



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

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COMMITTEE AGAINST TORTURE

Thirty-first session

SUMMARY RECORD OF THE 575th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 11 November 2003, at 10 a.m.

Chairman: Mr. BURNS

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The meeting was called to order at 10.05 a.m.

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

Third periodic report of Colombia (CAT/C/39/Add.4; HRI/CORE/1/Add.56/Rev.1)

1. At the invitation of the Chairman, Ms. Forero Ucros, Ms. Plata Gómez, Ms. Prieto Abad, Mr. Quintero Cubides, Ms. Salazar Blanco and Mr. Varón Mejía (Colombia) took places at the Committee table.
2. Ms. FORERO UCROS (Colombia), introducing the third periodic report of Colombia (CAT/C/39/Add.4), said that the report covered the period from 1999 to 2001. The complex situation of human rights and international humanitarian law in Colombia could not be considered in isolation from the prevailing climate of violence. Moreover, it should be emphasized that international humanitarian law applied not only to the Colombian authorities but also to the illegal armed organizations operating in the country. Despite the Government's best efforts to bring about peace, insurgents and armed groups had continued to perpetrate acts of terrorism. As the report noted, most cases of torture recorded in Colombia in 2000 had been perpetrated by the self-defence groups and guerrillas. On no account should the self-defence groups be considered an arm of the State.
3. During the reporting period a number of significant legislative instruments had been adopted to bring domestic law and institutions into line with international instruments. A detailed description of the new laws and their effect could be found in the report. In addition, the Committee should note the adoption of Act No. 742, ratifying the Rome Statute of the International Criminal Court; Act No. 707, by which Colombia had adopted the Inter-American Convention on the Forced Disappearance of Persons; Act No. 733, setting forth measures to eradicate kidnapping, terrorism and extortion; Act No. 734, which contained the Single Disciplinary Code; and Act No. 837, ratifying the International Convention Against the Taking of Hostages. Furthermore, considerable efforts had been made to promote a culture of respect for human rights and international humanitarian law within the police and the armed forces; to that end, 292,326 public officials had received training in the area of human rights.
4. The situation in Colombia's prisons continued to be problematic, as evidenced by the assessments made by international experts visiting under the auspices of the Office of the United Nations High Commissioner for Human Rights and a landmark judgement handed down by the Colombian Constitutional Court. Accordingly, the Government had worked hard to provide human rights training to prison officers, establish a network of prison visitors, outsource health-care and catering services for prison inmates, build new prisons, develop special strategies for dealing with such vulnerable categories of inmates as indigenous, elderly and disabled prisoners, foreigners, pregnant and breastfeeding mothers and children under the age of 3 living with their mothers in prison and devise programmes to help prisoners reintegrate into the community upon their release.
5. Mr. MARIÑO MENÉNDEZ, Country Rapporteur, said that the situation of armed conflict in Colombia should never be allowed to obscure the fact that no derogation was permitted from international humanitarian law. The rule of law was obviously of crucial

importance in efforts to stamp out torture and other abuses, and he was therefore heartened to note that the Constitutional Court had a track record of striking down legal provisions that it found to be unconstitutional. The third periodic report of Colombia, which had been submitted five years late, in fact dealt with the period 1999-2002, although there was scant information about the latter part of that period. In his remarks, therefore, he intended to refer to certain events relating to the period from 2002 to the present, especially given that the new President elected in August 2002 had embarked on a policy of “democratic security” that raised a number of questions regarding implementation of the Convention.

6. With reference to article 1 of the Convention, he was pleased to note that, at least in theory the definition of torture in Colombian law was in conformity with the definition provided in the Convention. However, while some positive trends with regard to article 2 had been noted in paragraphs 30 and 64 of the report, the Committee had received information from United Nations bodies and non-governmental organizations (NGOs) that appeared to belie the Government’s assertion that serious human rights violations by State agents were on the wane.

7. For example, it was alleged that in May 2003 soldiers of the 18th Brigade had entered the indigenous communities of Julieros, Velasqueros, Roqueros, Genareros and Parreros in Arauca department and had proceeded to rape and eviscerate a young woman, forced villagers to flee and raped three indigenous girls. Some of the villagers had been detained, accused of being members of guerrilla groups and tortured in order to terrorize the community. In another incident in December 2002, police had allegedly broken into the home of Juan Carlos Celis, a human rights defender, and attempted to force him to incriminate himself as a terrorist. When he had refused to do so he had been placed in detention; he remained in custody on charges of rebellion and terrorism. A number of cases of torture and disappearances carried out by paramilitaries had also been reported to the Committee in 2003, yet it appeared that the authorities had taken no steps to investigate the alleged incidents. Lastly, the Special Rapporteur on the question of torture, in the addendum to his report submitted pursuant to Commission on Human Rights resolution 2002/38 (E/CN.4/2003/68/Add.1), had stated that in February 2000 a mixed force of soldiers and police had forcibly displaced helpless members of the U’wa indigenous community from Canoas. Three children had reportedly died and a number of other people had disappeared during that operation.

8. Ms. FORERO UCROS (Colombia) pointed out that as the report before the Committee dealt exclusively with the period 1999-2001, her Government was completely unprepared to discuss more recent allegations. Moreover, she wished to remind the Committee that Colombia had not made the declaration provided for under article 22 of the Convention, and therefore her delegation could not go into the details of individual cases. Exceptionally, however, she would transmit the Committee’s questions on the cases just mentioned to her authorities and endeavour to obtain a response. The Committee should rest assured, however, that the policy of democratic security espoused by the Government of Colombia included the investigation of any wrongdoing by State agents.

9. The CHAIRMAN noted that it was the usual practice of the Committee to raise any issue that fell within its purview, regardless of when a particular event had taken place. Moreover, no State party had ever objected to questioning on individual cases designed to illustrate a particular point.

10. Mr. MARIÑO MENÉNDEZ, referring to the State party's obligation to take effective legislative, administrative or judicial steps to prevent acts of torture, enquired whether, in the opinion of the Colombian delegation, recent measures had been genuinely effective in attaining that goal. It could in fact be argued that some of those measures actually increased the risk of civilians being tortured. Specifically, the recruitment of peasant militias and the establishment of networks of civilian informers seemed highly dubious practices. By identifying civilians so closely with the State, the Government had unwittingly turned them into targets for the self-defence groups and guerrillas. To what extent did the authorities control the activities of the peasant militias, and what use was made of information passed on by informer networks?

11. The issue of due obedience as a justification for acts that might be characterized as torture or inhuman treatment had been addressed in article 32 of the new Penal Code and also in the new Military Penal Code, which stated that a person who committed a punishable act could be exempted from criminal liability if the act was carried out in compliance with a lawful order issued by a competent authority in accordance with legal formalities. He wished to know whether any judicial decisions on due obedience had been taken by the military judicial authorities since the adoption of the new Code.

12. Bill No. 223/2003 allegedly conferred judicial police powers on the armed forces, including authority to detain persons for up to six days without bringing them before a judge. He enquired about the status of that bill and wondered whether it still contained such restrictions on the principle of habeas corpus, which was a fundamental and non-derogable right, including under the Inter-American system of human rights. If the allegations were true, the State party would be introducing measures that encouraged the use of torture by third parties.

13. In October 2002 the Government had reportedly introduced a judicial reform bill imposing limitations on amparo applications to the Constitutional Court and on the Court's competence to review declarations of states of emergency. He wished to know what the status of reform bill was and asked for details of the restrictions on amparo proceedings contemplated in the bill.

14. Turning to article 3 of the Convention, he referred to Decree No. 250/2002, enacting the provisions of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The Decree allegedly limited the scope of the principle of non-refoulement to threats to the life of the person concerned and failed to refer to torture. Any such omission would have to be remedied. Moreover, the State party's report provided little information on non-refoulement. He wished to know of any cases in which foreigners had brought proceedings in Colombian courts against orders of expulsion or refoulement in violation of article 3 of the Convention.

15. Articles 2 and 4 of the Convention were interrelated, especially in respect of impunity. Under Act No. 522 of 1999, the new Military Penal Code excluded from military penal jurisdiction the crimes of torture, enforced disappearance, which had been characterized in many international forums as a form of torture, and genocide. Moreover, a Constitutional Court judgement had referred to the fact that military courts were not competent to hear cases relating to human rights violations. Where there was a conflict of jurisdiction, what criteria were applied by the Higher Council of the Judicature in deciding whether a case should be heard by the

military or ordinary courts? Was it sufficient for the Public Prosecutor's Office to waive the criminal jurisdiction of the ordinary courts and assign jurisdiction to the military courts for the latter to take action, for example in cases of extrajudicial execution preceded by torture?

16. A bill had reportedly been submitted to Congress on 21 August 2003 under which persons convicted of serious human rights violations would be exempted from serving their sentences. Moreover, article 13 of Decree No. 128 of 22 January 2003 allegedly granted the right of pardon, conditional suspension of sentence and other legal benefits to demobilized persons who had been members of illegal armed organizations and wished to lay down their arms. He enquired about the status of the bill before Congress and asked whether persons who had committed serious crimes, including torture, could be pardoned or amnestied.

17. There were disquieting reports from Amnesty International about the failure to prosecute senior members of the armed forces who had allegedly been responsible for serious violations of humanitarian law. In that connection he specifically wished to know whether any judicial or disciplinary action had been taken against Rodrigo Quiñones Cárdenas.

18. Turning to article 5 of the Convention, he said that the authorities appeared to be tolerant of paramilitary groups since they failed to bring to justice the leaders of such groups who were suspected of having carried out massacres. Carlos Castaño, for example, had benefited from a de facto amnesty even though his name had been linked to massacres such as the one carried out in El Salado in 2000. He wondered whether the impunity of such persons was due to special circumstances.

19. The situation of human rights defenders in Colombia was also very worrying. Although the State party's report described a number of measures designed to protect human rights defenders, witnesses and victims, reports of threats against such persons and attempts on their lives continued to be received. He asked for details of judicial proceedings against the perpetrators of such acts.

20. With regard to article 6 of the Convention, he requested statistics on the number of persons being held in pre-trial detention.

21. On the question of extradition, he noted that since the amendment of article 35 of the Constitution in 1997, Colombians could be extradited to third countries. What was the general practice in that regard and how many cases of extradition had occurred?

22. The guarantees provided by the State party under the Convention could be reinforced if Colombia made the declarations under articles 21 and 22 and ratified the Optional Protocol to the Convention.

23. Mr. RASMUSSEN, Alternate Country Rapporteur, regretted that the State party's report had been received five years late and did not fully comply with the Committee's reporting guidelines, since it failed to provide sufficient practical examples of implementation of the Convention.

24. When considering Colombia's previous periodic report (CAT/C/20/Add.4), the Committee had stressed the importance of providing training courses on the prohibition of

torture for medical personnel, who should not only be trained to recognize torture victims but to help in eliminating torture. He had found no response to that concern in the latest report. It was of the utmost importance to conduct a medical examination as soon as a detainee was admitted to a penal institution. Allegations of ill-treatment should be investigated and the medical findings recorded. Detailed guidelines were to be found in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), which had been endorsed by the United Nations General Assembly in 2000.

25. The report listed an impressive number of human rights training courses, but the word “torture” was not mentioned in that context. How many courses focused on the prohibition against torture, as required under article 10 of the Convention? Did they draw on the expertise of the country’s centre for the rehabilitation of torture victims?

26. In its concluding observations and recommendations on Colombia’s previous report, the Committee had recommended that the State party should keep under systematic review the rules, methods and practices referred to in article 11 of the Convention. However, paragraph 261 of the current report merely stated that arrangements for the custody and treatment of persons subjected to arrest, detention or imprisonment were one of the major concerns of the Government and the State as a whole. He would welcome detailed information on how those arrangements were kept under review, particularly in the context of pre-trial detention, as well as statistics on the prison population, classified according to gender and age, and information on violence among inmates and sexual abuse in prisons.

27. He noted the State party’s plans to build new prisons to deal with the problem of overcrowding, but suggested that the State party should also consider the possibility of providing alternatives to imprisonment.

28. Paragraph 94 of the report mentioned that intelligence and counter-intelligence units within the National Prison System Institute (INPECT) supported the Office of the Ombudsman in monitoring prison conditions and the legal status of inmates. Did the bodies concerned actually visit prisons and publish reports?

29. He wished to know about complaint procedures for detainees. Was it easy to file a confidential complaint with the Ombudsman, or were complaints channelled through the prison authorities, exposing the complainants to reprisals?

30. According to the Special Rapporteur on the question of torture, medical services in Colombian prisons were inferior to those available to the general public. He asked whether that was due to a lack of funding or to difficulties in recruiting qualified medical personnel.

31. Following its consideration of Colombia’s previous report, the Committee had recommended that the State party should ensure that swift and impartial investigations were conducted into allegations of torture. It was unclear how many of the cases mentioned in the current report had concerned torture and what the outcome of the investigations had been.

32. In the concluding observations which the Human Rights Committee had issued on Colombia’s fourth periodic report (CCPR/C/79/Add.76) in April 1997, that Committee had noted with great concern that impunity continued to be a widespread phenomenon, particularly among

the military. It had recommended that support given by military personnel to paramilitary operations should be investigated and punished, and that, stringent measures should be adopted to combat impunity. In its concluding observations on Colombia's second periodic report (CRC/C/15/Add.137) adopted in October 2000, the Committee on the Rights of the Child had reiterated its concern about gross violations of human rights involving children and alleged cases of street children tortured and ill-treated by members of the police and/or paramilitary groups. The Committee had urged the State party to undertake effective measures to ensure that such acts received an appropriate response and to establish care and rehabilitation programmes for child victims of torture and ill-treatment. He wished to know what action Colombia had taken in response to the recommendations of those two treaty bodies.

33. According to paragraph 265 of the report, the Public Prosecutor and the Director-General of the Public Prosecutor's Office selected cases of torture for investigation on the basis of a number of criteria, including whether or not the presumed offender was an agent of the State, a private individual whose activities were tolerated by State agents, a member of a subversive group or a self-defence group or, alarmingly, a private individual of high social standing. The delegation should provide further details about the legislation in force in Colombia governing the treatment of offenders, indicating in particular whether the treatment of persons accused of torture could vary depending on their social standing.

34. In its concluding observations on Colombia's previous report, the Committee had suggested that the State party should restore the State's monopoly over the use of force, disband all armed civilian or paramilitary groups and ensure that impartial investigations into allegations of torture were conducted immediately. Yet, recent reports from NGOs indicated that the army was out of control and that cases of torture, arbitrary killings, disappearances and impunity were still rife. He wondered whether the Government was taking any measures to place civil society under the control of a trained and organized police force rather than the military. Military force was the worst kind of force that could be used to deal with civil society.

35. To the best of his knowledge, the Colombian Government had never contributed to the United Nations Voluntary Fund for Victims of Torture. The Fund, however, had made a number of contributions to NGOs working for torture victims in Colombia. He would be interested in knowing whether the Government intended to make any contributions, either to organizations working with torture victims in Colombia or to the Fund.

36. Paragraph 256 (d) of the report indicated that evidence that did not help to establish the facts of a case or which had been obtained illegally was not admissible. Did that mean that the new Code of Penal Procedure contained a provision stipulating that statements made as a result of torture could not be invoked as evidence in court?

37. He noted the absence in the report of information about specific measures being undertaken to prevent acts of cruel, inhuman or degrading treatment or punishment. Nevertheless, according to NGOs, torture was systematic in Colombia. It was unfortunate that Colombia had not made the declaration under article 22 of the Convention, and he urged the Government to do so and also to consider ratifying the Optional Protocol to the Convention.

38. Mr. YAKOVLEV said that the report reflected a strong political will on the part of the Government to implement the provisions of the Convention. He welcomed the tables that had

been included in paragraph 27 to show the number of torture victims between 1997 and 2000. He would like to know, however, why there had been such an alarming increase in the number of victims in 1999. He would also like to know how many cases had been reported since 2000. Lastly, it would be useful to know what criteria had been used to categorize the victims.

39. Ms. GAER reiterated Mr. Yakovlev's request for further statistical information on victims of torture, and suggested that it should be disaggregated by gender, region and the type of State facility involved. Further information should also be provided about sexual violence in prisons and other State institutions and whether any monitoring mechanisms were in place to protect potential victims.

40. In a recent report, Amnesty International had argued that the failure to exclude rape from military courts might contribute to the continued use of sexual crimes as part of the counter-insurgency strategy. She wondered whether that was, in the delegation's view, a fair assessment of the situation; if so, she wished to know what measures were being taken to prosecute offenders and to eliminate the use of rape and sexual crimes as elements of that strategy. It would also be useful to know how the Government had responded to or implemented the recommendations contained in the report of the Special Rapporteur of the Commission on Human Rights on violence against women following her visit to Colombia in 2001 (E/CN.4/2002/83/Add.3). According to information received by the Committee, the Government had so far failed to take any action at all.

41. Paragraph 77 of the report indicated that, following repeated requests from human rights NGOs that their members should not be named in military intelligence reports, the Government was studying ways of bringing military intelligence practice and procedures in respect of private individuals into line with the Constitutional Court's rulings on the matter. She would be interested to learn whether those studies had been completed since the submission of the report and whether the Government had made or implemented any recommendations in that connection.

42. She welcomed the fact that a number of initiatives had been taken as part of a programme to protect human rights defenders. She had been particularly interested to learn that measures had been adopted to expand the communications network in order to improve security for individuals covered by the programme. She would like to know the number of requests for assistance that had been made under the programme, the nature of the complaints, the response of the authorities and the outcome.

43. According to Amnesty International, the events that had taken place in Colombia since Luis Camilo Osorio had taken office as Attorney-General reflected a marked hostility to human rights investigations and an ongoing effort to purge the Attorney-General's Office of officials willing to pursue such investigations. A number of officials from the Human Rights Unit of the Public Prosecutor's Office had allegedly been threatened and forced to resign, and the Attorney-General had allegedly failed to take any measures to protect them. If those allegations were correct, she wondered what measures were being taken to protect human rights defenders in the Government. It would be particularly interesting to know whether any innovative technologies, such as those described in paragraphs 70 and 71 of the report, had been developed for use by State officials.

44. The Government appeared to have made a tremendous effort to provide human rights training for members of the police and armed forces. She had been particularly impressed by the fact that, during officer, non-commissioned officer and executive personnel training, every member of the Colombian police and armed forces received an average of 90 hours a year of training in human rights and international humanitarian law. She would welcome information on the amount of time devoted to the prohibitions against torture and ill-treatment. She would also like to know the geographical distribution of persons undergoing such training. Paragraph 64 of the report indicated that there had been a decline in the number of complaints of violations of human rights and international humanitarian law by members of the armed forces as a result of the training programme. It would be useful to know how the reporting State had reached that conclusion. The report further indicated that the indictment of members of the armed forces for presumed human rights violations was rare: apparently, only 188 members had been indicted between 1995 and 2001. She wondered whether those indictments had been for torture and whether any individuals were serving prison sentences as a result.

45. Although she was horrified by the vast number of reports that had been received about the human rights abuses experienced by child soldiers, she had been heartened to learn that the Government had ordered the release from the armed forces of all persons under 18 years of age who had enlisted voluntarily. The reporting State should provide statistical information, disaggregated by gender and region, on children who left the armed forces. She was concerned about the tremendous pressure their departure placed on the system of social rehabilitation and juvenile justice, and she wondered whether the facilities providing care for such children were monitored to ensure that all children received adequate treatment and protection. She would also like to know whether any criminal investigations had been carried out to identify those responsible for the forced recruitment, torture and ill-treatment of child soldiers and whether those individuals had been prosecuted.

46. Mr. GROSSMAN requested additional information about the status of the joint project that was being conducted by the Attorney-General's Office in cooperation with the Office of the United Nations High Commissioner for Human Rights to determine the scope and content of the concept of prevention in supervisory bodies. He would also like to know the outcome of the measures taken by the Ministry of Justice and the National Prison System Institute (INPEC) to exercise effective control over administrative and custodial and supervisory personnel and to investigate, and apply appropriate sanctions in, all cases of corruption.

47. The CHAIRMAN enquired whether any members of the military, the armed forces or the police who had been investigated or convicted on charges of torture had ever been amnestied. If so, he wished to know how such amnesties were reconcilable with the spirit of the Convention and with customary international law.

48. Ms. FORERO UCROS (Colombia) said that her Government shared many of the Committee's concerns. Her delegation would endeavour to provide oral answers to the majority of the questions that had been raised by the Committee, any remaining questions would be answered in writing.

The meeting rose at noon.