



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

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## Committee against Torture

### Concluding observations on the seventh periodic report of Guatemala\*

1. The Committee against Torture considered the seventh periodic report of Guatemala (CAT/C/GTM/7) at its 1689th and 1692nd meetings (see CAT/C/SR.1689 and CAT/C/SR.1692), held on 16 and 19 November 2018, and adopted the present concluding observations at its 1711th meeting, held on 3 December 2018.

#### A. Introduction

2. The Committee welcomes the submission by Guatemala of its seventh periodic report and notes that the report was prepared in accordance with the simplified reporting procedure, which allows for a more focused dialogue between the State party and the Committee.
3. The Committee appreciates the constructive dialogue held with the State party's delegation and the additional information provided during and after the consideration of the report.

#### B. Positive aspects

4. The Committee welcomes the following legislative measures taken by the State party in areas related to the Convention:
  - (a) The promulgation in 2016 of Decree No. 18-2016 establishing special prosecutors' offices within the Public Prosecution Service to deal with the crimes of trafficking in persons and femicide, and Decree No. 21-2016 adopting the Organic Act on the Institute for the Provision of Assistance and Care to Crime Victims, in order to ensure the provision of specialized care for women;
  - (b) The promulgation in 2016 of Decree No. 44-2016 adopting the new Migration Code, including provisions on the procedure for recognizing refugee status, on political asylum and on humanitarian assistance.
5. The Committee commends the State party's efforts to adjust its policies and procedures in order to afford greater protection for human rights and to apply the Convention, in particular:
  - (a) The establishment of specialized courts and prosecutors' offices to deal with crimes of violence against women and the inauguration in 2018 of the Second Appeals Chamber for cases of femicide;

\* Adopted by the Committee at its sixty-fifth session (12 November–7 December 2018).



(b) The adoption in 2014 of the Public Policy against Trafficking in Persons and for the Comprehensive Protection of Victims 2014–2024, and in 2018 of the national anti-trafficking action plan for 2018–2022;

(c) The National Policy on Crime and Violence Prevention, Public Safety and Civic Peace for the period 2014–2034, the associated national action plan and the National Strategy for the Prevention of Violence and Crime for the period 2017–2027;

(d) The adoption in 2014 of the National Prison Reform Policy 2014–2024;

(e) The adoption in 2014 of the Protocol for the Implementation of Immediate and Preventive Security Measures for Human Rights Activists and in 2018 of General Instruction No. 5-2018 approving a protocol for the investigation of crimes committed against human rights defenders;

(f) The adoption in 2018 by the National Institute of Forensic Sciences of a procedure for the forensic handling of cases in which torture or cruel, inhuman or degrading treatment is being investigated; a procedure for the forensic examination of living persons in cases in which torture or cruel, inhuman or degrading treatment or punishment is being investigated and/or is suspected; and a handbook on specialized psychological evaluations, incorporating the provisions of the Minnesota Protocol on the Investigation of Potentially Unlawful Death and the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol);

(g) The adoption in 2018 of General Instruction No. 2-2018 of the Public Prosecution Service, approving a care pathway and specialized criminal prosecution procedure for adolescents in conflict with the law, and Instruction No. 3-2018, establishing care, coordination, investigation and intervention mechanisms for adolescents in conflict with the law.

6. The Committee appreciates that the State party maintains a standing invitation to the special procedures mechanisms of the Human Rights Council, which has allowed independent experts to carry out visits to the country during the reporting period, and it encourages the continuation of this practice.

## **C. Principal subjects of concern and recommendations**

### **Pending follow-up issues from the previous reporting cycle**

7. In paragraph 28 of its preceding concluding observations (CAT/C/GTM/CO/5-6), the Committee requested the State party to inform it about the steps it had taken pursuant to a number of recommendations which the Committee considered to be matters of priority. Those recommendations were set forth in paragraph 13, on violence against women; paragraph 14, on attacks against human rights defenders; and paragraph 18, on detention conditions. The Committee appreciates the State party's replies in this regard, received on 17 July 2014 under the follow-up procedure (CAT/C/GTM/CO/5-6/Add.1). In the light of this information, the Committee considers that the recommendations contained in paragraphs 13, 14 and 18 of the previous concluding observations have been implemented only partially (see paras. 20, 21 and 36 to 39 below).

### **Definition of the offence of torture**

8. The Committee is concerned that the State party has still not brought the definition of the offence of torture, particularly articles 201 bis and 425 of the Criminal Code, into line with the provisions of article 1 of the Convention, despite the Committee's repeated recommendations (CAT/C/GTM/CO/4, para. 10, and CAT/C/GTM/CO/5-6, para. 8) and the Constitutional Court resolution of 17 July 2012, although it welcomes the establishment of a technical panel to prepare draft legislation amending the definition of the offence of torture, to be presented in December 2018 (arts. 1 and 4).

9. **The State party should fulfil its obligations under the Convention, having reaffirmed its commitment to do so during the dialogue with the Committee, and**

should expedite the legislative process to amend, as a matter of priority, the relevant provisions of the Criminal Code by making torture a criminal offence as defined under article 1 of the Convention. In that connection, the Committee wishes to draw the State party's attention to paragraph 9 of its general comment No. 2 (2008) on the implementation of article 2 by States parties, in which it points out that serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity. The Committee reiterates its recommendation (CAT/C/GTM/CO/5-6, para. 8) concerning the need to ensure that acts of torture are not subject to any statute of limitations.

#### **Complaints of torture and ill-treatment and fundamental legal safeguards**

10. The Committee reiterates its concern (CAT/C/GTM/CO/5-6, para. 9) at the complaints of torture and ill-treatment that have been conveyed to it by reliable sources, with practices such as those of smothering people with bags soaked in pepper spray and administering electric shocks being used by police officers in particular, and complaints of sexual violence and harassment of people while in custody and in places of deprivation of liberty. The Committee regrets that fundamental legal safeguards, particularly the right to be brought before a judge within the time limit set by law, are not respected at all times. The Committee also regrets that the State party has not provided information on its procedures for ensuring that safeguards and procedural standards are upheld (arts. 2, 4, 12 and 16).

#### **11. The State party should:**

(a) **Unequivocally reaffirm the absolute prohibition of torture and publicly state that any person who commits, abets, allows or instigates acts of torture will be held personally responsible before the law, will be tried in a criminal court and will be duly punished;**

(b) **Adopt effective measures for ensuring that all detainees have the benefit, in law and in practice, of all fundamental safeguards from the very outset of their deprivation of liberty in accordance with international standards, in particular the rights: (i) to be assisted by a lawyer or public defender without delay; (ii) to request and receive a medical examination performed by a qualified, independent doctor and to have the examining physician(s) report any signs of torture or ill-treatment, confidentially and without fear of reprisal, to an independent investigative authority; (iii) to be informed of the reasons for their arrest and the nature of the charges against them in a language that they can understand; (iv) to have their detention registered, with compliance with the detention registration system being very closely monitored and any official who does not fulfil the requirements of that system, or who does not ensure that his or her subordinates do so, being duly punished; (v) to inform a family member or third party of their choosing of their detention without delay; and (vi) to be brought before a judge without delay and within the time limit set by law;**

(c) **Ensure that the questioning of persons deprived of their liberty is video recorded, that those recordings are stored in a safe place under the control of oversight bodies and that the recordings are made available to investigators, detainees and their lawyers;**

(d) **Ensure that judges, prosecutors and public defenders oversee periods of detention properly, take the initiative in asking detainees how they have been treated during their period of detention and request that a forensic medical examination be performed whenever they have reason to believe that a person who appears before them may have been subjected to torture or duress.**

#### **Acts of corruption**

12. The Committee is deeply concerned by numerous reports of corruption in the judicial system, the prison system and the police force of the State party and by reports that most acts of corruption go unpunished. The Committee is also concerned that the decision not to renew the mandate of the International Commission against Impunity in Guatemala may lead to a setback in the fight against impunity and in international cooperation in this

area. In particular, the Committee takes note with concern of the persistence of the practice known as *talacha*, whereby bribes are extorted from persons deprived of their liberty in exchange for the avoidance of physical punishment and/or as a condition for the provision of medical treatment, food or any other prison benefit (arts. 2, 10 and 12).

**13. The State party should immediately take steps, as a matter of urgency, to put an end to corruption in the judicial system, the prison system and the police force, which obstructs the effective application of the Convention. In particular, the State party should increase the support it provides to the Public Prosecution Service, build up the Service's capacity for investigating and prosecuting corruption cases and introduce independent audits and training programmes for civil servants designed to ensure the transparency of their actions. The Committee invites the State party to reconsider its decision not to renew the mandate of the International Commission against Impunity in Guatemala after 2019. It also requests the State party to apprise it of the steps that it has taken and the difficulties that it has encountered in its efforts to combat corruption and to provide it with information on the number of civil servants, including high-ranking officials, who have been tried and punished for engaging in corruption.**

#### **National mechanism for the prevention of torture**

14. While taking note of the appointment of three of the five rapporteurs of the National Office for the Prevention of Torture in August 2018 and of the Government's stated intention to increase the Office's budget, the Committee is concerned by the fact that the selection processes that have taken place to date have been challenged on the grounds of a lack of transparency, unjustified delays and a failure to include experience or specialized qualifications in the field of human rights as one of the selection criteria. The Committee is also concerned by reports that the Office has not fulfilled its legal mandate because it has failed to make public pronouncements and to follow up on its recommendations with the authorities and has mismanaged its funds; it is also claimed that its work has had little impact and its staff is not representative of an interdisciplinary or pluricultural approach. The Committee is especially alarmed by the use of the institution to put pressure on judges who are battling corruption, as is evidenced by the charges brought against Judge Iris Yassmin Barrios and Judge Erika Lorena Aifán Dávila in the Bitkov case, in which it has been claimed that, in the course of judicial proceedings, they acted in a way that could constitute torture. The Committee regrets that civil society has played such a small part in the work of the National Office for the Prevention of Torture, since its consultative council has not been established; it also regrets that there are no implementing regulations, aligned with international standards, for the law governing the Office and that there is no policy for minimizing the risk run by persons who report acts of torture or ill-treatment (art. 2).

**15. The Committee urges the State party to ensure that future rapporteurs of the National Office for the Prevention of Torture are selected by means of a public process that is transparent, participatory and inclusive and that will be independent, will maintain a gender and ethnic balance and will be based on an objective evaluation of the candidates' merits in terms of suitability, probity and recognized qualifications in a range of multidisciplinary fields, including health care (see article 18 of the Optional Protocol and the Committee's guidelines on national preventive mechanisms (CAT/OP/12/5, paras. 17 to 20)). The Committee also urges the State party to:**

(a) **Periodically evaluate the performance of the National Office for the Prevention of Torture, including its management of its resources and its personnel selection processes;**

(b) **Ensure that the National Office for the Prevention of Torture has unhindered access to all places of deprivation of liberty and is able to hold confidential meetings with detainees, follows up on the findings that it conveys to the proper authorities and on its recommendations, and respects and ensures the independence of the judiciary at all times;**

(c) **Ensure that non-governmental organizations have free access to all places of deprivation of liberty, that a consultative council for the national mechanism**

for the prevention of torture is established, and that it functions in an effective manner;

(d) **Strengthen the working methods of the National Office for the Prevention of Torture, including by adopting rules of procedure that are in line with the Optional Protocol, and put in place a policy for minimizing the risk run by persons who report torture or ill-treatment, including during visits.**

#### **Impunity for acts of torture and ill-treatment**

16. In view of the complaints of torture and ill-treatment that have been made, the Committee finds it worrisome that only four convictions for torture have been handed down between 2012 and 2018. It also notes with concern that, although 188 complaints of torture and 308 reports of related crimes were registered by the Prosecution Service between 2012 and 2015 and although 233 complaints have been registered by the National Office for the Prevention of Torture between 2015 and 2018, most of those cases are still under investigation. The Committee also notes with concern that most of the cases involving accusations against police officers or prison staff have been investigated as cases involving less serious offences. It regrets that the State party has not provided statistics on the number of investigations that prosecutors have opened on an ex officio basis. In addition, the Committee regrets the failure to provide information on the steps taken to ensure the independence and impartiality of the investigations being conducted by the Public Prosecution Service (arts. 2, 12, 13 and 16).

17. **The State party should:**

(a) **Ensure that all reports of torture or ill-treatment are investigated promptly and impartially, that no institutional or hierarchical relationship exists between the investigators and the suspected perpetrators and that investigations are opened on an ex officio basis whenever there is reason to believe that an act of torture or ill-treatment has been committed;**

(b) **Establish an independent, effective and confidential means by which victims of torture or ill-treatment who are being held in any prison or other place of detention can convey complaints directly to the Public Prosecution Service and ensure that informants and victims are, in practice, protected from any and all reprisals;**

(c) **Undertake a structural reform of the National Civil Police Force, to include a review of its internal investigation mechanisms, with a view to heightening its effectiveness and ensuring its complete institutional and hierarchical independence from the persons being investigated;**

(d) **Observe the principle of the presumption of innocence of persons being investigated as possible perpetrators of acts of torture or ill-treatment while also ensuring that they are suspended from duty immediately for the duration of the investigation, particularly if there is a risk that they would otherwise be in a position to reoffend, carry out reprisals against the alleged victim or hinder the investigation;**

(e) **Ensure that suspects duly stand trial and, if found guilty, are given sentences that are commensurate with the seriousness of their acts. The Committee wishes to draw attention to paragraph 10 of its general comment No. 2, in which it states that it would be a violation of the Convention to prosecute conduct solely as ill-treatment where the elements of torture are also present;**

(f) **Provide further training to prosecutors, forensic physicians and judges as a means of bringing about improvements in the quality of investigations, the scientific analysis of evidence, the proper classification of criminal acts and the prosecution thereof.**

#### **Excessive use of pretrial detention**

18. The Committee reiterates its earlier recommendations (CAT/C/GTM/CO/4, para. 20 and CAT/C/GTM/CO/5-6, para. 17) regarding excessive recourse to pretrial detention, which accounts for 51.58 per cent of the prison population according to data provided by

the delegation. The Committee is concerned about the fact that many persons are held in pretrial detention for minor offences, even after the applicable time limits have been reached. The Committee notes with concern that, under the Code of Criminal Procedure, a person must be held in pretrial detention if he or she is a reoffender or is charged with certain offences, including those covered by the Anti-Narcotics Act. The Committee is also concerned by reports that the frequent deferral of hearings, media pressure and public concern about safety are influential factors behind the nearly blanket application of pretrial detention and the prolongation of its duration. Although the Committee takes note of the adoption of the 2016 Act on the Implementation of Remote Monitoring in Criminal Proceedings, it regrets that electronic monitoring devices have to be paid for by the persons subject to such monitoring, unless the presiding judge decides otherwise, and notes that this may have a discriminatory impact on persons who cannot afford to cover the cost of such devices (arts. 2, 11 and 16).

**19. The State party should adopt the necessary legislative, judicial and administrative measures to counter the excessive use of pretrial detention by, in particular:**

**(a) Reducing the use of pretrial detention, which should be applied only as an exceptional measure on the basis of a case-by-case determination that such a measure is proportionate, reasonable and necessary, as defined by the legal requirements regarding flight risk or interference with the proceedings; under no circumstances should pretrial detention be mandatory for all individuals charged with a particular offence;**

**(b) Encouraging and overseeing the use of alternatives to imprisonment and ensuring that their use, particularly in the case of electronic monitoring devices, is aligned with the principles of equality and non-discrimination;**

**(c) Establishing a consolidated, automated registry of proceedings involving persons deprived of their liberty that flags the expiration date of the allowable duration of pretrial detention and the date of completion of prison sentences;**

**(d) Ensuring that the judiciary continues its efforts to monitor and verify the necessity, proportionality and duration of pretrial detention and to streamline procedural measures in order to avoid the deferral of hearings;**

**(e) Granting compensation to victims of unjustified pretrial detention.**

#### **Prison conditions**

20. Despite the measures adopted by the State party (see para. 5 (d) above) and its plans to remodel centres of detention and build new centres, the Committee continues to be concerned at the steady growth of the prison population and at the prison occupancy level, which, according to data provided by the delegation, stands at 269.66 per cent overall and is up to 500 per cent in some facilities. The Committee is concerned at the fact that, because of the overcrowding in its prisons, the State party continues to use police stations as long-term detention centres. In addition, and notwithstanding the information offered by the delegation in this connection, the Committee remains concerned by reports of: (i) a failure to effectively separate persons on or awaiting trial from convicted persons; (ii) the insufficiency of rehabilitation and social reintegration programmes; (iii) a lack of hygiene and sanitation services, access to drinking water and sufficient amounts of suitable food; and (iv) insufficient therapy for drug users and persons with mental disabilities. It also regrets the lack of medical personnel, medicines and medical equipment and the shortcomings that exist in arrangements for hospital transfers, although it welcomes the conclusion of an inter-agency agreement for the appropriate coordination of such transfers. The Committee regrets, in particular, the failure to systematically conduct thorough medical examinations as part of the prison intake process that would permit the early diagnosis of infectious conditions such as HIV infection and tuberculosis and their immediate treatment (arts. 2, 11 and 16).

21. **The State party should take steps, as a matter of urgency, to bring prison conditions into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela rules), in particular, by:**

(a) **Stepping up its efforts to reduce prison overcrowding by, first and foremost, effectively applying existing alternatives to imprisonment, such as the remission of sentences and the use of a graduated system;**

(b) **Discontinuing the use of police stations as long-term housing for detainees;**

(c) **Ensuring that persons on or awaiting trial are separated from convicted persons and that they are treated in a manner that is suited to their legal status;**

(d) **Providing specific budget projections for the policy on prison reform and implementing plans for the construction, remodelling and expansion of detention centres while ensuring that hygiene and health conditions, food supplies and access to drinking water are adequate;**

(e) **Ensuring, in cooperation with public health services, the continuity of medical treatment in prison, particularly for HIV infection, tuberculosis, drug dependency and mental health problems and medical monitoring of women during pregnancy, and of arrangements for rapid transfer in the event of medical emergencies;**

(f) **Ensuring that there is a sufficient number of suitable medical personnel, materials and medicines and that detainees have access to a medical examination as soon as possible after entry into the facility and as often as necessary thereafter so that health needs, infectious diseases and possible cases of ill-treatment can be identified;**

(g) **Increasing detainees' access to rehabilitation and social reintegration programmes.**

#### **Inter-prisoner violence and deaths in custody**

22. The Committee reiterates its concern (CAT/C/GTM/CO/5-6, para. 18) at the increase in the number of violent deaths occurring in the country's prisons, with 42 deaths by violence and 52 deaths by natural causes having occurred between January and October 2018. It is also concerned by reports that no protocols are in place for the investigation of such deaths. In the light of these reports, the Committee regrets the absence of official information concerning the findings of the investigations and any preventive measures that have been adopted. It is also disturbed about the persistently high levels of violence occurring between rival groups of prisoners, which appear to be the work of criminal gangs and extortion rings in prisons that exercise a form of self-rule. In this connection the Committee takes note with concern of reports regarding the widespread sale and use of drugs and the smuggling and use of firearms within the country's prisons. In addition, it is disturbed by reports of degrading treatment, aggression and sexual violence directed at prisoners by prison staff (arts. 2, 12, 13 and 16).

23. **The State party should increase its efforts to:**

(a) **Record and document all violent incidents in a manner that is in accordance with the Istanbul Protocol and promptly undertake a thorough, impartial investigation into all incidents involving violence, death, torture or ill-treatment occurring in detention centres. In cases where autopsies are called for, they should be performed in accordance with the Minnesota Protocol and any possibility that agents of the State or their superiors are the responsible parties should be evaluated and, if this is found to be the case, the guilty parties should be duly punished and the families of the victims should be provided with adequate reparation;**

(b) **Reinforce measures for preventing and reducing inter-prisoner violence, investigate the occurrence of smuggling and trafficking in firearms and drugs and the extortion rings operating in the country's prisons and regain effective control over them. The State party should also review the effectiveness of the suicide prevention programmes existing in such facilities and compile detailed data in that connection.**

- (c) **Recruit and train a sufficient number of prison personnel to ensure adequate ratios of prisoners to staff.**

#### **Deaths and ill-treatment occurring in residential and detention centres for adolescents**

24. The Committee is alarmed about the fire that broke out at the Virgen de la Asunción orphanage on 8 March 2017, which resulted in the deaths of 41 girls who had been locked in a schoolroom following an escape attempt and who were not freed in time by the police who were guarding them. While the Committee takes note of the investigations that are under way, it is concerned by reports that the events in question are being classified as minor offences, without taking into account intimidation as a possible purpose of torture. It is also concerned that complaints of ill-treatment, sexual abuse and trafficking in that centre are not being investigated and that there have been delays in paying out the annuity awarded to survivors and the family subsidy granted to other family members, although it does note that such compensation is to be paid retroactively. The Committee reiterates its concern (CAT/C/GTM/CO/5-6, para. 19) about the persistence of overcrowding – despite the significant reduction therein – and about unhealthful conditions and the frequency of violent incidents, riots and fires at centres for adolescents in conflict with the law, although it welcomes the plan to establish new reintegration and resocialization centres and the adoption of investigative protocols suited to the needs of adolescents in conflict with the law (see para. 5 (g) above). While noting the information provided by the delegation about the separation of adolescents in conflict with the law by age group, the Committee continues to be concerned at the failure to separate adolescents from young adults in the Las Gaviotas and Los Gorriones detention centres (arts. 2, 4, 12 to 14 and 16).

#### **25. The Committee urges the State party to adopt effective measures for:**

(a) **Investigating, promptly, thoroughly and impartially, all allegations of murder, torture, ill-treatment, sexual abuse and trafficking of children and adolescents who have been placed in the Virgen de la Asunción orphanage – whether the alleged events occurred before or after the events of 8 March 2017 – and of children and adolescents who have been placed in other shelters or detention centres and ensuring that the suspected perpetrators, together with their superiors who knew or should have known that such acts were being committed, are prosecuted and, if found guilty, punished in a manner that is commensurate with the seriousness of their actions;**

(b) **Promptly providing full redress to the child and adolescent victims of these acts and their families, including an enforceable right to fair and adequate compensation and the means for as full a rehabilitation as possible;**

(c) **Developing a public policy aimed at averting the institutionalization of children and adolescents, supporting families and suitable community-based services and ensuring that the separation of a child from his or her family for purposes of protection, detention or imprisonment is allowed only as an exceptional measure and for the shortest period of time possible;**

(d) **Improving, as a matter of urgency, conditions in shelters and centres of deprivation of liberty for children and adolescents in terms of sanitation, hygiene and safety and ensuring that adolescents are separated from adults, that suitable, culturally diverse socio-educational and rehabilitation programmes are offered, that the staff have received appropriate training and that regular inspections are carried out.**

#### **Investigation of acts of torture and other serious violations committed during the internal armed conflict**

26. While the Committee recognizes the recent progress made in some cases involving grave violations committed during the internal armed conflict, such as the judgments handed down in the Sepur Zarco and Molina Theissen cases, it continues to be concerned at the fact that most such violations remain unpunished. It is especially concerned about the effort being made to win passage of Bill No. 5377, which would introduce an amnesty for persons who committed grave human rights violations during that period. In addition, it is



concerned by reports of the stigmatization of victims, witnesses and justice officials and the filing of spurious lawsuits against them, as in the Molina Theissen case. The Committee is concerned at the acquittal of José Mauricio Rodríguez Sánchez, former head of military intelligence, despite the fact that the High-Risk Trial Court B confirmed in the same judgment that the army was responsible for the genocide of Maya Ixil communities in 1982 and 1983, although it notes that the judgment is under appeal. It is also concerned at the repeated use of delaying tactics that threaten to undermine the aggrieved parties' access to justice, given the advanced age of the victims and of their aggressors. The Committee also regrets that there has been no progress towards the passage of Bill No. 3590, on the establishment of a national commission to search for disappeared persons, since 2007, even though it is legally in order and despite the Committee's previous recommendations (CAT/C/GTM/CO/4, para. 11), although the Committee does take note of the existence of a new legislative proposal for the establishment of such a commission (arts. 2, 12 and 16).

**27. The Committee reiterates its previous recommendations (CAT/C/GTM/CO/4, para. 15 and CAT/C/GTM/CO/5-6, paras. 10 and 11) and urges the State party to:**

(a) **Ensure that all grave human rights violations committed during the internal armed conflict, in particular massacres, acts of torture, acts of sexual violence and enforced disappearances, including the Ixil genocide, are investigated without delay and that the parties who planned and directed those crimes and the parties who actually carried them out, including the chain of command, are punished in a manner commensurate with the seriousness of their acts. The State party should rule out the possibility of granting an amnesty or any other type of pardon for the crime of torture, as to do so would be a breach of the Convention;**

(b) **Provide effective protection for victims, witnesses and their families and all other persons involved in criminal proceedings and prevent their revictimization;**

(c) **Guarantee the independence and safety of justice officials and take the necessary steps to deal with actions or omissions, attacks and reprisals directed against them which are hampering the proceedings;**

(d) **Step up its efforts to locate and identify all persons who were subjected to enforced disappearance during the internal armed conflict by setting up a national search commission and a consolidated, centralized register of disappeared persons, as was recommended in the judgment handed down in the Molina Theissen case.**

### **Redress**

28. While the Committee takes note of the progress made by the State party in following up on the cases considered by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, it is concerned by reports that the compensation offered to victims does not always match the sums awarded in those decisions and that the State party has given priority to economic compensation over other measures. The Committee also regrets that the State party has not provided information on the measures of reparation and compensation, including means of rehabilitation, awarded by national courts and effectively implemented in order to benefit victims of torture or their families during the period under review. With regard to the steps taken to guarantee redress for victims of human rights violations committed during the internal armed conflict, the Committee remains concerned at the small size of the budget allocation for the National Reparations Programme, the administrative and linguistic barriers that hinder the submission of requests for redress owing to documentation requirements, procedural delays and the scant number of cases in which redress has been granted (art. 14).

**29. The Committee draws the State party's attention to its general comment No. 3 (2012) on the implementation of article 14 by States parties, in which it provides a detailed description of the nature and scope of their obligations under the Convention to grant full redress to victims of torture. In particular, the State party should:**

(a) **Ensure that all victims of torture or ill-treatment obtain redress, which includes an enforceable right to fair and adequate compensation, measures of**

restitution and satisfaction, the means for as full rehabilitation as possible and guarantees of non-repetition;

(b) Conduct an assessment, in cooperation with specialized civil society organizations, of torture victims' existing needs in terms of rehabilitation;

(c) Continue to move forward with the adoption of the necessary legislation and other measures to ensure that all persons who were subjected to torture during the internal armed conflict obtain full redress, to provide the National Reparations Programme with the resources it needs to operate and to facilitate victims' access to redress by putting in place simplified, culturally sensitive and gender-sensitive mechanisms for that purpose and offering interpretation services where necessary.

#### **Forced institutionalization and ill-treatment in centres for persons with disabilities and persons on drugs**

30. While noting the efforts made at the Federico Mora psychiatric hospital to separate patients in conflict with the law from regular patients, the Committee remains concerned at cases of sexual and physical abuse of patients, as acknowledged by the delegation, and regrets that the State party has provided only scant information on the outcome of investigations into abuses committed during the reporting period. The Committee also expresses its concern at reports that solitary confinement and physical and chemical restraints have been used on persons with disabilities at the Federico Mora hospital and on children and adolescents with disabilities at the Hogar Virgen del Socorro and the Hogar Hermano Pedro, although it welcomes the information provided by the delegation indicating that solitary confinement was prohibited in 2017. The Committee is further concerned at reports that drug users are involuntarily committed to private drug rehabilitation centres, where they are subjected to cruel treatment (arts. 2, 12, 13 and 16).

31. The Committee reiterates its previous recommendations (CRC/C/GTM/CO/5-6, paras. 20 and 21) and urges the State party to:

(a) Prioritize family reintegration and community-based health and social services as an alternative to the institutionalization of persons with intellectual and psychosocial disabilities and drug users;

(b) Avoid forced hospitalization or confinement on medical grounds, unless it is strictly necessary, and even then it should be used solely as a measure of last resort, for the shortest possible period, and solely when accompanied by adequate procedural and substantive safeguards, such as initial and periodic judicial reviews and unrestricted access to a lawyer and to complaint mechanisms;

(c) Ensure that the principle of free, prior and informed consent for medical treatment is respected and that means of physical or chemical restraint are used only as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail to satisfactorily contain that risk. The State party should ensure that the use of restraints is rigorously recorded in special registers and that any abuse is effectively investigated and that, where applicable, criminal charges are brought against those responsible;

(d) Ensure that all allegations of ill-treatment and sexual abuse of patients in the Federico Mora hospital, in centres for children with disabilities and in rehabilitation centres are investigated promptly, thoroughly and impartially. The State party should also ensure that alleged perpetrators are prosecuted and, if found guilty, punished in a manner commensurate with the seriousness of their acts, and should ensure that all victims are granted adequate redress;

(e) Increase resources and take the necessary measures to remedy any deficiencies that may exist in the internal functioning of the Federico Mora hospital and residential centres for children with disabilities, in particular by prohibiting solitary confinement and by ensuring the proper medical and health care for patients and residents and the appropriate selection and training of personnel;

(f) **Ensure that psychiatric and drug rehabilitation centres are regularly monitored by health and social services inspection authorities and independent monitoring mechanisms.**

#### **Violent deaths, evictions and internal security**

32. The Committee remains concerned at the high number of violent deaths occurring in the context of organized crime, mostly caused by firearms, and at reports of the persistence of lynchings, despite the organization of awareness campaigns. It is also concerned that there continue to be challenges in government oversight of private security companies, which sometimes take on the functions of the National Civil Police, creating an environment of intimidation, particularly in indigenous communities. The Committee also remains concerned about reports that the armed forces continue to play a role in civil security tasks carried out in response to the situation of insecurity, even though they were due to gradually cease providing such assistance in 2018. Despite the information provided by the delegation, the Committee continues to be concerned at reports that the National Civil Police, the army and private security firms are carrying out forced evictions, resorting to violence, intimidation and threats, and that indigenous communities have been particularly affected (arts. 2, 12 and 16).

33. **The Committee reiterates its previous recommendations (CAT/C/GTM/CO/4, para. 16 and CAT/C/GTM/CO/5-6, paras. 15 and 16) and urges the State party to redouble its efforts to:**

(a) **Prevent and punish all acts of violence under its jurisdiction, including killings, lynchings and excessive use of force committed by or with the acquiescence of the security forces, ensuring that complaints are investigated promptly, effectively, independently and impartially; that perpetrators are prosecuted and punished; and that victims receive appropriate redress;**

(b) **Develop a policy for the prevention of lynching;**

(c) **Develop a policy for establishing stricter control over the possession and carrying of firearms;**

(d) **Take, as a matter of urgency, the necessary measures to fulfil the State's commitment to definitively withdraw the armed forces from civil security tasks;**

(e) **Ensure that all private security firms are registered, as required by law, that their activities are properly monitored and that they are held accountable, and that those that fail to comply with the law are penalized;**

(f) **Provide routine training to all law enforcement officers on the use of force in the context of evictions, with due regard for the principles of legality, necessity and proportionality and for the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.**

#### **Principle of non-refoulement and situation of migrants**

34. While welcoming the adoption in 2016 of the new Migration Code (see para. 4 (b) above), the Committee notes with concern that some of its provisions may give rise to violations of the principle of non-refoulement, since they do not explicitly recognize this principle for the duration of the asylum proceeding and provide for the expulsion of persons who do not meet the administrative requirements for entry, including persons in need of international protection. The Committee also notes with concern that there are no appeal procedures and that regulations for the implementation of the new Code have not yet been adopted, although it acknowledges the State party's commitment to adopt them soon. The Committee is troubled by reports of collective expulsion and the return of unaccompanied children and adolescents without due regard for the principle of non-refoulement or for the best interests of the child. It is concerned at the situation of insecurity faced by migrants in transit, particularly members of the so-called "caravan" of Central American migrants. The Committee is also concerned about deplorable conditions in the facilities where migrants and returnees are kept (arts. 2, 3 and 16).

35. **The State party should take the necessary legislative and administrative measures to ensure, in law and in practice:**

(a) **That no one may be expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would run a personal and foreseeable risk of being subjected to torture;**

(b) **That migrants have access to refugee-status determination procedures, particularly at border posts, and to the swift and fair determination of refugee status, and the right to an effective remedy with suspensive effect in which appeals are reviewed by an independent authority;**

(c) **That asylum seekers and migrants are able to access legal assistance, interpretation and other basic services and that the best interests of the child are a primary consideration in all decisions concerning child and adolescent migrants and asylum seekers;**

(d) **That the necessary conditions are in place to ensure the safety of and assistance to migrants in transit and the necessary physical conditions and basic services in reception centres.**

#### **Femicide, gender-based violence and trafficking**

36. While appreciating the measures taken to combat gender-based violence and trafficking (see paras. 4 (a) and 5 (a), (b) and (c) above), the Committee remains concerned at the increase in the number of reported cases of sexual violence and the alarming number of femicides, a number that reached 307 in 2018, perpetrated in some cases as a means of social control and intimidation linked to organized crime, with 8 cases having been committed by police officers between 2012 and 2018. The Committee is also concerned at the low number of prosecutions and the leniency of the penalties imposed, the fact that specialized courts do not exist in all of the country's departments and the decrease in the number of trafficking cases detected among vulnerable population groups. It is further concerned about the failure to provide redress for victims, the insufficiency of the resources allocated to Comprehensive Support Centres for Women Survivors of Violence and the lack of high-quality specialized services in shelters for trafficking victims. While noting the recent reactivation of the National Coordination Agency for the Prevention of Domestic Violence and Violence against Women, the Committee regrets that this institution has been weakened and does not have the necessary resources (arts. 2, 12, 13 and 16).

37. **The Committee reiterates its previous recommendations (CAT/C/GTM/CO/4, para. 16 and CAT/C/GTM/CO/5-6, para. 13) and urges the State party to:**

(a) **Ensure that all cases of gender-based violence and trafficking, especially those involving actions or omissions by State authorities or other entities which engage the international responsibility of the State party under the Convention, are thoroughly investigated with a gender-sensitive and culturally sensitive approach, that the alleged perpetrators are prosecuted and, if convicted, are punished appropriately and that the victims receive redress, including adequate compensation;**

(b) **Promote the creation of specialized courts and prosecutors' offices in all departments of the country;**

(c) **Provide mandatory training on the prosecution of gender-based violence and trafficking to all justice and law enforcement personnel and continue awareness-raising campaigns on all forms of violence against women, including trafficking, with a gender-sensitive and culturally sensitive approach;**

(d) **Provide the necessary annual funding for the institutions responsible for implementing the existing laws, in particular the Comprehensive Support Centres for Women Survivors of Violence, the National Coordination Agency for the Prevention of Domestic Violence and Violence against Women and shelters for trafficking victims, ensuring that trafficking victims receive protection and secondary services;**

(e) **Increase the early detection capacity of law enforcement personnel to enable them to promptly identify victims of trafficking, as recommended by the**

**Committee on the Elimination of Discrimination against Women (CEDAW/C/GTM/CO/8-9, paras. 24 and 25).**

**Attacks against human rights defenders and journalists**

38. The Committee reiterates its concern at reports of a significant increase in attacks against human rights defenders and journalists, ranging from repeated threats and harassment to murder, with 24 murders of defenders – mostly those defending indigenous peoples' rights, the right to land and the environment – recorded between January and October 2018. The Committee is also concerned at the continuous stigmatization and defamation of defenders in the media, including social media, and by members of the executive branch, and at allegations of the misuse of criminal procedures against human rights defenders, including surveillance, arbitrary detention and the prolonged use of pretrial detention in areas where disputes often occur over agricultural land. While noting the protection mechanisms in place (see para. 5 (e) above) and the preventive measures ordered, the Committee regrets that the process of drafting a public policy for the protection of human rights defenders has not yet been complete. It also regrets the low number of convictions for the acts mentioned above and the limited effectiveness of the Unit for the Analysis of Attacks on Human Rights Defenders (arts. 2, 11, 12, 13 and 16).

39. **The Committee reiterates its previous recommendations (CAT/C/GTM/CO/4, para. 12 and CAT/C/GTM/CO/5-6, para. 14) and urges the State party to:**

(a) **Adopt and implement a public policy for the protection of human rights defenders, especially those defending the rights of indigenous peoples, and a programme for the protection of journalists and other media workers that is the outcome of a participatory process, and examine in greater depth the causes of the unprecedented violence towards these groups;**

(b) **Disseminate General Instruction No. 5-2018 of the Public Prosecution Service, ensure the prompt, thorough and effective investigation of all threats and attacks targeting human rights defenders and journalists, and ensure that those responsible are tried and punished in accordance with the seriousness of their acts;**

(c) **Ensure that the criminal justice system is not used to attack human rights defenders and that due process guarantees are upheld in cases in which charges are brought against human rights defenders;**

(d) **Provide resources and the necessary training to existing agencies with a protection mandate, so that they can respond in a coordinated manner and with due diligence;**

(e) **Ensure that human rights defenders are not subjected to reprisals for communicating with or providing information to the United Nations treaty bodies, including the Committee against Torture.**

**Violence motivated by sexual orientation or gender identity**

40. While appreciating the State party's efforts to guarantee the rights of lesbian, gay, bisexual, transgender and intersex persons, the Committee remains concerned at the high rate of violence they face, and is particularly concerned at the killings of transgender women, often linked to organized crime. The Committee is also concerned that the passage of draft legislation that would perpetuate discrimination based on sexual orientation, such as Bill No. 5272, may exacerbate this violence. The Committee is further concerned at the vulnerable situation of lesbian, gay, bisexual, transgender and intersex persons in detention, including transgender women incarcerated in men's prisons, who are exposed to a high rates of sexual violence, lengthy periods of segregation for their own safety and invasive and humiliating body searches (arts. 2, 12 and 16).

41. **The State party should:**

(a) **Ensure the physical integrity of lesbian, gay, bisexual, transgender and intersex persons in all settings and uphold the principle of non-discrimination on the grounds of sexual orientation or gender identity;**

(b) **Ensure that assaults motivated by a person's sexual orientation or gender identity are investigated, that the persons responsible are tried and punished and that the victims obtain redress, and that data on such crimes are systematically collected;**

(c) **Expedite the adoption and implementation of protocols to address the special needs of lesbian, gay, bisexual, transgender and intersex persons in the prison system;**

(d) **Exercise strict supervision of body search procedures and ensure that they are not degrading, that invasive searches are conducted only in exceptional cases and are as unintrusive as possible, and that they are conducted by trained staff of the same sex, and with full respect for the dignity and gender identity of the individual concerned (rules 50 to 53 and 60 of the Nelson Mandela Rules);**

(e) **Ensure that segregation for safety reasons conforms to the provisions of the Nelson Mandela Rules.**

### **Training**

42. The Committee expresses concern at the low coverage of the courses held on torture prevention and regrets that there has been no sustained follow-up to the training activities for law enforcement personnel during the review period. It also regrets that it has not received specific information on the scope and coverage of training programmes for judges, prosecutors and medical personnel; on the training provided to other law enforcement personnel, migration officers, public defenders and staff of the National Institute of Forensic Sciences; or on the course content taught on the needs of vulnerable groups deprived of their liberty. The Committee is also concerned that the State party still does not have a specific methodology to evaluate the effectiveness of these programmes in reducing the prevalence of torture and ill-treatment (art. 10).

43. **The State party should increase its efforts to:**

(a) **Develop and implement mandatory and regular training programmes and ensure that all public servants, including law enforcement personnel, migration officers, members of the army, prison officials, the judiciary, and staff of the Public Prosecution Service, the Public Criminal Defence Institute and the National Institute of Forensic Sciences are duly familiarized with and receive the relevant instructions regarding the provisions of the Convention and the obligations with regard to prevention, investigation, punishment and redress for crimes of torture and ill-treatment, and regarding the specific needs of vulnerable groups;**

(b) **Develop training programmes on non-coercive investigatory techniques;**

(c) **Establish a methodology for evaluating the effectiveness of training programmes as a means of reducing the number of cases of torture and ill-treatment;**

(d) **Continue to ensure that all relevant staff, including medical personnel and personnel of centres for persons with disabilities, receive specific training in identifying and documenting cases of torture and ill-treatment in accordance with the Istanbul Protocol.**

### **Follow-up procedure**

44. **The Committee requests the State party to provide, by 7 December 2019, information on follow-up to the Committee's recommendations on the national mechanism for the prevention of torture; deaths and ill-treatment occurring in shelters and detention centres for adolescents; investigation of acts of torture and other serious violations committed during the internal armed conflict; and violent deaths, evictions and internal security (see paras. 15 (b), 25 (a) and (b), 27 (a) and 33 (d) and (e) above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations contained in the concluding observations.**

**Other issues**

45. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, to all the organs of the State party, including the relevant authorities, and also through official websites, the media and non-governmental organizations, and to inform the Committee about the dissemination activities undertaken.

46. The Committee invites the State party to submit its next periodic report, which will be its eighth, by 7 December 2022. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its eighth periodic report under article 19 of the Convention.

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