



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

Distr.
GENERAL

CAT/C/SR.769
18 May 2007

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Thirty-eighth session

SUMMARY RECORD OF THE 769th MEETING

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

Chairperson: Mr. MAVROMMATIS

later: Mr KOVALEV
(Vice-Chairperson)

later: Mr. MAVROMMATIS
(Chairperson)

CONTENTS

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

Fourth periodic report of Poland

ORGANIZATIONAL AND OTHER MATTERS (continued)

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 Unit, 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 10.05 a.m.

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

Fourth periodic report of Poland (CAT/C/67/Add.5; CAT/C/POL/Q/4/Rev.1 and Add.1)

1. At the invitation of the Chairperson, the members of the delegation of Poland took places at the Committee table.
2. Mr. DUDA (Poland) said that his country had been undergoing intensive social and legal changes, caused mainly by its adjustment to the requirements of European Union (EU) membership and the consequent reforms. His Government had considered the Committee's recommendations, concluding observations and guidelines as the starting point for the preparation of the present periodic report. The major NGOs had enriched the content through their contributions.
3. The Government was committed to current efforts, based on international law, aimed at the complete incorporation of international human rights standards into domestic law, and was pleased to have ratified the Optional Protocol to the Convention against Torture on 14 September 2005. As one of the first States to ratify the Protocol, Poland had demonstrated the importance it attached to strengthening the protection of persons deprived of liberty against torture or other cruel, inhuman or degrading treatment or punishment. In addition, Poland had for a number of years made regular contributions to the United Nations Voluntary Fund for Victims of Torture. In order to meet its obligations under article 18 of the Optional Protocol, the Government had established the office of Ombudsman, to act as an independent authority in the implementation of national prevention mechanisms.
4. He described the major reforms undertaken in an effort to guarantee persons under Polish jurisdiction respect for their rights and freedoms, including a constitutional amendment on the prohibition of extradition when it would entail infringement of freedoms or rights or when the person concerned might be at risk of torture or abuse in the country of destination. Poland had also adopted the practice of "tolerated stay" to protect aliens from expulsion.
5. The police had introduced innovative solutions consisting of the establishment of a network of "plenipotentiary commanders" for the protection of human rights, to function as contact points in the coordination of all human rights issues. The full observance of human rights by law enforcement officials was dependent on a proper emphasis on training and education. For that reason, professional ethics and human rights had been included in the curricula at each level of training, with special emphasis on the prohibition of torture and inhuman or degrading treatment.
6. The prison service operated places of temporary detention under the principle of openness, with visits by judges, representatives of the Ombudsman and other institutions and organizations, mechanisms for the filing of complaints - without restrictions, and extensive monitoring and audit. Since 1998, over 20,000 prison service staff had received training in human rights standards. Overcrowding of correctional facilities and detention centres was nevertheless a

serious problem. Owing to a dramatic increase in the number of detainees since 1999, prison establishments had expanded their capacity considerably, and it was expected that by 2009 over 31,000 extra places would be available.

7. In 2006, the institution of Ombudsman for mental hospitals had been created. In line with the recommendations of the Committee, his Government had taken steps to reduce the incidence of abuse of junior soldiers, through a coordinated programme which had included the introduction of a military hotline and increased debate within military units.

8. Mr. GROSSMAN, Country Rapporteur, welcoming the delegation, said the Committee's constructive dialogue with States parties, based on the collective experience of the international community, assisted them in decision-making and in complying with their obligations under the Convention. The exchange of views during the reporting process was a mutual learning exercise that enriched the Committee's understanding of the status of the treaty in States parties and the challenges encountered in its implementation. Article 11 showed that protection of individuals against torture could be perfected through constant evaluation and improvement. He considered that training was extremely important in optimizing preventive action, particularly the type of interactive and targeted training that Poland had provided. The programmes described in the State party's replies to questions 19 and 20 were impressive, and the Committee looked forward to further discussions on the implementation of article 10.

9. Referring to article 1, on the definition of torture, he explained that the Convention did not oblige States parties to have a single definition of torture, but it did call for compliance with the prohibitions established in the Convention. The thinking of the Committee, however, was that it might be preferable to have a single definition of torture in order to simplify international cooperation, rather than dealing with provisions that were scattered throughout various enactments. He realized that the provisions of international treaties were incorporated into domestic law, but penal law had strict requirements of classification, under which application by analogy was not acceptable. Penal law provisions must be applied restrictively. He explained that the classification of torture had special implications, including deterrence, and it was considered desirable to establish a unified legal regime in order to eliminate the potential for confusion. He asked the delegation to comment on the point raised by the Helsinki Foundation for Human Rights, which had claimed that the offences proscribed in articles 246, 247 and 231 of the Polish Penal Code were very general and did not embody all aspects of the definition of torture contained in the Convention.

10. It had also been brought to the attention of the Committee that Polish legislation did not exclude the use of shackles in prisons, in violation of EU Council regulation No. 1236/2005 of 27 June 2005. He therefore asked whether it was common practice to use such methods of restraint, and what was the rationale for their use.

11. He praised the Government for ratifying the Optional Protocol in 2005, and for its regular contributions to the United Nations Voluntary Fund for Victims of Torture. He welcomed the progress it had made in incorporating the Rome Statute of the International Criminal Court within the framework of the Polish Penal Code and Code of Criminal Procedure.

12. With reference to questions raised under article 2 of the Convention, and with due respect for the right to privacy in legal consultations, he asked the delegation to explain why police

officers reserved the right to be present when detainees consulted their lawyer, as stated in paragraph 17 (b) of the written replies. He also asked about the status of the draft law on access to free legal aid, which had been submitted to parliament in October 2005, and for further clarification on allegations of the linking of legal aid to minimum custodial sentences, since that seemed potentially discriminatory. There had been complaints of unprofessional conduct, particularly in ex officio cases, and he asked the delegation to explain how those cases were handled. It had become standard practice to establish special duties for lawyers handling ex officio cases because the clients in those cases were considered to be somewhat disadvantaged.

13. The Committee had been informed that statistical data had not been compiled on legal assistance by the Ministry of Justice, the courts or lawyers. Accurate statistics and data collection were essential for effective policy design, and helped the Committee to formulate its recommendations to States parties.

14. With regard to gender-based and sexual harassment (question 7 of the list of issues), he emphasized that sexual orientation should be taken into consideration. In relation to physical examinations pursuant to articles 208 and 223 of the Code of Criminal Procedure, he wondered what criteria were used to interpret the provision that an examination or search should “to the extent possible” be performed by someone of the same sex. He looked forward to the rapid adoption of the Draft Code of Conduct for Crime Victims and stressed the importance of obtaining accurate statistics on crime, including the sex and age of victims.

15. Turning to article 3 of the Convention, he asked if the State party systematically sought diplomatic assurances from countries of destination when deporting unsuccessful refugee applicants or asylum-seekers and wondered whether the State party could provide any explanation for the sharp drop in the number of refugee applications between 2004 and 2007. Noting that the European Court of Human Rights, in the case of two Libyan nationals detained in the Warsaw airport transit zone, had highlighted the legal vacuum in Polish legislation concerning the detention of aliens after the expiry of the deadline for their expulsion, he enquired whether the State party had taken any steps to remedy that situation. The introduction of “tolerated stay” status was a welcome development facilitating the stay of individuals who might otherwise be deported, but such individuals did not appear to enjoy the right to a full range of support and social services. He asked if the State party was considering extending the services available to them, for example in the event of a medical emergency.

16. With regard to articles 4 and 16, and the excessive use of force by the police (question 14), he would welcome more information on the results of the analysis by the National Police Headquarters of the use of non-penetrating ammunition. More information would also be welcome on the current status of the investigation into the death of two persons due to the use of penetrating ammunition by the police during the incidents in Łódź in May 2004 (question 15). He stressed the importance of establishing a truly independent oversight mechanism (question 16) to ensure that the acts of public servants were in conformity with the law as a means of combating impunity and requested information on the degree of civil-society involvement in the functioning of any such mechanism.

17. Finally, he enquired whether the State party had taken any action on the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading

Treatment or Punishment in 2004 following its visit to Poland. For example, he asked if a Juveniles' Code had in fact been adopted. In response to that Committee's concerns about the use of excessive force by police and prison officers, the State party had replied that the necessary legal safeguards existed, but he asked what efforts had been made to ensure they were observed in practice. More information would also be welcome on any measures adopted as a follow-up to the European Committee's concerns about the role of medical personnel and the practice of having juveniles sign statements without having had the benefit of legal counsel.

18. Mr. GALLEGOS CHIRIBOGA, Alternate Country Rapporteur, referring to article 5 of the Convention, said it was important that the State party take action to assess the long-term practical effect of training programmes for law enforcement personnel (question 20).

19. The written reply to question 22 referred to different periods of pretrial detention - 12 months during preparatory proceedings and 2 years until a sentence was handed down by the court of first instance. However, it also indicated that extensions were possible and that there was no time limit for preliminary detention after the commencement of the principal court trial. He wondered if the delegation could clarify that situation, and also the situation regarding the use of the alternative custodial measures.

20. More information would be welcome on the prison service's 2006-2009 strategy for limiting overcrowding in prisons (question 23), and on restrictions on the rights of individuals in preliminary detention (question 24). He also requested further clarification of the situation regarding the use of "direct coercion measures" and the difference between security, safety and protection cells (question 27).

21. Turning to articles 12 and 13, he asked the delegation to respond to the questions raised by the International Commission of Jurists in its letter of 7 May 2007 concerning: the terms of reference of the Polish parliamentary inquiry into allegations of secret detentions in Poland; the written or oral submissions to the inquiry; the power of the inquiry to require the production of papers or the attendance of witnesses or search premises, and whether it made use of such powers; a visit to Stare Kiekuty base; publication of a written report; and steps taken by the State party to investigate allegations of secret detentions and renditions and prevent such violations of human rights in the future. He also stressed the importance of modifying witness and victim examination forms to include information such as race and creed in order to facilitate the gathering of statistics (question 31).

22. In connection with articles 14 and 16, he requested more information on the four cases of compensation to victims of torture arising from the limitation of human rights as a result of the introduction of extraordinary measures (question 34), and asked the delegation to comment on the surprisingly low number of complaints of violence against women (question 35). He welcomed the State party's efforts to prevent and combat sexual trafficking but urged it to incorporate a definition of that crime in the Penal Code. Finally, with regard to the State party's reservation to article 20 of the Convention (question 37), he had been informed by the Treaty Section of the United Nations that Poland had never in fact confirmed its reservation and that its initial reservation therefore had only a declarative value. He wondered if the delegation wished to comment on that point.

23. Mr. MARIÑO MENÉNDEZ asked whether there was any jurisprudence in the State party concerning the use of psychological torture and enquired as to the State party's position on the applicability of the Convention during periods of armed conflict, whether domestic or international. More information on the law requiring a declaration of non-cooperation with the previous regime would be welcome, including whether there was a penalty for failing to declare within the time frame stipulated and, if so, what the procedure would be.

24. The State party should provide statistics on domestic violence, including the number of complaints filed, and indicate how often the accused was detained and how often other precautionary measures were implemented. He asked how the Penal Code defined terrorism, whether any distinction was made between international and domestic terrorism, and what penalties could be imposed. He enquired whether the State party was required by law to inform foreign detainees of their right to contact their consulate or embassy. Stressing the State party's obligation pursuant to article 2 of the Convention to investigate the allegations of the use of secret detention and extraordinary rendition in the context of the fight against terrorism, he referred to the concerns raised by the International Commission of Jurists and asked when the report of the parliamentary inquiry into those allegations would be published.

25. Mr. Kovalev (Vice-Chairperson) took the Chair.

26. Ms. BELMIR expressed concern about the newly-introduced "short trial", which extended the possibility of the defendant's voluntarily accepting the penalty, and asked how that applied to defendants pleading not guilty. How was that situation reconciled with the principle of the presumption of innocence?

27. In response to question 14 of the list of issues, the State party had cited a number of cases in which police officers had been tried for using direct coercion or firearms. However, she expressed surprise that, although offenders had been tried and convicted, execution of their sentences was always suspended. She wondered whether that really was the best way to avert impunity; she was concerned that it would serve only as an encouragement to law enforcement agents to have excessive recourse to those methods, as they knew they would not be imprisoned.

28. She expressed concern about the independence of the judiciary, as much of the information provided to the Committee pointed to the need to pay greater attention to nomination and selection criteria, salaries and promotions.

29. She would welcome further information on the age of criminal responsibility and educational measures for young offenders. She would be interested to know more about the juvenile justice system in general: whether it conformed to international standards; the procedure for trying minors; whether there were special places of detention for young offenders; and how they were protected against abuse and ill-treatment during their detention.

30. Mr. KOVALEV noted the State party's claim that it was not necessary to incorporate the provisions of the Convention into its criminal legislation because ratified international treaties took precedence over domestic law in the event of conflict between the two. However, work was currently under way to incorporate the provisions of the Rome Statute of the International Criminal Court into the Penal Code and Code of Criminal Procedure. He therefore wished to

know what obstacles there were to similarly incorporating the most important provisions of the Convention, particularly article 1, which was very significant given that the State party had ratified four instruments that covered the crime of torture.

31. Ms. GAER welcomed the information provided on measures taken to address the problem of violence in the armed forces, which had resulted in a significant decrease in the number of junior soldiers reporting that they had been subjected to abuse. The cases cited in the current report did not appear to be as serious as those referred to in the third periodic report. Did that imply that the most serious types of cases had been eradicated? Expressing the hope that the Committee might cite Poland's experience as a model to be applied in other countries, she invited the delegation to comment on which of the preventive efforts made had been deemed most effective.

32. She asked whether there was any record of sexual abuse in psychiatric hospitals and whether any special measures were taken to protect patients from such abuse.

33. On the issue of trafficking in persons, she wished to know whether any persons accused of involvement in trafficking had been brought to trial and punished and, if so, what sentences had been handed down.

34. Noting that the Penal Code established penalties for offences involving the violation of rights and freedoms on grounds of nationality, ethnic background or race, she asked whether violations on the grounds of gender and sexual orientation were also provided for. She wished to know how many of the cases relating to anti-Semitism had involved violence. She asked whether there was a special government unit to address crimes committed on the grounds of anti-Semitism, fascism or racial discrimination. She wondered whether the fact that there were so few such cases mentioned in the report implied not that they did not occur, but rather that they were not addressed by law enforcement agencies. She therefore wished to know what training and preventive measures were taken in that area.

35. She referred to the European Parliament resolution of 26 April 2007 on homophobia in Europe, which criticized an emerging climate of racist, xenophobic and homophobic intolerance and called on the competent Polish authorities publicly to condemn and prevent declarations by leaders inciting discrimination and hatred based on sexual orientation. She also referred to the very recent ruling by the European Court of Human Rights that the Polish Government had violated the rights of a group of gay rights activists by refusing to authorize a 2005 rally in Warsaw. She asked whether any statistics were available on violent attacks against homosexuals, and requested information on what action had been taken to investigate such cases and whether anybody had been the subject of administrative or judicial sanctions. She expressed the hope that civil society would experience similar results to those achieved in the armed forces in eradicating intolerance and violence.

36. Mr. Mavrommatis (Chairperson) resumed the Chair.

37. Ms. SVEAASS requested clarification of the situation with regard to young offenders, in particular the age of criminal responsibility and the different measures taken for each age group.

38. She would welcome updated information on plans to improve conditions in detention facilities at the borders, particularly the size of cells and the maximum number of hours per day that must be spent in a cell.

39. She expressed support for the comments by Mr. Gallegos Chiriboga on the development of a monitoring system to evaluate training for law enforcement personnel. She wished to know what human rights training was provided to health professionals, and noted that the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) should be included in the training curriculum for health professionals and specifically those working with refugees.

40. She asked how the reports and recommendations of international bodies on the human rights situation in the State party were made available to the general public.

41. The CHAIRPERSON commended the State party for the advances and improvements made and the role it now played as a member of the EU.

42. The delegation of Poland withdrew.

The meeting was suspended at 11.55 a.m. and resumed at 12.10 p.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

43. The CHAIRPERSON drew the Committee's attention to the report of the meeting of the working group on reservations (HRI/MC/2007/5) and invited Mr. Camara, who had represented the Committee at that meeting, to give an update of that group's work.

44. Mr. CAMARA recalled that the Committee had considered the question of reservations at its previous session, but had not concluded its discussion owing to lack of time. Essentially, the question with regard to reservations was whether the 1969 Vienna Convention on the Law of Treaties, which contained provisions on reservations, was applicable to the various human rights treaties which had been drafted subsequent to it, such as the Convention against Torture, which dated from 1984. He recalled that the Committee had on two occasions concluded that a State party could not invoke its domestic legislation to avoid fulfilling its obligations under the Vienna Convention: the first had been during its consideration of the third periodic report of the United Kingdom, with reference to the Pinochet case; the second had been in relation to communication No. 181/2001 concerning Senegal (CAT/C/36/D/181/2001).

45. When the Committee had considered the initial report of the United States in 2006, the question of reservations had been raised for the first time. The Committee had recommended to the State party that it should withdraw its reservations, particularly to articles 1 and 16, but the State party had claimed there were no grounds for reviewing its position.

46. Taking into account the fact that other bodies also faced difficulties with regard to reservations, OHCHR had convened the first meeting of the working group in June 2006, which had produced a report (HRI/MC/2006/5) containing a series of recommendations. The working group had met again in February 2007, and at that meeting it had been proposed that an expanded working group meeting should be held, together with the International Law Commission (ILC), to address the issue. It appeared that both the working group and ILC

considered that human rights treaties should not be the subject of reservations. It was not yet known what the outcome of the work done to date would be, but the meeting with ILC had been scheduled for later in May, and he invited any colleagues who wished to do so to attend with him.

47. The CHAIRPERSON invited Committee members to express their views on the recommendations of the working group on reservations and on whether the work on reservations should be continued.

48. Mr. MARIÑO MENÉNDEZ, referring to the Spanish version of the working group's recommendations, suggested that the wording of paragraphs 5 and 7 needed to be improved.

49. Mr. KOVALEV said that the recommendation contained in paragraph 9 (c) was unrealistic because it would require parliaments of States parties, which were responsible for adopting and withdrawing reservations to treaties, to reconvene. Under the Vienna Convention on the Law of Treaties, a State party could not formulate a reservation which was incompatible with the object and purpose of the treaty.

50. Mr. WANG Xuexian suggested that the working group should discuss how to deal with a situation where a State party which had ratified the Convention without any reservations refused to implement the Committee's recommendation, for example under article 22, on the ground that it was not binding. Such refusal would be tantamount to a reservation.

51. Mr. CAMARA said that article 22 of the Convention was only applicable in a State party that had made the declaration under that article. States parties should be encouraged to accept all provisions of the Convention. The Committee had been established to interpret and monitor implementation of the Convention and was competent to decide whether a State party had violated its provisions. He asked members whether they disagreed with any of the recommendations made by the working group.

52. Mr. MARIÑO MENÉNDEZ, referring to recommendation 5, agreed that treaty bodies were competent to assess the validity of reservations and the implications of a finding of invalidity. Two issues required clarification, namely whether the Committee could make a binding decision on the validity of a reservation, and whether a State party could remain a party to the Convention without withdrawing the invalid reservation.

53. The CHAIRPERSON said he took it that the Committee agreed that the working group should continue its work on reservations.

54. It was so decided.

The meeting rose at 1 p.m.