



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

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Committee against Torture

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Summary record of the second part (public)* of the 1486th meeting

Held at the Palais Wilson, Geneva, on Thursday, 24 November 2016, at 11 a.m.

Chair: Mr. Modyig

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* The summary record of the first part (closed) of the meeting appears as document CAT/C/SR.1486.

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The public part of the meeting was called to order at 11 a.m.

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

Consideration of the situation in Cabo Verde in the absence of a report

1. **The Chair** (Country Rapporteur) said that consideration of the situation in Cabo Verde would take place in the absence of a report and without a delegation from the State party. As the Country Rapporteurs, he and Mr. Hani would each ask a series of questions before the floor was opened to questions from other members of the Committee.
2. The State party had ratified the Convention on 4 June 1992. It had not declared that it recognized the competence of the Committee under articles 21 and 22 of the Convention. The State party's initial report had been due for submission by 3 July 1993, but 23 years later it had still not been received.
3. In September 2014, the Committee had reminded the State party that it had yet to submit its initial report and had drawn attention to the option of a review in the absence of a report. The Committee had not received a response and, as an alternative, had offered the State party the option of accepting the simplified reporting procedure, which would have involved the preparation by the Committee of a list of issues prior to reporting. Again in the absence of a response, the Committee had notified the State party on 10 December 2015 of its intention to proceed with a review in the absence of a report, while making clear that the options of submitting an initial report or accepting the simplified reporting procedure remained open. Neither that notification nor two subsequent reminders had met with a response. On 9 November 2016, the State party had informed the Committee that a delegation would not be sent to the review scheduled for 24 and 25 November 2016.
4. The Committee regretted that its efforts to establish a dialogue with the State party had not been reciprocated. Nevertheless, it was hoped that the current review would pave the way towards a constructive dialogue at some point in the future. The State party should bear in mind that it could turn to the appropriate United Nations organs and agencies, including the Office of the High Commissioner for Human Rights (OHCHR), for technical assistance in meeting its reporting obligations under the Convention.
5. Cabo Verde was a State made up of roughly 10 islands and 8 islets off the coast of West Africa. It had gained independence from Portugal in 1975, and the first multiparty elections had been held in 1992. In April 2016, Ulisses Correia e Silva had been sworn in as Prime Minister. His party, the Movement for Democracy, had ousted the African Party for the Independence of Cape Verde for the first time in 15 years. The State party had been ranked second in Africa in the 2016 World Press Freedom Index prepared by Reporters Without Borders and had been categorized as "free" in the 2016 Freedom in the World report prepared by Freedom House.
6. Pursuant to article 12 of the Constitution, treaties duly ratified or approved took precedence, upon publication, over domestic laws. The Committee would like to have been able to review any judgments in which the Convention, or the domestic law equivalent, had been cited as the basis for a decision. The Committee recommended that the State party should ensure that the Convention, or the domestic law equivalent, formed the legal basis for court decisions in cases involving torture.
7. The Constitution prohibited torture and cruel, inhuman or degrading treatment. Although torture had been incorporated into the Criminal Code as a specific offence, the definition contained therein was not fully in line with the definition contained in article 1 of the Convention. On that basis, the Committee recommended that the exact wording of the

definition of torture contained in the Convention should be incorporated into the Criminal Code and that reference should be made to discrimination as a reason for torture.

8. Under the Criminal Code, the penalty for torture was 2 to 6 years of imprisonment, 5 to 12 years if the harm caused had been particularly severe or if the methods used had been particularly violent, or 8 to 15 years if the harm caused had resulted in an incurable serious illness or the death of the victim. The minimum sentence of 2 years of imprisonment was low enough to qualify for suspension under the Criminal Code, and the offence of torture remained subject to a statute of limitations. The Committee recommended that the Criminal Code should be amended to ensure that all convicted perpetrators of torture received sentences commensurate with the seriousness of that offence and that it was not subject to a statute of limitations.

9. The Committee would be grateful for information on any allegations of torture or ill-treatment that had been made since the entry into force of the Convention, including information on any criminal or administrative proceedings brought in response. Information on the sentences imposed on persons convicted of torture or ill-treatment, and an indication of whether or not they had been served, would also be welcome. The Committee recommended that torture should be excluded from the provision in the Criminal Code for the extinction of criminal responsibility through amnesty or pardon.

10. The State party should be commended for its ratification of the Optional Protocol in April 2016. However, with regard to measures to prevent torture and ill-treatment, a number of concerns remained. Although article 39 of the Criminal Code stipulated that due obedience to superior orders ceased if it led to the commission of an offence, it would be helpful to know whether subordinates who refused to obey superior orders were guaranteed protection from retribution.

11. As to fundamental legal safeguards, the right of detainees to medical assistance, ideally in the form of a doctor of their own choosing, seemed not to be included among the procedural safeguards provided for under the Criminal Code and the Code of Criminal Procedure. The Committee had also learned that the right of detainees to be brought before a judge within 48 hours of having been detained and the right to be informed of the reason for their detention and whether any charges had been brought against them were not always guaranteed. In that connection, information on any measures taken to guarantee fundamental legal safeguards, in particular the right to medical assistance and the right to be brought before a judge within 48 hours, would be welcome.

12. The Committee remained concerned that detainees were registered in an inconsistent and incomplete manner. The State party should develop a central registration system in which the whereabouts of all detainees was recorded and make the records of individual detainees available to their family members and legal counsel. The Committee wished to be informed of any complaints regarding the perceived inadequacy of guarantees for fundamental legal safeguards. The Committee wondered whether any measures had been taken to reduce the average length of pretrial detention as, according to World Prison Brief, pretrial detainees represented a relatively large proportion of the prison population.

13. The National Human Rights and Citizenship Commission had been set up in 2004, and there were plans to grant it greater independence. It would be helpful to know whether a time frame had been proposed for the process of improving its compliance with the Principles relating to the status of national institutions for the promotion and protection of human rights. Information on the proposed time frame for the establishment of a national preventive mechanism would also be welcome. The State party should review the funding made available to the Commission, which, according to reports, was insufficient. The Committee also wished to learn more about the monitoring visits made by the Commission to places of detention and the extent of its mandate in that regard. It would be useful to

know, for example, whether its officials were permitted to speak in private with detainees and whether they were granted access to all areas and documents during such visits. Information on the implementation of the recommendations of the Commission would also be welcome.

14. It would be helpful to know whether the access to places of detention granted to civil society organizations was subject to any conditions, the extent of their mandate to conduct monitoring visits, whether any civil society organizations had issued recommendations in connection with their visits and, if they had, what those recommendations had been.

15. The prison population had doubled since 1997, and the occupancy rate was approximately 121 per cent. The Committee wished to know why the prison population had increased, whether consideration had been given to alternatives to custodial sentences, and whether the issue was considered a priority. It would be helpful to know how prisoners filed complaints, whether they could do so in confidence, what their complaints had been, and how many complaints relating to torture or ill-treatment had been received.

16. It had been reported that the health-care services available to prisoners, in particular those with psychosocial disabilities or substance addictions, were not always adequate. In that connection, the Committee wished to know the ratio of prisoners to full-time doctors working in prisons. With regard to prisoners with psychosocial disabilities or substance addictions, information disaggregated by age, sex and the prison in which they were held would be helpful, as would an indication of how many prisoners had a psychosocial disability, a substance addiction or both. Information on the mental health services available to prisoners and the number of general health-care professionals and mental health specialists working in prisons would also be welcome.

17. It would be useful to know what measures had been put in place to ensure that prisoners with physical disabilities were able to access facilities, for example bathrooms, to meet their basic needs.

18. The Committee wondered what measures had been taken to tackle the backlog of court cases, which reportedly caused trials to be delayed by six months or longer.

19. In the light of recent allegations that several ministries had misappropriated government funds and that gaps in the legislative framework could allow some forms of corruption to go unpunished, the Committee wished to know whether the criminal justice sector had been implicated in those allegations, whether the administration of justice in cases involving torture or ill-treatment had been affected, and what measures had been taken to combat and prevent corruption.

20. It was commendable that article 38 of the Constitution prohibited the extradition of persons reliably thought to be at risk of torture, ill-treatment or the death penalty and extradition for political, ethnic or religious reasons. It would be helpful if the Committee could be provided with specific examples of extradition requests that had been denied under that article.

21. The Committee was concerned that, although article 3 of the Convention was directly applicable in the State party, the risk of being subjected to torture was not included among the grounds on which asylum was granted either in article 39 of the Constitution or in the Law on Foreigners. In addition, the State party lacked a procedure for refugee status determination and a system for recording asylum claims. The Committee was concerned that, as a result, the State party ran the risk of failing to identify victims of torture. In that connection, the Committee would appreciate information on any measures taken to ensure the proper processing of asylum claims, including information on which institutions were or would be responsible for processing them. Although asylum seekers had the right to request

a judicial review of an expulsion order, the Committee recommended that the exercise of that right should have a suspensive effect.

22. Foreign nationals who had not applied for asylum were dealt with under an administrative procedure and did not have the right to request a judicial review of an expulsion order. The Committee would have appreciated information on all cases in which foreign nationals had been removed from the State party, as well as information on whether consideration had been given to the provisions of the Convention in that regard.

23. The lack of clarity regarding the possibility of establishing universal jurisdiction over the offence of torture was regrettable. It would be helpful to know whether the State party had ever detained a person on suspicion of having committed an offence under article 4 of the Convention. With regard to extradition, he would like to know whether the courts had ordered extradition since the Convention had become law in the State party, whether the Convention had ever been invoked in extradition-related judicial decisions, whether the State party had ever detained or extradited a person suspected of having committed torture, what bilateral or multilateral extradition treaties the State party had signed with other countries, whether torture and ill-treatment were extraditable offences under those treaties, what the State party's policy was on diplomatic assurances and in what cases had the State party relied on diplomatic assurances in extradition proceedings. It would also be useful to know whether the State party had ever provided assistance to another State in cases involving offences under article 4 of the Convention, what government entity handled requests for judicial assistance, with what States Cabo Verde had mutual judicial assistance agreements and whether those agreements covered the offence of torture.

24. **Mr. Hani** (Country Rapporteur) said that, despite the State party's statements in its 2013 report to the universal periodic review regarding its reporting obligations, the Committee had yet to receive any information from Cabo Verde, which had also failed to respond to the Committee's invitation to participate in the dialogue.

25. Detailed information on the content of the human rights training provided to police officers would be appreciated. While he welcomed the training and awareness-raising efforts of the National Human Rights and Citizenship Commission, it was regrettable that training was general in nature and did not address the absolute prohibition of torture, that it was designed for recruits and was not part of in-service training, that it was not aimed at all professionals connected with custody, and that there had been only two sessions for prison guards. The lack of information on specialized training for professionals directly involved in investigating and documenting cases of torture and on the techniques used to document physical and psychological torture was also regrettable. The Committee recommended that the State party should continue developing, assessing and revising basic and in-service training programmes, in partnership with the National Human Rights and Citizenship Commission and the future national preventive mechanism, with a view to ensuring that all public servants were familiar with the Convention and the Optional Protocol. The State party should ensure that all relevant professionals received specific training on the identification and documentation of cases of torture and ill-treatment in keeping with the Istanbul Protocol.

26. Despite the fact that both the Constitution and the Criminal Code prohibited torture and ill-treatment, there were reports from a number of national and international sources that police officers were physically violent with detainees and that brutality against minors was common as a form of extrajudicial punishment, in violation of article 11 of the Convention. The Committee strongly urged the State party to take all legislative, administrative and disciplinary measures to end police brutality and extrajudicial punishment in police premises. It also urged the State party to conduct a prompt and impartial investigation into the abuse of minors by police officers, to bring those responsible to justice and to provide reparation to victims.

27. The State party should establish systematic monitoring of all provisions and practices regarding police custody and the treatment of arrested persons. In order to shift from a culture of violence to one of respect for procedure, the State party should adapt training to reflect changes in interrogation methods, bearing in mind the relevant recommendations contained in the latest thematic report of the Special Rapporteur on torture (A/71/298).

28. The Committee was concerned at the general feeling of impunity among the population, which stemmed from the sluggishness of the justice system and did little to encourage torture victims to file complaints. It would like to know: what steps the State party was taking, in law and in practice, to guarantee the right of torture victims to lodge a complaint, and to initiate a prompt and impartial investigation whenever there were reasonable grounds to believe that an act of torture had taken place; what the results of the investigations into allegations of excessive force had been; what the role of the National Police Council was in those investigations; and whether the perpetrators had served their entire sentences. The Committee would appreciate detailed statistical data on the investigations and other criminal or disciplinary action undertaken in cases of torture and ill-treatment, disaggregated by type of offence, ethnicity, age and sex.

29. There were a number of legal provisions on support and damages for victims of torture and various administrative and judicial remedies; however, the Committee lacked information on the reparation and compensation ordered by the courts and other State bodies, on the effective enjoyment of the award by victims or their families and on the rehabilitation provided to victims. The Committee drew the State party's attention to its general comment No. 3 on the implementation of article 14 and urged the State party to ensure that victims of torture and ill-treatment received comprehensive reparation, including fair compensation, and were provided with the necessary means to achieve the fullest possible rehabilitation.

30. Given the lack of information on the extent to which the inadmissibility of evidence obtained through torture was enforced in practice, the Committee recommended that the State party should adopt effective measures to implement the relevant provisions, strengthen the training in the Istanbul Protocol provided to judges, public prosecutors, forensic doctors and all health-care professionals working with detainees, and ensure that judges received adequate remuneration.

31. The Committee would like to know what steps were being taken to prohibit torture and ill-treatment in prisons and to punish those responsible, and what data were available on deaths and abuse in the context of clashes between West African migrants and law enforcement personnel. The Committee would appreciate a status update on the bill relating to the enforcement of prison and other sentences. The Committee urged the State party to ensure that the police did not use excessive violence — and especially racially motivated violence — and that no extrajudicial penalties were applied.

32. The Committee was concerned that corporal punishment continued to be used against children in the home and in school and that there were cases of persons with disabilities being physically and sexually abused in the home. Furthermore, sexual exploitation of children was prevalent and underreported, despite the establishment of a national coordination committee and the adoption of a code of ethics for the tourism industry. The Committee accordingly, recommended that the State party should take all necessary steps to ensure that children's rights — in particular, the ban on corporal punishment — were fully upheld.

33. Recalling that the State party had recognized the competence of other treaty bodies to receive individual communications, the Committee urged the State party to make the declaration under article 22 of the Convention.

34. **Mr. Bruni** said that it would be useful to know what measures had been adopted to reduce prison overcrowding, improve detention conditions, and put an end to the illicit practices made possible by the significant flow of visitors in and out of detention facilities.

35. He had read a number of press articles regarding the incident involving Carlos Graça, the former governor of São Martinho prison, who had been arrested on allegations of torture in 2006. Graça had been accused of committing such offences, together with several prison officers, as a reprisal for the protest by prisoners against the cancellation of family visits for Christmas. Graça had been released pending trial, after which he had fled to the United States where he had been arrested and sentenced to 3 years' imprisonment for falsification of documents and perjury. In 2010, Graça had been extradited to Cabo Verde. The Committee would be interested to find out whether Graça had been tried on charges of torture following his return to Cabo Verde and, if so, what had been the outcome of the trial.

36. **Ms. Racu** said that she would appreciate an update on the status of the draft action plan on human rights, particularly as to whether it contained provisions on the rights of prisoners and on the prevention of torture and ill-treatment.

37. Despite the implementation of programmes aiming to prevent the practice, child labour remained widespread, especially in rural areas. Children who engaged in street work, such as begging and the selling of drugs, were exposed to a high risk of human trafficking. Although the State party had introduced a number of laws to prohibit child labour, the enforcement of those laws was weak. She asked what steps the Government intended to take in order to eliminate the worst forms of child labour.

38. **Ms. Belmir** said that several bodies, including the Human Rights Committee, had studied the functioning of the judiciary within the State party and had found that the judicial system was slow and overburdened. Such problems could be attributed to the fact that the judiciary was not independent and that judges were underpaid and therefore more susceptible to corruption. The Committee, despite its repeated requests, had not received sufficient information on the status of judges, such as how much they were paid, how they were appointed, the duration of their mandate, and the procedure for promotion or disciplinary action. During its universal periodic review (UPR), the State party had been recommended to introduce judicial reforms in order to accelerate the administration of justice by establishing new courts, increasing the number of courts that handled minor offences and granting parole to persons convicted of minor offences who did not pose a threat to society. The State party had, however, not accepted the recommendation.

39. Training to prevent police abuse, was not adequate and abuse was increasing. The Committee would welcome a clear response to the recommendation made during the UPR to ensure that the behaviour of police officers and detention conditions for prisoners fully complied with international human rights standards.

40. On the issue of children, the State party needed to address the problem of poverty and discrimination in order to prevent the ill-treatment of children. They were often subjected to sexual violence in schools while street children were often employed by gangs and exposed to drug use. Children who were in conflict with the law were not always treated in accordance with the Convention on the Rights of the Child. Detention was used too readily for young persons over the age of 16, who were often detained with adults rather than being held in institutions geared to their specific needs. All in all, the State party was afflicted by corruption of the judicial system and succumbed too often to pressure exerted by persons in positions of power, thereby compromising the rule of law.

41. **Ms. Gaer** said that she would like to know whether the State party intended to accept articles 21 and 22 of the Convention; whether it planned to designate a national preventive mechanism under the Optional Protocol to the Convention and, if so, when; and whether a mechanism ensuring the regular production of reports for consideration by

international bodies had been established. Given that the Committee had failed to receive a report from the State party, the reporting mechanism was presumably not functioning and, consequently, she asked how and within what time frame the State party intended to tackle its reporting failures.

42. Concerning article 5 of the Convention, the Committee would like to be informed whether acts of torture were considered universal offences irrespective of where such acts occurred and the nationality of the victim. She requested information on cases in which suspects had been apprehended, judgments handed down and individuals taken into custody under article 5 of the Convention.

43. Referring to article 2 of the Convention, she invited the State party to outline the measures it was implementing to protect the rights of persons made vulnerable by discrimination or marginalization. For example, she noted the introduction of two national action plans to combat gender-based violence and wondered whether any lessons had been learned or concrete results achieved as a result of their implementation. She commended the creation of Rede Sol, a network connecting civil society organizations, the police, hospitals and other public sector services in an effort to protect and support victims of gender-based violence, and requested further information on the results the network had achieved. She would also appreciate data on registered complaints relating to gender-based violence, and the investigation and prosecution of such cases. The Committee was also interested in learning whether any data were available on gender-based violence and sexual violence in prisons, and whether there had been any prosecutions in that regard.

44. With reference to the issue of rape and domestic violence, she asked whether data could be provided on the incidence, investigations and prosecutions of such cases. In 2015, 122 cases of gender-based violence had been reported. It would be useful to find out whether protection orders had been made available to the victims and, if so, how many.

45. With regard to children, she commended the initiatives in place to assist and protect their rights, such as the Institute of the Child and Adolescent. Statistics on the number of individuals using such services and information on how the services operated would be welcome. The Committee would also like to know: whether persons who subjected minors to sexual exploitation or sex trafficking were punished under the law or whether it was the minors themselves who were punished; whether victim assistance programmes were in place; and whether existing legislation prohibited all forms of trafficking.

46. The Committee remained concerned about violence and other forms of abuse inflicted on lesbian, gay, bisexual, transgender and intersex persons. She asked whether data could be provided on such cases, whether such forms of abuse were monitored, and whether any complaints, investigations and prosecutions had taken place in that regard.

47. **The Chair** said that he would like to remind the State party of the concern raised by the Human Rights Committee regarding the lack of separation between young offenders and adults in places of detention and between pretrial and sentenced prisoners. Young offenders needed to be separated from adult offenders in order to prevent abuse, while pretrial prisoners should be kept apart from sentenced prisoners in order to respect the presumption of innocence. He wished to know whether the State party had managed to separate the different categories of prisoners in the period since the issue had been raised by the Human Rights Committee.

48. **Mr. Hani** said that he would welcome information on whether the State party had heeded the recommendation made by the Human Rights Committee to take concrete measures in order to combat the increase in juvenile delinquency. The recommendation had proposed the use of non-repressive measures in an attempt to tackle the root causes of that increase.

49. He reminded the State party of its obligations to report to international and regional bodies and of its intention to establish a reporting mechanism to facilitate that process. Cabo Verde received technical assistance from OHCHR but he questioned the value of such assistance, given that it had not improved reporting by the State party. He urged the Government to send its comments on the questions raised by the Committee within the established time frame.

The meeting rose at 12.45 p.m.