



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

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Held at the Palais Wilson, Geneva,
on Monday, 7 May 2007, at 3 p.m.

Chairperson: Mr. MAVROMMATIS

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

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

1. At the invitation of the Chairperson, the members of the delegation of Italy resumed their places at the Committee table.

2. Mr. MOGINI (Italy) wished first to draw the attention of the Committee to a number of mainly legislative bills currently under consideration by the Government and relating to the implementation of the Convention. Senate bill No. 1216 on the introduction of the crime of torture in the criminal system, to which reference was made in the written replies (para. 20), had been amended in March 2007 to provide for the creation of a national fund for victims of torture. On 4 April 2007, Senate bill No. 1463 on the creation of a national human rights institution had been approved by the Chamber of Deputies. Once it was passed by the Senate, a national human rights commission would be established with an independent post of ombudsman for the rights of detainees, thereby opening the way to ratification of the Optional protocol to the Convention against Torture, which called for the setting up of a national prevention mechanism. For the moment, sentencing judges ensured respect for the rights of detainees by meeting directly with them or by supervising the detention measures to be implemented in each individual case, and they thus guaranteed the implementation of the constitutional principle pursuant to which the sentence should have a “reintegration function”. The Council of Ministers would also adopt a bill in June 2007 which would amend national legislation to facilitate cooperation with the International Criminal Court.

3. The Constitution scrupulously ensured the same fundamental rights and freedoms as the relevant international instruments and provisions which made such protection intangible. Respect for the principles enunciated therein was guaranteed by the Constitutional Court, which monitored the constitutionality of laws and had competence to annul provisions which it deemed unconstitutional. The Constitutional Court was also mandated to settle jurisdictional disputes between the executive, legislative and judicial branches. It was independent, and its decisions were not subject to appeal. The various jurisdictions must interpret and apply the law, ensuring respect for both constitutional principles and international instruments, including the European Convention on Human Rights.

4. The Committee had asked about conditions of detention in prison facilities. Italy had two major problems in that area – prison overcrowding and the large number of non-European Union inmates – on which it was actively seeking a lasting solution. The treatment of inmates, notably with regard to questions of sentencing, was the same for all, whether Italians or foreigners, including persons of Roma origin. All foreign nationals, irrespective of whether they were legally present in Italy or not, were entitled to legal aid on the basis of a simple statement made under oath that was certified by the consular authorities. As to the functioning of the judicial system, it was true that delays were considerable, but that was a consequence of the care shown in guaranteeing respect for regulations on the proper conduct of proceedings, as set out in article 111 of the 1999 Constitution.

5. Turning to the events in Genoa and Naples in 2001, he assured the Committee that the Italian authorities would keep it informed of new developments in the framework of the proceedings instituted in that regard. In the Abu Omar case, which was before the Milan court, following the preliminary investigation completed on 16 February 2007, the prosecution had called for the indictment of a number of members of the Italian military intelligence and secret service (SISMI) and of foreign officials, for whom it had submitted extradition requests. The first hearing was scheduled for 8 June 2007. On 14 March 2007, the Government had submitted a complaint to the Constitutional Court, arguing a jurisdictional conflict with the prosecutor's office of the Milan court on the grounds that the court had obtained and used evidence in violation of the provisions relating to State secrets. Consequently, no decision could be taken on the extradition requests submitted by the prosecutor of the Milan court until the Constitutional Court ruled. Postponement of the decision concerning the extradition requests would not have an impact on the actual trial, which, pursuant to the Code of Criminal Procedure, could take place regardless of whether the defendants were present or not. On 18 April 2007, the Constitutional Court had declared the Government's complaint admissible. A decision on the merits might be taken in the second half of 2007.

6. In closing, he assured the Committee that on no account had protection of the rights and freedoms guaranteed by the Italian Constitution and domestic laws been undermined by the fight against terrorism. In conformity with the joint declaration of the European Union of 13 July 2005, adopted following the terrorist attacks in London, Italy had taken a series of initiatives to combat terrorism without resorting to emergency measures and at the same time ensuring that human rights were respected in all circumstances.

7. Mr. SIMONETTI (Italy) stressed that Italy's fourth periodic report had been prepared in close cooperation with a number of non-governmental organizations on the basis of information and comments provided by them. Returning to the case of Abou Elkassim Britel, he recalled that Mr. Britel, an Italian citizen of Moroccan origin, had been arrested in Pakistan in 2002 and sent to Morocco, where he had been sentenced to 15 years' imprisonment in 2003, the sentence having then been reduced upon appeal to nine years. The Italian diplomatic authorities in Morocco, who were in regular contact with Mr. Britel's family and his lawyers, were following the case closely. They also intervened regularly with the local authorities to improve Mr. Britel's prison conditions. His lawyers had submitted a request for a pardon which the Italian embassy in Rabat supported.

8. Mr. PIERMARINI (Italy), referring to the implementation of the Convention in the framework of an intervention of Italian armed forces or police abroad, said that respect for international humanitarian law in general and the obligations set out in the Convention in particular played a vital role in the training of members of the armed forces and the police force, especially those who were expected to take action in international operations. The training centre set up by the Vincenza carabineer corps for police units responsible for ensuring stability during peacekeeping operations was an example of the active part which Italy played in establishing a genuine human rights culture in its police force. In addition to those training activities, whose function was primarily preventive, special guidelines adopted in 2005 had put into place a permanent on-site monitoring mechanism so that violations could be systematically reported and duly punished. The modification of the structure of the armed forces to make them more professional was another important factor in preventing violence of the kind committed in Somalia in 1993 by certain members of the Italian armed forces, 85 per cent of whom had been

conscripts at the time. With regard to the punishment of soldiers who committed acts of torture, article 185 bis of the Military Criminal Code in Time of War provided for between one and five years' imprisonment. The sentences might seem somewhat lenient, but it should be borne in mind that for acts which constituted serious criminal offences (murder, sexual assault, serious bodily harm), the punishments specified in the Criminal Code were applicable, including life imprisonment. Italy's efforts to better train and supervise its troops were producing results: Italian forces were present around the world and were carrying out their missions efficiently and with professionalism.

9. Mr. LEPRI GALLERANO (Italy) said that the new Act on immigration, the so-called "Amato-Ferrero legislative decree", aimed to reduce the number of illegal immigrants and to promote legal immigration by establishing an equilibrium between supply and demand. To that end, it provided that the Italian diplomatic representations abroad were to draw up lists of applicants for immigration and that the granting of a residence permit would depend on the applicant having a labour contract in Italy. The lists would eventually simplify the procedures for extending the validity of residence permits for foreigners. The Amato-Ferrero legislative decree would also transfer competence for investigations from justices of the peace to ordinary judges and would offer incentives for the voluntary return of illegal immigrants to their countries of origin. In addition, it called for information campaigns targeting immigrants who wished to request asylum, to be conducted in cooperation with the Office of the United Nations High Commissioner for Refugees, the International Committee of the Red Cross and the International Organization for Migration. In March 2007, information campaigns had been launched at reception centres for immigrants in Lampedusa and in Sicily, those two islands being the main points of entry of immigrants into Italy. It was planned to extend the initiative to the rest of the country.

10. Mr. DIOTALLEVI (Italy), summarizing the substance of the written replies of Italy on the inclusion in domestic legislation of the definition of torture contained in article 1 of the Convention (paras. 19 to 22), said that the Senate was currently considering a new bill entitled "Incorporation into the Criminal Code of an article 613 bis and an article 613 ter relating to torture", pursuant to which the term "torture" designated any act aimed at inflicting serious psychological or physical suffering or cruel, inhuman or degrading treatment with a view to obtaining information or confessions or punishing another person, by use of means such as abduction, illegal arrest, illegal deprivation of liberty or abuse of authority. The fact that the perpetrator of those acts was a State official constituted an aggravating circumstance, but was not a necessary condition for the above-mentioned offences to be considered acts of torture. Domestic violence, for example, which presupposed serious physical and psychological suffering, came within the scope of the definition. If the acts of torture resulted in serious bodily harm, the punishment incurred was increased; if the victim died, it was a minimum of 30 years' imprisonment. The bill also envisaged the establishment of a compensation fund for victims of torture and, in the event of death, for their heirs. The Parliament was currently studying several other bills aimed at defining the minimum amount of compensation to be paid to victims of torture and providing rehabilitation assistance to victims of torture, terrorism and organized crime.

11. With regard to existing measures for combating sexual violence against women, he said that Act No. 66 of 1996 contained a broad definition of sexual abuse which covered a wide range of acts. The text provided that taking advantage of the physical or mental weakness of the victim

constituted an aggravating circumstance. Act No. 7 of 2006, which prohibited the practice of female genital mutilation, had been applied for the first time on 4 April 2006 in Verona against a woman who was about to perform an excision on a baby for the sum of 400 euros.

12. Concerning the implementation of the Statute of Rome of the International Criminal Court in the domestic judicial system, a bill had recently been prepared by the Ministries of Justice, the Interior and Defence in order to bring Italian legislation into line with the Statute and to incorporate its article 90, on competing extradition requests. The bill was to be submitted to the Council of Ministers shortly.

13. The Government was currently working to recast the texts of legislation pending from the previous legislature, including bill No. 1441 on the ratification of the Optional Protocol to the Convention against Torture and the creation of a national human rights commission. In accordance with the bill, the commission would monitor respect for human rights in places in which persons were deprived of liberty – police stations, prisons, holding centres for immigrants etc. – and would formulate recommendations to the Government and Parliament concerning any human rights question. It would also be empowered to receive complaints, conduct unannounced visits to prisons and immigrant holding centres, consult the case files of inmates with their consent and formulate recommendations to the prison administration.

14. Ms. CARDONE (Italy), after reviewing the content of the provisions of Italian legislation relating to custody and the rights of the accused, set out in detail in the written replies (paras. 24 to 27), said that an audiovisual recording must be made of all police interrogations, and all suspects placed in pre-trial detention on a court order must be brought before the judge within five days. During the hearing, the suspect must be assisted by a lawyer and, if the suspect did not have the means to hire one, a lawyer was appointed free of charge, in conformity with Presidential Decree No. 115/2002 concerning judicial assistance in criminal proceedings. Pursuant to article 104 of the Code of Criminal Procedure, suspects could be deprived of the right to speak with their lawyer for a maximum of five days, but that restriction was only imposed in very special cases, namely when there was a danger of evidence being altered.

15. Continuation in custody or pre-trial detention must be ordered by a judge, who could do so only if there were reasons to believe that other measures were likely to lead to the disappearance or falsification of evidence. Pregnant women, women with infants and suspects over 70 years of age could not be placed in custody. In accordance with article 303 of the Code of Criminal Procedure, the maximum duration of pre-trial detention varied as a function of the seriousness of the offences and the stage of the proceedings. It could be extended in a number of cases enumerated by law when the investigation concerned serious acts that were punishable by a sentence of more than 20 years' imprisonment, but its duration could not exceed six years. In the event of failure to comply with the relevant provisions, the suspect must be released immediately. Suspects placed in pre-trial detention could request that their case be examined by the competent judicial authorities; if the detention measure was confirmed, they could lodge an appeal with the Court of Cassation.

16. In the context of the fight against terrorism, Legislative Decree No. 144 of 2005, the so-called "Pisanu Decree", provided for a series of measures while taking into account constitutional guarantees relating to human rights.

17. Mr. D'ALTERIO (Italy) said that major improvements had been made in detention conditions in prisons. In just a few years, the prison population had gone from 60,000 to 39,000, thanks to an act passed in July 2006 which had allowed substantial reductions in sentences. Measures had also been taken to reduce the number of custodial sentences imposed by the courts and to promote alternatives to imprisonment. Nine new prisons had been built and six others renovated nationwide.

18. To combat the deterioration of living conditions in places of detention, a number of measures had been taken to improve inmate access to health care. In addition to undergoing a compulsory medical examination upon incarceration, inmates could consult a physician at any time upon request. They also had access to specialists and could, if necessary, receive the necessary therapy in specialized centres. A report must be produced for each medical examination. The physician was required to record the statements made by the inmate during the examination in writing and to ascertain the causes of any injuries noted; suspicious lesions must be immediately reported to the prison authorities.

19. The prison administration still did not have a sufficient number of psychiatric facilities (there were currently six throughout the country). However, individual psychiatric counselling for inmates had improved through the introduction of monitoring services in all Italian prisons. In that connection, it should be noted that the psychiatric hospital in Naples was currently being renovated and enlarged to create room for 337 additional patients.

20. The Department of Penitentiary Administration had adopted measures to prevent violence in prisons. Legal aid services had been introduced in a number of prisons, including in Rome and Florence. Their staff was made up of lawyers appointed to hear the complaints of inmates regarding any acts of violence.

21. Ms. CAVALLO (Italy) said that the Government was about to establish a commission to set guidelines for the reform of the entire system of justice for young offenders. It could already be announced that emphasis would be placed on maintaining ties between juvenile detainees and their families, promoting the social reintegration of young offenders and improving staff training. The Department of Justice for Minors had adopted a set of measures to improve the treatment of young asylum-seekers in detention, whose numbers had grown continuously in recent years. The measures aimed primarily to create conditions conducive to promoting recognition of and respect for other cultures. Young foreigners now had access to the services of "cultural ombudsmen".

22. The CHAIRPERSON thanked the delegation for its replies and invited the members of the Committee who wanted to pose additional questions to take the floor.

23. Ms. SVEAASS (Country Rapporteur) said that the information provided by the delegation had been a source of satisfaction to the Committee for many reasons. The fact that the bill on the creation of a national human rights institution was currently being considered by the Senate was particularly encouraging, because it implied that a national human rights commission would soon begin its work. She also welcomed the initiatives taken by the State party with regard to the prevention of violence in prisons and the progress made in combating prison overcrowding. She commended the State party on the inclusion of an explicit definition of torture in the Criminal Code and asked whether the new legislation on the subject contained provisions governing the payment of compensation to victims of such acts. It would be interesting to know whether there

had been any cases in which courts had ordered compensation to be paid to victims of torture. She also sought more detailed information on the obligation of the Italian armed forces and police to respect the provisions of the Convention against Torture during their activities abroad. The Committee would appreciate it if the delegation could provide, if applicable, any details on the implementation of rules of prescription in respect of acts committed by the police in the course of the law enforcement operations conducted in July 2001 during the G-8 Summit in Genoa. She took note of the information provided by the delegation on psychiatric counselling for inmates, but was concerned about reports of several cases of suicide in prisons said to have taken place following ill-treatment by prison staff. She would like to hear the delegation's comments on those very serious allegations. Further details would also be welcome on measures taken by Italy to combat sexual violence and on the prosecution of perpetrators of offences under Act No. 228 of 11 August 2003 on trafficking in human beings.

24. Mr. SIMONETTI (Italy) said that the Government had no intention of allowing the alleged perpetrators of the acts committed in the course of the law enforcement operations during the G-8 Summit in Geneva in July 2001 to go unpunished. Those acts were currently being examined in the courts in public hearings in the presence of both parties; the hearings had been very lengthy because of the complexity of the events and the large number of suspects. It was true that the rules of prescription could be applied to the acts of which the police officers were accused, given the time that had elapsed since they were said to have been committed. Aware of that risk, the Council of Ministers had promulgated a decree in which the prescription period had been extended to give the courts time to take a decision.

25. Mr. DIOTALLEVA (Italy), referring to the fund for victims of torture, said that the bill which would be passed shortly provided for the establishment of a fund for victims of all types of offences, in conformity with a decision by the Council of the European Union. The fund would be in addition to others which already existed for special cases, such as victims of terrorism or traffic accidents.

26. Mr. MARIÑO MENÉNDEZ (Alternate Country Rapporteur) noted that legislation would punish more severely any acts of torture which led to death or very serious injury, and he asked whether psychological torture which did not leave any physical traces would be punished less severely. He also noted that precautionary measures included placement in detention for a period of up to six years; as those measures differed from preventive detention, it would be useful to know whether Italian law set a time limit for preventive detention and whether it could also be extended for up to six years.

27. With regard to the expulsion of foreigners, he gathered that appeals lodged against immediate expulsion decisions were examined by a judge. Given that the principle of non-refoulement was at issue, he asked whether the judge considered those appeals in the light of article 3 of the Convention. He also noted that the ratification of the treaty establishing the International Criminal Court had entailed new obligations for Italy, including in the area of the definition of new crimes, with a view to facilitating cooperation with the Court. He enquired whether Italy intended to introduce the concept of crimes against humanity into its Criminal Code.

28. Mr. MOGINI (Italy) pointed out that the Act passed by the Parliament on the crime of torture covered both physical and psychological torture. In order to underscore that the act also

concerned violations of the emotional integrity of the victim, the offence, which initially had been included in the chapter of the Criminal Code relating to bodily harm (art. 593 bis), had been shifted to the chapter relating to psychological harm (art. 613 bis) in order to comply with the requirements of the Convention.

29. Placement in pre-trial detention (and not in preventive detention, as had been stated) was ordered by a judge at the request of the public prosecutor. Its maximum duration was coupled with the shorter time limits for each phase of the proceedings (preliminary investigation, trial, appeal, cassation). Failure to respect any of the time limits resulted in immediate release. The time limits were set as a function of the seriousness of the offences in question during the proceedings, and the maximum duration of six years applied only to offences punishable by life imprisonment or at least 20 years' imprisonment. Pre-trial detention was also considered to include the time spent in detention following the decision of the lower court. Thus, all the time prior to the final decision (including a decision handed down by the Court of Cassation) was counted. Consequently, the time period allowed seemed reasonable when compared with that applicable in other European countries.

30. As was well known, Italy was one of the countries that had worked most actively in favour of the establishment of the International Criminal Court. The Government intended to comply with its international obligations concerning the adoption, implementation and transposition into national law of the Court's Statute. The bill that would be examined by the Council of Ministers in June 2007 would cover Italy's obligations in that area in full, including in respect of the definition of offences.

31. With regard to supervision for persons placed in psychiatric hospitals, the Minister of Justice and the Minister of Health had undertaken to ensure that most of those persons were treated at the external facilities of "ordinary" public health care centres, a study having shown that some 60 per cent of such persons could be cared for in that way. A programme to that end was in preparation. As to the evolution of the suicide rate, he said that the measures taken in recent years had had some effect.

32. Mr. LEPRI GALLERANO (Italy) recalled that his delegation had already evoked the question of immediate expulsion without possibility of appeal, and it would send the Committee a report on the subject. Those cases only concerned persons who arrived at the border without identity papers or a visa. Under current legislation, persons who were subject to such a measure could lodge an appeal, which resulted in a stay of execution of the decision, and they were permitted to remain on the territory if the reasons given were well-founded.

33. Mr. D'ALTERIO (Italy) said that the number of suicides in prisons had been declining constantly: in 1980, there had been 40 cases among 30,000 inmates, as against 50 cases among 59,000 inmates in 2006; in 2007 there had been seven to date. The authorities were working to combat the phenomenon by reducing inmate isolation, shortening the stay of new arrivals in the prison's reception area and extending the periods spent in groups and outdoors. Upon arrival in prison, the detainee had a conversation with an official, who made certain that the individual could endure incarceration. Periodic visits were allowed, and a recently created suicide prevention unit had drafted instructions for good practice and organized staff training to heighten awareness of the problem.

34. Ms. BELMIR asked for a reply to the question concerning the expulsion of three Somali minors to Ghana. She also wondered about the fact that a judge could postpone allowing a detainee to have access to a lawyer in order to prevent evidence from being concealed, and she pointed out in that context that paragraphs 218 and 219 of the fourth periodic report (CAT/C/67/Add.3) addressed cases in which the offender was caught in the act; it seemed clear that in such instances, evidence was available

from the start. Positive developments had been noted in the treatment of young offenders, for example with regard to the need to separate them from adults during imprisonment and their right to lodge a complaint in the event of an assault or abuse. Greater attention was given to the situation of unaccompanied minors in holding centres. However, paragraph 215 of the report made no mention of any measure to prevent the transmission of illnesses such as hepatitis and AIDS, although the problem was greater than that of dietary or religious customs, for example.

35. Mr. GROSSMAN stressed that States parties were under a permanent obligation to regularly review whether they were in compliance with the Convention. They must analyse the norms in force and the measures taken over time; that was of the greatest interest to the Committee. It was worth noting in that connection that in the past, Italy had in fact granted political asylum to persons without papers, for example to many Chilean refugees. The question of non-refoulement was thus unrelated to the absence of papers; indeed, article 3 of the Convention, which was a peremptory norm of international law, made no reference to that issue.

36. Mr. LEPRI GALLERANO (Italy) confirmed that, like in other countries, persons arriving at the Italian border without papers were usually refused entry, but persons who requested asylum were admitted into Italian territory and their request was examined. In September 2004 and October 2005, groups of persons had been returned to Libya, but more than 400 others who had submitted an asylum request had been allowed to stay in Italy so that their cases could be reviewed. Between 13 and 21 March 2005, more than 1,200 persons had arrived illegally in Lampedusa, where they had received aid, after which some had escaped, and several hundred had been sent back to Libya and Egypt, but the 540 persons who had requested Italy's protection had been placed in a reception centre.

37. Mr. MOGINI (Italy), referring to the prevention of the transmission of AIDS and other contagious diseases in prison, pointed out that in general, anyone whose state of health was incompatible with detention was released under medical supervision. Moreover, there were prison programmes to screen for and treat contagious illnesses, so that persons in a custodial facility received the same treatment as anywhere else.

38. Mr. D'ALTERIO (Italy) said that inmates who became ill received medical and psychological assistance like any other patients. Specialized staff had been assigned to the Spoleto and Naples prisons to care for such persons; that was a pilot project which was to be extended to other Italian prisons.

39. The CHAIRPERSON said that the Committee was grateful to the delegation for its full cooperation and would forward its conclusions and recommendations to it at a later time.

40. Mr. SIMONETTI (Italy) said he was pleased at the valuable dialogue that had taken place; he would send the Committee additional information in writing.

41. The delegation of Italy withdrew.

The meeting rose at 5.25 p.m.
