



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

Distr.
GENERAL

CAT/C/CR/33/1
10 November 2004

ENGLISH
Original: SPANISH

COMMITTEE AGAINST TORTURE
Thirty-third session
15-26 November 2004

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

ARGENTINA

1. The Committee considered the fourth periodic report of Argentina (CAT/C/55/Add.7) at its 622nd and 625th meetings, held on 16 and 17 November 2004 (CAT/C/SR.622 and 625), and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the fourth periodic report of Argentina, though noting that it was received two years after the due date of June 2000. The Committee appreciates the constructive dialogue established with a high-level representative delegation and thanks it for the frank and direct answers provided to the questions posed by the Committee.

B. Positive aspects

3. The Committee welcomes with satisfaction the efforts made by the State party to combat impunity in respect of crimes against humanity committed under the military dictatorship, and in particular:

(a) The promulgation of Act No. 25.779 in September 2003, declaring the “Due Obedience” and “Clean Slate” Acts absolutely null and void;

(b) The initiation of a significant number of cases in which such violations are being investigated;

(c) The repeal in 2003 of executive decree No. 1581/01, which required the automatic rejection of requests for extradition in cases involving serious and flagrant violations of human rights under the military dictatorship.

4. The Committee also warmly welcomes the following positive developments:

(a) The recent ratification of the Optional Protocol to the Convention in November 2004;

(b) The ratification of the Rome Statute of the International Criminal Court in February 2001;

(c) The promulgation in January 2004 of the new Migration Act, No. 25.871, which lays down, inter alia, that a foreigner may be detained only by a judicial authority;

(d) The work accomplished by the National Commission for the Right to an Identity, which was entrusted with the task of locating children who disappeared under the military dictatorship.

C. Factors and difficulties impeding the application of the Convention

5. The Committee takes note of the difficulties encountered by the State party, especially those of an economic and social nature. However, it points out that there are no exceptional circumstances of any kind which may be invoked to justify torture.

D. Subjects of concern

6. The Committee expresses its concern at the following:

(a) The many allegations of torture and ill-treatment committed in a widespread and habitual manner by the State's security forces and agencies, both in the provinces and in the federal capital;

(b) The lack of proportion between the high number of reports of torture and ill-treatment and the very small number of convictions for such offences, as well as the unjustifiable delays in the investigation of cases of torture, all of which contributes to the prevailing impunity in this area;

(c) The repeated practice of miscategorization of actions by judicial officials, who treat the crime of torture as a minor offence (such as unlawful coercion), which carries a lesser punishment, when in fact such actions should be categorized as torture;

(d) The uneven application of the Convention in the various provinces of the State party, and the lack of machinery for accommodating the requirements of the Convention to the federal structure of the country, despite the fact that the State party's Constitution grants those provisions the same status as the Constitution itself;

(e) The information supplied by the State party on compliance with the obligations imposed by the Convention still fails to reflect the situation in the country as a whole, as the Committee has stated when considering previous reports by the State party. The Committee also notes with concern that the national register of information from domestic courts on cases of torture and ill-treatment in the State party has still not been established;

(f) The reports of arrests and detention of children below the age of criminal responsibility, most of them “street children” and beggars, in police stations, where they are held together with adults, as well as on the alleged torture and ill-treatment suffered by such children, leading to death in some cases;

(g) Allegations of torture and ill-treatment of certain other vulnerable groups, such as members of the indigenous communities, sexual minorities and women;

(h) The overcrowding and poor physical conditions prevailing in the prisons, and particularly the lack of hygiene, adequate food and appropriate medical care, which may be tantamount to inhuman and degrading treatment;

(i) The high number of persons being held in pre-trial detention, which according to the State party is as high as 78 per cent in the Buenos Aires prison system;

(j) The failure to apply the principle of separation between convicted prisoners and remand prisoners in detention centres, and between them and immigrants who have been served with expulsion orders;

(k) Alleged reprisals, intimidation and threats received by persons reporting acts of torture and ill-treatment;

(l) Humiliation and degrading treatment during body searches of persons visiting prisons;

(m) The fact that medical staff in prisons are not independent but are members of the prison service.

E. Recommendations

7. The Committee recommends that the State party should take all necessary steps to prevent acts of torture and ill-treatment in the territory of the State of Argentina, and in particular that it should:

(a) Take vigorous steps to eliminate the impunity of the alleged perpetrators of acts of torture and ill-treatment, carry out prompt, impartial and exhaustive investigations, try and, where appropriate, convict the perpetrators of torture and ill-treatment, impose appropriate sentences on them and properly compensate the victims;

(b) Provide training for judicial officials in order to enhance the efficiency of investigations and bring judicial decisions into line with the relevant international standards;

(c) Improve the quality of the State's security forces and agencies and enhance their training in respect of human rights, and specifically in respect of the requirements stemming from the Convention;

(d) Guarantee that the obligations arising from the Convention will always be fulfilled in all provincial courts, with the aim of ensuring the uniform application of the Convention throughout the State party. The State party is reminded that the State's international responsibility is borne by the State at the national level even when violations have occurred at the provincial level;

(e) Organize a national register of information from domestic courts on cases of torture and ill-treatment in the State party, a measure stated by the State party to be feasible;

(f) Take specific steps to safeguard the physical integrity of the members of all vulnerable groups;

(g) As promised by the delegation of the State party in the case of the province of Buenos Aires, guarantee that the holding of minors in police units will be immediately banned, that minors currently in police units will be transferred to special centres, and that a nationwide ban will be imposed on the detention of minors by police personnel on "welfare grounds";

(h) Take effective steps to improve physical conditions in prisons, reduce the existing overcrowding and properly guarantee the fundamental needs of all persons in custody;

(i) Consider amending its legislation and practice relating to pre-trial detention, so that such detention is imposed only as an exceptional measure, taking into account the recommendations on alternatives to pre-trial detention adopted by the Working Group on Arbitrary Detention in December 2003;

(j) Take the necessary steps to guarantee the principle of separation between convicted prisoners and remand prisoners, and between them and immigrants who have been served with expulsion orders in detention centres;

(k) Take effective steps to ensure that all persons reporting acts of torture or ill-treatment are protected from intimidation and from any unfavourable consequence of their action in making such a report;

(l) Take appropriate steps to guarantee full respect for the dignity and human rights of all persons during body searches, in full compliance with international standards;

(m) Take the necessary steps to guarantee the presence of independent, qualified medical personnel to carry out periodic examinations of persons in detention;

(n) Include in its next periodic report detailed statistical data, especially in terms of types of offence, the age, ethnic group and sex of the victim and the category of the perpetrator, on reports of acts of torture and other cruel, inhuman or degrading punishment or treatment inflicted by State officials, as well as on investigations, proceedings and criminal and disciplinary punishments imposed following such reports and the consequences for the victims in terms of reparation and compensation;

(o) Establish national prevention machinery with authority to make periodic visits to federal and provincial detention centres for the purpose of fully implementing the Optional Protocol to the Convention;

(p) Establish and promote effective machinery within the prison system to receive and investigate reports of sexual violence and provide protection and psychological and medical assistance to victims;

(q) Extensively publicize the reports submitted to the Committee by the State party, as well as the Committee's conclusions and recommendations, through official web sites, the media and non-governmental organizations;

(r) Inform the Committee within a year of the specific steps taken in pursuance of the recommendations set out in subparagraphs (e), (f), (l) and (o) above;

(s) Submit its next periodic report, combining the fifth and sixth reports, at the latest by 25 June 2008, the scheduled date for the submission of the sixth report.
