



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

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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 291st MEETING

Held at the Palais des Nations, Geneva,
on Monday, 5 May 1997, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears
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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 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Third periodic report of Sweden (CAT/C/34/Add.4; HRI/CORE/1/Add.4)

1. At the invitation of the Chairman, Mr. Magnuson, Mrs. Fridström and Mrs. Jönsson (Sweden) took places at the Committee table.

2. The CHAIRMAN welcomed the Swedish delegation and invited it to introduce Sweden's third periodic report.

3. Mr. MAGNUSON (Sweden) said that since the drafting of the third periodic report in August 1996, certain important amendments relevant for the Committee had been introduced into Swedish legislation. One major topic of interest was the amendments to the Aliens Act which had come into force on 1 January 1997. According to the new provisions, the following categories of persons in need of protection should be granted residence permits in Sweden: refugees, as defined by the 1951 Convention relating to the Status of Refugees (a new feature of the Aliens Act was the fact that the definition of refugee included persons who risked persecution regardless of whether the agent of persecution was a State or whether the State failed to provide protection against persecution by other agents); persons who had a well-founded fear of being sentenced to death, corporal punishment, torture or other inhuman or degrading treatment or punishment; persons who needed protection from an external or internal armed conflict or who, on account of an environmental disaster, could not return to their country of origin; and persons who because of their sex or homosexuality had a well-founded fear of persecution. Aliens could also be granted residence permits for humanitarian reasons. The amendments to the Aliens Act also applied to certain aspects of legal procedure. There would be an increased use of personal interviews with applicants and no decision could be taken until the applicant had been heard.

4. Another change made it mandatory for the decision-making authorities to submit in writing the grounds for all their decisions on residence permits, positive or negative. Decisions on residence permits could henceforth be appealed even if they did not mean a refusal of entry or expulsion. Consequently, a rejection of an application for a residence permit prior to the applicant's arrival in Sweden could be appealed, which could be of importance in family-reunification cases. He also drew attention to a new provision stating that the Swedish authorities were bound to respect a stay-of-execution order requested by an international body which was entitled to examine complaints from individuals, unless there were extraordinary reasons for not doing so.

5. The provisions on the detention of aliens were also being revised and were scheduled to enter into force on 1 October 1997. In future, responsibility for aliens detained under the Aliens Act would be transferred from the police authorities to the Immigration Board. Aliens detained under the Act would as a rule be placed in special detention centres. However, the Immigration Board could in certain cases decide otherwise for safety reasons. There were limitations on the detention of aliens under the age of 18 (rather

than 16 as had previously been the case). The new provisions stressed that detainees' conditions should be more humane and that their dignity should be respected. They would be given the same medical care as asylum-seekers.

6. After informing the Committee of the main amendments to the Aliens Act, he said he wished to make a few comments and corrections with regard to the report. In connection with the policy of non-refoulement (Convention, art. 3, report, para. 4), as of 1 January 1997, chapter 8, section 1 of the Aliens Act stipulated that an alien refused entry or expelled could in no case be transferred to a country where there were "reasonable grounds" for believing that the alien would be in danger of being subjected to torture; the previous wording had used the expression "firm reason". As of 1 January 1997 the Aliens Act also contained an explicit provision to the effect that a person who had a well-founded fear of being sentenced to death or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment should be granted a residence permit. In the bill originally proposing the amended provision, the Government had stressed that evidentiary demands should not be made too high when a risk of torture existed.

7. With regard to article 8 of the Convention, paragraph 19 of the report should be disregarded, as it referred to a situation in which an alien could be expelled on account of a crime committed in Sweden. Concerning article 16, the provisions mentioned in paragraphs 24 and 25 of the report should be considered as applicable to aliens under the age of 18.

8. Mr. SORENSEN (Country Rapporteur) thanked the representative of Sweden for his oral introduction. Since Sweden's third periodic report was relatively short and essentially covered new developments, he would refer to all the reports submitted by the Swedish Government. He had headed the delegation of the European Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment when it had visited Sweden in 1991. As the Swedish authorities had published the report and all related documents, he felt free to refer to them. Speaking as Rapporteur for the Committee against Torture, he was pleased to be able to say that none of the information consulted gave any indication that torture existed in Sweden. On the other hand, many refugees living in Sweden had previously been tortured. For that reason the implementation of article 10 of the Convention, on education and information on the prohibition against torture, was extremely important. Sweden appeared to be fulfilling its obligations under the Convention in that respect. He noted, however, that the question of training of medical personnel was mentioned in the initial report and the second periodic report, but not in the third periodic report. Paragraph 15 of the second periodic report mentioned some centres and seminars of interest in that area, but said that there were no systematic training programmes. Yet all doctors, dentists or other medical personnel in Sweden would at one time or another be confronted with a former torture victim. Given the extensive and long-standing results of torture, all involved medical staff should receive training in accordance with article 10 of the Convention. The same was true for law-enforcement personnel. In addition, all police and immigration officers should learn to recognize and understand the behaviour of torture victims. He would like to know whether those categories of personnel received such training.

9. The third periodic report said nothing about the implementation of articles 11 to 15 of the Convention. It would be useful to have information on that subject, for example on how the Swedish Government implemented those articles in the three main areas: police, prisons and persons deprived of their liberty for health reasons. Where the police were concerned, article 11 required States to keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of arrested persons. As soon as people were taken into police custody, they should be able to enjoy four fundamental rights: to be informed of their rights, to be able to inform their family of their arrest, to be given the assistance of a lawyer and to see a doctor. Were those rights laid down in any Swedish law or regulation? Was there a possibility that they were not being respected? Who was responsible for the systematic monitoring of the police and places of detention? Was there a body in Sweden which could make unannounced visits to police stations or prisons to inspect the premises, consult the registers and meet freely with the detainees? If such a body did exist, did it issue a report and was that report made public?

10. Another area requiring special care was pre-trial detention. The very detention of persons presumed innocent could represent degrading and inhuman treatment, which was why it should be of limited duration. It would be useful to have details on pre-trial detention in Sweden, in particular its average length and the conditions for deciding whether a detainee should be placed in solitary confinement. A welcome development was the fact that, since 1 January 1994, the judge rather than the prosecution decided whether a person in pre-trial detention should be subject to restrictions (with regard to visits, correspondence, contact with other prisoners, etc.). Nevertheless, the courts still appeared too often to follow the prosecution's suggestions, with restrictions in one area or another imposed on a very high proportion of detained persons. There were three other categories of individuals for which custodial measures could be ordered. With regard to the mentally ill, the Committee would like to receive a copy of the report to be submitted to the Government at the end of 1997 by the independent commission appointed to evaluate the effects of the new legislation on individual rights: the Act concerning Psychiatric Compulsory Care and the Act concerning Forensic Psychiatric Care, which had entered into force on 1 January 1992 (report, para. 27). He wished to know under what conditions confinement in a psychiatric establishment could be ordered and the average length of time for which a patient could be held against his will. On another matter, paragraph 116 of the initial report (CAT/C/5/Add.1) stated that in 1985, HIV had been classed among the venereal diseases to which the Act concerning Protection against Communicable Diseases was applicable, and that since then, five persons had been committed to compulsory isolation under the Act. Were any HIV-positive people still being held in compulsory isolation and, if so, how long had they been held? Custodial measures could also be ordered against alcoholics and drug abusers. The Act concerning the Treatment of Misusers in Certain Cases, which had entered into force on 1 January 1989 (CAT/C/17/Add.9, para. 23) set forth conditions for compulsory treatment under the Act, one of which was that the misuser either seriously endangered his own physical or mental health or was running an obvious risk of ruining his life. Under what other conditions could a compulsory treatment measure be ordered in such cases?

11. Swedish legislation's provisions for reparation, compensation and rehabilitation gave full effect to article 14 of the Convention. He noted that the Swedish authorities, through the Swedish International Development Agency, were working effectively to rehabilitate torture victims abroad and that Sweden was one of the main contributors to the United Nations Voluntary Fund for Victims of Torture.

12. Mr. BURNS (Alternate Country Rapporteur) expressed satisfaction with Sweden's legislation on the prevention of torture and the administrative processes implementing them. He asked whether chapter 8, section 1 of the Aliens Act, as amended in January 1997, to which the representative of Sweden had referred in his oral introduction, also applied to terrorists. He commended the Act's new provisions extending the possibility of residence permits in Sweden to persons who because of their sex or homosexuality had a well-founded fear of persecution if they were sent back to their countries of origin.

13. Referring to article 3 of the Convention, he asked what was the average length of detention for asylum-seekers and whether there was any legal time-limit on detention.

14. Paragraph 9 of the report contained a list of provisions in the Penal Code criminalizing acts referred to in article 1 of the Convention, and paragraph 12 stated that the Swedish Government took the view that existing Swedish law was in accordance with the obligations under article 4 of the Convention. In the Committee's view, failure to incorporate the Convention's definition of torture into the legislation did not represent strict adherence. Did any of the acts listed in paragraph 9 of the report constitute torture? More exactly, were the assaults by policemen and prison guards (report, paras. 30 and 31) torture, and if not did they amount to cruel, inhuman or degrading treatment or punishment?

15. Referring to paragraph 100 of the initial report (CAT/C/5/Add.1), which described the reference during a hearing to a statement made during a preliminary investigation, he asked whether Swedish legislation was in conformity with the provisions of article 15 of the Convention on that matter.

16. Mrs. ILIOPOULOS-STRANGAS welcomed the Aliens Act, which could serve as model legislation for many countries. She would like to know what criteria were used to determine whether statements made by an alien to substantiate his fears of returning to his country of origin were reliable and reasonable.

17. Mr. REGMI thanked the Swedish delegation for its oral introduction, which had stressed Sweden's punctual submission of periodic reports. He regretted that the Swedish authorities had not yet incorporated into the national legislation a definition of torture consistent with that in article 1 of the Convention. He would also like additional information on the following two cases reported by Amnesty International: that of Tony Mutka, a prisoner who had died during transport by prisons administration employees, and that of Sergio Nigretti, who had allegedly been ill-treated while in solitary confinement in the Kumla Prison. He would like to know whether the information provided by Amnesty International was accurate and whether those responsible had been prosecuted and punished.

18. Mr. PIKIS said that Sweden's third periodic report was insufficient, for its purpose was to inform the Committee of changes in legislation during the period since the previous report, on the one hand, and to provide it with information on events and other facts relating to the implementation of each article of the Convention, on the other. Furthermore, reports by States parties should clearly indicate whether the State shared the concerns expressed by the Committee during consideration of the preceding report, whether the Committee's recommendations had been given effect, and if not, why not.

19. The Law Council mentioned in paragraph 19 of the core document (HRI/CORE/1/Add.4) gave opinions on draft bills. What was the Council's mandate? Did it examine the constitutionality of legislation and could it ensure that bills were in conformity with international law in general and the Convention against Torture in particular? Referring to paragraphs 31 to 33 of the core document, he asked whether an ordinary court was empowered to decide on the constitutionality of a fundamental law and whether it could repeal laws that were unconstitutional. Could the courts verify the conformity of a text with recognized human rights standards such as the Convention?

20. He had been surprised to read in paragraph 35 of the core document that an investigation carried out by the Parliamentary Ombudsman might result in disciplinary sanctions being imposed on a civil servant or a judge, and wondered whether that was compatible with the principle of the independence of the judiciary. Paragraphs 39 to 47 of the core document on remedies and compensation did not clearly indicate whether the State was directly responsible for violations of human rights by its representatives. In that context, it would be useful to know the maximum amount of compensation and who decided whether compensation should be granted, whether Sweden had separate legislation for compensating the victims of acts of violence, and, if so, its contents.

21. Paragraph 52 of document HRI/CORE/1/Add.4 stated that no Swedish citizen could be deported. If a Swedish national committed an act of torture abroad, was that person liable to prosecution in Sweden? The provisions of article 5, paragraph 2 of the Convention should apply in such cases.

22. Paragraphs 69 and 70 of the core document made him wonder whether international law was considered to be an integral part of Swedish internal law, or whether the rules of international customary law were perceived as being inseparable from the national law and applicable in the country.

23. Sweden's third periodic report (CAT/C/34/Add.4) indicated that the Swedish authorities saw no need to define torture as an offence in order to explicitly prohibit particularly reprehensible acts of repression. Whether taken separately or as a whole, the offences listed in the report in connection with article 4 of the Convention in no way constituted essential elements of the offence of torture as defined in the Convention. The penalties laid down for assault appeared slight in cases where such acts had been committed to obtain confessions. The penalties laid down for unlawful coercion, referred to in paragraph 16 (d) of the report, did come closer to the Convention's provisions, but the Convention did not merely refer to unlawful coercion for the purpose of obtaining confessions but also spoke of

coercion used as punishment and intimidation. In the light of the information in paragraph 30 of the report, it would be useful to know what penalties were provided by law for assaults on suspects or detainees by policemen. In such cases, conditional sentences and fines appeared to be very light punishment, and he was surprised to find the case in which a police inspector had assaulted a detained woman by dragging her by her hair qualified as "petty assault", when it was in fact degrading treatment. He also found the use of dogs mentioned in the report to be a matter of concern; Amnesty International had also criticized the use of dogs in connection with a case mentioned by Mr. Regmi. It would therefore be useful to know the contents of the regulations on the use of dogs: in what circumstances could dogs, which could be vicious, be let loose, by whom and under what conditions?

24. He would also like to know the different types of detention and prison systems in force in Sweden, whether solitary confinement existed and whether it was considered to be compatible with article 16 of the Convention, whether solitary confinement was ordered only for detainees awaiting trial and what its maximum duration was, what were the practical arrangements for solitary confinement, under what conditions it could be ordered, who was responsible for ordering it and whether the measure could be appealed. Finally, he endorsed Mr. Regmi's request for clarification of the cases reported by Amnesty International.

25. Mr. ZUPAN said he would like to revert to a question raised by Mr. Burns and Mr. Pikis, namely the inclusion in Swedish legislation of a definition of the offence of torture. Article 4 of the Convention stipulated that all acts of torture must be qualified as torture under criminal law. The Swedish Government's position was that the offences listed in paragraph 9 of the report (CAT/C/34/Add.4) covered all the acts mentioned in article 4 of the Convention. However, the definition of torture in article 1 of the Convention was extremely technical from the criminal law standpoint and had been drafted with the greatest of care. It clearly stated that the acts in question must be committed by a public official or other person acting in an official capacity, whereas the acts listed in paragraph 9 of the report could be committed by anyone, rather than a certain category of persons. It was not merely a question of definition, for an obligation was involved to punish those responsible for such offences more severely because of their responsibilities. In addition, the offences covered in the Convention had to be committed with a specific intention: obtaining a confession, inflicting arbitrary punishment (for purposes of revenge), intimidation or coercion or for any reason based on discrimination. Paragraph 9 of the report made no mention of those specific intentions, which were an integral part of the definition.

26. The concept of attempt, mentioned in paragraph 11 of the report, was generally defined in Penal Codes, which most often stipulated that attempts should be punished when the act not completed itself carried a heavy sentence, such as a five-year prison term; that was not necessarily the case for the acts listed in paragraph 9 of the report, which was another reason why the Convention's definition of torture should be incorporated into the Swedish legal order. Furthermore, the rule according to which confessions extracted under torture should be excluded from the entire judicial procedure, and not only for those awaiting trial, had to be explicit. Roman law was much less

binding than Anglo-Saxon law in that respect, and certain items of evidence could be excluded from the procedure only if the judicial authority had recognized them as resulting from torture - which was not possible without a definition of torture.

27. Complicity - a very broad term - in acts of torture was punishable under article 4 of the Convention, and the information provided in paragraph 10 on the subject was not sufficient. There, too, it was necessary for Swedish law to include a full definition of torture. Article 2, paragraph 2 of the Convention stipulated that no circumstances could ever be invoked as a justification of torture. He did not doubt, however, that the Swedish Penal Code provided for cases in which all the acts listed in paragraph 9 of the report were justified. That was another reason why Swedish law should have a definition of torture. Finally, the Convention stipulated that States parties must ensure that any individual who alleged that he had been subjected to torture had the right to lodge a complaint and possibly obtain compensation, which could not be done without such a definition.

28. Mr. YAKOVLEV agreed that Sweden was one of the countries that implemented the Convention most effectively. Of particular interest was the important role played by the Ombudsman. He would, however, like to know more about the circumstances surrounding police arrests. There were, of course, times when force had to be used in making arrests, since some people were dangerous or aggressive. The problem was the dividing line between the lawful and unlawful use of force: were there guidelines for law enforcement officers on the subject, and what were their basic contents?

29. Mr. CAMARA associated himself with the very positive remarks made by the other members of the Committee about a country that was probably the one that implemented the Convention the most effectively, but he would like to ask a question with regard to paragraph 32 of the report, which spoke of the circumstances surrounding the death of a detainee who had apparently been mentally ill. The court had not found that the prison officers had caused the death of the prisoner, but that they had not followed the regulations concerning transport. It would be useful to know what criteria the court had used to come to that decision, and especially whether there had been a medical report attesting to the fact that failure to observe the transport regulations had not caused the death of the person in question. More generally, he would like to know whether culpable homicide (through negligence, carelessness or failure to observe regulations, for example) existed under Swedish criminal law. He would also like to return to the question of justification: if Swedish law did not contain a definition of the crime of torture and if it did not specify that no circumstance could be invoked as a justification of torture, how could Sweden say that it was in strict conformity with the Convention? If torture was covered under general criminal law, it could, like any other offence, be justified and those responsible cleared. It did appear necessary for the State party to enact special provisions for acts of torture if it wished to be in conformity with article 2, paragraph 2 of the Convention.

30. The CHAIRMAN joined the other members of the Committee in commending Sweden. He associated himself with their remarks on the need to include in the legislation a definition of torture as a specific criminal offence, an

issue which had been of concern to the Committee since the consideration of Sweden's initial report. A further argument in favour of including a definition was the fact that without one Sweden would not be able to establish statistics on convictions for torture, should that prove necessary.

31. Mr. MAGNUSON (Sweden) said that he could already answer one of the questions asked by the members of the Committee: the amended legislation to which he had referred earlier had entered into force on 1 January 1997; another series of amendments to the detention system was under consideration and would enter into force in October 1997.

32. The CHAIRMAN invited the Swedish delegation to attend the following meeting to reply to the questions raised.

33. The Swedish delegation withdrew.

The public part of the meeting rose at 11.40 a.m.