

## **BOLIVIA**

### **CAT A/56/44 (2001)**

89. The Committee considered Bolivia's initial report (CAT/C/52/Add.1) at its 462nd, 465th and 472nd meetings, held on 3, 4 and 10 May 2001 (CAT/C/SR.462, 465 and 472), and adopted the following conclusions and recommendations.

#### **A. Introduction**

90. The Committee welcomes the initial report of Bolivia, which was submitted within the time limit established by the Convention. Bolivia acceded to the Convention on 12 April 1999 without making any reservations. It has not made the declarations provided for in articles 21 and 22.

91. The report was not drafted in accordance with the guidelines for the preparation of reports by States parties. Nevertheless, the Committee is grateful for the additional information provided by the representatives of the State party in the oral presentation, and for the open and constructive dialogue with those representatives.

#### **B. Positive aspects**

92. The Committee notes with satisfaction:

(a) The adoption of a new Code of Criminal Procedure, to enter into force shortly, and of the Public Prosecutor's Office Organization Act, which are designed to remedy shortcomings in the country's currently deficient system for the administration of justice;

(b) Efforts by the Ombudsman's Office, established by the Act of 22 December 1997, and its six offices currently in operation, and those of the Human Rights Commission established by the Chamber of Deputies, to improve the human rights situation in the country;

(c) The measures adopted by the State party to implement human rights training programmes not only for public officials, but also in universities and secondary schools, with the participation of the United Nations Development Programme and the Office of the High Commissioner for Human Rights.

#### **C. Factors and difficulties impeding the application of the Convention**

93. The Committee has taken note, during its consideration of the report, of the lack of training in human rights and, in particular, in the prohibition of torture given to law-enforcement officials and members of the armed forces, which has resulted in a situation in which serious ill-treatment and torture are inflicted.

94. Deficiencies in the legal aid system mean in practice that most detainees are deprived of their constitutional right to a defence lawyer.

#### D. Subjects of concern

95. The Committee expresses its concern with respect to the following:

(a) The unsatisfactory definition of the crime of torture in the Criminal Code, which does not cover some of the situations included in article 1 of the Convention, and the mild penalty prescribed, which is not consistent with the seriousness of the crime;

(b) The continuing complaints of torture and other cruel, inhuman or degrading treatment, resulting on many occasions in death, both in police stations and in prisons and military barracks;

(c) The impunity accorded to human rights violations and, in particular, the use of torture, which appears to be widespread, resulting from the lack of any investigation of complaints and the slow pace and inadequacy of such investigations, which demonstrates the lack of effective action by the authorities to eradicate these practices and, in particular, the dereliction of duty on the part of the Public Prosecutor's Office and the courts. The lack of investigations is compounded by the failure to remove the accused police officers from office, further reaffirming impunity and encouraging the continuation or repetition of these practices;

(d) Failure to respect the maximum period for holding persons incommunicado, set at 24 hours in the Constitution, which facilitates the practice of torture and cruel, inhuman and degrading treatment, and impunity therefor;

(e) Judicial delays which would appear to affect two thirds of the prison population, who are kept waiting for their cases to be heard, a situation which is largely responsible for the serious overcrowding of prisons;

(f) Overcrowding, lack of amenities and poor hygiene in prisons, the lack of basic services and of appropriate medical attention in particular, the inability of the authorities to guarantee the protection of detainees in situations involving violence within prisons. In addition to contravening the United Nations Standard Minimum Rules for the Treatment of Prisoners, these and other serious inadequacies aggravate the deprivation of liberty of prisoners serving sentences and those awaiting trial, making of such deprivation cruel, inhuman and degrading punishment and, in the case of the latter, punishment served in advance of sentence;

(g) Information it has received regarding the inhuman conditions under which prisoners are held in the facilities known as carceletas in the Chapare area, Santa Cruz, Cochabamba and other cities in which, in addition to the illegal nature of the so-called "legal deposit" imprisonment which does not exist in domestic law, detainees are held in subhuman conditions for indeterminate periods, sometimes lasting several months, and where juvenile and adult detainees are held together, as are prisoners awaiting trial and those already serving sentences. In addition, the disciplinary confinement in punishment cells of the kind known as el bote (the can) is, in the Committee's view, tantamount to torture;

(h) The numerous complaints submitted to the Ombudsman and the Human Rights Commission established by the Chamber of Deputies regarding treatment in breach of articles 1 and 16 of the

Convention, which in some cases have caused serious injury and even loss of life, inflicted on soldiers in barracks during their compulsory military service under the pretext of disciplinary measures;

(i) The excessive and disproportionate use of force and firearms by the National Police and the armed forces in suppressing mass demonstrations resulting from social conflicts which, by remaining unpunished, encourage the repetition of such abuses and appear to indicate tacit approval on the part of the authorities. The torture, arbitrary detention and ill-treatment perpetrated by the police and military forces in their own facilities are particularly serious during periods when a state of siege has been declared;

(j) Frequent cases of harassment, threats and acts of aggression against human rights defenders;

(k) The return to their country of refugees from Peru without complying with procedural formalities that would have enabled them to present reasons why they were afraid of being returned to their country of origin.

96. The exceptional nature of those few cases in which the State has accepted its obligation to compensate for damage caused by exceptionally serious violations of the right to life would appear to demonstrate the absence of any State policy relating to redress for victims of human rights violations. The Committee is particularly concerned about the lack of government initiatives for the rehabilitation of torture victims.

#### E. Recommendations

97. The Committee recommends that the State party:

(a) Incorporate in its criminal legislation the definition of torture as set forth in the Convention, make torture a crime and stipulate penalties commensurate with its seriousness;

(b) Step up the activities to protect, defend and promote human rights which, according to its report, the State party has been developing, particularly those relating to vocational training for all law-enforcement officials;

(c) Adopt the necessary legal and administrative measures to set up a national public register of persons deprived of liberty, indicating the authority which ordered such deprivation, the grounds for the relevant decisions and the type of proceedings;

(d) Adopt the necessary measures to ensure effective compliance by government procurators with their duty to conduct criminal investigations into any complaint of torture and cruel, inhuman or degrading treatment in a prompt and impartial manner; during these investigations, the accused officials should be suspended from their duties;

(e) Set up a centralized public register of complaints of torture and ill-treatment and of the results of the investigations;

(f) Adopt all necessary measures to guarantee the free exercise by human rights defenders of their right to promote respect for such rights, to report violations of this right and to defend victims;

(g) Adopt all necessary measures to ensure that every person deprived of liberty exercises his/her right to a defence and receives the assistance of a lawyer, if necessary at the expense of the State;

(h) Review the disciplinary procedures and rules in prisons so as to ensure that violations are dealt with impartially and that any inhuman and cruel punishments are excluded;

(i) Adopt adequate measures to ensure that no person can be expelled, returned or extradited to another State where there are substantial grounds for believing that that person would be in danger of being subjected to torture; steps must be taken to ensure that these persons have the possibility of explaining these grounds in impartial and adversarial proceedings whose findings are subject to review by a higher authority;

(j) Make the declaration provided for in articles 21 and 22 of the Convention.

98. The Committee particularly urges the judiciary and the Public Prosecutor's Office to take the lead in action to redress serious omissions in the investigation and punishment of torture and cruel, inhuman and degrading treatment.