



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

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Summary record of the 1867th meeting

Held at the Palais des Nations, Geneva, on Thursday, 25 November 2021, at 3 p.m.

Chair: Mr. Heller

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The meeting was called to order at 3 p.m.

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

Third periodic report of the Plurinational State of Bolivia (CAT/C/BOL/3; CAT/C/BOL/Q/3; and CAT/C/BOL/RQ/3)

1. *At the invitation of the Chair, the delegation of the Plurinational State of Bolivia joined the meeting.*

2. **Mr. Siles Bazán** (Plurinational State of Bolivia), introducing his country's third periodic report, said that, under the Constitution, international instruments held constitutional rank within the Bolivian legal order and, where they provided greater protections, took precedence over the Constitution. In response to the recommendations issued by the Subcommittee on Prevention of Torture after its visits in 2010 and 2017, the definition of the offence of torture had been brought into line with international human rights standards. However, the relevant law had been repealed following an unjustified strike by opposition legislators. Efforts to introduce the necessary amendments had been further frustrated by the disruption of the constitutional order in 2019 and 2020 – a period characterized by serious human rights violations and the persecution of election officials. Since the restoration of the constitutional order, the work on harmonizing Bolivian legislation with international standards had resumed. In addition to the provisions needed to establish the seriousness of the offence of torture, the definitions of other offences, such as sedition, terrorism, conspiracy and genocide, were also being reviewed.

3. Pursuant to the Optional Protocol to the Convention and the recommendations issued by the Committee, the Subcommittee on Prevention of Torture and the Interdisciplinary Group of Independent Experts, the Government had adopted Act No. 1397 of 29 September 2021 whereby the Ombudsman's Office was designated the country's national preventive mechanism and was given a broader mandate and greater freedom of action than the current Service for the Prevention of Torture, as well as guarantees of financial, operational and managerial autonomy. The transfer of that mandate to the new entity was under way.

4. Once the rule of law had been re-established following elections that had been internationally recognized as transparent, legal action had been initiated in connection with the flagrant human rights violations, including torture and ill-treatment, which had been committed with impunity during the social and political crisis of 2019–2020. Various reports by regional and international bodies, the Ombudsman's Office and civil society all indicated that the events in Sacaba and Senkata constituted massacres.

5. In the light of the coronavirus disease (COVID-19) pandemic and prison overcrowding, the Ministry of Justice and Institutional Transparency was drafting a new presidential decree on pardons and amnesty on humanitarian grounds.

6. Public servants of the various institutions involved in the prevention, prosecution and punishment of criminal offences and reparation of victims were provided with human rights training with a view to ensuring timely and effective access to justice.

7. The Government had welcomed the final report of the Truth Commission on its investigation into cases of murder, enforced disappearance, torture, arbitrary detention and sexual violence committed with political or ideological motives between 4 November 1964 and 10 October 1982. The Office of the Deputy Minister of Justice and Fundamental Rights was working to implement the recommendations it set forth regarding, inter alia, necessary legislative amendments, the initiation or resumption of criminal proceedings at the national and international levels, and reparation measures.

8. **The Chair** (Country Rapporteur) said that the Committee was cognizant of the circumstances in the State party that had affected the human rights situation and had delayed the submission of the report for four years.

9. While important constitutional changes had been made, Bolivian criminal law was still not fully in line with the Convention. Accordingly, he wished to learn more about the status of the bill to amend the Criminal Code, in particular article 295 on ill-treatment and

torture. It was his understanding that the new legislation would enumerate the acts that constituted the offence of ill-treatment and torture, include the purpose of such acts in the definition of the offence, cover a wider range of potential perpetrators and ensure that applicable penalties reflected the gravity of the offence. It was a concern that the Criminal Justice System Code had been repealed, as it had included the offence of medical negligence and had classified torture as a crime against humanity. The Committee was also concerned at the fact that the law governing the armed forces had not been brought into line with the Constitution, especially with regard to human rights matters.

10. He would welcome information on the number of staff in the Ombudsman's Office and how they were selected and on what steps were being taken to strengthen the institution's independence and to allocate the necessary technical, financial and human resources for the fulfilment of its mandate. Information on the joint visits to places of deprivation of liberty by the Ombudsman and the Service for the Prevention of Torture, what recommendations they had made and what action had been taken in follow-up to those recommendations would also be welcome.

11. The delegation was invited to comment on any measures taken to address the recommendations made by the Subcommittee following its visits, particularly regarding prison overcrowding, the closure of substandard prisons, inhuman conditions in punishment cells, allegations of reprisals against inmates who had cooperated with the Subcommittee and the impunity of State officials who committed ill-treatment and torture. Did the State party intend to re-establish the national human rights institution or to create a new mechanism for promoting more dialogue with civil society?

12. Concerning article 3 on non-refoulement, it would be interesting to know what legislative and other steps the State party had taken in order to ensure that no one was returned to a country where he or she ran a risk of being subjected to torture. Similarly, further details about the exceptions allowing for expulsion on grounds of national security or public order would be useful. He would appreciate updated data on refugee arrivals to the State party, disaggregated by nationality, gender and age, as well as information on the new requirements for entry into the country applying to Venezuelan nationals and on what problems the new restrictions were creating for migrants passing through the State party on their way to other countries in the region. He would welcome the delegation's comments on reports that migrants were not allowed to apply for asylum at the border or at the offices of the National Commission for Refugees in Santa Cruz de la Sierra, on whether individuals subject to expulsion or extradition orders were informed of their right to claim asylum and on the asylum system's ability to cope with the exponential growth in applications.

13. Regarding the political crisis of October and November 2019, he would like to know what investigations had been conducted into the serious human rights abuses committed by security forces, particularly in Sacaba and Senkata, whether any penalties had been handed down, what court had heard the cases involving military personnel and whether the creation of an independent commission of inquiry was envisaged. In addition, he would appreciate updated data on complaints of ill-treatment, sexual violence, torture and excessive use of force that had led to the death of protesters. Had any progress been made on ensuring that jail and prison registers contained the requisite information in all cases of deprivation of liberty?

14. The Committee was interested in hearing what steps, such as, for instance, the establishment of internal and external oversight mechanisms, had been taken to ensure that the actions of the police and armed forces were governed by strictly professional criteria subject to civilian authority. In the light of allegations that the justice system had been manipulated to punish officials associated with former President Morales, the Committee was also interested in knowing how many people had been accused, tried and convicted under current anti-terrorism laws and what remedies and legal safeguards were available to them.

15. He wondered whether the delegation could provide information on the reported harassment of human rights defenders and journalists, sometimes by government officials, both before and after the resignation of former President Evo Morales. He wished to know whether any investigations had been launched pursuant to those reports. It would also be helpful to have details on any investigations into the allegations that employees of the Instituto de Terapia e Investigación sobre las Secuelas de la Tortura y la Violencia Estatal

(Therapy and Research Institute on the Effects of Torture and State Violence) had been subjected to intimidation and had been followed. He would like to know whether the State party planned to create a mechanism for the protection of journalists at risk of human rights violations. He also wished to know whether the Government was planning to adopt a new amnesty decree and, if so, whether the decree would provide for greater safeguards to prevent its arbitrary application.

16. **Mr. Rodríguez-Pinzón** (Country Rapporteur) said that he wished to know whether a detainee's right to the assistance of counsel was triggered as soon as he or she was taken into custody. The Committee was concerned about reports that that right was sometimes not recognized. Reports that detainees, including minors, were sometimes unable to contact their families to inform them of their detention, in some cases for periods exceeding 72 hours, were also worrying. He would like to learn more about the procedure used to notify the person of a detainee's choosing that the detainee had been taken into custody. He would also appreciate information on the specific notification protocols followed by the police and the methods used to monitor compliance with them.

17. Were there any mechanisms in place to ensure that detainees could exercise their right to be examined by a doctor of their choosing as soon as they were taken into custody? It would be helpful to know whether the requirements for gaining access to prison registers also applied to the registers kept in police stations and how the State party ensured that those registers were kept up to date. He would appreciate information on any disciplinary action taken since the Committee's review of the State party's previous periodic report against law enforcement officials who had prevented the prompt application of fundamental safeguards for detainees. He also wished to know how the State party planned to address structural flaws in the system for the provision of counsel to detainees, such as the fact that there were so few public defenders relative to prosecutors, that their salaries were low and that they lacked access to proper training.

18. It would be helpful to have an update on the Government's efforts to implement the decision of the Inter-American Court of Human Rights in *I.V. v. Bolivia*. In that connection, information would be appreciated on the Government's reported inability to fund the measures called for in that decision, as the Government had apparently sought the help of the Instituto de Terapia e Investigación in implementing some of those measures but had not made the necessary funds for doing so available to it. He would welcome details on the increase in violence against women observed between 2016 and 2018 and on what factors could have caused the increase and what steps the Government was taking in response. It would also be helpful to have statistics on that subject for 2019, 2020 and 2021 so that the Committee could see whether that upward trend had continued. He would appreciate data, disaggregated by the victims' age and ethnic origin or nationality, on complaints, investigations, trials, convictions and sentences relating to acts of gender-based violence since the Committee's review of the State party's previous periodic report. He wondered what progress had been made in establishing the domestic violence shelters that the State party had previously indicated were being planned. Could the delegation inform the Committee as to the number of special prosecutors assigned to handle gender-based offences? He also wished to know whether the awareness-raising campaigns on the prevention of violence mentioned in the replies to the list of issues had been carried out and, if so, what impact they had had and how many people had taken part.

19. He was curious to hear the delegation's views as to whether the reportedly high levels of sexual violence and impunity in the country could be addressed by enacting legislation or amending or repealing existing legislative provisions, such as those relating to the offences of rape and statutory rape, and whether the Government had adopted any policies in that connection. He wished to know how the State party planned to ensure that women rape victims had access to safe abortion services and that abortion and post-abortion services were available through the public health-care system, particularly for poor women and women living in rural areas.

20. As the data on trafficking in persons provided by the State party in its replies to the list of issues were not clearly labelled, were not disaggregated and did not cover the entire period under review, it would be helpful if an expanded data set could be submitted. He would also appreciate information on measures taken to ensure that possible victims of

trafficking were provided with non-custodial accommodation and with full access to appropriate medical and psychological support while identification processes were being carried out.

21. **Mr. Siles Bazán** (Plurinational State of Bolivia) said that the Criminal Justice System Code that had been adopted in 2017 and repealed in 2018 had contained a definition of torture that was consistent with international standards. After its repeal, the Government had started to work on an emergency law that would focus on the implementation of recommendations made by international mechanisms. Definitions of the offences of torture, sedition, terrorism and conspiracy had already been drafted, and the definition of genocide was being examined with a view to resolving certain ambiguities in it. The Government had sought the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR), other international bodies and civil society to lend greater legitimacy to the emergency law.

22. In connection with the reform of the country's judicial system, initial drafts of amendments to the Code of Criminal Procedure and the Organic Act on the Public Prosecution Service had been prepared. Under the amendments, judges would be able to make greater use of alternative non-custodial measures and would order pretrial detention only in extreme cases. As the widespread use of pretrial detention was one of the causes of prison overcrowding in Bolivia, such amendments would help alleviate that problem.

23. The Bolivian armed forces were continuing their efforts to bring their internal regulations into line with international standards. Observatories had been created on thematic areas such as gender and racism and were providing training for members of the military and civilians on human rights and international humanitarian law. Channels for reporting human rights violations existed within the Ministry of Defence and the offices of the inspectors general of the various branches of the military.

24. The previous national preventive mechanism, the Service for the Prevention of Torture, had been part of the executive branch, whereas the Ombudsman's Office was a decentralized agency attached to the Ministry of Justice and Institutional Transparency. The decision to transfer the preventive mechanism's functions to the Office of the Ombudsman had been taken to ensure the independence of the mechanism in accordance with the Optional Protocol to the Convention. During the time that the interim Administration had been in office, the Ombudsman had demonstrated its independence and freedom of action by speaking out against the numerous human rights violations that had taken place. The Ombudsman's Office would be an effective preventive mechanism capable of fulfilling the recommendations of the Committee and the Subcommittee.

25. The transfer of functions to the Ombudsman's Office was currently under way. The Ombudsman was reading the reports of the previous mechanism and working within the deadlines prescribed by law for the operationalization of the new mechanism. The previous mechanism had had only 9 officials to cover the entire country, whereas the Ombudsman's Office had approximately 200 staff and a number of regional offices, including offices in remote regions. The Office's larger team, which, importantly, included many more lawyers, and its broader national presence would allow it to address cases of torture and ill-treatment more promptly. Using its constitutionally guaranteed financial independence, the Ombudsman's Office would decide on the budget to be allocated to the national preventive mechanism, which was expected to be significantly higher than the previous budget of the Service for the Prevention of Torture.

26. The law governing the transition provided that the Ombudsman's Office must take over all administrative and judicial proceedings to which the Service had been a party. The Office was currently drafting the necessary regulations to comply with that provision. It had also taken over all the responsibilities and powers of the Service, which were fully compatible with its existing authority under the Constitution. The Office of the Deputy Minister for Justice and Fundamental Rights had a constitutional and legal responsibility to promote and protect human rights and would therefore work with the Ombudsman's Office and other relevant public bodies to implement the Committee's recommendations and comply with the Convention.

27. To prevent the recurrence of events such as those that occurred in 2019 and 2020, the Government intended to investigate and punish all crimes perpetrated under the aegis of

Supreme Decree No. 4078, which had allowed the police and armed forces to commit human rights violations with impunity. The first step was to draw up a list of victims, including those who had died, been injured, tortured, harassed and/or arbitrarily detained. In the case of those who had died, the Government was implementing the decree on reparation issued by the interim President. To properly address the cases of torture, the national preventive mechanism would need to be fully operational. In the meantime, an agreement would be concluded with the Instituto de Terapia e Investigación for its assistance with investigations in line with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

28. The authorities had held a number of meetings with organizations of victims and their families and were working to identify common patterns among the complaints with support from OHCHR and the Inter-American Commission on Human Rights. The focus was on improving the reparations procedures implemented for victims of the dictatorship, particularly in regard to the qualification mechanism. A draft law on the subject was being developed by the Human Rights Commission of the Chamber of Deputies.

29. Once those victims had been identified, a law would be proposed to provide them with comprehensive reparation and an implementation plan would be developed. Comprehensive reparation entailed not only monetary compensation but also the construction of memorials, moral recognition and guarantees of non-repetition.

30. In accordance with recommendations of the Interdisciplinary Group of Independent Experts, the Government was also establishing a database on legal proceedings related to the events of 2019. Measures taken to address the delay of some of those proceedings included the establishment of a national roster of lawyers who could work on the cases. The judicial oversight bodies of the Council of the Judiciary were empowered to observe the proceedings. In the Public Prosecution Service, a commission was being established to implement the recommendations of the Interdisciplinary Group and the Committee.

31. In 2019, members of the current Government had filed an application for constitutional review of the criminal offences of sedition and terrorism on the grounds that the definitions were too broad. Their application had been prompted by the fact that unlawful criminal proceedings had been brought under the relevant articles against persons exercising their right to protest. The proceedings against Jeanine Áñez Chávez regarding the constitutional legitimacy of her assumption of the interim presidency did not involve charges of sedition or terrorism but rather the adoption of unconstitutional decisions and dereliction of duty. It was expected that her trial could begin soon and, given the overwhelming evidence against her, that a conviction would be secured.

32. Criminal proceedings on charges of terrorism, sedition and conspiracy had initially been brought against Ms. Áñez Chávez but had been suspended pending the outcome of the constitutional review. The Government had been working on amendments to the Criminal Code with support from OHCHR and other bodies and would soon be able to inform the international community exactly which offences Ms. Áñez Chávez had committed. All proceedings against her were being conducted with respect for due process, including the presumption of innocence. At the request of her family, she had access to a private doctor and separate accommodations in prison.

33. With the return to democratic stability, the leadership of the National Commission for Refugees would be able to fulfil its mandate of processing asylum applications and promoting the integration of refugees and asylum seekers effectively and efficiently.

34. **Mr. Limpias Esprella** (Plurinational State of Bolivia), speaking via video link, said that, since the visit of the Subcommittee in 2017, prison overcrowding had decreased from 254 per cent to 176 per cent. The decrease had been achieved partly through a series of presidential decrees providing for pardons on humanitarian grounds. Hundreds of prisoners had been granted a pardon or amnesty under Supreme Decree No. 4461 before it had been repealed at the recommendation of the Interdisciplinary Group of Independent Experts. Contrary to claims made by the opposition, no one had been released on political grounds. Rather, in response to the COVID-19 pandemic, the Government had decided to release vulnerable prisoners such as older persons, women with children, pregnant women and persons with disabilities or terminal illnesses.

35. The Government was also addressing the problem of prison overcrowding through new infrastructure projects in various regions. For example, 300 new places had been created in prison facilities in Cochabamba Department and a further 300 in Tarija Department. A new prison would shortly be opened in Beni Department to replace one that had been closed down owing to the poor conditions of detention that it had afforded. Further reductions in overcrowding would require a reduction in the use of pretrial detention and better coordination between the judiciary and the Directorate General of Prisons. Major prison construction projects in the departments of La Paz, Cochabamba and Santa Cruz had been delayed by the pandemic but were once again under way. Those projects would allow for the closure of San Pedro prison in La Paz and the expansion of Palmasola prison in Santa Cruz.

36. To avoid delays in court proceedings during the pandemic, almost 10,000 virtual court hearings via video links with prisons had been held in 2020 and over 22,000 such hearings had been conducted in 2021. As recommended by the Subcommittee, the Directorate General of Prisons had issued instructions for the immediate closure of the punishment cells referred to as “cages”, “holes” or “dungeons”. The Sentence Enforcement and Supervision Act provided for regular visits to places of detention to ensure that prisoners’ rights were respected. The visits carried out by the International Committee of the Red Cross (ICRC) and support provided by the national preventive mechanism and OHCHR had helped the Directorate General to improve prison conditions.

37. The Subcommittee had also highlighted the need for a complaints mechanism for prisoners. Complaints were initially addressed by the administrative officials of each prison, who would then refer serious matters, such as allegations of torture, to judicial authorities. If prisoners were afraid to complain through that avenue, their families could use a free hotline, which was independent of any individual prison administration. Complaints received by the Ombudsman’s Office, ICRC and the human rights treaty bodies had also led to the resolution of certain issues.

38. **Mr. Cox Mayorga** (Plurinational State of Bolivia), speaking via video link, said that reactivation of a national human rights council would help many victims of torture and ill-treatment. The Government was working to clarify who was legally responsible for acts of torture that had occurred on 10 and 11 November 2019, when a de facto Government had been in power. It had not been possible to take disciplinary action against police or armed forces personnel suspected of wrongdoing during that period because the de facto Government had not acted on complaints made at the time. Some complaints had been made many months after the events, but it had not yet been possible to initiate proceedings regarding those cases. An independent commission would be needed to investigate those complaints, bearing in mind that torture and ill-treatment were criminal as well as disciplinary offences and that civilians had also participated in atrocities such as those that had occurred in Cochabamba. Proceedings had been initiated regarding the massacres of Senkata and Sacaba, but there had as yet been no resolution of those cases. He could not point to any specific outcomes in proceedings involving cases of torture. Many disciplinary cases had been taken against members of the police and armed forces for torture and ill-treatment, but all concerned events that had occurred prior to 2019. The Government was working to fulfil its obligation to investigate the events of that period.

39. The law required that records must be kept of all persons taken into police custody. However, there was currently no unified national system for doing so. The Government would endeavour to remedy that shortcoming and expected to be in a position to provide appropriate statistics by the time it submitted its next periodic report.

The meeting rose at 5 p.m.