



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

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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE 622nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 16 November 2004, at 10 a.m.

Chairperson: Mr. MARIÑO MENÉNDEZ

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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 (agenda item 5) (continued)

Fourth periodic report of Argentina (CAT/C/55/Add.7; CAT/C/33/L/ARG/Rev.1
(FUTURE))

1. At the invitation of the Chairperson, Mr. Annichiarico, Ms. Carbone, Mr. Carlotto, Mr. Cerda, Ms. Figueroa, Mr. Mattarollo, Mr. Mugnollo, Mr. San Juan and Ms. Triola (Argentina) took places at the Committee table.
2. Mr. CERDA (Argentina), introducing the fourth periodic report of Argentina (CAT/C/55/Add.7), noted that the Convention against Torture enjoyed constitutional rank in Argentina and said that the Argentine Government viewed the Committee's consideration of its fourth periodic report as an opportunity to assess the effectiveness of the measures it had adopted to combat torture and to identify areas in which further efforts were needed. The broad composition of the delegation was testimony to the importance that his Government attached to the report.
3. Mr. MATTAROLLO (Argentina) said that serious violations of human rights and freedoms continued to occur in democratic Argentina, largely as a result of practices inherited from the dictatorships of the past. The practices of the police, security forces and prison services, as well as many aspects of the administration of justice, betrayed a lack of respect for democracy and the rule of law. The treatment of minors who came into conflict with the law, the continued occurrence of summary executions and enforced disappearances, and the torture and ill-treatment of detainees attested to the magnitude of the problems Argentina faced.
4. The Government had responded to the popular call for a major transformation of political institutions and practices that had been raised during the 2001 crisis by stepping up its efforts to combat impunity. In the interests of truth, justice and reparation, and for the future of Argentina, it was crucial that the crimes against humanity committed during the military dictatorship, particularly by agents of the State, should not go unpunished: the legitimacy of the criminal justice system was at stake, and impunity undermined the process of national peace and reconciliation.
5. Since taking office, President Kirchner had initiated a number of measures to eradicate impunity, the most important of which had been the rescinding by Congress of amnesty laws, namely the Clean Slate and Due Obedience Acts, and the ratification of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. In that connection, several hundred cases relating to crimes committed under the military dictatorship had been reopened and more than 60 military personnel were being held in pre-trial detention.
6. The Government had also ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador). Moreover, the President of Argentina had recently

signed and deposited with the Secretary-General of the United Nations the country's instrument of ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, thereby making Argentina the sixth country to have ratified the Optional Protocol since its adoption in December 2002.

7. Turning to the list of issues (CAT/C/33/L/ARG/Rev.1 (FUTURE)), he said that an Inter-ministerial Commission set up to incorporate the provisions of the Rome Statute of the International Criminal Court into domestic law had completed its work in 2001 and had submitted a bill to Congress. However, the Senate Constitutional Affairs Committee had subsequently submitted alternative bills on the subject, which were under review by the Senate.

8. A national register recording information on cases of illegal detention and ill-treatment had been established. Information drawn from three sources indicated that during the first half of 2004 in the national federal justice system, excluding the Federal Capital, there had been 90 cases of simple assault, with no convictions; 68 cases of unlawful treatment of detainees, with 1 conviction; and 4 cases of torture, with no convictions. During the same period in the Federal Capital there had been 79 cases of simple assault, 264 cases of unlawful treatment of detainees, and 12 cases of torture - all with no convictions. While drafting a national report on torture, the Office of the Secretary for Human Rights had established a database of legal cases relating to torture. Fifteen provinces and the Autonomous City of Buenos Aires had provided information on cases during the period from 1998 through the first half of 2001. The figures showed that there had been 991 cases of the unlawful deprivation of liberty, with 13 convictions; 3,551 cases of unlawful treatment by serving officers, with 6 convictions; 516 cases of ill-treatment by prison staff, with 3 convictions; 12 cases of torture, with no convictions; and 1 case of failure to prevent torture, with no conviction. Two conclusions that could be drawn were that there was a tendency to employ ill-treatment rather than torture, and that the number of investigations opened was disproportionate to the number of resultant convictions.

9. The preparation of a national report on torture had been interrupted by the crisis at the end of 2001. In June 2004, the Office of the Secretary for Human Rights of the Ministry of Justice and Human Rights had begun work on the report, and information was currently being solicited from all the provinces.

10. Difficulties in ensuring the uniform application of the Convention were common to all federal States. In Argentina, the problem was overcome by the constitutional rank attributed to a number of international human rights instruments, including the Convention against Torture. Moreover, the Office of the Secretary for Human Rights had initiated a bill, currently under review by the executive power with a view to its eventual submission to Congress, that would give the federal justice system jurisdiction over the investigation and judgement of certain crimes against the freedom and integrity of the person, including torture and cruel, inhuman or degrading treatment or punishment. It was hoped that the ratification of the Optional Protocol to the Convention against Torture would also help to ensure the uniform application of human rights standards.

11. The Office of the Secretary for Human Rights received periodic reports from human rights observer bodies in the provinces on the human rights situation in places of detention. On its visit to Argentina, the Commission on Human Rights Working Group on Arbitrary Detention had noted that it was the first time in its experience that a State had provided files prepared by non-governmental organizations (NGOs).

12. Following the rescinding of the amnesty laws, 62 officials from the three armed forces had been prosecuted and were currently in pre-trial detention. Former intelligence agents and former police officers had also been charged. No persons accused or convicted of human rights violations committed during the last military dictatorship were currently serving in the army. Moreover, all promotions in the military were subject to consultation with the Office of the Secretary for Human Rights. The types of offences that formed the basis of the charges in the 336 cases that had been reopened, which were listed in an annex to his written statement, included enforced disappearances, aggravated torture, kidnapping and the abduction, detention and concealment of minors. He drew attention to the case of Juan Barrionuevo, who had been prevented by the Office of the Secretary for Human Rights from taking up an official post while awaiting trial.

13. Mr. CARLOTTO (Argentina) said that in Buenos Aires province, a provincial programme for the prevention of torture had been established in April 2002, under the coordination of the provincial human rights secretariat. Specific objectives had been identified, including the provision of services to facilitate the rehabilitation of detainees upon release, services for the prevention of torture and an integrated response to victims of violations, including access to legal aid.

14. In 2004, the Office of the Secretary for Human Rights had made unannounced visits to one or two places of detention per day. Most prisons and detention facilities for children and adolescents had been visited more than once since the Office had been established. Priority was given to places of detention about which complaints had been received. In addition, facilities were requested to provide information on such matters as the health of prisoners, the recreational facilities available and so forth. Private interviews were held with detainees in conditions that ensured confidentiality.

15. The Office of the Secretary for Human Rights had been acknowledged to be an important focal point for immediate remedy and access to justice. A free telephone number received some 10,000 calls a month regarding prison conditions. When a complaint was received, measures were taken to ensure that the victim appeared before an official promptly, and the Office was asked to maintain contact with the individual. A criminal investigation was carried out and charges brought. If the alleged perpetrator was an official, the appropriate administrative body was informed. Measures were requested by State bodies to ensure the physical safety of the victim and of any witnesses. Requests for transfer were granted in cases of torture or ill-treatment.

16. Changes had been made in the training provided to security forces. The use of devices that produced an electrical shock, permissible during the 1990s, had been prohibited. Information was being compiled from the archives about cases against members of the prison service in Buenos Aires involving violations committed in the context of the State terrorism perpetrated during the period of military dictatorship.

17. Mr. MATTAROLLO (Argentina) said that, under the new Migration Act, the Federal Administrative Disputes Court was the only body competent to take decisions regarding the detention of foreign nationals. A foreigner facing an expulsion order could no longer be placed in administrative detention prior to leaving the territory. The Act also suspended the expulsion of nationals of the countries neighbouring Argentina. Since the entry into force of the new Act, the number of foreigners expelled from Argentina had decreased dramatically: while in 2002 there had been 166 expulsions and in 2003 there had been 105, only 10 foreigners had been expelled in 2004.

18. As to the difference between unlawful coercion and torture, he said that a recent ruling by Oral Court for Federal Criminal Cases No. 28 in the Autonomous City of Buenos Aires had marked a turning point in Argentine jurisprudence. In the case in question, a group of nine Federal Police officers had arrested and ill-treated three youths and had then forced them to jump into a river. One of the youths had died as a result. The Court had found the nine police officers guilty of torture, in accordance with the definition provided in article 1 of the Convention, and had sentenced the three ringleaders to life imprisonment - the maximum penalty provided for under Argentine criminal law. The other six also received prison sentences. The ruling was another indication of Argentina's efforts to combat impunity in the country.

19. The Convention had been invoked directly before Argentine courts in a number of cases. For example, in its recent examination of a case involving the 1974 murder in Buenos Aires of the former Commander-in-Chief of the Chilean Army and his wife by an agent of the Chilean Directorate of National Intelligence (DINA), the Supreme Court of Justice of the Nation had invoked the Convention and other international instruments and had ruled that the statute of limitations did not apply to such crimes or to the illicit involvement in such crimes. It was likely that the Supreme Court would use that judgement as jurisprudence when addressing the pending question of the constitutionality of abolishing the so-called impunity laws. The Convention had also been invoked in several of the cases heard by the Procurator-General of the Nation. Moreover, Division I of the National Court for Federal Criminal and Correctional Cases had recently concluded that the Due Obedience and Clean Slate Acts were incompatible with the objectives of the Convention and had specifically cited the Committee in its ruling.

20. His delegation recognized that the statement made in paragraph 99 of Argentina's fourth periodic report (CAT/C/55/Add.7), indicating that the obligation to put a wanted person on trial when extradition was refused was confined strictly to the case of nationals, was incompatible with article 5, paragraph 2, of the Convention, which did not distinguish between nationals and non-nationals in such cases. Steps would be taken to rectify the matter and to reflect the fact that the Convention took precedence over domestic law. Although there were currently no pending requests for the extradition of non-nationals accused of torture (all existing requests were based on the nationality of the victim and involved cases of torture by soldiers during the last military dictatorship), Argentina had in the past received requests for the extradition of non-nationals and had granted extradition where appropriate.

21. On 28 June 2004, in order to mark the International Day in Support of Victims of Torture, the Office of the Under-Secretary for Human Rights of the Ministry of Justice and Human Rights had introduced a joint initiative with the Medical Confederation of the Argentine Republic and an NGO specializing in bio-ethics and human rights to teach Argentina's law enforcement and medical personnel how to prevent, investigate and document cases of torture

and help rehabilitate torture victims. As part of that initiative, a seminar had been held in August 2004 on the implementation of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). Furthermore, for the first time in its 20-year history, the Argentine Forensic Anthropology Team was receiving subsidies from the Government to help it investigate cases of persons who had disappeared during the last military dictatorship.

22. The problem of prison overcrowding was difficult to address, particularly in the light of contradictory demands made by society in recent years: on the one hand, the Government was being called on to ensure full respect for due process of law, while on the other, highly mobilized sectors of society were calling for increased security and harsher punishments that would limit the guarantees of due process. As at 5 November 2004 there had been a total of 9,930 inmates in federal prisons, which had an official capacity of 9,104 prisoners; in 2001, the maximum number of prisoners had been 8,006. The situation was even more critical at the provincial level, particularly in the prisons that fell under the authority of the Buenos Aires Prison Service, which had been designed to accommodate 14,900 prisoners but currently held 24,945. An additional, 5,705 persons were being held in police stations in Buenos Aires province alone. A series of emergency measures had been taken by the provincial and national authorities to overcome the crisis caused by prison overcrowding. For example, in November 2002 an administrative emergency had been declared, and in December 2003 the President of the Republic had introduced the Prison Infrastructure Plan for 2004-2007, which aimed to create 18 new prisons throughout the country, providing accommodation for 4,772 inmates.

23. In October 2003 a number of private and public bodies had signed an agreement on cooperation, evaluation and technical assistance in matters relating to the promotion and qualifications of federal prison staff.

24. As of September 2002, a total of 2,476 complaints of ill-treatment, abuse and torture of minors had been recorded in the register established by the Supreme Court of Justice of Buenos Aires. In view of the pressure that had been exerted on the Government in recent years to increase public security by imposing harsher penalties, the Office of the Under-Secretary for Human Rights had proposed the introduction of a new child protection act to ensure that all children were afforded the requisite guarantees of due process, in accordance with the provisions of the Convention on the Rights of the Child, which took precedence over domestic law in Argentina. The existing child protection system in Argentina did not provide such guarantees.

25. According to the information gathered in a recent survey on cases of torture, there were no registers at all of complaints or claims of torture, ill-treatment or unlawful coercion lodged by inmates housed in the prison facilities of Córdoba or other provinces.

26. The maximum duration of pre-trial detention was two years, but that period could be extended for a further year if multiple crimes were involved, or if a case was particularly complicated. The Government was deeply concerned at the high number of individuals in pre-trial detention, particularly in Buenos Aires province, where approximately 80 per cent of all prisoners were in fact being held in pre-trial detention. According to reports, the problem was not unique to Argentina, but was common throughout the Latin American and Caribbean region. Although certain provinces of Argentina, including Córdoba, had introduced some innovative projects to address the problem, the country as a whole faced many shortcomings in that regard.

27. Although it was not unknown for police officers to detain individuals improperly, the Public Attorneys' Office was taking concrete measures to reduce such abusive practices, particularly through the criminal prosecution of such abuse. One such measure had been the establishment in 2000 of a committee to investigate rigged criminal proceedings, which had thus far uncovered some 100 cases of irregular police proceedings and had initiated proceedings against the police officers involved in approximately half of those cases.

28. It was particularly difficult to monitor the situation of children and young people detained in police stations. According to a survey conducted in April 2004, a record 344 children and adolescents were being held in police custody in Buenos Aires province, in breach of numerous regulations. Of those, 37 had been detained for over 30 days; 35 had been detained for more than 50 days; 27 had been detained for more than 100 days; 12 had been detained for more than 200 days and 2 had been detained for more than 300 days. Since 1988, the Supreme Court of Justice of Buenos Aires had been calling for a change in the situation; however, it was not until an incident at a police station in Quilmes had led to the death of three adolescents that the Minister for Security of Buenos Aires province had introduced resolution No. 1623 of 25 October 2004, prohibiting the detention of minors in police stations. Consequently, steps were being taken to transfer the children being held in police custody in Buenos Aires province to alternative facilities.

29. As there was no legal rule obliging the national Supreme Court of Justice to hand down a decision within a certain timeframe, it was impossible to say when and if the Court would take a decision regarding the rescinding of the so-called amnesty laws. Although the reform process that was under way was delaying the consideration of certain complex issues, the Court was considering a number of cases relating to the Due Obedience and Clean Slate Acts that had already been considered favourably by the Procurator-General of the Nation. It was to be hoped that a ruling on those amnesty laws would soon be forthcoming.

30. In order to ensure the security of prisoners who claimed to have been subjected to torture, a judge could order measures to protect the physical integrity of the individuals concerned. In practice, however, such measures were often insufficient and counterproductive, and involved placing such prisoners in an isolated cell for 23 hours a day. Furthermore, as prisoners were often required to make their statements to the court in the presence of a prison officer, it was not unknown for such prisoners to be punished by the officers in question upon their return to prison. Indeed, six prisoners involved in a torture case had recently died while in custody.

31. Mr. MUGNOLLO (Argentina) said that the situation in Argentine prisons had been critical ever since the prison system reform had been introduced a decade previously. Consequently, a series of mechanisms had been introduced to improve the system's efficiency. One such measure had been the establishment of the office of Government Procurator for the Prison System, whose task was to investigate individual or collective complaints or claims from persons in detention with a view to guaranteeing and protecting their rights. The Procurator enjoyed free access to detention facilities and was able to conduct private interviews with detainees in person or over the telephone. He had the authority to request any information he might need and make recommendations to the Supreme Court of Justice regarding cases of torture. There was clear evidence to suggest that the Supreme Court had taken the Procurator's opinion into account in its rulings. In January 2004, Act No. 25.875 on the Office of the Procurator on the Prison System had entered into force, converting the Office from a government

body into an independent one. That step had been taken partly in anticipation of the entry into force of the Optional Protocol to the Convention, which required each State party to set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment. The Act also broadened the Procurator's mandate in various spheres and obliged all government bodies, natural or legal persons and public and private entities to cooperate with the Procurator. Regrettably, despite the fact that the Procurator had considered 59 complaints since the introduction of the Act, no court decisions had been issued in those cases. Some cases were still being investigated while others had been closed.

32. Mr. MUGNOLLO (Argentina) said that torture victims were often reluctant to denounce acts of torture for fear of reprisals and because no effective mechanism for their protection existed. It was also difficult to identify torturers, who usually concealed their identity when committing such acts. In a number of cases, complaints of torture had resulted in the dismissal of the prison official responsible. However, there was no institutionalized follow-up mechanism or systematic punishment of acts of torture, and his delegation was unable to provide information on the results of administrative investigations.

33. Mr. MATTAROLLO (Argentina) said that Argentina had a reparations policy for human rights violations committed during the military dictatorship. Compensation had been awarded to persons who had been victims of enforced disappearances and their families, persons detained under emergency legislation and civilians detained and tried by military courts. Recently, reparation payments had been introduced for the children of disappeared persons and for children born to mothers in captivity. A bill currently before Congress contemplated compensation for persons who had been forced into exile in order to save their lives or maintain their freedom or physical integrity. Awards had been granted in 14,716 cases involving detention and 8,296 cases of enforced disappearance. To date 1,212 requests for compensation had been received in connection with enforced exile. There was currently no administrative compensation for victims of acts of torture perpetrated by police officers; compensation in such cases could be awarded only by means of a court order.

34. His Government was of the view that the fight against terrorism must take place within the framework of multilateral cooperation. Safeguarding human rights and fundamental freedoms was crucial, and Argentina had ratified all relevant international instruments. At the national level, a special unit had been set up to investigate the terrorist attacks on the Israeli Embassy in 1992 and the Argentine Israeli Mutual Aid Association in 1994, and administrative measures had been taken to guarantee respect for human rights and fundamental freedoms in the process.

35. Mr. GROSSMAN (Country Rapporteur) expressed his appreciation for the State party's commendable efforts to put an end to impunity for crimes committed during the dictatorship and for the open and frank report that testified to that commitment.

36. He asked what progress had been made in establishing a register to record information from courts throughout the country on cases of illegal detention and ill-treatment, and to what extent the country's federal structure might hamper that process.

37. Argentina's ratification at the federal level of the major international instruments that established the non-derogable nature of the prohibition of torture, including the Optional Protocol to the Convention against Torture, was commendable. However, since the administration of justice currently fell to the provinces, the provisions of those instruments were applied unevenly. He wished to know what progress had been made in granting federal courts jurisdiction over acts of torture committed at the provincial level.

38. He also wished to know how the extradition of former military officials was being dealt with pending a decision by the Supreme Court on the amnesty laws.

39. In spite of efforts to train police personnel in human rights, complaints of torture were frequent and few cases were brought to trial. It would be useful to learn of any studies undertaken to assess the effectiveness of such training and of measures taken to bridge the gap between human rights policy commitments and the implementation of such policies.

40. He asked how the State party perceived the effectiveness of measures taken to alleviate overcrowding in detention centres. The State party had announced the transfer of some 300 children, and he wondered whether that transfer had been effected.

41. Between 1996 and 2000, the harassment, ill-treatment and torture of prostitutes in the city of Mar del Plata had reportedly led to the death of some of the victims. In January 2004, Sandra Cabrera, Secretary-General of the Association of Argentine Women Prostitutes, had denounced the constant harassment, threats and intimidation of prostitutes by the police. Reports from credible sources also alleged the ill-treatment and torture of participants in a social protest march in Caleta Oliva in October 2004. The Committee had been informed of an incident involving the killing of children during confrontations with the police. Members of the indigenous Toba community in Formosa province had reportedly been arrested and subjected to torture and ill-treatment in connection with the death of a policeman. He asked the delegation to ascertain the veracity of the above allegations and to indicate whether those cases had been investigated and, where applicable, prosecuted. He also wished to know why no charges had been brought thus far against members of the Mitre Division in the case of Luis Cufre, who had suffered serious injuries as a result of police action.

42. The inadmissibility of evidence obtained by torture or other cruel or inhumane treatment was of particular concern to the Committee, and he appealed to the delegation to ensure Argentina's compliance with that provision.

43. Mr. PRADO VALLEJO (Country Rapporteur) thanked the delegation for its oral presentation and expressed his satisfaction with the Government's commitment to overcoming the legacy of the dictatorship.

44. He was concerned that the penalties laid down for acts of torture were weakened in their practical application by the courts, which often preferred to try offenders on less serious charges which entailed lighter penalties. The term "unlawful coercion" was frequently used where the act in question in fact amounted to torture, and he wished to know whether the Government intended to address that problem.

45. There was a high incidence of acts of torture resulting in the death of the victim - perpetrators had been tried and convicted in six cases in recent times - and the excessive use of force by the police appeared to be the principal cause. The alleged torture of children by police officers was also cause for grave concern. He asked what measures had been taken to combat those practices, since the measures to combat impunity appeared ineffectual in that regard.

46. The Committee was concerned at the detention of foreigners under administrative orders that provided for expulsion without the possibility of an appeal. He wished to know how the State party intended to safeguard foreigners' rights to an effective legal remedy. Also, the indefinite detention of persons arrested without a judicial warrant was in violation of international norms, and he asked the delegation to comment on allegations that persons had been detained for two to three years without a trial. It had been reported that in Buenos Aires province 21,449 prisoners were being held in pre-trial detention without any indication as to the duration of their detention. He appealed to the delegation to review that situation and take remedial measures. He also wished to express concern at the detention of street children under the age of legal capacity, and he wished to know what measures the State party intended to take to eradicate that practice.

47. It appeared that police medical officers might serve as prison doctors while at the same time advising the prison administration. Those two functions were incompatible, and measures must be taken to resolve that contradiction. He was pleased to note that the delegation had acknowledged the problem of prison overcrowding and the fact that it required urgent action.

48. Mr. RASMUSSEN commended the State party on the measures it had taken to prohibit torture and end impunity. The establishment of a National Commission on the Right to an Identity that would lead the search for missing children was particularly praiseworthy, and he would be interested to learn of any progress made.

49. It would be useful to know whether reports were prepared and published on the visits carried out by the minors office of the Ministry of Justice to detention centres and police stations, and whether NGO visits were permitted.

50. He asked what policies existed for the separation of inmates of different age groups and whether all minors under the age of 21 were detained in the same place. If so, what safeguards were in place to protect the younger children from ill-treatment and abuse? There were reports that children under 12 years of age had been arbitrarily arrested and abused by the police, and he asked the delegation to comment on that matter.

51. The institution of training programmes for medical personnel on the identification and documentation of cases of torture in accordance with the Istanbul Protocol was a positive step. It would be useful to know how the impartiality of examining doctors was guaranteed. The unprecedented number of remand prisoners, which contributed to prison overcrowding, was a source of concern and he suggested that the Government should examine the situation and devise strategies to reduce the prison population.

52. Ms. GAER welcomed Argentina's ratification of the Optional Protocol to the Convention. Nevertheless there were a number of issues raised in the report and in the oral presentation that required some clarification. Concerning the right to extradition, she understood

that the statement made in paragraph 99 of the report was incorrect. Paragraphs 38 to 42 of the report referred to the case of an individual sought by his own State for the crime of terrorism who, after pleading the absence of guarantees of due process and the risk of torture if extradited, had eventually, following an appeal, been granted refugee status on the basis of the provisions of article 3 of the Convention. She wondered whether that individual had been investigated or prosecuted on charges of terrorism, or whether such prosecution was even possible. The same question had occurred to her when the delegation had mentioned the terrorist attacks that had taken place in Argentina in 1992 and 1994. The Committee was interested in what happened to individuals who were not returned to their homeland. Since Argentina would shortly become a member of the Security Council, she recalled that Security Council resolutions 1373 (2001), 1456 (2003) and 1556 (2004) called for more effective judicial measures to combat terrorism, protection of the human rights of persons charged with terrorism, and the denial of any safe haven to terrorists.

53. She asked whether sexual violence in prisons, both between prisoners and involving prison guards, was monitored and, if so, what the results were. Was there a specific procedure for submitting complaints of sexual violence as opposed to violence in general?

54. Paragraphs 524 to 525 of the report indicated that regulations on body searches had been included in the provincial codes of criminal procedure. However, she had been informed that when women visited relatives in prison they were subjected to highly degrading body searches, including anal and vaginal examinations, irrespective of their age or health condition. She wished to know whether such information was correct and, if so, whether the Government was concerned about it as an abusive practice.

55. With regard to 1999 reform of the Penal Code, she noted, on the positive side, that the provisions relating to rape which had exonerated the rapist of any offence if he married the victim had been amended. However, the new provisions referred to the offence as “a conflict” and allowed for an agreement between the accused and the victim on the basis of “free consent” whereby the offence was not liable to prosecution. It seemed that the State was providing exculpatory legal loopholes for what was widely recognized as a violent crime amounting to torture or ill-treatment. She therefore wished to know how the delegation interpreted that provision.

56. Lastly, the Buenos Aires Code of Criminal Procedure had been amended in 2000 to require suspects to give information or indications that might be of use in the immediate pursuit of a police investigation. That would seem not only to expand police powers with regard to body searches, but also to facilitate the use of coerced testimony, which was prohibited under article 15 of the Convention. She sought information on exactly how and when that provision was applied.

57. Mr. YU Mengjia thanked the delegation for its extensive and very frank oral presentation. Following up on Mr. Rasmussen’s remarks about the high percentage of remand prisoners, he enquired whether there was any connection with the concept of “dynamic security” mentioned in paragraph 384 of the report. He asked the delegation to elaborate on that concept and its implementation in practice.

58. Regarding the scope of the application of amnesty, he asked whether there had been any cases of amnesty applied to the perpetrators of torture. If there had, he wished to know how that could be reconciled with the non-derogable nature of the principles enshrined in the Convention.

59. Lastly he said that paragraph 442 of the report, which referred to difficulties encountered in the conduct of truth-finding proceedings, was unclear and warranted some explanation.

60. The CHAIRPERSON, speaking as a member of the Committee, said he would welcome more information on the Office of the Government Procurator for the Prison System, which would have an important role to play in the context of the Optional Protocol. The Office would appear to have a wide range of functions relating to the prevention of torture, including monitoring the situation in detention facilities and prisons and investigating complaints.

61. He also sought clarification on the legal situation of asylum-seekers. Specifically, he wished to know whether there was any special procedure for handling urgent applications, and for how long and where asylum-seekers were detained.

62. From the information contained in paragraphs 489 and 490 of the report, it seemed that the safeguards protected under article 15 of the Convention were not necessarily provided in all the provinces, which gave rise to discrimination.

63. Referring to Mr. Grossman's remarks, he asked for some explanation of the alarming reports of overcrowding that had resulted in casualties at the Mendoza Provincial Prison. That situation had prompted recommendations by the Inter-American Commission on Human Rights, and he wondered whether they had been followed up. A further source of concern requiring urgent action were the recent reports of ill-treatment in the Boulogne-sur-Mer prison.

64. Mr. MATTAROLLO said that he wished to clarify one point immediately and would endeavour to collect as much information as possible in order to answer the remaining questions during the meeting scheduled for the next day. In response to Mr. Rasmussen's concern about the very high rate of prisoners held in pre-trial detention, he said that the figure of 78.7 per cent referred to Buenos Aires province only. The national figure was significantly lower: 56 per cent for prisoners held in pre-trial detention and 44 per cent for convicted prisoners. The problem of high numbers of prisoners in pre-trial detention was endemic in the Latin American and Caribbean region, a situation that was borne out by relevant studies, which, of course, made it no less serious. He thanked the members of the Committee for their comments and questions, which would help his Government in its task of rebuilding democracy, consolidating the rule of law and promoting respect for human rights.

65. Mr. Annichiarico, Ms. Carbone, Mr. Carlotto, Mr. Cerda, Ms. Figueroa, Mr. Mattarollo, Mr. Mugnollo, Mr. San Juan and Ms. Triola withdrew.

The meeting rose at 12.50 p.m.