



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

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Fifty-first session

Summary record of the first part (public)* of the 1174th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 30 October 2013, at 10 a.m.

Chairperson: Mr. Grossman

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.1174/Add.1.

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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)*

Combined fifth and sixth periodic reports of Poland (CAT/C/POL/5-6; CAT/C/POL/Q/5-6; HRI/CORE/POL/2009)

1. *At the invitation of the Chairperson, the delegation of Poland took places at the Committee table.*
2. **Mr. Węgrzyn** (Poland) said that Poland had signed the International Convention for the Protection of All Persons from Enforced Disappearance on 25 June 2013 and was about to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Poland had also ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2005, and had designated the Ombudsman as the national preventive mechanism. It was in the process of establishing a free legal aid system accessible to foreigners who had applied for asylum or appealed against an expulsion order. The system should become operational in 2015. Moreover, steps had been taken to improve the living conditions of irregular migrants in guarded centres, and the rules of procedure of such facilities had been relaxed without compromising security.
3. A definition of human trafficking in line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime had been included in the Penal Code in 2010, as had a definition of slavery.
4. Combating prison overcrowding was one of the priorities of the Government. Thanks to the efforts undertaken, the number of cases of pretrial detention, whether at the prosecutor's request or by decision of the judiciary, had fallen considerably. Over the past seven years, the number of cases of pretrial detention during the preliminary investigation stage had decreased by 45 per cent, with judges only having recourse to the preventive measure on an exceptional basis, where the circumstances so warranted. Poland also intended to strengthen the criteria related to pretrial detention established in its Code of Criminal Procedure. The number of persons serving their sentence in prison had also fallen, particularly thanks to the use of electronic bracelets. The current prison population stood at 97.2 per cent of total prison capacity. The new prison administration law of 2010 made it obligatory for the prison authorities to ensure humane detention conditions and respect for the rights of persons deprived of their liberty.
5. In 2013, following on from the Committee's earlier recommendations regarding the protection of vulnerable groups, Poland had established the Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance. Moreover, in each district, the Prosecutor General had appointed a prosecutor responsible for conducting a preliminary investigation in cases of hate crimes. The Ministry of Justice had also set up a department of international cooperation and human rights.
6. With regard to the possible existence of secret Central Intelligence Agency (CIA) prisons in Poland, under no circumstances would the Government of Poland hamper the ongoing independent inquiry. The public authorities cooperated with the courts and sent prosecutors the information that they requested. The authorities were strongly in favour of holding talks on the matter with civil society, and they had already met with Amnesty International to discuss the issue.
7. **Mr. Mariño Menéndez** (Country Rapporteur) drew the delegation's attention to the need to criminalize torture in order to ensure that offences addressed by the Convention

were punishable by penalties commensurate with their gravity. He wished to know whether persons deprived of their liberty had access to a lawyer from the very outset of their detention, within what time limit they had to be brought before a judge, and whether the State party used incommunicado detention, particularly in the case of detainees suspected of terrorism. He also wished to know whether persons in police custody could choose the doctor responsible for examining them should a medical examination prove necessary and whether the unjustified imposition of pretrial detention could give rise to compensation and, if so, how.

8. The delegation should indicate whether the legal aid offered to refugees and asylum seekers was State-funded, and provide further information on the permit for a tolerated stay, in particular by stating how many such permits were issued each year, how the rights of permit holders differed from those of asylum seekers or refugees, and whether children whose parents were permit holders had access to education. It would also be useful to know who selected the representative of a non-governmental organization (NGO) to sit on the body responsible for resolving disputes that could break out in detention centres for foreigners, how long a foreigner could legally be held before being deported, and whether the State party strictly enforced the Dublin II Regulation. In that regard, the delegation should indicate whether appeals against expulsion orders had suspensive effect, and whether the Istanbul Protocol was used in asylum determination procedures.

9. He asked about the status of the bill on foreigners, whether the Human Rights Defender was mandated to receive complaints from foreigners, what action had been taken by the Ombudsman for Children and the ombudsmen for the rights of persons in psychiatric hospitals, and how the rapid response system established to prevent misconduct among law enforcement officials worked. He said that the information in paragraph 330 of the report was illogical, and asked the delegation to explain how the fact that no compensation had been granted to prisoners victims of torture or abuse by police officers confirmed the efficiency of the complaints procedure.

10. He understood that a number of Polish detainees in European Union countries were about to be transferred to Polish prisons, and asked whether there was a risk that the prison capacity would be insufficient. He also wished to know whether the State party had recourse to solitary confinement in the case of prisoners deemed to be particularly dangerous and, if so, under what circumstances and for how long, and who was responsible for monitoring such detention.

11. He wished to know whether the State party planned to conduct an inquiry to determine whether acts of torture had been committed in secret CIA prisons in Poland and whether confessions had been obtained through torture, indicating, as appropriate, whether the perpetrators of ill-treatment would be prosecuted. He also asked whether, in the State party, victims of trafficking were considered as such, whether it was guaranteed that they could not be sentenced for acts committed under duress, and whether they were subsequently obliged to cooperate with authorities with a view to dismantling trafficking networks. In that regard, he would appreciate further information on the role of border guards in the prevention of human trafficking and on the procedure that they had to apply in their cooperation with the police.

12. Given the large number of doctors who refused to carry out abortions despite being authorized to do so, it would be helpful to know whether there was a conscientious objection to abortion in the State party. The delegation should indicate what action had been taken by the Government Plenipotentiary for Equal Treatment in respect of lesbian, gay, bisexual and transgender (LGBT) persons. It should also indicate whether marital rape had been included in the domestic violence law and, as appropriate, whether the provision had already been applied by the courts. Lastly, it could perhaps indicate whether, in the

near future, the State party intended to adopt a new Penal Code incorporating the provisions of the two previous draft codes.

13. **Mr. Wang Xuexian** (Country Rapporteur) asked which authority had examined the 503 complaints from detainees that had been registered by the prison administration in 2010, and whether criminal penalties had been imposed on the officers in question who had been found guilty of ill-treatment. He also wished to know whether the Ombudsman had conducted inquiries into the deaths of detainees, and into the beatings and ill-treatment inflicted on persons deprived of their liberty by public officials that had been brought to his attention since 2008. It would be useful to obtain further details on the composition and mandate of the Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance.

14. The delegation should indicate how many of the 300 or so persons who had been sentenced for abuse between 2005 and 2009 had been public officials, and whether the offences of which they had been found guilty included acts of torture or ill-treatment. It could perhaps also indicate what use would be made of the military disciplinary detention centres that had been liquidated, whether the law providing for the castration of men found guilty of raping children or close relatives had already been implemented and how such punishment was compatible with the Covenant, whether the State party planned to ratify the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness, and whether it was true that foreigners were sometimes deported without a court order. It would also be helpful to know whether the electrical stunning devices whose use was authorized under the Law of 9 April 2010 on the Border Guard were equivalent to the electroshock weapons (tasers) whose dangers the Committee had highlighted on several occasions.

15. **Ms. Sveaass** asked what concrete steps had been taken to improve conditions for foreigners in detention centres and ensure that families with children were sent to other, more appropriate facilities. She also requested information on the remedies available to persons declared incompetent, and on the judicial review of decisions authorizing their placement in homes. She also wished to know whether rehabilitation programmes were available for victims of torture or ill-treatment, including in cases of hazing within the army, and whether any asylum requests had already been granted on the basis of evidence of torture gathered under the Istanbul Protocol.

16. **Mr. Bruni** asked whether an evaluation had been carried out of the impact that the human rights training provided to law enforcement officials, prison staff and border guards had on the number of cases of torture and ill-treatment. Since the State party appeared to have resolved the problem of prison overcrowding, the delegation could perhaps indicate what measures were planned to guarantee, in law and practice, that the space available per detainee was not under 4 square metres, in accordance with the standard advocated by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the European Court of Human Rights.

17. **Ms. Belmir** asked what was being done to remedy the numerous deficiencies in the judicial system — shortage of magistrates, procedural delays, insufficient level of training of judicial staff, lack of legal aid system — which compromised access to justice, particularly for the poorest groups. It would also be useful to obtain further details on the grounds for extending pretrial detention.

18. **Ms. Gaer** asked whether the lack of cases of hazing recorded between 2007 and 2010 had been borne out since then, and what factors, aside from the professionalization of the army, had, in the State party's view, contributed to the elimination of the practice. She also wished to know whether the 107 deaths in custody in 2012 had given rise to inquiries and, if so, whether some of the deaths had turned out to be linked to acts of torture or ill-

treatment. She asked the State party to explain why none of the cases of abuse perpetrated by public officials that had been tried between 2005 and 2010 had led to victims receiving compensation, whereas, during the same period, more than 12,000 civil claims for damages had been filed against the police and there had been almost 300 convictions for violence. Lastly, she wished to know how many defendants had accepted the shortened trial procedure, and whether there had already been any confirmed cases in which defendants had accepted the procedure under duress.

19. **Mr. Domah** said that, contrary to the State party's assertions, the definition of torture set forth in article 1 of the Convention was not reflected in the Penal Code, which included neither the word "torture" nor the various elements of torture within the meaning of article 1. He would like the delegation to comment on the matter.

20. **Mr. Tugushi** enquired whether the State party intended to increase the budget allocated to the Ombudsman, which was currently insufficient to enable him to fully assume his role as the national mechanism for the prevention of torture. He also asked whether measures were planned to guarantee that inquiries into ill-treatment by law enforcement officials were conducted solely by the prosecution service, without police intervention, whether there were plans to relax the overly restrictive regime applied to persons in pretrial detention, and whether measures were envisaged to end the systematic and prolonged use of methods of restraint in the psychiatric wards of some prisons.

21. **Mr. Gaye** asked whether every person held in police custody systematically underwent a prior medical examination, or whether the examination was only performed under certain circumstances, left to the discretion of the officers in whose custody the detainee was placed. He also wished to know whether delays in civil proceedings might explain the fact that no final judgements requiring the State to compensate victims of abuse by public officials had been handed down between 2005 and 2010; if so, the Committee would need to know what the State party was doing to rectify the situation, which was leading to a denial of justice. Lastly, the delegation should indicate what steps had been taken to resolve the issue of inter-prisoner violence.

22. **The Chairperson** asked what the criminal provisions were for punishing acts constituting torture within the meaning of article 1 of the Convention in a manner commensurate with their gravity. He also wished to know the number of cases in which pretrial detention had been extended beyond the legally established two-year limit, whether such decisions had been subject to judicial review, whether the State party intended to exclude any possibility of extending pretrial detention pursuant to the recommendation of the universal periodic review, and what alternatives to pretrial detention were provided for by law.

23. He noted that, in exceptional circumstances, competent bodies could order that, during the first two weeks of pretrial detention, meetings between a suspect and his or her counsel take place in the presence of the prosecutor. He therefore wished to know who determined the presence of exceptional circumstances and what criteria were taken into consideration. He also wished to know whether it was possible to appeal the validity of the decision and, if so, how many such appeals had been examined by the courts. He invited the delegation to comment on statements by the Human Rights Defender indicating that, contrary to claims by the authorities, suspects were not allowed to use their mobile phones while in police custody, even to talk to their lawyer. It should also provide information on the follow-up to the judgment handed down in October 2012 by the European Court of Human Rights in the case of *P. and S. v. Poland*, concerning a minor who had become pregnant as a result of rape and who had been denied an abortion by certain public institutions. Had the victim and her mother been compensated in accordance with the judgment?

24. Moreover, he wished to know whether the State party intended to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and whether it had included a provision in its Penal Code to prevent victims of trafficking from being prosecuted, detained or punished for activities in which they were involved as a direct consequence of their situation, as recommended by the Human Rights Committee in its concluding observations (CCPR/C/POL/CO/6). The delegation should indicate why asylum-seeking minors over the age of 13 could be detained, and why the minimum age for such a measure had not been set at 18. It should also indicate whether any legal remedies were available to rejected asylum seekers to challenge the lawfulness of their detention when the reason given was the risk that they might cross the border illegally. It would be useful to know whether refugees had access to legal counsel, a doctor and an interpreter, whether training for border guards was provided in conjunction with civil society organizations, and whether the authorities had created a computer database containing every complaint filed against border guards.

25. With regard to extradition, he invited the delegation to set out the State party's position in respect of diplomatic assurances, and to indicate whether the authorities intended to provide the information requested by the European Court of Human Rights in its judgment in the case of *Al-Nashiri v. Poland*. He also invited the delegation to describe the follow-up to the recommendations issued in 2012 by the Ombudsman in relation to illegal acts frequently committed by prison staff, which were allegedly tantamount to ill-treatment and torture, and the outcome of the investigation into an incident that had taken place in May 2011, in which a Nigerian vendor working at a market in Warsaw had been shot dead by a police officer during an inspection. It could perhaps also indicate whether an inquiry had been launched into the complaint filed by Robert Biedroń, who had reportedly been beaten by the police during an anti-fascism demonstration he had attended and held in police custody for 20 hours with no access to legal counsel or his relatives.

26. Lastly, he wished to know whether the State party planned to incorporate a definition of discrimination in its domestic law, given the rise in acts of violence on the grounds of racism, anti-Semitism, sexual orientation or disability.

The first part (public) of the meeting rose at 12.05 p.m.