



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

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Summary record (partial)* of the 1026th meeting

Held at the Palais Wilson, Geneva, on Thursday, 3 November 2011, at 10 a.m.

Chairperson: Mr. Grossman

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* No summary record was prepared for the rest of the meeting.

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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)*

Fourth to sixth periodic reports of Paraguay (CAT/C/PRY/4-6)

1. *At the invitation of the Chairperson, the delegation of Paraguay took places at the Committee table.*
2. **Mr. González** (Paraguay) introduced his delegation and said that Paraguay intended to maintain a permanent dialogue with all international human rights mechanisms and responsibly address its shortcomings in that area. Noting that, in the course of 2011, reports of the State party had been considered by the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women, and that it had appeared before the Human Rights Council under the Universal Periodic Review, he observed that Paraguay was up to date with its reports to all the treaty bodies to which it was a party. That fact served to underline Paraguay's commitment to comply with its international obligations.
3. Paraguay had been one of the first countries to be visited by the Subcommittee on Prevention of Torture and the first to host a follow-up visit, and had agreed to make public the Subcommittee's ensuing reports. The Subcommittee had been appreciative of the assistance provided by the State party in the preparation and conduct of the visits, which had taken place in March 2009 and September 2010. The Subcommittee had been afforded speedy and unhindered access to places of detention and prison authorities had given their full cooperation. It had been able to conduct private interviews with all the prisoners it had wished to meet and had been afforded unrestricted access to documents and registers. The Subcommittee had met the President of Paraguay during its first visit, as well as representatives of various NGOs. In a further demonstration of the State party's interest in improving its human rights situation, the delegation had held a meeting with the Association for the Prevention of Torture just prior to appearing before the Committee against Torture.
4. The State party was in the process of amending legislation with a view to defining torture as a criminal offence in line with article 1 of the Convention. It should be noted that, under the Constitution, no statute of limitations applied to the crime of torture. That principle had been upheld in several court decisions and, with a view to combating impunity, the Constitutional Chamber of the Supreme Court had ruled that no statute of limitations applied to criminal actions or the penalties incurred by such crimes.
5. A national preventive mechanism had been established under Act No. 4288/11. It was an independent legal body, the aim of which was to strengthen protection afforded to persons deprived of their liberty against all forms of treatment and punishment that were prohibited under domestic legislation and the relevant international instruments, and to achieve the eradication of torture and other cruel, inhuman or degrading treatment. An ad hoc committee had been set up to calculate the mechanism's budgetary requirements.
6. Under Organization Act No. 4423/11, the Public Defender Service had been granted operational and financial independence and a good number of public defenders had been appointed. The Prosecutor-General's Office had established a specialized human rights unit, composed of three prosecution units and based in Asunción, with a view to streamlining nationwide efforts to combat human rights violations. Prosecutors had also been granted certain exclusive functions.
7. Human rights featured in all police training programmes and a manual on the use of force had been issued. As part of a new disciplinary regime, a human rights prosecution

unit specializing in administrative inquiries had been established within the national police. On the theme of education, 37 inmates of the Casa del Buen Pastor women's penitentiary would start four-year degree courses in law and psychology in 2011 under an agreement between the Ministry of Justice and Labour and the Universidad Técnica de Comercialización y Desarrollo (Technical University for Marketing and Development).

8. The Human Rights Network of the Executive Branch was developing a national human rights action plan aimed at allowing groups and sectors of society that had hitherto been ignored to make their voices heard. Thematic round tables made up of representatives of public institutions, social organizations and universities had been established in various cities to look at ways of promoting the rights of members of certain sectors of society. Consultative workshops had then been run to revise the texts produced by the round tables. Input from the workshops would be used by a coordinating committee to draft the action plan, which it was hoped would be made public in December 2011. The United Nations Deputy High Commissioner for Human Rights, Ms. Kyung-wha Kang, had recently visited Paraguay and, as well as pointing out human rights issues requiring urgent attention, praised the efforts of the Network. The State party was nevertheless aware that much remained to be done in order for it to achieve full compliance with the Convention.

9. **The Chairperson** said that the visits by the Subcommittee on Prevention of Torture to the State party and the establishment of a national preventive mechanism were encouraging signs of improvement in the human rights situation.

10. **Mr. Mariño Menéndez** (Country Rapporteur) welcomed the process of legislative and institutional reform upon which the State party was embarked and its spirit of cooperation with international human rights treaty bodies. He noted, however, that the State party had not accepted article 20 of the Convention.

11. Taking note of the State party's intention to amend the Criminal Code by bringing article 309, on the definition of torture as a criminal offence, into line with article 1 of the Convention, he asked for confirmation that a bill had also been drafted to amend the Military Criminal Code by incorporating a similar definition. The absence of a definition of torture as a criminal offence that met international standards meant that instances of torture might be dealt with under other categories of offence to which a statute of limitations did apply, unlike the offence of torture. As a result, and given that it appeared that the Convention could not be invoked directly before the courts in Paraguay, the Criminal Code as it currently stood had impeded the full application of article 5 of the Constitution.

12. With regard to the safeguards provided for in articles 2 and 4 of the Convention, he welcomed the detailed register described in paragraph 122 of the State party's report, but expressed surprise that such an important concept should have been introduced only in a decision of the national police, rather than in a legal instrument of higher rank. He sought further information on exactly how the register functioned, and who was responsible for overseeing the responsibilities of police station chiefs outlined in paragraph 123. He asked about the three-way relationship between the police, the prosecution services and the judges of the courts responsible for procedural safeguards with regard to detainees. Were safeguards judges informed of police actions, such as questioning? Who was responsible for ensuring respect for human rights? He also asked whether standard instructions and procedures existed for questioning, and whether interviews were recorded.

13. While the creation of the Public Defender Service was a welcome development, it appeared that demand for legal assistance far outstripped supply, with 192 lawyers to deal with thousands of cases. He asked whether the Public Defender Service, like the prosecution services and safeguards judges, was entitled to visit people in police custody, which seemed to be subject to restrictions. Given the increased risk of torture or ill-treatment in the initial stages of detention, it was important to ensure that appropriate

safeguards were in place. He asked whether detainees were able to lodge appeals for constitutional protection (*amparo*). Had any cases occurred and, if so, had the Supreme Court issued any rulings or writs of habeas corpus?

14. The State party's extensive use of pretrial detention for long periods amounted to a quasi-punitive measure, potentially violating the presumption of innocence, impeding the application of protection measures and moving detainees away from their place of origin. The situation was perhaps linked to problems in the functioning of the security and judicial systems, resulting in part from lack of resources. Emphasizing that justice delayed was justice denied, he asked whether consideration had been given to speeding up the judicial system, and whether the Criminal Chamber of the Supreme Court functioned properly.

15. He asked whether the Ombudsman's Office had established a database of complaints of torture, and whether any register of allegations of torture by police existed, for the purpose of both increasing public awareness and improving the situation. With regard to the detention of foreign citizens, he asked how the State party gave effect to the provisions of article 36 of the 1963 Vienna Convention on Consular Relations.

16. Since 1999, only one person seemed to have been convicted of torture in the State party. Article 309 of the Criminal Code had never been applied, while article 307 had been invoked only a handful of times. Of the many complaints submitted to the prosecution services, action had been taken only in 56 cases. Given that there was a dedicated human rights unit within the prosecution services, he asked whether the low rate of prosecution and conviction stemmed from inadequate investigation. It might be useful, as had already been suggested in other forums, to establish a specific mechanism for investigating allegations of torture or inhuman treatment of detainees, particularly in police custody. The Human Rights Council's Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had concluded in 2007 that torture was still widely practised during the first days of police custody, particularly in Ciudad del Este. The lack of convictions for torture suggested impunity. He enquired about the procedure for submitting and dealing with complaints of ill-treatment at police stations. Concerning the excessive use of force by the security services, he asked whether private groups existed who used force with the tacit agreement of the authorities in land disputes. Such a situation would have implications for the responsibilities of the State party. Had any complaints been received in that regard, particularly in connection with land disputes involving indigenous peoples?

17. He asked whether a state of emergency had been declared in Paraguay and, if so, for what purpose and for how long. Was it related to the fight against terrorism, drug trafficking, or organized crime? What degree of organized crime would justify a state of emergency? He sought confirmation of reports from the Human Rights Council and the Subcommittee on the Prevention of Torture that there was no official register of weapons issued to police. If that was true, such a situation raised serious problems for individual security and contravened international legal standards.

18. Turning to the issue of the independence of judges, he enquired about the procedure for appointing a bench of magistrates to sit in a case, and stressed the need for effective guarantees of impartiality.

19. It appeared that rulings of the Inter-American Court of Human Rights in cases involving certain indigenous groups were being applied slowly. He asked whether the indigenous groups affected were participating in the process, and whether they had expressed any views. Indigenous peoples were often vulnerable to exploitation. Had a specific national mechanism been created to address claims from indigenous peoples concerning the use of their traditional lands? If a register of land ownership existed, did it recognize and protect indigenous title?

20. Lastly, with regard to article 3 of the Convention, he highlighted the overlap between international protection and measures to combat human trafficking, and asked whether the State party had refused to extradite any persons on the grounds that they would run the risk of being tortured in the country requesting the extradition.

21. **Ms. Sveaass** (Alternate Country Rapporteur), thanking the State party for submitting the report in accordance with the new procedure, acknowledged the challenges faced by Paraguay in dealing with the crimes of the former regime and fostering the transition to democracy, and she expressed appreciation for the openness of the State party in the report. As with other countries in the region that had recently emerged from dictatorships, the key questions included how the State party had dealt with the crimes of the former regime and the transitional processes with regard to justice and accountability, how the victims of the previous regimes had been acknowledged and compensated, and what steps had been taken to ensure that violations of human rights, particularly with regard to torture, had become a thing of the past.

22. On the designation of a state of exception, she requested further information on the criteria used to decide to enforce such a state, and on the practical implications of such a decision.

23. Concerning the training provided to police, military and health-care personnel on aspects of the Convention, she noted that the report provided more information on the training given to military and police personnel than on that given to medical personnel, and requested more information in that regard. She welcomed the report that the training provided to military personnel had been considered to be successful and that no claims of torture had been made against military personnel engaged in supporting the national police since the training, but requested information on any oversight that might have occurred regarding the number of complaints received before the training, as that information was vital for evaluating the training. She commended the State party for including the Istanbul Protocol in the training, and enquired whether, in accordance with the Protocol, forensic doctors were available to investigate cases of alleged torture. Welcoming the particular focus on investigation of reports of torture in the training provided to the police, she expressed concern that the State party's claim that the number of complaints of torture and ill-treatment against police personnel had fallen as a result of the training did not entirely agree with the reports received by the Committee regarding situations occurring during the early phases of arrest and detention, and she requested additional information from the State party on that issue. In addition, she would appreciate further details of the training provided with regard to demonstrations and mass protests.

24. Echoing the question raised by Mr. Mariño Menéndez, she enquired how successful the "weapons control" register had been, and whether any resulting abnormalities or irregular use of weapons had been investigated. There had also been reports that it was possible to buy ammunition and not register it and an explanation would be welcome. In addition, she requested confirmation that the previously common practice of policemen purchasing their own weapons had stopped.

25. With regard to visits to prisons, she welcomed the information regarding the adoption of a national preventive mechanism in April 2010, and asked for more information about the visits to prisons carried out by relevant bodies, in particular with regard to unannounced visits, opportunities to speak to inmates in private, the procedure followed to make the recommendations of those bodies public and the reactions received to such recommendations. More detailed information was also needed on the recommendations made to improve the prison system.

26. She welcomed the information on the registration of prisoner information, particularly with regard to health, but asked whether details of disciplinary action were

included. There had been reports of prisoners being placed in isolation for extended periods and, drawing attention to the case of Mr. Mauricio Marga, a Mexican national who had been held in isolation for 15 days before eventually being transferred to another prison, asked whether such punishments were entered in the registers and their duration recorded.

27. She also requested information on measures being taken to combat corruption in prisons, as there had been reports that prisoners were paying guards for services that they should receive as standard, such as walks or contacts with lawyers. Expressing concern at reports that female prisoners had been encouraged to sell sex to male inmates with the guards acting as facilitators and that a child pornography ring had been uncovered in Tacumbú national prison, she asked for clarification of those reports and on the measures taken to prevent and punish such activities. In addition, she wished to receive further information on reports that male inmates were permitted more conjugal visits than female or homosexual inmates, on the specific actions taken with regard to combating drugs in prisons and on drug rehabilitation for prisoners.

28. Noting with appreciation the information provided by the State party with regard to disciplinary actions by the police, she asked whether any police officers had been given prison sentences for inflicting serious bodily injury on detainees. Psychological pain also constituted a form of torture and any reports of such actions should be provided. Referring to reports of cases of police brutality, she asked what action had been taken in such cases. Although five cases of torture had been reported during 2009, only in one of them was sufficient evidence produced to substantiate the accusation and she wished to know if any punitive action had been taken as a result.

29. She welcomed the steps taken to provide compensation to victims of the former regime, and asked whether, apart from monetary compensation, any other forms of compensation, such as rehabilitation, were provided. Moreover, more information was needed on compensation for those who had been victims of torture during the current reporting period.

30. Noting that persons who were convicted of crimes on the basis of testimonies and evidence produced as the result of torture were permitted to appeal their convictions, she enquired whether such persons were made aware of the possibility and, if necessary, provided with legal assistance in that regard.

31. Turning to the subject of indigenous groups in Paraguay, she asked whether there had been a new census to provide updated information on the number of indigenous people in the State party. She welcomed the measures taken by the State party to address questions such as land disputes and asked for an update on measures taken to uphold rulings on such issues by the Inter-American Court of Human Rights. There had also been reports of difficulties experienced by representatives of that Court in gaining access to communities when investigating land disputes and the Committee would appreciate information on steps taken to address that issue.

32. With regard to trafficking, she requested an explanation of the figures contained in paragraph 177 of the report and asked how many persons had been found guilty of trafficking and what measures had been taken to increase the support provided to victims of trafficking. She encouraged the State party to provide training for border police and prosecutors on the issue of trafficking, particularly with regard to the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children.

33. On the issue of abortion, she asked for information on the rights of women who had been raped or the victims of trafficking with regard to abortion, and on what was done to help such women. In addition, she wished to know whether abortion was permitted in cases where the pregnancy threatened the life of the mother, and what happened to doctors who performed abortions that they judged to be medically necessary.

34. Lastly, with regard to psychiatric care in the State party, she asked for more information on the closure of the psychiatric unit at Tacumbú national prison and welcomed the reforms that had been instituted with regard to the treatment of persons with mental disabilities. However, she noted that there were no clear legal provisions regulating the rights of persons with mental disabilities and further information was required in that regard.

35. **Mr. Bruni** noted that, although Paraguay had not yet established a national preventive mechanism, as set forth in the Optional Protocol to the Convention, it should be commended for adopting legislation to establish and finance such a mechanism; he asked the members of the delegation when it was expected to become operational and what human and financial resources would be allocated to that end.

36. In its report, the State party had submitted only partial responses to questions raised in paragraph 24 of the list of issues; inter alia, Paraguay had not submitted information on the number of wardens in each prison, on the training and salaries that those wardens received, or on the regulations governing the use of isolation cells and solitary confinement to punish detainees and convicted prisoners. Furthermore, Paraguay had not informed the Committee if military or civilian high-security prisons had been established, and had not outlined the procedures followed when persons deprived of their liberty were transferred between prisons. The delegation was urged to provide complete answers to the questions raised in paragraph 24 at the earliest opportunity.

37. Information provided to the Committee in reply to the questions raised in paragraph 25 of the list of issues was likewise incomplete: the Committee had been informed that conditions in Paraguayan prisons were deplorable; more in-depth information in that regard should be submitted by the State party as a matter of urgency.

38. In paragraph 24 of the combined fourth to sixth periodic reports submitted by the State party in reply to the list of issues, it was stated that criminal enforcement courts were authorized by law to monitor the prison system by carrying out inspections. The Committee wished to know whether unannounced inspections took place, and whether it could be informed of the outcomes of one or more recent inspections and follow-up thereto by the competent authorities.

39. In paragraph 111 of its report, the State party had stated that a review was taking place of the current prison system in Paraguay; the Committee wished to know if any information was available on the outcome of that review. According to paragraph 141 of that report, while 5 detention facilities in Paraguay were very overcrowded, the other 10 facilities were operating below capacity. He asked why this was the case and what steps had been taken to address the issue of overcrowding.

40. **Mr. Gaye** asked whether military personnel in Paraguay could be brought before regular criminal courts, or if they were tried exclusively in military courts. He also asked for further clarification regarding the procedures followed when a person was arrested, particularly with regard to the time frame that the police must respect in that regard. He was surprised that, according to the State party report, investigations into certain cases of torture had been suspended and asked why those investigations had not been completed. He also asked what penalties were imposed on the perpetrators of torture, and what follow-up mechanisms were in place, when it was established that torture had been used to obtain confessions.

41. **Ms. Belmir** noted that, in 2003, Paraguay had ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; she asked whether Paraguay intended to abolish the death penalty within the military justice system, particularly in the light of the fact that Paraguay had been urged to do so within the context of the universal periodic review.

42. Paraguay did not seem to be making use of objective criteria when appointing and promoting judges so as to ensure that the process was fair and transparent. She asked whether an action plan had been drawn up with a view to reforming the legal system.

43. Although the Code of Criminal Procedure provided for due process from the moment of arrest, no mechanism had been established to monitor the work of the national police, who did not always notify the Office of the Public Prosecutor that a person had been detained. Human rights violations sometimes occurred during that first hour of arrest and, as a result, the justice system was not highly regarded by the public at large. Paraguay needed to enact reform so as to ensure that there was adequate oversight of actions taken by law enforcement authorities.

44. She noted that the State party was failing to ensure that minors in conflict with the law were dealt with appropriately, and that they were often treated harshly. She also asked whether Paraguay had drawn up special legal procedures to ensure that women received appropriate treatment, particularly in cases where they had been subjected to domestic and marital violence.

45. **Ms. Gaer** asked the State party why its periodic report, which had been due in 2003, had been delayed. She commended Paraguay for ratifying the Second Optional Protocol to the Covenant on Civil and Political Rights and also commended the fact that no amnesty law had been enacted with regard to members of the regime of former President Stroessner.

46. She asked for further information on how the military justice system dealt with incidences of torture, and on the process by which it was decided whether an offence constituted an act of torture to be referred to the military courts, or whether it was another form of human rights abuse that should be dealt with by the regular courts. In his report, The Special Rapporteur on torture had drawn attention to the extreme punishments that were sometimes meted out to conscripts in Paraguay. The Committee required further information on that practice, including whether it had given rise to investigations and whether persons who meted out harsh treatment to conscripts were punished.

47. She noted that the penalty imposed on perpetrators of domestic violence was only a fine. Furthermore, for prosecutions to take place in that regard, it was necessary to prove that domestic violence or abuse was habitual, and that the persons concerned cohabited. She asked what steps Paraguay was taking to amend legislation in that field. She commended Paraguay on the establishment of shelters for the victims of trafficking but noted that those shelters were often underutilized; she asked the delegation to comment on the status of those shelters and on what steps could be taken to ensure that better use was made of them.

48. The Subcommittee on Prevention of Torture had reported that a child pornography ring had been uncovered in a Paraguayan prison, and had recommended that that matter should be fully investigated. She asked whether such an investigation had taken place. She also asked for more information on domestic violence, and on harsh treatment of, and sexual violence perpetrated against, street children.

49. **Ms. Kleopas** noted that, according to paragraphs 224 and 225 of the State party report, a committee had, since 2009, been organizing the drafting of a comprehensive law on violence against women. She asked when that committee was likely to conclude its deliberations and what recommendations it had made to date. She also asked whether Paraguay intended to criminalize marital rape, whether the law would offer protection to victims of violence, and whether the State would provide rehabilitation for victims of torture and establish the necessary shelters. She also asked whether Paraguay intended to enact legislation to explicitly prohibit corporal punishment of children, as the Committee on the Rights of the Child has twice recommended.

50. **The Chairperson** commended Paraguay on its ratification of human rights conventions, including the International Convention for the Protection of All Persons from Enforced Disappearance. Noting that the Convention against Torture had been invoked by national courts in 2008 and 2009, he asked whether Paraguay would provide training to judges with a view to raising awareness of the Convention, and whether Paraguay would incorporate the Convention in its national legislation. Concerns had been raised that the mechanisms for the investigation of torture that were in place in the State party were not in line with the Istanbul Protocol. The Committee wished to know whether steps were being taken in that regard, as well as what facilities were available for the rehabilitation of victims of torture. He also asked whether any remedial measures had been adopted to address human rights abuses by military personnel, how detainees could lodge complaints in that regard, and whether they could bring legal proceedings against the party that subjected them to torture.

51. **Mr. González** (Paraguay) thanked the Committee for inviting the Paraguayan delegation to attend the meeting, and gave his assurances that it would endeavour to answer all the Committee's questions.

The discussion covered in the summary record ended at 12.05 p.m.