



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

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COMMITTEE AGAINST TORTURE

Fortieth session

SUMMARY RECORD (PARTIAL)* OF THE 821st MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 6 May 2008, at 3 p.m.

Chairperson: Mr. GROSSMAN

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of Costa Rica (continued) (CAT/C/CRI/2; CAT/C/CRI/Q/2, Add.1 and Add.2; HRI/CORE/CRI/2006)

1. At the invitation of the Chairperson, the members of the delegation of Costa Rica resumed places at the Committee table.
2. Ms. THOMPSON (Costa Rica) said that while the definition of torture in article 123 bis of the Criminal Code did not make reference to abetment or acquiescence, those two elements appeared elsewhere in the Code and were therefore taken into consideration in conjunction with that definition. There had been only one case to date in which that article had been invoked, owing to the fact that it was still relatively new. The 2001 amendment that had introduced the crime of torture was becoming more widely known, as was the possibility of invoking the Convention directly. Indeed, the Constitution stated that international instruments took precedence over domestic legislation and there had been several cases in which provisions of the Convention against Torture had been invoked before domestic courts. The Standard Minimum Rules for the Treatment of Prisoners and other United Nations declarations and agreements that provided for more extensive rights than those enshrined in domestic law had also been successfully invoked in domestic courts.
3. The Attorney General's Office was responsible for victim protection. That included measures such as relocating the victim and providing psychological care. A draft law on victim and witness protection sought to enhance the current level of protection available. While no specific legislation provided for compensation in cases of torture, such cases were included in the provisions covering State responsibility for unlawful acts or cases of objective responsibility. Cases of torture, violation of physical integrity or of other human rights were handled by the constitutional channels, and involved invoking habeas corpus or *amparo*. The State could be convicted directly and, where relevant, the actual perpetrators of a violation could be required to pay compensation. While it was unusual, that system allowed for flexibility and prompt resolution of such cases. A victim of torture or other cruel, inhuman or degrading treatment or punishment who was unable to obtain compensation through domestic remedies could appeal to the Inter-American Court of Human Rights. The rulings of that Court were binding on the State of Costa Rica.
4. Article 43 of the draft law on reform of the Criminal Code provided for alternative punishments for adults. They included fines, weekend detention, community service, house arrest and restricted residence.
5. In its current form, article 181 of the Code of Criminal Procedure provided for the admissibility of evidence obtained under torture if that evidence was to the advantage of the accused. There had been much debate about that provision, as detailed in the written reply to question 36 of the list of issues. However, since it had been decided that the provision might encourage ill-treatment or torture, the article would be amended to exclude that provision.

6. The principle of non-refoulement, as enshrined in the Convention, was binding on all Costa Rican authorities without exception. Under article 9 of the Law on Extradition, a person could not be sent back to a country that imposed the death penalty.
7. According to article 37 of the Constitution, the police had to have proof beyond reasonable doubt that a person had committed an offence before they could make an arrest. All detainees appeared before a judge within 24 hours of their arrest, and had access to legal counsel. Persons in pretrial detention could be held incommunicado for a maximum of 10 days, according to strict regulations. Incommunicado detention was rare and could be invoked only once a trial was under way. All detainees held incommunicado retained access to legal counsel. Incommunicado detention was ordered by a judge and used only when there was a danger that a case would be compromised if the detainee was free to communicate with others.
8. Under articles 57 and 58 of the Criminal Code, civil servants could be removed from office for between 6 months and 12 years. There were no recorded cases of a life suspension from service.
9. Mr. GUILLERMET (Costa Rica) said that his Government had in February 2002 recognized the Committee's competence to receive and consider communications, as provided for in articles 21 and 22 of the Convention. The reference to the contrary in paragraph 11 of the second periodic report was an error.
10. The draft law on migration was currently under examination and should be ready for adoption in summer 2008. The process had been delayed owing to the volume of work generated by the referendum on and signing of the Central American Free Trade Agreement with the United States of America.
11. The migration detention centre that had been in operation when the second periodic report was submitted had subsequently been closed. The new holding centre for foreigners in transit had opened in August 2006, and provided better conditions for migrants. The authorities recognized that further improvements were necessary. Staff of the Office of the Ombudsman conducted regular visits to the centre to monitor conditions. No complaints of torture or ill-treatment in the centre had been received to date. Efforts were being made to secure funds from the Central American Bank for Economic Integration in order to improve conditions in regional temporary holding centres and at border posts.
12. The Office of the Ombudsman had been informed in the past of cases of abuse by border guards and the Public Prosecutor's Office had instituted the appropriate procedures. Training of law enforcement officials in the area of human rights education, including the rights of migrants and children, had been strengthened. The national body for the protection of children and adolescents had been informed of cases of underage migrants seeking asylum, whether accompanied by a guardian or alone, and the minors in question had been given shelter while the administrative procedures were being carried out. The Security Centre for Aliens in Transit provided accommodation for families so that they would not be broken up. Unaccompanied minors were held in the custody of the National Children's Trust (PANI), which provided shelter for adolescents. Every effort was made to uphold the rights of migrant children and

adolescents. Although the Government did not keep statistical data on asylum-seekers broken down by age, the proportion of minors within the refugee population seeking asylum was estimated at 23 per cent.

13. The Government was working closely with the International Organization for Migration (IOM) and the Office of the United Nations High Commissioner for Refugees (UNHCR) to ensure that its legislation concerning trafficking in persons was consistent with international law. Illegal trafficking in persons was punishable under national law by imprisonment of two to six years, or three times that term when the perpetrator was a public official or when minors were involved in such acts. Draft legislation was being considered which would raise the penalty for such an offence to 10 to 16 years' imprisonment. The Government had also drafted a strategic action plan to combat trafficking in migrants, including prevention, treatment and the protection of rights. A national coalition, including international organizations such as the IOM, International Labour Organization and UNHCR and civil society, was also actively engaged in combating the illicit trafficking in migrants.

14. It should be emphasized that the National Police Academy included human rights education in its curriculum. Officers were trained to respect national and international law concerning torture and other cruel, inhuman or degrading treatment. National law stipulated that under no circumstances could there be any justification or impunity for such treatment. In addition, the Government was making every effort to ensure compliance with the Istanbul Protocol. The Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had also been incorporated in forensic training.

15. Ms. THOMPSON (Costa Rica), referring to the question about women prisoners, said that Costa Rica had ratified the Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women and had acceded to the Beijing Declaration and Platform for Action. The Government had enacted legislation to combat sexual harassment, domestic violence and the sexual exploitation of minors and had incorporated a gender-based approach which had been previously lacking in its law. A national mechanism had also been established to combat sexual violence against children and adolescents. Concerning the question raised about data broken down by sex, age, ethnicity and other categories, although there was no prohibition against gathering such disaggregated information, the national agency in charge did not normally do so.

16. Mr. GUILLERMET (Costa Rica), referring to the question raised about the request for asylum of the Colombian national Mario Uribe, said that in accordance with the Convention on Territorial Asylum, asylum could not be granted if the asylum-seeker had committed an offence under ordinary law. After Mr. Uribe had stated his intention to seek asylum, the Government had received information from the Colombian Prosecutor's Office clarifying the situation, on the basis of which he had been taken into custody by the Colombian authorities. In addition, no formal application for asylum had been filed by him.

17. Ms. THOMPSON (Costa Rica) said that counter-terrorism legislation was currently being reviewed in Costa Rica to ensure that no provisions encroached on human rights. The Government had been guided by that principle in its international activities as well, particularly

as a member of the Security Council. Concerning the question raised about corporal punishment, it was prohibited in schools by law. Under the Family Code, parents had the right to administer moderate corporal punishment to their children. Nevertheless, minors were guaranteed the right to physical integrity, dignity and honour. Any punishment must be carried out in accordance with the principles of the rights of the child, and a bill on the abolition of physical punishment was currently under consideration.

18. The question concerning the purported detention of migrants 50 kilometres outside the border arose from a misunderstanding. Only persons who had entered the territory without going through the necessary checkpoints within 50 kilometres of the border inside the country could be legally expelled. In any case, the possibility that those persons had been tortured or mistreated would be taken into account.

19. The provisions in the Criminal Code referring to sexual minorities and sodomy had been eliminated. In addition, the law against domestic violence applied to gay and lesbian couples and did not discriminate on the basis of gender.

20. Ms. SVEAAS (Alternate Country Rapporteur), recalling the mention by the delegation of two cases in which the Government had been considered responsible for the ill-treatment of persons under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, enquired whether the perpetrators themselves had also been held accountable, particularly in the case in which there had been physical attacks in a maximum security centre. With respect to the reform of article 181 of the Code of Criminal Procedure, she suggested that article 15 of the Convention, according to which any statement which was established to have been made as a result of torture must not be invoked as evidence in any proceedings, should be incorporated into the legislation. She drew particular attention to the exception for statements by persons accused of torture which could be used as evidence. More information was needed on the increase in the number of people in situations of pre-detention. It was essential that persons seeking asylum should not only be afforded the necessary applications but also adequate care and treatment.

21. Mr. GALLEGOS CHIRIBOGA asked for an update on the status of the draft legislation on the protection of victims and witnesses and the amendment to the Criminal Code concerning alternative sentences. He also asked the delegation to specify the maximum duration of pretrial detention. A clear distinction should be drawn between different types of migratory flows, since different concepts were involved, with differing consequences for persons who arrived in Costa Rica as undocumented migrants, as opposed to persons who were victims of human trafficking for the purpose of exploitation. He was interested to know whether there were protocols for the identification of victims of trafficking, and what strides had been made in providing refuge, counselling or other forms of support. He also asked what steps had been taken to make marital rape a punishable offence, separate and apart from other forms of domestic violence.

22. With respect to the conditions of detention, he asked the delegation to elaborate on the extent to which women in prisons and detention centres had access to health care; and how the Government ensured the effective treatment and processing of migrants at the Costa Rican border, in order to avoid a recurrence of situations in which legitimate asylum-seekers were

mistaken for undocumented migrants. Furthermore, in response to reports on cases of human rights violations directed at minorities, particularly gays and lesbians, he was interested to know what measures had been adopted to improve security in places of detention.

23. Mr. MARINO MENENDEZ asked whether Costa Rica was considering ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and what national mechanisms had been established for the implementation of the Optional Protocol. He asked for further clarification on the issue of non-refoulement, since he had understood from the delegation's written replies that no recourse was available to persons who were denied asylum, in which case he would be concerned about the fate of persons who faced expulsion and were put at risk of being tortured.

24. Ms. BELMIR, in reaction to the claim that there was no torture in Costa Rica, and that complaints to the contrary had been unsubstantiated, drew attention to the summary record of a meeting of the Human Rights Committee (document CCPR/C/SR.2492), in which Costa Rica had made statements to the effect that the non-existence of torture might be explained by the possibility that cases of torture might have been considered "abuse of authority", and that perhaps it would take some time before the legal definition evolved to the point where it would encompass such types of abuse as torture. She was greatly concerned that, in paragraph 33 of the above-mentioned summary record, it was stated that Costa Rica had no intention of reducing the maximum period of incommunicado detention, and wondered why that duration was considered appropriate. She asked the delegation to explain their concept of a minor, and at what age a minor was regarded as having reached the age of majority.

25. Mr. GAYE asked about the status of Costa Rican legislation with regard to attempts to commit torture, and the obligation of the State party to criminalize torture, under article 4 of the Convention.

26. Ms. THOMPSON (Costa Rica) said that the rise in the number of cases of pretrial detention was directly linked to the increase in the incidence of violence, which had led to a surge in the number of arrests and crimes brought before the courts. Under Costa Rican law, the maximum period of pretrial detention was 12 months, but that was not the case for incommunicado detention. There had been a backlog of draft legislation, yet the Government remained committed to expediting the adoption of provisions for the protection of victims and witnesses.

27. She assured the Committee that the legislative obstacle to criminalizing the offence of marital rape had been removed from the Criminal Code, and that her Government anticipated accession to the Convention on the Protection of the Rights of All Migrant Workers. However, migrants in Costa Rica already enjoyed many of the rights and entitlements granted by that Convention, which could indeed explain why Costa Rica was an attractive destination for migrants. Furthermore, Costa Rica had been among the first countries to establish mechanisms to monitor the implementation of the Optional Protocol to the Convention against Torture.

28. In outlining the distinction between the concepts of asylum and refugee status, the specific remedies available in each case, and the legal principles used for the granting of either status, she pointed out that asylum was largely determined as a political act granted under regional

instruments or the executive branch of States. Refugee status had an international connotation, under the 1951 Convention, and was granted as an administrative act and remedy by States, according to certain criteria.

29. Her Government's claim that Costa Rica had no cases of torture did not represent a denial by the State party, but was rather a reflection of the facts as they stood before the courts. There were no plans to reduce the period of incommunicado detention, which was an exceptional measure, but defendants were protected by certain safeguards. With regard to the detention of minors, she said that since 1996, legislative amendments had reformed the Costa Rican system to provide guardianship, whereby minors could be placed in protective care as a provisional and exceptional measure, and could be subject to sanctions only following due process with guarantees and safeguards provided under the criminal justice system. Children under the age of 12 could not be held responsible for breaching the law. She took the opportunity to describe the various alternative sanctions applicable to minors in two categories depending on their age group. Children were not imprisoned under any circumstances.

30. Attempts to commit torture were indeed criminalized, and punishable at the same level as the act of torture itself, at the discretion of the presiding judge. Article 73 of the Criminal Code provided that such attempts should be considered the same as instigation and complicity.

31. Mr. GUILLERMET (Costa Rica), thanking the Committee for its encouragement and the opportunity to analyse its human rights policy, reiterated Costa Rica's commitment to participate in the work of the treaty monitoring bodies in a spirit of frank and constructive dialogue.

32. The members of the delegation of Costa Rica withdrew.

The discussion covered in the summary record ended at 5.16 p.m.