



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

Distr.: General

28 April 2017

Original: English

Committee against Torture Sixtieth session

Summary record of the 1517th meeting*

Held at the Palais Wilson, Geneva, on Wednesday, 26 April 2017, at 10 a.m.

Chair: Mr. Modvig

Contents

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

Fifth and sixth periodic reports of Argentina

* No summary record was issued for the 1516th meeting.

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

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

Fifth and sixth periodic reports of Argentina (CAT/C/ARG/5-6 and CAT/C/ARG/Q/5-6)

1. *At the invitation of the Chair, the delegation of Argentina took places at the Committee table.*
2. **Mr. Avruj** (Argentina) said that the work of his Government was rooted in the fundamental belief that a problem must first be acknowledged before it could be addressed. Argentina was fully engaged with its international human rights obligations and would shortly be receiving a visit from the Working Group on Arbitrary Detention. Within the Federal Human Rights Council, a team had been set up to ensure the proper implementation of the Optional Protocol to the Convention.
3. The current administration had created a number of new offices within the National Secretariat for Human Rights and Cultural Pluralism, including the National Office for Policies to Address Institutional Violence. Within the new offices, victim-oriented human rights training played a vital role. In February 2017, the Government had established a commission to reform and update the Criminal Code. The commission was working in coordination with the Justice 2020 programme to ensure that the views of society were represented.
4. The Bicameral Committee on the Office of the Ombudsman had recently taken steps towards appointing the Ombudsman and had established a timeline for the composition of the National Committee for the Prevention of Torture. While the structure of the National System for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been established, progress in defining the legal status of the local prevention mechanisms had been uneven, with some provinces further advanced in the process than others.
5. The Federal Justice Council had a mandate to ensure that policies on judicial and prison matters remained coherent across the different levels of government. In March 2017, the Federal Prisons Council had launched a campaign to promote the Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules). It had also begun to address the comprehensive reform of the federal prison system and the extension of the support programme for persons under electronic surveillance.
6. In January 2016, the Government had declared an administrative emergency in the National Statistics System due to the shortage of reliable data. In March 2017, representatives from public prosecution services throughout the country had exchanged views on how best to develop a transparent statistics system on judicial matters which would facilitate the design of policies based on empirical data.
7. The Government was determined to address issues that had been neglected for many years and stood ready to analyse the challenges it faced in ensuring effective protection for human rights.
8. **Ms. Varela** (Argentina) said that Argentina had been one of the first countries to actively promote the entry into force of the Optional Protocol to the Convention.
9. While the process of appointing the members of the National Committee for the Prevention of Torture had been stalled for a number of years, in 2016 the Bicameral Committee on the Office of the Ombudsman had begun to address the matter, and the work and finances of the existing monitoring bodies had been evaluated. The National Committee for the Prevention of Torture was comprised of 13 members — the Prison System Ombudsman, 6 parliamentary representatives, 2 representatives from the local preventive mechanisms, 3 representatives from NGOs and a representative of the National Secretariat for Human Rights and Cultural Pluralism.
10. In March 2017, the Bicameral Committee had begun to receive applications for the three seats allocated to NGOs. Once the applications had been processed, public hearings would be held in June 2017 and would also include the candidates for the seats reserved for representatives of local preventive mechanisms. The selected candidates would then be

confirmed by both congressional chambers and it was hoped that the Committee would take up its functions by the end of July 2017. The Government was determined to ensure that the Committee was up and running as soon as possible, so as to be able to fulfil its international obligations.

11. Another task of the Bicameral Committee was to appoint the Ombudsman. A total of 12 applications had been received for that position and efforts were under way to ensure that the required two-thirds majority vote would be achievable in both chambers. The Bicameral Committee intended to hold a meeting with the Association for the Prevention of Torture and national civil society organizations in May 2017 for an exchange of views.

12. **Mr. Heller Rouassant** (Country Rapporteur) said that he welcomed the progress made in the State party in the areas of memory and reparations in connection with offences committed during the period of State terrorism.

13. He would be interested to hear about the reasoning behind the draft amendments to the Criminal Code described in paragraph 4 of the State party's report and to learn which stage of approval the draft had reached. It would be helpful to receive an account of any plans to adopt a specific law prohibiting torture and to revise the definition of torture to incorporate all the elements listed in article 1 of the Convention.

14. The Committee would like to hear the delegation's comments in connection with the excessive delay in the entry into force of the new Code of Criminal Procedure, which had been scheduled for March 2016. It would be useful to learn how the new Code would be implemented once it did enter into force. He would be grateful for an update on the situation regarding the appointment of the Ombudsman and for details of how the financial independence of the Office of the Ombudsman would be ensured.

15. In connection with the information provided in paragraph 24 of the State party's report, he would like to receive clarification of which authority was responsible for coordinating the various bodies involved in examining complaints of torture. Details would be welcome on the number of complaints of torture received by the Office of the Ombudsman and on the activities the Office had undertaken. It was unclear what the situation would be if a two-thirds majority vote was not achieved in both chambers in connection with the appointment of the new Ombudsman.

16. He said that he would welcome information on the rates at which applications for refugee status had been accepted by the State party since 2014, when they had appeared to be falling. He wished to know the reasons for the denials of entry at crossing points along the country's borders, including of families, that had been highlighted by the State party's Public Defence Service. In addition, the delegation should provide more detailed information about the outcome of the extradition requests received by the State party. In that connection, he wondered what procedure was followed in cases where requesting States provided assurances that the person whose extradition was sought would not be subjected to acts prohibited under the Convention.

17. In view of what appeared to be the increasing stigmatization of immigrants, who were associated with crime in the text of Emergency Decree No. 70/2017, which had amended the Migration Act, it would be interesting to have specific information on the percentage of foreign nationals in the State party's prisons and on the reasons for their imprisonment. In providing that information, the delegation should address reports that the amendments to the Act constituted a breach of the State party's international obligations. The delegation should also indicate what measures had been taken, especially since the adoption of the recent emergency decree, to ensure due process for persons subject to expulsion proceedings, whether plans had been made to amend the decree and what steps had been taken to prevent a recurrence of the ill-treatment to which migrants had reportedly been subjected by personnel from the State party's law enforcement agencies.

18. The planned structure of the committee that was to be assigned responsibility for coordinating the activities of the entities comprising the National System for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment did not appear to be in conformity with article 18 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, not least because the committee would include a representative of the executive branch of the State party's Government and six Members of Congress. He wondered what plans were being

made to ensure that three representatives of civil society on the coordinating committee participated fully in the committee's work and that civil society was involved in all efforts to set up the national preventive mechanism. It would be interesting to know on what criteria the Members of Congress who were to serve on the coordinating committee would be chosen and, more broadly, why the full implementation of the National System for the Prevention of Torture, which also involved the establishment of provincial preventive mechanism, was taking so long. He asked why the federal Government had not intervened in the case of the preventive mechanism of Mendoza Province, which had been in existence for five years but had never been assigned a budget.

19. Turning to the issue of conditions of detention, he said that he wished to know on what standards the State party was relying for its assertion (CAT/C/ARG/5-6, para. 153), which was at odds with other information available to the Committee, that there was no overcrowding in the Argentine Federal Prison System. The Committee would welcome a comment on reports that cross-dressers and transgender persons were frequently harassed and detained by law enforcement officials in the Provinces of Tucumán and Buenos Aires and the city of Buenos Aires. Why, in the State party's view, had its incarceration rates risen so spectacularly in recent years?

20. He said that the major problems in the State party's prisons, in addition to overcrowding, were the insufficient separation of pretrial detainees and convicted prisoners, the deplorable material conditions and a shortage of basic services, in particular health care, the frequent use of solitary confinement and the use of torture as a method of discipline. In the latter connection, he wished to know what plans the State party had made to prevent torture and other violent and sometimes deadly incidents in its prisons, many of which had been amply documented by the Office of the Ombudsman for the Prison System. It would be interesting to have information about the outcome of investigations into such incidents as a recent brawl in a police station in Pergamino that had left seven detainees dead. In addition, he wondered what plans had been made to lower the rather high percentage of deaths in custody that were caused by such problems as inadequate health care, self-medication and drug abuse.

21. He wished to know why the State party had disregarded a recommendation, made by the Committee in 1997 and again in 2004, that it should organize a national register of information from domestic courts on cases of torture and ill-treatment. More broadly, the efforts made to collect data were insufficient. It would nonetheless be interesting to know how many reports of torture there had been in recent years, how many investigations of such reports had been conducted and how many convictions had been secured. In general, the severe problems besetting the country's prisons highlighted the need for the Office of the Ombudsman for the Prison System to receive the support it needed to fulfil its mandate. A comment on police violence outside the prison system, which often involved the routine harassment, or worse, of poor youths in the State party's major cities, would also be welcome.

22. Some impending developments in the State party were troubling. For example, under proposed amendments to Act No. 24.660, the Sentence Enforcement Act, a number of alternatives to imprisonment would be eliminated. It was likely that such amendments would worsen the overcrowding of the country's prisons. They would ultimately make a mockery of the notion, enshrined in the Constitution, that serving a sentence was a form of rehabilitation.

23. **Mr. Zhang** (Country Rapporteur) asked, with regard to training for public authorities, whether the training provided for law enforcement personnel and penitentiary staff was compulsory and carried out on a regular basis. He asked for comments on concerns about the lack of vocational training provided for police recruits during the transition to democracy and the excessive police presence in certain areas. He wondered whether and how often immigration officers received training on the Convention, and whether training was provided to judicial officials and prosecutors on the absolute prohibition of torture and other provisions of the Convention with a view to aligning judicial decisions with international standards. He asked, with reference to question 21 (c) and (d) of the list of issues, whether a methodology had been developed to evaluate the implementation of training programmes for law enforcement personnel.

24. Turning to the issues of forensic examinations, in light of the 2013 report of the Subcommittee on Prevention (CAT/OP/ARG/1) recommending that the State party should

establish a system of independent examinations, in conformity with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), whereby qualified forensic physicians carried out examinations whenever there were signs of torture, he asked what training the medical examiners of the police and security forces received to enable them to identify signs of torture and ill-treatment. He also asked whether the Subcommittee's recommendations that medical services should be provided directly by the Ministry of Health at both the federal and provincial levels and that medical examinations, including examinations on admission to prison, should strictly observe the right to privacy and confidentiality, had been implemented.

25. With regard to the national preventive mechanism, he asked why the Ombudsman for the Prison System, in its capacity as the national preventive mechanism, was not authorized to communicate with detainees under federal charges in certain prisons or to access prisoners' administrative and judicial files, despite the granting of those powers to the mechanism. He asked why the Chief Public Defender's Office reportedly faced obstacles preventing access to provincial prisons in Cordoba. He would like updated information on the number of complaints of sexual violence against detainees by prison staff during the reporting period and for 2016, and on the investigations and outcomes of those cases. Noting that the National Register of Cases of Torture or Ill-Treatment did not contain information from domestic courts on cases of torture and ill-treatment in the State party, he asked whether that information was contained in another register. He emphasized that the Committee had recommended the establishment of such a register in 2004 (CAT/C/CR/33/1).

26. In view of reports of prison overcrowding, he asked whether the delegation could provide updated information on the number of persons in provincial prisons, disaggregated by province, particularly Buenos Aires, Mendoza and Chaco, and the number of persons in federal prisons, as well as the capacities of those prisons. He also asked on which criteria prison capacity statistics were based. He invited the delegation to comment on reports of harsh prison conditions, including inadequate sanitation facilities and poor building conditions.

27. Turning to criminal proceedings pertaining to cases of torture, he would appreciate data on the number of complaints of alleged torture and ill-treatment, and the investigations, prosecutions and convictions relating to such complaints. He expressed concern at reports indicating that torture and ill-treatment had become routine practice among prison staff, that inter-prisoner violence was to some extent encouraged by prison officials, who delegated leaders among the detainees. Other disturbing reports mentioned the extremely broad powers granted to the police, which had led to humiliating body searches, the arbitrary and systematic transfer of detainees away from their families as a form of punishment, and excessive use of force by the police, even attempted murder. In 2015, there had been around 800 acts of physical aggression recorded in the National Register of Cases of Torture or Ill-Treatment. The Programme Against Institutional Violence had received around 3,700 complaints of ill-treatment since 2011, some 2,000 of which related to detention, searches or solitary confinement. The perpetrators of institutional violence appeared to act with impunity; victims were not afforded protection and cases could be closed for various reasons, including victims' failure to maintain their allegations for fear of reprisals, and judicial decisions deeming that the use of force did not qualify as torture. He would like the delegation to comment on such reports of impunity.

28. With regard to redress for victims, information would be appreciated on compensation measures ordered by the courts and actually provided to victims of torture or their families since the consideration of the previous periodic report, and on whether a victim rehabilitation programme had been developed. He asked what the status was of the protocol for dealing with victims who were witnesses in legal proceedings. He asked how many complaints had been submitted to the National Institute to Combat Discrimination, Xenophobia and Racism in 2015 and 2016 and whether the victims had been compensated. He would like further explanation on the laws in Catamarca, Mendoza, Santa Fe, La Pampa and Neuquén that stated that the facts of a case could be proven by any form of evidence, apart from the exceptions established by law. He would like details of those exceptions.

29. Turning to the issue of illegal abortions, the Human Rights Committee, in its 2016 recommendations (CCPR/C/ARG/CO/5) had recommended that the State party should

review its legislation in that area and review the Belén case in the light of relevant international standards, with a view to that detainee's prompt release. The Special Rapporteur on torture and the Human Rights Committee concurred that the practice of obtaining confessions from women who required urgent medical assistance following an abortion, either induced or spontaneous, could constitute torture or other ill-treatment. He asked the delegation to respond to those concerns.

30. While the State party had provided information regarding the limited use of solitary confinement in accordance with the law, the Committee had received information from other sources concerning the use of forms of isolation that violated existing regulations, such as the alternated release of groups of detainees from their cells for up to three hours. He would like to know whether that practice was regulated by law, and what the grounds were for its use and for the three-hour time limit.

31. **Mr. Touzé** said that the practice in a number of detention facilities of placing detainees in solitary confinement for up to 23 hours was highly questionable, as were the reasons invoked by prison staff for such isolation, such as security considerations, lack of space and temporary lack of appropriate cells. Such practices tended to be arbitrary and devoid of any legal basis. Surveillance officials could bring pressure to bear on isolated detainees, who also found it difficult to exercise their right to appeal against the order of solitary confinement. The authorities had failed to provide the requisite safeguards despite individual and collective action.

32. The Committee regarded solitary confinement as a violation of detainees' rights, that could lead to severe distress. It was admissible only when accompanied by adequate safeguards. He asked whether solitary confinement could be ordered by prison officers or only by prison wardens, whether the grounds for such confinement were clearly specified in the regulations, and whether the grounds and proportionality could be reviewed and dismissed. As solitary confinement should always be a measure of last resort, he asked whether any alternative measures were envisaged. He also wished to know whether detainees in solitary confinement had access to a lawyer and benefited from visiting rights, and whether different regimes were applicable to men, women and juveniles.

33. **Mr. Bruni** noted that, according to the report, the Convention had been granted constitutional status. He therefore assumed that it could be invoked in court as a legal basis for declaring that sentences and confessions obtained through torture were null and void.

34. Contracts had been awarded for the construction of two prisons for men and one prison for women in the city of Rosario. According to the report, both projects were to be completed by late 2015. He asked whether they had in fact been completed and, if so, whether they were capable, as planned, of accommodating 90 per cent of the detainees held in police stations. Although the report, which had been prepared in 2015, stated that there was no overcrowding in the federal prison system, the Human Rights Committee had expressed concern in its concluding observations adopted in July 2016 (CCPR/C/ARG/CO/5) about high levels of overcrowding, which gave rise to police stations being used as permanent places of detention. It had recommended that the State party should adopt effective measures to improve material conditions in its prisons and to reduce overcrowding.

35. The report referred to legal measures and judicial decisions whereby requests for extradition were refused when there were substantial grounds to believe that the person to be extradited was at risk of being subjected to torture or ill-treatment. He asked whether the same procedures were applicable in cases of expulsion or refoulement, and whether they were applicable to persons who were deemed to pose a threat to national security and public order. He stressed in that connection that the principle of non-refoulement was absolute. Although the State party trusted diplomatic assurances regarding the humane treatment of a person to be extradited, there was a case pending before the Supreme Court in which the court of first instance had found that the assurances provided by a State were insufficient and had therefore rejected the request for extradition. He wished to know whether a final decision had been adopted by the Supreme Court and asked which State had provided inadequate assurances.

36. **Ms. Gaer** enquired about the reasons for the State party's failure to submit a periodic report to the Committee between 2004 and 2015. She requested assurances that such a delay would not recur.

37. The Committee had been informed that the key reason for prison overcrowding was increased incarceration and the larger number of pretrial detainees. She invited the State party to comment on that information. The report contained a table showing the number of deaths among persons deprived of their liberty. It stated that all deaths had been investigated but failed to present the results. In 2009 5 criminal cases had been opened into deaths in the Boulogne Sur Mer complex, and administrative proceedings had been launched in 39 cases for misconduct by prison staff. She enquired about the outcome of the cases and requested similar statistics for subsequent years.

38. A mixed-sex residential correctional facility had been established in 2012 for young people in the 14 to 21 age group in order to create a setting that replicated community and social life. The Committee adopted a strict approach to the segregation of male and female detainees. She enquired about the results of the initiative and asked what measures were taken to protect women and girls from inter-prisoner or staff abuse.

39. She commended the information about toll-free numbers and hotlines and the number of complaints received. She enquired about the action taken on the complaints and asked whether a monitoring mechanism had been established. She noted that femicide had been incorporated into the Criminal Code and that a unit had been established for the registration, classification and follow-up of femicides and homicides in which gender was an aggravating circumstance. She asked how many prosecutions had resulted from such calls and complaints. According to the report, mobile squads had been established to assist victims of domestic and sexual violence, and there had been 7,342 victims between 2006 and 2014. However, no information was provided on prosecutions, convictions or assessments of the effectiveness of the squads.

40. According to the State party's report, there was no overcrowding in the federal prison system. While the United States Department of State country report on Argentina for 2016 described prison capacity in federal penitentiaries, which stood at approximately 103 per cent of capacity, as marginally adequate, it also found that prisoners in Buenos Aires provincial penitentiaries exceeded the facilities' capacity by about 87 per cent. She asked whether there had been a negative trend since 2015.

41. The measures introduced by the Federal Prison Service to prevent violence among inmates included a programme for aggressive prisoners, which addressed compulsive and aggressive behaviour. She enquired about the number of inmates involved in the programme and the results achieved. She also wished to know whether any police or prison officials had been suspended, transferred or prosecuted for failing to take appropriate action with respect to inter-prisoner violence.

42. According to the report of the United States Department of State, the Federal Prison Service had registered 257 cases of torture and ill-treatment during the first half of 2016, but only 42 per cent of the complaints had led to criminal investigations. She asked how many of the investigations had resulted in prosecutions and criminal sentences.

43. **Ms. Belmir** said that former President Cristina Fernández de Kirchner had complained about the unduly slow procedures of the judicial system, which in her view benefited large corporations, and had called for greater democratization. She enquired about procedures for the appointment of members of the Council of the Judiciary, the composition of which, according to the State party's report, was designed to achieve balanced representation of political bodies. The judiciary was therefore at risk of politicization. In addition, restrictions had been imposed on the establishment of courts of cassation positioned between the country's appeal courts and the Supreme Court.

44. The State party's claim that the Public Prosecution Service was financially and professionally independent was untrue, since it was subservient to the executive. The staff of the Attorney General also had very limited freedom of action. Judges frequently reached erroneous conclusions when examining facts pertaining to cases of torture and imposed lenient penalties. Moreover, people refrained from filing complaints for fear of reprisals. Additional problems in the justice system included prison overcrowding, lengthy pretrial detention, discrimination between Argentine and foreign detainees, and inadequate training of police officers. The time had therefore come for an all-encompassing reform of the judicial system.

45. **Mr. Hani** noted that the State party's national preventive mechanism was composed of 13 members, including 6 parliamentarians, the Ombudsman for the Prison System, 2 representatives of local bodies elected by the Federal Council of Local Mechanisms for the Prevention of Torture, 3 representatives of NGOs, and a representative of the Secretariat of the Ministry of Justice and Human Rights. He requested additional information regarding the role of the Ombudsman for the Prison System. Some NGOs had mentioned cases in which the authorities had adopted a strict interpretation of his mandate, imposing limits on his monitoring activities and impeding visits to detention facilities. He asked whether civil society organizations would be permitted to monitor such facilities when the national preventive mechanism commenced its operations in late July 2017. He also enquired about the budget for the mechanism and regulations governing remuneration, immunity and expert staff to support the mechanism.

46. The Committee had received alarming information regarding deaths in detention, especially the figures of 377 in the province of Córdoba and 569 in the province of Santa Fe. The number of deaths due to institutional violence had reportedly totalled 1,930 since 2010. He requested confirmation of the statistics submitted by civil society organizations and asked whether an autopsy was automatically undertaken by an independent forensic physician following a suspicious death in a detention facility.

47. **The Chair** said that the Rapporteurship on the Rights of Persons Deprived of Liberty of the Inter-American Commission on Human Rights had visited Argentina in September 2016 and had issued a report in October 2016. It had expressed concern, in particular, regarding the use of pretrial detention and the compilation of statistics. Judges in courts of first instance were allegedly under pressure from various sources to order pretrial detention even when it was not justified. The fact that not all judges had security of tenure could undermine the independence of the judiciary and contribute to the problem.

48. He commended the declaration of a state of emergency regarding national statistics and the creation of a National Registry of Torture Cases. However, the Inter-American Commission report had drawn attention to the lack of a national register of detainees. With regard to the monitoring of detention facilities after the national preventive mechanism commenced its operations, he asked whether the State party would consider incorporating civil society organizations in local monitoring mechanisms so that their expertise could be turned to good account. He enquired about plans to include medical expertise in monitoring teams to address issues relating to health-care services and deaths in custody.

49. **Mr. Heller Roussant** said that the Mental Health Act provided for the establishment of a national mental health monitoring body, in which three public-sector institutions and three representatives of civil society would participate. There was currently a health-care emergency in the province of Buenos Aires. Four provincial hospitals, including two psychiatric hospitals, were in a critical state. Such conditions gave rise to inhuman and degrading treatment of patients, sexual abuse and violence by health-care professionals.

50. **Mr. Bruni** noted that in February 2015 the Supreme Court of Buenos Aires had decided to establish a register of convictions in cases of torture and ill-treatment. He asked whether it was operational and, if so, how many cases had been registered and how were they addressed.

51. **Ms. Belmir** said that the Committee on Enforced Disappearances had raised the issue of administrative detention without a warrant and subsequent judicial monitoring. Another issue was the transfer of detainees following sanctions imposed outside the judicial system. She enquired about the action taken to address those issues.

52. **Mr. Hani**, referring to the public security emergency plan adopted by Buenos Aires in 2014, said that civil society organizations had mentioned instances occurring under the plan of arbitrary detention, excessive use of force by the police and discrimination against young people belonging to marginalized urban groups. He asked whether measures had been taken to ensure that such emergency plans complied with the Convention and that all forms of arbitrary detention and excessive use of force were prosecuted.

The meeting rose at 12.50 p.m.