



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

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Committee against Torture

Concluding observations on the third periodic report of Uruguay*

1. The Committee against Torture considered the third periodic report of Uruguay (CAT/C/URY/3) at its 1212th and 1215th meetings (CAT/C/SR.1212 and SR.1215), held on 29 and 30 April 2014. At its 1231st and 1242nd meetings (CAT/C/SR.1231 and SR.1242), held on 12 and 20 May 2014, the Committee adopted the following concluding observations.

Introduction

2. The Committee would like to thank the State party for agreeing to follow the optional reporting procedure, which makes for closer cooperation between the State party and the Committee and for a more focused consideration of the report and dialogue with the delegation. Nevertheless, the Committee finds it regrettable that the third periodic report was submitted more than 15 years late.

3. The Committee also appreciates the frank and constructive dialogue that was held with the State party's delegation, as well as the additional information provided during its consideration of the report.

Positive aspects

4. The Committee notes with satisfaction that the State party has ratified or acceded to all the core human rights instruments in force, including the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

5. The Committee welcomes the fact that the State party has taken the following legislative measures in areas related to the Convention:

(a) Promulgation of Act No. 18026 of 25 September 2006, on cooperation with the International Criminal Court in combating genocide, war crimes and crimes against humanity;

* Adopted by the Committee at its fifty-second session (28 April–23 May 2014).



(b) Adoption of the Migration Act (Act No. 18250) of 6 January 2008 and of the Act on Refugees and the Right to Asylum (Act No. 18076) of 19 December 2006, which provided for the establishment of the Refugee Commission;

(c) Promulgation of Act No. 18446 of 24 December 2008, as amended by Act No. 18806 of 14 September 2011, which provides for the establishment of the National Human Rights Institution and Ombudsman's Office and for that body to perform additional functions as the national mechanism for the prevention of torture (art. 83);

(d) Promulgation of Act No. 18596 of 18 September 2009, which acknowledges the responsibility of the State and the right of victims to full reparation;

(e) Adoption of the National Prison System Act (Act No. 18667) of 15 July 2010, which is aimed at reducing prison overcrowding, and the Provisional and Early Release Act (Act No. 17897) of 14 September 2005;

(f) Promulgation of the Punitive Powers of the State Act (Act No. 18831) of 27 October 2011 and the adoption of Executive Resolution No. CM/323 of 30 June 2011, which repealed the Expiry of Punitive Powers of the State Act (Act No. 15848).

6. The Committee also commends the State party on its efforts to amend its policies and procedures in order to afford greater protection for human rights and to apply the Convention and, in particular, its adoption of the first National Plan against Domestic Violence (2004–2010).

Principal subjects of concern and recommendations

Definition of the offence of torture

7. Although Act No. 18026 defines torture as a specific offence, the Committee notes that the definition set out in article 22 is incomplete inasmuch as it fails to mention the purpose of the act in question or any reason for it that is based on discrimination as material elements in constituting all the circumstances associated with torture that are mentioned in paragraph 2 of that article. Nor is there any specific mention of acts of torture carried out in order to intimidate, to coerce or to obtain information or a confession from a person other than the person who was tortured (art. 1).

The State party should align article 22 of Act No. 18026 with article 1 of the Convention by specifying the objective of the offence, identifying discrimination as one of the motivating factors or reasons why torture may be inflicted and including acts intended to intimidate, coerce or obtain information or a confession from a person other than the victim in the definition. In this regard the Committee recalls its general comment No. 2 (2007), on the implementation of article 2 by States parties, which states that serious discrepancies between the Convention's definition and the definition figuring in a State party's law create actual or potential loopholes that can foster impunity (CAT/C/GC/2, para. 9).

Basic procedural guarantees

8. Although it takes note of the explanations provided by the delegation, the Committee remains concerned at reports from non-governmental sources which indicate that Act No. 18315 of 5 July 2008, on police procedures, has extended the discretionary powers of the police during arrests, raids and house searches and in relation to the use of force (art. 2).

The Committee urges the State party to take effective steps to ensure that police officers comply with the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

The State party should also ensure that all persons deprived of their liberty have the benefit, in practice and from the very beginning of their detention, of all basic legal safeguards, including those set out in paragraphs 13 and 14 of the Committee's general comment No. 2 (2007), and in particular that detainees and persons at risk of torture and ill-treatment have judicial and other remedies available to them.

Allegations of torture and ill-treatment in prisons

9. The Committee finds it regrettable that, notwithstanding the "dozens of criminal complaints of ill-treatment or failure to care for persons deprived of their liberty" submitted by the Parliamentary Commissioner for the Prison System (CAT/C/URY/3, para. 539), the State party has not provided precise information on the number of allegations, investigations, trials or convictions involving cases of torture or ill-treatment during the reporting period. What little information exists mentions charges of torture being brought against two warders at the Canelones prison in 2012 and a number of complaints concerning warders at various prisons for having inflicted "personal injury" upon prisoners (arts. 2, 12, 13 and 16).

The State party should:

(a) **Take appropriate steps to ensure that all allegations of torture or ill-treatment are promptly, thoroughly and impartially investigated and that those responsible are tried and, if found guilty, punished in accordance with the seriousness of their acts;**

(b) **Ensure that investigations into allegations of torture or ill-treatment are carried out by an independent body that has the necessary resources at its disposal;**

(c) **Evaluate the effectiveness of the complaints mechanisms available to persons deprived of their liberty;**

(d) **Provide detailed information on any cases of torture or ill-treatment that occurred during the reporting period, including disaggregated information on the number of complaints, investigations, trials and judgements and on reparation granted to victims.**

Prison conditions

10. The Committee applauds the steps taken by the State party to improve prison conditions and eliminate overcrowding through an ambitious programme that includes the construction of a new prison and units in several other prisons. It is, however, concerned by the fact that two thirds of the prison population is awaiting trial and that the State party's legislation still does not set a maximum length of pretrial detention. The Committee is also concerned by reports of shortcomings in terms of medical care, the water supply, sanitation and ventilation in cells. It is also concerned by reports indicating that there is not a strict separation of accused from convicted prisoners. Moreover, the Committee notes that the State party's prison system is still under the Ministry of the Interior, which continues to present problems with regard to the suitability of the treatment of prisoners.

The State party should adopt the necessary measures to continue improving prison conditions. In particular, it should:

(a) Ensure that the basic needs of persons deprived of their liberty are met in respect of medical care, access to drinking water and sanitation, and adequate ventilation in buildings, in accordance with the Convention and the Standard Minimum Rules for the Treatment of Prisoners, bearing in mind that the Standard Minimum Rules are currently under review;

(b) Redouble its efforts to make use of alternative measures to deprivation of liberty in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules);

(c) Set a maximum limit on the length of time that a person can be held in pretrial detention, in accordance with international standards, as part of the reform of the Code of Criminal Procedure;

(d) Ensure that different categories of prisoners are kept in separate institutions or wings based on their sex, age, criminal record, the legal reason for their detention and the type of detention concerned;

(e) Prioritize the transfer of the prison system from the Ministry of the Interior to another administrative department.

Deaths in custody

11. The Committee finds it regrettable that the State party has not provided full statistical information on deaths of detainees during the reporting period. According to the scant data available, there were 46 deaths in the prison population between 2010 and 2012; of these deaths, 19 were a result of fires in detention centres and the remainder were caused by electrocution or violence among prisoners. The Committee takes note of the information provided by the delegation on the deaths of prisoners in the fires of 24 August 2009, at the Santiago Vázquez prison complex (COMCAR) and of 8 July 2010, at Rocha prison, according to which both the related criminal cases were shelved at the prosecution's request. The Committee also finds it regrettable that information is lacking on investigations into the deaths that occurred in custody during the reporting period and on the steps taken to prevent any recurrence of such cases.

The State party should provide comprehensive statistics on the number of persons who have died in custody during the reporting period, disaggregated by place of detention, sex, age, ethnic origin or nationality and cause of death. It should also provide detailed information on the outcome of investigations into those deaths and on steps taken to prevent any recurrence of such cases.

The Committee urges the State party to promptly undertake thorough, impartial investigations into all deaths of persons held in custody and to carry out the corresponding autopsies. The State party should also assess any possibility that prison officers or other staff might bear responsibility for such deaths and, if this proves to be the case, to punish those responsible appropriately and to provide compensation to the victims' families.

Juvenile justice

12. The Committee is concerned about the call for a referendum on 26 October 2014 on the proposal to lower the minimum age of criminal responsibility to 16 and try young people in conflict with the law as adults in cases involving serious crimes, as a means of

combating crime in the State party. The Committee is also concerned by information that it has received which indicates that the tightening of criminal legislation applicable to juvenile offenders has led to a significant increase in the number of minors deprived of their liberty and that this has resulted in a deterioration in their conditions of detention at Adolescent Criminal Responsibility System (SIRPA) facilities. Although the State party has not provided information on occupancy levels in these centres, information at the Committee's disposal indicates that there is overcrowding at the SER and Las Piedras centres in Colonia Berra and that this situation is made worse by the fact that these young people are confined to their cells for up to 23 hours a day, with no access to educational or recreational activities. Conditions of detention at the Admissions Centre for Female Adolescents (CIAF) and the Cepri Detention Centre, in Montevideo, are also very poor, with problems with regard to the water supply and sanitation facilities being noted, in particular. The Committee is also concerned by information indicating that the adoption of more stringent measures to prevent escapes from these centres has considerably restricted inmates' opportunities for contact with the outside world (arts. 2, 11 and 16).

The State party should ensure that its juvenile justice system is fully in line with international standards, especially the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). In particular, the Committee urges the State party to:

- (a) Ensure that the minimum age of criminal responsibility is in accordance with internationally established standards;**
- (b) Ensure that minor offenders are deprived of their liberty only as a last resort and for the shortest amount of time possible and that their detention is reviewed periodically with a view to putting an end to it;**
- (c) Use alternatives to pretrial detention wherever possible;**
- (d) Ensure that conditions of detention in juvenile custodial centres are consistent with the Convention and other international human rights standards and that the minors in these centres receive care, protection, an education and job training;**
- (e) Redouble its efforts to alleviate overcrowding in juvenile detention centres.**

Juvenile facilities

13. The Committee is gravely concerned by reports of ill-treatment of minors in SIRPA facilities. According to the information submitted, there are documented cases of ill-treatment in the form of beatings, the use of stress positions such as the "*paquetito*" or "package" (shackling hands and feet behind the back), abusive or humiliating punishments, including forced nudity, collective punishments, strip searches, invasive body searches and the use of coercive measures within these facilities. While welcoming the additional information provided by the delegation, according to which SIRPA has opened 16 files on cases of ill-treatment, sexual abuse and irregularities in restraint procedures since 2012, and criminal complaints have been brought in 3 cases arising in the SER centre, the Committee finds it regrettable that the information does not include the number of alleged victims or their sex and age, the place of detention concerned or the protective measures taken in each case. Notwithstanding the delegation's statement in which it categorically denied all allegations that psychopharmaceutical substances are administered as a means of restraint, the Committee remains concerned by reports indicating that there are irregularities in this regard, particularly in respect of female juvenile detainees. Lastly, the Committee is

concerned by reports that reprisals have been taken against victims, their families and officials in these centres who have reported ill-treatment of this kind (arts. 2, 12, 13 and 16).

The Committee urges the State party to:

(a) Set up an effective, independent and accessible complaints mechanism that will ensure that reports of torture or ill-treatment of minors held in SIRPA centres are investigated promptly, thoroughly and impartially. Such investigations should be carried out by an independent agency;

(b) Investigate the alleged irregularities in the administration of medicines to juvenile detainees;

(c) Ensure that, in cases of alleged torture or ill-treatment, suspects are immediately suspended from duty for the duration of the investigation, particularly if there is a risk that those actions might be repeated or the investigation obstructed;

(d) Protect victims and witnesses of torture or ill-treatment from reprisals;

(e) Provide victims of torture and ill-treatment with redress, including just and adequate compensation and the fullest possible rehabilitation, taking due account of the Committee's general comment No. 3 (2012) on the implementation of article 14 by States parties (CAT/C/GC/3).

Monitoring and inspection of places of detention

14. The Committee is concerned by the fact that the national mechanism for the prevention of torture does not have a budget of its own and lacks all the resources it would need to perform its work in a fully satisfactory manner. The Committee attaches importance to the mechanism's active presence in juvenile custodial facilities, but is of the view that the need for it to coordinate its activities with other inspection agencies, such as the Parliamentary Commissioner for the Prison System or the Office of the Inspector General for Psychopathic Patients, cannot be allowed to act as an obstacle to the full performance of its duty to monitor all places where people are deprived of their liberty (art. 2).

The State party should ensure the national preventive mechanism's functional independence by assigning it a budget of its own and specialized medical and legal staff so that it can cover all places where people are deprived of their liberty in accordance with the Optional Protocol to the Convention and the guidelines on national preventive mechanisms (CAT/OP/12/5, paras. 20, 32 and 39).

The State party should also take the necessary steps to support the work of the national mechanism for the prevention of torture by ensuring that its recommendations are fully applied.

The National Human Rights Institution and Ombudsman's Office

15. The Committee notes with concern that, although the State party considers that the budget of the National Human Rights Institution and Ombudsman's Office "is sufficient to ensure the Institution's independent operation and covers the necessary infrastructure and staffing" (CAT/C/URY/3, para. 85), the National Human Rights Institution states in its report to the Committee that there are budget-related difficulties and that there is a need for "an adequate legal-administrative framework and more budgetary and operational autonomy [to ensure] ... greater independence and effectiveness" (paras. 36–38) (art. 2).

The State party should:

(a) Ensure that the National Human Rights Institution has the independence, budget, infrastructure and the resources of its own that it needs to fully execute its mandate in accordance with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles);

(b) Urge the National Human Rights Institution to apply for accreditation with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

Efforts to combat impunity and to provide redress for serious human rights violations committed during the dictatorship

16. The Committee recognizes the efforts of the State party to address impunity and to provide redress to the victims of past human rights violations (committed in 1973–1985) (see paragraphs 5 (c) and (d) above). However, the Committee is in disagreement with Supreme Court Decision No. 20 of 22 February 2013, in which the Court found that articles 2 and 3 of the Punitive Powers of the State Act (Act No. 18831) were unconstitutional. While it is understood that the scope of the finding of unconstitutionality is confined to the specific case in which this issue was raised, the Committee is of the view that the Supreme Court's refusal to allow the retroactive application of the provision whereby crimes against humanity are not subject to a statute of limitations runs counter to international human rights law (arts. 1, 4, 12, 13, 14 and 16).

The State party should continue to work to ensure that crimes against humanity, including acts of torture and enforced disappearance, are not subject to any statute of limitations, amnesty or immunity. In that respect, the Committee refers to its general comment No. 2 (2007), which states that: “amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability”, and its general comment No. 3 (2012), which states that: “amnesties for the crime of torture are incompatible with the obligations of States parties under the Convention, including under article 14. [...] The Committee considers that amnesties for torture and ill-treatment pose impermissible obstacles to a victim in his or her efforts to obtain redress and contribute to a climate of impunity. The Committee therefore calls on States parties to remove any amnesties for torture or ill-treatment.”

Independence of the judiciary

17. The Committee is concerned by the transfer, pursuant to a Supreme Court order which did not state the reasons on which it was based, of Judge Mariana Mota from the Seventh Criminal Court of Montevideo to the First Civil Court on 15 February 2013. It notes that, until that time, Judge Mota had been presiding over investigations that had been opened in connection with numerous cases of crimes against humanity committed in 1973–1985. According to information supplied by the delegation, the transfer has been challenged and the case is under investigation in the administrative courts (art. 2).

The State party should adopt effective measures to ensure the full independence and impartiality of judges and prosecutors by ensuring, inter alia, that the laws and regulations that govern such officials' appointment, security of tenure and the manner in which they may be removed from the bench are in conformity with international standards, particularly the Basic Principles on the Independence of the Judiciary

(which were ratified by the General Assembly by its resolution 40/32 of 29 November 1985 and by its resolution 40/146 of 13 December 1985).

The Committee recommends that the State party call the attention of the Supreme Court to the fact that a competent, independent and impartial judiciary that acts in accordance with the Bangalore Principles of Judicial Conduct (E/CN.4/2003/65, annex) plays an important role in protecting human rights.

Refugees and training courses

18. Bearing in mind the State party's efforts to equip itself with a new legal framework in respect of migration and asylum, the Committee is concerned by reports indicating that, despite the provisions of Act No. 18076, women, unaccompanied minors or minors who have become separated from their families, and victims of torture or traumatization who request asylum in the State party do not receive treatment that is in accordance with their specific needs during the refugee-status application process (arts. 3, 10 and 16).

The State party should ensure that it is in full compliance with its obligations in respect of non-refoulement under article 3 of the Convention. In particular, the Committee recommends that the State party:

(a) **Strengthen its ongoing training programmes on the protection of refugees and national asylum laws for immigration officers and border guards;**

(b) **Uphold the principle that asylum procedures should remain confidential and should provide for special consideration for women, minors, victims of torture or traumatization and other asylum seekers with specific needs.**

Abuses committed by peacekeepers

19. The Committee takes note of the recent conviction at first instance of four marines from the military contingent sent by Uruguay to serve in the United Nations Stabilization Mission in Haiti (MINUSTAH) for the assault of a young Haitian man who reported that he had been sexually abused in 2011 at a military base in Port Salut, Haiti. According to information supplied by the delegation, the perpetrators of these acts have been discharged from the Navy, and the judgement, which fixed a sentence of imprisonment of 2 years and 1 month, was appealed in March 2014 and is still under review (arts. 1, 2, 4, 5, 12 and 16).

The Committee urges the State party to ensure that those responsible for such acts are punished in accordance with the seriousness of their acts, and ensure that victims receive redress, including just and adequate compensation, and as complete a rehabilitation as possible, in accordance with the Committee's general comment No. 3 (2012). The State party should also take steps to prevent a repetition of this type of abuse in peacekeeping operations, including the provision of specific training on sexual abuse.

Violence against women

20. The Committee acknowledges the State party's efforts to prevent and combat gender-based violence and underlines the importance of the legislative, administrative and other measures adopted during the reporting period, as well as the collaboration with civil society in that regard. Nevertheless, and in spite of the foregoing, the Committee is concerned by the prevalence of gender-based violence, and particularly domestic violence, in Uruguay, where 132,206 complaints were filed in respect of this offence between 2005

and 2013, with 26,086 of those complaints being lodged in 2013. While taking note of the ample information supplied by the State regarding the measures adopted to combat domestic violence, the Committee finds it regrettable that so little official data are available on the various forms of violence against women and that statistics are lacking on investigations, trials, judgements and the sentences handed down to guilty parties and on the redress granted to victims during the reporting period (arts. 1, 2, 4, 14 and 16).

The Committee urges the State party to strengthen its efforts to combat violence against women, ensuring that all cases of violence against women are thoroughly investigated, that the alleged perpetrators are put on trial and, if convicted, given an appropriate sentence and that victims receive redress, including just and adequate compensation. In this regard, the Committee draws attention to paragraph 33 of its general comment No. 3 (2012). The Committee also recommends that public awareness-raising campaigns on all forms of violence against women should be broadened.

Violent deaths of transsexual women

21. The Committee strongly condemns the killings of transsexual women that have occurred in the country. The available information indicates that only one of the six cases of killings of this type that have occurred in the past two years has been resolved (arts. 1, 2, 4, 12 and 16).

The State party should take steps, as a matter of urgency, to put an end to the selective killing of persons because of their sexual orientation or their gender identity. The Committee therefore also urges the State party to:

- (a) Protect people from homophobic and transphobic violence and from cruel, inhuman and degrading treatment;**
- (b) Adopt the legislative measures concerning hate crimes that are necessary to deter violence directed at people because of their sexual orientation or gender identity and establish effective systems for reporting this type of violence so that the perpetrators of such acts can be investigated, put on trial and punished;**
- (c) Provide targeted training to police officers and other law enforcement officials regarding violence directed at people because of their sexual orientation or gender identity.**

Human trafficking

22. The Committee takes note of the information supplied by the State party on trafficking in persons for purposes of sexual exploitation and forced labour, and appreciates the State's efforts to prevent and combat this phenomenon. The scant information available on the subject, however, is limited to the number of trials and convictions and the sentences handed down to guilty parties between 2012 and 2013 (arts. 1, 2, 4, 12 and 16).

The State party should:

- (a) Redouble its efforts to prevent and combat human trafficking;**
- (b) Undertake prompt, impartial investigations into cases of human trafficking, ensure that those found guilty of such offences are punished and ensure that all victims of such acts obtain redress.**

Training

23. The Committee appreciates the State party's efforts to provide training but finds it regrettable that it has not received any information on how effective the training programmes for law enforcement officials have been in reducing the number of cases of torture and ill-treatment. The Committee also takes note of the cooperation that takes place between the Ministry of the Interior, the Parliamentary Commissioner for the Prison System and the Department of Forensic Medicine of the Faculty of Medicine of the University of the Republic in developing courses for medical and health-care staff of the prison system on the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) (art. 10).

The State party should:

(a) Continue to develop mandatory training programmes in order to ensure that all civil servants are fully familiar with the provisions of the Convention and are fully aware that breaches will not be tolerated, that they will be investigated and that those responsible will be prosecuted;

(b) Expand its targeted training programmes on the Istanbul Protocol to include judges, prosecutors, forensic physicians and all medical personnel who deal with persons in detention;

(c) Continue to develop a methodology for evaluating the effectiveness of training and instructional programmes in reducing the number of cases of torture and ill-treatment.

24. The State party is invited to disseminate its report to the Committee and these concluding observations widely in all appropriate languages through official websites, the media and non-governmental organizations.

25. The Committee requests the State party to furnish it with information by 23 May 2015, at the latest, on the action that it has taken in response to the recommendations in paragraphs 9, 12 and 13 of these concluding observations that it: (a) ensure or reinforce safeguards for persons who have been deprived of their liberty; (b) undertake prompt, impartial and effective investigations; (c) prosecute suspected perpetrators and punish those found guilty of having committed torture or ill-treatment.

26. The Committee invites the State party to submit its fourth periodic report by 23 May 2018, at the latest. To that end, and in view of the fact that the State party has agreed to report to the Committee under the optional reporting procedure, the Committee will submit a list of issues prior to reporting to the State party in due course.
