

PARAGUAY

CAT A/49/44 (1994)

52. The Committee considered the initial report of Paraguay (CAT/C/12/Add.3) at its 158th, 159th and 161st meetings, held on 10 and 11 November 1993 (see CAT/C/SR.158, 159 and 161), and adopted the following conclusions and recommendations:

A. Introduction

53. The Committee thanks the State party for its report and for its cooperation in the constructive dialogue with the Committee; it takes note of the information submitted in the report and presented orally by the representative of Paraguay.

54. Paraguay has complied with its obligation to submit an initial report under article 19 of the Convention, and its second periodic report is due on 10 April 1995.

B. Positive aspects

55. The Committee regards as very positive the fact that Paraguay now has a democratic Government and that its authorities have expressed the firm determination to promote and protect human rights and, in particular, to bring about the total and effective eradication of torture and other similar treatment. It also regards as a positive step the adoption in 1992 of a new democratic Constitution that firmly enshrines fundamental human rights and expressly prohibits torture.

56. It is also encouraging that judicial proceedings are now under way to investigate grave violations of human rights, especially torture and political murders committed under the previous regime.

C. Subjects of concern

57. However, the Committee is concerned, firstly, that the practice of torture continues within the police, according to serious allegations received; the victims of this practice are said to be not only adults, but also minors.

58. The Committee is also concerned about the complex situation in the prisons, which do not appear to meet the minimum requirements in order to serve as re-education centres for offenders and not to become instruments of ill-treatment.

59. Another cause for concern is the continued lack of legal mechanisms to make clearer the prohibition of torture (which the Constitution has already established), to halt extended or incommunicado detention and, in general, to bring domestic law fully into line with the Convention. The Committee is also concerned about the absence, in practice, of a swift and firm reaction on the

part of the courts to allegations of ill-treatment and torture.

60. Lastly, the Committee is concerned about the slow pace of judicial proceedings relating to violations of human rights committed under the previous regime and also about Paraguay's apparently inadequate system for the civil compensation and rehabilitation of victims.

D. Recommendations

61. The Committee believes that Paraguay could have a more complete mechanism for the eradication of torture if it recognized the competence of the Committee under articles 21 and 22 of the Convention.

62. The Committee hopes to receive in writing the replies that it did not obtain orally during those meetings and, in particular, comments on the information communicated to the Committee by two non-governmental organizations.

63. The Committee encourages the Government of Paraguay to finish making changes to its legislation and to bring it into line with the Convention, as well as to speed up investigations and judicial proceedings relating to torture and other similar treatment.

64. The Government might wish to request the technical assistance of the United Nations Centre for Human Rights.

65. A contribution by Paraguay to the United Nations Voluntary Fund for Victims of Torture would be a gesture reflecting that State's determination to promote human rights.

CAT A/52/44 (1997)

189. The Committee considered the second periodic report of Paraguay (CAT/C/29/Add.1) at its 289th, 290th and 292nd meetings on 2 and 5 May 1997 (CAT/C/SR.289, 290 and 292), and formulated the following conclusions and recommendations.

1. Introduction

190. Paraguay ratified the Convention against Torture in 1990. It has not made the declarations under articles 21 and 22 of the Convention. It is also a party to the Inter-American Convention to Prevent and Punish Torture.

191. Paraguay's initial report, submitted on 13 January 1993, was considered by the Committee at its eleventh session, in November 1993. Its second periodic report, which was submitted on 10 July 1996, complies with the guidelines on the form and content of periodic reports which the Committee adopted in 1991.

2. Positive aspects

192. Paraguay has not adopted any "clean slate" or amnesty act.

193. Article 5 of the Paraguayan Constitution gives constitutional rank to the prohibition of torture and cruel, inhuman or degrading treatment or punishment and stipulates that there is no statutory limitation on judicial proceedings intended to punish those offences.

194. Under article 137 of the Constitution, international treaties, conventions and agreements, including the Convention against Torture and the Inter-American Convention to Prevent and Punish Torture, once approved and ratified, form part of Paraguayan domestic law and rank higher than the laws and immediately below the Constitution.

195. The guarantees applicable to arrest and detention, which are set forth in article 12 of the Constitution, provide a legal framework that can and should help to prevent torture.

196. The constitutional provisions governing states of emergency are consistent with the non-derogability provision contained in article 2, paragraph 2, of the Convention against Torture.

3. Factors and difficulties impeding the application of the provisions of the Convention

197. Nearly five years after the promulgation of the Constitution of Paraguay, there has been no implementation of the decision to establish an ombudsman, whose mandate, duties and functions provide an opportunity for effective action to promote and protect human rights and prevent torture and other cruel, inhuman and degrading treatment through systematic inspection of the places where those offences are reportedly practised. The Constitution also authorizes the ombudsman to protect torture victims, investigate reports and complaints of torture and publicly condemn or report its occurrence.

198. There has been insufficient activity on the part of the Public Prosecutor's Department, as may be inferred from the report considered by the Committee, which states that between 1991 and the date of completion of the report, criminal proceedings had been instituted in respect of physical ill-treatment by public officials in only 15 cases.

4. Subjects of concern

199. There is no definition of torture in existing legislation and the definition contained in the draft Penal Code at the current stage of its consideration by Parliament does not meet the obligation imposed on the State party by article 4 of the Convention in relation to article 1 thereof. The definition contained in the original form of the draft was inadequate and the current one is even more so.

200. The Committee has been informed by reliable sources that although the infliction of torture and ill-treatment is no longer, as in the past, an official State policy, it is still practised by public officials, particularly in police stations and primary detention centres, in order to obtain confessions or information which are accepted by judges as grounds for instituting proceedings against the victims. The Committee is also concerned about information received from the same sources concerning the frequent physical ill-treatment of soldiers during their compulsory military service.

201. Another subject of concern to the Committee is information from the above-mentioned sources that paramilitary groups in the service of major landholders have been evicting people from land they have occupied for many years and that this activity appears to be tolerated by the State.

202. The existence of a legal arrest warrant does not, under any circumstances, justify torture. However, the fact that many arrests are made without a previously issued warrant from the competent authority and in cases other than those involving persons caught in flagrante delicto facilitates the practice of torture and cruel, inhuman or degrading treatment as a result of the clandestine circumstances in which it takes place and because the victims may remain at the disposal of their captors for longer than the 24-hour period within which detainees must, according to article 12, paragraph 5, of the Constitution, be brought before the competent judge.

203. With regard to the right of torture victims to redress and fair and adequate compensation, including the means for as full rehabilitation as possible, as provided for in article 14 of the Convention, the Committee is concerned that the report submitted by the State party makes no mention of the existence of programmes for the compensation and physical and mental rehabilitation of victims, thus leading it to believe that there are no such programmes. As to the right to fair and adequate compensation, the Committee is concerned that the State party has only subsidiary responsibility for the actions of its officials, as stated in article 106 of the Constitution, which makes victims responsible for laying claim to the assets of their torturers in order to exercise that right; the State may be required to assume responsibility only if such assets are non-existent, insufficient or cannot be found.

204. The Committee is also concerned that domestic law includes insufficient provisions prohibiting the expulsion, refoulement or extradition of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture, as stipulated in article

3 of the Convention. Article 43 of the Constitution extends such protection only to those granted political asylum.

205. Lastly, the Committee is concerned that domestic law contains no provisions on the universal prosecution of torture or on judicial cooperation for that purpose.

5. Recommendations

206. The provisions on torture should be separated from the new Penal Code, currently under somewhat lengthy consideration in Parliament, and all matters related to torture and other cruel, inhuman or degrading treatment or punishment should be included in a special act containing the provisions necessary to give effect to the provisions of the Convention. In particular:

(a) Torture should be defined in terms consistent with article 1 of the Convention and, since Paraguay is also a party to the Inter-American Convention to Prevent and Punish Torture, the definition should include a specific statement that: "Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish", as established by article 2 of that Convention, ^{3/} which the Committee has taken into consideration in accordance with article 1, paragraph 2, of the United Nations Convention against Torture;

(b) The practice of torture should in itself be punishable by law, independently of any effects on or consequences for the victim and without prejudice to any increase in penalties, in view of the seriousness of such effects or consequences;

(c) Provisions to facilitate the prosecution of the use of torture at the international level should be included in accordance with the Convention and the provisions of article 143 of the Constitution, which includes recognition of international law and the international protection of human rights among the guiding principles of Paraguay's international relations.

207. The provisions establishing the post of ombudsman should be implemented promptly, and the act regulating his functions and setting forth the principles embodied in chapter IV, section I, of the Constitution should be promulgated promptly.

208. Rules and instructions on the matters referred to in article 11 of the Convention should be issued, and systematic procedures for the supervision and monitoring of compliance therewith should be established and maintained in order to eliminate the practice of torture and other cruel, inhuman or degrading treatment or punishment.

^{3/} See Organization of American States, Basic Documents pertaining to Human Rights in the Inter-American System, Washington, D.C., 1996.

209. Physical conditions in prisons should be improved and the conditions of prisoners in detention should be made compatible with human dignity.

210. Systematic programmes of education and information regarding the prohibition of torture should be developed and fully included in the training of the officials referred to in article 10 of the Convention.

211. The declarations under articles 21 and 22 of the Convention should be made.

212. The Committee hopes that it will soon receive the official information on the enforcement of penalties against public officials who have engaged in the practice of torture and other cruel, inhuman and degrading treatment which the representatives of the State offered to provide during the Committee's consideration of the report of Paraguay.

213. Lastly, the Committee recommends that the third periodic report of Paraguay be submitted by the 10 April 1999 deadline.

CAT A/55/44 (2000)

146. The Committee considered the third periodic report of Paraguay (CAT/C/49/Add.1) at its 418th, 421st and 425th meetings, held on 5, 8 and 10 May 2000 (CAT/C/SR.418, 421 and 425) and adopted the following conclusions and recommendations.

1. Introduction

147. The third periodic report of Paraguay, submitted within the time-limit provided for in article 19 of the Convention, was not in conformity with the general guidelines regarding form and contents adopted by the Committee at its twentieth session.

148. During the introduction of the report and in response to the comments and views of the members of the Committee, the representatives of Paraguay provided comprehensive information which partially made up for the report's shortcomings.

2. Positive aspects

149. The Committee notes with satisfaction:

(a) The entry into force of the new Penal Code and the gradual application of the changes introduced by the new Code of Criminal Procedure, whose enforcement should enable the State party better to fulfil its obligations under the Convention;

(b) The innovations introduced by the new Penal Code, including the extension of its application to the punishment of acts committed abroad against rights which are universally protected under an international treaty, a provision which is in keeping with article 5 of the Convention;

(c) The exclusion of the probative value of any statement which is contrary to procedural guarantees provided for in the Constitution and in international law, as required by the new Code of Criminal Procedure, thus giving national courts binding jurisdiction, in accordance with article 15 of the Convention;

(d) The imposition of appropriate sentences for human rights violations committed during the dictatorship overthrown in 1989;

(e) Programmes for the training of judges, prosecutors and police officers under the new criminal law system;

(f) The announcement by the representatives of Paraguay that a ratification bill will soon be submitted recognizing the competence referred to in articles 21 and 22 of the Convention.

3. Principal subjects of concern

150. The Committee is concerned at:

(a) The failure to establish the Office of the Ombudsman eight years after the entry into force of the 1992 Constitution, which provided for it, and more than four years after the promulgation of the Organization Act;

(b) The fact that in the legislation in force, torture is not defined as an offence in accordance with article 1 of the Convention; the offence provided for in the new Penal Code does not include basic elements of the offence described in the Convention;

(c) The information the Committee received from reliable sources that the practice of torture and cruel, inhuman or degrading treatment or punishment continues in police stations and in Armed Forces prisons and premises, where soldiers performing compulsory military service are subjected to frequent physical ill-treatment;

(d) The lack of programmes for redress and the rehabilitation of the physical and mental health of the victims of torture, as required by article 14 of the Convention. The Committee also did not receive information on any case in which a victim of torture obtained the right to redress.

4. Recommendations

151. The Committee recommends:

(a) The prompt appointment of the Ombudsman and the provision of sufficient resources to enable his Office to establish its presence throughout the national territory;

(b) The inclusion in the Penal Code of provisions defining torture as a crime in accordance with article 1 of the Convention;

(c) The legal recognition of the right of victims of torture to redress and fair and adequate compensation at the expense of the State.