



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

Distr.
GENERAL

CAT/C/SR.761
11 May 2007

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Thirty-eighth session

SUMMARY RECORD OF THE 761st MEETING

Held at the Palais Wilson, Geneva,
on Friday, 4 May 2007, at 10 a.m.

Chairperson: Mr. MAVROMMATIS

CONTENTS

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

Fourth periodic report of Italy

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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 periodic report of Italy (CAT/C/67/Add.3; CAT/C/ITA/Q/4/Rev.1 and Rev.1/Add.1)

1. At the invitation of the Chairperson, the members of the delegation of Italy took places at the Committee table.
2. The CHAIRPERSON invited the delegation to introduce the fourth periodic report of Italy (CAT/C/67/Add.3).
3. Ms. LUCIDI (Italy) said that since Italy had submitted its third periodic report in 1999, the world political, economic, social and cultural situation had been transformed, and the increased threat of terrorism had posed new challenges to physical security. The maintenance of peace and security, and crisis prevention and management were top priorities for her Government, which was also firmly committed to international efforts to reduce poverty, hunger and underdevelopment, and to the promotion of human rights and other goals espoused by the United Nations.
4. Respect for human rights was also a main criterion for Italy's domestic policy and for European Union (EU) policy in general. On the one hand, Italy endeavoured to ensure that the fundamental rights of all persons within its territory were respected, and on the other, it participated in international efforts to safeguard the enjoyment of freedom, democracy and basic human rights by men, women and children in less fortunate countries.
5. Apart from enshrining the rights and fundamental freedoms established by international instruments, the Italian Constitution of 1948 upheld the principle of non-discrimination as a basic tenet, by which domestic legislation, the executive and the judiciary had always been inspired.
6. The increasing flow of illegal immigrants into Italy had raised growing concern. In response, the Italian Council of Ministers had adopted the Amato-Ferrero bill, which aimed, among other things, at improving the regulation of migration through labour-market and integration initiatives.
7. Comprehensive draft legislation on political asylum was under consideration, a process that involved the parliamentary examination of several bills and the incorporation of EU directives into domestic law. In recognition of the need to adjust its legislation to changing international reality, Italy based its legislative framework and government policies on the principle of integration of foreign citizens, and on the right of access to housing, medical assistance and education. There was no intolerance towards the 3 million foreign workers legally residing in Italy; all workers, national or foreign, had equal rights and social benefits.

8. She assured the Committee that her Government attached great importance to ensuring that its strategies for tackling issues relating to demographic flows were guided by respect for fundamental rights. Instead of adopting repressive measures to curb illegal migration, her Government had enhanced its cooperation with UNHCR, the International Office of Migration and the Italian Red Cross. New legislation to establish territorial commissions for the recognition of refugee status, simplification of procedures, and the creation of centres for the identification of asylum-seekers had entered into force in 2005; and in 2007, a Ministry of the Interior directive facilitating the care of unaccompanied minors arriving at Italian borders had come into effect. Over the years, the Government had reinforced measures to prevent trafficking in human beings and its nefarious consequences, which included trade in organs, prostitution and new forms of slavery.

9. Within the context of the European Year of Equal Opportunities for All, Italy had focused specific attention on the protection of the human rights of women, resulting in the establishment of a centre to monitor prostitution and trafficking in human beings, the introduction of legislation prohibiting and punishing discrimination against women in the workplace, and a parliamentary review of draft legislation on domestic violence.

10. A National Anti-Racial Discrimination Office (UNAR) had been established, in accordance with EU directive 2000/43/EC, as a body to prevent discrimination, promote equal treatment and evaluate application of the principle of non-discrimination. As an offshoot of UNAR activities, a register of associations working to combat discrimination had been set up to authorize relevant bodies to act on behalf of the victims of discrimination.

11. With respect to integration, she said special attention had been paid to measures to support the integration of Roma, whether of foreign or local origin, and immigrants in Italy. The Italian authorities were awaiting the imminent enactment of comprehensive legislation on the protection of the cultural identity of Roma people and planned to convene an international conference on the situation of Roma in Europe.

12. Acts of racism were carefully monitored and countered through the adoption of appropriate policies and sanctions. Specific attention had been paid to racial discrimination and violence during sports events.

13. Turning to the use of force by law enforcement officials, she said that two ad hoc directives had been issued in the aftermath of disturbances in Naples and Genoa. The directives were addressed to heads of police in an effort to raise awareness among police officers of the principle of due diligence, and the correct and appropriate use of means of deterrence. The Italian Constitution provided for the punishment of physical and psychological violence perpetrated against persons whose liberty was restricted. The use of force and weapons by the police was allowed only in specific circumstances. The initiatives adopted in recent years confirmed her Government's steadfast commitment to the protection of human rights and fundamental freedoms.

14. Mr. SIMONETTI (Italy), summarizing his Government's replies to the list of issues (CAT/C/ITA/Q/4/Rev.1), said that an ad hoc working group had been established within the framework of the Inter-Ministerial Committee for Human Rights to prepare the relevant dossiers relating to the report submitted to the Committee against Torture.

15. During the 2006 Legislature, parliamentary debate had focused on the dual classification of torture as a crime against “moral freedom” and “the right to life and individual safety”. The legislature had seen the introduction of comprehensive legislation on asylum through seven bills and three EU directives. In addition to the above-mentioned Amato-Ferrero bill that was based on a Ministry of the Interior directive of March 2007, a consolidated text on the establishment of the national commission for the promotion and protection of human rights for detainees and persons deprived of their freedom had been adopted by the Chamber of Deputies, and was under Senate review. It was expected to pave the way to the ratification of the Optional Protocol to the Convention against Torture. Similarly, his Government was particularly committed to the framing of a bill on the basic principles of non-discrimination, including recognition of the specific characteristics and protection of Roma.

16. Further legislation was pending in the areas of the prevention and punishment of crimes involving domestic violence, sexual orientation, gender identity or other forms of discrimination, as well as the harmonization of domestic legislation with the Rome Statute.

17. With regard to torture and the excessive use of force by the police, he cited the provisions of the Constitution to the effect that the inviolability of personal liberty might be restricted by the judicial authorities only on justified grounds and in accordance with procedures prescribed by law. In cases of emergency, the public security authorities might adopt provisional measures, which must be approved by the judicial authorities within 96 hours. In the armed forces, a soldier found to be responsible for an act of torture was subject to criminal and disciplinary sanctions, regardless of the circumstances, including compliance with orders from a superior.

18. Various articles of the Criminal Code cited specific offences and provided individuals with protection against illegal treatment during arrest and detention. In addition to the application of the Criminal Code, the Government recognized the importance of training, including human rights education courses, for all law enforcement officials. A legislative decree on sanctions for the infringement of European Council regulation on trade in goods which could be used for capital punishment, torture or other cruel, inhuman or degrading punishment had been adopted in January 2007. Furthermore, articles 1 and 13 of Act No. 352/1975 on prison rules implemented the constitutional provision that punishment must be humane and aim at re-educating convicted persons.

19. Presidential decrees protected the rights of immigrants who, owing to a violation of the prohibition of such action, had been expelled or returned to a country where they might be persecuted, or ran the risk of being sent to another country where they would not be protected against persecution. With specific reference to the increasing level of illegal migration from Libya to Italy, he recalled that a 2002 agreement between the two countries was based on cooperation in fighting terrorism, organized crime, drug trafficking and illegal immigration. In general, the management of centres for immigrants fell under specific guidelines issued by the Ministry of the Interior, and was based on respect for diversity, the provision of medical and psychological support, information, legal assistance, adequate living standards, food and other necessary services.

20. Commenting on the issue of trafficking, he said that his Government had enacted laws to combat organizations engaged in trade in human beings and the exploitation of women and children.

21. Since the entry into force of the United Nations Convention on the Rights of the Child, due care for the principle of safeguarding the best interests of the child had been fully considered in the treatment of minors, particularly those who were unaccompanied, foreign or in detention. Italian legislation prohibited the expulsion of foreign minors under the age of 18 unless they intended to follow an expelled parent or guardian. A protection-based approach was ensured through the establishment of a committee on foreign children under Legislative Decree No. 286/98 on immigration, and an ad hoc directive adopted by the Ministry of the Interior. Discrimination against foreign minors, including Roma, was not tolerated. Foreign minors were under the supervision of the staff of the Department of Juvenile Justice, and could participate in the same capacity as Italian citizens in educational activities, vocational and professional programmes, and sports and leisure activities.

22. Violence against women was a punishable offence under article 609 bis of the Criminal Code, Act No. 66/1996 provided for legal advisory services for women and shelters for women victims of violence, Legislative Decree No. 216/2003 gave victims the right to file a complaint and receive compensation, and a Legislative Decree issued on 8 June 2005 guaranteed non-discrimination and prohibited sexual harassment, including in the workplace. Furthermore, Act No. 154/2001 prohibited domestic gender-based violence and violence against vulnerable groups such as elderly persons and persons with disabilities.

23. Turning to the issue of racism, he said that Italy had ratified the International Convention on the Elimination of All Forms of Racial Discrimination and established the UNAR (see paragraph 10 above), charged with awareness-raising and gathering statistics. Specific attention had been paid to the situation of the Roma with a focus on access to education and housing. Regular meetings had been held with Roma representatives and an ad hoc working group on Roma-related issues had been set up. One noteworthy initiative was the “intercultural living” project in Calabria aimed at preventing the ghettoization of the Roma. The police had also received training in cultural diversity and migration-related issues and legislation.

24. In the context of international efforts to combat terrorism, parliament had adopted by an overwhelming majority Act No. 155/2005, which was in conformity with the relevant EU legislation and was currently in force.

25. Ms. SVEAASS, Country Rapporteur, acknowledged the State party’s efforts to promote human rights and eliminate torture, and welcomed its signature of the Optional Protocol to the Convention but wondered when it would proceed to ratification. She took note of the addition of torture to the Military Criminal Code in Time of War and relevant measures adopted since the preparation of the fourth periodic report. She noted that the report, due in 2002, had not been submitted until 2004, said that its format made it somewhat difficult to understand and enquired whether civil society had been involved in its preparation. She further noted that the State party had not yet submitted a core document.

26. Mr. MARIÑO MENÉNDEZ, Alternate Country Rapporteur, said that he would ask questions relating to articles 1-9 of the Convention, in particular articles 1-4. He looked forward to the adoption of the Amato-Ferrero bill on asylum and the incorporation of related

EU directives. He also welcomed the reintroduction of the bill to add articles 613 bis and 613 ter, concerning torture, to the Criminal Code, but expressed concern that the definition of torture contained therein was less comprehensive and absolute than that contained in article 1 of the Convention, which was the internationally accepted standard.

27. Although article 609 bis of the Criminal Code criminalized sexual violence, it did not list examples of such crimes and he asked if female genital mutilation, which might also be considered a form of torture under the Convention, would be considered a crime. According to the delegation's oral replies, an individual could not be deported to a country where there was a risk of persecution on a number of grounds, including gender, and he wondered whether the risk of female genital mutilation, or rape in times of conflict, for example, would be considered grounds for granting asylum or refugee status. He also enquired whether the inclusion of torture in the Military Criminal Code in Time of War meant that the use of torture could be considered a war crime, whether the International Criminal Court might have jurisdiction and whether the State party considered the Convention applicable during an armed conflict.

28. Since the crime of torture had not yet been specifically incorporated into domestic legislation, there were no statistics relating to the number of possible cases, the types of crimes and the perpetrators. He urged the State party to move rapidly to specifically criminalize torture and recalled the obligation of States parties under the Convention to investigate all allegations of torture or inhuman treatment, not only physical but also psychological and mental, including torture by agents of the State.

29. Article 2 of the Convention underscored a State party's obligation to prevent acts of torture, and he expressed concern that under Act No. 155/2005, the so-called Pisanu decree on anti-terrorism measures, detainees could apparently be held for up to eight days without access to a lawyer, which seemed excessive. He asked for clarification on that issue and on the availability of medical care for such detainees. Most detainees were foreigners, and he had received reports that their detention could last months or years, even six years in one case. He asked if there was any legislation concerning the detention of foreign nationals and whether there were any limits on the length of their detention.

30. Turning to article 3 of the Convention, he wondered how the principle of non-refoulement was applied in practice, and recalled that the Convention allowed for no derogations from that principle if there was a risk of torture. More information would be welcome on the powers of border police to deny entry to a refugee-claimant or asylum-seeker and on the role of the Head of Police Administration (Questore). The number of illegal immigrants, many of whom arrived by sea, had increased greatly in 2004 and 2005, and he urged the delegation to respond to concerns raised by human rights defenders relating to alleged secret collective deportations of aliens, who had thereby been denied the right to have their claim for refugee status or asylum heard.

31. Many immigrants had been deported to Libya, even if they were not Libyan citizens, and he asked whether there was any procedure to appeal a deportation order and whether the State party had tried to follow up on the situation of deportees in Libya. The delegation should comment on reports that the State party had concluded with the Libyan authorities an agreement on the building of detention centres for migrants in Libyan territory, and indicate how migrants' rights to a hearing of their claim for refugee status or asylum and to non-refoulement if they risked torture would be protected.

32. It was his understanding that a foreigner illegally present in Italian territory could be deported by administrative order and that under the “Pisanu decree” deportation could be immediate, although an appeal was possible to the regional administrative tribunal. He asked if consular representatives were automatically notified of the detention of one of their nationals or of the presence of one of their nationals claiming refugee status, asylum or humanitarian protection. He stressed the importance, when adopting relevant EU directives or enacting new legislation aimed at regulating immigration, of ensuring that the rights of foreign nationals were protected, in particular with regard to the principle of non-refoulement as set out in the Convention.

33. Referring to article 4 of the Convention, he expressed concern that the penalties for the use of torture under the Military Criminal Code in Time of War did not appear to be severe and recalled that article 4 (2) of the Convention required that penalties for offences involving torture should be appropriate and take account of their grave nature. He expressed concern that the measures adopted by States parties to combat terrorism were having the effect of diminishing human rights protection and therefore welcomed efforts by the State party to prosecute State agents for their involvement in the illegal detention of foreigners or their transfer to States where they might face torture. He requested an update on the State party’s efforts to extradite agents of the United States of America’s Central Intelligence Agency (CIA). More information would likewise be welcome on the State party’s efforts to provide diplomatic protection for its citizens, in particular in the case of an Italian citizen of Arab origin who had been subjected to torture after being transported to Morocco.

34. Ms. SVEAASS, Country Rapporteur, welcomed the extensive information provided in the report and written replies concerning human rights training for law enforcement officials. She asked whether there was any follow-up to that training, and whether any evaluation was carried out to assess its effectiveness. She asked what the consequences were for participants in training courses who displayed attitudes or behaviour that were not in keeping with the spirit of the training. It was also important to include a component on non-discrimination against immigrants and other ethnic communities in such training.

35. She requested more specific information on research on police behaviour vis-à-vis the Roma community. She would welcome further information on training in the field of crowd control, particularly the use of non-violent methods. She asked what kind of occupational training was provided to personnel in the various temporary-stay and protection centres. She also wished to hear about measures taken to tackle domestic violence, particularly how the police and others involved in that area had been trained to intervene in those situations. She requested additional information on specific training to enable health personnel to detect signs of torture and provide rehabilitative care. To what extent had the Istanbul Protocol - the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - been incorporated into such training?

36. Noting that the replies to questions 19 and 20 of the list of issues concerning article 11 appeared to relate only to foreigners, she requested additional information on all detainees. She would also welcome additional information on the National Commission on the Protection of

Human Rights. She asked for an update on the current situation with regard to overcrowding and antiquated conditions in prisons and what measures were being taken to address those problems. She would also welcome information on the use of solitary confinement, and suicide in prisons and detention centres.

37. The Committee had been informed of a number of cases of the use of force by police during riots and large demonstrations, and she wished to know how those cases had been dealt with. It appeared that a number of legal proceedings had been initiated, but she wondered whether anyone had actually been convicted or sentenced for their participation in the riots of 2001 and later incidents referred to in the report. She would also be interested to hear any general comments on how the use of force and violation of human rights principles had been investigated and what assistance was provided to persons wishing to file a claim.

38. She expressed concern that, although the issue of compensation for victims of torture had been discussed at length during the consideration of Italy's previous periodic report in 1999, there was no reference to it in the current report or written replies. She welcomed Italy's continued contribution to the United Nations Voluntary Fund for Victims of Torture, and asked about concrete measures of redress and compensation ordered by the courts, how many requests had been made and how many granted, and actual amounts paid out.

39. Concerning the article 15 provision that any statement established to have been made as a result of torture should not be invoked as evidence in any proceedings, she requested clarification of the meaning of the reference in the written replies to articles 64 and 188 of the Code of Criminal Procedure, which provided that during questioning and the gathering of evidence, methods or techniques liable to influence judgement or to affect the ability to remember and evaluate facts could not be used, even with the consent of the person involved. Were there cases in which that had occurred, and if so, what had been the consequences?

40. Welcoming the various initiatives and legislative enactments in the area of non-discrimination and integration of foreigners, she asked whether there was any clear overview of how the courts had dealt with infringements of that legislation, and how many people had been convicted in that connection. In relation to human trafficking, she noted that many cases were currently being investigated, and requested information on convictions or sentencing. She also wished to know how many victims had received treatment under the programmes described in the report.

41. Noting that levels of domestic violence were very high, she said that the problem clearly needed vigorous attention and asked what legal measures were being adopted in addition to those in the social and psychological fields. She wished to know how many of the reported cases of domestic violence had been witnessed by children. Noting that there had been cases of Italians being convicted for sex crimes committed abroad, she asked whether there had been any similar convictions for crimes committed in Italy. She requested clarification of the reference in the written replies to the extension of general aggravating circumstances in cases of sexual violence to crimes committed on grounds of sexual orientation.

42. Ms. BELMIR expressed concern that there were some cases in which the judge could delay the exercise of the right of persons in police custody to have access to defence counsel by five days, and asked whether it was possible to appeal against such decisions. Regarding access

to medical examination, she asked why it was not the prison governor who authorized the medical examination for persons awaiting judgement in the first instance but rather the judicial authority. She expressed concern that there was no facility in police stations for detainees to talk to their lawyers, and also that, according to some NGOs, there were acts being committed that would fall under the purview of article 1 of the Convention and needed to be addressed.

43. She noted that various NGOs and international human rights bodies had recommended that the Italian juvenile justice system should be reformed, taking into account a number of guarantees provided for in the Convention on the Rights of the Child and other instruments, in particular with respect to vulnerable children such as unaccompanied children and children belonging to minority groups. She expressed concern about the expulsion of unaccompanied children, some of whom had been expelled without any assurances as to their age or identity. She would welcome explanations in that regard.

44. Concerning refoulement, she expressed concern about the case of Mr. Britel, who had been returned to Morocco without his lawyer being informed. It had taken a long time for the Moroccan judicial authorities to grant him access to a lawyer, the guarantees of a fair trial and access to the media in order to draw attention to his situation.

45. Mr. CAMARA expressed concern at the apparent inconsistency with which the Italian judicial authorities treated crimes committed abroad against Italian citizens, on the one hand, and those committed by Italians abroad, on the other. He expressed particular concern at the handling of the case of Jorge Olivera, an Argentine military officer, whose extradition had been requested by France. As part of the extradition proceedings, the Rome Court of Appeal had ruled that the crimes of which he had been accused were subject to a statute of limitations, which was surprising, as it was not normal practice in extradition proceedings for the judicial authorities to examine the substance of the case. The treatment of the case of the Italian military personnel who had committed odious crimes of torture against Somali citizens while serving on a peacekeeping mission had also been extremely surprising. He wished to know whether there had been investigations in Somalia in that case. Had independent judicial authorities travelled to Somalia to identify the victims? The sentences had been derisory given the seriousness of the crimes. Were there plans to hold an inquiry in Somalia, or had the case now been closed? He wondered whether such patent impunity might not lead to reprisals against the Italian armed forces in countries in which they were operating.

46. Mr. GALLEGOS CHIRIBOGA stressed the importance of defining torture in the Criminal Code, and said that cases of torture in the context of human trafficking and other migratory phenomena should be investigated.

47. Mr. GROSSMAN stressed the importance of incorporating the definition of torture into national legislation and of examining each asylum case on an individual basis.

48. Ms. LUCIDI (Italy) said that genital mutilation was punishable by 4 to 12 years' imprisonment. About 20 asylum applications had been received from women from Nigeria, Togo, Somalia, Guinea and Cameroon who had been subjected to genital mutilation.

49. Mr. MORCONE (Italy) said that all temporary-stay and assistance centres, and also identification centres, were managed by civilian staff. Police ensured law and order outside the centres and had no contact with the aliens except for reasons of public safety. International and non-governmental organizations had helped to improve the quality of the medical and legal assistance provided to aliens in those centres. Special attention was paid to their needs. In particular, they were given an opportunity to engage in cultural activities and to receive vocational training. No aliens were discriminated against on any grounds.

50. Referring to question 14 of the list of issues, he said that his Government no longer planned to build holding centres for migrants in Libya. However, it had agreed to build health centres and a facility where police would be trained under a bilateral cooperation agreement between Italy and Libya.

51. Ms. LUCIDI (Italy) said that the law prohibited the expulsion or extradition of individuals to countries where they were at risk of being subjected to persecution on grounds of race, gender, language or religion. Although discrimination on grounds of sexual orientation was already taken into account when examining asylum applications, her Government intended to explicitly include it among relevant grounds for non-discrimination.

52. Mr. PINTO (Italy) said that a distinction must be made between the concepts of “refoulement” and “expulsion”. “Refoulement” was a measure adopted with regard to aliens who had recently crossed the Italian border. “Expulsion” related to the removal of aliens who had been present on the national territory for a certain time and who had broken the law or failed to apply for a residence permit. Aliens who had failed to meet the requirements for entry into the country could be returned. In the case of the island of Lampedusa, the law authorized the immediate expulsion of aliens who had evaded border controls. The relevant provision applied specifically to illegal immigrants who had come to the island by boat. Upon arrival, illegal immigrants were provided with food and medical assistance; they were interviewed to determine their nationality. Unaccompanied children were placed with local families. Under article 33, paragraph 2, of the Convention relating to the Status of Refugees, an exception to the principle of “non-refoulement” could be made in cases when an alien posed a danger to national security. The so-called “Pisanu decree” did not constitute a violation of the “non-refoulement” principle, since it authorized the expulsion of aliens who, following a thorough investigation by the intelligence service, were regarded as a danger to national security. Owing to the massive presence of Egyptians among the illegal immigrants, the Libyan authorities had authorized the expulsion of Egyptians to Libya in order to facilitate their return to Egypt.

53. Ms. LUCIDI (Italy) said that the concept of “voluntary and assisted repatriation” had been introduced into Italian legislation. If aliens agreed to leave voluntarily and cooperated with the Italian authorities, her Government undertook to finance the return to their country of origin and to financially support their reintegration into society upon return.

54. Ms. FORTE (Italy) said that, in addition to the basic training provided to all police officers at the beginning of their career, human rights training was now being provided to police officers at all levels. Officers who were promoted had to undergo additional training.

55. Ms. DELLA MONICA (Italy) said that genital mutilation was a crime under Act No. 7 of 9 January 2006. Numerous civil society organizations were actively involved in protecting victims of genital mutilation and domestic violence. Special campaigns were conducted with a view to raising public awareness of the issue. A free-of-charge hotline was in place for victims of genital mutilation and domestic violence. A plan of action to combat all types of violence would be drawn up and a special centre would be established to monitor violence against women and children. An inter-ministerial committee and a number of NGOs were actively combating the phenomenon of trafficking in persons.

56. Mr. PALAZZI (Italy) said that Italian legislation contained specific anti-discrimination provisions and established the principle of equality of persons, regardless of their race or ethnic origin. Legal remedies were available to victims of discrimination. A special anti-discrimination bureau had been set up at the national level to combat discrimination through preventive measures and awareness-raising campaigns. Great importance was attached to combating discrimination against the Roma, who were among the most vulnerable groups within the population.

The meeting rose at 1.10 p.m.