



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

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COMMITTEE AGAINST TORTURE

Thirty-eighth session

SUMMARY RECORD OF THE 763rd MEETING

Held at the Palais Wilson, Geneva,
on Monday, 7 May 2007, at 10 a.m.

Chairperson: Mr. MAVROMMATIS

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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)

Fourth periodic report of the Netherlands (CAT/C/67/Add.4; CAT/C/NET/Q/4/Rev.1 and Rev.1/Add.1)

1. At the invitation of the Chairperson, the members of the delegation of the Netherlands took places at the Committee table.
2. Mr. de KLERK (Netherlands), introducing the fourth periodic report, apologized for its late submission and said his delegation's written replies contained updated information on relevant developments since 2002. Each constituent part of the country was responsible for implementing the Convention within its territory; the current report covered only the European part of the Netherlands and Aruba. A report from the Netherlands Antilles covering the period 1998-2006 would be submitted shortly. As an interim measure, the Government of the Netherlands Antilles had provided an extensive response to the question relating to it in the Committee's list of issues.
3. His Government had made combating torture a fundamental objective. It contributed more than 1 million dollars annually to the United Nations Voluntary Fund for Victims of Torture. All its obligations under the Convention had been incorporated into national legislation, and numerous regulations and policies had been adopted to strengthen the rights enshrined in the Convention. For example, the International Crimes Act, which had entered into force on 1 October 2003, fully incorporated the definition of torture contained in the Convention. His Government was also expected to ratify the Optional Protocol to the Convention by the end of the year.
4. Turning to the issue of procedures for dealing with asylum-seekers, he said that the Aliens Act, which had entered into force on 1 April 2001, provided for a new accelerated asylum procedure in addition to the regular procedure. The Act contained sufficient safeguards to ensure fair treatment of all applications, which were evaluated on the same grounds as under the regular procedure. An application could be rejected only if no further investigation was deemed necessary; if further investigation was deemed necessary but could not be carried out within the time limit set, the case was dealt with under the regular procedure. The decision to assign a case to the accelerated procedure was subject to judicial review at the request of the applicant or his counsel, and a rejection of an application was also subject to appeal.
5. Before the start of the procedure, asylum-seekers were provided with written information about it by the Immigration and Naturalization Service; since asylum-seekers usually spent several weeks at a reception centre before the initiation of the procedure, they had time to familiarize themselves with it, consult the Dutch Refugee Council and prepare supporting documents. Asylum-seekers had the right to free legal assistance and their legal adviser had the right to attend their interviews. In 2006, 3,906 applications had been reviewed under the accelerated procedure; 1,207 of them had been approved.

6. His Government believed that the accelerated procedure was consistent with its international obligations. On 31 October 2002, the Hague Court of Appeal had found that the accelerated procedure did not contravene the ban on refoulement under article 33 of the 1951 Convention relating to the Status of Refugees, that it provided sufficient opportunity for receiving legal assistance and gathering evidence, and that the time granted to legal advisers to prepare was not unduly brief for cases that lent themselves to the accelerated procedure. His Government was nevertheless committed to reviewing the procedure so as to address any concerns.
7. With regard to the detention of aliens, he said that an alien who was not a legal resident must leave the country; failure to do so could result in detention and expulsion. Detention, which was governed by administrative law, was used only if considered necessary to prevent an illegal alien from evading expulsion and was subject to many safeguards. Special attention was given to aliens with children. The Custodial Institutions Inspectorate had been asked to study the situation by the Minister for Immigration and Integration in 2005, and the current State Secretary for Justice planned to present a policy document on alien minors in detention, including limits on the use and duration of detention, in the near future.
8. As to the Psychiatric Hospitals (Committals) Act, he said that in January 2004 provision for a “conditional order”, allowing individuals to be treated on an outpatient basis as long as they met certain conditions, had been added to the Act. On 1 January 2006, an “observation order” had been added to the Act, allowing a three-week period of observation following committal to determine whether the individual was a danger to himself. In 2007, in response to the concerns of patients’ rights groups, the “advanced psychiatric directive” would take effect; it allowed symptom-free patients to frame a statement, in cooperation with their doctors, specifying the circumstances in which they could be committed and what treatment they wished to receive. Awareness campaigns had been organized to inform the public about the new measures and every five years an independent group of experts reviewed implementation of the Act, the level of public awareness and the need for changes. The third such evaluation would be submitted before the summer of 2007. Any recommendations would be closely studied by the Government in collaboration with stakeholders.
9. Ms. PETERSON (Netherlands), with reference to Aruba, said that the Execution of Custodial Sentences Act had been adopted by the Aruban parliament in late 2005. It established an extensive legal framework that defined the rights and duties of prisoners, specified precisely what infringements of their physical integrity were permitted, included rules regarding the use of isolation cells, and gave prisoners a legal right to complain about decisions regarding execution of their sentence.
10. The existing correctional institute had been enlarged and renovated, a new young offenders’ facility and a new women’s detention facility had been built, and a facility offering specialized care for mentally-disturbed prisoners was planned. Police detention cells in the capital had likewise been renovated. Furthermore, a draft Criminal Code would be submitted to parliament later in 2007, incorporating into domestic law many of the international instruments

to which Aruba was a party. Her Government also intended to ratify the Optional Protocol to the Convention as part of its commitment to take all steps necessary to protect human rights in its territory.

11. Ms. THEODORA-BREWSTER (Netherlands), referring to the Netherlands Antilles, said that, in spite of budget constraints, prison and police detention facilities were being renovated and modernized and capacity was being increased. She stressed her Government's commitment to taking whatever measures were necessary to protect human rights in its territory and to implement the recommendations of the Committee.

12. The CHAIRPERSON thanked the delegation for its report and replies to the Committee's list of issues. He suggested, however, that the State party might wish to update its core document (HRI/CORE/1/Add.66) to include, for example, measures adopted in the context of the so-called war on terrorism. The human rights situation, in particular with regard to torture, was generally satisfactory in the State party, but he cautioned that even in States with an excellent human rights framework, in the face of an emergency such as conflict, terrorism or the arrival of large numbers of immigrants, it was necessary to be vigilant and ensure that the response to such situations did not lead to a weakening of human rights protections, as was underscored in article 2 of the Convention.

13. Speaking as Country Rapporteur, he said that he agreed with most of the grounds cited by the Supreme Council in deciding that the 1982 "December murders" in Suriname could not be prosecuted in the Netherlands, except the requirement that such cases must have connections with Dutch jurisdiction. In his opinion, the aim of the Convention was clearly to ensure that no torturer would be able to find a safe haven anywhere.

14. He enquired whether the prohibition of corporal punishment for minors included corporal punishment in the home, whether the State party had sought diplomatic assurances in cases of rendition, and what the current situation was regarding rendition. With regard to the State party's reply to question 2, he pointed out that there was in fact at least one exception to universal jurisdiction, that being a connection to Dutch jurisdiction.

15. He acknowledged the Government's legitimate right to effectively put an end to abuses of the asylum procedure by illegal immigrants through the establishment of an accelerated procedure, but stressed that, in so doing, the Government must comply with article 3 of the Convention. He understood that most European countries also applied some sort of fast-track procedure, but none was as short as that used in the Netherlands. He expressed concern that not only those applications that were manifestly false were included in the accelerated process, but also more complicated cases, which merited lengthier consideration. Given the extremely short time frame for the accelerated procedure, he was surprised that the courts undertook only a marginal examination of the decisions of the Immigration and Naturalization Service. New evidence or changed circumstances, which could not with reasonable diligence be made available to the administrative authority in the time frame allowed under the accelerated procedure, should be admitted. The fact that the new Government had undertaken to review the accelerated procedure was encouraging, and he urged it to do so promptly.

16. Noting that in its report and responses to the list of issues the Netherlands, like many other European countries, referred almost exclusively to the European Convention for the Protection of Human Rights and Fundamental Freedoms, he pointed out that universal treaties were of equal importance and also merited reference.

17. He commended the work done by the Government in the area of war crimes or crimes against humanity, particularly in the Nzapali case, but asked what mitigating circumstances had accounted for the fact that that person had received a prison sentence of only 30 months, which did not reflect the gravity of the crimes he had committed.

18. He requested an explanation concerning the categorization of certain countries as unsafe, and asked whether the accelerated procedure was used for applications from citizens of those countries. He would also welcome information on whether there was any collective agreement on that matter, within the European Union (EU) for example. He welcomed the fact that the Government had signed the Optional Protocol to the Convention and planned to ratify it shortly.

19. Ms. SVEAASS, Alternate Country Rapporteur, commended the important work being done by the Netherlands internationally in the area of human rights and the role played by the International Criminal Court in The Hague.

20. She requested more specific information on how human rights issues, particularly the prohibition of torture, were addressed in training for police and prison personnel. She would also be interested to hear more on monitoring of the effect of such training and whether any training on cultural sensitivity was provided.

21. She asked the delegation to comment on the training of medical personnel and the European meeting held in Amsterdam in 2006 on how the Istanbul Protocol (the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) could be implemented in asylum procedures, which would imply training medical personnel to use it. She commended the Netherlands for being one of the very few countries to have mainstreamed health-care services for torture victims and traumatized refugees within their regular health-care system.

22. She requested clarification on how long a person could be detained without access to a lawyer or being brought before a judge and the maximum period for detention in a police cell. With reference to the study undertaken to evaluate the effect of detention in maximum-security institutions on the mental health of detainees, she noted that it had been based on a very limited number of people, and that it was therefore dangerous to draw the broad conclusion that the practice did not cause serious psychological harm. She wished to know whether the practice of routine strip-searches, particularly in the maximum-security institutions, had been modified.

23. Noting that the situation where young offenders in Bon Futuro prison in the Netherlands Antilles were detained together with adults was currently under review, she requested more information on plans to change those arrangements, the institution to which young offenders would be moved, and what education and training they would be offered. She requested clarification on the number of persons detained in that prison without trial. Referring to the statistics on inter-prisoner violence, she asked whether the injuries concerned only those

sustained by detainees or also injuries to prison employees. She enquired whether detainees who shared four-person cells were more prone to inter-prisoner violence. She asked the delegation to comment on the use of riot squads.

24. She would be interested to hear more about the functioning of the Ombudsman's Office. Noting that complaints were usually dealt with by the regional police, but that if the complainant was not satisfied the case could be referred to the Ombudsman, she asked what were the criteria for not being satisfied and how many cases had been transferred from the regional police. Concerning rehabilitation, she would like to know what redress or compensation had been received by victims of torture or ill-treatment perpetrated in the Netherlands. She expressed concern about reported cases of children who had lived in the Netherlands for many years being returned to Somalia, and asked whether the Government considered it part of its responsibilities to assist them.

25. Concerning the accelerated asylum procedure, she wished to know more about the situation of children in reception or detention centres. She asked how long accompanied and unaccompanied children could be held there and what services were provided to them during that time. Were there alternative reception centres that were less restrictive than the detention centres?

26. She asked the delegation to comment on alleged violations of human rights provisions in the implementation of anti-terrorism measures. Noting that the international community was particularly concerned about cases in which soldiers serving on United Nations peacekeeping missions had violated ethical codes while carrying out their operations, she asked how the Government was addressing the situation and ensuring that military personnel were adequately trained.

27. She asked whether the centres for victims of violence against older persons and related projects were monitored, and whether there had been any convictions for violence against older persons.

28. With regard to the trade, export and use of equipment specifically designed to inflict torture or cruel, inhuman or degrading treatment, she noted that, in the context of the nineteenth anniversary of the Anfal campaign in Iraq, there had been reports that some of the gas used in that campaign had been provided with the assistance of Dutch companies. She would welcome comment on those allegations and how the situation had been addressed.

29. Mr. GROSSMAN, referring to the ruling of the Supreme Court in the Bouterse case that manslaughter and murder did not constitute torture within the meaning of the Act implementing the Convention against Torture, noted that the Inter-American Commission on Human Rights had prepared a report on the killings in Suriname which contained extensive evidence that the victims had been brutally tortured before being killed. Although there was room for a theoretical discussion as to whether murder constituted torture, there was sufficient evidence from an authoritative treaty body to give substance to the claim that the victims had been tortured and to merit an investigation.

30. Noting also that the Supreme Court had limited the scope of the Act to cases which had connections with Dutch jurisdiction, he pointed out that the Suriname killings could have been linked to the Netherlands because at that time Bouterse had been accusing the Netherlands of being involved in the activities of the people who had been killed.
31. He asked whether the relatives of the victims of the 1982 “December murders” in Suriname had attempted to initiate a criminal indemnity action against the perpetrators. It would also be useful to know whether the NOVO team, which had been set up to investigate and prosecute war crimes and crimes against humanity, had sufficient resources at its disposal.
32. According to the International Commission of Jurists, administrative review of the facts had been abolished in asylum cases; on appeal, the judgement was only subject to “marginal scrutiny”. He asked whether the facts were also subjected to thorough scrutiny.
33. Referring to question 6 of the list of issues, he said that, save in exceptional cases, a person whose asylum application had been rejected and who submitted a new application must invoke new facts and changed circumstances for the application to be considered. He asked on the basis of what criteria cases could be considered “exceptional”.
34. He asked whether the recommendations made by the Committee on the Rights of the Child in its concluding observations on the second periodic report of the Netherlands (CRC/C/15/Add.227, para. 54) concerning, inter alia, the definition of an unaccompanied minor seeking asylum had been implemented.
35. Mr. MARIÑO MENÉNDEZ asked whether the criminal laws of the Netherlands, the Netherlands Antilles and Aruba prohibited sexual tourism. It would also be useful to know whether female genital mutilation was considered to constitute torture and whether allegations of genital mutilation made by asylum-seekers were taken into account when their asylum applications were considered.
36. He asked whether the Constitution had primacy over the provisions of customary international law and whether the Rome Statute of the International Criminal Court had been incorporated into the domestic law of the Netherlands.
37. Information on asylum applications rejected on the ground that the asylum-seekers had previously submitted an application in another EU country would be welcome. Lastly, he asked whether video and audio recordings of pretrial questioning of suspects were widely used.
38. Ms. BELMIR asked whether the Supreme Court ruling of 18 December 2001 concerning the “December murders” had been made on the basis of the Constitution, and whether the decision was binding and fully applicable in the Netherlands, the Netherlands Antilles and Aruba.
39. She wished to know whether any assistance was provided to children to substantiate their asylum applications under the accelerated asylum procedure.

40. She expressed concern that the juvenile justice system was not in conformity with relevant international human rights instruments, particularly as far as the realization of the right to a fair trial was concerned. The use of corporal punishment in the family and in educational establishments, sexual exploitation of children, and violence against women were other areas of concern.

41. Ms. GAER asked whether the Government planned to revise its core document, which dated back to 1998.

42. She asked whether special measures of protection were in place for vulnerable minorities, in particular sexual minorities. It would also be useful to know whether the risk of being subjected to traditional practices violating the physical integrity of women was taken into account when considering asylum claims. In how many of such cases had women been granted asylum?

43. She asked who was responsible for investigating the deaths of detainees in the detention facilities of the International Criminal Tribunals in The Hague.

44. There had been an increase in the number of reports of anti-Semitic and anti-Islamic violence. She wished to know what measures had been taken to prevent such incidents.

45. Referring to paragraphs 117-119 of the written replies to the list of issues, she asked whether any sanctions other than dismissal had been imposed as a consequence of disciplinary investigations by the Internal Investigation Bureau.

46. Referring to the statistical data on convicted persons contained in the annex to the written replies, she expressed surprise at the large number of Colombian and Venezuelan detainees and enquired for what offences they had mostly been convicted. Information on measures to prevent sexual violence in prisons would also be welcome.

47. She requested information on the use of riot squads to enforce prison discipline in Bon Futuro prison in the Netherlands Antilles. Information on policies to combat inter-prisoner violence and on the number of cases in which criminal or disciplinary sanctions had been imposed on prisoners would be useful. According to information received from an NGO, inmates in Bon Futuro prison were not separated on the basis of age, legal status or other objective factors. The "Wackenhut" Corrections Corporation had developed a new and proper classification procedure for prisoners. She asked why that procedure had not been implemented and whether it would be implemented in the future.

48. Mr. KOVALEV asked which authorities were responsible for considering asylum applications lodged in the Netherlands Antilles. It would also be useful to know whether a person who had been subjected to torture or ill-treatment in the Netherlands Antilles was required to complain to the authorities in the Netherlands Antilles or to those in The Hague. Were there documents which defined the distribution of powers between the Netherlands, the Netherlands Antilles and Aruba?

The meeting rose at 12.30 p.m.