



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

Distr.: General
2 May 2023

Original: English

Committee against Torture Seventy-sixth session

Summary record of the 1983rd meeting

Held at the Palais Wilson, Geneva, on Thursday, 20 April 2023, at 3 p.m.

Chair: Mr. Heller

Contents

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

Second periodic report of Brazil (continued)

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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)*

Second periodic report of Brazil (CAT/C/BRA/2; and CAT/C/BRA/Q/2) (continued)

1. *At the invitation of the Chair, the delegation of Brazil joined the meeting.*
2. **The Chair** invited the delegation to continue replying to the questions posed by Committee members at the 1980th meeting.
3. **Mr. de Almeida** (Brazil) said that the questions posed by Committee members had given the delegation cause for reflection and had shed light on some of the challenges facing the current Government. The delegation was also grateful for the opportunity to meet with civil society representatives prior to the meeting and wished to underscore the current Government's commitment to ensuring that the voices of civil society were heard.
4. **A representative of Brazil** said that article 1 of Law No. 9455 of 1997 defined torture as an ordinary offence, meaning that it could be committed by both public and private actors. The Superior Court of Justice had held that the definition of torture enshrined in Brazilian law was compatible with the Convention against Torture, since article 1 (2) of the Convention provided that the definition of torture set forth in article 1 (1) was without prejudice to any international instrument or national legislation which contained or might contain provisions of wider application. In Brazil, if a crime was committed by a public official, the duration of the sentence was increased by between one sixth and one third. Any public official who was convicted of the crime of torture would face automatic dismissal and could face administrative as well as criminal sanctions.
5. Under its national law, Brazil could exercise jurisdiction over crimes committed outside the national territory if the victim was a Brazilian national or if the perpetrator was in a place that was under Brazilian jurisdiction. Thus, it could be said that Brazilian law provided for unconditional extraterritorial jurisdiction when the victim was Brazilian and limited universal jurisdiction over perpetrators when they were physically present in Brazilian territory. However, it could be made clearer under national law that Brazil could request the extradition of a person accused of such a crime for law enforcement purposes without the need for them to be present in the national territory for prosecution and trial.
6. Brazil was currently a signatory to 32 bilateral extradition treaties and was a party to 7 multilateral conventions on the subject. It could also use the Convention against Torture as the legal basis for extradition in respect of acts of torture if it received an extradition request from another State party with which it had no extradition treaty. For example, the Federal Supreme Court had granted extradition request No. 1122 of 2009 on that basis. As had been explained previously, extradition requests in respect of crimes of torture committed during the dictatorship had been refused because, as the amnesty law applied to the acts in question, the double criminality requirement for extradition could not be fulfilled. The Supreme Court had ruled thus in extradition request No. 1327 of 2020.
7. The Migration Law (Law No. 13,445 of 2017) prohibited extradition if the requesting State refused to provide assurances that it would not subject the person concerned to torture or other degrading treatment. For example, in extradition request No. 1425 of 2021, the Supreme Court had refused the extradition request because the persons sought might have faced life imprisonment or the death penalty in the country seeking the extradition.
8. Crime victims could receive protection under the Federal Protection Programme for Victims and Witnesses under Threat. Applications for protection under the Programme could be submitted by the interested party, the Public Prosecutor's Office, the police authority conducting the criminal investigation, the investigating judge, the Public Defender's Office or an association defending human rights. Decisions to admit or to exclude persons from the Programme were taken by a committee comprising representatives of the Public Prosecutor's Office, the judiciary and various public and private agencies. Decisions could be appealed before the committee itself and were also subject to judicial review. Participation in the Programme was voluntary. Approximately 500 persons were currently enrolled in the

Programme, the majority of whom were women of colour. In some 30 per cent of cases, persons were under protection for reasons related to torture.

9. The Federal Protection Programme for Human Rights Defenders had been established in 2016 by presidential decree. Several programmes had been implemented at the state level in order to better respond to local protection needs. The federal programme provided protection to human rights defenders in states where no programme was in place. In 2019, Presidential Decree No. 9937 had expanded the scope of the federal programme to offer protection to communicators and environmental activists. However, the programme still did not have a legal framework and no national implementation plan had been developed. To remedy that situation, the Ministry of Human Rights and Citizenship had proposed the establishment of a technical working group to devise a national plan to protect human rights defenders and to draft the necessary implementing legislation. Most recipients of protection under the federal and state programmes were persons involved in land disputes, particularly Indigenous and Quilombola persons, who were often targets of violence. The possibility of applying collective protection measures in respect of specific communities and peoples was being explored.

10. The National Congress was currently considering several bills that would amend counter-terrorism laws in a way that would effectively criminalize the activities of human rights defenders and civil society. Bill No. 3283 of 2021, which would classify as terrorist acts any acts carried out on behalf or in support of organized crime groups, was an example of such a bill. The Ministry of Human Rights and Citizenship and non-governmental organizations had been lobbying lawmakers to reject such bills.

11. Violence against women, including femicide, continued to pose a serious problem in Brazil. Law No. 13,104 of 2015 had increased the minimum sentence for femicide from 6 to 12 years' imprisonment and the maximum sentence from 20 to 30 years' imprisonment. A total of 1,400 femicides had been reported in 2022 alone, which was the highest number recorded since the Law's enactment. The coronavirus disease (COVID-19) pandemic and the associated social isolation and economic vulnerability were factors that had contributed to the rise in cases. The establishment of a ministry specifically for women underscored the State's commitment to tackling gender-based violence. Measures taken to that end included strengthening of hotlines for reporting violence and updating of the programme to guarantee women a life free from violence. There were currently 84 shelters for women victims of violence in operation and additional shelters were due to be opened.

12. In Brazil, abortion was legal in three scenarios: when the pregnant woman's life was at risk, when the pregnancy was the result of sexual violence and when the fetus had anencephaly. Women seeking legal abortion services had to appear before a multidisciplinary panel of health-care professionals, which would review their case. Decisions that restricted women's right to legal abortion were at variance with the relevant World Health Organization guidelines on the subject and with Brazilian law and were subject to revocation.

13. Law No. 14,344 of 2022 had created mechanisms for preventing and combating domestic and family violence against children and adolescents and had increased the penalties applicable to those offences. To strengthen the implementation of the Law, police units and courts specialized in dealing with crimes against children and adolescents were being established. Units to combat violence against children and adolescents were already operational within public defenders' offices throughout the country. A programme to protect children and adolescents who had received death threats was also in place.

14. A large percentage of trafficking victims were impoverished women from regions of Brazil where violence was endemic. Those women were typically trafficked to other parts of Brazil or to other countries for the purpose of sexual exploitation and some were also forced to become drug mules. As to whether trafficking was contributing to rising incarceration rates for women, many of the women who were forced to transport drugs within Brazil were caught in flagrante delicto and were imprisoned without being given the opportunity to prove that they had been trafficked. A new national plan to eradicate slave labour and to support victims was under development.

15. **A representative of Brazil** said that the National Mechanism to Prevent and Combat Torture was an independent body comprising 11 experts elected by means of a public

selection process for a three-year term with the possibility of re-election. The Mechanism's main activities included carrying out confidential missions to the different states of Brazil, during which experts might inspect places of deprivation of liberty, participate in events and provide training. The Mechanism's original budget for 2023 had been insufficient to cover the projected cost of its monitoring activities, but additional budgetary resources had subsequently been requested and granted. Additional human and financial resources would be needed to provide the Mechanism with all the technical assistance it needed. To date, three state-level torture prevention mechanisms had been set up.

16. By Decree No. 9831 of 2019, former President Jair Bolsonaro had moved the 11 posts occupied by the experts of the Mechanism from the Ministry of Women's Affairs, Family and Human Rights to the Ministry of Economic Affairs, dismissed the incumbent experts and declared that their work would no longer be remunerated. The State Counsel-General's Office had brought a case before the Supreme Court, which had suspended the decree's effects on grounds of unconstitutionality and non-fulfilment by Brazil of its international obligations and had ordered the reinstatement of the experts with full pay. The Ministry of Human Rights and Citizenship was exploring the possibility of having the decree repealed completely. Several provisions of Order No. 8 of 2016, which regulated the access of anti-torture bodies to prisons in the Federal District, had also been suspended pending review, as the restrictions they imposed had been deemed to run counter to Law No. 12,847 of 2013, creating the National System to Prevent and Combat Torture.

17. The National Committee to Prevent and Combat Torture had 23 members: 11 from the executive branch and 12 from civil society organizations. Regrettably, the budget allocated to the Committee by the previous Government had been insufficient to allow it to fulfil its mandate. The Ministry of Human Rights and Citizenship had since removed those budgetary restrictions and was working to diversify the body's current membership.

18. Existing monitoring systems needed to be improved, including through the allocation of sufficient financial resources, in order to ensure compliance with the recommendations issued by the various national torture prevention bodies. Steps should also be taken to ensure that forensic examinations included the identification of injuries that could have been caused by torture and to increase the credibility attributed to torture victims' statements. There was a tendency at present to consider the statements of public officials more credible than those of victims.

19. The Office of the National Ombudsman for Human Rights received complaints of human rights violations, including from persons who were deprived of their liberty. In 2023, it had facilitated dialogue between representatives of the federal Government and the family members of prison inmates. The Office also conducted inspections of prisons. In 2023, it had visited prisons in Brasília and in the State of Rio Grande do Norte. It had also taken steps to promote alternatives to detention and ensure better monitoring of police activities and monthly inspections of the country's prison facilities. The Office of the National Ombudsman for the Prison System received hundreds of complaints a month from prisoners or members of their families, most of which related to lack of legal aid or prison health care. The Human Rights Observatory of the National Council of Justice, composed of members of civil society organizations, awarded subsidies for activities to raise awareness of human rights.

20. Since the adoption by the National Council of Justice of resolution No. 213 of 2015, anyone arrested in flagrante had to be brought before a judge within 24 hours. Detained persons must be informed of their constitutional rights and given the opportunity to meet in private with a lawyer or public defender, and their families must be notified of their arrest. Since the resolution was adopted, some 1.2 million custody hearings had been held, during which more than 88,000 complaints of torture had been made. More than 480,000 detainees had been released, which had helped to reduce the overcrowding of police holding cells. A data management system, to which all judicial authorities had access, had been set up to facilitate the application of the resolution.

21. In 2020, as the COVID-19 pandemic was sweeping the country, provision had been made for virtual custody hearings for detained persons. As of 2022, five States had not yet resumed in-person hearings, while another five were holding hearings both in person and

virtually. The federal authorities were nonetheless well aware that if the hearings were to function as a means of preventing torture, they would have to be held in person.

22. A national database of judicial proceedings made it possible to track the number of proceedings instituted for the crime of torture. In 2022, 1,130 new cases involving torture had gone to trial; in 2021 the number had been 1,770 and in 2020, 1,448.

23. **A representative of Brazil** said that, although acts of torture committed by on-duty members of the military were considered military crimes, the defendants stood trial in courtrooms presided over by civilian judges, except in the States of São Paulo, Minas Gerais and Rio Grande do Sul, which had military tribunals. The military justice system heard only cases involving serving members of the national armed forces. Only the country's lawmakers, over whom the Federal Prosecution Service had no influence, had the power to amend Law No. 13,491 of 2017, which stated that military personnel accused of some crimes against civilians would be tried by military courts. In practice, military courts rarely tried cases involving torture crimes, the majority of which were committed by police officers.

24. The Federal Prosecution Service had broad powers, including to investigate crimes allegedly committed by members of law enforcement agencies. Law No. 13,964 of 2019 amending the Code of Criminal Procedure provided for oversight of investigations by a judge responsible for procedural safeguards (*juiz das garantias*). However, the application of the Law had been suspended pending a ruling by the Supreme Court on the constitutionality of some provisions. Motions for a change of jurisdiction from the state courts to the federal courts were used only in especially serious situations.

25. The use of evidence obtained by illicit means, including through torture, was prohibited under the Constitution and the Code of Criminal Procedure. Judges who disregarded the prohibition were liable to disciplinary sanctions. Law No. 13,964 of 2019 required the recusal of judges who had come into contact with such evidence, but the application of that provision, too, had been suspended pending a Supreme Court ruling on the constitutional challenge to the Law.

26. The National Council of the Federal Prosecution Service had taken a number of steps to combat torture in Brazil, not the least of which had been the establishment in 2023 of a working group to steer the Service's response to reports of deaths, torture and sexual violence in police facilities. The Council had adopted several resolutions providing for the application of international torture prevention standards, including the Istanbul Protocol.

27. **A representative of Brazil** said that there were slightly more than 654,000 prisoners, the overwhelming majority of them male, in the country's state-level prisons. Some 326,000 of those prisoners were housed in high-security facilities. Some 190,000 people were in pretrial detention. The number of prisoners in the federal prisons was much smaller. Private contractors, in cooperation with the public authorities, operated 42 of the country's more than 1,500 prisons. The recommended ratio of prison staff to inmates had not yet been achieved in the state prisons, but in the federal prisons the ratio had been reached or even exceeded.

28. There was a national policy on the provision of health care to persons deprived of their liberty. Multidisciplinary teams of health workers, which in addition to primary care specialists might include psychiatrists, nutritionists, therapists, pharmacists and other health professionals, provided care to prisoners. The size and epidemiological profile of the prisoner population in a given facility determined the composition of the health-care team and the allocation of financial resources for the provision of health care to prisoners.

29. One of the aims of the training given to prison guards was to promote a culture of peace and human rights. Students in the country's police academies would be spending increasing amounts of instructional time learning about human rights. New national curricular guidelines, which training institutions around the country could draw on, were expected to be in place shortly.

30. **A representative of Brazil** said that regulation of prison occupancy and provision of alternatives to detention were the main strategies for reducing overcrowding in the country's prisons. Since 2019, the National Council of Justice had been offering technical assistance to local governments to help them set up facilities or equipment for alternative penalties and electronic monitoring. Databases were being developed with a view to facilitating

comprehensive oversight of the movement of inmates into and out of the country's prisons, and the procedures for processing admission, release and other related orders were being standardized.

31. Regulatory steps had been taken with a view to improving mental health care for prisoners with mental or emotional disabilities. In the coming months, the National Council of Justice and the Court of Justice of Paraná would hold an international seminar on the mental health of persons deprived of their liberty.

32. Reliable current data on the number of prisoners subject to the set of special disciplinary measures known as the differentiated disciplinary regime were unavailable, but it was a small number. In 2020, for example, 159 prisoners had been held under that regime. The judicial authorities documented the existence and use of punishment cells in their inspection reports. The National Council of Justice, in partnership with the Association for the Prevention of Torture, was working to improve monitoring of the use of such cells and to discourage their use. The Council had conducted a survey to identify the causes of deaths in custody. The final report on the survey would be published shortly.

33. In 2020, the Council had published three sets of guidelines on supporting children and adolescents in conflict with the law, including the provision of ongoing support after they had served their sentences. Work was also being done to ensure that detention centres for children and adolescents had reading materials and sports facilities and equipment. An event had recently been organized to build the capacity of judges to conduct regular inspections of juvenile detention facilities.

34. The Council took appropriate action in response to any complaints from adolescents, including complaints of torture. Alternatives to detention were available to children and adolescents in conflict with the law, and 82 per cent of those currently subject to socio-educational measures were not being held in detention facilities. Juvenile detention facilities provided health care to the children in their care. A government decree providing for the free distribution of sanitary pads had been issued only a month earlier.

35. The Council had established a unit to monitor action taken in follow-up to recommendations made by the Inter-American Commission on Human Rights. It would also act on recommendations made by United Nations human rights bodies.

36. **A representative of Brazil** said that the National Council of Justice had recently issued guidelines on the procedures to be followed whenever there were indications that a person taken into custody had been subjected to torture or other cruel, inhuman or degrading treatment or punishment. Under those guidelines, factors that made such persons particularly vulnerable to violence, including gender, race, sexual orientation, age and ethnicity, were to be given special consideration. The judicial authorities were also encouraged to ensure that such persons were given medical examinations before they were brought before a judge for an initial hearing. A protocol based on the Istanbul Protocol established the minimum requirements for medical exams, and a national roster of forensic experts trained to identify signs of torture was being drawn up.

37. Building the capacity of the country's law enforcement and security officials was, for the most part, the responsibility of the states and the Federal District. Although the Ministry of Justice and Public Security could not dictate the curricula used in local police academies, instruction in those academies was expected to take place in line with a national curricular framework that reflected the Ministry's commitment to the principles of necessity, proportionality and legality; the rule of law; and the dignity of the individual. The curriculum also dealt with structural racism, the use of force and international human rights standards. In 2022, the Government had adopted a policy on education in the prison system to ensure consistency across facilities.

38. The Ministry of Justice and Public Security was investing in training, research and the modernization of security facilities and was working with civil society to promote human rights, notably by revising the techniques and protocols used at such facilities. Training was provided in person and online. Future courses were planned on topics such as defending democracy and protecting human rights, using modern technology to fight crime and protecting the environment and Indigenous Peoples. Professionals who worked with

adolescents and children within the socio-educational system had an obligation to engage in continuous professional development. Courses had been developed for all levels of training, and specialist schools had been established at the state level. The first evaluation of the socio-educational policy had been conducted in 2020.

39. The Government had adopted rules on nutrition for inmates and was developing an oversight mechanism. It was working with the Food and Agriculture Organization of the United Nations to promote adequate nutrition in prisons, including through policies to ensure adequate space near prisons for the cultivation of organic crops.

40. A federal programme had been introduced to encourage law enforcement officers, especially rapid intervention groups, to wear body cameras. Between 2019 and 2022, the use of cameras had been found to reduce violence against black persons in São Paulo by 64 per cent. In addition, regulations on the differentiated use of force were being updated and brought into line with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Efforts were being made to strengthen oversight bodies within the police and promote the use of less-lethal weapons and alternatives to the use of force. Steps were also being taken to implement the National Public Security and Social Defence Plan, which provided increased protections for vulnerable groups, and to encourage state and municipal governments to align with the plan.

41. The Government acknowledged the high level of violence against black populations and had included measures in the National Public Security and Social Defence Plan to combating structural racism. The Plan also addressed the problems of violence against women and femicide. The Government was also working with civil society to promote public policies to improve security and enhance access to justice for black persons living in favelas.

42. **Ms. Maeda** (Country Rapporteur), expressing thanks for the detailed information provided, said that she wished to know whether the State party intended to amend its drug policy to move towards a less punitive approach, taking into account the disproportionate impact of harsh drug sanctions on ethnic minorities and women. She would like more information on what was being done to combat racial profiling and structural racism in policing. She would also appreciate an update on the status of two cases pending before the Brazilian Supreme Court: one challenging the constitutionality of the current law that allowed military members to be tried by military courts even for crimes against civilians and the other concerning a proposal to expand the jurisdiction of military courts to allow the prosecution of civilians accused of offences against military members during times of peace. In addition, she would like to hear more about what the Government planned to do to strengthen the national preventive mechanism.

43. It would be useful to learn what domestic legal provisions and safeguards were in place to ensure the non-refoulement of asylum-seekers and refugees, in line with article 3 of the Convention. She would welcome statistics on the number of asylum applications received during the review period and the number of applications granted owing to a risk of torture in the country of origin. Lastly, she wished to know whether the State party had entered into any agreements on mutual judicial assistance and whether, pursuant to such agreements, any evidence had been transferred in connection with the prosecution of torture or ill-treatment cases.

44. **Mr. Liu** (Country Rapporteur) said that he welcomed the State party's efforts to improve the human rights situation in the country. With regard to tackling criminality, he encouraged the State party to give more attention to preventive measures and restorative justice. He also urged it to address cultural factors that discouraged vulnerable individuals from using essential services.

45. **Ms. Racu** said that it would be useful to receive data on the number of femicides registered per year and to hear more about the measures taken to prevent domestic and gender-based violence. She would also like to hear more about measures taken to prevent torture resulting from gender bias and, especially, violations of the sexual and reproductive rights of black girls and women, including obstetric violence. Further information on the availability of protection services, such as shelters, for victims of such violence would be appreciated as well.

46. **Mr. Iscan**, noting the failure by certain entities within the country's state governments to fully implement its treaty obligations, said that the federal structure of the State party did not absolve the federal Government of its obligations under international law. It would be helpful to the Committee if the delegation could explain any further measures considered by the federal Government to ensure coordination and accountability at the state level.

The meeting was suspended at 5.10 p.m. and resumed at 5.30 p.m.

47. **Mr. Almeida** (Brazil) said that the current Government was fully aware that the drug policies instituted under previous Administrations had failed. It also recognized that drug trafficking posed a serious problem and sought to address it in an intelligent manner, treating drug use and trafficking as public health issues related to economic inequality and structural racism, rather than focusing on repression. While the Government did not currently have a specific strategy for decriminalizing drug use, numerous initiatives had been undertaken to strengthen the public health approach to the problem. Advancing such an approach was complicated, however, because of the authoritarian attitudes of far-right parties in Brazil, which favoured repressive measures. The Government had established a working group under the Ministry of Justice and Public Security to discuss a new policy on drugs, with a special focus on women.

48. Owing to the country's authoritarian past and history of racial inequality, the Government encountered difficulties in addressing certain problems, such as racial profiling. The implications of racial inequality were still felt in the judicial system and were of serious concern, as they complicated the country's implementation of international human rights standards. The Supreme Court had recently heard a case that challenged the legality of criminal proceedings based on racial profiling. The Ministry of Human Rights and Citizenship had taken the position that a ruling by the Supreme Court in that case recognizing the existence of structural racism and its impact on Brazilian institutions would be a landmark that could open up unprecedented opportunities to address racial inequality and problems such as racial profiling and to improve the implementation of criminal law in Brazil.

49. The Government would never invoke the federal structure of the Brazilian State to justify a failure to fulfil its obligations under a treaty. The delegation had described the federal structure solely with the intention of clarifying the objective challenges faced in the implementation of the Convention. The Government was committed to overcoming those challenges and ensuring implementation in all states of the country. It was keenly aware of its responsibilities to the international community and, even more importantly, to the Brazilian people.

50. **A representative of Brazil** said that a national policy concerning populations in street situations had been adopted in 2009 and an intersectoral committee that included government and civil society representatives had been set up to monitor its implementation. The previous Government had reduced the membership of the committee, thus undermining its monitoring activities. However, the current Government had very quickly taken action to restore the committee as an effective body, ensuring broader social participation, including the representation of persons in a street situation, women and black, brown and Indigenous persons in the committee's membership. The committee had also been empowered to hold dialogues with national and state-level bodies to promote better implementation of the national policy.

51. The National Council for the Rights of Children and Adolescents, under the Ministry of Human Rights and Citizenship, had been instrumental in issuing guidelines for the care of children in a street situation. In 2021 the National Council of Justice had issued a resolution providing guidance for the judicial system's handling of cases involving persons in a street situation. The guidance was intended to ensure access to justice, facilitate coordination of assistance and provide guarantees of safety and uphold the rights of such persons. An interministerial group had been established with the aim of promoting housing for persons in street situations, and a presidential decree setting out the implementing regulations for the Father Julio Lancellotti Law, which prohibited "hostile architecture" that impeded access to public spaces for persons experiencing homelessness, was currently in preparation.

52. **A representative of Brazil** said that there were no members of the military in the Military Prosecutor's Office, which was part of the Public Prosecutor's Office and was

staffed entirely by civilians; it was an autonomous entity and had its own budget. The Supreme Court had not yet ruled on either of the two cases mentioned by Ms. Maeda. Its most recent action in relation to the case concerning Law No. 13,491 of 2017 had been to accept an *amicus curiae* brief from a civil society organization, the Conectas Human Rights Institute. The Ministry of Human Rights and Citizenship was very concerned about the possible extension of the jurisdiction of military justice bodies.

53. **A representative of Brazil** said that the number of femicides had increased by about 5 per cent between 2021 and 2022, whereas killings without a gender component had dropped dramatically. The previous Government had reduced by 90 per cent the budget for policies to combat gender violence, but the current Government had recently adopted a new package of measures to tackle the issue. The new policies would strengthen law enforcement and patrolling services for the protection of women. There were also plans to improve the domestic violence hotline and to open 40 new women's centres to provide comprehensive assistance to victims of domestic violence. There were currently 84 shelters for victims. There were also plans to establish a comprehensive health promotion system specifically for black women in order to improve respect for their sexual and reproductive rights and help combat domestic and sexual violence.

54. **The Chair** said that the Committee was encouraged by the presentation of the report, the dialogue with the delegation and the establishment of the Ministry of Human Rights and Citizenship, which bore witness to the new Government's commitment to pursuing a new approach to human rights.

The meeting rose at 6 p.m.