



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

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COMMITTEE AGAINST TORTURE

Forty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)\* OF THE 882nd MEETING

Held at the Palais Wilson, Geneva,  
on Thursday, 7 May 2009, at 10 a.m.

Chairperson: Mr. GROSSMAN

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\* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.882/Add.1.

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 19 OF THE CONVENTION (continued)

Initial report of Honduras (continued) (CAT/C/HND/1)

1. At the invitation of the Chairperson, the members of the delegation of Honduras resumed their places at the Committee table.
2. Mr. CÁLIX HERNÁNDEZ (Honduras), replying to questions asked by the Committee during the 880th meeting, acknowledged that the definition of torture in the Honduran Criminal Code did not exactly match the definition in article 1 of the Convention. The main differences had to do with references to discrimination and the severity of the offence. With regard to the latter, the penalty laid down for persons convicted of torture was 10 to 15 years' imprisonment, which was quite severe, given that the term for homicide was 15 to 20 years. The length of the sentence varied, depending precisely on the seriousness of the injury suffered by the victim.
3. While no explicit reference to discrimination had been included in the definition in the Criminal Code, it had not been deliberately omitted. Discrimination was criminalized elsewhere in the Code, and the legislators who had drafted the definition might therefore have considered it unnecessary to refer to it. Moreover, as international conventions, once ratified, automatically became part of domestic law, cases of both torture and discrimination could be prosecuted on the basis of the Convention. Nevertheless, in order to allay the Committee's concerns, his delegation would recommend that the Criminal Code be revised in order to bring the definition fully into line with article 1 of the Convention.
4. Under the Code of Criminal Procedure adopted in 2002, judicial oversight was exercised by enforcement judges. They were responsible for ensuring that sentences were carried out in accordance with the law and that the fundamental rights of detainees were respected. There were 25 such judges covering the country's 24 detention facilities.
5. Article 323 of the Constitution stated that no public official was required to carry out orders if they were illegal or would entail the commission of an offence. Article 24 of the Criminal Code established that three requirements must be met if an order from a superior was to be invoked as justification: the order must come from a competent authority, the subordinate must have an obligation to carry it out as part of his or her official duties and the order must not infringe any of the fundamental rights recognized under the Constitution or international instruments. In addition, article 22 of the Police Law expressly prohibited police officers from following orders that were illegal or that involved a violation of human rights or torture. Hence, there was no possibility that an order from a superior could be invoked as justification of torture.
6. In accordance with the Criminal Code, pretrial freedom was the rule and pretrial detention the exception. Generally speaking, the maximum allowable length of pretrial detention was one year, but it could be two years if the detainee was accused of a crime that carried a prison sentence of six years or more. It could be extended for up to six months in complex cases where additional time was needed to collect evidence, but only with the authorization of the Supreme Court of Justice. Persons over the age of 60, women who were pregnant or breastfeeding and persons who were terminally ill could not be placed in pretrial detention.

7. Pretrial detention could be ordered by the public prosecutor as a temporary measure to prevent the flight of an individual accused of an offence. Anyone placed in pretrial detention must be brought before a judge within 24 hours. Judicial detention could be ordered only by a judge, and only for six days, in cases where there was a risk of absconding or obstruction of justice. Currently, 10,700 people were imprisoned in Honduras; 51 per cent were serving sentences and 49 per cent were in pretrial detention.
8. The Constitution stipulated that the State must ensure legal counsel for needy persons. Accordingly, individuals accused of a criminal offence who could not afford to hire a private attorney were represented by a public defender, of whom there were currently 241. Defendants were represented by a public defender in about 70 per cent of all criminal cases.
9. With regard to the questions concerning the Supreme Court of Justice and the Supreme Electoral Court, there was no overlap or conflict in their functions. Both institutions had the right to draft and submit to the legislature proposed legislation on matters falling within their purview, but in practice they rarely made use of that prerogative.
10. Draft legislation that would establish a national judiciary council was currently pending before Congress. The establishment of such a body was considered necessary in order to enhance the effectiveness of the judiciary and decentralize a number of administrative functions.
11. Regarding the right of habeas corpus, the Constitution provided for the restriction or suspension of some rights in certain extraordinary circumstances and subject to several conditions, but in no case could the right of habeas corpus be suspended.
12. Mr. CUSTODIO LÓPEZ (Honduras) said that records were made of all detention centre visits and were entered into the database of the Office of the National Commissioner for Human Rights. The proper authorities were informed of any complaints or irregularities and were required to respond within 10 days. Generally speaking, the results obtained had been satisfactory.
13. With regard to the Immediate Reaction Programme and its 24-hour hotline, the number of complaints received averaged 125 a year. Most were related to domestic violence or unlawful detention. The hotline staff, most of whom were law students, were trained in how to respond to crisis situations and assist callers in resolving legal problems. As to whether the programme was considered effective, 125 cases a year might not seem very many, but human rights cases were complex and resolving them often took considerable time. In his view, however, even if the programme had helped just one person facing a crisis situation, it would have proved its worth.
14. Mr. URTECHO (Honduras) said that in accordance with the Convention - and with the Rome Statute, to which Honduras was also a party - there was no statute of limitations under Honduran law for crimes of torture. The Code of Criminal Procedure provided safeguards for individuals who lodged complaints against the Preventive Police Force or other law enforcement officials. The Witness Protection Act provided safeguards for witnesses; however, it had not been possible to implement that Act owing to lack of resources. With regard to cases of femicide, the Public Prosecution Service had set up a special unit to investigate violent deaths. It was staffed by 27 prosecutors, and 100 per cent of cases investigated had been solved and the perpetrators convicted.

15. Ms. PONCE (Honduras) said that the Office of the Special Human Rights Procurator, working in coordination with an NGO, conducted weekly visits to detention facilities for the purpose of identifying human rights violations and verifying that detainees were not being held illegally. She did not have statistics on the number of visits conducted but undertook to communicate that information via her country's Permanent Mission. Those visits had pointed up the need to revise the Police and Harmonious Social Relations Act, under which detentions were regulated.

16. She acknowledged the delay in resolving cases of enforced disappearance, particularly with respect to criminal prosecution. Some progress had been made in securing civil redress for victims. Her Government had established a special compensation fund for that purpose, and compensation had been awarded in about 30 cases thus far. One of the primary obstacles to criminal prosecution of such cases was that enforced disappearance was not defined as a specific offence under the Criminal Code. The Public Prosecution Service was pressing for an amendment of the Code in order to rectify that situation.

17. In the meantime, the Office of the Special Human Rights Procurator was attempting to prosecute enforced disappearance cases as other offences, such as unlawful detention or murder. To that end, it was updating information on victims and creating a genetic databank containing specimens from their family members so that their identity could be conclusively established and cases prosecuted when they were found. There was no statute of limitations for such cases.

18. Currently there were no public rehabilitation services for victims of human rights violations, but such services were provided by NGOs. As to the situation of mentally ill persons who had been convicted of crimes, the capacity of psychiatric hospitals to deal with such individuals was currently being evaluated.

19. With regard to youth gangs, the Public Prosecution Service was promoting the amendment of relevant provisions of the Criminal Code and was even considering the possibility of bringing a constitutional challenge to article 332 of the Code on the grounds that the penalties for the offence defined therein were disproportionate and that pretrial detention was imposed as a general rule in such cases.

20. Killings in detention facilities remained one of most serious human rights problems in Honduras, although some headway had been made in reducing impunity. For example, in a highly publicized verdict handed down in 2008, a group of 18 police officers had been convicted of the massacre of 67 people at El Porvenir prison farm. That case had helped to raise awareness of conditions in the country's detention facilities and spur a movement to reform the prison system. As a result, a bill had been submitted to Congress for the establishment of a penitentiary institute, a professional body which would be responsible for managing those facilities.

21. The Office of the Special Human Rights Procurator was investigating various cases involving human rights defenders and had recently won a conviction in the case of Dionisio Díaz García, a human rights lawyer assassinated in 2006. The Office was also aware of cases of human rights violations involving land rights activists. However, as most of those violations had occurred in rural areas, and the Office operated only in Tegucigalpa and San Pedro Sula, its ability to pursue such cases was limited. As to political assassinations, the Office of the Special Procurator generally treated such cases as human rights violations even if it was not clear that public officials had been involved.

22. Work was under way, on the instructions of the President of Honduras, to implement the recommendations of the various human rights bodies, particularly those of the Human Rights Committee, concerning her country's implementation of the International Covenant on Civil and Political Rights. Regarding migratory amnesty, granting such amnesty to foreign nationals was a prerogative of Congress, which could exercise that power directly or through the Ministry for the Interior and Justice, which was responsible for implementing immigration policy.

23. Ms. FLORES (Honduras), referring to the issue of intrusive body searches, explained that it was normal procedure to search all persons upon admission to penal facilities. The procedure for women involved a superficial body search by female security staff and did not include vaginal examinations. In exceptional circumstances, where it was deemed necessary to carry out more thorough searches that included internal examinations, the searches were required to be performed by a medical practitioner. The Code of Criminal Procedure governed the use of body searches by members of the National Police Force and prohibited them from engaging in practices that might be offensive to the person searched.

24. As far as the smuggling of firearms into prisons was concerned, she said that visitors were subjected to exhaustive physical searches. In addition, extra security measures were applied to all deliveries, and vehicles were granted restricted access. Further details on instructions, guidelines and statistics concerning the prison system were available and would be provided to the Committee at a later date.

25. Prison personnel received training under a human rights education programme that was arranged in conjunction with Centre for the Prevention, Treatment and Rehabilitation of Torture Victims and their Relatives. Prison personnel were supervised by the prison governors, as established by the law relating to juvenile justice and prison security; an inspector-general was responsible for monitoring the work of prison personnel at the national level.

26. Regarding the situation of persons deprived of their liberty and the incidence of abuse, killings and overcrowding in prisons, she said that the prison population had actually fallen from some 13,000 to under 11,000 since 2007. A number of mechanisms had gradually been established in conjunction with the Supreme Court of Justice and the ordinary courts with the aim of reducing the potential for abuse and inter-prisoner conflict. Furthermore, the Government had made considerable efforts since 2006 to increase the budgetary allocation intended to cover the daily needs of all prisoners.

27. With reference to the delivery of care to prisoners with mental disorders, she recalled that there were no provisions within the prison service for specific psychiatric treatment. Although there were limitations on facilities for mentally-ill prisoners, every effort was nevertheless made to ensure internment or outpatient treatment in specialized institutions where feasible. Since March 2009, a number of judicial bodies, government departments and representatives of civil society had worked on a strategy to improve social and judicial benefits for psychiatric patients.

28. Ms. PRUDOTH BARDALES (Honduras) confirmed that in 2008 there had been approximately 172,000 children whose births had not been registered. Efforts had been initiated under an agreement between the Honduran Child and Family Institute and the national civil

registry to speed up the establishment of a comprehensive birth registration system, and a number of mobile registries had been set up to reach remote areas, including the areas inhabited by indigenous groups.

29. She refuted the claim that minors had been singled out for detention on the basis of their appearance, such as body tattoos; there were currently no such minors in internment centres. The Child and Family Institute had set up social programmes aimed at improving the lifestyles and prospects of minors and young persons in conflict with the law. Four educational centres had been established and a mobile unit provided services for the voluntary removal of tattoos in vulnerable communities.

30. A special investigative unit was currently studying the number of deaths of minors in internment centres, and further details and statistics had been compiled by the National Police and the Public Prosecution Service.

31. Great improvements had been made in the El Carmen educational complex and Renaciendo internment centre. Human rights awareness and training had contributed greatly to improving the quality of care and conditions for adolescents between 12 and 17 years of age in those institutions. As recently as 16 April 2009, the Supreme Court of Justice had made enforceable a decision of January 2006 relating to violations at the internment centres. In 2008, there had been no deaths or cases of absconding children.

32. Ms. GARCÍA PAREDES (Honduras) described a number of measures undertaken by her Government and aimed at implementing the recommendations of the Committee on the Elimination of Discrimination against Women, including the enactment of specific legislation on the prevention of trafficking, at both the domestic and regional levels. She was pleased to inform the Committee that the Palermo Protocol on trafficking in persons had been submitted by the President to Congress for approval.

33. The National Women's Institute was responsible for harmonizing domestic legislation with international law, in conjunction with the competent State bodies, civil society and women's movements. It had widely distributed material publicizing the Convention on the Elimination of All Forms of Discrimination against Women.

34. Her Government was in the process of establishing a reliable national system of data collection in order to ensure the full and effective implementation of obligations under international treaties. In addition, a gender unit was planned, within the Public Prosecution Service, inter alia to ensure implementation of the law on domestic violence.

35. Ms. SAGRARIO PRUDOTH (Honduras) said that her Government was fully committed to allocating budgetary resources for the continued development of national preventive mechanisms, within the limits of the national economy. She explained that the process for the selection of members of the national preventive mechanism was governed by a specific law prescribing its composition and the required personal and professional qualifications.

36. Among the root causes of the high level of criminality, she identified factors such as poverty, low educational level, unemployment, social inequality, exclusion and organized crime.

37. Mr. FLORES MURILLO (Honduras), referring to the question of the criminal responsibility of persons instructed by their superior officers to commit violations, said that article 24 of the Criminal Code released persons from such responsibility if they were acting in compliance with instructions in the performance of their duty. However, that provision was linked to certain criteria laid down in article 323 of the Constitution, which stated that no official, civil or military, should be obliged to carry out orders that entailed the commission of an offence. All members of the Honduran armed forces, of whatever rank, acted within a strict legal framework, based on legal principles that attached paramount importance to the concept of duty, the proportionate use of methods and resources, and the principle that actions or omissions should never restrict the exercise of rights and freedoms enshrined in international and domestic law.

38. Mr. SUAZO ORTIZ (Honduras) said that all 13,000 members of the National Police Force had been trained in the principles of human rights, with the active support of various NGOs and members of civil society.

39. Human rights defenders were protected by the National Police Force and the usual legal provisions. Moreover, there was constant contact with the higher ranks of the police force to ensure that they were protected. The essential function of the National Police Force and the National Preventive Police Force was to uphold public order and prevent crime; members of those forces who had been identified as having engaged in illegal actions were punished. The National Council for Internal Security had been established to advise on and contribute to formulating security policies that would include civil society.

40. The Minister of Security had established a special unit to monitor private security firms in view of the possibility of corruption and the fact that they might be used to carry out assassinations. All such firms and their personnel were closely monitored, in particular when used to support police activities. The records of former police officers and soldiers seeking work with those firms were checked before they were employed.

41. The CHAIRPERSON said he wished to emphasize the importance of the fact that the State party did not impose the death penalty; that fact shed considerable light on its criminal procedure reforms and other legislative reforms, which were expected to lead to a reduction in the number of cases of pretrial detention. In addition, the State party had made efforts to train personnel on the Convention against Torture and other international instruments. With regard to monitoring the police, experience in the region had indicated that citizens needed to know that State institutions would respond to their legitimate needs within the framework of the law.

42. Efforts to combat impunity remained of crucial importance, in particular in connection with disappearances that had occurred in the past. No truth commission had been established in the State party, no responsibility had been established for actions in connection with disappearances and much remained to be done with regard to compensation for victims. The NGOs that had met with the Committee looked forward to meaningful and concrete action in relation to the investigation of disappearances.

43. On the question of impunity, the Committee would be looking at the outcome of the case of the persons who had been convicted and imprisoned in connection with the murder of two

environmentalists but had subsequently been removed from prison. An investigation, and possibly a criminal investigation, were needed in order to determine who had been responsible for their removal.

44. The Committee would study the action taken by the State party to incorporate the crime of torture in its domestic legislation. One purpose of the law was to serve as a guide for conduct; however, the relevant provisions were scattered and confusing, both to citizens and to the Committee. The State party should, therefore, continue to improve and clarify the existing legislation.

45. During the dialogue, concerns had been raised about compliance with the international standards for the treatment of prisoners and detainees; the State party needed to establish the relevant monitoring bodies. The non-existence of the death penalty in the State party for ordinary or other crimes was a key issue. The Committee's reports should consistently highlight cases in which the death penalty had been abolished.

46. Ms. SVEAASS, Alternate Country-Rapporteur, said that in view of comments in the Honduran press it should be emphasized that the Committee had not yet reached conclusions but had merely asked questions based on the information it had received from the State party and NGOs; conclusions would be reached once the Committee had had the opportunity to consider the replies and additional information provided to it.

47. She noted that action had been taken in support of human rights defenders and expressed the hope that that action would be treated as urgent. She observed that the Centre for the Prevention, Treatment and Rehabilitation of Torture Victims and their Relatives was an important institution that had recently been subjected to threats; the State party should ensure that it was adequately protected from such harassment.

48. The State party was 1 of only 10 that had ratified the International Convention for the Protection of All Persons from Enforced Disappearance, having done so in 2008. Although the Convention had not yet been implemented, the fact that it had been ratified was an important and positive step. She asked whether enforced disappearance would be criminalized so that those responsible could be identified and charges brought against them.

49. Crimes committed in the past cast shadows over the present and the future. She asked what had been done to investigate and hold accountable the active members of Battalion 316, a unit notorious for numerous killings and serious torture, and whether any members of that unit remained active. She also wished to know whether police officers who had violated the Convention were dismissed, as was the case with military personnel, and further whether police duties were militarized.

50. She sought clarification as to whether complaints against the police were investigated independently or dealt with by the police. In connection with trafficking and violence against women, she asked the delegation to indicate measures taken to provide women and girls with rehabilitation, e.g. the setting-up of shelters or rehabilitation centres.

51. Mr. GAYE said he had noted that the State party's domestic legislation stipulated a minimum penalty of 10 years and a maximum penalty of 15 years' imprisonment for the offence



of torture. He asked the delegation to clarify the distinction made between persons detained for the purposes of a police investigation and those detained in the context of judicial investigations and proceedings. He wished to know what legal safeguards were available to them to ensure that their period of custody was monitored, whether they had access to habeas corpus or other remedies and whether the normal safeguards were available to them, namely, contact with family members and access to legal counsel and doctors.

52. He asked the delegation to further clarify the specific areas of competence of both the Supreme Court of Justice and the Supreme Electoral Court in relation to legislative initiatives.

53. Ms. BELMIR said that the delegation might wish to give due importance to the dearth of institutions to monitor the independence of the judiciary, as such institutions were essential to the preservation of rights. Although the State party had ratified both the International Convention for the Protection of All Persons from Enforced Disappearance and the Inter-American Convention on Forced Disappearance of Persons, enforced disappearances continued to occur with impunity. She requested additional information in connection with the extrajudicial execution of minors.

54. The Convention against Torture sought to prohibit any violation of human dignity, privacy and physical integrity. However, the practice of conducting body searches on women constituted a de facto breach of the Convention. It was the State party's responsibility to identify other means of obtaining evidence, e.g. by using modern surveillance techniques.

55. With regard to pretrial detention, it was necessary to differentiate between procedures prior to and following conviction; although pretrial detention could be extended by a specified period, it was a distinct and highly specific procedure and the treaty bodies did their utmost to ensure that it was used with caution. States had a responsibility to produce evidence of offences; although the time available to them to do so could be extended by up to six months in cases where evidence was difficult to obtain, that responsibility could not be borne by persons in detention as that amounted to a denial of justice. She therefore urged the State party to review its provisions on pretrial detention since principles such as due process could not be set aside.

56. Ms. KLEOPAS said that under articles 12 and 13 of the Convention States parties were responsible for conducting prompt and impartial investigations into allegations of torture and ill-treatment. She asked whether complaints against the police were investigated by the police themselves, and how many police officers had been investigated, prosecuted and convicted of torture or ill-treatment.

57. Mr. Mariño MENÉNDEZ asked the delegation to provide further information on the procedures followed in the case of foreigners who failed to comply with Honduran migratory laws. According to the report (para. 78), it would seem that there were two options. The first involved a migratory amnesty, which appeared to refer to a pardon granted by the Ministry of the Interior and Justice once the foreigner had been expelled or deported from the country, while the second involved setting extraordinary deadlines for regulating migratory situations. He asked whether both procedures were in force, whether in the first case the pardon could also be granted while the foreigner was still in the country and whether the second one was available to the Government. From what he understood, it was the legislature that extended the deadlines, but that meant that it would have to legislate every few years.

58. Ms. GARCÍA PAREDES (Honduras) said that the National Institute for Women, in coordination with other State and civil society organizations, was taking measures to establish appropriate mechanisms to protect the rights of women subjected to any type of violence. The Institute had established shelters in different parts of the country, and was providing technical and financial assistance to two NGOs that worked specifically with women victims of violence.

59. The Institute's budget had recently been increased significantly and, recognizing that education was a key factor in development and the elimination of violence, it was focusing its efforts on revising school curricula to ensure that children received an education based on respect for fundamental human rights.

60. Mr. URBIZO (Honduras) said that his country had returned to democracy and the rule of law. The military authorities were now subject to the civilian authorities, and the primacy of the executive over all other branches of power had been abolished because a strong and independent legislature and judiciary had been established. The twenty-first century was the century of human rights, and inculcating respect for human rights in Honduras had been an arduous task; he accordingly wished to take the opportunity to pay tribute to Mr. Ramón Custodio López, the National Commissioner for Human Rights, who had played such a fundamental role in that regard.

The public part of the meeting rose at 12.15 p.m.