



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

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Summary record of the 1597th meeting

Held at the Palais Wilson, Geneva, on Thursday, 23 November 2017, at 3 p.m.

Chair: Mr. Modvig

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention *(continued)*

Initial report of Timor-Leste (continued) (CAT/C/TLS/1)

1. *At the invitation of the Chair, the delegation of Timor-Leste took places at the Committee table.*
2. **Mr. Dias Ximenes** (Timor-Leste) said that one of the priorities of the Chega! National Centre was to advocate for accelerated implementation of the recommendations of the Truth, Reception and Reconciliation Commission and the Truth and Friendship Commission by the National Parliament. The issue was a sensitive one; it was hoped that members of the new legislature would find a solution that would spare victims from having to relive past suffering. The National Centre had recommended amending legislation on reparation for victims and establishing a public memory institute.
3. The Ombudsman for Human Rights and Justice, civil society organizations and Indonesian human rights institutions had been holding annual meetings to identify and locate disappeared children who had been removed to Indonesia during the conflict which had taken place between 1975 and 1999 to enable them to return to Timor-Leste to visit members of their families. The Government was also planning to establish a commission to address the issue of enforced disappearance.
4. Under a zero-tolerance policy introduced by the Ministry of Education, school personnel who inflicted corporal punishment on children were subject to disciplinary sanctions.
5. The Government had not deported Rohingya migrants but had, in fact, provided them with assistance. Members of that community who had arrived in Timor-Leste had intended to make Australia their final destination and had not requested asylum. There were no plans to change the rules governing asylum applications.
6. Although the Penal Code did not contain separate definitions of torture and ill-treatment, it clearly defined torture and criminalized acts of torture in accordance with the Convention. Judges decided on the classification of offences on a case-by-case basis.
7. In order to ensure the rights of children, youth and adolescents who committed offences or were in conflict with the law, the Ministry of Justice was preparing for submission to the Council of Ministers a new bill on punitive-educational measures for children aged 12 to 16 and a new draft law on the special regime for youth and adolescents aged 16 to 21.
8. The Ministry of Justice would propose the ratification of the Optional Protocol to the Convention to the Council of Ministers. The Ministry would also propose that an invitation to visit the country should be extended to the Special Rapporteur on torture.
9. Currently, there were public defender's offices providing free legal services in four municipalities; two more such offices were planned for 2020, and eventually there would be an office in all of the country's municipalities. In order to ensure access to justice in remote areas, the Ministry of Justice had created a mobile court that undertook monthly visits to distant municipalities.
10. With respect to solitary confinement, prisons had their own statutes and executive regimes. As part of special measures to ensure their security, new prisoners were held in a security cell for three to four days before they were placed with other inmates. During that time, they were interviewed by prison guards and given a medical examination. Under Decree-Law No. 14/2014 on the criminal enforcement regime, prisoners who encountered problems with other prisoners were transferred to a security cell for solitary confinement. Prisoners in those cells had access to the same facilities, meals and exercise as prisoners in other cells.
11. Construction would begin on the planned new juvenile detention centre when the corresponding budget was allocated. The new centre would accommodate up to 100

juveniles and include a vocational training centre. The new prisons planned for the municipalities of Baucau and Manufaha would each accommodate up to 120 detainees and comply with international standards. Representatives from the Ministry of Justice and the Ministry of Health regularly visited prisons to inspect living conditions and to determine whether visits by doctors were necessary. The Government was also planning to establish more mental health centres and to increase funding for the services such centres provided.

12. A suspect could be held in preventive detention for a maximum of 72 hours. Normally, however, suspects were released after 12 hours and subsequently notified of the next stage in the process by the Public Prosecution Service. Only 190 of the 690 prisoners at Becora prison were held in preventive detention.

13. The Government did not discriminate against lesbian, gay, bisexual and transgender (LGBT) persons; the latter enjoyed the same rights and opportunities to access government services as other citizens. The Prime Minister had recently called on citizens to accept and respect the members of that community.

14. Under Decree-Law No. 15/2014, the Police Forensic and Criminal Investigations Unit investigated cases of torture and other cruel, degrading or inhuman treatment.

15. Under article 141 of the Penal Code, abortion was permitted when continuation of a pregnancy threatened the life of the mother and all other life-saving measures had been exhausted. Termination of pregnancy required the consent of the woman concerned and medical certification. Where such a certificate could not be obtained and termination was urgent, the doctor performing the procedure had to consult other doctors beforehand whenever possible.

16. The Immigration Law provided for two types of deportation decisions. An administrative decision was adopted by a member of the Government responsible for migration, and a judicial decision was issued by the competent court. Under the Law, an appeal could be lodged against a deportation decision.

17. **Mr. Tilman Da Costa** (Timor-Leste) said that disciplinary action had been taken against members of the police who had used excessive force against a group of young men in the Special Administrative Region of Oecussi. The victim of police violence at a football match in Maliana had reported the incident to the public prosecutor, and the case would be subject to careful investigation. Police officers wore distinctive uniforms and insignia; only intelligence officers wore civilian clothing. Human rights training was provided for all police cadets as a matter of priority. Furthermore, law enforcement officials would receive training and technical and material support under a long-term bilateral cooperation agreement which had been signed with the Australian Federal Police and the New Zealand Police.

18. A number of measures had been taken to facilitate administrative processes related to police activities, including the establishment of an incident management system and the post of police liaison officer to the prosecutor.

19. **Mr. Dos Reis Santos** (Timor-Leste) said that, with regard to the Maubere Revolutionary Council (KRM) case, the Government had ordered the joint operation for the arrest of members of the group. While use of force had not been intended, KRM had not cooperated, and had fired at the police, who had subsequently resorted to the use of force in self-defence. The incident therefore could not have been avoided. Thus far, no complaints had been received from the victims or members of their families.

20. **Mr. Da Silva** (Timor-Leste) said that, in cooperation with the Indonesian authorities, some of the children who had been taken from their families and sent to Indonesia during the Indonesian occupation had been identified and reunited with their families. The search would continue. Since they were now adults, some had married and started families in Indonesia and had therefore chosen not to return to Timor-Leste.

21. With regard to non-refoulement, Timor-Leste was a very young country, which lacked human resources and was open to immigration. Visas were granted on arrival, without discrimination. Timor-Leste did not, however, tend to be a country of intended destination; it was geographically close to Australia, which was the intended final

destination of most migrants. In the event that migrants became stranded in Timor-Leste en route to Australia, the maritime police were generous with their assistance, providing food and water. Most migrants, however, continued on their journey. Should they request asylum in Timor-Leste, their request would be granted.

22. **Ms. Gaer** (Country Rapporteur) said that, while the Committee appreciated the proposed legislative changes on reparation for historical abuses, she wished to draw the delegation's attention to the Committee's general comment No. 3 (2012) on the implementation of article 14 by States parties. While the issue of reparation for past abuses was indeed sensitive, delay of justice was tantamount to denial of justice. Redress involved upholding the right to truth, allowing people to find out what had happened, and guaranteeing that such events would never be repeated. Those steps could be taken only by addressing the issues of the past and providing accountability. The Committee therefore hoped that the State party would reconsider the measures that could be taken to ensure that surviving victims were able to obtain full redress.

23. Impunity was an obstacle to the right to redress, which must be overcome in order to allow victims to recover from the pains of the past. She hoped that the Public Memory Institute would be authorized to bring the past abuses to light. She asked whether statistics in that regard were already available and had simply not been made public, or whether information would need to be gathered. She wished to know what follow-up action the Government had taken with regard to the cases referred to the Prosecutor General by the United Nations Serious Crimes Investigation Team at the end of 2012, in particular whether there had been any prosecutions and convictions, and, if so, what sentences had been handed down in the 311 cases for which investigations had been completed. She asked whether the Public Memory Institute would provide assistance to individuals, and whether it would be able to receive individual complaints.

24. Regarding the situation of disappeared children who had been taken to Indonesia, scientific evidence could be used for identification purposes and to reunite those children with their families. Technology alone, however, was not sufficient to rectify the situation; political will was essential. She wished to know, therefore, whether the Government was making any specific efforts to identify those disappeared children, and whether there were any statistics available on how many had been identified and reunited with their families. She also wished to know what was being done to implement the recommendations of the Truth, Reception and Reconciliation Commission with regard to disappearances. She requested further details on the assistance provided to refugees who arrived in Timor-Leste, in particular whether there was any communication between the authorities and the Office of the United Nations High Commissioner for Refugees, and whether they were provided with any legal aid. She asked if data were available on how many of those refugees who transited through the State party actually arrived at their intended destination, Australia.

25. The Committee remained concerned regarding the lack of separate provisions on torture and ill-treatment in the State party's criminal legislation. Although the Government considered that judges were able to distinguish between those offences on the basis of the Penal Code, it was generally the case that more detailed legal provisions were required to issue a decision on whether a crime constituted torture or ill-treatment. The State party's intention to ratify the Optional Protocol to the Convention was particularly welcome. Was there a time frame in place in that regard?

26. Regarding so-called prison initiation rites, she wished to know whether holding suspects in solitary confinement for up to four days was a routine procedure that was officially approved. The 72-hour delay in bringing detainees before a judge was unacceptable. Extended periods of solitary confinement in a darkened cell would be extremely disorienting and highly problematic. To have such measures implemented with government support was unprecedented in the Committee's experience. She therefore requested clarification that the Government did indeed consider such treatment as a necessary judicial measure. Individuals in detention should be guaranteed fundamental legal safeguards, including immediate access to a physician. Further information on how those safeguards were guaranteed would be appreciated, in particular on how the State party ensured that prison medical staff were independent, whether detainees had the possibility of requesting a visit from or to a doctor of their choice and whether suspects

were granted the right to contact their family and a lawyer immediately upon being taken into custody. She asked whether any officials had been prosecuted for abusing the 72-hour pretrial detention period. She was also interested to know whether the use of closed-circuit television cameras in prisons had brought to light issues of abuse by prison officials.

27. With regard to the case of abuses by police officers in the Oecussi Ambeno enclave, she wished to know exactly what disciplinary measures had been taken. She welcomed the information that new prisons would be built in the State party and asked whether individuals remanded in custody would continue to be held in detention with convicted prisoners, and whether men and women would be detained in separate facilities. She asked how many cases of ill-treatment had been registered using the monitoring system put in place by the National Directorate of Prison Services. She also asked whether there was a standard operating procedure in place in police stations, in particular with regard to the wearing of uniforms. She wished to know whether there had been any cases of police officers being charged with exercising police powers when not in uniform. Was there a registry of police interactions? She asked whether that standard operating procedure was available in all of the major languages spoken in the State party. She wished to know whether any efforts were being made to increase the number of municipal public defender's offices. Lastly, she requested further clarification with regard to due obedience, and in particular whether the order of a superior officer could be ignored when it involved potential acts of torture or ill-treatment.

28. **Ms. Pradhan-Malla** (Country Rapporteur) said that she would appreciate the delegation's comments on earlier questions that remained unanswered. Specifically, she wished to know how the State party intended to ensure that the Committee's concluding observations were circulated to all branches of government and effectively implemented; whether the State party planned to enhance and assess training in the Istanbul Protocol and extend it to all law enforcement personnel, the judiciary, medical and psychiatric staff, forensic specialists and immigration officials; what plans were in place to endow the Office of the Ombudsman for Human Rights and Justice with sufficient human and financial resources; and how many new mental health centres would be opened and when. In addition, information on the enforcement of the guidelines on school discipline, the adoption of a law on mandatory reporting of child abuse, and the number and outcome of complaints of corporal punishment brought by the Office would be helpful. Further details on solitary confinement, obstacles to the implementation of laws on violence against women, amendments to the ban on incest, plans to remove the requirement that abortions should be authorized by a panel of three doctors and accountability for discrimination against LGBT persons would also be helpful. Lastly, she would like to know the number of Rohingya refugees that the State party had helped to reach Australia and the rationale for maintaining the 72-hour deadline for the submission of asylum applications.

29. **Mr. Bruni**, reiterating concerns about the number of persons in pretrial detention and the effect of overcrowding on prison conditions, asked whether the State party intended to adopt non-custodial measures for minor offences.

30. **Mr. Hani** said that he would welcome a reply to his questions regarding the ratification of the Optional Protocol, the cases heard by the Special Panels for Serious Crimes in East Timor, the recruitment of international judges, the availability of victim rehabilitation in practice and updated figures on complaints against law enforcement personnel.

31. **Ms. Belmir** said that she would appreciate the delegation's comments on the prohibition of torture in states of emergency, the legal status of expulsion decisions by the Ministry of Defence and efforts to raise awareness of the victim compensation mechanism.

The meeting was suspended at 4.30 p.m. and resumed at 5.05 p.m.

32. **Mr. Dias Ximenes** (Timor-Leste) said that he would raise the matter of reparation for victims with the Council of Ministers. Regarding article 167 of the Penal Code, members of the judiciary were provided with the necessary training to distinguish between ill-treatment and torture.

33. **Mr. Da Silva** (Timor-Leste) said that the authorities spared no effort in searching for the children who had disappeared in the latter decades of the twentieth century; however, it should be borne in mind that the children were now adults and had changed names and religions, making it difficult to trace and identify them. The authorities had nonetheless reunited 100 individuals with their families. The Government had not facilitated the travel of Rohingya refugees to Australia, as that was not in its power, but it had provided food and water where necessary. The ratification of the Optional Protocol was on the agenda, but the Government had yet to determine its most pressing legislative priorities.

34. Measures had been taken to ensure that the perpetrators of crimes committed during the occupation of Timor-Leste by Indonesia were brought to justice. In that connection, the Truth, Reception and Reconciliation Commission and the Truth and Friendship Commission had been established, and both mechanisms still accepted complaints. Timor-Leste and Indonesia enjoyed friendly relations, and many citizens of Timor-Leste went to Indonesia to study or to receive medical treatment. Nevertheless, the past had not been forgotten.

35. In Timor-Leste, there was no discrimination against LGBT persons, who were afforded respect and accepted as part of society. There was no specific mechanism to handle cases of discrimination against such persons.

36. **Mr. Tilman Da Costa** (Timor-Leste) said that various penalties, including verbal and written warnings, suspension and dismissal, could be imposed on a police officer who had committed a disciplinary offence. In one recent case, the decision had been taken to transfer the offending police officer to a different station. In accordance with the standard operating procedures in force, police officers were required to wear the appropriate uniform. The task force unit patrolled the streets on a daily basis and sometimes wore field uniform. Police officers who did not wear uniform were liable to disciplinary action. All information relating to individual cases handled by the police, including victim statements, was stored in a computerized incident management system, and each incident was assigned a case number, which made it possible to track its progress. The district operations centre oversaw the operational situation across the country. If a crime occurred, a community police officer would notify the appropriate unit, who would send investigative officers to the scene.

37. The strategic plan for 2014-2018 provided for training activities for the national police. The proposed extension of the strategic plan was currently under discussion. There was no specific training course on the prevention of torture, but training courses on the prevention of gender-based and domestic violence had been introduced. The possibility of introducing a training course on the prevention of torture would be raised with the competent authorities. Most of the cases registered in the incident management system concerned assault or domestic violence. A recent evaluation had shown that further efforts were needed to improve the training of police officers.

38. **Mr. Moniz Leão** (Timor-Leste) said that new prisoners were placed in security cells rather than in so-called "dark cells". Pursuant to Decree-Law No. 14/2014, new prisoners had to stay in security cells during their first few days in prison. The purpose was to allow the prison administration to assess the new prisoner with a view to identifying any potential obstacles to his or her placement among other prisoners. The conditions in the security cell were the same as those in the rest of the block. All prisoners had access to a lavatory, were given regular meals and could leave their cells for two hours a day.

39. There was a lack of qualified medical staff in prisons. Prisons were equipped with video surveillance cameras. No complaints had been received from prisoners held at the facilities in Dili, Gleno and Suai. The new prison had been planned to meet international standards, and children would be held separately from adults, as would men from women. Since 2014, the number of prisoners had increased to over 600, and most of them were held in Becora Prison. The facility in Suai was recruiting additional prison guards in preparation for the transfer of some prisoners. The Office of the Public Defender had four municipal offices across the country, and additional municipal offices would soon be established. There were plans to ensure that the Office had a presence in every municipality.

40. **Ms. Xavier** (Timor-Leste) said that, pursuant to article 25 (5) of the Constitution, the declaration of a state of emergency could not serve to justify any violation of the right

not to be subjected to torture, slavery or servitude or of the right not to be subjected to cruel, inhuman or degrading treatment or punishment. Article 167 of the Penal Code would apply in the event of any violation of those rights. With due authorization, a woman could undergo an abortion only if her pregnancy posed a threat to her life or health or to the life or health of the unborn fetus. Pursuant to article 141 of the Penal Code, the requirement to obtain authorization from multiple doctors could be waived in certain circumstances.

41. In 2010, the Ministry of Education had adopted a zero-tolerance policy regarding the use of corporal punishment in schools, and inspectors had the authority to take action in response to reported cases. All schools in Timor-Leste had parents' associations, which were involved in enforcing that policy.

42. **Mr. Da Silva** (Timor-Leste) said that, with renewed cooperation from Portugal, efforts were being made to strengthen the judiciary of Timor-Leste.

43. **The Chair**, thanking the delegation for its replies, said that additional information could be submitted in writing within 48 hours of the end of the meeting.

The meeting rose at 5.45 p.m.