



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

Distr.: General
16 November 2009

Original: English

Committee against Torture Forty-third session

Summary record of the first part (public)* of the 902nd meeting

Held at the Palais Wilson, Geneva, on Thursday, 5 November 2009, at 10 a.m.

Chairperson: Mr. Grossman

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.902/Add.1.

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The meeting was called to order at 10 a.m.

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

Second periodic report of El Salvador (CAT/C/SLV/2; CAT/C/SLV/Q/2 and Add.1; HRI/CORE/1/Add.34/Rev.2)

1. *At the invitation of the Chairperson, the representatives of El Salvador took places at the Committee table.*
2. **Mr. Larios López** (El Salvador) said that, owing to last-minute problems and the economic crisis, a delegation from his country had unfortunately been unable to attend the meeting. He and his colleague from the Permanent Mission of El Salvador to the United Nations at Geneva would endeavour to stand in for the delegation to the fullest extent possible.
3. The new Government, which had taken office in June 2009, was fully committed to the rule of law and respect for the exercise of the guarantees and fundamental freedoms enshrined in the Constitution, other domestic legislation and the human rights treaties in force, and international jurisprudence. It was aiming to respond to the changing social environment, and to promote and protect human rights and encourage public bodies to do likewise in confronting the country's challenges, while at the same time respecting individual rights and freedoms. The Government would increase its cooperation with NGOs and national bodies working in the human rights field.
4. Introducing his country's second periodic report, he noted that it contained information concerning the period 2000–2006. El Salvador was a party to the major human rights instruments of the United Nations and the Organization of American States. The Constitution enshrined the right to life, physical and moral integrity, liberty and work, and the right to be protected in the defence of those rights.
5. The Convention's definition of torture was incorporated in article 297 of the Criminal Code, which prescribed prison sentences of three to six years and dismissal for any public servants who permitted or perpetrated torture in the course of their duties. The Prisons Act, based on the United Nations Standard Minimum Rules for the Treatment of Prisoners, strictly prohibited the use of torture, ill-treatment or humiliating practices in the enforcement of sentences. Pretrial detainees retained all their constitutional rights and those established by law. The National Civil Police Organization Act specifically provided that no member of the National Civil Police could inflict, incite or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment. However, many cases of torture and ill-treatment involved auxiliary law enforcement agencies, and were committed by public security officers or prison warders. Action was necessary in order to try and/or punish the perpetrators in accordance with the law.
6. The Office of the Procurator for the Protection of Human Rights received complaints about institutions and public officials concerning ill-treatment, excessive use of force, inhuman treatment of detainees and violations of the right to physical integrity, issued decisions on responsibility and followed up the action taken based on the Procurator's opinion.
7. The Inspector-General of the National Civil Police was responsible for taking disciplinary action against police officers of any rank who committed offences, whether in the course of duty or not. The new authorities were intent on punishing any police personnel who did not comply with the rules. The National Public Security Academy, which had been established as part of the 1992 peace accords, was responsible for initial and ongoing general and specialized training for the National Civil Police. It checked

records and screened candidates to ensure that no one was recruited who had committed a breach of human rights, including torture or violations of humanitarian law. The Academy used the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) as part of its initial training. Since 1992, all police cadets had received training in human rights and criminal law concerning the prohibition of torture.

8. The current Government had inherited a high crime rate and was trying to make the institutions responsible for public security more effective. It was committed to the social prevention of violence. Despite its efforts, there was still much to be done to improve the prison system.

9. On 1 June 2009, the Government had initiated a new national development project based on social inclusion, greater opportunities, attaching increased importance to production and employment, modernization of institutions and full guarantees of democratic freedoms. Part of the human rights reform planned for the period 2009–2014 concerned justice, reparation and truth, and sought to compensate victims of recent human rights violations. Both national and international resources would be allocated to the compensation fund. The Government also planned to compensate families whose children had disappeared during the armed conflict.

10. As part of its plans for 2009–2014, the Government would establish a working group to examine all issues relating to international human rights instruments. Part of the group's mandate would be to consider making the declarations provided for in articles 21 and 22 of the Convention. The replies to the Committee's list of issues (CAT/C/SLV/Q/2/Add.1, available in Spanish only) provided further information on the Government's efforts to further improve its implementation of the Convention.

11. **Mr. Gallegos Chiriboga**, First Country Rapporteur, said that the second periodic report and the replies to the Committee's list of issues had given rise to several areas of concern. The level of violence was particularly worrying, especially gang violence and violence against vulnerable groups, including women, children, people with disabilities, ethnic minorities and migrants. Arbitrary detention, particularly of gang members, was another concern, as was the excessive use of force by the police. Prolonged pretrial detention, violence, overcrowding and lack of control in prisons were further areas to be addressed. Many cases of enforced disappearance during the armed conflict of 1980–1992 had yet to be resolved, and the General Amnesty (Consolidation of the Peace) Act needed to be repealed, since it would provide impunity for non-derogable offences.

12. While articles 4, 10 and 27 of the Constitution and article 297 of the Criminal Code contained a definition of torture, it was not in line with that required by article 1 of the Convention. He asked what steps the State party planned to take to ensure that it incorporated in domestic legislation a definition of torture that conformed to that of the Convention. Recalling the Committee's general comment No. 2, he asked whether the State party had prepared a bill to incorporate the punishment of all forms of cruel, inhuman or degrading treatment into domestic legislation.

13. Referring to article 2 of the Convention, he requested additional information on the reforms of the judiciary, and in particular the Office of the Attorney-General and the National Civil Police. It would be useful to learn what methods the police would use to tackle the escalating level of violence in the State party. Given that the chief of police appointed the Inspector-General of the National Civil Police, he asked whether civil society was concerned about the lack of independence implicit in that system.

14. Further details should be provided on efforts to uphold human rights while tackling gang violence, including the scope of measures to prohibit the violation of children's rights and the "anti-gang laws". The Committee would appreciate details of the results of the

commission established to find children who had disappeared during the armed conflict. He asked which agencies had participated, whether civil society had played a role, what methods had been used and what compensation, if any, victims had received. He also wished to know about the commission's investigations into disappearances of adults, and asked about the budget and any victim compensation programmes.

15. It would be useful to learn whether the Office of the Attorney-General had punished any public officials or removed them from office. If so, details of specific cases and the reasons for the punishment would be appreciated. He asked how many people had access to legal aid through the Attorney-General's Office and the number of requests that Office received. The State party should indicate whether the sanctions proposed by the National Council of the Judiciary had been implemented and if so, details of specific cases and reasons should be provided.

16. The Committee would appreciate information on prison inspections by State bodies, particularly the Office of the Procurator for the Protection of Human Rights. Additional details of assistance given by the State to the Office, in compliance with its obligations under the Convention, should also be provided. He requested additional details of the protection measures taken in response to threats to State agents involved in investigating cases of human rights violations, particularly those concerning the provisions of the Convention.

17. Regarding article 4 of the Convention, he requested clarification of the reply to question 10 of the list of issues on the scope of the General Amnesty (Consolidation of the Peace) Act. He urged the State party to repeal that Act in order to ensure transparency in the process of consolidating peace and national reconciliation. He would appreciate information on measures to protect the victims of violence or threats of violence by non-State agents, with particular reference to the case of Velásquez Rodríguez, which had come before the Inter-American Court of Human Rights.

18. In relation to article 5, he requested information on cases in which judges had taken into consideration the Constitutional Court decision of 16 September 2000 in examining the cases of persons accused of committing crimes during the civil war.

19. **Ms. Belmir**, Second Country Rapporteur, requested confirmation that pretrial detainees and convicted criminals were held together in State prisons. If so, the problem of overcrowding was surely exacerbated by mixing categories of detainees that should be separated, not to mention the presence of gang members, who were apparently highly active in prisons. She asked what measures the State party was taking to protect detainees, particularly members of vulnerable groups such as women and children. It would be useful to learn what role the judiciary played in protecting detainees, and how frequently representatives of the judiciary or other bodies visited prisons to monitor conditions. The Committee would appreciate updated disaggregated statistics on crime in the State party, particularly since it had admitted that the crime rate was rising.

20. While the Office of the Procurator for the Protection of Human Rights carried out important work, it clearly lacked resources and its recommendations on dealing with offences committed by police and prison personnel apparently had little effect. She would welcome the State party's comments on the lack of follow-up to the Office's recommendations.

21. On the issue of extrajudicial killings, she particularly wished to mention two categories of victims: women and children. The phenomenon of the murders of young women had been mentioned repeatedly by a number of treaty bodies and was alarming in terms of the number of incidents and the age group (15–20) of the victims. She requested information concerning the reasons for that phenomenon and the measures being taken by the Government to investigate and eliminate it. It went without saying that those guilty of

the murders should be punished and the victims' relatives compensated. The same applied to the problem of children who were murdered or disappeared.

22. In that connection, she was concerned that, in trying to remedy the evils of the past by decreeing a general amnesty, the State party was, in fact, taking one step forward and two steps back. The killings in question had targeted specific categories of persons and, in fact, were continuing unabated at the present time.

23. As to the situation of foreign migrant workers in El Salvador, it appeared that they were subjected to both discrimination and violence. While there could be no argument that the State party should combat that situation, she wondered whether, given the current state of affairs, the judiciary was sufficiently equipped to handle the task. In any State it was the judiciary, backed by domestic legislation and the Constitution, that carried the burden of ensuring respect for the laws of the land. She asked whether in El Salvador the number of judges, their methods of work and the manner of their appointment enabled the judiciary to assume that role in a completely independent fashion, in conformity with the law.

24. **Mr. Gaye** said that he was perplexed by two situations described in the second periodic report that appeared to reveal a serious conflict of interest. The first was that the functions of the Attorney-General included responsibility for conducting legal proceedings and, at the same time, appointing and dismissing judges. That was not in line with the traditional principle of the independence of the judiciary, nor with that of the separation of the functions of prosecution and judgement.

25. The second was that the Police Commissioner was responsible for appointing the Inspector-General of Police. In the light of human rights violations that might be committed during police investigations, particularly violations of the Convention, it was important to have an independent authority capable of carrying out an objective and impartial inquiry. In El Salvador, the police seemed to have the power to select their own inspectors.

26. On the question of abuse of power, he noted that the State party had failed to specify in its periodic report exactly what it considered to constitute such an offence. He asked whether that term was used to refer to acts of ill-treatment or torture. It appeared that in cases of alleged abuse of power disciplinary proceedings were preferred to judicial proceedings. Moreover, cases of alleged torture were not investigated. That meant that they were not referred to the courts, perpetrators were not punished and victims did not receive reparation. Nor did the efforts of the Procurator for the Protection of Human Rights seem to have any effect. Such incidents suggested a potential violation of the provisions of the Convention.

27. With regard to overcrowding in prisons, the situation had become very unstable. He wondered whether one of the causes of overcrowding might not be the same inertia that was present in the judicial system and was responsible for the failure to prosecute acts of torture. If prisoners were not prosecuted within a reasonable period, prisons obviously became overcrowded and the current unmanageable situation arose. Moreover, prison staff reportedly did not receive the necessary training for effectively managing prisoners, in terms of helping to rehabilitate them in preparation for their eventual return to society. The State party did not seem to have any social rehabilitation policy for prisoners.

28. **Ms. Sveaass** said that she had read frequent reports of cases of police violence in El Salvador and, in that connection, asked what was the status of the police ethics board that had apparently been set up in 2001 to serve as an independent watchdog organization for the National Civil Police.

29. While there were numerous references in the second periodic report to various types of training in human rights for law enforcement officials, they were mostly initial training programmes. While that was certainly a positive development, she was concerned that the

provision of initial training alone was insufficient and should be supplemented by continuing in-service training.

30. In that connection, she welcomed the State party's decision to comply with the obligations set out in paragraph 10 (f) of the Istanbul Protocol concerning the training of law enforcement personnel regarding the prohibition of torture. She asked whether the State party had also taken steps to train medical personnel, as required in that paragraph. In addition, she would be interested to know whether law enforcement personnel received any special training in dealing with cases of violence against women, including domestic violence.

31. As to the problem of young people involved in criminal gangs, she enquired whether the police had any particular procedures for dealing with such people that were aimed at their reintegration into society.

32. She asked what was the status of the General Amnesty (Consolidation of the Peace) Act of 1993 and whether the new Administration would make any changes to that Act. She wished to know whether investigations would be reopened into the killing of several Jesuit priests and others in El Salvador nearly 20 years previously.

33. **Ms. Kleopas** asked whether, in El Salvador, the offence of torture was subject to a statute of limitations. In her view, the conditions prevailing in Salvadoran prisons amounted to cruel, inhuman and degrading treatment and punishment: prisoners were seriously underfed, lived in darkness and were denied visits by their relatives. They were subjected to overcrowding, abuse and ill-treatment. In that connection, she enquired whether the new Government had any plans to ratify the Optional Protocol to the Convention as that might provide a solution to the problems it faced in its prisons. It might also consider providing better training for law enforcement officials and prison staff, who, in some cases, were reportedly not well acquainted with their duties.

34. She asked whether the Government had any plans to adopt measures to protect children at risk of becoming involved with gangs. Since some of those children might be in need of international protection, she enquired whether the Government had any intention of cooperating with UNHCR in that respect.

35. With regard to corporal punishment, she noted that the Committee on the Rights of the Child had expressed concern at the prevalence of corporal punishment in the family and had recommended its elimination. Although corporal punishment had been banned in schools, she had been unsuccessful in finding any information about its legality in institutional care settings. She wished to know whether the Government planned to prohibit corporal punishment in the home.

36. **Mr. Mariño Menéndez** asked whether gang violence in El Salvador had resulted in Salvadorans leaving the country or, more generally, whether the Government was aware of any form of protection that had been established to assist the victims of such violence that included their admission to foreign countries. States that respected human rights should provide for the protection of their nationals abroad, as well as that of foreign migrants residing in their territory. He requested clarification of paragraph 119 of the second periodic report, which referred to an article of the Constitution that seemed to imply that a foreigner residing in El Salvador was not free to seek the protection of the representatives of his or her own country. That provision appeared to be excessively restrictive, and he would appreciate an explanation as to the State party's practice regarding such matters.

37. On the issue of asylum, he asked whether the State party made a distinction between refugees and other categories of foreigners who were entitled to protection from the Government for humanitarian reasons and could be granted residency in El Salvador.

38. In the State party's replies to the list of issues (CAT/C/SLV/Q/2/Add.1), it had provided data on the number of cases of expulsion of foreigners by air and by land between 2005 and 2009. He asked whether any foreigners had arrived on its territory by sea and applied for asylum during that period, and by what route those whose applications had been rejected had been expelled. He enquired whether any unaccompanied minors had sought entry into El Salvador and whether the authorities had accorded them special treatment in view of their vulnerability. Such treatment might include not sending them back immediately, verifying their origin, finding their family or contacting the representatives of their country of origin. He would appreciate having additional information on that subject.

39. The reform of the 2006 Prisons Act had greatly improved the situation in prisons, despite the large number of difficulties still facing the Government. He asked whether the State party had plans to provide job training for prisoners, especially younger prisoners, in an effort to rehabilitate them and prevent the vicious cycle of repeat offences and imprisonment once such prisoners were released. He wished to know whether El Salvador had maximum-security prisons or sections and what criteria were followed in assigning prisoners to them. In particular, he would like to have information on the rules governing incommunicado detention.

40. With regard to the killings of six Jesuit priests and others in El Salvador in 1989, he asked whether there had been any new developments that might finally lead to closure of the investigation and determination of responsibility for the murders, thereby ending the decades-long impunity of the perpetrators. He enquired whether any steps had been taken to establish cooperation with the Government of Spain, given that Spanish nationals had been among the victims.

41. **Mr. Kovalev** said that El Salvador was a country of origin of economic migrants and a transit country for asylum-seekers. According to UNHCR, problems had been noted in relation to asylum-seekers entering El Salvador. The reasons for that situation varied, but included a lack of knowledge of the basic principles of refugee protection. He requested an account of any steps that had been taken in that regard.

42. **Ms. Gaer** pointed out that the issue of sexual violence did not concern only women's prisons; however, she requested more complete information on measures to monitor such violence in prisons. She asked whether the provision, which had allowed charges to be waived against a rapist who married his victim, was still being applied, even though it had been repealed, and if so, what steps the Government was taking to ensure compliance with the current provision.

43. With regard to the report of the Special Rapporteur on violence against women, who referred to claims that a high proportion of female police officers had been subjected to sexual harassment and violence, she asked what kind of reporting system had been set up and what results had been achieved.

44. The State party had said that hundreds of persons had been arrested for trafficking in persons; however, she had been unable to find information on individuals who had been sentenced to prison terms. She asked how many persons had been arrested in connection with trafficking, how many victims had been recorded and how many suspended sentences had been handed down in those cases.

45. **The Chairperson** said that the Committee particularly appreciated the opportunity to hold a dialogue with representatives of El Salvador, given the country's difficult past, which had included a bloody civil war and systematic violations of human rights. The establishment by the United Nations of an operation to monitor the Peace Accords had been followed by a series of natural disasters that had left a total of 1 million Salvadorans without homes. Currently, the country faced, inter alia, gang violence and problems of social inequality.

46. He welcomed, among other positive developments, the important role that had been assigned to the Procurator for the Protection of Human Rights and the wealth of information he had supplied to the Committee. He also welcomed the fact that article 144 of the Salvadoran Constitution established the primacy of international treaties. On the other hand, article 297 of the Criminal Code stated that public officials or persons under their authority who, in the discharge of their functions, subjected a person to physical or psychological torture, or were in a position to prevent such acts but failed to do so, were liable to a sentence of imprisonment of three to six years. In his view, such a light penalty was not commensurate with the seriousness of the offence of torture, and he would appreciate hearing the State party's views on that issue. As stated in writing by the Procurator for the Protection of Human Rights, that provision raised doubts as to its compatibility with the Convention. Moreover, in his report, the Procurator had refuted the argument that article 320 of the Criminal Code covered cases that were not covered under article 297. He therefore wished to raise the issue of a potential contradiction between certain provisions of the Criminal Code and the Convention.

47. The National Civil Police Organization Act had reduced the oversight authority of the Inspector-General of the National Civil Police. He was concerned that the police force might, as a result, be subject to a less independent monitoring regime.

48. He noted that when a person applied to join the National Police Security Academy, checks were made to ascertain that he or she had no criminal record. He asked whether the screening process was effective in practice and whether any statistics regarding rejected applicants were available.

49. Referring to reports by the Procurator for the Protection of Human Rights that some 21,000 prisoners were being held in inhuman conditions due to overcrowding and that young people had been tortured in juvenile detention centres, he asked whether the new Government's programme provided for action to improve prison conditions.

50. The Constitutional Division of the Supreme Court had ruled in 2004 that some provisions of the legislation enacted to combat the criminal gangs known as *maras* were unconstitutional inasmuch as they permitted the arbitrary exercise of authority. He asked whether the Court's judgement had been implemented.

51. The Truth Commission had identified the perpetrators of 30 cases of serious human rights violations. He asked whether the military personnel and members of the judiciary concerned had been dismissed from office.

52. The Committee had been informed that the Government's human rights reform programme was designed to guarantee justice for all and redress for victims. Had the various challenges to be addressed been prioritized?

53. According to paragraph 180 of the report, 4,390 police officers had participated in seminars and training between 2003 and 2006. He asked what proportion of the police force had received such training and whether the courses were based on theoretical concepts or specific cases. What links were established to the recommendations of the Truth Commission and the requirements of the Convention? Were training courses on the prevention of torture also provided for members of the armed forces?

54. In 2008, the Office of the Procurator for the Protection of Human Rights had received some 652 complaints. Most of them concerned the National Civil Police and contained allegations of excessive use of force and ill-treatment of detainees. There had also been 19 allegations of torture and 8 of extrajudicial killings. He enquired about the outcome of the complaints.

55. According to the Office of the Procurator and the Office of the Inspector-General of Police, the police had used excessive force in February 2008 when entering a school in San

Jacinto to arrest the father of one of the students. The case had been referred to a disciplinary court, but the proceedings had been inconclusive. He invited the State party to comment on the case.

56. The Office of the Procurator reported that death squads had been operating in the Department of Sonsonate. Specific dates and names had been mentioned. Moreover, the trade union leader José Gilberto Soto had been murdered in January 2005 and the police had failed to undertake a genuine investigation. What action was the State party taking to deal with such situations?

57. The Truth Commission had recommended that the victims of past crimes should be compensated, that a national monument should be erected in their honour in San Salvador and that a national day of commemoration should be held. He asked whether the new Government was intending to act on those recommendations.

58. He invited the delegation to reply to the questions raised by Committee members the following day.

The public part of the meeting rose at 11.35 a.m.