



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

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## Committee against Torture Seventy-eighth session

### Summary record of the 2041st meeting

Held at the Palais Wilson, Geneva, on Wednesday, 1 November 2023, at 10 a.m.

*Chair:* Mr. Heller

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*The meeting was called to order at 10 a.m.*

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

*Third periodic report of Costa Rica (CAT/C/CRI/3; CAT/C/CRI/Q/3)*

1. *At the invitation of the Chair, the delegation of Costa Rica joined the meeting.*
2. **Mr. Guillermet Fernández** (Costa Rica), introducing his country's third periodic report, said that protecting human rights and respecting the dignity of all persons were among the Government's overarching priorities and were reflected in the country's legal framework.
3. Since the submission of the report, the Costa Rican judiciary had participated in a project supported by the Regional Programme for Social Cohesion in Latin America (EUROsociAL+) aimed at examining the problem of prison violence. An analytical report had subsequently been published setting out the challenges faced by the detention system in Costa Rica and highlighting the measures instituted by the Ministry of Justice to increase the use of alternatives to detention, improve the material conditions in detention facilities and set up an office to oversee post-release social reintegration initiatives. The Public Defence Service had submitted an amicus curiae brief to the Inter-American Court of Human Rights in the context of the Court's advisory opinion on differentiated approaches with respect to certain groups of persons deprived of liberty.
4. In 2022, progress had been made in the implementation of the System for Registration, Communication and Comprehensive Assistance for Victims of Institutional Prison Violence. The aim of the System, which was aligned with the Brasilia Regulations Regarding Access to Justice for Vulnerable People and the Sustainable Development Goals, was to ensure the detection, reporting and prevention of torture and the provision of support to any detainees who were victims of torture. The strategic actions taken with a view to achieving that aim included prison visits, monitoring, information-sharing and the establishment of a registry to record instances of institutional prison violence. The provision of comprehensive support to victims of such violence was underpinned by legal and practical inputs from an inter-institutional discussion forum comprising all relevant authorities, including the national preventive mechanism.
5. The Planning Directorate of the judiciary had made its most recent statistics available to the public via a digital platform, thus taking an important step forward in terms of transparency and accountability. Statistics for the years 2001 to 2019 were also available online in the form of annual directories.
6. The Access to Justice Commission and its subsidiaries were responsible for providing specialized analyses and proposing guidelines based on a human rights perspective. A new chapter on access to justice had been added to Act No. 7600 on the rights of persons with disabilities to ensure that such persons were effectively protected by the State.
7. The adoption of Act No. 9593 on access to justice for Indigenous Peoples represented an important step forward. Under that law, the Public Defence Service was tasked with providing Indigenous persons with legal advice and representation using a tailored intercultural approach that took account of the cosmovision of each People and territory. The Service had built up its capacity to provide support to the Ngabe communities in the south of the country, particularly along the border with Panama. The Service was also working to eliminate geographical barriers and guarantee access to justice by providing professional assistance online to anyone anywhere in the country.
8. An executive decree had been issued recognizing people of African descent as tribal peoples, in line with the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169). The Access to Justice Unit provided human rights training and designed learning modules focusing on, inter alia, persons of African descent, persons with disabilities and minors.
9. In October 2022, the Government had launched the Gender Pathway for 2023–2026, which was designed to combat sexual harassment by providing guidance and support to victims and ensuring better access to justice for women. The National Policy for Addressing

and Preventing Violence against Women of All Ages for 2017–2032 was currently being implemented by the National System for the Treatment and Prevention of Domestic Violence. That policy focused on six strategic areas: promoting a non-macho culture; promoting forms of masculinity aimed at achieving equality and non-violence; coordinating public and private initiatives to break the cycle of multidimensional poverty and violence against women; providing effective protection and due diligence and avoiding revictimization; preventing sexual violence and providing victim support; and preventing femicide.

10. The Equality Office had spearheaded a campaign to prevent discrimination against LGBTIQ+ persons and had developed a protocol for officials at the Ministry of Public Security to ensure that transgender persons were treated with dignity.

11. The National Police Academy provided police officers with training on human rights and State obligations with a view to ensuring that law enforcement agents complied with all relevant national and international standards. Efforts were being made to bring about a paradigm shift in the approach taken by police officers whereby the main focus would be on prevention, particularly in connection with social risks faced by young people. Sports and other activities were being used to promote a culture of peace among vulnerable population groups, help young people to avoid joining gangs and improve trust in the police.

12. The Judicial Training College had mainstreamed human rights, a gender-sensitive approach, inclusive language and issues pertaining to families and Indigenous Peoples into all of its training courses.

13. **The Chair** (Country Rapporteur) said that the Committee welcomed the State party's commitment to promoting and protecting human rights, as well as its robust institutions, strong monitoring bodies and active civil society. It particularly appreciated the State party's efforts to link the work of the Ombudsman's Office, as the national preventive mechanism, to the 2030 Agenda for Sustainable Development and the Sustainable Development Goals.

14. The Committee had noted that the State party had amended the Criminal Code in December 2022 to reclassify the crime of torture and increase the maximum prison term applicable to perpetrators. He wondered whether the State party intended to further amend the relevant provisions to provide greater clarity regarding the possible criminal motives for torture, in particular by recognizing intimidation, coercion and extraction of information or a confession as possible motives and by including crimes of torture committed by persons acting on the order of, or with the knowledge or consent of, a third party during the execution of public functions. He would be grateful to receive updated statistics on the number of reports of torture received and on the number of persons convicted of crimes of torture since 2018.

15. In the light of the recent rise in violence in Costa Rica, driven primarily by drug trafficking, high youth unemployment and deepening poverty in the wake of the coronavirus disease (COVID-19) pandemic, the Committee would be interested to learn what progress had been made in the development of a comprehensive policy to tackle the root causes of crime, as recommended on previous occasions by the Committee and by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It would also be interesting to know what measures had been taken to address the problems caused by prison overcrowding and the shortage of technical and security staff in prisons. While welcoming the introduction of alternatives to detention, which had led to a reduction in prison overcrowding, he wondered what was being done to reduce the large proportion of the prison population made up of persons who were being held in pretrial detention, in particular in relation to drug offences.

16. He was aware of the challenges posed by the rising rate of migration to and through Costa Rica as a result of the ongoing crisis in Central America, but he also noted that migrants continued to face issues in accessing their rights and basic services. Following the reform of the asylum system in 2022, he wished to know how the State party was ensuring that asylum-seekers were not returned to their countries of origin without due process and that all asylum cases were considered on their merits. He would also welcome the State party's comments regarding allegations that its asylum procedures were prohibitively expensive, that asylum-seekers lacked access to legal advice and information about their rights and the

asylum procedures available to them, that there was a substantial delay in the processing of asylum cases and that asylum-seekers were not provided with the provisional documentation that they needed in order to be able to avail themselves of their social and economic rights. Furthermore, in the light of reports that asylum-seekers were being detained in poor conditions at Juan Santamaría International Airport, he wished to know whether any administrative directives had been adopted regarding the use of areas in the airport for the purpose of migration detention.

17. It would be useful to know whether the State authorities had conducted any analyses to determine what factors might increase migrants' vulnerability and to use that analysis as a basis for preventing the criminalization of migration. He asked how many migrants, refugees and asylum-seekers were currently in Costa Rica and how many detention centres for irregular migrants there were. It would be interesting to learn whether any progress had been made in the adoption of legislation to tackle migrant smuggling and to guarantee full protection for victims of human rights violations. He wondered whether the State party had considered signing any regional agreements to help tackle the humanitarian crisis.

18. In the light of the increase in discrimination and hate speech directed against migrants in Costa Rica, he wished to know whether the State party had evaluated the impact of its campaign to combat xenophobia and raise awareness about the rights and obligations of migrants and refugees and whether anyone had been charged for inciting hate against migrants. In addition, the Committee would be grateful to know what progress had been achieved in relation to the requests issued by the International Criminal Court for the extradition of two individuals accused of committing torture in the Sudan. It was also curious to know whether the State party had any plans to develop a system of reparations and rehabilitation for victims of torture.

19. He wondered what steps the State party was taking to address the violence suffered by members of the Bribri and Bröran Indigenous Peoples in southern Costa Rica since 2012 and the impunity with which that violence was being committed. He would like to hear about any measures being taken to remedy the inadequacies – and, notably, the brevity – of the investigation into the alleged murder of Bribri leader, Sergio Rojas Ortiz, who had been killed for resisting the illegal occupation of his people's lands and for whose death no one had been held accountable. He also wished to know whether investigations were under way into the death of Jehry Rivera and into the assaults and death threats against José Enrique Ortiz and Pablo Sibar – all Indigenous human rights defenders protected by precautionary measures of the Inter-American Commission on Human Rights – and, if not, whether the State party would consider conducting such investigations. Lastly, it would be useful to hear why no programmes were in place to combat racism and discrimination and why the Indigenous Land Recovery Plan had, since its launch in 2016, been so ineffective.

20. **Ms. Maeda** (Country Rapporteur) said that she would appreciate clarification of the specific wording in articles 22 and 25 of the Violence against Women Act 2007 (No. 8589) corresponding to the offences of ill-treatment and emotional abuse, respectively, that had been deemed unconstitutional by the Constitutional Chamber; she also wondered what the impact of abrogating those articles had been. She wished to know whether the Crime Victim Support and Protection Office had been provided with sufficient financial, technical and human resources to enable it to fulfil its mandate with complete independence. She wondered what number or proportion of the 433,483 protection measures requested under the Domestic Violence Act between 2010 and 2018 had actually been ordered and how many other such measures had been requested since 2018. While she welcomed the detailed information, including statistical data, provided on cases of violence against women and on prosecutions and convictions in respect of such cases, she would be grateful for updated information, in particular any that reflected the impact of the COVID-19 pandemic on the number of cases of gender-based violence.

21. In the light of the reportedly poor conditions existing in places of detention for women, she would like to know what structural reforms had been introduced to meet their gender-specific sanitation, dietary and health-care – including psychiatric care – needs. It would be useful to hear the State party's views on the potential for using alternatives to custodial sentences.

22. Information on the allocation of sufficient funding for the National Fund against Trafficking in Persons and Smuggling of Migrants to ensure adequate support services for victims – including shelters, psychological counselling and reintegration – would be helpful. In addition, she would appreciate updated information on any anti-trafficking policies introduced since 2018.

23. She was keen to receive any information that the State party could share about the inter-institutional programmes concerning the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) in respect of which the National Mechanism for the Prevention of Torture had applied to the Special Fund established under the Optional Protocol to the Convention. She wished to know if any specific legislative and/or policy measures were planned to ensure compliance with interrogation rules and instructions. If so, she would like to know whether the Government planned to conduct regular reviews of such measures and to incorporate civil society voices into the review process.

24. It was helpful to know that none of the cases handled by the Crime Victim Support and Protection Office from 2011 to 2017 had been related to the offence of torture, but information on the years since 2017 would also be useful. She wondered what criteria the State party used to divide those cases into such categories as torture, violence against women or domestic violence. It was unclear to her what definition of “victim of torture” was used for the purposes of determining eligibility for assistance from the Crime Victim Support and Protection Office. Information on the number of cases of torture or other cruel, inhuman or degrading treatment or punishment committed by public officials – as opposed to private individuals – would be useful, as would figures on the number of convictions and compensation awards in such cases.

25. She wished to know what steps the State party had taken in response to the concern expressed by the Committee on the Rights of the Child regarding allegations of ill-treatment of children deprived of their liberty and to effectively ensure the prevention of such acts in the future. Information on the deteriorating material conditions in the Zurquí Juvenile Training Centre and on measures taken to improve those conditions would be useful. She would like to know whether the age of criminal responsibility was still 12 and, if so, whether the State party planned to raise it in the future. Finally, since a number of legislative measures had been taken to protect sexual minorities, she wondered whether the Government had identified cases of abuse or violence against members of such minorities, including by public officials, and, if so, what action it had taken.

26. **Ms. Racu** said that she would be interested to learn more about the System for the Registration, Reporting and Comprehensive Care of Victims of Prison Violence established in 2022. Since some interesting initiatives to address the problems of alcohol and drug addiction were reportedly being implemented in prisons, an update on any such rehabilitation programmes would be helpful, as would updated statistics on the numbers of prisoners participating in those programmes. In the light of the report of the Subcommittee on Prevention of Torture on its visit to Costa Rica, she would appreciate information on any measures taken pertaining to prison staff, such as steps to increase staffing levels, including medical personnel, in particular psychiatric specialists, or training programmes.

27. **Mr. Liu** said that he understood that the State party had decriminalized therapeutic abortions in 2019. Nevertheless, in view of the detrimental effect of the criminalization of elective abortions on patient care and on human rights, he would like to know whether the State party was currently considering reforming the provisions on abortion, as recommended by the Inter-American Commission on Human Rights, the Committee on the Elimination of Discrimination against Women and the Special Rapporteur on the right to health.

*The meeting was suspended at 11.55 p.m. and resumed at 12.30 p.m.*

28. **Mr. Guillermet Fernández** (Costa Rica) said that, in view of the discontent of the victim’s family with the investigation into Sergio Rojas Ortiz’s death, it had been reopened in early 2021. Family members had been given unrestricted access to the case file and allowed to propose whatever investigative procedures they saw fit; in addition, the opinion of a cultural expert had been commissioned and made available to all parties. In July 2022, a suspect had been charged with Mr. Ortiz’s killing, but the investigation had been dropped in

February 2023 owing to a lack of evidence against the instigator of the crime. The Office of the Assistant Prosecutor for Drug Trafficking and Related Offences was conducting a parallel investigation concerning the possible direct perpetrators of the killing. In the case of Jehry Rivera, in February 2023 Juan Eduardo Varela Rojas had been sentenced to a total of some 22 years for offences that included Mr. Rivera's killing, although an appeal had been filed. In the case of José Enrique Ortiz, a public court hearing had taken place in May 2022. Pablo Sibar was receiving enhanced police protection; frequent patrols were conducted and, when the police had sufficient resources available, a static police post was maintained near his residence. In addition, he was in regular contact with the leadership of the local police force, and the Public Prosecution Service was monitoring the situation. An investigation into the offences committed against him had been ongoing since he had reported them in January 2022. In addition to the work of the judiciary, the Government, supported by United Nations agencies, was holding talks with Indigenous Peoples to negotiate the complicated issues surrounding the return of their lands, which was at the root of all the offences involved.

29. The decriminalization of therapeutic abortions had been accompanied by awareness-raising and training programmes for professionals in public and private health-care services. At the same time, with a view to guaranteeing the right to sexual and reproductive health, contraceptive plans – free of charge for all adolescent girls and for all women – had been modernized. Medical professionals were given in-service medical and legal training in order to ensure that women of all ages, including women deprived of their liberty, could gain access to high-quality reproductive health care free of any prejudices or gender stereotypes.

30. With the reform of the Violence against Women Act in 2021, Costa Rica had become the country with the most advanced law on femicide in the region. The amended law applied to any offences committed against a woman in the context of any form of intimate partner relationship, including after the couple had separated. Under the revised law, femicide – understood to mean the ending of a woman's life at the hands of another person – carried a prison term of between 20 and 35 years unless the act in question constituted an offence carrying an even heavier sentence. Other penalties specified under the amended law included prison terms of between 3 months and 2 years for physically abusing or assaulting a woman; of between 2 and 10 years for restricting a woman's freedom of movement; and between 8 months and 3 years for restricting a woman's exercise of her property rights. Under the revised law, the courts must order pretrial detention of the accused whenever there was a risk to the victim, the complainant or a witness. The amended law was closely aligned with the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

31. Strategies for addressing the issue of prison overcrowding were based on public safety considerations and a human rights approach. The domestic regulations governing the prison system and policy were based on the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). Efforts were made to identify all prisoners' individual vulnerabilities and skills with a view to equipping them with the life tools they would need after their release. The prison population totalled over 15,400 inmates, compared with an official capacity of a little over 13,700. Alternatives to incarceration, including electronic monitoring, were being used to reduce overcrowding, especially in the case of young offenders. In recent years, rehabilitation facilities had been opened to promote former prisoners' reintegration into society. In addition, efforts were being made to have new prisons built. However, the country's very large fiscal deficit had, during the previous Administration, led the Legislative Assembly to enact budget restrictions under which the budget could not be increased by more than the rate of inflation in 2024. Nevertheless, a petition for an extraordinary budget increase of 6 billion colones – around \$110 million – for the security sector had been submitted to the Assembly for its approval.

*The meeting rose at 1 p.m.*