



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

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on Thursday, 30 April 2009, at 10 a.m.

Chairperson: Mr. GROSSMAN

CONTENTS

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

Initial report of Nicaragua

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.872/Add.1.

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The meeting was called to order at 10.05 a.m.

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

Initial report of Nicaragua (CAT/C/NIC/1)

1. At the invitation of the Chairperson, the members of the delegation of Nicaragua took places at the Committee table.
2. Mr. ROBELO RAFFONE (Nicaragua), introducing his country's initial report (CAT/C/NIC/1), said that his Government was firmly committed to promoting and protecting the human rights and fundamental freedoms of all its citizens. Upon taking office in 2007, the Government had made fulfilment of its obligations under various international human rights conventions a priority, and one of its first acts had been to prepare and submit reports to the respective treaty bodies. To that end, a special unit had been set up within the Ministry of Foreign Affairs and an inter-institutional committee, comprising public institutions and civil society organizations, had been established to draft the reports.
3. In evaluating Nicaragua's compliance with the Convention, it was important for the Committee to be mindful of socio-economic conditions in the country, particularly poverty and extreme poverty, which his Government viewed as an extremely grave violation of human rights. It was also important to consider the legal and institutional changes that had occurred in recent years, most notably the reform of the Criminal Code and the adoption of a new Code of Criminal Procedure.
4. Although Nicaragua had not been a party to the Convention in 1987 when its current Constitution had been adopted, the Constitution did prohibit torture. The new Criminal Code defined and criminalized torture. While the previous Criminal Code had not classified torture as a specific offence, it had provided for the prosecution of persons who committed acts of torture under other offences, such as abuse of authority. The new Code of Criminal Procedure, which replaced the former inquisitorial system of justice with an adversarial one, also banned torture and other cruel, inhuman or degrading treatment and established safeguards for persons charged with offences.
5. The Prison System and Enforcement of Sentences Act, adopted in 2003, established the rules for the operation of the national prison system in accordance with the principles of re-education and social reintegration, and prohibited physical or psychological abuse or any other infringement of the human dignity of prisoners. A Special Procurator for Prisons monitored compliance with the Act and an Inspector General ensured compliance by the police with the Constitution and with domestic laws concerning arrest and detention. The Inspector General also conducted investigations of any allegations of torture or other human rights violations. The National Police were a civilian corps whose professionalism and respect for human rights had been recognized both regionally and internationally. Indeed, the representative of the United Nations Development Programme in Managua had cited the Nicaraguan police force as a model for Latin America.

6. His Government, in fulfilment of its obligations under the Convention, sought to ensure that public officials were educated and informed regarding the prohibition against torture and, despite budgetary constraints, provided training to law enforcement and medical personnel. The training curriculum of the national police academy included content relating to the promotion and protection of human rights, and police officers received continuing training on legislation relating to police work. Prison physicians received training in human rights, forensic medicine and topics relating to the particular health-care needs of prisoners.
7. His delegation looked forward to a frank and constructive dialogue with the Committee.
8. Ms. SVEAASS, Country Rapporteur, commended Nicaragua for its ratification of the Optional Protocol to the Convention and for its recent enactment of legislation for the protection of refugees. She enquired what steps were being taken to designate a national preventive mechanism in accordance with the Optional Protocol, suggesting that the Office of the Human Rights Procurator might play that role. Noting that the State party had signed the Convention in 1985 but had not ratified it until 2005, she asked what had accounted for that long delay. She also requested more information on the inter-institutional committee to which the head of delegation had referred. In particular, she wished to know how it differed from the Working Group for the Convention against Torture and which civil society organizations had participated in drafting the report.
9. The definition of torture included in Nicaragua's new Criminal Code appeared to be very similar to the definition contained in article 1 of the Convention, except with reference to the person committing the offence. The sections of the Code relating to sanctions clearly applied to public officials or persons acting in an official capacity. She wondered whether there were any plans to bring the definition fully into alignment with the Convention. She also enquired whether anyone had been convicted of the crime of torture and, if so, what penalties had been imposed.
10. With regard to the rights of detainees described in paragraphs 53 and 54 of the State party's report, she would like to know the time limit within which detainees must be informed of the reasons for their detention and whether they had the right to be examined by an independent physician. Referring to paragraph 34, she noted that the total number of public defenders in Nicaragua was 79. What consequences did that have in terms of the right to justice for defendants who could not afford to hire a private attorney?
11. Article 193 (c) of the regulations under the Police Act, mentioned in paragraphs 55 and 56, appeared to create an exception to the Convention's prohibition against invoking an order from a superior officer or a public authority as a justification of torture. Was that, in fact, the case?
12. Paragraph 86 of the report indicated that criminal enforcement judges made visits to detention centres to resolve complaints by inmates and to ensure that their rights were being respected. She requested information on the number of such visits made, the number of complaints received and the actions taken by the enforcement judges. She would also like to know what procedures were followed by judges who received allegations of torture, and what specific roles the Office of the Human Rights Procurator and the Special Procurator for Prisons played with respect to visits to detention centres, allegations of torture and complaints made by immigrants. In relation to the latter, the Committee had been informed by NGOs that immigrants

were routinely being held for periods exceeding three months under very poor conditions. Special reference had been made to a group of migrants from China. She invited the delegation to comment on those allegations.

13. Paragraph 39 of the report stated that the budgets allocated to the bodies responsible for safeguarding detainees' rights were insufficient, which sometimes resulted in violations of those rights. What was being done to rectify that situation?

14. She had lived in Nicaragua and was keenly aware of the problem of violence against women and children, including physical, sexual and psychological violence. Recent statistics indicated that crimes against women had risen alarmingly. The State party had an obligation to do its utmost to prevent such violence, to ensure that victims received legal assistance, to investigate all allegations of domestic violence, to punish perpetrators and to provide victims with compensation. She would like to know what measures were being taken to enforce laws against violence, particularly domestic violence; what actions were under way or envisaged to prevent violence against children, including corporal punishment; what protective measures, such as shelters and hotlines, were available to victims of domestic violence; and how many complaints of violence had been filed, investigated and prosecuted. Additionally, she wondered whether law enforcement officials received training in gender issues and what resources had been allocated to training programmes and awareness campaigns.

15. An issue that had rightly elicited strong reactions within the United Nations treaty bodies and elsewhere was the general prohibition of abortion, even in cases of rape, incest or presumed life-threatening pregnancy, contained in articles 143 and 145 of the Criminal Code. She found it impossible to understand why, in 2006, Parliament had repealed the Act authorizing "therapeutic abortion". In some cases pregnancy was the result of heinous and humiliating crimes, such as incest or of rape. Forcing a woman to carry life-threatening pregnancies to term was also totally unacceptable. Furthermore, health-care personnel were required, under articles 148 and 149 of the Criminal Code, to breach international standards and violate their Hippocratic oath. Preventing a health professional from assisting a 12-year-old with an unwanted pregnancy amounted, in her view, to condoning an act of torture.

16. The Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women had all taken a strong stand on the issue, as had a number of prominent NGOs. As a health professional herself, she intended to raise the matter in other international settings such as the World Medical Association, especially since the World Health Organization's guidelines for medico-legal care for victims of sexual violence seemed to have been ignored when the law had been adopted. She asked whether the State party would reconsider the law and compensate the victims of serious harm which was inflicted with the acquiescence of persons in official positions and was basically discriminatory.

17. The Committee had also received reports of attacks on human rights defenders and political activists who had opposed the legislation. Ms. Vilma Núñez, President of the Nicaraguan Human Rights Centre, feared for her life. Ms. Patricia Orozco, Coordinator of the 28 September Campaign for the Decriminalization of Abortion in Latin America and the Caribbean, and a leader of the Women's Autonomous Movement, had received death threats and threats of sexual violence. The State party had a moral duty to come to their support.

18. The Working Group on Enforced or Involuntary Disappearances had drawn attention to a number of unresolved cases of enforced disappearances in Nicaragua. She enquired about recent developments in that regard. She also enquired about the right of persons in psychiatric hospitals to protest against involuntary treatment. What oversight mechanisms had been put in place?

19. Under article 18 of the Criminal Code, one of the conditions for extradition was that the requesting State presented guarantees of a fair trial for the extradited person and assurances that he or she would not be subjected to torture or ill-treatment. She asked the delegation to elaborate on the guarantees required.

20. A Refugee Protection Act had been adopted on 4 June 2008. How did the authorities propose to ensure that asylum-seekers and refugees had effective access to the rights recognized in the Act and that law enforcement officials were familiarized with its provisions? A large number of Salvadoran refugees had reportedly been living in the country since the 1980s without proper documentation. What measures would be taken to regularize their situation?

21. She also asked the delegation which authority was responsible for ensuring that rejected asylum-seekers were not returned to countries where there were substantial grounds for believing that they would be at risk of being subjected to torture or ill-treatment. What decisions had been taken on cases falling under article 3 of the Convention?

22. Paragraphs 115 to 118 of the report listed disciplinary sanctions imposed on prison staff, ranging from private warnings to dismissal. She asked whether the penalties prescribed in article 369 of the old Criminal Code had been updated in the amended version.

23. Lastly, she wondered whether any staff members of the Institute of Forensic Medicine had acquired expertise in documenting cases of torture in accordance with the Istanbul Protocol.

24. Mr. GALLEGOS CHIRIBOGA, Alternate Country Rapporteur, said that the State party's report, submitted in 2007, provided a lucid account of its efforts to comply with its obligations under the Convention. The delegation had just circulated a lengthy review of recent developments, which would have greatly assisted the Committee if it had been received somewhat sooner.

25. According to paragraph 143 of the report, medical staff in the prison system received no specific training on how to recognize cases of torture or other cruel, inhuman or degrading treatment or punishment. He stressed that all prison staff should receive such training. Moreover, the State had a general responsibility to raise awareness among all public officials of what constituted torture and cruel, inhuman or degrading treatment, and also of the need to ensure that vulnerable groups such as women, children, persons with disabilities and migrants enjoyed special protection. Training courses for law enforcement officials and other public officials did not seem to address issues such as sexual harassment of women and femicide. Staff dealing with children and adolescents were not systematically informed of minors' rights.

26. He asked what steps had been taken to implement the Protocol of Action on Offences pertaining to Intrafamily Ill-treatment and Sexual Aggression adopted in 2003 on the basis of an initiative by the Supreme Court of Justice. In particular, had the Legal Service Training College introduced special training programmes, including one for judges attached to the criminal

divisions of juvenile appeal courts? He gathered that little progress had been made in the training of prosecutors, in establishing interdisciplinary teams to provide services in district juvenile criminal courts and in training officials to run socio-educational programmes for adolescents as an alternative to imprisonment. The staff of custodial centres for minors should, of course, also receive special training in human rights.

27. Referring to paragraphs 165 to 176 of the report concerning arrangements for investigating allegations of torture, he asked for practical details of investigations conducted and their outcomes. Had there been cases in which the competent authorities had failed to act on a complaint of torture and, if so, on what grounds?

28. Vigorous action to prevent impunity was a key requirement for the elimination of torture. It was therefore important to present detailed figures for the number of perpetrators of such acts who had been prosecuted and convicted and the types of sentences that had been handed down.

29. The Committee had received statistical information from the Nicaraguan Human Rights Centre to the effect that police officers were frequently accused of human rights violations. They were accused of using disproportionate force equivalent to torture or ill-treatment during police custody and less frequently in the context of investigations. According to the Centre's annual report for 2008, it had received 265 complaints against police officers for assault, unlawful detention and ill-treatment. He invited the delegation to comment on that figure.

30. The impartiality of judges was a vital prerequisite for the protection of human rights. He asked how many cases concerning torture by public officials had been heard by the judicial authorities.

31. Was the right of torture victims to compensation and rehabilitation confined to Nicaraguan nationals or could it also be exercised by migrants and refugees? Did the right to compensation depend on the existence of a criminal conviction or could compensation also be claimed in cases where a disciplinary or administrative sanction had been imposed on the perpetrator of an act of torture or ill-treatment? He enquired about the State party's rehabilitation programmes for torture victims and asked for details of medical treatment, individual cases and relevant legal decisions. What criteria were applied when determining the scale of compensation? Could a victim file an appeal if he or she considered that the compensation was inadequate?

32. According to paragraph 194 of the report, the two main difficulties impeding the improvement of conditions in detention centres were the size of the budget allocation and the fact that staff lacked motivation because of low wages. What measures had been taken to rectify the situation? The report admitted that there was significant overcrowding in a number of prisons and that Bluefields prison lacked even the most basic facilities to accommodate detainees. There was no sewage system and no drinking water, and the infrastructure as a whole was so dilapidated that the inmates tended to vent their frustration in violent behaviour. Minors tended to be held in the same wings as adult prisoners. According to the report, there was an urgent need to build a prison in the Autonomous Region of Atlántico Norte. He wondered whether work had begun on a prison-building project since the submission of the report.

33. He stressed that every State bore responsibility for ensuring the safety of its citizens. Nicaragua was therefore required to take vigorous action against domestic violence and other

forms of violence between individuals. How were complaints of domestic violence dealt with and how effective were the measures taken to protect women, children and other vulnerable groups?

34. The Human Rights Committee had expressed concern (CCPR/C/NIC/CO/3) about a growing number of reports alleging systematic persecution and death threats against human rights defenders by individuals, political groupings and bodies connected to the State authorities. It also noted with concern the criminal investigations against defenders of reproductive rights, including the criminal charges pending against the nine women defenders of women's rights involved in the interruption of an abortion conducted on an under-age girl who had been raped. He asked what measures were being taken to halt such systematic harassment.

35. According to information provided by NGOs, many cases of ill-treatment of detainees in prisons and police detention facilities went unpunished. What measures were being taken to end such abuses and to ensure that the perpetrators were held accountable?

36. He asked whether the offences of trafficking and sexual exploitation of children and women had been defined in the Criminal Code and whether appropriate penalties had been prescribed. Other treaty bodies had drawn attention to trafficking as a major problem in Nicaragua.

37. Welcoming the Refugee Protection Act adopted by the National Assembly in 2008, he asked whether asylum-seekers could effectively exercise their rights under the Act and whether border guards had been trained to implement its provisions. He understood that special mechanisms had been introduced to prevent the refoulement of asylum-seekers to countries where they would be in danger of being subjected to torture or ill-treatment.

38. Referring to reports of prolonged detention of migrants, especially those of Chinese origin, he asked to what extent the Inter-American Convention to Prevent and Punish Torture was being applied to migrants and stateless persons.

39. Ms. BELMIR said that the Public Prosecutor's Office was described in paragraph 27 of the report as an independent body which was structurally, operationally and administratively autonomous. As the Office was a party to legal proceedings, she enquired about its relationship with the courts and the remedies available against its actions.

40. According to an NGO report, in 2008 complaints of ill-treatment had been filed against 30 per cent of all police officers, and sanctions had been imposed in 10 per cent of those cases. A major training and awareness-raising effort was therefore required.

41. Referring to paragraph 131 of the report, she commended the provisions in the Code of Criminal Procedure guaranteeing fair treatment at all stages of legal proceedings. However, the principle of equality was not mentioned. Problems related to ethnic pluralism had an impact on the judicial system in many countries. She therefore asked whether all citizens of Nicaragua were equal before the law.

42. According to the Working Group on Arbitrary Detention (A/HRC/4/40/Add.3), there was a special category of detainees in Nicaragua who were forgotten by the justice system and had

been effectively dumped as “gifts” on the prison system. They had no contact with the outside world and no possibility of availing themselves of the remedies to which they were entitled. The Working Group also drew attention to the disproportionate severity of criminal penalties handed down for offences relating to the use and sale of narcotics, noting the unreasonably high minimum fine of 1 million córdobas (about 61,000 United States dollars) set for such offences, which, given the general inability of offenders to pay it, was converted into an additional year’s imprisonment. The Working Group further noted the institution of enforcement by committal, under which a civil court judge was able to order the detention of a person for up to one year for failure to comply with the conditions of a loan agreement.

43. Referring to paragraph 67 of the report, she noted that illegal migrants were held in premises designated as the National Custody Centre for Illegal Migrants, where various custodial measures were applied prior to their deportation. No information was provided regarding time limits on detention and the possibility of court appeal against the deportation order.

44. Highlighting the situation of children in vulnerable situations in Nicaragua, she said she was confident that the Government was aware of the issues concerning street children and children in conflict with the law, the phenomenon of child labour and other forms of exploitation. In that regard, she drew particular attention to the children of working and migrant women, and recalled that the Committee on the Rights of the Child had urged the State party to give greater priority to the protection and care of the children of migrant women.

45. In closing, she invited the delegation to comment on the juxtaposition of secularism with legislation based on religious conviction, as in the case of the laws on abortion.

46. Mr. MARINÑO MENÉNDEZ, referring to earlier comments on the role of human rights defenders, asked whether the procurator for prisons had access to military installations and premises, or other locations where detainees were held, including police stations, special centres for young offenders and psychiatric clinics.

47. In relation to article 3 of the Convention on the return or expulsion of persons, he asked whether the Nicaraguan authorities had established a procedure for determining whether persons entering the territory of Nicaragua illegally required humanitarian protection prior to being deported. In the absence of such a procedure, were such issues left to the discretion of border officials, and was the length of time allowed before expulsion in conformity with international law?

48. With regard to transparency during trials, he asked about the circumstances under which judges decided to hold closed hearings, whether such decisions were made independently by judges or in consultation with other judicial authorities, and the possibility of appeal against those decisions. He further enquired whether data had been compiled on the frequency of recourse to habeas corpus, on complaints claiming violation of that right, and the length of time allowed for the exercise of such recourse after detention. In that connection, he raised the question of proportionality, to which the Government of Nicaragua had attached great importance. He was keen to know whether there was any case law or jurisprudence that established the meaning of proportionality within the context of investigations.

49. He also asked the delegation to explain which illnesses prevalent in prisons were referred to in paragraph 75 of the initial report.

50. Mr. GAYE said that since torture was not classified as a criminal offence in Nicaraguan legislation, the Committee would welcome an update on the situation with regard to the proposed amendments to the Criminal Code, which would, among other things, address that omission and prescribe corresponding sanctions. He also asked whether the Government of Nicaragua had issued a declaration recognizing the competence of the Committee to receive and consider communications from or on behalf of individuals who claimed to be victims of a violation under the Convention.

51. He referred to paragraph 131 of the report, which stated that article 4 of the Code of Criminal Procedure provided for the right to a defence, and that the State ensured that persons who could not afford to pay a private lawyer would receive legal advice from a public defender. He wished to clarify the status of public defenders, and asked whether they were professional lawyers or State employees.

52. Since the Committee had received disturbing reports concerning the treatment of minors in conflict with the law, he was curious to know whether the Nicaraguan authorities had established special procedures and arrangements for their treatment, custody and accommodation.

53. It was remarkable that the report did not provide adequate information on the situation of judges since, in his view, it was indispensable for States parties to provide data on the institutional framework and the basic principles that governed the functions of the judiciary.

54. He had gathered that the Church had exerted a strong influence on recent legislative amendments concerning the issue of abortion, and it appeared that therapeutic abortions were prohibited. At the same time, domestic laws were ambiguous with respect to the conduct of physicians, who did not have clear guidance as to whether their performance or non-performance of a therapeutic abortion as a life-saving intervention put them at risk of prosecution. He invited the delegation to explain the legal framework applicable in such situations.

55. Ms. KLEOPAS, following up on the previous speaker's query, asked whether the Government of Nicaragua had taken into account the recommendations on abortion made by the Human Rights Committee in December 2008. She wondered whether any doctors had been prosecuted for negligence for having refrained from performing life-saving abortions because they had feared being held criminally liable.

56. She was interested in knowing whether special complaints procedures had been introduced to assist female victims of domestic and sexual violence. She also asked whether the Government intended to impose a statute of limitations on criminal liability for acts of torture.

57. Ms. GAER asked for further information regarding investigations into allegations of police abuse. Noting that approximately 67 per cent of over 2,000 complaints in 2008 related to human rights violations, she wondered what proportion of those violations consisted of torture, ill-treatment or physical abuse, and whether the perpetrators, if any, had been punished accordingly.

58. There was reportedly a pattern of vigilante violence against members of the political opposition, civil society and activists. Human rights groups had indicated that the Government was unwilling to investigate instances of vigilante violence, and in certain instances had even obstructed such investigations. She was therefore curious to know how often investigations had been initiated, and who had been found to be responsible for vigilantism.

59. She asked whether the Government had implemented the recommendations on the establishment of prison registers made by the Working Group on Arbitrary Detention following its visit to Nicaragua in 2006.

60. She asked for statistics that would provide an insight into the situation of female prisoners and the facilities in which they were housed. She asked why increasing numbers of women had been imprisoned, and requested statistics on the investigation of complaints regarding physical abuse or sexual violence. She was curious to know whether systems had been established for monitoring sexual violence within the male and female prison populations.

61. During his visit to Nicaragua in 2005, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance had drawn attention to the treatment of indigenous people and persons of African descent. Those groups suffered disproportionately from social marginalization and discrimination, and he highlighted the poor health infrastructure in the regions where they lived. She wished to know whether data had been compiled on the number of persons seeking medical attention for trauma-related conditions that might indicate ill-treatment or poor delivery of health care, especially for dealing with reproductive health issues. It was important to know whether there were any such statistics disaggregated by ethnicity, region, gender and race since a lack of strategy to combat multiple forms of discrimination further compounded the ills within a society.

62. With regard to the harassment of human rights defenders, she enquired about the outcome of the case in which a number of persons had been prosecuted for coming to the aid of a 9-year-old rape victim.

63. The CHAIRPERSON reminded the delegation that within the parameters established under the general guidelines on reporting on the measures affecting the implementation of the Convention, there was also the need to provide tangible examples and statistics in support of the claims of effective implementation made by States parties.

64. The report had described a number of legal provisions and various safeguards granted by such provisions, but he believed it would be useful for the delegation to quote specific cases that showed the scope of enforcement by the judicial system.

65. Regarding the ratification of the Optional Protocol to the Convention and the promotion of national preventive mechanisms, he stressed the need for the allocation of adequate resources to the Office of the Human Rights Procurator to enable it to function effectively. Without sufficient resources, it would not be able to fulfil its additional obligations under the Optional Protocol.

66. Referring to paragraph 88 of the report, he asked the delegation to explain the relationship between the Military Criminal Code and the new Criminal Code, which incorporated the concept of torture. He was curious to know whether the new provisions superseded the provisions of the

Military Criminal Code, which referred to the lesser charge of “abuse of authority” for practices that encompassed torture. He sought clarification as to whether military personnel could be held liable for acts of torture under the new legal regime.

67. He referred to paragraph 118 of the report, which mentioned the case of five persons who had been subjected to physical ill-treatment by police officers. In his opinion, the dismissal of the police officers was not a sufficiently severe penalty, given the seriousness of the acts which seemed to fall within the category of torture and cruel, inhuman and degrading treatment. Admittedly, paragraph 121 of the report stated that the police officers faced the prospect of being brought to trial. He was interested in knowing the outcome of the criminal proceedings if indeed they had been initiated, and even more importantly, what legal definition was applied for those proceedings. Would the officers be tried for abuse of authority, ill-treatment or torture?

68. Although the provision made for the review of procedures for the custody and treatment of prisoners seemed rather good, he was curious to know how many complaints lodged by inmates, as mentioned in paragraph 149 of the report, had been processed and resolved. Similarly, he wished to know whether the health and well-being of inmates were monitored on a daily basis, as prescribed in the manual on the role of custody officers (report, para. 52).

69. He welcomed the adoption of the new Code of Criminal Procedure as a sign of Nicaragua’s commitment to existing safeguards for the respect of human rights. He asked the delegation to provide statistics on persons placed in pretrial detention and the proportion of detainees who were actually convicted as compared with those awaiting conviction.

70. The CHAIRPERSON, referring to acts of torture or ill-treatment committed by prison personnel, asked how many cases there had been and how many complaints had been lodged. He asked whether there had ever been a case of a torture victim receiving compensation in Nicaragua.

71. According to the report, records showed that breaches of discipline among the prison population had risen by 50 per cent in 2006 compared with 2005. That was a worrying figure, showing that the situation was worsening; it could be attributed to lack of medical attention, health problems or restrictions on family visits. In general, it would be useful if the State party could provide more statistical information.

The public part of the meeting rose at 12.10 p.m.