



association pour la prévention de la torture
asociación para la prevención de la tortura
association for the prevention of torture

UN Committee against Torture

APT submission on Guatemala

9 February 2015

Submission from the Association for the Prevention of Torture (APT) to the Committee against Torture providing background information and suggested questions and recommendations on torture prevention and the Optional Protocol to the UN Convention against Torture (OPCAT) for **Guatemala**, whose List of Issues Prior to Reporting (LOIPR) will be adopted by the Committee during its 54th session in Geneva.

The Association for the Prevention of Torture (APT) is an independent NGO based in Geneva, working for a world free from torture, where the rights and dignity of all persons deprived of liberty are respected.

To achieve this vision we:

- *Promote transparency and monitoring of places of detention*
- *Advocate for legal and policy frameworks*
- *Strengthen capacities of torture prevention actors and facilitate exchanges*
- *Contribute to informed public policy debates*

1. Key facts

UNCAT ratification: 5 June 1990

OPCAT ratification: 9 June 2008

NPM designated: Office of the National Preventive Mechanism against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment¹

2. Background information

Violations of the rights of persons deprived of their liberty in Guatemala, including violations to the right to life and to integrity continue to be a reality in Guatemala's prisons, where overcrowding reached 155% in November 2013, according to a report from the Ombudsman's Office.²

Following a BBC report on the conditions prevailing in the Federico Mora psychiatric hospital, international and national attention was drawn to the very serious abuses, including sexual abuses, committed in this facility. The OHCHR in Guatemala and the Ombudsman's Office publicly urged the authorities to guarantee the rights of all patients in this hospital and comply with the precautionary measures requested by the Inter-American Commission on Human Rights in 2012.³

In its last concluding observations on Guatemala, the Committee addressed these issues and, in order to comply with its obligation under article 2 of the Convention and under the OPCAT, made the following recommendation:

*"[S]peed up the implementation of the law establishing the national preventive mechanism by promptly appointing its members, [...] ensure that these appointments comply fully with the relevant provisions of the Optional Protocol to the Convention [...] and that the mechanism has the necessary resources."*⁴

The NPM was established in 2014 (see section 2.2 below) and has started to conduct visits to places of deprivation of liberty. In addition, the State of Guatemala will receive a first visit by the UN Subcommittee on Prevention of Torture (SPT) during 2015.

¹ Legislative Decree N° 40-2010 published in the Official Gazette on 9 November 2010, available at: <http://www.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnálisisDocumentaciónJudicial/cds/CDs%20Leyes/2010/pdfs/decretos/D040-2010.pdf>

² See Procurador de los Derechos Humanos, *Informe Anual Circunstanciado, Informe de situación 2013*, p. 63.

³ See BBC, "Inside the world's most dangerous hospital", <http://www.bbc.com/news/magazine-30293880>, 5 December 2014; Procurador de los Derechos Humanos, *PDH solicita intervención de autoridades para el resguardo de los derechos humanos de pacientes reclusos en el Hospital Federico Mora*, 11 December 2014, <http://www.pdh.org.gt/noticias/noticias-destacadas/item/5088-pdh-solicita-intervenci%C3%B3n-de-autoridades-para-el-resguardo-de-los-derechos-humanos-de-pacientes-reclusos-en-el-hospital-federico-mora.html#.VNidSC7lx1>; OHCHR in Guatemala, *OACNUDH llama a garantizar los derechos humanos de pacientes del hospital Federico Mora*, 7 December 2014, http://www.ohchr.org.gt/documentos/comunicados/112014_OACNUDH_llama_garantizar_DDHH_en_Hosp_FMora%287dic14%29.pdf

⁴ Concluding Observations on the combined fifth and sixth periodic reports of Guatemala, UN Doc. CAT/C/GTM/CO/5-6, 21 June 2013, para. 23.

2.1 Legal reforms: the definition of torture and statutes of limitations

In its last concluding observations, the Committee urged Guatemala *"to 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."* The Committee also recommended that *"the State party ensure that acts of torture are not subject to any statute of limitations."*⁵

This recommendation, previously issued by the CAT, remains unimplemented despite a judgment from the Constitutional Court of 17 July 2012 declaring article 201bis (definition of torture) unconstitutional.⁶

To date, several provisions of the criminal code therefore still need to be amended to bring the definition of torture into conformity with both the UNCAT and the Inter-American Convention to Prevent and Punish Torture, and ensure that acts of torture are not subject to any statute of limitations (Art. 425 currently provides for a penalty of 2 to 5 years imprisonment and is silent on the issue of statute of limitations).

2.2 NPM establishment and functioning

Since the Committee's last review of Guatemala's report in May 2013, the process to select the NPM members has come to an end.

In March 2014, four years after the adoption of the legislation establishing the NPM, the Guatemalan Congress appointed the NPM members. The APT welcomes this development and the fact that the NPM is now operational and was granted a budget of 10 million quetzales (approx. 1.25mio USD) for the year 2015.

In September 2014, the 5 members of the Advisory Council (an advisory body established by the Legislative Decree creating the NPM), including representatives from civil society organisations, were also appointed.

Need for multidisciplinary expertise

The NPM of Guatemala is composed of 10 persons (known as "Rapporteurs"): 5 members and 5 substitutes. At the moment, almost all members and substitutes have a legal background. The APT is concerned that the lack of expertise in other fields, especially, but not limited to, medical expertise, will restrict the NPM preventive approach and might constitute an obstacle to monitor "non-traditional" places of detention, including psychiatric hospitals.

⁵ Concluding Observations on the combined fifth and sixth periodic reports of Guatemala, UN Doc. CAT/C/GTM/CO/5-6, 21 June 2013, para. 8.

⁶ See Corte de Constitucionalidad de Guatemala, Doc. 1822-2011, 17 July 2012, available at http://www.cc.gob.gt/index.php?option=com_content&view=article&id=766&Itemid=122

Cooperation with the Advisory Council and other actors, including civil society

The Advisory Council met on several occasions with the NPM in plenary since its activities begun. The APT welcomes this practice and recommends that both bodies ensure a regular channel of communication to share information that is relevant for the Council to be able to perform its advisory role. Furthermore, this would allow the Mechanism to benefit from the Council members' expertise and develop a clear methodology of cooperative work.

Beyond its cooperation with the Advisory Council, the NPM could also engage with other actors, including non-governmental organisations who are experienced in the field of detention, especially to compensate for the lack of multidisciplinary expertise within the Mechanism. The NPM could benefit from their experience, which would enrich its work – in particular on the specific needs of certain groups in situation of vulnerability in detention- and strengthen the link between the Mechanism and civil society.

Strengthening capacities of the NPM

In order to adopt a holistic preventive approach from the initial phase of functioning, NPMs should benefit from specific capacity-building training and from the experience of their peers to establish an appropriate monitoring methodology.

During the first Regional Forum on the OPCAT in Latin America, convened by the APT in 2014 in Panama, operative NPMs from across the region were unanimous on the positive impact that capacity-building training activities have on their internal institutional development, technical skills and working methodology, hence, on the efficiency of the monitoring visits.

The State of Guatemala has set up programmes to educate and train public servants (especially the police and the penitentiary system) on the duties and responsibilities under the Convention against Torture. However, no information is available on the inclusion of the NPM in these programmes or on any other training effort to improve their methodology and specific skills in the prevention of torture.

3. Suggested questions

In light of the background material above, the APT proposes that the Committee against Torture include the following questions in the List of Issues Prior to Reporting (LOIPR) for Guatemala:

Articles 1 and 4

Legal reforms: the definition of torture and statutes of limitations

- Please indicate the steps that Guatemala has taken to modify articles 201*bis* and 425 of the criminal code, in order to ensure compliance of the definition of torture with international standards and explicitly provide that any acts of

torture cannot be subject to statutes of limitations, and what the timeline for this reform is.

Articles 2, 11 and 16

NPM effective functioning

- Please provide information on any actions planned by the State to train the recently established NPM in order to strengthen its capacity to conduct effective monitoring to all places of deprivation of liberty envisaged in the OPCAT and build a multidisciplinary approach to its work.
- Please provide information on steps taken to ensure the adoption of strategies by the NPM, in order to ensure regular information-sharing and cooperation with the Advisory Council, and any other efforts made to engage with other actors, including civil society organisations (i.e through participation during monitoring visits, exchange of experiences, or information-sharing on specific issues of expertise).