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

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Committee against Torture
Fifty-first session

Summary record of the 1193rd meeting
Held at the Palais Wilson, Geneva, on Tuesday, 12 November 2013, at 3 p.m.

Chairperson: Ms. Belmir (Vice-Chairperson)

Contents

The meeting was called to order at 3 p.m.

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

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

1. *At the invitation of the Chairperson, the delegation of Andorra took places at the Committee table.*

2. **Mr. Alberca Sanvicens** (Andorra) said that, in the period since his country had submitted its initial report, the public prosecution service had received a total of four complaints in 2012 and three in 2013 of offences prohibited under the Convention. The first concerned harassment and ill-treatment of a suspect by a police officer, whose conduct in a homicide investigation had been captured on camera. The second concerned sexual abuse and harassment of a female prisoner by a prison warder. Summary criminal proceedings and administrative proceedings had been initiated in both cases, and the public officials concerned had been suspended from their duties as a precautionary measure pending a verdict in the criminal proceedings. Of the remaining complaints, three involved allegations of torture filed by a single prisoner, one involved allegations of degrading treatment and torture filed by a female prisoner against prison warders, and the last involved allegations of degrading treatment against a police officer filed by a private citizen. None of the proceedings had yet reached the trial phase.

3. International treaties took precedence over national law, but in judicial proceedings attorneys tended to invoke national laws, which contained detailed definitions of the offences covered by the Convention, rather than the Convention itself. Article 13 of the Criminal Code specified that all definitions of criminal offences in that Code related to intentional acts and that negligent acts were punishable only where expressly prescribed by law. Thus, article 110 of the Code, which defined the offence of torture, was in line with the definition of torture contained in article 1 of the Convention, which defined torture as an act that was intentionally inflicted on a person. All acts of torture were considered to involve the abuse of power. Discrimination constituted a criminal offence under article 30, paragraph 6, of the Criminal Code.

4. **Mr. Espot Zamora** (Andorra) said that, in the course of the universal periodic review of Andorra, the Government had been asked whether it intended to set up an independent body, in accordance with the recommendation of the European Commission against Racism and Intolerance, in order to allow investigations into complaints of police misconduct. At that time, the Minister for Foreign Affairs had explained that such a body would not serve much purpose since no complaint of misconduct by an Andorran police officer had been lodged since 2006. However, given that criminal proceedings had been brought against two police officers in the past two years, the Government would analyse that recommendation more carefully and possibly reconsider its position.

5. All persons were entitled to report incidents directly to the Andorran courts without going through the police. Both the courts and the public prosecution service had prosecutorial initiative and had already had occasion to exercise it. There was also an independent internal affairs department within the police service that investigated police misconduct and police corruption.

6. **Mr. Alberca Sanvicens** (Andorra) said that, following a periodic visit to Andorra in 2011, the European Committee for the Prevention of Torture had recommended that an independent public body should be appointed to carry out frequent visits to places of detention as a means of preventing torture and ill-treatment of prisoners. In accordance with that recommendation, the number of visits in 2012 had been increased to four and three visits had so far been conducted in 2013. One of the visits had been to La Comella prison,

which had held 42 prisoners, including men, women and minors. In the course of such visits, inspections were carried out of all facilities, including prison cells and common areas, and confidential prisoner interviews were conducted. At the urging of the public prosecutor, joint visits had been conducted with representatives of the Andorran bar association and the Ombudsman, which had proved to be a successful formula for increasing the effectiveness of prison visits. In the coming months, follow-up visits would be conducted in police detention facilities and hospitals.

7. **Mr. Forner** (Andorra) said that the Office of the Ombudsman (the Raonador del Ciutadà), had been established in accordance with the Paris Principles, except with regard to pluralist representation of civil society in its composition. On the basis of a Council of Europe recommendation, the Ombudsman's mandate had been extended to include the protection of children's rights, and following a legislative amendment in 2010 children could submit complaints directly to the Ombudsman. A reform of the institution was possible; however, application for accreditation would have to be made to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, which had not yet been done. The Ombudsman's Office was a member of the International Ombudsman Association.

8. **Mr. Espot Zamora** (Andorra) outlined the provisions of article 8.2 of the Constitution, which prohibited torture and cruel, inhuman or degrading treatment or punishment and those of article 42, which governed states of alert and emergency. The constitutional rights that could be suspended during a state of emergency, which were explicitly enumerated in article 42, did not include those recognized in article 8.2. While it was true that Andorra had not enacted specific legislation to regulate those special states, the provisions of the Constitution were considered to provide adequate protection in that regard.

9. **Ms. Cascales** (Andorra) said that no mechanism had been set up to protect police or prison officers who refused to carry out superior orders to commit torture or who reported another officer who had committed such an act. In both cases, the officers had the obligation to report such incidents to the relevant authority; failure to do so was a serious disciplinary offence. Once such a report had been received, the administrative procedure was engaged and the implicated officer was immediately suspended from his or her duties. That had the effect, inter alia, of preventing any contact at work between alleged perpetrators and officers who had reported them.

10. Promotion within the ranks of the police or security forces was a public, competitive process, and candidates or trade unions could challenge the award of a promotion by means of an administrative appeal. Her Government considered existing mechanisms to be comprehensive enough to address the risk of reprisals against whistle-blowers.

11. **Mr. Alberca Sanvicens** (Andorra) said that the Qualified Act on Extradition had been modelled on the 1957 Council of Europe Convention on Extradition. The extradition process involved both a political and a judicial phase. In the former, the Government received an extradition request from another State either for pre-expulsion detention or for the initiation of extradition proceedings; after ensuring that the provisions of articles 2 and 3 of the Act had been met, it referred the request to the public prosecutor.

12. The Criminal Court (*Tribunal de Corts*) decided, at first instance, whether or not to grant the extradition; its decision could be appealed before the Criminal Division of the High Court of Justice. The Government was then notified of the final decision, which it transmitted to the requesting State.

13. The Qualified Act on Extradition was virtually identical to the European Convention on Extradition, which facilitated its application and obviated the need for bilateral agreements with third countries. Andorra had concluded one bilateral agreement with

Morocco on assistance to detainees and the transfer of sentenced persons. The prohibition of the death penalty was one of the guiding principles of the Andorran Constitution, and if a State that applied the death penalty made an extradition request for one of its nationals, the Andorran courts would certainly deny it.

14. **Ms. Cascales** (Andorra) said that expulsion could result from either a judicial or administrative decision and could be temporary or permanent. Expulsion could also be ordered as a substitute sentence when a prisoner had less than 5 years left to serve. In such cases, its duration could not exceed 15 years. Such expulsion could be requested by the prisoner; if it was denied by the court, the decision could be appealed.

15. Administrative expulsions were governed by the 2008 Qualified Act on Immigration, which expressly stipulated that they should not be confused with expulsions imposed by a criminal court. An administrative expulsion could be ordered as a preventive measure when the person in question was believed to pose a threat to the security of the State, society, property or public order. In such cases, the duration of the expulsion must be proportionate to the perceived threat but could not exceed 10 years. The other type of administrative expulsion took the form of an enforcement measure when a foreigner in an irregular situation failed to leave the territory within the required time. Such expulsion could not be of more than two years' duration.

16. Any expulsion could be challenged in the courts, but for it to produce suspensive effect the expellee must be a resident of Andorra. The Administrative Court was careful to ensure that expulsion orders did not interfere with the right to respect for privacy and family life. An expulsion order issued against a non-resident of Andorra did not have suspensive effect, and the Minister of the Interior could establish a time limit of 30 days for its execution.

17. **Mr. Espot Zamora** (Andorra) said that article 110 of the Criminal Code, under which torture was punishable, provided for a sentence of 1 to 6 years' imprisonment and disqualification from the exercise of civic rights for up to 9 years. The statute of limitations for torture expired after 10 years. The Government had taken note of the Committee's view that prison sentences for torture were too short and would take it into account when making future amendments to the Code. Article 81 of the Code explicitly stipulated that no statute of limitations applied to the prosecution of the crime of genocide or crimes against humanity.

18. **Ms. Cascales** (Andorra) said that police officers received initial and further training in proper police conduct, the content of which derived from a variety of basic instruments, including national laws and regulations, and European and international human rights declarations and treaties. The training focused primarily on the Criminal Code, and the police service's legal department regularly held short courses on the offences of torture and ill-treatment, which included simulations based on actual cases. Police officers were also given training in the use of force.

19. Forensic doctors carried out assessments of physical signs of ill-treatment or torture of defendants in judicial proceedings and suspects in police custody in accordance with the Istanbul Protocol and other European protocols. They also examined detainees in order to determine whether their complaints matched physical signs of ill-treatment, and they cooperated with other institutions in efforts to prevent torture and cruel, inhuman or degrading treatment or punishment.

20. Beginning in 2014, there were plans for lawyers to give training courses to prison personnel. The Andorran bar was an independent and self-regulating professional association and took any disciplinary measures deemed necessary against any of its members.

21. **Mr. Villaverde** (Andorra) said that a national bioethics committee, composed of health-care professionals from the public health system, had been set up to address the ethical dimensions of patients' rights. It was mandated to act on its own initiative or at the request of any health-care professional, patient or family member of a patient, and independently of the Ministry of Health. The committee did not have disciplinary powers but transmitted its conclusions to various professional associations and to the Ministry of Health, which did have disciplinary powers.

22. **Ms. Cascales** (Andorra) said that the current wording of article 24 of the Code of Criminal Procedure recognized the right of all persons deprived of their liberty to request that a family member or person of their choice should be informed immediately of the location of their detention. A previous regulation had provided for delaying notification of detention for five hours but had since been revoked. Article 24 did not provide for detainees to be examined by a doctor of their choice at their own expense, but there were plans to include such a provision in forthcoming amendments to the Code.

23. As expressly stipulated in articles 105 to 108 of the Code of Criminal Procedure, incommunicado detention could be ordered — for a maximum of eight days — solely by means of a substantiated decision issued by an investigating judge in the case of an individual who had already been deprived of his or her liberty on grounds that included drug-trafficking, abduction, terrorism and money-laundering. A public official who placed a prisoner in incommunicado detention or, for that matter, in solitary confinement, which was governed by a separate provision of the Code of Criminal Procedure, without an order by a judge, was liable to the penalties set out in article 345 of the Criminal Code.

24. **Ms. Mingorance** (Andorra) said that all detainees had the right to legal representation. If a detainee failed to appoint a lawyer or his lawyer failed to arrive within 45 minutes of being notified of the facts, the duty counsel would automatically be assigned to the case. The establishment of that procedure ensured that the right to legal representation was guaranteed at all times.

25. **Ms. Cascales** (Andorra) said that the criminal prosecution process included an investigation phase and a trial phase. Pursuant to article 103 of the Code of Criminal Procedure an investigating judge could only remand a person in pretrial detention when: releasing the accused could pose a threat to public safety or be socially disruptive; there were grounds for believing that, given the circumstances, the seriousness of the offence and the penalty attached, the offender would attempt to evade justice; the offence had caused harm to a third party and no bail or adequate security had been provided; custody was necessary for the protection of the accused or to prevent reoffending; the accused had failed to comply with the summons issued by the court or the judge, or release could prejudice the proper conduct of the investigation. Pretrial detention was therefore strictly regulated and detainees could submit an application for release at any point.

26. **Ms. Mingorance** (Andorra) said steps had been taken to ensure that police officers and witnesses reporting acts of torture were protected against any ill-treatment or intimidation resulting from their allegations or any evidence given. Police officers reporting acts of torture enjoyed full anonymity and witnesses could request additional protection measures, such as restraining orders.

27. **Ms. Cascales** (Andorra) said that victims of torture or ill-treatment had the right to request reparation and compensation for physical and moral injury. The costs incurred as a result of the injury were borne by the offender or, failing that, the State.

28. The national prison currently held 46 prisoners, who occupied 11-square-metre cells containing no more than two persons at a time. In exceptional circumstances, four persons could be held in a 16-square-metre cell. Following the recommendations of the European

Committee for the Prevention of Torture, the cell doors in the prison had recently been modernized to give prisoners more privacy.

29. On the question of prison regimes, she confirmed that solitary confinement was only used in exceptional circumstances and steps had been taken to reduce the maximum duration from 30 days to 7 days for adults and 3 days for minors. Owing to the very small number of minors in the prison population, there were no separate facilities for them and they were held together with adults. There was also no special prison regime for persons with disabilities, although appropriate safeguards had been put in place to ensure that their specific needs were met, particularly if they underwent periods of solitary confinement.

30. There were no regulations in force to regulate the use of restraints in prison but such measures were only used in emergency situations and were closely monitored by the Ministry of the Interior and the public prosecutor. Only the prison governor could authorize the use of Tasers and each device was fitted with audio and visual recording equipment. In the event of a Taser being used, the prison officers concerned were required to submit a full report detailing their actions to the prison authorities. Body searches continued to be used in prison as a security measure but were kept to a minimum in accordance with the recommendations of the European Committee for the Prevention of Torture. The prison authorities kept a record of all searches conducted and new procedures had been introduced to ensure that full body searches were carried out as respectfully as possible.

31. As to prisoners' right to privacy, medical examinations were not conducted in the presence of a prison officer, although the cell door of the prisoner concerned must be kept open at all times for security reasons. If a prisoner was found to have a communicable disease, he was separated from the other prisoners and the fact was recorded in his file.

32. **Mr. Alberca Sanvicens** (Andorra) said that there were no psychiatric treatment facilities in the national prison but special measures had been taken to ensure that persons suffering from mental illness received appropriate care. The forcible detention of persons with a mental illness was provided for in accordance with the Incapacity Act and could be appealed before the civil courts.

33. **Mr. Villaverde** (Andorra) said that national legislation provided for voluntary psychiatric detention for persons with certain types of mental illness. A psychiatrist must approve the request and patients who were the subject of such a decision could only be discharged once it had been demonstrated that they posed no risk to themselves or others.

34. **Ms. Mingorance** (Andorra) said that human trafficking was not defined as a separate offence in the Criminal Code but acts amounting to human trafficking could be prosecuted under other existing articles. Acts of domestic violence were criminal offences and specific provisions prohibited the use of corporal punishment against children.

35. **Mr. Bruni** (Country Rapporteur) welcomed the increased number of prison inspections and asked whether the Government intended to increase the mandate of the national Ombudsman. Noting the slight rise in the prison population, he requested information on the nationalities of prisoners and the current number of minors detained. He wished to know whether the State party intended to raise the time bar for acts of torture and genocide, and enquired about the use of Tasers in prison. Lastly, given the absence of psychiatric facilities in the prison, he asked whether prisoners with mental illnesses were sent to neighbouring countries for treatment.

36. **Mr. Wang** Xuexian (Country Rapporteur) asked whether, as part of the State party's attempts to increase the penalties for acts of torture, the statute of limitations for such offences would be extended accordingly. He sought clarification on the two phases of the criminal prosecution process and wished to know whether it was true that foreigners committing similar offences to Andorran citizens had been held for longer periods in

pretrial detention. As to discrimination, he enquired whether the Criminal Code contained provisions prohibiting racial hatred and public incitement to racial hatred.

37. Turning to the issue of asylum applications, he asked whether national legislation provided for the granting of asylum for refugees and whether the State party intended to ratify the Convention relating to the Status of Refugees and the Convention relating to the Status of Stateless Persons. Lastly, he wished to know why the State party had not supported the recommendation made by Sweden during its universal periodic review in 2011 to take all necessary measures to ensure the enjoyment by non-citizens of human rights in general.

38. **Mr. Mariño Menéndez**, noting the lack of asylum legislation in Andorra, asked the delegation to provide further information on the treatment and current legal status of the seven persons granted asylum in Andorra. He wished to know whether in addition to refugee status foreigners could apply for complementary protection or temporary residence and, if so, which body was responsible for monitoring applications. Could foreigners permanently residing in Andorra transmit their nationality to their children and were their children eligible for Andorran nationality by jus soli?

39. **Mr. Domah** asked whether lawyers received comprehensive training on the Convention and matters relating to torture. He also wished to know whether the Government provided health-care professionals with information on how to detect signs of torture.

40. **The Chairperson** said that Tasers should be used only as a last resort. Only personnel who needed to know should be informed when detainees were diagnosed with sexually transmitted infections, as that was a question of dignity. The presumption of innocence must be respected throughout investigations and trial proceedings. Misconduct by public officials very probably indicated an intention to commit an offence. She asked why the State party was reluctant to ratify the Optional Protocol to the Convention or sign the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

41. **Ms. Sveaass** asked the delegation to clarify whether draft legislation designed to strengthen complaint mechanisms for psychiatric patients covered only detainees or applied to all such patients.

42. **Mr. Alberca Sanvicens** (Andorra) said that, under the Criminal Code, dangerous offenders with diminished capacity caused by serious mental illness could be held in confinement in a civilian institution. Mental health legislation passed in 2004 regulated the conditions under which a person could be committed to a facility for psychiatric care. A judge must receive a request to commit a person from a qualified medical practitioner and decide within 48 hours whether to proceed. Parliament was currently looking at amendments to the legislation with a view to reinforcing the rights of psychiatric patients.

43. **Mr. Espot Zamora** (Andorra) said that the total prison population was currently 46, including 9 Andorrans, 16 Spaniards and 8 Portuguese. One minor was being held on a charge of attempted murder. Under the Criminal Code, acts of torture could be punished with prison terms ranging from 1 to 6 years, and up to 9 years where such acts were life-threatening. Depending on the seriousness of the crime, the statute of limitations on acts of torture ranged from 10 to 30 years. Intent to harm or destroy an ethnic group when committing a crime was considered to be an aggravating circumstance. The penalty for murder in such a case ranged from 20 to 30 years' imprisonment.

44. **Ms. Cascales** (Andorra) said that prison warders carried Tasers, which had been used in four instances since 2007. In two of those cases, warders had used the weapons in

order to overpower violent inmates. Consideration might be given to withdrawing Tasers from use in future.

45. **Mr. Bruni** said the Committee had not suggested that the State party should ban the use of Tasers but rather that it should consider issuing them only to specialized law enforcement officials whose assistance could be requested by prison staff when necessary. The fact that warders carried Tasers could create needless tension in the prison.

46. **Mr. Espot Zamora** (Andorra) said that his Government would give due consideration to the suggestion.

47. **Ms. Mingorance** (Andorra) said that pretrial detention was used only in cases of serious crime, and in the case of robbery only when the offence had been committed by organized gangs. The average period of pretrial detention was eight and a half months. It tended to be longer in the case of foreign nationals caught up in international crime rings, as the investigation of such cases tended to be complex. A suspect could be placed in pretrial detention only after having been formally charged. The presumption of innocence was maintained throughout court proceedings.

48. **Mr. Espot Zamora** (Andorra), acknowledging that his Government had not signed the Convention relating to the Status of Refugees or its Protocol, said that Andorra was not a destination country for asylum seekers and that it was unable to provide asylum systematically. However, in cooperation with the authorities of Spain, residence and work permits had recently been granted to five Eritrean refugees, demonstrating the State party's willingness to take in refugees in specific cases, particularly when they were vulnerable. In that context, it should be noted that the State party had ratified the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. It planned to ratify the Istanbul Protocol shortly. There was no local municipal government as such in the State party. The complexities of administration of the seven electoral districts made it impossible for foreign residents to vote but they had full access to public services.

49. **Mr. Alberca Sanvicens** (Andorra) said that discrimination against, and insulting treatment of, members of specific groups in the State party were crimes under the law, as was denial of the Holocaust. A broad range of aggravating circumstances for offences was set forth in article 30 of the Criminal Code.

50. **Mr. Forner** (Andorra) said that his country's exceptional geographical situation obliged it to treat matters of nationality with extreme caution. Currently, foreign nationals could apply for Andorran citizenship only after 20 years' legal residence. A proposal to reduce the requirement to 15 years had been rejected. Persons born in Andorra were entitled to citizenship if their parents' nationality was unknown but they could lose it if the parents' nationality subsequently became known. Foreign minors resident in the State party were entitled to apply for citizenship after 10 years' legal residence. Noting that Andorra had signed or ratified more than 250 international instruments in the previous 25 years, he said that it might consider ratification of the Optional Protocol to the Convention at a later date. Immigration, however, was a delicate matter in a country of Andorra's dimensions.

51. **Ms. Cascales** (Andorra) said that prisoners with highly contagious diseases could be transferred to hospital if required. Otherwise, where necessary and for the good of the other prisoners, they were placed in isolation in the same way as they would be in hospital in such circumstances.

52. **Mr. Alberca Sanvicens** (Andorra) said that, under the Criminal Code, penalties for offences committed wittingly were higher than for those committed through negligence or imprudence. The crime of torture was considered an intentional offence regardless of whether or not it was carried out in the context of misconduct by a public official.

53. **Mr. Wang** Xuexian asked whether the practice of body searches prior to and after family visits to prisoners could be abolished.

54. **Mr. Espot Zamora** (Andorra) said that changes had already been made to prison inmate search methods as a result of recommendations made by the European Committee for the Prevention of Torture. The State party would welcome suggestions from the Committee against Torture in that regard but the question of prison security remained paramount.

55. **Mr. Villaverde** (Andorra) said that annual training, including on methods of detecting ill-treatment, was mandatory for all public service medical personnel. All medical professionals had a legal obligation to report cases of suspected ill-treatment, including domestic violence, and could be barred from practising for failure to do so.

The meeting rose at 6.05 p.m.