they did not know whether anything was being done, and/or the authorities behaved in the following way upon receiving their report:

- “Nothing, he didn't say anything, he only ordered preventive custody”. Interviewee No. 3

- “He did not believe me and told me that we always make the police look bad”. Interviewee No. 54
- “Nothing, what is important to them is the police report, what it says there”. Interviewee No. 126
- “The judge wanted to investigate whether I was a gang member”. Interviewee No.110¹⁵⁵

2) Sexual and intrafamily violence

Regarding sexual crimes, in the capital city the Women’s Prosecutor brought 42 cases of sexual crimes in 2003, out of approximately one thousand reports received in its office each year¹⁵⁶. Only three judgments concerning reports of intrafamily violence were issued between September 2001 and September 2003¹⁵⁷.

155 ICCPG, Rates of impunity in police crimes against women. Guatemala, 2005.

156 INECIP/ICCPG, Violence against women, Guatemala, 2004, p. 101.

157 Ibid.

RECOMMENDATIONS

The NGO coalition recommends that the Guatemalan Government take necessary measures to:

1. Modify judicial practices that do not consider international human rights treaties to be measures of the constitutionality of laws, which thereby prevent the treaties from being directly invoked before the Constitutional Court as a basis for an action of unconstitutionality.
2. Guarantee that all reports of torture or inhumane treatment are investigated promptly and effectively in order to clarify the facts, identify those responsible and ensure proceedings and punishment in accordance with due process under domestic law. Specifically:
 - a. Guarantee that every person who reports an act of torture will not be the object of reprisals against his or her life and personal integrity;
 - b. Adopt necessary measures to guarantee that, while investigating reports of possible participation by an agent of the State in acts of torture, the agent in question will be suspended and the deprived of his service weapons;
 - c. Establish adequately financed protection mechanisms for victims and witnesses;
 - d. Strengthen the Victim Services Office in the Office of the Public Prosecutor and in the National Civil Police to ensure immediate assistance to victims of torture and other serious crimes.
3. Modify the practice of Guatemalan courts by initiating an investigation of torture committed during the internal armed conflict, and finalise the special proceeding contemplated in article 11 of the National Reconciliation Law.
4. Implement crime prevention measures, as current repressive policies have encouraged increased extrajudicial executions of young people and acts of “social cleansing”, without effectively reducing crime.
5. Halt the criminalisation of social protest and the repression of popular movements. Also, conduct an exhaustive investigation and sanction those responsible for attacks against human rights defenders.
6. Strengthen the selection process for potential members of the public security forces, prison guards and other personnel, to ensure that selected

individuals possess the physical, psychological and professional ability to carry out their duties with integrity and according to the law. Also, undertake effective measures to increase the percentage of the following groups in National Civil Police recruitment:

- a. Women: Simultaneously establish measures guaranteeing the effective promotion of women to command positions within the police institution.
 - b. Indigenous persons: Establish programs to recruit indigenous persons in order that they may serve in their own communities.
7. Eliminate the militarisation of the National Civil Police and the Prison Guard. In particular:
- a. Order the immediate end to civilian guard training courses administered by the Guatemalan Army, as well as the use of military bases for this purpose.
 - b. Strengthen the School of Penitentiary Studies and reinforce training programs for security and prison personnel in order to create an institutional culture of understanding and respect for human rights norms.
 - c. Terminate military participation in civil security tasks and suspend military advisors in the high levels of the Ministry of Governance, while also implementing a Commission for the Investigation of Illegal Bodies and Clandestine Security Organisations that guarantees the dismantling of such groups and the criminal prosecution of those responsible for human rights violations.
8. Adopt measures necessary to guarantee that all detainees be immediately informed of their rights, including the right to an attorney and to bring complaints in cases of mistreatment, and in order to guarantee that all detention is subject to prompt judicial oversight. Establish clear disciplinary norms for the infraction of these rights under the constitutional, for use by the Judicial Discipline Board.
9. Reinforce judicial oversight of detention and establish courts of first instance throughout the country which may oversee the defendant's initial statement and his or her rights, within the six-hour period set by the Constitution.

10. Bring detainees to Prison System Directorate prisons only when there is a court order. Terminate the use of police stations as detention centres, especially in the case of women deprived of their rights.
11. Adopt additional training and oversight measures to ensure that security forces do not conduct extrajudicial interrogations, and to educate regarding the police obligation to inform the detainee of his or her right not to incriminate him or herself. Also, strengthen the disciplinary regime.
12. Establish clear rules of conduct with respect to the treatment of detainees, by means of a sensitivity campaign of posters, flyers, written instructions and conduct guides.
13. Incorporate a forensic physician into the criminal courts of first instance in order adequately to document physical evidence of torture in an immediate manner.
14. Financially strengthen the agencies that oversee detentions, specifically the Human Rights Ombudsperson and the Public Criminal Defence Institute, in order that they may carry out their duties with utmost care in the police stations and police headquarters.
15. Dismantle the current Criminal Investigation Directorate, or DINC (formerly SIC), and create in its place a police scientific investigation unit to adapt criminal investigations to human rights standards.
16. Consider the possibility of establishing specialised units in the National Civil Police and the Office of the Public Prosecutor, with necessary training resources, to coordinate efforts and duly respond to threats against victims, witnesses and human rights defenders in cases of torture.
17. Comply with the State commitment to compensate torture victims, as well as other victims of human rights violations, guaranteeing the implementation of the National Search Program without discrimination of any kind and without partisan politics. Comply as well with friendly settlement agreements reached before the Inter-American Commission and the judgements of the Inter-American Court. It is of particular importance that the Government ask forgiveness for acts of sexual violence against women committed by security forces during the war.

18. Comply with the recommendations of the CAT; specifically, expedite the approval and implementation of the CAT Optional Protocol, as well as the Prison System law, initiatives that are currently pending before Congress. Issue a declaration relative to article 21 of the CAT.
19. Comply with the Law of Integral Protection of Children and Adolescents, Decree 27-2003, in order that the life and integrity of children and adolescents is respected, and in order to guarantee their survival, safety and development.
20. Realise a Plan of Action in favour of Guatemalan children and adolescents, to ensure their safety, welfare and holistic development.
21. Classify intrafamily violence as a crime in the Penal Code and eliminate its article 200, which permits the marriage of the aggressor to the rape victim. Also eliminate the Code of Criminal Procedure articles permitting the criterion of opportunity, the payment of small fines or the abandonment of cases of sexual assault.
22. In terms of provisions that protect women's rights, in accordance with the text of Penal Code article 201 bis, rape as a form of torture is only contemplated in the provision that: *"torture is committed on orders from or with the authorisation, support or acquiescence of the State authorities"* and with the purpose of *"(...) obtaining from that person or a third person information or a confession concerning an act he has committed or is suspected of having committed, or to intimidate or coerce him or other persons"*. The purposes enumerated in the Convention, which the CAT has emphasised as deficiencies to be corrected, are not contemplated: namely, the aim of "punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind". For this reason, legislative reform is imperative for the harmonisation of the criminal definition of torture with the definition contemplated by the Convention against Torture.
23. Conduct sensitisation activities to train police agents and justice system personnel to receive complaints and adequately investigate acts of sexual violence and intrafamily violence against women.

COMMITTEE AGAINST TORTURE

Thirty-sixth session

1-19 May 2006

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**List of issues
of the Committee against Torture**

GUATEMALA

UNITED
NATIONS

CAT

**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**Distr.
GENERALCAT/C/GTM/Q/4
24 February 2006ENGLISH
Original: SPANISHCOMMITTEE AGAINST TORTURE
Thirty-fifth session
7-25 November 2005**List of issues to be considered during the examination of the
fourth periodic report of GUATEMALA (CAT/C/74/Add.1)****Article 1**

1. In the light of the concluding observations of the Committee against Torture in 2000 (A/56/44, paras. 67-76), please indicate the current status of the proposed reform of article 201 bis of the Criminal Code, which defines the offence of torture. Give details of the scope of the reform.

Article 2

2. Please indicate the status of the prison system bill now before Congress. Explain why it has not been adopted and who is opposed to it and why.
3. Please indicate whether there is a specific, clear rule against invoking an order from a superior officer or a public authority as a justification for torture.
4. Please provide information on legislation and practice with regard to:
 - (a) The duration of pretrial imprisonment;
 - (b) When and by whom the detainee's personal details are recorded and how long it takes to bring him or her before a judge;
 - (c) The rights of detainees and persons deprived of their liberty;
 - (d) What percentage of detainees have not been charged.

5. Please describe the mandate and functions of the Human Rights Office of the Ministry of Defence and the impact of the training provided by this Office for the armed forces on the prevention of torture and other cruel, inhuman and degrading treatment. Are all members of the armed forces obliged to take this training?
6. In the light of the observations of the Committee against Torture in 2000 (A/56/44, paras. 67-76), please indicate whether military personnel have powers to arrest and detain individuals.
7. Please provide information on the Guatemala Segura (“Safe Guatemala”) programme and on the involvement of troops and use of military facilities in it (number, role, ranks, etc.).
8. The peace agreements stipulate that police and military forces may be combined only in an emergency. What type of emergencies permit the establishment of combined forces? Do they include emergencies arising from natural disasters? Please give details of how the Safe Guatemala programme relates to the peace agreements.
9. Please indicate whether there is a register for compiling information from the domestic courts on cases of torture and ill-treatment in the territory of the State party.
10. According to information from various NGOs and the report of the Office of the Human Rights Procurator, lynching has become a widespread form of torture in Guatemala. What charges are brought against the perpetrators at trial? What investigations have been carried out into cases of this kind? How many convictions have been handed down? What are the penalties for lynching? What action has been taken to educate people about the penalties for lynching and to prevent this from happening?

Article 3

11. Please indicate how the State party guarantees in practice the exercise of an effective judicial remedy against administrative orders for the detention of foreigners, particularly asylum-seekers, with a view to their expulsion from the territory. Please also indicate whether such a remedy has suspensive effect. In addition, please state what steps Guatemala has taken to avoid excessive use of force and/or sedatives when deporting asylum-seekers.
12. Please provide statistics disaggregated by sex, age and ethnic origin on asylum-seekers and refugees in Guatemala, and the percentage of asylum-seekers whose applications are rejected.

Article 4

13. Please indicate what action the State party has taken to bring the penalty for instigating torture, as provided for in article 425 of the Criminal Code, into line with article 4 of the Convention.
14. Please indicate whether the free telephone hotline for complaints and allegations from migrants has received any information on cases of migrants being tortured. If so, please indicate the number of cases, their circumstances and what happened subsequently.

Article 5

15. Please indicate whether the Guatemalan courts have the power to bring proceedings against foreigners present in Guatemala who are suspected of committing acts of torture abroad. Are there any precedents in this respect?

Articles 6 and 7

16. Please indicate what measures have been taken in Guatemala to ensure that detainees are able to communicate promptly with a lawyer and, in the case of foreigners, with a representative of their State of origin. Please indicate whether a specified period must elapse before a detainee is allowed access to a lawyer.

17. What action has the Government taken to prevent harassment and abuse of women detainees? Is there legislation to prevent sexual harassment in prisons? If so, how many people have been charged and convicted under this legislation?

Article 10

18. Please provide information on the impact of the human rights training programmes dealing with torture that are provided for the Office of the Director-General of the Penitentiary System, the National Civil Police and the Armed Forces. Provide statistics, disaggregated by sex, age and ethnic origin, on the total number of officers in these institutions and the number of them who have received training. Please also provide information on what the courses cover, who gives the courses, whether non-governmental organizations are involved in them, and what the budget is for the programme.

19. Non-governmental organizations report that prosecutors and investigators charged with securing justice for victims of torture or inhuman treatment are very poorly trained and work with limited resources. What steps has Guatemala taken to train judicial officials properly? What qualifications are necessary to obtain the post of prosecutor or investigator, and what training do they receive on the job? Are there any plans to increase the budgets for prosecutors and investigators?

20. According to the report of the Office of the Human Rights Procurator, most young people in prisons belong to indigenous communities. What steps has Guatemala taken to address this situation?

21. Please provide information on proposals for the repeal or reform of the Code of Military Justice of 1878 with a view to bringing the Guatemalan legal system into line with the requirements of the Convention against Torture, paying particular attention to the adoption in 2004 of the so-called "new military doctrine".

Article 11

22. Bearing in mind that the Guatemalan Constitution gives precedence to international human rights law over domestic law, please indicate whether the Convention has been directly

invoked in the domestic courts. If so, please indicate the number of pending or closed cases in which this has occurred, and give some examples. Please also provide details of the methods used to maintain discipline in detention centres and prisons.

23. Please indicate how many allegations or requests for action have been submitted and what steps have been taken to deal with them by the Human Rights Office of the National Civil Police and the Office for Victim Care since they were set up. Please also provide information on the human resources of these offices and the budget allocated to them.

24. Please give details of the system for processing administrative complaints about torture filed against the National Civil Police and of how the process is completed. Also indicate how many complaints of this kind have been submitted and whether or not the proceedings led to the imposition of penalties.

25. Please provide information on the measures taken by the State party in response to the large number of violations of the right to physical integrity by the National Civil Police, as reported in paragraph 48 of the State party's report.

26. Please provide information on the "disciplinary committees" that perform disciplinary and monitoring tasks in prisons and their involvement in the events that took place recently, on 15 August 2005, in various detention centres.

27. Please provide information on the guidelines in the programme to crack down on gangs (Plan Antimaras) and the "Clean Sweep" programme (Plan Escoba) of the National Civil Police in connection with the interrogation of detainees. What rules are followed by the military police when interrogating prisoners in their custody? Please also provide more information about the interrogation guidelines for all detainees.

28. What measures has the State party taken to combat corruption in detention centres, such as protection rackets or payments for allowing firearms inside?

29. Non-governmental organizations report that the army and other State institutions are refusing to cooperate with investigations of former and serving military personnel. What measures has the State party taken to secure the cooperation of witnesses and thus prevent impunity? Can the State force witnesses to testify?

30. Please indicate whether detainees and persons deprived of their liberty have access to a doctor or, where necessary, to health services and legal assistance.

31. What is the situation of minors in prisons? Are they held in the same facilities as adults? The Committee has heard about the detention conditions for minors in Las Gaviotas detention centre (where rioting is alleged to have taken place on 2, 5 and 22 January 2002). Please indicate what policies are being implemented to address this problem.

Article 12

32. With regard to paragraph 96 of the State party's report, please indicate what measures have been taken to ensure that the National Civil Police complies with legal standards (the Constitution and the international human rights treaties ratified by Guatemala) when

investigating allegations of torture either on its own initiative or at the request of the party concerned. Are the same measures applied to military investigations into allegations of torture? Have there been any investigations into allegedly irregular or illegal operations linked to the military intelligence service reporting to the chiefs of staff? In particular, have there been any investigations into enforced disappearances that might be considered a form of torture?

33. Please indicate whether disciplinary proceedings for acts of torture or cruel, inhuman or degrading treatment are held concurrently with criminal proceedings for the same acts. Please also provide details of the number of complaints, their outcome and the administrative and/or penal consequences.

34. Please provide information on the investigations undertaken by the State party, and on compliance with the Convention, in relation to:

(a) The escape of 78 dangerous prisoners from the high-security prison in Escuintla (June 2001);

(b) The decapitation of seven persons in the pretrial detention centre in Zone 18 (February 2003);

(c) The alleged practice of cannibalism among prisoners in Pavoncito (March 2003);

(d) The simultaneous riots on 15 August 2005 in Precinct 31, El Hoyón prison, the Canadá prison farm, El Infiernillo prison (Escuintla), the Pavón rehabilitation farm (Guatemala City) and the pretrial detention centre in Mazatenango (Suchitepéquez).

Article 13

35. If a complaint about torture or inhuman treatment is submitted to a competent body, such as the Procurator's Office, and is not processed, is there any judicial remedy against the decision not to take up the complaint? How has the State party ensured that the complainant and witnesses are protected against ill-treatment or intimidation as a consequence of the complaint or any evidence given? Please give details of all the mechanisms and procedures normally used by the State party in such cases to protect victims and witnesses, as well as judicial officials, from reprisals or ill-treatment.

36. Please indicate what kind of protection the police and/or other security forces offer to judges, prosecutors and witnesses. How many cases of intimidation and threats have been reported? Is there any evidence to suggest that these threats were made by groups connected with State officials? Have these threats been investigated? With what outcome?

37. Is there any law to protect data concerning victims or witnesses, and can the latter apply for an order to guarantee the confidentiality of the data or, where necessary, have the data erased?

38. Is there any form of provision in Guatemala permitting Guatemalans to initiate criminal proceedings in the courts of other countries in respect of criminal acts alleged to have been committed in Guatemala?

39. According to reports from non-governmental organizations, the United Nations has documented 626 massacres, but only one case has been brought before the Guatemalan courts. What is the situation with regard to the other 625 massacres? How many of these cases have been referred to the judicial authorities?

Article 14

40. Please provide statistical information on the compensation awarded by the domestic courts and actually paid to the victims of torture or cruel, inhuman or degrading treatment.

41. In the light of the peace agreements, please provide information on the National Compensation Programme and on how it works, the cases it has accepted, the compensation claims finalized, the amount of compensation paid out and the number of victims compensated.

Article 15

42. Please describe the procedures in place to ensure that statements obtained under torture are not admissible as evidence.

Article 16

43. Please provide information on the situation of hospital patients, particularly with regard to the “forcible intervention” of the National Mental Health Hospital and the Experimental Psychiatric Teaching Centre, in the light of article 16 of the Convention.

44. What measures has the State party taken in relation to cases of excessive use of force by the police and army against indigenous people, especially in the context of political demonstrations and civil unrest?

45. Please give information on how the police handle and investigate cases of child abuse and domestic violence.

46. How does the State party ensure that children, particularly indigenous children, are prevented from undertaking the worst forms of child labour?

47. Please indicate the annual budget allocated by the State party to the prison system and detention centres to avoid overcrowding and malnutrition, as well as inhuman detention conditions.

Questions of a general nature

48. Please indicate what progress has been made in ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

49. Please give information on measures taken by the State party to include a gender perspective in the legislation banning torture. Please also describe specific measures taken to prevent acts of sexual violence. Please provide statistics on the number of investigations in this respect and on the penalties for those convicted of such acts.

COMMITTEE AGAINST TORTURE

Thirty-sixth session

1-19 May 2006

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**Conclusions and recommendations
of the Committee against Torture**

GUATEMALA

UNITED
NATIONS

CAT



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

Distr.
GENERAL

CAT/C/GTM/CO/4
25 July 2006

ENGLISH
Original: SPANISH

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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
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Conclusions and recommendations of the Committee against Torture

GUATEMALA

1. The Committee considered the fourth periodic report of Guatemala (CAT/C/74/Add.1) at its 701st and 704th meetings, held on 4 and 5 May 2006 (CAT/C/SR.701 and CAT/C/SR.704), and adopted at its 719th meeting, held on 7 May 2006 (CAT/C/SR.719), the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of Guatemala, as well as the oral information provided by the State party representatives during the consideration of the report. The Committee thanks the representatives of the State party for a frank and constructive dialogue.

3. The Committee also welcomes the information provided in writing by the Office of the Human Rights Procurator on the application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Guatemala.

B. Positive aspects

4. The Committee is pleased to note the efforts made to reform the State party's judicial system, and particularly welcomes the work carried out by the judiciary's Modernization Unit in this respect.

5. The Committee welcomes the declaration adopted by the State party on 25 September 2003 under article 22 of the Convention, whereby it recognizes the competence of the Committee to receive complaints of torture from individuals.
6. The Committee is pleased to note that the State party in April 2006 submitted a proposal to the Office of the Secretary-General to establish a Commission for the Investigation of Illegal Groups and Clandestine Security Organizations.
7. The Committee welcomes the establishment in September 2005 of an office of the United Nations High Commissioner for Human Rights in Guatemala, with a combined technical cooperation and monitoring mandate.
8. The Committee welcomes the ratification by Guatemala on 14 March 2003 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
9. The Committee welcomes the improvement of the human rights situation in the State party, including the fact that the practice of enforced disappearance as a State policy has ceased and that no further reports have been received of the existence of secret detention centres.

C. Subjects of concern and recommendations

10. The Committee reiterates its concern, as already expressed in its consideration of preceding reports, that the State party has still not brought the definition of the offence of torture contained in the Criminal Code fully into line with the Convention (arts. 1 and 4).

The State party should amend, as a matter of priority, the relevant provisions of the Criminal Code, particularly articles 201 bis and 425, in order to legally define torture in accordance with article 1 of the Convention, and criminalize it in accordance with article 4, paragraph 2, of the Convention.

11. The Committee also reiterates its concern about the existence of laws and practices which allow the army to be involved in matters that fall within the competence of the police, such as the prevention and repression of ordinary crime. Moreover, it takes note that the State party has assigned 3,000 military personnel to support the fight against ordinary crime, instead of strengthening the police force (art. 2).

The State party should adopt effective measures to strengthen the National Civil Police and should repeal all laws which allow the army to be involved in activities of law enforcement or the prevention of ordinary crime, which should be carried out exclusively by the National Civil Police.

12. The Committee is concerned about reports of an increase in acts of harassment and persecution, including threats, killings and other human rights violations, experienced by human rights defenders, and about the fact that such acts remain unpunished (art. 2).

The State party should adopt effective measures to strengthen and guarantee the independence of the unit for the protection of human rights defenders within the Presidential Human Rights Commission, as well as to prevent and protect human rights defenders from any further violence. Furthermore, the State party should ensure the prompt, thorough and effective investigation and appropriate punishment of such acts.

13. The Committee is concerned that the requirement regarding article 2, paragraph 3, of the Convention is expressed ambiguously in the State party's legislation (art. 2).

The State party should amend its legislation in order to explicitly provide that an order from a superior officer or a public authority may not be invoked as a justification of torture.

14. The Committee is concerned about the bill on military jurisdiction presented to Congress in 2005, which provides that military courts would have jurisdiction to try military personnel accused of ordinary crimes (arts. 2 and 12).

The State party should amend the above-mentioned bill in order to restrict the jurisdiction of military courts to the trial of military personnel accused of crimes of an exclusively military nature.

15. The Committee is concerned with the impunity that persists regarding most of the human rights violations committed during the internal armed conflict, with over 600 massacres documented by the Historical Clarification Commission still to be investigated. The Committee notes with concern that in practice the 1996 National Reconciliation Act has become an obstacle to the effective investigation of the 1982 case of the Dos Erres massacre, which is making no headway due to procedural delays without any legal justification (arts. 11, 12 and 14).

The State party should strictly apply the National Reconciliation Act, which explicitly excludes any amnesty for the perpetrators of acts of torture and other grave human rights violations, ensures the initiation of prompt, effective, independent and thorough investigations of all acts of torture and other grave human right violations committed during the internal armed conflict, and grants adequate compensation to the victims.

16. The Committee is seriously concerned about the numerous allegations concerning:

(a) The "social cleansing" and killings of children living in the street and in marginalized areas, which often involve acts of torture and ill-treatment, and the fact that such cases are not thoroughly investigated;

(b) The increase in violent killings of women, which often involve sexual violence, mutilations and torture. The fact that these acts are not investigated exacerbates the suffering of relatives seeking justice, who, in addition, complain of gender discrimination by the authorities in the course of investigatory and judicial proceedings; and

(c) The lynchings of individuals, which casts doubt on whether the rule of law is applied in the State party (arts. 2, 12, 13, 16).

With regard to these practices, the State party should:

(a) Take urgent measures to ensure that no persons within its jurisdiction are subjected to torture, or to inhuman or degrading treatment, and fully comply with its duty to prevent and punish such acts when carried out by private individuals;

(b) Ensure prompt, impartial and thorough investigations, free of any discrimination on gender, race, social origin or any other grounds, and bring alleged perpetrators to justice;

(c) Ensure the full implementation of the Law for the Integral Protection of Children and Adolescents, inter alia by providing sufficient funds to guarantee the security, well-being and development of all children;

(d) Carry out campaigns and training activities for police officers and members of the judiciary to make them duly aware of the existing social violence, in order to enable them to receive complaints and investigate them properly.

17. The Committee is concerned about reports of sexual violence against women in police stations (arts. 6 and 11).

The State party should take steps to ensure that all arrested women are brought immediately before a judge and then transferred to a detention centre for women, if so ordered by the judge.

18. The Committee is concerned that the functioning of the State party's prison system continues to lack a regulatory framework (art. 11).

The State party should adopt legislation on the prison system in conformity with international human rights norms such as the Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

19. The Committee expresses its concern about a provision in the Criminal Code currently being considered by the Constitutional Court, which exempts a rapist from any penalty if he marries the victim (arts. 4 and 13).

In the light of the grave nature of this crime, the State party should repeal this provision and ensure the prosecution and punishment, as appropriate, of all perpetrators.

20. The Committee is concerned about the large percentage of persons held in pretrial detention who, according to the State party, account for 50 per cent of all detainees (arts. 6 and 11).

The State party should step up its efforts to adopt effective measures, including legislative measures, to reduce the number of persons held in pretrial detention.

21. The Committee is concerned about reports of the use of excessive force by police officers during evictions in rural areas, which often result in the destruction of homes and other personal belongings, and sometimes even in violent deaths. (arts. 6, 10, 12 and 13).

The State party should adopt effective measures to prevent the use of excessive force during evictions, provide specific training on evictions for police officers, and ensure that complaints concerning forced evictions are thoroughly investigated and that those responsible are brought to trial.

22. The Committee expresses concern with the extension of the death penalty to new types of crimes. According to information provided by the State party itself, 12 persons have been sentenced to death, even though under regional and international instruments freely ratified by the State party it was legally bound to refrain from extending the death penalty to new crimes. The failure to revoke these sentences constitutes a form of cruel and inhuman treatment or punishment (art. 16).

The State party should bring its legislation on the death penalty fully in line with its obligations under international law.

23. The Committee requests that the State party in its next periodic report provide detailed statistical data, disaggregated by crimes, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions and criminal and disciplinary sanctions imposed in each case. Information is further requested on any compensation and redress granted to the victims.

24. The Committee urges the State party to consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

25. In light of the assurances provided by the representatives of the State party that the necessary steps are being taken to ratify the Rome Statute of the International Criminal Court, the Committee encourages the State party to proceed with ratification of the Statute without delay.

26. The State party should widely disseminate its reports and the conclusions and recommendations of the Committee through official websites, the media and non-governmental organizations.

27. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 12, 15, 16 and 17.

28. The State party is invited to submit its next periodic report, which will be considered as the sixth report, by 3 February 2011 at the latest, the due date for the presentation of the sixth periodic report

