



UN Committee against Torture 50th Session (6 to 31 May 2013)

APT submission on Guatemala

Alternative report 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 combined fifth and sixth periodic reports will be reviewed by the Committee during its 50th session in Geneva.

Submitted 16 April 2013

***The Association for the Prevention of Torture (APT)** is an independent NGO based in Geneva, working globally to prevent torture and other ill-treatment. To achieve this vision the organisation works within four integrated areas:*

Transparency in places of detention - Promoting a system of visits by independent experts to prisons and other places where people are held in detention.

Effective laws and policies - Lobbying with governments to ratify the Optional Protocol to the UN Convention against Torture and to adopt legal and procedural standards to prevent torture.

Capacity for prevention - Creating partnerships for prevention within countries, bringing governments, police services, judges and lawyers, national human rights institutions and civil society together in the fight against torture.

Informed public debate – Reinforcing support against torture through active and informed public debates, responding to the corrosion of international standards, particularly with parliamentarians and the media.

1. Key facts

OPCAT Ratification: 9 June 2008

NPM designated: National Mechanism to Prevent Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (yet to be established)

2. Background information

a. NPM establishment

Guatemala ratified the OPCAT in 2008. Five years later, despite the adoption of the Legislative Decree 40-2010 creating the National Mechanism to Prevent Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (NPM),¹ the mechanism has not been established nor have its members been appointed.

The selection process for the members of the NPM, initiated in 2011 by the Human Rights Commission of the Congress, was invalidated for non-compliance with the principles of “transparency, objectivity, suitability and publicity”, as described by the UN High Commissioner for Human Rights in her 2012 annual report,² and by civil society organisations.

In July 2012, the Human Rights Commission started a new selection procedure and in November it submitted to the President of the Congress a list of fifteen candidates out of the initial thirty applicants. To finalise the process, the plenary session of Congress has to select five permanent members and five substitutes out of the fifteen candidates.

Regrettably, at the time of writing the selection process for the members of the NPM is stalled. Additionally, the APT has been informed that one of the 15 members selected by the Human Rights Commission of the Congress has recently died. Consequently, the Commission will have to select a new candidate to complete the list of fifteen, prior to the final selection by the Congress.

b. Conditions of detention

Since the last review by the Committee against Torture in 2006,³ there have been positive developments in the legal framework on the penitentiary system, in particular the adoption of the Law on the Penitentiary Regime (2006),⁴ and its Regulations

¹ Decree N° 40-2010, Congress of the Republic of Guatemala, 9 November 2010. The full text of the law is available at

<http://www.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20leyes/2010/pdfs/decretos/D040-2010.pdf>

² Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the activities of her Office in Guatemala, UN Doc. A/HRC/19/21/Add.1, 30 January 2012, at para.25.

³ Committee against Torture, Concluding Observations: Guatemala, UN Doc. CAT/C/GTM/CO/4, 25 July 2006.

⁴ Ley del Régimen Penitenciario, Decree N° 33-2006, Congress of the Republic of Guatemala, 6 October 2006, available at

<http://www.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20leyes/2006/pdfs/decretos/D033-2006.pdf>

(2011).⁵ Among its provisions, the Law creates the Penitentiary School (*Escuela de Estudios Penitenciarios*), responsible for the specialized professional civil career of penitentiary staff, and a permanent register of all persons deprived of their liberty. It also establishes a comprehensive policy of social reintegration and the improvement of infrastructure for places of detention.

Yet despite the adoption of legal standards, according to the last annual report of the Ombudsman's Office (*Procuraduría de los Derechos Humanos*),⁶ and the UN High Commissioner for Human Rights,⁷ few policies for the implementation of this framework have been agreed.

The penitentiary system of Guatemala continues to face serious problems, including violence, corruption and overcrowding (127.33% above capacity), which is directly linked to the abuse of pre-trial detention (52% of all detainees).⁸ The conditions of detention for persons with mental disabilities are a matter of particular concern. In its annual report, the UN High Commissioner for Human Rights highlighted the following:

Detainees and patients share the same overcrowded space and lack appropriate medical treatment, adequate food, water and sanitation, electricity and security. Complaints were made by patients, detainees and staff of sexual, physical and psychological abuse by the PNC, which is in charge of the inmates.⁹

c. Legal reform on the definition of torture

Both the Committee against Torture and the Human Rights Committee have expressed concern over the fact that the provisions of the Guatemalan Criminal Code related to torture (articles 201*bis* and 425) are not in conformity with the Convention against Torture, and recommended its amendment.¹⁰ The Guatemalan Constitutional Court declared article 201*bis* of the criminal code unconstitutional and recommended to bring it in line both with the UNCAT and the Inter-American Convention to Prevent and Punish Torture.¹¹

⁵ Reglamento de la Ley del Régimen Penitenciario, Government Decision (Acuerdo Gubernativo) N° 513-2011, Ministry of Interior, 30 December 2011, available at <http://old.congreso.gob.gt/archivos/acuerdos/2011/CCXCIII0560300040513201130122011.pdf>

⁶ Procuraduría de los Derechos Humanos, Informe Anual Circunstanciado 2012, Guatemala, January 2013, pp. 13, 35-37, 201, 206-210, available at <http://www.pdh.org.gt/documentos/informes-anales/finish/15-informes-anales/329-iac-2012-situacion-de-los-derechos-humanos-de-guatemala>

⁷ Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the activities of her Office in Guatemala, UN Doc. A/HRC/22/17/Add.1, 7 January 2013, paras.43-46.

⁸ As of November 2012, the number of detainees in the penitentiary system was 14,758, while the capacity was 6,492. See Procuraduría de los Derechos Humanos, *op. cit.*, p.35.

⁹ See Human Rights Council, *op. cit.*, para. 45. For further information, see also Procuraduría de los Derechos Humanos, *op. cit.* p. 201 and <http://www.disabilityrightsintl.org/disability-rights-international-continues-to-pressure-guatemalan-government-to-end-human-rights-abuses-at-notorious-psychiatric-facility/>

¹⁰ See UN Doc. CAT/C/GTM/CO/4, at para.10 and Human Rights Committee, Concluding Observations: Guatemala, UN Doc. CCPR/C/GTM/CO/3, 19 April 2012, para.23.

¹¹ See Corte de Constitucionalidad, 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

3. Suggested questions and recommendations

In light of the background material above, the APT proposes that the Committee formulates the following questions and recommendations to Guatemala:

Articles 1 and 4

- Recommend the amendment of articles 201*bis* and 425 of the Criminal Code to define and criminalise torture in accordance with articles 1 and 4(2) of the UNCAT.

Articles 2, 11, and 16

- Please provide information on the measures taken to speed up the selection process for the members of the NPM.
- Recommend to finalise the selection process of the NPM members as a matter of urgency, ensuring that the process follows the principles of transparency, publicity, gender and ethnic balance,¹² and that the candidates chosen have a multidisciplinary background as well as relevant practical experience in the prevention of torture, in full compliance with the OPCAT.
- Please provide information about the measures being undertaken to implement the Law and Regulations on the Penitentiary Regime.
- Recommend the effective implementation of both the Law and Regulations on the Penitentiary Regime, in particular the prompt adoption of a comprehensive policy of social reintegration, the effective functioning of the Penitentiary School (*Escuela de Estudios Penitenciarios*), the creation of a permanent register of all persons deprived of their liberty and the improvement of infrastructure for places of detention.

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¹² Guatemala has one of the largest indigenous populations relative to total population in Latin America. According to the last Census of the National Statistics Institute of Guatemala (2002), 41% of the population identifies itself as indigenous, but unofficial sources affirm that indigenous population is over 60%.