



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

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Summary record of the 1151st meeting

Held at the Palais Wilson, Geneva, on Friday, 17 May 2013, at 3 p.m.

Chairperson: Mr. Wang Xuexian (Vice-Chairperson)

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In the absence of Mr. Grossman, Mr. Wang Xuexian (Vice-Chairperson) took the chair.

The meeting was called to order at 3.05 p.m.

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

*Second periodic report of the Plurinational State of Bolivia (continued)
(CAT/C/BOL/2; CAT/C/BOL/Q/2/Add.1 and Add.2)*

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

2. **Ms. Llanos Sangüesa** (Plurinational State of Bolivia) said that there had been no reports of femicide since the enactment in early 2013 of legislation introducing harsh penalties for the offence. Act No. 348, on ensuring that women lived free of violence, stipulated that the decisions of women victims of violence with regard to their sexual and reproductive rights must be respected. The Act set forth a series of measures to prevent violence against women and to protect them from it. They included provisions penalizing femicide, domestic violence, acts of sexual abuse, sexual harassment, and guaranteeing the rights of women to participate unhindered in public and political life. Articles of the Criminal Code setting out attenuating circumstances for acts of violence had been repealed. Victims of violence against women could report such crimes to a series of institutions, including the police, the Public Prosecution Service, municipal services and indigenous authorities. Those institutions had an obligation to provide victims with full support and information on their rights and the assistance available to them. Act No. 1674 had been repealed. Article 46 of Act No. 348 expressly prohibited conciliation procedures between the parties in cases of violence against women. Special courts were being set up under the Act to deal with violence against women. Judges appointed to those courts would require specialized knowledge and training in gender issues and human rights.

3. Women who gave birth in public hospitals, attended pre and postnatal classes and followed the recommendations of their doctors were entitled to a State subsidy aimed at reducing maternal and infant mortality. Under Supreme Decree No. 1302 of 2012, members of school staff charged with offences of physical or sexual aggression against pupils were removed from their posts for the duration of criminal proceedings. The case of Patricia Flores was still under investigation.

4. Five new prisons had a combined capacity of 1,680 inmates. Some 83 per cent of the total prison population of more than 14,700 was in pretrial detention. Under a presidential decree, it was planned to pardon and release around 1,000 inmates, with a view to relieving the pressure in overcrowded prisons. The types of punishment administered to inmates in prisons included transfers between sections or prisons. Prison councils monitored possible abuses by prison governors. Civilian authorities and the police were jointly responsible for maintaining order in prisons. Security cameras were being installed on the perimeter of prisons in order to clamp down on the smuggling of alcohol and drugs inside and to monitor violence. There had been cases of sexual violence in facilities where men and women were housed together and it was a policy goal of the Government to separate male and female inmates in all prisons. Children up to the age of 6 in prison were allowed to stay with their mothers or, where the courts had issued an appropriate custody order, with their fathers. They were provided with food and crèches operated in the main correctional facilities, to allow children to be taken out of the prison grounds during the day.

5. Under Supreme Decree No. 1211, US\$ 3.6 million had been set aside to pay compensation to 1,704 persons who had been tortured or who had otherwise suffered during the years of dictatorship. Similarly, victims and family members of victims of the violent incidents of October 2003 had also received compensation. Survivors of those

events had received legal and medical assistance (including surgery). Some were entitled to educational and housing support, and where appropriate, State aid for the disabled. Two former ministers and five military commanders had been convicted for their part in those events, but the former president, Mr. Sánchez de Lozada, and other former ministers were still at large.

6. Replying to a question regarding protection of the rights of the Guaraní people in their state of semi-servitude, she said that the authorities were following up reports on the matter. Under an action plan designed to promote access to justice for the Guaraní, it was hoped that their situation would improve considerably in coming years. Progress had, however, been hampered by the failure of the Assembly of the Guaraní People to comply with its undertaking to provide the authorities with evidence of the problem of servitude.

7. The United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Mutuma Ruteere, had found no incompatibility between the Racism and All Forms of Discrimination Act (No. 045) and freedom of expression. Indeed, he had stated that “some media outlets in Bolivia have at times disseminated ideas and messages of racial superiority that incite racial hatred, and are not doing enough to provide a balanced coverage that includes the voice of discriminated communities and groups”. There had been no reports of excessive use of force by the police during separate operations carried out in 2009 to disband an anti-government mercenary group in Santa Cruz and to arrest local opposition officials in Pando, who had allegedly been involved in the massacre of indigenous farmers the previous year.

8. **Mr. Cox Mayorga** (Plurinational State of Bolivia) said that, while the authorities did their utmost to protect human rights defenders, no specific legislation had been adopted to that effect. Attacks on journalists were a violation both of journalists’ rights and the right to freedom of expression. In 2012, legislation had been introduced requiring owners of media outlets to contribute 1 per cent of their annual income to a life insurance and permanent invalidity fund. It would benefit over 15,000 journalists. In April 2013, the Government had ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

9. In 2003, an inter-institutional council had been set up to shed light on cases of enforced disappearance. Part of its mandate was to follow up on relevant decisions of the Inter-American Court of Human Rights and other international bodies, and to process information that could reveal the whereabouts of victims’ remains. The Government was working with forensic scientists and archaeological experts in an effort to find victims’ remains. In addition, a bill was being drafted on a truth commission responsible for identifying the perpetrators and accessories of the enforced disappearances and those who had ordered those crimes. All forensic doctors worked under the authority of the Forensic Investigation Institute, which was not linked to the Executive. Forensic medicine could be practised under the auspices of the Public Prosecution Service only.

10. The Office of the Prosecutor was informed of all arrests within eight hours. During preliminary inquiries, the police conducted investigations under the supervision of the Prosecutor’s Office, gathered evidence and prevented suspects from fleeing or going into hiding. The accused and their counsel could intervene in the investigations and had access to all information. The Code of Criminal Procedure included a provision prohibiting the use of torture and other cruel, inhuman or degrading treatment or punishment during arrest and detention. The Prosecutor’s Office informed the investigating judge of detentions within 24 hours and ensured that the detainees’ rights were being respected. The police had a maximum of 20 days to conduct their preparatory investigations, as described in the periodic report (para. 93). Any statement containing a confession made by the accused which was not made in the presence of the prosecutor and the defence counsel was considered null and void.

11. Judges could decide to use summary proceedings, which could also be requested by the prosecutor, with the agreement of the accused, but the victim could veto their use. Immediate proceedings were also available in cases of flagrante delicto. As indicated in paragraphs 71 and 72 of the periodic report, out-of-court settlements were not used in cases of domestic violence, acts that endangered the life or the physical, psychological or sexual integrity of a person, or cases involving the offence of torture.

12. Any written or oral complaints of ill-treatment from detainees were registered, and prison governors were legally responsible for updating registers of complaints. The Ombudsman's Office was mandated to receive and investigate all complaints of human rights abuses and it undertook periodic visits to all the country's prisons and other places of detention. The right to habeas corpus was guaranteed under the Constitution and several other instruments of domestic legislation. The Ombudsman's Office took steps to raise public awareness of its work and submitted annual reports to the Government. If steps were not taken to implement the recommendations of the Ombudsman's Office within 30 days of their notification, higher authorities were informed.

13. Turning to the issue of human rights abuses being tried under military jurisdiction, he said that the Constitutional Court had reached a landmark decision in 2012, ruling that the case of the killing of Grover Beto Poma Guanto during military training should be referred to a civilian court. The Court sentence had urged the Legislative Assembly to replace the military penal standards of 1976 and bring them into line with the Constitution and the relevant international human rights instruments.

14. The judicial reform that had already resulted in the 2010 Judiciary Act and the 2010 Act on the Plurinational Constitutional Court was still under way. Work on the new Code of Criminal Procedure had been completed in 2013 and the bill would be submitted to the Legislative Assembly in due course. The Jurisdiction Demarcation Act prohibited torture and other cruel, inhuman or degrading treatment and punishment and provided that the indigenous native and campesino system of justice respected the right to life and defence and upheld all the other constitutional guarantees. There was, however, a long list of crimes and offences that continued to fall within the ordinary justice system and could not be tried under the indigenous native and campesino system, including lynching.

15. The new migration legislation, enacted in May 2013, covered all aspects of migration and was in line with the international human rights instruments to which the Plurinational State of Bolivia was a party. The 2012 refugee legislation had been based on the relevant international law and included the regionally-accepted definition of refugees, as enshrined in the 1984 Cartagena Declaration on Refugees. In July 2012, legislation had been enacted to combat human trafficking and smuggling. It included the establishment of dedicated national and regional councils that would implement the national plan of action. The national council had concluded several bilateral and multilateral agreements on the prevention of human trafficking and smuggling.

16. The bill on a national mechanism for the prevention of torture or other cruel, inhuman or degrading treatment or punishment was currently before the National Council on Economic and Social Policy, where it would be examined prior to submission to the Legislative Assembly. The members of the Council of the Judiciary had been democratically elected in 2011 for a six-year term. In 2012, the first 21 disciplinary judges had been appointed. Legislation introduced in 1994 had put a stop to the practice of lawyers sending their clients to prison until they had paid their legal fees.

17. **Mr. Mariño Menéndez** (Country Rapporteur) asked whether the national mechanism for the prevention of torture would provide for a body other than the Ombudsman's Office to receive complaints of torture. He urged the State party to take

account of the strict requirements contained in the Optional Protocol to the Convention against Torture, including the financial autonomy of the national preventive mechanism.

18. Turning to the new legislation the State party had adopted, he asked whether the new migration law provided that migrants had the right to appeal against a deportation order. He requested clarification of whether cases of torture could be brought before the indigenous native and campesino system of justice and if so, whether such cases were considered in accordance with the Convention. It would be useful to know why the Assembly of the Guaraní People had not replied to the Government's questions on landownership. He requested additional information on the Racism and All Forms of Discrimination Act, particularly whether it criminalized acts of racism. He wished to know whether the National Public Defender Service had become fully operational and whether the State party had sufficient resources to provide decent criminal defence services to all accused persons who lacked sufficient means.

19. **Ms. Sveaass** (Country Rapporteur) asked whether any school staff had been dismissed as a result of the 2012 legislation concerning offences of physical or sexual aggression against pupils. It would be useful to know whether police, judges, military personnel and health personnel had received training on implementing Act No. 348 on ensuring that women lived free of violence.

20. She requested clarification of the data on prison occupancy, as some of the statistics appeared not to be up to date. That said, prison overcrowding was clearly still acute and it was most alarming that over 83 per cent of inmates were held in preventive detention. She asked whether there were any specialized institutions that provided care and assistance to people who had been victims of torture under the military dictatorship. The Committee would welcome more details of reparations that had been granted to the victims and family members of victims of the violent incidents of October 2003.

21. She asked whether there was a time limit for the legal consideration of cases in the State party, since the Ombudsman's Office had reported that the authorities had not yet implemented its recommendations in several cases, including the violent events of 24 May 2008 in Sucre. Given that three individuals had been killed in the Hotel Las Américas in 2009, and that the autopsy reports had revealed that there had been no crossfire, she failed to understand why there had been no reports of excessive use of force by the police during that operation.

22. It would be useful to know whether all officials were trained in the procedures set forth in the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). She also requested specific data on the number of complaints brought before the Ombudsman's Office that had resulted in a judicial decision and the nature of those decisions. Were those data published by the Ombudsman's Office or other authorities? She welcomed the Constitutional Court landmark decision of 2012 and asked whether it had effectively put an end to trials of human rights abuses by military courts. The Committee would welcome statistics on investigations, detentions and sentences for the crime of human trafficking.

23. **Mr. Bruni** said that the fact that 83 per cent of detainees were in pretrial detention was unacceptable and the 800 per cent overcrowding found in some prisons was inhuman and degrading treatment and constituted a violation of article 16 of the Convention. What steps would be taken to find alternatives to imprisonment, build more accommodation and increase health-care services in prisons? What was being done to curb gang violence and drug trafficking in prisons, particularly in the notorious San Pedro prison? He requested an update on the legislative process to establish the national preventive mechanism.

24. **Mr. Gaye** welcomed improvements to the judiciary and hoped that they would contribute to addressing the problem of high levels of pretrial detention and alleviate prison

overcrowding. He emphasized the importance of raising public awareness of the scale of penalties for criminal offences to deter potential offenders. He urged the State party to conduct investigations into the 55 deaths in police stations between 2006 and 2010.

25. **Mr. Mariño Menéndez** said that steps should be taken to prevent recidivism of sexual violence and violence against women and re-victimization. What measures were in place to ensure that victims of violence had access to a safe legal process? He asked whether the same judges served in both the indigenous and ordinary criminal justice systems.

26. **Ms. Sveaass** was concerned about the high maternal mortality rate, particularly in rural areas, and asked what measures had been adopted to increase access to health care. Given the different justice systems in the State party and the fact that the indigenous legal framework allowed traditional practices that would be deemed unacceptable under the Convention, how were international human rights standards implemented? She asked what measures were in place to address violence within the military.

The meeting was suspended at 5.15 p.m. and resumed at 5.20 p.m.

27. **Ms. Llanos Sangüesa** (Plurinational State of Bolivia) said that racism and racial discrimination were criminal offences and mechanisms were in place to ensure protection against such crimes. The new legislation designated the authorities responsible for providing training and preventing racism and racial discrimination in society, public administration and the military. Policies had been introduced in education to promote respect for cultural diversity and plurinationalism and provide human rights training. Measures to raise public awareness of racism and racial discrimination had been put in place and training had been provided to public officials on the new legislation, including in police and military institutions. Steps had also been taken to create equal economic opportunities and contribute towards eradicating poverty. The new legislation also prohibited impunity for racism and racial discrimination at all levels of public administration and society. A committee had been established to combat all forms of racism and discrimination, while victims were given recourse to constitutional, administrative and criminal processes under both the indigenous and ordinary justice systems. The publication, dissemination or promotion of racial and discriminatory ideas in the media were punishable through economic sanctions and the suspension of licences.

28. Specific training on human rights, including on the Convention and the Istanbul Protocol, was provided to the military, police and judiciary. The Ministry of Defence was responsible for promoting and coordinating the defence of human rights within the military, including the right to dignity, social inclusion, equal opportunities, gender equality, cultural diversity and transparency. It was developing policies, programmes and training to raise awareness of national and international human rights instruments, including the Convention against Torture, and international humanitarian law. It had also developed a programme to eliminate any ill-treatment or abuse and violations of human rights within the military, which had led to a fall in offences over the past six years. Regular inspections of military units and training institutions were carried out to monitor conditions and ensure that all military personnel, particularly those completing their military service, were well treated.

29. **Mr. Cox Mayorga** (Plurinational State of Bolivia) said that the State party would welcome the Committee's comments on the establishment of the national preventive mechanism, as a draft law on creating the body within the Office of the Ombudsman was currently under discussion. New legislation on migration would include guarantees that migrants would not suffer from undue administrative delays in their appeals against illegal deportation. Indigenous justice had its own jurisdiction and methods of working, originating from ancestral knowledge and practices, and could not be compared with the ordinary justice system. Judges and other judicial officials were specially appointed and

worked on a rota system, which was unlike the structure or geographical jurisdictions in operation in the ordinary justice system. Criminal cases such as cases of torture, however, were processed exclusively by the ordinary justice system and any conflicts within legislation were decided by the plurinational constitutional courts.

30. The Government had drawn up a plan to eradicate slavery and modern forms of exploitation, including of the Guaraní people, and had decided in 2011 that the Guaraní People's Assembly would take responsibility for its implementation. The process had been delayed, however, pending receipt of information from the Assembly on the number of its people in situations of slavery and exploitation. A national public defence service had been established and would be involved in any case of torture, or ill-treatment in prisons. It was a free State service provided primarily for the rural population without the resources to access the criminal justice system.

31. The Prosecutor's Office was currently being reorganized and would in the future offer protection to witnesses and victims, including ensuring that women victims of violence were not re-victimized. It would guarantee the independence of the judiciary and thus provide protection from abuse and ill-treatment by members of the justice system. Five centres offering integrated plurinational justice services were being set up in rural areas to address the problem of prison overcrowding, with the financial support of Denmark. They would provide access to the services of the judiciary, public prosecution, police, public defence and support for victims, including child and women victims of violence. The centres would also contain holding cells to avoid the transfer of prisoners from rural areas to urban areas, thereby helping to reduce overcrowding in prisons and pretrial detention, especially as many pretrial detainees were currently held in the capital. Alternatives to pretrial detention were under consideration, but the authorities were aware that any provisions put in place must not jeopardize victim protection.

32. **Ms. Navarro Llanos** (Plurinational State of Bolivia) said that the Plurinational State of Bolivia had come a long way since the dictatorship, an era in which systematic human rights violations and the practice of torture had been the norm. Democracy had since been restored and the Government had endeavoured to eradicate those practices, particularly the serious acts of torture and ill-treatment in police institutions. The Plurinational State of Bolivia would continue in its efforts to ensure it had a society free from the threat of torture and other cruel, inhuman or degrading treatment or punishment and the comments of the Committee would help it to achieve that objective.

The meeting rose at 6 p.m.