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Contribution from the World Organisation Against Torture (OMCT) to the Universal Periodic Review (UPR) Process on Guatemala

OMCT wishes to draw attention to the serious situation as regards torture and other cruel, inhuman or degrading treatment or punishment in Guatemala and, in particular, to emphasise the following:

1/ General human rights situation

At the end of 1996, Guatemala overcame its internal armed conflict which had lasted more than 36 years. Today, more than ten 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 the country. The independence of the powers remains fragile, impunity prevails, corruption at governmental level pollutes and the army keeps reportedly an active presence in police activities.

Moreover, crimes of the past as documented by the *Comisión Nacional de Esclarecimiento Histórico* (including about 600 massacres) remain mostly unpunished, despite the adoption of the Law on National Reconciliation that denies amnesty to any of those responsible of serious human rights violations.

2/ Practice of torture

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.

Furthermore, there are concerns that the State approach to civil security and crime is not a preventive vision but a repressive one which has led to increase violence and a phenomenon of social cleansing. There is reason to believe that members of the security forces participate in extrajudicial executions of Guatemalan women, children and adolescents. For example, children living in marginalised areas are stigmatized for many reasons: some are organised into *maras* (they are aged between 13 and 25 years old, usually have tattoos, are engaged in criminal activities, are socially marginalised, etc.) and other simply live in the street. They are subject to harsh repression usually called “social cleansing” (by law enforcement officers or private security societies working on behalf of the authorities or neighbours¹). Indeed, in addition to mass arrests, executions are frequently perpetrated against *maras* members, including children. Moreover, executions are often accompanied by torture, intensifying the cruelty of the act. The authorities do

¹ There are cases where neighbours or merchants hire professionals to kill street children or gang child members in order to protect their houses and stores.

nothing to stop those killings and do not investigate them but justify them as “revenge between gangs”.

3/ Conditions of detention

Although the legislative decree 33-2006 was approved in September 2006, the human rights situation of persons deprived of their liberty in Guatemalan prisons remains serious: 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, increased conflict between rival groups and social cleansing within the prisons.

4/ Violations of human rights against children, including torture or other cruel, inhuman or degrading treatment or punishment

- *Integral protection of children*

Protecting children is taking actions and measures to assure them an integral development. The State has not been able to apply the Law for the Integral Protection of Childhood and Youth (decreto 27-2003) properly and completely because only insufficient funds have been assigned and action plans to protect childhood have not been taken yet.

- *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. 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. However, during 2005, 334 children and minors under 18 were killed in Guatemala City and 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.

5/ Violence against Women

- Violence against women takes different forms, including intra-family violence², femicide and sexual violence by State agents.
- Intra-family violence remains considered a private matter and not a public concern. Moreover, a 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.

² The elements corresponding to intra-family violence are based on the study “Violence against women. Treatment by the Guatemalan criminal justice system”, of the Institute for Comparative Studies and Criminal Law in Guatemala (ICCPG), 2004.

- The number of women murdered is still on the increase. 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 deaths. The number of cases that actually result in a court sentence is very low. Also, in the process of investigation, there is strong gender bias on the part of State agents in dealing with victims' families.
- There is no prevention effort for these types of crime, despite the existence of a law to prevent intra-family violence. Moreover, sexual crimes are also considered private crimes, for which reason there is little impetus for prevention campaigns.
- A report elaborated by the Institute for the Comparative Study of Criminal Science suggests a pattern of sexual torture against women detainees³, including sexual violence, vaginal search, etc. While complaints are lodged by women, the rate of investigation and sanctioning remains very low.

6/ The situation of human rights defenders

- The situation of human rights defenders is very preoccupying, especially during election periods which are usually accompanied by political and criminal violence.
- Increased attacks against those who defend the right to justice, the struggle against impunity and those defending economic, social and cultural rights have been documented these last years.
- Direct personal threats, attacks by parties identified as belonging to the local power elite (whether official authorities or the economic power elite), burglaries of organisation offices as well as judicial harassment are among other means used to hinder human rights defenders work.
- In terms of investigation of and criminal prosecution for the attacks, impunity persists.

Recommendations

In view of these elements, OMCT recommends that the Government of Guatemala

- Guarantee in all circumstances the physical and psychological integrity of all Guatemalan citizens, including human rights defenders;
- Ensure that legal safeguards guaranteed under national law are consistently applied and coherently enforced in accordance with international human rights standards;
- Ensure that all measures are taken in order to cease all excessive use of force by law enforcement agents against individuals during arrest and police custody. It should introduce human rights legal safeguards in its law and ensure their proper implementation. In particular it should guarantee that all women arrested are immediately brought before a judge (*juzgado de turno*) and then if so decided transferred to a woman's detention centre in order to avoid sexual abuse in police custody;
- Order thorough and impartial investigations into human rights violations in order to identify all those responsible, bring them to trial and apply the penal and/or administrative sanctions as provided by law;
- Take urgent measures to combat prison overcrowding, with priority given to alternative measures to detention;
- Increase the budget assigned to the implementation of the Law and to create an action Plan for Guatemalan children and youths guaranteeing their security, well-being and integral development required by their status. In addition, all measures of prevention

³ ICCPG, Rates of impunity in police crime against women. Guatemala, 2005.

- should be taken, including police education and training on the obligation to respect the rights of children;
- Immediately stop all those child rights violations. It shall guarantee that all children whatever their social origin are treated with dignity and humanity at all times and shall order prompt and effective investigation of child killings and prosecute those responsible in order to end impunity, in compliance with relevant international standards (UN Convention on the Rights of the Child: articles 6, 37 and 40) and the Constitution of Guatemala (presumption of innocence and non publicity of the trial).
 - Effectively investigate and punish perpetrators of violence against women, both in the private and in the public sphere, in conformity with the sanctions prescribed by the law.
 - Put an end to all acts of harassment against all human rights defenders in Guatemala, in accordance with the provisions of the UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, especially its Article 12(2), which provides that “the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”;
 - Ensure respect for human rights and fundamental freedoms throughout the country in accordance with national laws and international human rights standards.