



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

Distr.: General
27 July 2017

Original: English

Committee against Torture Sixty-first session

Summary record of the first part (public)* of the 1543rd meeting

Held at the Palais Wilson, Geneva, on Monday, 24 July 2017, at 3 p.m.

Chair: Mr. Modvig

Contents

Consideration of reports submitted by States parties under article 19 of the Convention

Consideration of the situation in Antigua and Barbuda in the absence of a report

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.1543/Add.1.

This record is subject to correction. Corrections should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of the present record to the Documents Management Section (DMS-DCM@un.org).

Any corrected records of the public meetings of the Committee at this session will be reissued for technical reasons after the end of the session.



The public part of the meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention

Consideration of the situation in Antigua and Barbuda in the absence of a report

1. **The Chair** said that consideration of the situation in Antigua and Barbuda would take place in the absence of a report and without a delegation from the State party. The State party had acceded to the Convention in 1993. Its initial report had been due for submission in 1994, but 23 years later had not been received. In 2015, the Committee had reminded the State party that it had yet to submit its initial report and had drawn attention to the option of a review in the absence of a report and the option of accepting the Committee's simplified reporting procedure. In the absence of a response, the Committee had notified the State party of its intention to proceed with a review in the absence of a report. The State party had been contacted twice in 2017 to offer it the opportunity to participate in the Committee's meeting by videoconference. Initially, correspondence had indicated a willingness to participate in that way, but attempts at contact in July 2017 had received minimal responses prior to 19 and 20 July 2017, when the Committee was informed that its correspondent at the Ministry of Justice and Legal Affairs was not able to authorize the testing and use of videoconferencing for participation in the Committee's meetings.

2. **Mr. Touzé** (Country Rapporteur) said that, under article 19 of the Convention, State parties undertook to submit their initial report within one year of its ratification and every four years thereafter. Even if a State party did not appear to systematically engage in torture and ill-treatment, it was expected to provide the necessary information for the Committee to evaluate its application of the Convention. The silence of the State party was not a positive sign, particularly in light of its lack of response following the universal periodic review by the Human Rights Council. He wished to know why the State party had chosen not to respect its reporting obligations under the Convention, noting that the submission by the State party of reports to other human rights treaty bodies seemed to indicate that the reason could not be purely financial.

3. Although it appeared that the Convention could, in law, be invoked in domestic proceedings, he would like to know whether that happened in practice; relevant data should be provided. He asked whether the State party intended to abolish capital punishment. Since the definition of torture in the legislation of Antigua and Barbuda did not fully meet the requirements of the Convention, he wished to know why the grounds of discrimination had not been included in the national definition of torture and whether the Government intended to review the law in that regard. There was no indication that the penalty provided for torture — life imprisonment — varied according to the intent and seriousness of the crime committed. Information should be provided in that regard, and with respect to the lack of any mention in the legislation of the absence of a statutory limitation on crimes of torture.

4. The State party should explain the provisions in article 3 of the Suppression of Torture Act 1993 that appeared to permit the justification of prohibited acts when following the orders of a superior. Similarly, information should be provided on the grounds for pardon provided for in article 72 of the Code of Criminal Procedure, which appeared not to include an exception for perpetrators of torture. More information should be provided on the application of article 5 of the Convention relating to jurisdiction in criminal and civil matters.

5. The State party should confirm that all arrests were based on legitimate grounds and rested on a clearly established legal basis, since it appeared that in some cases the police made arrests without proper grounds. Information before the Committee indicated that the detention period of 48 hours was regularly exceeded and that detainees could be held for up to 96 hours without justification. The State party should provide information in that regard and with respect to access to a lawyer from the start of detention. Clarification should be provided on whether legal aid was provided to victims only in certain cases of murder; whether legal aid was available to victims of torture; and whether interpretation was provided for victims of torture who did not understand the national language, for both civil

and criminal cases. Information from the universal periodic review of Antigua and Barbuda indicated that, in some cases, preventive detention had been extended up to 5 years. The State party should provide information on such occurrences and indicate what steps have been taken to shorten preventive detention.

6. Violence during arrest or detention, particularly against persons with disabilities, gay persons and foreign nationals, had been reported. He wished to know what measures had been taken to investigate those cases and punish the persons involved. In particular, the State party should explain the follow-up to the suspension in 2015 of the Commissioner of Police for not taking action regarding four complaints made against other officers, as well as the follow-up to those four complaints. Details should be provided of how the independence of the authorities responsible for investigating the police was ensured.

7. The sole prison in Antigua and Barbuda was overcrowded and conditions there were unacceptable. Numerous sources reported violence, ill-treatment and sexual abuse, poor hygiene conditions and a lack of basic necessities such as water. Details should be provided of the action taken to address that situation, in particular to: extend accommodation; separate women and minors from adult males; provide medical care; provide specific care for prisoners with poor mental health; ensure access to drinking water for all detainees; offer training programmes to detainees; establish an accurate register at the prison; introduce a complaints mechanism for detainees; and introduce practical and legal routes to reduce penalties.

8. Details were needed of the legal definition of minor, child and young person, since domestic legislation contained contradictory definitions. The Government should indicate the outcome of its 2015 programme to consider how to avoid imprisoning minors and explain whether there were plans to adjust the age of criminal liability, which was currently 8 years of age. He wished to know whether the Government intended to adopt legislation that clearly prohibited the corporal punishment of children in all contexts.

9. Given the apparent impunity that surrounded violence against women committed in the prison, whether perpetrated by State officials or private individuals, he asked for details of the measures taken and planned to incriminate violence, including sexual violence, against women, and to pursue perpetrators and bring them to justice. Antigua and Barbuda was a destination and transit country for victims of trafficking in persons, particularly women from other Caribbean States, who were subsequently exploited for sex or domestic labour. Despite the adoption in 2010 of a law to prevent trafficking in persons, no case had been prosecuted, sentenced or punished under that law. The State party should describe the measures taken to implement the law, to introduce official procedures to identify and distinguish between victims and perpetrators of trafficking, find alternatives to the detention of victims and direct them towards appropriate services.

10. He asked why the State party deprived vulnerable migrants of their liberty, such as asylum seekers who had entered and remained in the country legally, were not accused of any offence and possessed valid identity documents. The State party should indicate whether it intended to review its position and adopt an asylum law that complied with international requirements and respected the principle of non-refoulement. Information should be provided on the case of 15 asylum seekers from a country in the Middle East that had been highlighted by the Office of the United Nations High Commissioner for Refugees in 2015. Despite the examination and approval for asylum of 10 of the 15 cases by an ad hoc committee established by the Governor General of Antigua and Barbuda, the judicial and practical follow-up to those cases remained uncertain, due to the lack of legal framework governing asylum and the protection of refugees.

11. **Mr. Bruni** (Country Rapporteur) said that, with respect to articles 1 to 4 of the Convention, the State party should revise the definition of torture in the Suppression of Torture Act 1993 and indicate the domestic penal provisions that punished torture, or, if necessary, adopt such provisions as a matter of priority.

12. With reference to article 2 of the Convention, and noting the appointment of Ms. Marion Blair as Ombudsman of Antigua and Barbuda, he asked whether her office was mandated and equipped to address complaints of torture and ill-treatment. If not, the Government should take action to provide the necessary resources and powers or establish a

national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights, as accepted by the State party during its universal periodic review in 2011.

13. Turning to the principle of non-refoulement established by article 3 of the Convention, he asked whether the State party had introduced any legislation or administrative regulations on asylum or refugee status and its determination, and whether such laws and regulations contained a clause stipulating that no person would be expelled, returned or extradited to another State where there were substantial grounds to believe that he or she would be in danger of being subjected to torture. That information was particularly important in light of criticism by the International Organization for Migration regarding its decision not to accept any more refugees following the application by 10 Syrian nationals for refugee status. The Government should indicate whether it had accepted requests for asylum from persons under its jurisdiction who claimed to be in danger of torture if forcibly returned to another country.

14. He wished to know moreover whether the ad hoc eligibility committee established to review asylum applications had received any applications from alleged victims of torture or persons at risk of torture if returned to their country of origin, and what the outcome of those applications had been. The Government should indicate whether migrants who were detained at the immigrant detention and removal centre in St. John's could request asylum if they were at risk of torture in their country of origin. Information should be provided on the length of detention at that centre.

15. He asked how the Government intended to implement the 2017 recommendation of the Committee on the Rights of the Child to accede to the 1961 Convention on the Reduction of Statelessness, to establish referral mechanisms to ensure the proper identification and protection of victims of trafficking, and to provide victims with an effective opportunity to obtain asylum. He also asked, as recommended by the Office of the United Nations High Commissioner for Refugees whether the authorities envisaged alternatives to detention for migration management and the establishment of legal and procedural safeguards to ensure that migrants and asylum seekers were not subjected to arbitrary or indefinite detention.

16. With regard to article 11 of the Convention, he asked whether the measures adopted by the Government to address prison overcrowding, outlined in the report of the Working Group on the Universal Periodic Review, had born fruit and what measures would be taken to radically change the untenable living conditions that existed in the sole prison in the country, which included severe overcrowding, inter-prisoner violence and corruption among guardians. In light of the fact that the passage of the Child Justice Bill would require the Government to place juveniles in secure accommodation instead of prison, he asked where juvenile offenders were currently held and whether concrete follow-up had been given to the Government's view that an additional penal institution was needed for young people up to the age of 25. He asked what measures had been taken to implement the 2017 recommendation of the Committee on the Rights of the Child to transform the Boys Training School into an appropriate residential option for boys, ensuring that the arrest and detention of a child should be in conformity with the law and should be used only as a measure of last resort, for the shortest appropriate period of time and in accordance with the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. He recalled that, according to the United States Department of State 2016 human rights report on Antigua and Barbuda, the police holding facility in St. John's station was in a state of disrepair and needed refurbishing.

17. With regard to article 16 of the Convention, he asked what follow-up had been given to the Government's consideration to declare a moratorium on the death penalty. Lastly, he asked what measures the Government planned to take to implement the recommendations in paragraph 29 of the 2017 concluding observations of the Committee on the Rights of the Child to end all forms of corporal punishment in all settings, in particular in schools, in the home and in private and public institutions.

18. **Ms. Gaer** said that the absence of either a report or a delegation from the State Party led her to question whether the Convention was being implemented there, particularly as

the State party had managed to submit reports to other treaty bodies. She asked how many arrests had been carried out, convictions brought and sentences imposed under the Domestic Violence Act 2015. Disaggregated data on the prison population and details on the operations of the sexual offences unit within the police would assist the Committee in assessing the situation. With regard to the allegations of impunity following two cases of sexual assault and rape of minors by police officers, that had been outlined in the United States Department of State report, she asked whether the offenders had been prosecuted and how those cases had been dealt with. In light of further media reports of rape committed by police officers, she asked whether the perpetrators had returned to their duties or been suspended or replaced. The Government's reiterations in the report of the working group on the universal periodic review that time was required to change the attitude of Antiguan, particularly with regard to corporal punishment and to consensual sex between adults of the same sex, amounted to a deferral of any action to address those problems. She therefore asked what was being done to deal with corporal punishment of children, whether whipping was still legal and, if so, whether the Government might envisage repealing the provision concerned. She would appreciate further examples of the training given to police officers and its outcomes, in practice, as reports had shown that past police training had effectively led to a decrease in the stigmatization of HIV-positive persons.

19. **Ms. Belmir** said that reports to other treaty bodies revealed discrepancies between domestic legislation and international obligations. The 2007 concluding observations of the Committee on the Elimination of Racial Discrimination had highlighted that articles 8, 14 and 16 of the Constitution, in particular, conflicted with the fundamental principles of non-discrimination, equality and non-retroactivity of criminal law. In light of the fact that police could carry out arrests, including of minors, without warrants, and that all detainees did not enjoy their fundamental legal safeguards, much work was required to ensure the respect of international norms in the State party.

20. **Mr. Zhang** said that reports showed that police abused their right to arrest and that persons were sometimes held without charge for 72 hours, in contravention of the law. There had also been reports of police officers instigating an argument and subsequently detaining the individual concerned without charge. He therefore requested information on arrest procedures and the treatment of detainees.

21. **Mr. Hani** said that the absence of a delegation to the videoconference deprived other States parties of the opportunity to learn by example. He asked whether the State Party intended to make a declaration under article 22 of the Convention and to ratify the Optional Protocol.

22. **The Chair**, speaking in his capacity as expert, asked whether the rights of detainees to be informed of the grounds of their arrest and to receive a medical examination were upheld in law and in practice, as they were measures that could prevent torture. Following the outbreak of methicillin-resistant *Staphylococcus aureus* (MRSA) in the so-called 1735 prison, which had led to the refusal of rehabilitation staff to enter the prison to lead sessions, he asked whether the Ministry of Health had followed up on its intention to recruit a small number of doctors and nurses for the prison health services. He asked whether those medical staff had received training in early identification of signs of torture; whether a routine medical examination procedure was in place for new-arrivals to the prison to detect signs of torture or ill-treatment; whether training for judges covered article 15 of the Convention, so that statements made as a result of torture could not be invoked as evidence in proceedings; and whether cases found to be based on statements obtained through torture were dismissed. He asked for information concerning complaints of torture submitted during the reporting period and how many investigations into such allegations had been launched.

23. He strongly encouraged the Government to enter into a constructive dialogue with the Committee and to break the silence of 23 years. Alternatively, written replies could be provided to the Committee.

The public part of the meeting rose at 4.20 p.m.