



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

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Summary record of the first part (public)* of the 1190th meeting

Held at the Palais Wilson, Geneva, on Monday, 11 November 2013, at 10 a.m.

Chairperson: Mr. Grossman

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.1190/Add.1.

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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)*

Initial report of Andorra (CAT/C/AND/1)

1. *At the invitation of the Chairperson, the delegation of Andorra took places at the Committee table.*
2. **Mr. Espot Zamora** (Andorra) said that the Convention had entered into force for Andorra in 2006, but that the Principality had been committed to combating torture since 1996, when it had signed the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; it had also signed Protocols Nos. 1 and 2 thereto in 2002. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had carried out three visits to the Principality between 1998 and the end of 2011. Act No. 9/2005 on the Criminal Code had incorporated the necessary provisions to punish acts of torture and ill-treatment into domestic legislation. Moreover, the various laws applicable to public officials who were involved in the custody of persons deprived of their liberty explicitly prohibited torture and inhuman or degrading treatment or punishment, and the perpetrators of such acts were subject to administrative, or even criminal, sanctions.
3. Significant efforts had been made to improve living conditions in places of detention. A new prison in line with international standards had been inaugurated in 2006. Pursuant to recommendations issued by the CPT following its most recent visit, the prison cell bars had been replaced with doors to ensure privacy for inmates, and windows would shortly be fitted in isolation cells to allow natural light to enter. New premises had been equipped to accommodate individuals placed in detention for the first time, in order to facilitate their adaptation. The juvenile prison facility had been restructured to ensure that detainees had access to a full range of activities, particularly training programmes, aimed at facilitating their rehabilitation. In December 2012, a cooperation agreement had been signed by the prison authorities and the National Health Service with a view to improving medical care for prisoners and, from January 2014, lawyers from the Andorran Bar Association would provide general training on prison law and national and European criminal procedure law to prison officials.
4. In response to recommendations issued by the CPT following its most recent visit, Parliament was currently considering a bill to amend the Act on Disability and Tutelary Bodies by strengthening safeguards related to forced hospitalization in psychiatric establishments and the use of physical restraints. Another draft text to regulate the use of restraints and reduce the length of solitary confinement in prisons was currently under review. A reform of the Code of Criminal Procedure to guarantee all suspects the right to be examined by a doctor of their choice was also under way.
5. Of particular note, among the amendments that had already been made to criminal procedure law, was the inclusion of the right of all detainees to have access to counsel from the very outset of their detention. New provisions guaranteeing that right to persons treated as suspects, whether detained or not, should be adopted in the near future. Interrogation rooms equipped with video recording devices had been made available in police stations and there were plans to fit them with audio recording devices shortly.
6. **Mr. Bruni** (Country Rapporteur) said he was pleased to note that there had been no reported cases of torture in the State party, for which it should be commended. He asked whether representatives of civil society had been consulted during the preparation of the report, as there was no reference to that effect in the report itself. Noting that the State party had not ratified the Optional Protocol to the Convention against Torture or the 1951

Convention relating to the Status of Refugees and its Protocol, he asked whether it planned to do so. Given that the State party had affirmed during its universal periodic review that it did not intend to establish a national human rights commission, the delegation could perhaps indicate whether there were plans to bring the mandate of the Ombudsman's Office into line with the Paris Principles to enable it to perform all the functions of a national human rights institution.

7. He wished to know whether the Convention, which was directly applicable in domestic law, had already been invoked before national courts. He was pleased to note the steps that had been taken to safeguard the basic rights of prisoners and prevent torture, but observed that progress could still be made in that area by, in particular, amending the Code of Criminal Procedure to ensure that all persons taken into custody had the right to contact a relative without delay to inform them of their situation. Referring to paragraph 94 of the report, he asked what constituted "incommunication", which was punishable under article 345 of the Criminal Code. He welcomed the fact that Andorran law did not provide for any derogation from the prohibition of torture in time of war or any other public emergency, but it would be preferable for it to explicitly state that no exceptional circumstances could be invoked to justify torture. The delegation could perhaps indicate whether the State party intended to incorporate such a provision in its legislation. It would also be useful to know whether the absolute prohibition of torture and other provisions of the Convention were part of the training provided to the police, and whether doctors who dealt with detainees had received training on the use of the Istanbul Protocol.

8. Noting that, between 2007 and 2011, there had been no reported cases of extradition or expulsion of persons claiming that they ran the risk of being tortured in the country of return, he asked whether there had been any such cases since 2011. The penalties for perpetrators of acts of torture under the Criminal Code — 1 to 6 years' imprisonment and 1 to 9 years' suspension of civic and civil rights — were not commensurate with the gravity of such acts. It would be useful to hear the delegation's views on the matter, and to know whether there were other provisions allowing for the imposition of heavier penalties. The same question applied to the crime of genocide, for which the maximum penalty was only 6 years' imprisonment. If cases of torture in which the alleged perpetrators were law enforcement officials had been brought before the courts since the period covered by the report, the delegation should provide examples and indicate, where appropriate, the penalties that had been imposed. It would also be helpful to know whether the State party might consider repealing the statute of limitations for crimes involving torture, or, alternatively, extending the statute of limitations currently in force, which was just 10 years.

9. In its response to the CPT report, the Government of Andorra indicated that prison cells were occupied by a maximum of two detainees, or three on an exceptional basis and if the detainees so requested. That was somewhat surprising, given that the country's only prison, which had a 125-person capacity, had been holding just 42 detainees at the time of the CPT visit, that the average size of a cell was 11 square metres, and that the minimum space per prisoner as recommended by the CPT was 4 square metres. It would be useful to obtain further details on the criteria for managing cell occupancy levels. It would also be helpful to know the status of the draft amendment to the Prisons Act, which aimed to reduce the maximum length of solitary confinement as punishment from 30 days to 7, what steps the State party had taken to regulate the use of electrical discharge weapons by prison staff, and how many such weapons were currently in service. Lastly, he wished to know whether the procedure for voluntary admission to psychiatric institutions announced in the State party's response to the CPT report had been implemented.

10. **Mr. Wang Xuexian** (Country Rapporteur) asked whether domestic law contained provisions on asylum or granting refugee status, and whether legislation to combat racism

and intolerance punished incitement to violence and hatred against a racial or ethnic group. He also wished to know whether trafficking and violence against women were established as specific offences in the Criminal Code, and whether the State party had taken legislative or other measures to prohibit corporal punishment in all settings. He requested further information on training in the prevention and early detection of ill-treatment, which was to be provided under the new system of medical services for persons detained in police stations or prison (report, paras. 245–247).

11. He invited the delegation to comment on the observations of the European Commission against Racism and Intolerance (ECRI), according to which there was no independent body with authority to investigate allegations of excessive use of force by law enforcement officials and monitor police activities. The delegation should also comment on information contained in the CPT report regarding its 2011 visit, to the effect that detainees were subjected to systematic body searches before and after family visits, which amounted to degrading treatment under the Convention. The delegation could perhaps also respond to reports that individuals arrested for theft or drug trafficking could spend up to eight and a half months, or even a year, in pretrial detention if they were foreigners. Lastly, he wished to know whether the State party intended to ratify the Convention relating to the Status of Refugees and the Convention on the Reduction of Statelessness, and why it had not accepted the recommendation to take all necessary measures to ensure the enjoyment by non-citizens of human rights in general, which had been made during its universal periodic review by Sweden.

12. **Mr. Domah** enquired whether the jurists who would take part in the training programme for bodies responsible for implementing the Convention had themselves received the relevant training. Noting that, under article 24 of the Criminal Code, arrested persons could waive their right to be represented by a lawyer if they made an explicit request to that effect, he asked whether such requests were frequent, and whether provisions allowing police to interrogate suspects in the absence of a lawyer were often applied in cases in which the lawyer failed to appear at the police station within 45 minutes of being summoned. He asked the delegation to indicate whether the police abused such provisions.

13. **Ms. Belmir** asked whether the State party might consider bringing the definition of torture set forth in article 110 of its Criminal Code into line with that found in article 1 of the Convention, by eliminating the differences mentioned in paragraph 82 of the report and including discrimination among the possible reasons for inflicting torture. In the light of the CPT report, she asked why the use of electrical discharge weapons was permitted in prisons, given that such facilities were closed and secure, and whether steps had been taken to remove the requirement for prison doctors to issue certificates stating whether detainees were fit to undergo a punishment. Lastly, she wished to know whether the State party had complied with the recommendation of the CPT to remind law enforcement officials that verbal abuse of detainees was unacceptable.

14. **Mr. Tugushi** asked whether the State party planned to take action to address the lack of independent visits to places of detention, a problem that the CPT had raised on numerous occasions. He also wished to know whether draft guidelines providing detailed instructions on the use of restraints in prisons had been developed and adopted.

15. **Mr. Gaye** said he was surprised to note that the Constitution “prohibited” the death penalty, and sought clarification on the meaning and purpose of the provision. He wished to know how the State party, which had acceded to several international instruments related to torture before ratifying the Convention, reconciled the various definitions of torture set out in those instruments. He also asked whether Andorran legislation offered protection against reprisals to subordinates who refused to execute an order from a superior that was clearly illegal, in particular an order to commit acts of torture, and how the Andorran authorities ensured that persons on death row who they agreed to extradite under certain conditions

were not executed once they had been transferred to the requesting State. He also wished to know whether it was possible to appeal the deportation decisions of administrative bodies, whether such appeals had suspensive effect, and what concrete measures were being taken by judges to guarantee the protection of complainants and witnesses.

16. **Mr. Mariño Menéndez** enquired about the status of seven persons who had been granted asylum in the State party, and asked what legislation had been applied in order to issue them with a permanent residence permit. He also wished to know whether vulnerable persons, particularly unaccompanied minors, could receive subsidiary protection on humanitarian grounds. Moreover, he invited the delegation to indicate whether Andorra intended to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), and whether domestic courts had issued judgements on the care of foreign women suffering domestic violence. Noting that Andorra had adopted a law on extradition, he asked whether the court of last resort with authority to rule on appeals against extradition decisions was the Constitutional Court, and whether the Principality had concluded extradition treaties with Maghreb countries. Lastly, the delegation should indicate which law was applied in the acquisition of citizenship, and whether foreigners could become naturalized through marriage.

17. **Ms. Sveaass** asked whether the Istanbul Protocol was part of the training provided to doctors, and whether non-governmental organizations for the protection of the rights of vulnerable groups, including lesbian, gay, bisexual and transgender persons, participated in the training activities organized for law enforcement officials. She also wished to know whether the police received training on violence against women and children. The delegation should provide information on the number of cases of violence against women that had been tried by courts since 2000, and on the legal safeguards enabling patients who had been hospitalized against their will in psychiatric establishments to file an appeal and have their case assessed by an independent psychiatrist.

18. **The Chairperson** noted that the reason for discrimination under article 1 of the Convention was not referred to as such by the State party's legislation, and asked whether there were plans to address that gap. He wished to know whether the State party intended to take steps to reduce the average length of pretrial detention, which posed a problem with regard to the presumption of innocence. According to reports, several foreign nationals accused of committing offences had been detained for more than a year without trial. He asked whether the delegation could confirm those reports. In respect of incommunicado detention, which could last up to 30 days in Andorra, the delegation should indicate whether the period was renewable, and whether minors and persons with disabilities could be placed in solitary confinement. Lastly, it would be useful to know the results of measures to combat domestic violence, including the provision of care for victims.

19. **Mr. Bruni** (Country Rapporteur) enquired whether the State party had adopted measures to combat human trafficking, particularly when it was for prostitution. If so, he would welcome further information on measures to assist victims.

20. **Mr. Wang Xuexian** (Country Rapporteur) requested additional details on the balance of powers within the Ministry of Justice, which also served as the Ministry of the Interior.

21. **Mr. Domah** observed that health-care staff received common training on medical ethics as part of their university studies. He wished to know whether the State party ensured that the individuals concerned effectively implemented the rules in practice.

22. **Ms. Belmir** asked whether the State party had taken all necessary measures to address the recommendations of the CPT to the effect that detainees be granted privacy

when they so wished, and that their medical examinations be conducted out of the hearing and, unless otherwise requested, out of the sight of non-medical staff.

The first part (public) of the meeting rose at 11.30 a.m.