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COMMITTEE AGAINST TORTURE

Nineteenth session

SUMMARY RECORD OF THE 303rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 12 November 1997, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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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 Argentina (CAT/C/34/Add.5, HRI/CORE/1/Add.74, CAT/C/17/Add.2)

1. At the invitation of the Chairman, Mr. Benitez, Mrs. Von Beckh and Mr. Chelia (Argentina) took places at the Committee table.

2. Mr. BENITEZ (Argentina) reiterated his Government's appeal to the international community to ensure that the system of protection of fundamental rights and obligations undertaken at the national, regional and international levels had full effect. It was of paramount importance that the Convention be applied strictly, not only for the benefit of the victims of cruel, inhuman or degrading treatment, such as torture, but also to prevent and eradicate such practices.

3. The three branches of power in Argentina had attained their objectives by virtue of the instruments and responsibilities granted them by the country's legal order. Active sponsorship of and participation in the preparation of the various human rights conventions and, the work being done by The Under-Secretaries for Human and Social Rights in the Ministries of Foreign Affairs and the Interior, and by the Government Procurator for the Prison System, within the Ministry of Justice, affirmed his country's vigilance in the area.

4. Since the 1994 Constitutional reform, the international human rights treaties had enjoyed constitutional rank and were under the ongoing scrutiny of a specific commission established to ensure their precedence and to spearhead the legislative changes necessary to give full force and effect to the recognized rights.

5. Extraditions of suspected war criminals had been granted under article 144 (3) of the Argentine Penal Code, which recognized the offence of torture as extraditable and provided for the trial of its perpetrators and compensation for its victims and their families. He took the opportunity to inform the Committee of later developments concerning some of the cases mentioned in the third periodic report.

6. His Government fully realized that prisons constituted a high-risk environment for the commission of the offences of torture and ill-treatment. That fact had been the subject of exhaustive investigations, within the law-enforcement bodies and prison system in general, which had led to drastic changes. He did not wish to imply, however, that the provincial and federal police were necessarily or generally implicated in such acts, but simply that the potential risk had to be recognized if the changes needed to guarantee the protection of the human rights of detainees effectively were to be promptly made. The Government Procurator for the Prison System had worked successfully in the three years since his post had been established.

7. There had been two significant legislative developments, namely, the adoption of Act No. 24,660 governing the deprivation of freedom, and Decree No. 330/96 providing a general regulation for the treatment of persons under trial. Both instruments were deeply rooted in the concept of humanitarianism, fully respecting the rights and guarantees flowing from the Constitution and the international treaties ratified by Argentina.

8. Without prejudice to the legislative progress on the subject, the Government Procurator for the Prison System had identified cases of ill-treatment and had reported them to the courts. A number of specialized study programmes and workshops had targeted officials of the federal prison system, and the police forces and members of the judiciary in order to familiarize them with the international legal instruments and concepts governing the treatment of inmates.

9. Several provisions of the Convention were devoted to the characterization of torture as an extraditable offence and, in full recognition of that principle, the Argentine legislature had adopted Act No. 224,767 on international cooperation in criminal matters on the basis of reciprocity and guarantee of due process, and subject to certain conditions.

10. His Government was fully aware that much remained to be done to eradicate the offence of torture, but it pledged its unreserved commitment to work steadily toward that goal.

11. Mr. GONZALEZ POBLETE (Country Rapporteur) said that, when ratifying the Convention on 24 September 1986, Argentina had made the declarations under articles 21 and 22, and had entered no reservations.

12. With regard to article 2 of the Convention, the third periodic report of Argentina quoted an extract from article 75, paragraph 22, of the new Constitution which conferred constitutional rank on various human rights instruments, including the Convention. That new provision had categorically dispelled the doubts expressed by the Committee when it had considered the previous report of Argentina. At that time, it had been concerned by the fact that, in certain rulings, the Supreme Court of Argentina had not recognized the primacy of international conventions over the provisions of domestic law.

13. The report omitted to state that Argentina had been one of the first members of the Organization of American States (OAS) to ratify the Inter-American Convention on Forced Disappearance of Persons, merely saying, modestly, that Argentina had contributed to its adoption. There was no doubt that the Inter-American Convention strengthened the protection against torture. The ratification of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, in 1996, was yet another indication that Argentina's implementation of article 2 of the Convention against Torture was fully satisfactory.

14. The extraditions granted by Argentina had been effected in a manner consistent with the provisions of article 3 of the Convention. Nevertheless, the extradition treaties entered into with other States were applicable only

for the purposes of criminal prosecution. He wondered therefore what the policy of Argentina was with respect to the return (refoulement) of persons, as covered in article 3.

15. With respect to article 4, paragraph 15 of the report stated that, although there had been no changes in the substantive provisions of the Penal Code during the period covered by the report, accusations of torture, ill-treatment and unlawful coercion had had a better reception. Cases were cited in which allegations of torture had led to convictions. The penalties provided for acts of torture in article 144 (3)of the Penal Code were cited in detail in the initial report of Argentina (CAT/C/5/Add.12/Rev.1), and ranged from eight years' to life imprisonment, depending on the circumstances.

16. The sentence imposed in the Sergio Santiago Durán case referred to in paragraph 74 of the report, was consistent with those provisions. However, in the Miguel Rodríguez case (para. 73) and the Rodríguez Laguens case (para. 79), the judge had failed to impose the life sentence prescribed for acts of torture resulting in death, opting instead for the minimum sentence applicable in cases of murder.

17. Despite the severity of the sentences laid down for acts of torture, the judges thus failed to apply those provisions. According to information provided by non-governmental organizations (NGOs), since the entry into force of Act No. 23,097, only five life sentences had been imposed for acts of torture resulting in death. Furthermore, many cases of torture were characterized as lesser offences such as unlawful harassment and coercion, so that the accused could be given a conditional discharge under article 144 (2).

18. It appeared that the judges also failed to apply article 144 (5) of the Penal Code, as could be seen from annex I to the report, which revealed that 81 proceedings concerning torture had been initiated between 1992 and 1995, 73 of them imputed to Federal Police agents and eight to Federal Prison Service agents. In 46 of those cases - 57 per cent - injuries had been documented, all of them attributable to Federal Police agents. Over the same period the number of injuries documented had fallen substantially.

19. However, the final column of the table revealed the ineffectiveness of the judicial investigations, which might account for the gradual decline in the number of accusations. Of the proceedings in question, 53 (66 per cent) had been stayed or dismissed, and 23 cases had been filed. In no case had a sentence been passed - a circumstance inconsistent with the fact that injuries had been documented in 46 of the cases.

20. The explanation seemed to be that judges habitually failed to apply article 144 (5), which provided for the trial and conviction of the perpetrators' superior in the event of his culpable failure to prevent acts of torture. In none of the cases referred to, in the report or by other sources, had the judges applied that provision. Furthermore, a study of the cases revealed not only a lack of cooperation on the part of the police services, but also attempts by those services to hamper the investigations.

21. An examination of many of the cases referred to in paragraphs 69, 70, 71, 73, 74, 77, 79 and 80 of the report, and in reports by NGOs, revealed the

existence of a powerful network of systematic complicity within the police institutions, involving such practices as claims by police officers to have acted in self-defence, the placing of a weapon in the corpse's hands, falsification of autopsy findings, destruction of evidence, cleansing of corpses and their clothing to remove evidence of torture, false declarations of the cause of death by members of the medical profession, and institutional protection of the individuals accused.

22. Those practices were typified by the Sergio Santiago Durán case, in which the police surgeon had given as the cause of death poisoning by substances ingested by the victim; while a second autopsy, conducted by independent doctors, had revealed evidence of suffocation resulting from the placing of a plastic bag over the victim's head, bruising, injuries caused by electric shocks applied to the genitals, and death as a result of cardiorespiratory arrest. The Durán case also revealed extensive police protection of the direct perpetrators of the crime, several of whom had continued to live normal lives until detained following a recent television inquiry.

23. With respect to article 5, paragraph 18 of the report indicated that there had been no changes in the exercise of jurisdiction by the judiciary over the offences referred to in article 4 of the Convention since the preceding reports. Domestic legislation was in keeping with the provisions of article 5, paragraph 1, subparagraph (a). With regard to paragraph 1, subparagraph (b), national jurisdiction could be exercised only over offences committed abroad by agents or employees of the Argentine authorities in the performance of their duty. Otherwise, the crime escaped national jurisdiction, even if the criminal was a national and had returned to the national territory. With regard to paragraph 1, subparagraph (c), if the crime had been committed abroad against a victim of Argentine nationality, the case escaped national jurisdiction whether the person responsible was a national or a foreigner. With regard to paragraph 2, article 5 of Act No. 1612 on extradition, cited in the initial report, required the accused to be tried in Argentina if his extradition was refused. That Act, dating from 1885, provided that nationals would not be extradited.

24. He had no comments to make regarding articles 6 and 9. With respect to articles 7 and 8, the report stated that Argentina applied the principle aut dedere aut punire and, in cases where no agreement existed, that the principle applied to nationals, and also in respect of acts having consequences within its territory. That statement seemed to indicate that the duty to try the accused where extradition was refused and no bilateral extradition treaty existed would apply only with respect to nationals. He wondered what would happen if a foreigner's extradition was refused and no extradition treaty existed with the requesting State. There appeared to be a contradiction between article 1 of the Penal Code and article 5 of Act No. 1612. In such cases, he would like to know which provision would prevail.

25. With respect to article 11, the previous report had referred to the provisions of the new Code of Criminal Procedure, which was then about to enter into force. When the Committee had examined that report, the new Code had come into force only a few days previously. The third periodic report

provided extensive information on the main provisions of the new Code that were aimed at safeguarding the physical and mental integrity of persons deprived of liberty.

26. The change from an inquisitorial to an accusatory procedure was to be welcomed, as it was likely to reduce substantially the incidence of torture. However, no information was provided on standards and instructions relating to custody and treatment of detainees, other than the reference to provision for an enforcement judge (para. 60).

27. According to information received from NGOs, despite the severe restrictions on cases in which the police could detain persons without a court order, large numbers of persons continued to be detained without such an order in application of police edicts, or under the procedure for conducting identity checks. It was alleged that 80 per cent of police detentions were carried out in application of one or other of those two measures. According to the Amnesty International report for 1997, a new statute to be prepared by the Constituent Assembly for the Province of Buenos Aires would substantially reduce the powers of the police to detain persons on those grounds. He would welcome further information in that regard.

28. Mr. ZUPANCIC (Alternate Country Rapporteur), having endorsed his colleague's positive remarks about the third periodic report of Argentina (CAT/C/34/Add.5), referred to the information contained in the latest Amnesty International report on Argentina to the effect that, between 1993 and 1996, the Centro de Estudios Legales y Sociales (Centre for Legal and Social Studies) had recorded over 1,200 victims of police violence in the Federal Capital and Greater Buenos Aires. While the Office of the Under-Secretary for Human Rights within the Argentine Ministry of the Interior, mentioned in paragraph 50 of the core document for Argentina (HRI/CORE/1/Add.74), appeared to be in an excellent position to ensure respect for articles 11 and 12 of the Convention, it would have been helpful if that Office had provided statistics in its field, a comment which also applied to the institutions referred to in paragraphs 54, 56, and 60 of the core document.

29. Paragraph 29 of the third periodic report, omitted any mention of education and information regarding the prohibition against torture in the training of medical personnel, as provided for in article 10 of the Convention. He would like further information concerning the procedural penalties provided for under article 2 of the Code of Criminal Procedure (para. 35 of the report) and, in particular, whether such penalties were imposed in the event of a violation of the rule that personal liberty might be restricted only to the absolutely essential extent, as provided for in article 280 of the Code of Criminal Procedure (para. 36).

30. With regard to paragraph 37 of the report, which specified the usual exceptions to the requirement for a court order for arrest or pre-trial detention, he would like to know whether there was any case law, or any provision in the Code of Criminal Procedure, which required the prosecuting party to accumulate a certain level of evidence before a court order could be issued. He had been pleased to learn from paragraphs 38 and 39 that incommunicado detention could be imposed for a maximum of 72 hours only and

that such detention was no impediment to a detainee's communication with his defence counsel. He would, however, like some assurance that communication with the defence counsel took place in private.

31. Having welcomed the fact that the habeas corpus procedure was available in Argentina, he requested enlightenment concerning the application by an individual accused of committing an offence for exemption from detention (para. 43 of the report), since that seemed to be the reverse of the normal procedure, whereby the onus lay on the prosecution to demonstrate the existence of one of the reasons for detention stipulated in article 319 of the Code of Criminal Procedure (para. 56). In that connection, he wondered on what basis the large number of detentions referred to by his colleague had been made and also how many of them took the form of incommunicado detention. In connection with paragraph 47, he wished to know whether the client-attorney relationship was assured of privacy.

32. It was his understanding of article 309 of the Code of Criminal Procedure, reproduced in paragraph 55, that detainees were conditionally released, without prejudice to continuing investigation, in cases where there was insufficient evidence to prosecute, since detention would constitute a violation of the presumption of innocence. He would like that interpretation confirmed. He also wished to know what legal duration of pre-trial detention was, in view of the fact that, apart from the 72-hour period of incommunicado detention, further periods of detention were probably involved before and after indictment. In connection with the disallowance of voluntary statements to the police (para. 58), he wished to know whether information gathered through pressure and torture by the police had any probative value in court.

33. Turning to paragraph 63 et seq of the report, he wished to know whether any allegations of torture were investigated during the habeas corpus procedure and whether there was provision for the compensation of victims, since it was his impression that torts were adjudicated as adhesive to the main criminal trial, in which case a victim might be precluded from subsequently filing a civil damages suit for torts.

34. Lastly, in connection with paragraph 92 of the report, in respect of article 15 of the Convention, he wished to know the situation with regard to the rule excluding evidence obtained by forced self-incrimination.

35. Mr. SORENSON, having endorsed the questions already asked, said, with reference to paragraphs 12, 13 and 14 of the report, that he would like to know how Argentina dealt in practice with asylum-seekers and where they were held, as it was not possible to keep them in police stations for long periods of time. He also wished to know whether Argentina's impressive training of its police officers specifically included the prohibition against torture, as provided for under article 10 of the Convention. Stressing that the education of forensic, police, prison and normal civilian doctors concerning the prohibition of torture was extremely important in view of the regrettable role that they had played in the past, he asked for further information on the education they received on that subject.

36. With regard to article 317 of the Code of Criminal Procedure, reproduced in paragraph 56 of the report, he said he wondered whether the Spanish word

translated as “may”, in the first line of the article, should not have been translated as “should”. He also wished to know whether it was the prison governor or the court that was responsible for releasing a prisoner under article 317, paragraph 2, of the Code and, if the responsibility rested with the latter, whether such release was ordered expeditiously.

37. With reference to paragraphs 86-92 of the report and in view of the apparently substantial need for medical compensation in Argentina, he would like to know whether the Government recognized the value of rehabilitation centres.

38. He appreciated the fact that Argentina had contributed to the United Nations Voluntary Fund for Victims of Torture. However, since contributions from the Fund to organizations working on behalf of torture victims in Argentina exceeded the total amount of donations received, he suggested that the Argentine authorities might consider increasing their contribution, as a mark of respect for the victims of torture.

39. Mr. PIKIS asked whether he understood correctly from paragraphs 41 and 42 of the core document (HRI/CORE/1/Add.74) that international treaties must be self-executing in the sense that they must establish detailed rules if they were to be invoked in the resolution of disputes before the courts.

40. He also asked whether the post of Under-Secretary for Human and Social Rights was a political or civil-service one, how long the incumbent's term of office was, who appointed him, what his terms of service were and how his jurisdiction was differentiated from that of the Ombudsman (Defensor del Pueblo), mentioned in paragraph 60 of the core document.

41. Referring to paragraph 50 of the core document, he asked what benefits were envisaged by way of damages under the historical reparation programme.

42. Paragraph 63 of the core document said that complaints could be filed by persons immediately affected or by a third party. He wondered whether there had to be some connection between the third party and the victim of violence or whether such an initiative constituted a form of actio popularis.

43. Paragraph 73 of the core document referred to restrictions on habeas corpus following the declaration of a state of siege. He hoped that the Argentine authorities had considered the possibility that the suspension of fundamental human rights under those circumstances might constitute a breach of article 2, paragraph 2, of the Convention.

44. He sought clarification concerning the implications of the pardon granted in 1989 to the perpetrators of heinous crimes - crimes against humanity in every sense of the term - during the period from 1976 to 1983. According to Amnesty International, the pardon ruled out prosecution for acts of torture, with some minor exceptions. He wished to know whether it had been tested in the courts and whether there had been a judicial pronouncement to the effect that the pardon made it legally impossible to punish those guilty of torture. If that were so, Argentina would appear to be in breach of article 12.

45. Mr. BURNS, having commended Argentina on enacting the legislation and establishing the institutions needed for the protection of human rights and adopting all the optional features of the Convention, said that the fact that prosecutions for breaches of human rights were taking place on a regular basis represented an improvement in Argentina's record since the consideration of its initial report. However, there were still reported cases of factual as opposed to legal impunity. Alleged police perpetrators of brutality were still at large, reflecting, as he saw it, the survival of a strong police culture of violence.

46. He thus reiterated the Committee's recommendation that strenuous police re-education programmes should be implemented by the Government, particularly in the case of senior police personnel. Strong statements must be made to line officers and field officers about the inevitability of investigation and punishment in the event of abuses. Change was a slow process but any country suffering from that type of problem must persevere with action to eradicate it, if necessary with the assistance of the Office of the High Commissioner for Human Rights.

47. Amnesty International asserted in its 1996 report that Elba Tempera, a lawyer for the family of Andrés Núñez, a builder who had disappeared in 1990, had been intimidated and threatened by the judge in charge of the case, who had subsequently disqualified himself. The possibility that members of the magistracy were involved in intimidation was an extremely serious matter. He asked whether the allegation had been investigated and, if so, what the outcome had been.

48. Mr. REGMI, having commended the Government of Argentina on compensating persons who had been victims of torture during the military dictatorship and their relatives, said he was interested in the legal and practical framework for the functioning of such human rights institutions as the parliamentary commissions, the Ombudsman, the Office of the Under-Secretary for Social and Human Rights in the Ministry of the Interior, the Office of the Under-Secretary for Human Rights in the Ministry of Foreign Affairs and the Federal Council of Human Rights. In particular, he would like to know which of them was the competent authority for receiving complaints of ill-treatment and torture.

49. According to an Amnesty International report that had just been published, no effective action appeared to have been taken by the Argentine authorities to eradicate the practice of torture and ill-treatment. Reports of abuses by the police in the provinces and the federal capital continued, particularly of detainees held at police stations, often under provincial police-by-laws. Progress in investigating such reports was allegedly slow.

50. Amnesty International alleged that Leandro Oliva had been arrested with his girlfriend by a police patrol in Buenos Aires and subjected to torture on the way to the police station. Both had allegedly been beaten and threatened with death while in police custody. Clarisa Andrea Lencina had filed a complaint in March 1996 against two police officers of the third police station, stating that she had been subjected to beatings, near-asphyxiation and sexual abuse on two occasions. Adriana Cortés, a transsexual woman arrested in Mendoza province in February 1997, had reportedly been refused a

painkiller for toothache until she agreed to have sexual intercourse with the guard at the police station. He wished to know whether those three cases had been investigated and, if so, what steps had been taken to remedy the abuses reported.

51. Mr. YAKOVLEV, having commended Argentina on the practical steps it had taken to implement the Convention, said that provincial legislation was a problem for any federal State. He thus asked what the relationship was between federal and provincial legislation, particularly in the case of provincial legislation which allowed for the detention of alleged suspects under police-by-laws (Code of Misdemeanours). Young people and sexual minority groups were allegedly specially targeted. Was there any machinery to monitor provincial legislation with a view to ensuring that it was compatible with constitutional and federal legislation?

52. The CHAIRMAN invited the delegation to reply at the next meeting to the questions asked by the members of the Committee.

53. The delegation of Argentina withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

54. Mr. SORENSEN said that Mr. Niels Steenstrup Zeeberg, a former project coordinator at the International Rehabilitation Council for Torture Survivors in Copenhagen, had embarked on a three-year world tour with his family and a photographer - the Stop Torture Omnibus Programme (STOP) - to generate publicity for the global campaign against torture. Having interviewed representatives of Amnesty International in the United Kingdom and members of the European Committee for the Prevention of Torture at Strasbourg, he had requested permission to film, and possibly interview, members of the Committee against Torture on the following day, when the delegation of Portugal was due to present its report. STOP would subsequently visit rehabilitation centres throughout the world. It was a project that he wholeheartedly supported.

55. The CHAIRMAN said that he, personally, felt that the publicity for the Committee and the fight against torture was to be welcomed and that Mr. Zeeberg should be given permission to film.

56. Mr. GONZÁLEZ POBLETE said he had no objection to granting Mr. Zeeberg's request, since the proposed film was a general documentary. It would have been a different matter if the film had concerned a specific State party.

57. The CHAIRMAN said that the delegation of Portugal would be consulted before permission was given.

58. Mr. PIKIS suggested that only the Chairman should be interviewed in an official capacity. Other members of the Committee would be free to give private interviews if they so desired.

59. It was so decided.

The meeting rose at 12.55 p.m.