



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

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Summary record of the 1148th meeting

Held at the Palais Wilson, Geneva, on Thursday, 16 May 2013, at 10 a.m.

Chairperson: Ms. Belmir (Vice-Chairperson)

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In the absence of Mr. Grossman, Ms. Belmir (Vice-Chairperson) took the chair.

The meeting was called to order at 10.10 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Second periodic report of the Plurinational State of Bolivia (CAT/C/BOL/2; CAT/C/BOL/Q/2/Add.1; CAT/C/BOL/Q/2/Add.2; HRI/CORE/1/Add.54/Rev.2)

1. *At the invitation of the Chairperson, the delegation of the Plurinational State of Bolivia took places at the Committee table.*

2. **Ms. Navarro Llanos** (Plurinational State of Bolivia) said that torture had its roots in the country's history, and that successive dictatorships had used it as a means of repression and oppression. Civil society protest movements had brought about important changes that had culminated in the promulgation of a new political constitution on 25 January 2009, proclaiming the Plurinational State of Bolivia. In 2006, the Government had adopted a national development plan entitled "Bolivia: Dignity, Sovereignty and Productivity for a Good Life", with the focus on combating social inequality and exclusion and establishing a system of restorative and free justice. It had also adopted the National Human Rights Plan of Action "Bolivia: Dignity for a Good Life" 2009–2013. Article 15 of the Constitution provided that everyone had the right to life and to respect for their physical, psychological and sexual integrity. It prohibited torture and cruel, inhuman or degrading treatment and stipulated that there was no death penalty. The Constitution also provided that international instruments — such as the Convention against Torture and the Inter-American Convention to Prevent and Punish Torture — prevailed over national laws.

3. In the area of legislation, the Plurinational State had prepared a bill on the establishment of a mechanism for the prevention of torture. It had undertaken to bring its Criminal Code and Code of Criminal Procedure into line with the Convention and had submitted to the executive body of the Plurinational Legislative Assembly for approval a bill on the creation of a new Children's and Adolescents' Code, which provided for diminished criminal responsibility for minors. Various other laws had been adopted, including Act No. 251/2012 on the protection of refugees, Organic Act No. 260/2012 on the protection and assistance provided to victims and witnesses, and Act No. 254/2012 on the creation of the Code of Constitutional Procedure.

4. In an effort to combat violence against women, including domestic violence, sexual violence and femicide, the Government had introduced Act No. 243/2012 on the prohibition of political harassment of women, Comprehensive Act No. 263/2012 on trafficking in persons, Comprehensive Act No. 348/2013 guaranteeing a woman's right to a life free of violence, and Act No. 1053/2011 establishing the National Day to Combat All Forms of Violence against Women. In addition, Presidential Decree No. 1363/2012 had created the Committee to Eradicate All Forms of Violence against Women. The Ministry of Justice had devised a national programme to restructure the public and private services working in the area of violence against women, which would involve awareness-raising activities for judicial officials and the general public on those matters.

5. Following the recent recruitment of 83 public defenders, the National Public Defender Service now extended to rural areas. In accordance with the Constitution and the Sentence Enforcement and Supervision Act, detainees had the right, from the very outset of detention, to the services of a lawyer of their choice, to contact a relative, to be examined by an independent doctor and to receive free legal aid.

6. The prison administration ensured that a detention warrant was issued for all persons deprived of their liberty and that detainees were treated well, that they received medical,

psychological and social care and that measures were taken in the event of physical assault. The Directorate-General of Prisons cooperated with the Ombudsman's Office, which was accredited in accordance with the Paris Principles, by allowing it to visit the various places of detention to carry out inspections and investigate possible acts of torture or ill-treatment.

7. Steps had been taken to modernize the judiciary and strengthen the disciplinary regime applicable to judges. Regulations establishing the post of disciplinary judge had been adopted and 21 disciplinary judges had been appointed in June 2012. Disciplinary judges could impose penalties, including suspension, on judges found guilty of misconduct in the exercise of their duties.

8. A national council to combat human trafficking had been set up and a political strategy and national action plan were currently being prepared. A special unit had been established to prosecute cases of trafficking in persons, offences against sexual freedom, and gender-based violence. The Public Prosecution Service, in cooperation with the Ministry of Justice, had prepared a protocol for the specialist care of victims of human trafficking and set up prevention, protection and care mechanisms, as well as criminal prosecution mechanisms, thus providing access to justice, reparation and reintegration of victims into their families and society. The Bolivian Government had also undertaken joint initiatives with Argentina, Brazil, Peru and other Southern Common Market (MERCOSUR) countries to combat trafficking.

9. Pursuant to the Act on Exceptional Reparation for Victims of Political Violence during Periods of Unconstitutional Government, 488 victims and relatives of victims had received compensation. In November 2012, the Ministry of Justice had provided the Legislative Assembly with a list of the victims of political violence on whom the Bolivian State would bestow public honours by way of reparation.

10. The Plurinational State of Bolivia had ratified the Optional Protocol to the Convention against Torture in 2005, and in 2010 had hosted a mission of the Subcommittee on Prevention of Torture, which had highlighted the efforts made by Bolivia to combat torture and ill-treatment and improve conditions of detention. Various facilities had been created in order to resolve the problem of prison overcrowding, including two prisons in the department of Santa Cruz, with a capacity of 288 and 450 respectively. Model rural prisons (*carceletas*) had been opened in five municipalities, and many establishments had been renovated or enlarged. Over 1,000 prisoners were expected to be pardoned under a presidential decree issued in December 2012.

11. The emphasis of training programmes for police officers, judges and prosecutors was placed on constitutional rights, the accountability of public officials, and the obligation to report any acts of torture or abuse of power. Attesting to the determination to put an end to years of impunity, some members of the armed forces and the police, including senior officers, had already been dismissed and in some cases convicted, for having committed, tolerated or covered up acts of torture or ill-treatment.

12. In a 2012 decision, the Plurinational Constitutional Court had concluded that the military courts were not competent to rule in cases of human rights violations. The United Nations High Commissioner for Human Rights, Ms. Pillay, had welcomed the historic decision by the highest court in Bolivia, which had convicted 2 former ministers and 5 high-ranking military officials for their involvement in the death of more than 60 persons during the 2003 anti-government demonstrations.

13. **Mr. Mariño Menéndez** (Country Rapporteur) asked whether the State party intended to include a definition of torture that was in line with that of the Convention in its new Criminal Code. He wished to know the maximum period a person could be detained before being brought before a judge and whether there was an interrogation protocol. He would welcome additional information on the safeguards available to persons in pretrial

detention or police custody and wished to know whether there were registers recording all places of detention and whether confessions obtained under torture could be used as evidence.

14. He would be interested to know whether the profession of forensic doctor was regulated and whether such doctors functioned independently or came under the executive. The delegation might provide details of the complaint mechanisms for reporting ill-treatment in detention and the possibility of habeas corpus. Noting that Bolivia had two justice systems — ordinary and indigenous — he wished to know which system dealt with cases of torture.

15. Remarking on the delays in the administration of justice, he asked whether the State party planned to take steps to expedite procedures, particularly in cases involving acts of torture committed against indigenous persons during past demonstrations. He would also like the delegation to comment on whether Bolivia had drawn on the Cartagena de Indias Declaration when drafting its legislation on the protection of refugees, and whether the courts had ever invoked the principle of non-refoulement in their rulings.

16. The delegation might also comment on whether members of the most vulnerable groups, such as women and indigenous peoples, were protected against torture and ill-treatment, whether any of the perpetrators of femicide had been convicted, and what the State party intended to do to combat sexual violence against girls at school. Given the high number of maternal deaths as a result of backstreet abortions, he wondered whether the State party would consider abolishing the obligation for pregnant women who had been the victims of rape and in cases where continuation of the pregnancy would put the life of the woman at risk to secure official authorization for an abortion. In conclusion, he asked the delegation whether the State party planned to comply with the obligation to set up a national preventive mechanism in accordance with the provisions of the Optional Protocol, which it had ratified in 2005, and whether it planned to attach greater importance to the Ombudsman's recommendations.

17. **Ms. Sveaass** (Country Rapporteur) asked how the State party specifically intended to give effect to article 15 of the new Constitution. She wished to know when the State party would take the necessary steps to fulfil the commitment it had made in February 2010, during the universal periodic review, to declassify confidential information on the enforced disappearances that had taken place between 1980 and 1982 under the dictatorship of Luis García Meza Tejada, and whether the suspected perpetrators of those acts could be brought before the ordinary courts rather than the military courts. Did the State party plan to expedite procedures concerning past human rights violations committed by members of the armed forces?

18. Noting that, some reliable sources indicated that acts of violence against women went largely unpunished (51 final convictions handed down in respect of 247,000 complaints filed between 2007 and 2011), she asked whether the State party intended to set up a court specializing in such cases and, if so, when. She would also be interested to learn what steps were being taken to ensure the safety of girls at school, to protect them from sexual harassment and to punish sexual relations between teachers, in particular, and minors. The delegation might provide details on certain legal provisions on abduction, whereby the perpetrator of the offence could receive a reduced sentence if he undertook to marry a victim who was a minor, even if he had subjected her to sexual violence.

19. She considered excessively vague the State party's replies concerning the police operation at the Las Américas Hotel in Santa Cruz in 2009, during which three clearly unarmed persons had been killed, and would welcome additional information on the matter. She would also be interested to know what measures had been taken to put an end to violence against human rights defenders, extrajudicial killings and excessive use of force.

She recalled that, under article 10 of the Convention, States parties were obliged to ensure that education and information regarding the prohibition of torture were fully included in the training of law enforcement personnel, civil or military, medical personnel and public officials.

20. The delegation could perhaps indicate the exact number of persons in detention in Bolivia and the prison overcrowding rate. She also wished to know what obstacles had been encountered in the establishment of custody records and records of complaints of torture or ill-treatment and what steps would be taken under the National Human Rights Plan of Action to remedy them. With regard to the Act on Exceptional Reparation for Victims of Political Violence during Periods of Unconstitutional Government (Act No. 2640), she asked which provisions had been amended by Act No. 422 and what impact the amendments might have on pending reparation applications.

21. **Mr. Gaye** asked why the information contained in paragraph 58 of the report, according to which “In the past five years, 85 people have died in police stations”, had been presented in the conditional tense in the French version. He asked the delegation to give details of the causes of so many deaths and to indicate what action had been taken in response to the approximately 20 complaints received by the National Directorate of Prison Security between 2009 and 2010 of alleged cases of torture or cruel, inhuman or degrading treatment or punishment, as referred to in paragraph 59 of the report.

22. He would be interested to know which “formalities that persist within the justice system” caused the excessive delays in judicial proceedings and whether there was a disciplinary body of elected members with a fixed mandate in the justice system. With regard to the prison situation, he asked whether forms of punishment other than imprisonment were used in Bolivia. Noting that article 117 of the Constitution provided that “custodial sentences shall not be imposed for a failure to honour debts or financial obligations except as provided for by law”, he would like to know which cases were provided for by law.

23. **Mr. Bruni** asked whether a date had been set for the establishment of the national preventive mechanism, which should have taken place in 2006 in accordance with the provisions of the Optional Protocol. He wondered whether the transfer of responsibility for the prison system from the Ministry of the Interior to the Ministry of Justice had been completed and whether the change had resulted in concrete improvements in the prison situation. The delegation might provide details of the provisions on access to medical care in prison, which seemed to be derisory, and the results of the measures taken to ease prison overcrowding. He wished to know the current situation in prisons and whether additional measures were planned. Noting that Circular No. 10/2009 tightened the restrictions on the use of punishments or penalties liable to infringe the rights of persons deprived of their liberty, he asked which punishments or penalties were permitted and which were prohibited in places of detention. The delegation might comment on the particular regulations that applied in San Pedro Prison, the largest prison in La Paz.

24. **Mr. Tugushi** asked the delegation to comment on the provisions of the 2012 legislation on reparations for victims of political violence, under which complainants had to provide evidence that they had been subjected to such acts. Noting that the judgements of the military courts were not always compatible with those of the Inter-American Court of Human Rights and that the activities of the military courts impinged on civil proceedings, he asked whether the State party planned to take steps to remedy those serious shortcomings. He also wished to know what was being done to prevent possible attacks on freedom of expression that might ensue from enforcement of Act No. 045/2010, which set out penalties for media that disseminated racist or discriminatory ideas.

25. **Ms. Gaer** asked whether legal proceedings had been initiated and reparations awarded in the cases concerning acts of torture and ill-treatment committed in the context of military training and whether the persons who had made the films showing such acts, which had been broadcast on Bolivian television, had been identified. The delegation might describe the penalties imposed on the perpetrators of femicide and acts of violence against women of indigenous and African descent, and comment on information to the effect that judges favoured conciliation in cases of domestic or sexual violence.

26. With regard to violence and the absence of internal control in prisons, she asked what measures were being taken to prevent violence among inmates and to control prison gang activities. She wished to know whether any prison officials had been convicted of corruption and whether supervision measures were in place in prisons where men and women were detained together in the daytime, particularly to protect women and children from violence. Noting that the Ombudsman had observed that inmates in some prisons had to take out “life assurance” in order to avoid being beaten and subjected to torture, she asked whether the authorities had taken note of those observations and taken measures accordingly. In conclusion, could the delegation provide specific examples of cases in which evidence obtained through torture had been deemed inadmissible by a court.

27. **The Chairperson**, speaking as a member of the Committee, asked for further details about the facilities known as *carceletas*, which was, for her, a disturbing form of incarceration. She noted with concern that, in accordance with Act No. 25/2010 on the judiciary, the settlement of disputes through conciliation acquired the authority of a final decision to the detriment of the judicial institutions, particularly the Public Prosecution Service and the Constitutional Court. The delegation might comment on those points and on the recusal of judges in cases of violence against girls in the school system, which in her view constituted a denial of justice.

28. **Mr. Mariño Menéndez** (Country Rapporteur) asked whether Bolivia sought diplomatic assurances before deporting foreigners and whether migrant workers and members of their families, who faced deportation, could appeal the decision. He would also like to know what measures were taken to combat police corruption and why cases of police brutality in Sucre and Caranavi, for instance, had not been followed by legal action, despite the Ombudsman’s recommendations.

29. **Ms. Sveaass** requested further details of Government action in response to the Ombudsman’s recommendations and of proceedings initiated as a result of complaints received by the Ombudsman.

The meeting was suspended at noon and resumed at 12.15 p.m.

Organizational and other matters

Meeting with the Chairperson of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

30. *At the invitation of the Chairperson, the Chairperson of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment took a place at the Committee table.*

31. **The Chairperson**, welcoming the Chairperson of the Subcommittee, said that it was a pity that no members of the Subcommittee had attended the Committee’s twenty-fifth anniversary ceremony. She recalled that, at its 1143rd meeting, the Committee had discussed with the delegation of Romania the establishment of its national preventive mechanism and had asked it to provide a timeline for implementation, which it would forward to the Subcommittee on receipt. She invited the Chairperson of the Subcommittee to present his sixth annual report (CAT/C/50/2).

32. **Mr. Evans** (Chairperson of the Subcommittee on Prevention of Torture) apologized for the absence of the members of the Subcommittee at the ceremony to mark the Committee's twenty-fifth anniversary. Several members had been on mission in New Zealand that week and the others had also been unavailable. He thanked the Committee in advance for the information concerning Romania which it would be forwarding. Introducing the report, he pointed out that it marked the end of the Subcommittee's "founding" period. A new bureau, composed of the Chairperson and four vice-chairpersons, had been elected in February 2013. Sixty-eight States from every region in the world were now parties to the Optional Protocol, accounting for almost half of the States parties to the Convention against Torture. In 2012, grants had been made for the first time through the Special Fund set up in accordance with article 26 of the Optional Protocol. A second call for applications was under way and the Fund had received new voluntary contributions.

33. The Subcommittee had adopted new working methods, including advisory visits to the national preventive mechanisms. It had also revised its rules of procedure to bring them into line with the Guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa guidelines). The regional task forces had been strengthened, thus, among other things, informing the discussions on the programme of visits. New ad hoc working groups had been set up on the following topics: systemic issues; the Standard Minimum Rules for the Treatment of Prisoners; induction and ongoing training of Subcommittee members; reprisals; and procedural issues. Furthermore, in its annual report, the Subcommittee outlined its views on two substantive issues, namely the role of judicial review and due process in the prevention of torture in prisons, and the concept of indigenous justice.

34. The number of visits planned each year had increased from three to six. There had been five visits in 2012: two visits under article 11 (a) of the Optional Protocol (Argentina and Kyrgyzstan) and three advisory visits to national preventive mechanisms (Honduras, the Republic of Moldova and Senegal). The planned visit to Gabon had had to be postponed for operational reasons. Of the six visits planned for 2013, two had already been carried out: one advisory visit to the national preventive mechanism in Germany and one regular visit to New Zealand. The Subcommittee deeply regretted that its access to places of detention was sometimes delayed and that some States parties gave too narrow an interpretation of the term "place of detention".

35. In accordance with the established practice, States parties were requested to submit a reply to a country visit report within six months. To date, the replies of four States parties were overdue: Cambodia, Honduras, Liberia and the Maldives. There had been a rise in the number of written replies from States parties, which formed a constructive basis for dialogue with the Subcommittee. The Subcommittee considered that the frequency of its visits should be brought into line with the submission of State party reports to the other treaty bodies, but it had to contend with a serious lack of resources.

36. To date, 43 States parties had established national preventive mechanisms in accordance with article 17 of the Optional Protocol, while 18 States had not yet fulfilled that obligation. The Subcommittee was engaged in ongoing dialogue with the States that had not yet done so. An increasing number of national preventive mechanisms were submitting their annual reports to the Subcommittee, which also maintained contacts with the mechanisms outside of its advisory visits, particularly during its sessions.

37. The Subcommittee also maintained close relations with the Committee against Torture and other regional and international bodies and civil society organizations. Cooperation and coordination between the Subcommittee and Committee could be further strengthened by improving the exchange of information, for instance on the concluding observations adopted by the Committee, and ensuring that the visits of the two bodies were complementary. Subcommittee members were willing to explore all avenues.

38. **Mr. Tugushi** asked whether the projects financed by the Special Fund were followed up and whether projects involving the implementation of recommendations to the national preventive mechanisms were eligible for funding. He wished to know the extent to which States parties were prepared to make the country visit reports public and whether there were any statistics on that particular. He would also be interested to hear the Subcommittee's impressions of developments in the establishment of national preventive mechanisms.

39. **Mr. Bruni** said that the issue of the national preventive mechanism had been raised systematically during the Committee's meetings with State party delegations. He asked whether the description of projects financed by the Special Fund was made public. He pointed out that the Committee had tasked Mr. Tugushi and himself with addressing the issue of reprisals, and he would be happy to cooperate with the Subcommittee on the matter.

40. **Ms. Gaer** noted with interest that the regional group with the most States parties to the Optional Protocol was Eastern Europe, even though it represented the smallest group of States Members of the United Nations. With regard to indigenous justice, she was concerned that the point of view expressed by the Subcommittee could be seen as condoning traditional practices that were often very discriminatory towards women. The precautions outlined in paragraphs 82 and 83 of the report did not seem adequate.

41. **Ms. Sveaass** said that the Committee would soon be discussing with Bolivia the establishment of its national preventive mechanism, and invited the Chairperson of the Subcommittee to share his observations in that regard. It would be useful for the Committee and the Subcommittee to cooperate on the issues of reprisals and the Standard Minimum Rules for the Treatment of Prisoners.

42. **Mr. Wang Xuexian** said that the Committee could draw on the Subcommittee's new working methods, conducting special visits to countries that had not submitted a report.

43. **The Chairperson** supported the views expressed by Ms. Gaer on the position of women in indigenous justice.

44. **Mr. Evans** (Chairperson of the Subcommittee on Prevention of Torture) said that follow-up of the projects financed by the Special Fund was carried out by the Grants Committee of the Office of the United Nations High Commissioner for Human Rights, which was responsible for the administration of the Fund under the provisional system currently being reviewed. Advisory visits to national preventive mechanisms in 2012 had been the first of their kind. If, in future, there were public reports on such visits, grants could be requested for projects designed to implement the recommendations contained therein. He did not know where a description of the funded projects could be found, but agreed that that information would be useful.

45. The Subcommittee actively encouraged States parties to publish the country visit reports, which was increasingly the case, but it fully respected their decision if they chose to keep them confidential. The number of national preventive mechanisms continued to rise, but they often faced budgetary pressure. If a State party decided simply to assign new responsibilities to an ombudsman or other institution for the defence of human rights, following the "Ombudsman Plus" model, it was important that they were allocated adequate financial resources. The Subcommittee encouraged governments to provide preventive mechanisms with different financing from that of the ministerial bodies. Even if there was a lack of resources, the mandate of the national preventive mechanism should not be considered secondary. Ideally, the Subcommittee and the Committee could discuss the situation in a given State party before the issue of the national preventive mechanism was raised during the dialogue between the Committee and the delegation.

46. The issue of reprisals might be a topic of substantive discussion at the next joint meeting of the Subcommittee and the Committee in November. With regard to indigenous justice, the Subcommittee had been of the view that paragraphs 82 and 83 of its annual report clearly set out the parameters of the issue by, for instance, referring to the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169). The intention had been to recognize certain, but not all, forms of indigenous justice. Nonetheless, he understood Ms. Gaer's and the Chairperson's concerns and proposed that the matter be discussed at the joint meeting of the two bodies in November.

47. **The Chairperson** thanked Mr. Evans and said that coordination and cooperation between the Committee and the Subcommittee should continue.

The meeting rose at 1.05 p.m.