



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

Distr.
GENERAL

CAT/C/SR.737
22 November 2006

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Thirty-seventh session

SUMMARY RECORD (PARTIAL)* OF THE 737th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 14 November 2006, at 3 p.m.

Chairperson: Mr. MAVROMMATIS

CONTENTS

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

Initial report of Guyana (continued)

* No summary record was prepared for the rest of the meeting.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.05 p.m.

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

Initial report of Guyana (continued) (CAT/C/GUY/1; HRI/CORE/1/Add.61)

1. At the invitation of the Chairperson, Ms. Teixeira (Guyana) resumed her place at the Committee table.
2. Ms. TEIXEIRA (Guyana), replying to questions raised by the Committee at an earlier meeting, said she had divided the questions into two categories: general issues; and constitutional and legislative issues. Her Government was committed to upholding the rights enshrined in the Convention against Torture and other international human rights treaties. Having struggled to promote free and fair elections and the restoration of democracy, it would not condone or encourage the erosion of human rights, and democratic institutions. Advances in terms of parliamentary and constitutional reforms attested to the commitment of the Guyanese Government and people; the openness of the media in the process of democratization had contributed to the climate of transparency. The commitment to the consolidation of democracy was further strengthened by the Constitution, which allowed the judiciary to take into account international agreements, in particular those relating to human rights. In that connection she referred the Committee to articles 141, 153 and 154 of the version of the Constitution amended in 2003, and to paragraphs 25-27, 38-41, 46, 57, 71, 72, 81, 87-89, 109 and 110 of the initial report of Guyana (CAT/C/GUY/1).
3. There had been an alarming increase in crime and violence between 2001 and 2006. The correlation of political forces with the main opposition party and criminal elements following the 2001 elections had escalated and led to the escape of five dangerous prisoners in 2002. That had in turn led to a terrifying increase in armed robberies, kidnappings and gang violence with shoot-outs and extrajudicial killings. The police, armed with revolvers, had faced politically-supported criminal gangs equipped with machine guns and other heavy weapons. While reports by the Guyana Human Rights Association referred to shootings by the police, they omitted to mention the hundreds of persons murdered by criminals between 2002 and 2006. The sadistic killings had shocked the whole country and hampered development. The police had been unable to bring the situation under control.
4. In 2005, there had been a decline in the number of murders from 185 to 153 (one third of which had been caused by domestic or interpersonal dispute); however, the incidence of armed robberies had remained high. In 2006, some inroads had been made against the criminal gangs through improved intelligence, training, and better equipment and communication in the law enforcement agencies. The recent rendition of an important Guyanese drug baron from Suriname to the United States to face criminal charges had resulted in a reduction of drug-related violence.
5. Turning to constitutional and legislative issues, she said that the Convention against Torture and other human rights treaties were incorporated in the Constitution, which took

precedence over any other legal statute (art. 8). Guyana was a party to the Optional Protocol to the International Covenant on Civil and Political Rights, as indicated in paragraphs 109 and 110 of the initial report.

6. The Constitution provided for the establishment of five new human rights commissions, subject to the approval of two thirds of the members of Parliament. The reason only one commission had been established was that the opposition parties had blocked the two-thirds majority required under the Constitution for the four other commissions dealing with women, children, indigenous peoples and ethnic relations. It was expected that the required majority would be obtained at the next session of Parliament. The President appointed only the Chairperson of the Human Rights Commission, which was composed of the chairpersons of the other four commissions. They were elected from persons approved by Parliament and then appointed by the President.

7. The Ombudsman had not been appointed for similar reasons: the President had not received the necessary support from the opposition parties. However, in the light of the 2006 elections and the President's recent initiative in creating an enhanced framework for political cooperation among all political parties, the political climate was now more conducive to such an appointment.

8. In accordance with the Constitution, individuals could seek redress in the courts, and the judiciary was required to take into consideration the definition of torture contained in article 1 of the Convention, as well as broader definitions contained in other treaties. There was therefore no impediment to the court hearing and ruling on complaints of torture and ill-treatment, as indicated in paragraphs 38-40 of the initial report. Other important issues relating to torture and ill-treatment were covered in paragraphs 32, 33, 69 and 70 of the report. The Director of Public Prosecutions could, on his or her own cognizance, bring charges or order investigations in connection with such offences without a police report. The same applied to the Police Complaints Authority, which was headed by a retired judge. Under the Criminal Law (Offences) Act, penalties for offences of torture and ill-treatment ranged from a seven-year prison sentence to the death sentence; details were given in paragraphs 71 and 72 of the initial report.

9. Concerning extradition and related matters, she said that her Government did not support rendition (refoulement) of its nationals to other territories or rendition in principle. With regard to the case of the Guyanese drug baron arrested in Suriname and handed over to the United States authorities in a second State, Trinidad and Tobago, the Guyanese authorities had publicly voiced their concern about the case setting a dangerous precedent, since the rendition had taken place without observance of due process and extradition requirements.

10. Responding to the question whether Guyana could be a safe haven for known torturers, she said that individuals, irrespective of their nationality, could only be removed from Guyanese territory following a court order issued in accordance with due process and not by rendition. When an extradition agreement existed with another State which did not classify torture as an offence, that did not pose a problem: torture was defined as an offence in the Guyanese Constitution and was thus an indictable and extraditable offence.

11. As far as compensation was concerned, she said that the State could be called upon to provide compensation for victims of torture where the perpetrator was a government official, or where the Government had knowledge of the act but failed to prevent it, as indicated in paragraph 113 of the report. Explaining the statement in paragraph 114 to the effect that the State was not legally responsible for the offender's conduct, she gave the example of a police officer off duty who became involved in a violent fight with a civilian at a party, namely in a situation that was not connected with the performance of duties or orders of a superior. Charges would be brought against the police officer concerned, but the State would not be held responsible.

12. Articles 139 (5) and 153 (1) also provided for redress for contraventions of provisions relating to the protection of fundamental rights and freedoms.

13. A statement obtained under torture could not be used in a Guyanese court of law. If the accused or witness claimed that they had been tortured, the magistrate was obliged to hold a voir dire. Such cases had occurred in Guyana, although they had not been mentioned in the initial report. If the magistrate was satisfied that the person concerned had not been tortured, the case was reconvened; if the allegations of torture were confirmed, the case could be dismissed. She presumed that by the unlawful acquisition of evidence, the Committee was referring to the acquisition of evidence without search warrants, or without judicial approval of surveillance techniques, such as wiretapping.

14. Guyanese society was divided on the question of capital punishment. There had been no hangings for 10 years. If a bill to repeal the death sentence was submitted to Parliament, she expected that members of Parliament would be allowed to vote according to their conscience, as with the bill providing for the medical termination of pregnancy submitted in 1994.

15. Article 150 (2) of the Constitution outlined certain fundamental rights, including freedom of assembly, movement and expression, that were derogable in a state of emergency; however, article 141, which ensured protection against torture, inhuman or degrading punishment or treatment, remained non-derogable.

16. Article 40 of the Constitution recognized fundamental human rights and freedoms, but also ensured that no individual could prejudice the rights and freedoms of others or the public interest. That included the right to religion, Guyana was a multireligious society and any derogatory remark or attack on another religion was viewed as a violation of that right. The same applied to freedom of expression: owing to racial hostilities during the 1997 and 2001 elections, Parliament had passed the Racial Hostility Act to uphold and strengthen article 149 A, B and C. Furthermore, under articles 8, 154 A (b) and 164 (2) (a) and (b), a two-thirds majority was required in Parliament in order to curtail any human right. It was possible to add a right by a simple majority, but not to curtail one, including those covered by obligations under international human rights treaties.

17. Turning to the question of rape and sexual violence, she explained that statutory rape involved carnal knowledge of a minor, where the victim was considered incapable of making a choice. As to rape, the standard definition used by other jurisdictions applied. She expressed support for the findings of the Guyana Human Rights Association report on sexual violence. Owing to cultural, historical and sociological factors, discrimination against women, and sexual

and domestic violence, persisted. An increasing number of cases were being heard, and perpetrators charged and convicted, under the Domestic Violence Act. Relevant training had been provided to law enforcement officials. For economic reasons, however, women were sometimes reluctant to press charges, which was a factor in the low level of convictions.

18. The scope of the joint project executed by the Inter-American Development Bank (IDB) and the Government of Guyana concerning justice sector reform would cover cases of sexual violence, rape, domestic violence and the right to a prompt trial.

19. The NGO Help and Shelter ran a home for battered women and children, with support from the Ministry of Human and Social Services. The ministry provided representation assistance in cases of child abuse and child rape, and worked with the police and victims of domestic violence. A proposal was being considered for a new police unit to deal with domestic violence and sexual violence. A legal aid clinic, financially supported by the Government, provided legal assistance to the poor, and to women and children.

20. With regard to the independence of the judiciary, she said that articles 127 and 128 of the Constitution governed the manner in which the Chancellor of the Judiciary and the Chief Justice were appointed, and the appointment of judges through the Judicial Service Commission. The President could not revoke the appointment of a judge, save on the advice of the Judicial Service Commission, which was appointed by a parliamentary standing committee operating in accordance with the provisions of the Constitution. The Government did not control the judiciary. On the contrary, it lost more cases than it won. The provisions of articles 128 A (1) and (2) and 129 of the Constitution providing for part-time judges had not yet been implemented.

21. She did not know why the human rights recommendations of the Guyana Human Rights Commission had not been included in the report of the Disciplined Forces Commission. However, the 164 recommendations that had been included, aimed at improving the functioning of police, army, prison and firefighting units, would have an indirect bearing on the human rights situation, since better trained and more accountable disciplined forces would result in fewer abuses of power. She referred in particular to the recommendations concerning extrajudicial killings, accountability and complaints.

22. The use of force was governed by articles 139, 143 and 197 of the Constitution and by the Police (Discipline) Act. Training with the Scottish and other British police, overseas training and improved human rights training had served to raise awareness of operational parameters.

23. The former Minister for Home Affairs, Ronald Gajraj, had been exonerated from any direct responsibility for extrajudicial killings by the commission of inquiry established in early 2004, which had presented its findings in April 2005. The former minister had resigned in May 2005 and was currently an overseas high commissioner for Guyana. The commission of inquiry had recommended that the procedures provided for by law concerning licensing of firearms should be implemented and that legislation concerning the issue of such licences be amended. Those recommendations were being acted upon.

24. She had welcomed the Chairperson's suggestion that, as an alternative to holding a preliminary investigation, magistrates could be asked by the Director of Public Prosecutions to rule on whether a case should proceed. However, there were considerable problems within the

criminal justice system at the level of the magistracy. There had been complaints, for example, of magistrates unlawfully granting bail to persons involved in drug trafficking or gunrunning. New proposals concerning ways of reducing the backlog of cases would be examined in the context of justice sector reform.

25. The “visiting committees” responsible for ensuring that prisoner welfare was addressed in prisons were composed of civilians. They did not visit police station lock-ups. In connection with the proposed closure of a number of lock-ups, she referred to the twofold problem of lack of funding for new prisons and the impossibility under the joint IDB-government project of rehabilitating police lock-ups.

26. With regard to complaints about law enforcement officials conducting investigations into their own practices, she reiterated that the Director of Public Prosecutions could commence an investigation on his or her own initiative. Members of the police force and army could be charged under civil and criminal law.

27. Work had started in March 2006 on the creation of a database for statistics relating to torture, in the form of a “crime observatory”. The result would be greater exchange of information between the police, the courts and the Director of Public Prosecutions, and improved case investigation and management.

28. Sexual violence in places of detention had occurred in the past but only one case was currently before the courts. Medical examinations in cases of sexual violence were compulsory, and police officers received relevant annual training. Training was also provided to emergency hospital staff dealing with sexual violence and domestic violence.

29. Women who were detained prior to being charged, or awaiting trial, were kept in separate lock-ups.

30. Juvenile offenders, i.e. offenders over the age of 10 and under the age of 17, were charged under the Juvenile Offenders Act. Those between the ages of 10 and 16 were sent, on the basis of a court ruling, to juvenile rehabilitation centres. Upon completion of the rehabilitation period their file was expunged. Offenders aged between 16 and 18 could be sent to juvenile rehabilitation centres if a magistrate so decided, or to the prison section reserved for juvenile offenders. While juvenile offenders, when arrested, sometimes found themselves in the same police station as adults, they did not share a lock-up. A recommendation for the creation of a separate section in police stations for juveniles awaiting to appear in court had been rejected by the Chief Magistrate.

31. The issue of the shortage of magistrates was a complex one. Whereas Guyana had previously had its own final court, it had recently joined the newly created Caribbean Court of Justice, which in December 2005 had become the country’s final court of appeal. Many reforms were being carried out in the justice sector, concerning inter alia the jurisdiction of various districts and divisions in a relatively large geographical area. Unfortunately, young, newly trained lawyers did not consider the magistracy to be sufficiently lucrative.

32. Guyana had experienced problems since the 1960s in relation to the ethnic composition of the police force. The majority of the disciplined forces were Afro-Guyanese. Between 1965

and 1992 Indo-Guyanese and Amerindians wishing to join the police were discriminated against on the basis of height and cultural or religious differences. Since 1992, strenuous efforts had been made to encourage Indo-Guyanese applicants to join the police, but with limited success. In the past two years, however, following amendments to height requirements, 25 per cent of police recruits had been of Amerindian origin, while that ethnic group accounted for just 9 per cent of the population.

33. In an effort to address that ethnic imbalance the Government, in conjunction with the police force, had set up a community-based residential police unit. The aim was twofold: to reduce crime within communities and enhance intelligence-gathering. A total of 600 people were expected to have been recruited by the end of 2006, with the majority of those recruited in coastal regions being Indo-Guyanese.

34. The age of consent for girls - which had been the subject of heated debate among different social and religious groups - had been raised to 16 in 2005.

35. Legislation relating to flogging and whipping remained unchanged, but she believed that once general levels of crime and violence had been reduced, there would be greater willingness in society to abolish such draconian provisions.

36. Guyana had already received financial and other assistance from UNDP to strengthen human rights protection and promotion, and had applied for another US\$ 100,000 for training schemes.

37. Concerning the reference to unlawful killings by the police, contained in the United States Department of State country report (2005) on Guyana's human rights practices, she wished to emphasize that there were no politically-motivated killings in her country. Fatal police shootings were, however, a problem that needed to be addressed. As documents produced by the Guyana Human Rights Association pointed out, some 80 police officers had been brought before the courts over the previous two years for various crimes, including the use of excessive force leading to serious injury or death. The successful prosecution of police officers who had committed crimes epitomized the considerable progress made in her country. The Government and society, including the police, were less tolerant of unlawful killings than in the recent past and less likely to condone impunity.

38. The issue of coroners' inquests was a long-standing one that her Government was anxious to resolve. Guyana had tried single-handedly to solve the many problems facing its criminal justice system, especially the magistracy, but there had been little impact. Over the years, foreign institutions had also reviewed the situation, issued recommendations and offered technical assistance. Guyana had recently been granted a multimillion dollar investment loan by IDB so that it could radically overhaul the justice administration system. In the 1990s, most international donor agencies had been reluctant to finance any projects relating to the police force. But the International Monetary Fund, IDB and the World Bank had recently changed their policies, in recognition of the fact that improving economic development went hand in hand with strengthening democratic institutions, the rule of law and governance. The IDB loan, which would not be easy for Guyana to repay, would at least provide the Government with the technical and financial support it would need over the next five years to improve the administration of the judiciary, the police and the entire criminal justice system.

39. She concluded by saying that Guyana's initial report had been prepared by a number of inter-agency bodies, whose membership had been outlined earlier, and submitted to the cabinet for final approval. Her Government acknowledged that it needed assistance with preparing reports to be submitted to the United Nations treaty bodies, especially the Committee against Torture, whose procedures were particularly complex. She would be reporting back to her Government with suggestions on how improvements could be made when preparing future reports.

40. The CHAIRPERSON, speaking as Country Rapporteur, assured the representative of Guyana that no member of the Committee doubted Guyana's commitment to the protection of human rights. The Committee had, however, detected pitfalls in its implementation of the Convention against Torture, due in part to the criminal situation in the country. Guyana was currently taking the right approach, but would have benefited had it sought international expert assistance on the protection of human rights soon after independence, as Cyprus had done. The problem of a culture of violence could not be addressed by legislative measures alone. Guyana should follow the example of South Africa, whose initial report was also being considered at the present session. Its Government had correctly recognized the interconnection between economic, social and cultural rights and had engaged civil society in that regard.

41. Despite the claims to the contrary by the representative of Guyana, he felt that the country's initial report exposed many lacunae in national legislation in relation to the Convention. In his view, the Government had taken many half measures that could withstand the tests of neither habeas corpus nor constitutionality. The Committee therefore urged Guyana to adopt enabling laws in order to bring its legislation into line with the Convention.

42. Welcoming the fact that evidence obtained as a result of the unlawful gathering of primary evidence was not admissible before the courts in Guyana, he wished to know whether the same was true of derivative evidence, i.e. significant evidence based on information that had been unlawfully obtained from a third person, for example through torture or other cruel, inhuman or degrading treatment or punishment.

43. He noted with satisfaction that temporary judges were never resorted to in Guyana, even though the Constitution made provision for them, and that neighbourhood policemen had been introduced.

44. Ms. TEIXEIRA (Guyana), in response to one of the questions put by the Chairperson, confirmed that under the Guyanese Constitution the Director of Public Prosecutions was statutorily independent and had responsibility for all prosecutions, whereas the Attorney-General was a political appointee.

45. Mr. MARIÑO MENÉNDEZ, Alternate Country Rapporteur, thanked the representative of Guyana for her constructive dialogue with the Committee, acknowledged the difficulties Guyana faced and welcomed the announcements of legislative reforms aimed at remedying a number of problems. He sought clarification of a number of points.

46. A two-thirds majority in Parliament was required for Guyana to withdraw from international treaties, including the Convention against Torture. Was it true, however, that under the Constitution the statutory right to protection from torture could not be suspended by the authorities in any circumstances?

47. Recalling that the definition of torture given in the Convention was both universal and autonomous of all the definitions given in other international legal instruments, and observing that the initial report suggested that Guyana took a minimalist approach to its definition, he urged the Guyanese authorities to bring its legislation into line with the Convention.

48. He wished to know whether the Caribbean Court of Justice, the appellate court of the Caribbean Community (CARICOM), of which Guyana was a member State, could hear appeals concerning violations of the Convention. Did Guyana intend to accede to the American Convention on Human Rights (Pact of San José)?

49. According to paragraph 118 of the initial report “Evidence obtained as a result of the unlawful gathering of primary evidence is not admissible before a court of law.” Did that “unlawful gathering of primary evidence” refer not only to torture but also to all forms of cruel, inhuman or degrading treatment or punishment?

50. Ms. SVEAASS observed that, even for a country with a small population like Guyana, the team of government medical experts for assessing and reporting on allegations of torture or other cruel, inhuman or degrading treatment or punishment was too small: just two psychiatrists and no forensic experts or pathologists. Were such medical specialists being trained in Guyana or was it totally dependent on foreigners?

51. Ms. BELMIR, recalling two recommendations to Guyana made by the Human Rights Committee, asked (a) whether the Government had taken measures to recruit part-time judges as one way of addressing excessively lengthy proceedings; and (b) whether legislative amendments had ensured that members of the Amerindian ethnic minorities enjoyed equal employment opportunities in the national police force.

52. She wished to know whether there had been any follow-up to the recommendation made by the Committee on the Rights of the Child in its concluding observations (CRC/C/15/Add.224) concerning Guyana’s initial report (CRC/C/8/Add.47) to the effect that consideration should be given to raising the age of criminal responsibility, which was currently set at 10 and was too low. It was generally recognized that children under the age of 12 were not sufficiently mature to be held criminally responsible.

53. Mr. GROSSMAN asked whether any measures had been taken in response to the report issued on 28 February 2006 by the Inter-American Commission on Human Rights concerning the case of the disappearance in Guyana of Franz Britton (report No. 1/06, case 12.264); the Commission had recommended that Guyana should carry out an investigation concerning the whereabouts of Mr. Britton, adopt legislative or other measures to prevent the recurrence of such events, and make full reparation for the violations listed.

54. Ms. TEIXEIRA (Guyana) agreed with the Chairperson that there was a connection between economic, social and cultural rights and the issue of violence. Among the measures that had been taken to combat the culture of violence in her country were the establishment of a national commission on law and order, and also community development groups to create safe neighbourhoods. The community development groups had begun as a series of pilot projects and would soon be replicated in other parts of the country. The problem of gangs was prevalent in the Caribbean region, and a study conducted by the university of the West Indies had found that young men without prospects often found in gangs a sense of identity that was otherwise lacking in their lives. The Government had a responsibility to reduce such violence.

55. Regarding doubts expressed by the Chairperson as to whether certain aspects of Guyana's legislation relating to the Convention could withstand the test of habeas corpus or constitutionality, she said she would consult with the Attorney-General on those matters and report back to the Committee in writing. On the question of bringing Guyana's legislation into conformity with the Convention in terms of its definition of torture, there was no doubt that Guyana accepted the universal definition of torture and treated torture as an international crime. Because slavery and indentured labour were phenomena that had prevailed in Guyana until the beginning of the twentieth century, the issues of torture and inhuman treatment were perhaps more real to its people than to many others. More detailed information on that issue would be addressed to the Committee in due course.

56. Information on a number of cases that had been brought by Guyana before the Caribbean Court of Justice and details concerning whether or not Guyana intended to accede to the American Convention on Human Rights (Pact of San José) would be provided to the Committee in writing. Regarding the limited number of medical specialists available to assess and report on allegations of torture or other cruel, inhuman or degrading treatment or punishment, she said that the medical school of the university of Guyana trained general practitioners but did not train specialists. Through a technical cooperation project sponsored by Cuba, some 300 students were being trained as general practitioners, and the Government was hoping to secure funding to help them continue training to become specialists. It was unfortunate that a large number of the well-qualified young people graduating from the university of Guyana left the country for North America or Europe. That phenomenon was partially compensated, ironically, by a new wave of immigrants from other countries in the southern hemisphere, which helped Guyana to meet some of its needs for qualified medical staff.

57. The increased numbers of Amerindians in the police force were attributable not to amendments to the law on police recruitment, which had been enacted more than 10 years previously, but to improvements in the education of Amerindians. After having been isolated for so long, the Amerindian populations concentrated in the interior of the country now had access to secondary schools, which enabled them to obtain the necessary education required for employment in the police force.

58. Although she had not yet read the recommendations of the Committee on the Rights of the Child concerning Guyana's initial report, she could see no objection, in principle, to raising the age of criminal responsibility. It was important to note that juvenile offenders brought before the courts were not treated as criminals, but as pupils or students. A single co-educational institution existed where children could be sent for rehabilitation for a period of up to three years. Although the majority of such children had committed petty crimes, in the past two years

there had been an influx of older children who had been involved in gang activities. The total number of juvenile offenders in Guyana was 140, all of whom had been placed in the rehabilitation facility. Courts could, however, also rule to return a child to his or her home, to an orphanage or to an appropriate NGO.

59. The disappearance of Franz Britton was taken seriously. There was no softening of the Government's position on the issue of disappearances and kidnapping, particularly if the latter involved the police. The Attorney-General would provide more detailed information on the case of Mr. Britton. She could confirm, however, that the writ of habeas corpus was used frequently in Guyana, and that its courts were open to granting injunctions. One of the greatest challenges to dealing with violent crimes was the lack of evidence and the difficulty posed by the sharing of information between the police and the State, particularly in the context of gang violence. The recently enacted witness protection legislation would provide for witness protection, and, it was hoped, encourage people to report abuses, including torture and cruel, inhuman or degrading treatment or punishment.

60. The CHAIRPERSON thanked the representative of Guyana for her forthright answers to the questions put by Committee members. He suggested that she should contact the secretariat to request assistance with the preparation of future periodic reports.

The discussion covered in the summary record ended at 4.55 p.m.