



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

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Summary record of the first part (public)* of the 938th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 4 May 2010, at 10 a.m.

Chairperson: Mr. Grossman

Contents

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

Third periodic report of Liechtenstein

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.938/Add.1.

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The meeting was called to order at 10.05 a.m.

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

Third periodic report of Liechtenstein (CAT/C/LIE/3; CAT/C/LIE/Q/3/ and Add.1)

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

2. **Mr. Marxer** (Liechtenstein), introducing the third periodic report (CAT/C/LIE/3), said that his Government attached great importance to all international and regional human rights treaties and to their effective implementation. It was committed to strengthening the system of human rights protection within the United Nations, especially through the treaty body system. Its unwavering commitment to the absolute prohibition of torture was evident from its advocacy of international standards in multilateral bodies and in resolutions concerning torture in the Human Rights Council and the General Assembly. His Government had also contributed to setting up and developing the International Criminal Court. No case of torture or inhuman or degrading treatment or punishment had been recorded in Liechtenstein since its accession to the United Nations and other international organizations.

3. The legal framework and practice for implementing the Convention in Liechtenstein had improved significantly since its second report to the Committee in 1999. In November 2006, it had ratified the Optional Protocol to the Convention. In revising its Enforcement of Sentences Act, it had established a Corrections Commission to monitor the enforcement of sentences. The Commission had been designated as Liechtenstein's national preventive mechanism under the Optional Protocol. Its regular reports and recommendations provided the basis for a constructive dialogue on penal matters with the Ministry of Home Affairs and the Ministry of Justice. According to the Commission's annual report for 2009, no complaints of ill-treatment had been made by detainees. The revised Enforcement of Sentences Act reflected recommendations by the European Committee on the Prevention of Torture, including recommendations on the frequency of prison visits by the Corrections Commission and on the Commission's reports to the Government.

4. The Code of Criminal Procedure had been amended to improve the protection of witnesses and the treatment of pretrial detainees. Under the Victims Assistance Act of 2008, the Victims Assistance Office made further provision for the compensation and rehabilitation of victims, in line with article 14 of the Convention. The report on a visit to Liechtenstein, including police facilities and Vaduz prison, made in 2004 by the Council of Europe's Commissioner for Human Rights had confirmed that there had been no cases of torture or inhuman or degrading treatment or punishment.

5. Liechtenstein had contributed to global action to combat torture as part of its activities to promote international humanitarian cooperation and development. For many years it had supported the United Nations Voluntary Fund for Victims of Torture and the World Organization Against Torture. Since 2009, it had supported a prevention programme in Latin America through the non-governmental Association for the Prevention of Torture. Since the beginning of the reporting period, Liechtenstein had contributed over \$US 600,000 to global action against torture.

6. **Ms. Kleopas**, First Country Rapporteur, expressed appreciation for the concise but comprehensive report submitted by the State party, and its substantial contribution to global action against torture. She also welcomed its ratification of the Optional Protocol and its designation of a national preventive mechanism.

7. According to the State party's written replies (CAT/C/LIE/Q/3/Add.1, para. 5), there were no current plans to incorporate a definition of torture into its Constitution. The provisions of the Convention were already part of its monist legal system, since torture and inhuman or degrading treatment or punishment were expressly prohibited and punished under articles 83–90 and 312 of the Criminal Code. That might be so, but the absence of a specific offence of torture, as defined in the Convention, could make it impossible to impose appropriate sentences for acts amounting to torture and thus defeat the purpose of the Convention. Quoting paragraph 11 of the Committee's general comment No. 2, she pointed out that codifying the offence of torture emphasized the need for appropriate punishment that took into account the gravity of the offence and enabled the public to challenge State inaction that violated the Convention. She hoped the absence of complaints about torture in the State party did in fact mean that there had been no cases of torture, and was not attributable to the fact that torture was not a specific offence in the State party. She noted that a five-year statute of limitations applied to offences under article 312 of the Criminal Code (report, para. 39). However, under international law the prohibition of torture was a peremptory norm and torture was a non-derogable offence to which no statute of limitations could apply.

8. Under article 128 (a) of the State party's Code of Civil Procedure, every arrested person must be informed upon arrest or immediately thereafter of the suspected offence and the reason for the arrest, and of his or her right to inform a relative or confidant and to designate defence counsel (report, para. 17). According to that Code, defence counsel must be appointed for the entire period of pretrial detention. It was not clear, however, whether a detainee could be deprived of the right to consult counsel, without supervision, from the beginning of pretrial detention.

9. A person could be detained by the police for up to 24 hours and must be informed of the reason for the detention. However, the opportunity to notify a confidant could be withheld if doing so "would endanger the purpose of the measure" (*ibid.*, para. 21). That exception could lead to detention taking place without due process. According to article 129 of the Code of Civil Procedure, an accused person could in some circumstances be detained by law enforcement authorities without a written order "for purposes of presentation to the investigating judge". That statement was unclear, but it could be interpreted as meaning that administrative detention could take place without due process and without access to a lawyer, relative or doctor from the outset.

10. The right of detainees to have access to a doctor had been guaranteed by the State party's Public Health Act, but no separate provision to that effect was being included in the new revised Act. Had it been further amended to include that right? When taken into custody, detainees were given a notice, which they were asked to sign, stating that they could inform a relative, consult a lawyer and designate a doctor to be consulted for the purpose of a medical examination, at their own expense, unless that would delay the investigation. That condition could imply that detainees did not in fact have a legal right to consult a doctor from the outset.

11. She wondered what measures the State party had taken to guarantee the rights of detainees under its bilateral extradition treaty arrangements with Austria (*ibid.*, para. 57).

12. Turning to the question of safeguards for persons in psychiatric hospitals and social welfare establishments, she said the European Committee for the Prevention of Torture (CPT) had recommended that mental patients should be enabled to give free and informed consent to treatment, and that the right to do so should be protected by law and any exceptions strictly defined. What provision was being made by the State party in its revised Mental Health Act to comply with that recommendation?

13. In 2007 the CPT had recommended that the practice of covering the heads of persons following arrest (“hooding”) should be abolished. The Committee also took that view. The Special Rapporteur on torture had found that the practice made it virtually impossible to prohibit torture, because the victim was unable to identify the torturer. The State party was nevertheless persisting in the practice in certain rare instances.

14. On the question of legal aid, an important right for anyone seeking to defend himself or herself in a court of law and a fundamental guarantee of a fair trial, it appeared from the notice given to detainees that legal aid was not available from the beginning of their detention but only when they were remanded in custody. That meant that they were not represented while being questioned by the police. Asylum-seekers also experienced difficulty in obtaining legal aid and advice.

15. Given that the State party had appointed its Corrections Commission to serve as its national preventive mechanism under the Optional Protocol to the Convention, it would be desirable for it to amend its Execution of Sentences Act to give the Commission a specific mandate and specific functions under the Optional Protocol. According to article 17 of the Act, at least two of the five members of the Commission should not be members of the national public administration. That meant, however, that the other three could be public officials, which could compromise the independence of the Commission as the national preventive mechanism, and could also restrict the number and nature of the places of detention it was able to visit. It was however commendable that four visits had been made by the Commission in 2009 to the national prison and to police cells. The Commission had made constructive recommendations, and she hoped the State party would inform the Committee of the status of implementation of the five or six on which it had no information.

16. On the question of setting up an institution distinct from the Commission with the task of promoting human rights, the State party seemed reluctant to do so because of its small size. One solution would be to establish an institution with a broad mandate and capacity to receive and investigate human rights complaints, including complaints about violations of children’s rights.

17. She welcomed the State party’s ratification of the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. However, the State party was unable to supply sufficient statistical data for the Committee to ascertain whether it was complying with its obligation of non-refoulement under article 3 of the Convention against Torture. It could perhaps set up a unit for the purpose of preparing statistical data for all the United Nations human rights treaty bodies; in doing so, it would be able to draw upon technical assistance from OHCHR. Reports indicated a significant rise (to around 228) in the number of asylum-seekers in the State party in 2009. It was not clear whether their claims were being examined on their merits or to which countries those refused asylum were being returned. Reports also indicated that pressure was put on asylum-seekers to leave the State party and that the sum of 300 Swiss francs was being offered as an inducement to them to do so. That information had come from reliable sources.

18. Information also available to the Committee suggested that inadmissibility decisions were based on implausibility or inadequacy of asylum-seekers’ answers about their travelled route, before they had even had an opportunity for their claim to be examined on its merits. It must be remembered that asylum-seekers were desperate people, fleeing dangerous situations. In failing to undertake a substantive review of the merits of claims for international protection, and in seeking to bring about the premature departure of asylum-seekers, the State party was breaching its obligations under the 1951 Convention relating to the Status of Refugees, which required that the State party should assess the asylum claim or else identify another State responsible.

19. Even in cases where the State party returned asylum-seekers, it was very important to ensure that all safeguards were in place, that asylum claims would be properly reviewed, and that people were not at risk of being returned in breach of article 3 of the Convention against Torture.

20. Also, there were reports that asylum-seekers had been held in detention merely on the grounds of their illegal entry into Liechtenstein. The detention of bona fide asylum-seekers exclusively on the grounds of illegal entry violated article 31 of the 1951 Convention. Other information received by the Committee indicated that, owing to limited capacity in the normal reception centre, in 2009 some asylum-seekers had been accommodated in an underground bunker, which admitted no daylight. That was particularly detrimental to the needs of families, unaccompanied children, other vulnerable people or indeed any asylum-seeker. She requested information on progress with the revision of the Foreigners Act and the Asylum Act, with particular regard to conditions and length of detention of foreigners.

21. Another issue of concern to the Committee was that it was very difficult for a stateless person to acquire naturalization because the normal condition for eligibility was 30 years' residence in Liechtenstein. The same requirement applied to refugees, whereas under article 34 of the 1951 Convention the State party had an obligation to facilitate the naturalization of refugees as far as possible.

22. Referring to the interrogation of detainees, she asked what rules, instructions and practices were adopted by the State party in order to comply with the Convention against Torture, and in particular whether a lawyer could be present during all interrogations and whether all interrogations were recorded, preferably on video, and the identity of all persons present included.

23. Another issue on which she did not have any information was how the State party decided on the admissibility or otherwise of a statement or confession obtained through torture. Was there a separate legal proceeding to determine whether such a statement should even reach the judge or jury?

24. **Mr. Wang Xuexian**, Second Country Rapporteur, commended the professionalism of the State party's report. Referring to article 10, and observing that the Corrections Commission had said that training courses for officers at Vaduz prison were not in fact put into effect, he sought comments from the delegation. He also asked whether the State party had any intention to train medical personnel, either in Liechtenstein or abroad, to serve in Vaduz prison.

25. Noting, with regard to article 11, that the national preventive mechanism had recommended that a solution be found for the shortage of space and personnel in Vaduz prison, he asked for the State party's comments.

26. Observing that the State party, in different places in its various documents, had used three different terms relating to a particular type of cell – isolation cell, secure cell and observation cell, he wished to know if those terms meant the same thing and what was the function and legal basis of those cells.

27. The Committee had received reports of five minors being held in the same prison as adults. He asked whether that was still the case, noting that the Committee had always urged that minors be kept separate from adults and, if so, whether the State party had any intention of separating them. He also asked whether the State party had given thought to penalties other than prison for minors.

28. Referring to article 16, and recalling that the State party had reported in paragraph 103 of its written replies that a revision of the law on sexual offences was under way and that the new version would include domestic violence as a specific offence, he asked about

progress with that revision. He also sought clarification of the apparent contradiction between paragraphs 103 (b) and 105 of the written replies: were data on domestic violence collected systematically or not.

29. Recalling the State party's assertion that there was no human trafficking in the country, he sought further information on reports that 207 female dancers had been admitted to the country. He asked whether the State party had verified that they were no more than professional dancers and not involved in trafficking in any way.

30. **Mr. Gallegos Chiriboga**, acknowledging Liechtenstein's contribution to the negotiation of the Convention on the Rights of Persons with Disabilities, referred to the report on inspections of psychiatric institutions where people with mental disabilities, ostensibly under treatment, might in fact be deprived of their liberty, as had been reported to the Committee by NGOs involved in the field of disability.

31. Referring to reports that asylum-seekers had been detained solely on the grounds of illegal entry, he said that detention for asylum-seekers should be used only as a last resort and for as short a time as possible. Perhaps the delegation would care to comment.

32. **Mr. Gaye** said that he would welcome clarification on the institutional framework and political structure of the State party. First, he wished to learn more about the status of the Reigning Prince, observing that, according to paragraph 7 of the report, laws voted by parliament could not enter into force unless they received the sanction of the Prince and pointing out that the Prince's was a hereditary position whereas parliament comprised elected deputies.

33. The Prince had considerable constitutional power, including authority to dissolve the National Assembly and dismiss the Government. He asked whether those powers were controlled and, if so, how. Noting also that the appointment of judges must be approved by the Prince following their election by parliament, he wished to know what were the guarantees of the independence of judges.

34. He was also not yet clear on the status of international instruments such as the Convention. He understood they were fully integrated into domestic positive law immediately upon ratification, but with what rank? He saw in paragraph 11 of the report that there was a procedure that could be undertaken in the Constitutional Court to verify constitutionality, but he wished to know who could approach that Court and how.

35. While paragraph 23 of the report stated that access to a physician was guaranteed, he asked how that physician was appointed and how the physician's independence was guaranteed.

36. With regard to issues concerning migrants, he would appreciate an explanation of what was involved in preventive expulsion measures, and whether there was any possibility of appeal against them. Noting that, as in many States, a foreigner was detained once he was in an illegal situation vis-à-vis immigration law, he asked whether there were no alternatives to detention.

37. **Mr. Bruni** said the fact that no allegation of torture or ill-treatment had been submitted to the judicial authorities of the State party since the Convention's entry into force was a very encouraging sign. Few States parties had such a positive record. He also appreciated the very clear and comprehensive report and written replies.

38. Paragraph 28 of the report, relating to article 2 (3) of the Convention, stated that in Liechtenstein the order of a superior could not be invoked to justify torture. However, he asked what appeal procedure would be available in practice to a law enforcement official who received an order that, in his view, entailed an act of torture or an act conducive to inhuman or degrading treatment or punishment. Could the official contest that order?

39. With regard to article 10, in paragraph 60 of the report and paragraph 59 of the replies it was stated that security officers were trained for three months in how to treat and take care of prisoners and other persons in their charge, but there was no special training programme for the medical profession, as had already been mentioned by Mr. Wang Xuexian. He could understand the reasoning that Liechtenstein was a small country, its medical professionals were educated abroad and the country only had one small prison, but he wished to bring to the State party's attention the manual on investigation and documentation of torture, known as the Istanbul Protocol, published by the United Nations in 2004. That provided legal and medical information for all professionals dealing not only with persons under arrest but also asylum-seekers or migrants, and could be a useful tool to detect signs of ill-treatment or torture in the case of persons who did not wish to complain of torture because they were frightened, traumatized or from a different cultural environment. He would like to hear the State party's opinion on that matter.

40. With regard to article 13, paragraph 76 of the report gave information on measures for the protection of young victims and victims of sexual offences and torture. He asked the State party to clarify whether a person who complained of abuse in a place of detention was entitled under the law to the most urgent measure of protection, namely to be transferred to a place where he or she would no longer be in contact with the person responsible for the abuse.

41. **Ms. Gaer** commended the exemplary role played by Liechtenstein in relation to the eradication of torture. While it was admirable that there had been no cases of torture in Liechtenstein, at the same time there was no offence of torture. Thus, even if something along the lines of torture were to occur, there was no specific charge that could be laid against the perpetrator. The Convention did set store by the establishment of a specific offence of torture.

42. Paragraph 74 of the written replies stated that over the past 10 years 125 prisoners had been transferred to Austria to serve their sentences owing to Liechtenstein's limited prison capacity. She sought information on the breakdown of those persons, by gender, age, race and nationality, and whether or not they were citizens of Liechtenstein.

43. With regard to monitoring in facilities other than prisons, she sought information about whether there had been any systematic monitoring of claims of physical abuse, abuse of administration of medicines or sexual abuse. If so, had there been dismissals and had charges been brought?

44. Paragraph 104 of the written replies, responding to question 25 regarding domestic violence, gave some statistics, but she would appreciate additional data on gender, age, race and nationality, and whether or not the persons concerned were Liechtenstein citizens. The second part of the chart was less clear. It spoke about measures, such as police counselling, expulsions and prohibition of entry. She asked for clarification of what expulsion meant. Expulsion from Liechtenstein or from the home? Or prohibition of entry to the home or to the country?

45. It had been indicated that there were no statistics on whether crimes had been committed with a racial motivation. She asked for an update on any progress made in that area or any plans to develop such indicators. Understanding that the Committee on the Elimination of Racial Discrimination had been told by the State party that a study on the root causes of extremism, particularly right-wing extremism, was in progress and that results had been expected by 2009, she asked whether it had been completed.

46. While appreciating that there had been no cases in Liechtenstein involving article 3 of the Convention, she nevertheless wished to ask about the standards applied. The article prohibited expulsion of a person to a State "where there are substantial grounds for believing that he would be in danger of being subjected to torture". What standards did the

authorities use in making that assessment? Did they require certainty that a person would be at risk of torture? Did they use the criterion adopted by some States that torture was “more likely than not”? To what extent was the assessment in accordance with due process requirements? Was it an administrative or judicial assessment? Any clarification would be welcome.

47. **Ms. Belmir** said that the State party had sought to justify the lack of a definition of torture in its domestic law by referring in the report to its ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms. However, that Convention contained no definition of torture. The elements of the offence had been defined by the European Court of Human Rights in its jurisprudence.

48. With regard to pretrial detention and police custody, she noted that the Public Prosecutor’s Office, the investigating judge and the trial court tended to consult each other about the apportionment of responsibilities. The initial pretrial detention period of 14 days could be extended on review by one month and on further review by two months. She asked whether the same period was prescribed for all offences or whether the seriousness of the offence was taken into account.

49. According to paragraph 22 of the report, the law enforcement authorities were permitted in exceptional cases to arrest a person without a warrant. She asked whether they were invariably cases of *flagrante delicto*.

50. According to paragraph 21, an arrested person must be given the opportunity to notify a relative or trusted person, unless “the purpose of the measure” would be jeopardized. She asked the delegation to explain what was meant by that phrase.

51. She requested further information about the procedures for the appointment of judges, their term of office and the involvement of the Reigning Prince.

52. Although very few minors were detained, the Committee on the Rights of the Child had recommended that the State party should specify in its legislation the maximum period of pretrial detention for minors, which should be less than that for adults.

53. When the Council of Europe’s European Committee for the Prevention of Torture had visited Liechtenstein in February 2007, it had received allegations of excessive use of force, tight-fitting handcuffs, verbal abuse at the time of arrest and, in at least one case, the hooding of the arrested person for the duration of his apprehension and transfer to custody. The Committee had urged the authorities to ensure that police officers were reminded at regular intervals that all forms of ill-treatment, including verbal abuse, were unacceptable and would be severely sanctioned.

54. **Ms. Sveaass** said that one of the recommendations contained in the report of the Working Group on the Universal Periodic Review (A/HRC/10/77) was that Liechtenstein should include references to sexual orientation and gender identity in its equality laws and initiatives. The State party had said in response that its laws and procedures were already being reviewed with a view to eradicating such discrimination. She asked what progress had been made in that regard.

55. Referring to the creation of ombudsman’s offices for persons with disabilities and under the Victims Protection Act, she asked how the reports of the officials concerned were presented and disseminated.

56. The replies to the list of issues referred to the important work of the Victims Assistance Office on behalf of victims of criminal offences and of torture or other cruel, inhuman or degrading treatment or punishment. She enquired about the professional composition of the team and asked whether refugees who had been exposed to torture before arriving in Liechtenstein could also avail themselves of their services.

57. **Mr. Mariño Menéndez** noted that the lack of statistics on asylum requests and applications for long-term residence permits in Liechtenstein was attributed to limited human resources. The Committee would greatly appreciate any extra effort that the State party could make in that regard.

58. He noted that Liechtenstein had concluded readmission agreements on asylum-seekers with Switzerland and Austria and that the Government had sought to return some asylum-seekers to Italy. If decisions under such agreements were taken automatically without considering the merits of the asylum application, the principle of non-refoulement might be breached. According to the replies to the list of issues, the Foreigners Act was being reviewed in the light of Directive 2008/115/EC of the European Parliament and Council of 16 December 2008 on common standards and procedures in member States for returning illegally-staying third-country nationals. How soon was the amended version likely to be adopted?

59. The treaties ratified by Liechtenstein listed in the report contained no instrument concerning trafficking in persons. If there were women victims of trafficking in the country, they merited special protection. For instance, they could be offered a residence permit for assisting in action to combat trafficking networks.

60. Although some sentences imposed by the State party were served in Austrian or other prisons, the Liechtenstein authorities still bore responsibility for the well-being of the detainees. He asked whether any oversight mechanisms had been established.

61. **The Chairperson** said he understood that Liechtenstein, as a small country, encountered problems in assigning personnel and resources to handle issues pertaining to the implementation of the Convention. For instance, the number of applications for asylum had increased from 26 in 2008 to 227 in 2009. More trained personnel were required, especially to ensure compliance with the provisions of article 3.

62. According to the replies to the list of issues, when asylum-seekers claimed that they would face a risk to life or limb upon expulsion or return, the claim was reviewed in depth. He asked what judicial body reviewed such claims and what steps were being taken to improve statistical data on asylum-seekers.

63. How frequently had arrested persons been hooded to prevent the identification of police officers? And what was the Correction Commission's attitude to that practice? He suggested that less degrading alternatives might be used.

The public part of the meeting rose at 11.55 a.m.