



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

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**Committee against Torture**  
**Forty-fourth session**

**Summary record of the first part (public)\* of the 940th meeting**

Held at the Palais Wilson, Geneva, on Wednesday, 5 May 2010 at 10 a.m.

*Chairperson:* Mr. Grossmann

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

*Fourth and fifth periodic reports of Austria*

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\* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.940/Add.1.

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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*)

*Fourth and fifth periodic reports of Austria (CAT/C/AUT/4-5; CAT/C/AUT/Q/4-5 and Add.1)*

1. *At the invitation of the Chairperson, the members of the delegation of Austria took places at the Committee table.*

2. **Mr. Tichy** (Austria) stressed that his Government welcomed the opportunity to engage in a dialogue with the Committee on its report and to benefit from the Committee's global experience. Austria was fully dedicated to the promotion and protection of human rights and the rule of law, and the Government attached great importance to full compliance with the country's international human rights obligations, especially the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Provisions prohibiting all forms of torture and ill-treatment were part of the constitutional, criminal and administrative law of Austria, which had comprehensive mechanisms and procedures to monitor compliance with its human rights obligations.

3. On 23 February 2010 his Government had adopted the "Pledges and commitments" relating to its candidature for membership of the Human Rights Council for the period 2011–2014. They included the commitment to ratify the Optional Protocol and the inclusion of a specific provision on torture in the Austrian Criminal Code.

4. The principle of absolute prohibition of torture was also reflected in Austria's approach to combating terrorism. While recognizing that terrorism was a global threat requiring specific countermeasures, the Government remained convinced that efforts to combat it must be carried out in full compliance with international human rights standards and the rule of law.

5. Austria had always strongly supported international initiatives to combat torture, and in particular the mandate of the United Nations Special Rapporteur on torture. It had issued a standing invitation for all Special Procedures of the Human Rights Council and cooperated fully with international and regional monitoring mechanisms, in particular with the United Nations human rights treaty bodies and the mechanisms of the Council of Europe. In 2009 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the European Commission against Racism and Intolerance (ECRI) had undertaken their fifth and fourth visits respectively to Austria. The reports of both committees having been published in March 2010, Austria had studied the recommendations contained in them very carefully and provided comprehensive responses.

6. At the national level, the preparation of reports to United Nations human rights treaty bodies was carried out by the human rights coordinators in the federal ministries and the federal provinces, who were also responsible for the follow-up to their conclusions and recommendations. In that context Austria had to acknowledge one particular shortcoming, namely, difficulty in meeting all requests for detailed statistical data. In some areas, the structure of its statistics prevented Austria from giving a comprehensive reply to all such requests, but the Government was working to improve the situation.

7. Turning to some new developments following on from Austria's response to the list of issues, he said that the Government's current work programme explicitly referred to recommendations of the Committee and envisaged a number of legislative amendments relevant to the Convention against Torture. These concerned in particular the inclusion of a specific provision on torture in the Criminal Code and the creation of specific penal

provisions implementing the provisions of the Rome Statute of the International Criminal Court concerning crimes against humanity and war crimes. The drafts of those new provisions would be considered by various experts over the coming months.

8. Additionally, a national preventive mechanism, the main prerequisite for ratification of the Optional Protocol, would be established. Building upon the wide experience of the Human Rights Advisory Board established at the Federal Ministry of the Interior, the relevant legislative drafting would be concluded in the second half of 2010. It was planned to mandate the Austrian Ombudsman Board with the monitoring task and to incorporate the existing Human Rights Advisory Board and its commissions into the new structure.

9. Concerning pre-deportation detention in Austria, substantial structural improvements were being made with a view to keeping persons awaiting deportation completely separate from those detained on the basis of a criminal sentence. As a first step, the construction of a modern pre-deportation detention centre for up to 220 persons was planned, with work due to start in the spring of 2011. The facility would be based on an “open concept” in line with international standards, with due respect for human dignity and attention to the needs of persons pending deportation.

10. Austria had always had a clear “zero tolerance” policy regarding any form of torture and other cruel, inhuman or degrading treatment perpetrated by law enforcement officials, but unfortunately, despite all efforts, some individual cases of ill-treatment did occur. All allegations against members of the security services had to be investigated promptly, effectively and impartially. The procedures for the investigation of allegations were governed by the relevant criminal legislation and by internal orders of the Federal Ministries of the Interior and Justice.

11. The amendments to the Code of Criminal Procedure which had entered into force on 1 January 2008 had led to a significant improvement in the transparency and independence of investigations. In accordance with those new provisions, the Federal Minister of Justice had issued a decree on 6 November 2009 concerning responsibilities and procedures in the event of allegations of ill-treatment. The aim of the new provisions was to exclude any appearance of bias during the investigations and to clarify suspicions of ill-treatment by members of the security services or prison officers. A similar decree had been issued by the Minister of the Interior within her sphere of competence.

12. Following recommendations of the Austrian Human Rights Advisory Board and the CPT, a new anti-corruption authority had come into being on 1 January 2010. That independent authority had been established outside the traditional law enforcement structures and conducted its investigations in close cooperation with public prosecutors.

13. The Austrian authorities placed great emphasis on human rights awareness-raising and training programmes for law enforcement officials, judges and public prosecutors. Austria’s law enforcement officials were specially trained in the prevention of torture, which was a mandatory component of both basic and advanced courses. Those programmes had existed for many years and had been constantly improved on the basis of recommendations from the Committee, the CPT and the ECRI. Additionally, there were many voluntary courses and seminars on human rights and non-discrimination.

14. Among the human rights training courses for the police he described one project which aimed to highlight the role of the police as an organization for the protection of human rights. That modern understanding had influenced the police services’ perception of their role, management of human resources, organizational structures and operational procedures. On the basis of that new approach, the Federal Ministry of the Interior had established a new training course under the title of “POLICE.(EM)POWERS.HUMAN.RIGHTS” with the aim of systematically conveying those principles to the police.

15. **Mr. Gallegos Chiriboga**, First Country Rapporteur, said that the report, the written replies and the presentation had been very informative. Observing that the written reply to question 1 of the list of issues stated that the Ministry of Justice was preparing a proposal to include in the Criminal Code a definition of torture based on article 1 of the Convention, he asked whether it would include all the elements contained in article 1. The Committee considered the definition to be a fundamental issue.
16. He observed that instances of torture were currently prosecuted on the basis of section 312 of the Criminal Code, with penalties of imprisonment that appeared to be very lenient. That suggested that the gradations of torture provided for in the legislation should be strictly delineated, in line with the serious nature of the crime.
17. The response to question 4 of the list of issues did not include information on cases of torture or ill-treatment where the aggravating circumstances as stated in section 33 of the Austrian Criminal Code, including racism and xenophobia, had been invoked in the determination of sanctions for such crimes.
18. Noting that the reply to question 3 stated that the Ministry of Justice would prepare a draft aimed at incorporating in the Criminal Code the obligations deriving from the Rome Statute of the International Criminal Court regarding crimes against humanity and war crimes, he requested the delegation to update the Committee on the proposed amendment.
19. Observing that the reply to question 5 stated that the Ministry of Justice had received no reports of sexual violence in prisons, he asked whether the State party was monitoring sexual violence in detention centres. If so, what procedures were used? It was very important to have statistics, disaggregated by sex, ethnic background and so on.
20. He asked whether the State party was considering establishing a fully-fledged legal aid system in the context of police custody, to ensure that persons who were not in a position to pay for a lawyer could nevertheless receive legal aid throughout their detention. He requested the delegation to provide additional detailed information on measures taken to ensure that the right to speak to a lawyer in private and to have a lawyer present during questioning was not arbitrarily denied when the criminal investigation department invoked possible “interference in ongoing investigations” or “corruption of evidence” (report, para. 65).
21. He requested the delegation to explain to the Committee the meaning of paragraph 24 of Internal Instruction (*Erläss*) Ref. BMI-EE 1500/0007-II/2/a/2009 issued by the Federal Ministry of the Interior concerning the implementation of the right of access to a lawyer during police custody. He also asked the delegation to explain what concrete measures had already been taken to ensure that detained minors were not subjected to police questioning without a trusted person and/or lawyer being present.
22. He asked whether there was an impact assessment of the measures taken to make the police force more representative of the gender and ethnic composition of the population. Observing that as of 1 February 2010, 12 per cent of police officers were female (3,274 out of 27,244), he suggested that an improvement needed to be made.
23. He asked the delegation to provide further information on its adoption of the principled position against the use of diplomatic assurances to facilitate the transfer of persons to a country where they might be at risk of torture.
24. While the response to question 9 of the list of issues stated that in 2009 there had been 28 preliminary investigations of alleged abuse by law enforcement officials against asylum-seekers, he asked the delegation whether any data were available for the period 2006–2008.

25. Information received by the Committee appeared to indicate that the State party had introduced further restrictions on the asylum legislation since the 2004 amendment of the Asylum Act. For example, there were no effective remedies for repeat application for international protection in certain situations, and there were expanded grounds for pre-deportation detention of asylum-seekers. The legal provisions regarding the basic needs of asylum-seekers had now been adopted by all Länder, as recommended by the Committee in its previous concluding observations. However, the Committee had received reports on the extensive grounds for withdrawal and cessation of care provisions, which might leave needy asylum-seekers without accommodation or health assistance.

26. In its reply to question 12 (c) of the list of issues, the State party had said that in 2009 the Asylum Court had granted stays of extradition in about 600 cases, but the reply did not provide information on the total number of cases of appeal for a stay of extradition rejected by the Independent Federal Asylum Senate (now the new Asylum Court) during the period under review. Also, the reply to question 12 (e) did not provide information on the number of applicants who had been deported or extradited while awaiting a decision on an appeal against a decision denying asylum based on a procedural issue. He asked the delegation to explain what concrete measures had been adopted to ensure that asylum-seekers had access to appropriate legal support throughout the asylum procedure, including during any detention measure that might be imposed on them, as recommended by the ECRI in its fourth monitoring report on Austria.

27. The Committee was pleased that the new Asylum Act, effective from 1 January 2006, explicitly stipulated that asylum-seekers who claimed to have been victims of sexual abuse or to have been exposed to the threat of it must be interrogated by persons of the same sex. However, the Committee had received reports that that rule was followed only to a limited degree. He asked whether there were any guidelines for officials performing refugee-status determination, explaining gender-related and age-related persecution.

28. Noting that asylum-seekers often could not furnish proof of their claimed under-age status, he asked the delegation to provide detailed information on which medical examination techniques were included in the new age-assessment procedure, and whether the medical examination technique systematically included an inspection of the genitals of the asylum-seeker concerned. If that was so, he asked for an explanation of the reasons for that decision.

29. Turning to the issue of persons with disabilities, he said that some NGOs had requested that the Committee forward to the State party recommendations, such as the following: abolish the practice of coercive medical measures and any detention or preventive measures associated with their enforcement, when linked to the existence of a disability such as an apparent or diagnosed mental illness; ensure that inspection systems in prisons, psychiatric institutions and other institutions serving persons with disabilities conformed to the requirements of the Convention on the Rights of Persons with Disabilities; and ensure that any laws permitting interdiction or involuntary confinement on the basis of disability were repealed in order to give effect to articles 12, 14, 17 and 25 of that Convention.

30. He had now covered articles 1 to 9, his particular responsibility, but would now go on to a few broad thematic issues, the first being the rights of women and children. He requested the State party to provide information on cases in which trafficking, prostitution or abduction rings had been broken up by the police, including comprehensive and disaggregated statistical data on the number of trafficked women and children. He also asked for updated information on newly developed bilateral, regional and international cooperation with countries of origin, transit and destination so as to further curb that phenomenon. He asked the delegation to indicate what training and capacity-building efforts had been made by the State party for law enforcement and border patrol officials so

as to increase their ability to identify potential victims of trafficking. He also asked whether the newly drafted National Action Plan against Human Trafficking contained preventive measures, measures to ensure the effective prosecution and punishment of offenders, and victim support measures, including legal, psychosocial and livelihood-creation support when necessary.

31. Turning to the issue of discrimination against women, he asked what measures had been adopted to enforce the principle of equal pay for equal work and to strengthen the protection of persons working under unorthodox employment contracts.

32. The Committee considered violence against women and domestic violence to be major elements in cruel, inhuman or degrading treatment. An emblematic case in Austria had been that of Josef Fritzel. That case had created a perception in the world that more work was needed in that area. While tragic, the case could serve as an opportunity to teach the world that such outrages must not be allowed to happen, and that the State and the Government had a responsibility to protect vulnerable groups, including women and children, even within the confines of the home.

33. On female migrant workers, he asked what measures had been adopted to respond effectively to their needs, and to integrate women of all vulnerable and minority groups into society and employment.

34. Regarding the issue of the sale and trafficking of children and sex tourism, he asked the State party to update the Committee on the implementation of the recommendations made by the Committee on the Rights of the Child, which included: a comprehensive plan to address the sale of children, child prostitution and child pornography incorporating all aspects of prevention, recovery and reintegration; a nationwide policy on coordination, care and support for child victims; an effective reporting and referral system; ensuring that the legal representatives and guardians of separated asylum-seeking children were trained and familiar with the specific needs of child asylum-seekers; guaranteeing that all child victims had access to adequate procedures to seek damages from persons legally responsible; allocating additional funds for public awareness-raising campaigns against sex tourism; strengthening cooperation with the tourism industry and civil society organizations in order to promote responsible tourism through the dissemination of the Code of Conduct of the World Tourism Organization; incorporating irregular intercountry adoption into legislation as a criminal act; and providing disaggregated data on domestic and intercountry adoptions.

35. Turning to the issue of the rights of minorities, especially the Roma, he asked what measures were taken to prevent questioning, arrests and searches based on physical appearance, colour or membership of a racial or ethnic group. He also asked whether the current police training, aimed at preventing discrimination against all vulnerable ethnic groups, was mandatory, and whether any human rights and democracy education programmes on the issue of racial discrimination were provided for civil servants, police officers, social workers and health-care professionals.

36. Observing that government statistics for 2005 showed there had been 1,047 public complaints against federal police officers, he asked the delegation to provide statistics for the period since 2006 and also to indicate the penalties imposed for acts of ill-treatment committed by law enforcement officials against non-citizens.

37. As recommended by the Committee on the Elimination of Racial Discrimination among others, he suggested that the State party should vigorously combat any tendency, especially in politicians, to target, stigmatize, stereotype or profile people on the basis of race, colour, descent and national or ethnic origin. The State party should ensure the strict application by judges, prosecutors and the police of article 283 of the Criminal Code, and of other provisions punishing incitement to racial or religious hatred. What measures had been taken to implement those recommendations?

38. The Committee noted that the State party had adopted measures to combat racism, stereotyping and racial prejudice in the media, such as the incorporation of provisions prohibiting racial incitement into the Federal Act on Austrian Broadcasting. However, as at September 2008, the mechanism for self-regulation of print media through the Austrian Press Council had been inactive. He asked whether the mechanism had been activated since then.

39. Noting that Roma and persons of African and Latin American origin were frequently denied access to places intended for use by the general public, he asked whether any human rights, democracy education or media training campaigns had been held on that issue.

40. While he welcomed the delegation's reference to the constructive dialogue between government officials and civil society, he was surprised that no NGO had come to Geneva to brief the Committee.

41. According to a report adopted by the Legal Affairs Committee of the Parliamentary Assembly of the Council of Europe in 2007, United States "high-value" detainees had been held in secret Central Intelligence Agency (CIA) detention centres in Poland and Romania between 2002 and 2005. According to the European Parliament, European Union countries had turned a blind eye to extraordinary renditions across their territory and airspace. The purpose of the rendition system was to extract information from alleged terrorists at any cost, including torture, incommunicado detention, kidnapping or covert flights via third countries. Suspects were held without charge and without procedural guarantees. He enquired about Austria's position on such renditions.

42. He was reassured by the Austrian Government's position that extradition would not be granted on the basis of diplomatic assurances.

43. The Wiesenthal Centre had classified Austria's investigations of war crimes under the heading "failure in practice" in its annual report issued on 15 April 2007. He invited the delegation to comment.

44. The granting of settlement permits for family reunification of third-country nationals in Austria was based on a quota system. The quota, which was revised annually, was divided among the provinces, with Vienna having the largest quota. Applications that were denied owing to exhaustion of the quota were subject to a three-year delay before further action was taken. He asked whether the quota system was applicable to the family reunification of long-term residents in Austria.

45. **The Chairperson**, speaking as Second Country Rapporteur, said he was pleased to hear that Austria intended to ratify the Optional Protocol to the Convention. He also commended the State party's zero tolerance policy on torture and ill-treatment, its approach to the combating of terrorism and its standing invitation to the special procedures of the Human Rights Council.

46. The Committee would be interested in hearing more about the State party's experience in operating "open stations" for pre-deportation detention and also in promoting the human rights dimension of the work of law enforcement officials.

47. He welcomed the progress made in implementing the Committee's concluding observations on Austria's third periodic report (CAT/C/AUT/CO/3). For example, the State party had said in its reply to question 13 of the list of issues that any concern that a person to be extradited might be subjected to torture or inhuman or degrading treatment could not be offset by diplomatic assurances. Progress had been made in combating human trafficking and in dealing with prisoner suicides, and significant emphasis had been placed on training and awareness-raising programmes for police officers, prosecutors and judges.

48. A new definition of torture was to be incorporated in the Criminal Code. He asked whether a draft definition that might be shared with the Committee already existed.

49. According to paragraph 68 of the report, Austria was committed to ensuring that all defendants, regardless of their financial means, were represented by a defence counsel. However, the paragraph also referred to “certain conditions” and stated that it was for the court to decide whether the appointment of a legal aid lawyer was appropriate. What criteria were applied by the courts in taking such a decision? The Committee would welcome information on specific cases of rejection and acceptance of an application for legal aid.

50. The Criminal Procedure Reform Act of 2008 guaranteed the right of a defendant to the presence of a lawyer during interrogation except when it was necessary to prevent interference in ongoing investigations or corruption of evidence. How was such a determination made and what evidentiary status would be required to deny a defendant’s right to counsel? In its reply to the Committee’s question about the evidentiary value of statements made during interrogation by a defendant in the absence of counsel, the State party noted that defendants were free to retract their statements. It was then for the court to determine the evidentiary value of the statements, unless the defendant could demonstrate that force or other inappropriate interrogation methods had been used. What was meant by the phrase “inadmissible forms of influence on free will”?

51. In its previous concluding observations the Committee had requested further information on the standardization of techniques used to interrogate persons in police custody and the implementation of new techniques, particularly the use of video-recording of interrogations. He asked what steps were being taken to standardize such techniques and whether video recordings were made of interrogations.

52. In response to question 16 of the list of issues concerning information on training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons to assist them in detecting and documenting physical and psychological sequelae of torture, the State party had listed a number of such programmes. He asked which were mandatory and whether incentives were offered to officials to attend seminars that were not mandatory. Did the mandatory programmes deal with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, known as the Istanbul Protocol? And did the courses for judges and prosecutors seek to generate awareness of racism and cultural diversity?

53. Amnesty International had stated in a 2008 report that while Austria had taken effective steps towards eliminating discriminatory practices by police officers, additional action was needed. According to Amnesty International, voluntary programmes did not attract the officers who were in greatest need of training. He suggested that an outcome assessment system should be introduced.

54. With regard to the high suicide rate among detainees, he noted that the State party was taking steps to deal with the problem and that a guideline for cell allocation based on a “traffic light system” had been established. Various causes of death were mentioned, but there was no indication as to whether some of the deaths could have been caused by inter-prisoner violence or police brutality. He asked what medical services were available to detainees and what additional steps had been taken in the case of prisoners with a medical condition. Was provision made for psychological care?

55. Hanging and suffocation seemed to be frequent causes of death and there had been one case of drowning. The table for 2009 indicated that a prisoner in Göllersdorf prison had been “run over by a train”. He failed to understand how a train could be travelling through a prison. In another case the cause of death was unknown. He asked whether an autopsy had been conducted. A prisoner had died from a “shot to the head” in 2008. Again, he wondered



how a person could be shot within a prison. A woman had fallen from a window in 2007. Had she been under interrogation at the time and had there been an autopsy?

56. He welcomed the steps that had been taken to prevent inter-prisoner violence. The number of incidents had declined from 216 in 2008 to 153 in 2009.

57. The Committee had asked for data concerning reported ill-treatment during the period under review. However, statistics were available only for 2009. There had been 445 cases of abuse with a total of 455 victims, which seemed to imply that some cases had involved several victims. He asked what percentage of victims came from ethnic minorities. How was “abuse” defined in legal terms and how was the concept communicated to the general public so that people would know when they were entitled to complain? According to the State party, statistical assessments of the results of investigations of allegations of abuse and the penal measures taken were ongoing. He asked how soon the assessments might be completed.

58. The Human Rights Advisory Board was tasked with providing systematic guidance to security police officers by means of observation and regular reviews with a view to safeguarding human rights. Its NGO members were appointed by the Federal Minister of the Interior. Although there was an office in the Ministry responsible for follow-up to the Board’s recommendations, only 55 of the 106 recommendations had been implemented. According to the State party, the Board dealt only with systemic and structural changes and did not receive individual complaints. Was there any independent body tasked with receiving and investigating complaints against law enforcement officials?

59. Cheibani Wague, a Mauritian legally resident in Austria, had died in July 2003 in the course of his arrest by the Viennese police. He had been in an argument with his employer in the street and the latter had called the police and an ambulance. On arrest Mr. Wague had been given an injection and had lain on the ground unattended for several minutes before a paramedical unit had tried to resuscitate him. He had died before reaching the hospital. A police officer and an emergency physician had been convicted of the crime of involuntary manslaughter, for which they had received suspended seven-month prison sentences. The police officer’s penalty had been reduced from seven to four months on the ground of mitigating circumstances.

60. The Committee had enquired about the case of Bakary J., a Gambian citizen who was to be deported from Austria, having been convicted of drug possession. According to Amnesty International, after Bakary J. had refused to board the plane, three police officers had taken him to an empty warehouse in Vienna, where they had been joined by a fourth officer, and told him that they had been instructed to kill him. Bakary J. alleged that one of the officers had referred to Hitler, saying that he had hated blacks and Jews and killed six million of them. Bakary J. was about to become victim number six million and one. The officers had punched and kicked him. One of them had reversed a car into him as he was lying on the floor, hitting him in the back and the neck. In view of the seriousness of his injuries, the police officers had decided to take him to hospital. On the evidence of the officers, the doctor recorded that the injuries had been sustained while Bakary J. was attempting to escape. According to the State party’s report, the victim had sustained “a non-dislocated fracture between the eye socket and the jaw”. Three police officers had been sentenced to suspended terms of imprisonment of eight months each and the fourth to a suspended term of six months. Bakary J. had been awarded damages of 3,000 euros, but it was unclear whether the damages had been paid. In 2007 the Senior Public Prosecutor’s Office in Vienna had filed an appeal of nullity that had been upheld by the Supreme Court. The victim’s representative had lodged a further plea. He wondered whether there was any prospect of an early settlement of the case. The suspended sentences in both the Cheibani Wague case and the Bakary J. case appeared to be very lenient. The Human Rights Committee had recommended in its concluding observations on Austria’s fourth periodic

report (CCPR/C/AUT/CO/4) that the State party should take immediate and effective steps to ensure that cases of death and abuse of detainees in police custody were promptly investigated by an independent and impartial body outside the Ministry of the Interior and that sentencing practices and disciplinary sanctions for police officers were not overly lenient. What action was being taken on that recommendation?

61. As the Crime Victims Act had only been applicable to non-nationals since 30 June 2005, he asked what forms of remedy were available to non-Austrian nationals who had been subjected to torture or ill-treatment before that date. According to the *New York Times*, Mr. Mike B., an African-American teacher, had reportedly been beaten in February 2009 by an undercover police officer while travelling on the Vienna underground railway, having been mistaken for a drug-dealer. Had he been entitled to compensation as a non-Austrian?

62. He was curious to know how the political establishment and the general public had reacted to the case of Bakary J. Had it been incorporated in police training courses?

63. According to the 2009 human rights report of the Department of State of the United States, overcrowding remained a problem in some Austrian prisons. The Human Rights Advisory Board had repeatedly described the conditions facing aliens prior to deportation as questionable from a human rights standpoint. The State party had admitted in its replies to the list of issues that some prisons were overcrowded, for instance Vienna Josefstadt, Vienna Simmering, Feldkirch and Neustadt prisons. What measures were being taken to deal with the problem?

64. The State party had replied to the Committee's question about action to ensure that deprivation of liberty was always a measure of last resort in the case of children. He asked whether any guidelines had been issued in that regard and what alternative measures were available.

65. The Human Rights Committee had expressed concern about the case of Yankuba Ceesay, an 18-year-old asylum-seeker from Gambia awaiting deportation, who had died in October 2005 in a "safety cell" after 11 days of hunger strike, and the case of Geoffrey A., a Nigerian detainee awaiting deportation, who had been released in August 2006 after 41 days of hunger strike. He enquired about the medical supervision of persons awaiting deportation.

66. According to the NGO Sex Workers' Forum of Vienna, sex work was legal in Austria but sex workers were required to undergo regular medical check-ups and to register with the local authorities. The Vienna communal health office was responsible for the medical inspection of about 1,850 registered sex workers but the service was accessible only 20 hours a week and was grossly understaffed. The NGO accused the authorities of inhuman and degrading treatment. He invited the delegation to comment on the charge. The same NGO claimed that asylum-seeking women were not permitted to accept a regular form of employment to secure their livelihood and the subsistence of their families; owing to labour and immigration regulations, sex work was the only viable source of income for asylum-seeking women, regardless of their qualifications. He asked whether that was true.

67. According to Amnesty International, Austria had adopted exemplary measures regarding the use of taser X26 stun guns. The Committee felt that such guns should be outlawed. He enquired about the current situation with regard to their use.

68. When did Austria expect to ratify the Optional Protocol to the Convention?

69. He wished to hear more about the content of the Terrorism Prevention Act of 2010 and also about the number and type of sentences that had been handed down to persons convicted of terrorist acts.

70. **Mr. Bruni** observed that, according to paragraph 67 of the State party report, audio or video recordings of interrogations of defendants whose access to a lawyer had been denied must be made “if possible”. He enquired why such facilities were not always available, as they were an essential guarantee in the absence of a lawyer.

71. Concerning training for medical personnel in accordance with article 10 of the Convention, he noted that more attention was being paid to intercultural differences in the presentation of symptoms. As the Government was planning to provide training on that issue in 2010, he wondered whether it had envisaged incorporating into those programmes material from the Istanbul Protocol, a manual designed specifically to deal with victims of torture coming from different cultures.

72. Turning to articles 12 and 13, he pointed out that, although paragraph 23 of the written replies to the list of issues had mentioned 445 cases of abuse by law enforcement officials in 2009, no information had been provided on the results of any investigations into those allegations. He asked whether the delegation could provide detailed information on those cases.

73. In accordance with article 15 of the Convention, section 166 of the Criminal Procedure Act expressly ruled out the admission as evidence of statements obtained through torture. He would like to know whether section 166 had ever been invoked before a court following the entry into force of the Criminal Procedure Reform Act in January 2008.

74. According to the State party’s report, there had been a decline in the number of prison suicides between 2006 and 30 April 2008. However, he was concerned that other figures provided in paragraph 20 of the written replies indicated that the number of cases had continued to be high in 2008/2009. He noted that a cell allocation programme had been introduced in late 2007 aimed at reducing suicide rates and asked if the delegation could provide information on the results of that measure.

75. He noted with satisfaction that Austria had numerous rehabilitation programmes for victims of torture and violence at the national level. He would like to receive confirmation that Austria would continue at the international level to make contributions to the United Nations Fund for Victims of Torture.

76. **Mr. Gaye** welcomed the decision of the Austrian Supreme Court to carry out a further review of alleged fundamental rights violations in the case of an extradition request by Croatia, which had already been considered on appeal. The principle whereby the Supreme Court agreed to hear and decide such cases was important since it provided appropriate guarantees to persons subject to an extradition procedure. With respect to decisions handed down by the Asylum Court, a court of last instance whose rulings might be subject to a further review only by the Constitutional Court in case of alleged violations of constitutional rights, he asked the delegation to clarify the distinction between fundamental rights and constitutional rights. He would also like to know whether there had been any asylum cases in which the Constitutional Court had ruled.

77. Turning to the issue of the interrogation of defendants when access to a lawyer had been denied or restricted, he said that the provisions in the Code of Criminal Procedure allowing audio or video recordings to be made “if possible” were vague and required clarification.

78. On the question of refoulement and expulsion, he noted that, subsequent to the case of Bakary J., deportation practices in the State party had been subjected to a comprehensive evaluation and that problematic deportations were increasingly carried out using aircraft chartered specifically for that purpose, known as “joint return operations”. He wondered what that actually meant in practice. He was also concerned that provisions concerning the role of the Human Rights Advisory Board in monitoring such deportations were not clear.

He would like to know whether the presence of members of the Board during those procedures was mandatory or merely a possibility.

79. **Ms. Gaer**, recalling that article 3 of the Convention stated that “No State party shall expel, return (“*refouler*”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”, asked what level of proof or certainty Austrian law required in such circumstances, and whether an administrative or judicial review procedure was used.

80. Concerning the representativeness of the police force, she asked what proportion of recruits had expertise on minorities and migrants. According to information in the written replies, women accounted for 12 per cent of law enforcement officials at all service levels. She enquired how many were involved in actual policing and what proportion were dealing with gender-based issues.

81. In 2009, a total of 28 preliminary investigations had been initiated for alleged abuse of asylum-seekers by law enforcement officials. Proceedings had been dismissed in 16 of those cases, 1 had been discontinued and proceedings were still pending in 11 cases. She would like to know who reviewed those preliminary investigations.

82. She thanked the delegation for the information in its written replies about the case of the extradition to Egypt of Mr. Bilasi-Ashri indicating that the effort to obtain diplomatic assurances had been suspended. She asked at what level diplomatic contacts had taken place and how formal or informal that process had been. She also sought confirmation that there were no further such cases.

83. The Committee had asked about additional provisions of the Asylum Act enabling authorities to take all decisions in a family procedure at the same time as the regular procedure. However, it was not clear whether the decision to deny an appeal for one member of a family applied to all members of a family who were awaiting decisions on their appeals. The Committee would welcome clarification of that point.

84. With regard to the case of Mr. Cheibani Wague, the State party had indicated in its written replies that the seven-month suspended sentence originally imposed on the guilty police officer had been reduced to four months, and that civil proceedings were not possible. In view of that fact, she wondered at what point a person seeking to obtain remedy for ill-treatment or torture could actually make a civil claim. It would be helpful to know whether there was any specific legislation or court decisions which applied or interpreted those procedures.

85. **Ms. Sveaass** expressed concern at the continuing use of “cage beds” in psychiatric hospitals, a practice that had been abandoned by most European countries. It was important that the rights of persons undergoing involuntary treatment should be respected. She hoped the Government would reconsider its position in that regard.

86. She wondered how the two high-profile kidnapping cases involving Natascha Kampusch and Josef Fritzl had affected procedures and regulations for persons working in social care.

87. Information available to the Committee indicated that a high number of complaints alleging ill-treatment by police officers were not followed up. She would like to know what body was responsible for monitoring those complaints.

88. Although there had been a decrease in the number of asylum-seekers in detention, she expressed concern that it was still high. She would like to know whether the Government intended to continue to return asylum-seekers to Greece under the Dublin II Regulation.

89. **Ms. Belmir** regretted the reintroduction of the use of tasers in prisons. She asked the Government to explain clearly how it had arrived at that decision.

90. She would welcome further clarification as to the coordination that existed between the Human Rights Advisory Board at the Federal Ministry of the Interior and the Ministry of Justice.

91. **Mr. Mariño Menéndez** said that the criteria used to determine whether an asylum-seeker was at risk of refoulement seemed to be very generous and more in line with European practice than with provisions in the Convention. He would like to know whether those criteria were applied systematically.

92. As to persons who had been granted the status of refugees by another European country in accordance with the Convention relating to the Status of Refugees, he asked whether Austria would respect that status in the event of an extradition request by a third country.

93. It was sometimes not possible to return asylum-seekers who had been denied refugee status to their country of origin because their nationality was not known. He would like to know what the legal situation of such persons was and whether they could be granted a residence permit. More generally, he would like to know the situation of stateless persons in Austria.

94. **Mr. Wang Xuexian** asked the delegation to comment on the Government's statement that "Austria may — according to domestic law — also grant extradition based on the principle of reciprocity." He asked the delegation to specify which domestic law was referred to and provide some examples of how that principle was put into practice.

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