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COMMITTEE AGAINST TORTURE

Twentieth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 326th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 8 May 1998, at 10 a.m.

Chairman: Mr. BURNS

later: Mr. CAMARA

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.326/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 (agenda item 7) (continued)

Second periodic report of New Zealand (CAT/C/29/Add.4, CAT/C/12/Add.2)

1. At the invitation of the Chairman, Mr. Farrell, Ms. Holmes and Ms. Geels (New Zealand) took places at the Committee table.

2. The CHAIRMAN welcomed the New Zealand delegation and, recalling the Committee's custom that any member who was a national of a State whose report was under consideration should refrain from participating in the debate, said that he would not participate in the dialogue between the Committee and the representatives of New Zealand.

3. Mr. Camara took the Chair.

4. Mr. FARRELL (New Zealand) said that the submission of New Zealand's second periodic report was of particular significance because it was taking place in the fiftieth anniversary year of the Universal Declaration of Human Rights. The report, like the initial report, stated that no one had been convicted of or charged with committing an act of torture. New Zealand was the only country which, before ratifying the Convention, had passed legislation to implement the obligations it was about to undertake ("Act to make better provision for the punishment of crimes of torture and to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment"). The second periodic report, which covered the period from January 1991 to January 1995, highlighted a number of legislative and regulatory measures which had been adopted since 1991, including the adoption of the Mutual Assistance in Criminal Matters Act 1992, the Mental Health (Compulsory Assessment and Treatment) Act 1992, the Accident Rehabilitation and Compensation Insurance Act 1992 and the Health and Disability Commissioner Act 1994, the revision of training procedures for prison officers relating to the prohibition against torture, the development of standards for community-based residential services with the objective of safeguarding children in care, the decision of the Court of Appeal in the Simpson v. Attorney-General case, which recognized the ability of individuals to seek compensation directly from the State for any breach of the individual's rights under the New Zealand Bill of Rights Act 1990, and the inquiry into complaints by prisoners at Mangaroa prison alleging assault by prison officers.

5. He also wished to inform the Committee about a number of developments which had occurred since the preparation of the report, particularly the changes to the justice sector of the New Zealand Government in 1995. The functions of the former Department of Justice had been divided between the Ministry of Justice (responsible for criminal law), the Department for Courts (responsible for the day-to-day running of the courts) and the Department of Corrections (which enforced the sentences imposed by the courts).

6. A number of other developments had taken place since the preparation of the report, which improved New Zealand's implementation of various articles of the Convention. In relation to article 2 of the Convention, new regulations

governing penal institutions which were due to enter into force on 1 July 1998 would bring about a major modernization of the management regime of penal institutions and the care of inmates. Detention conditions would be improved from a practical, medical, spiritual and cultural point of view and inmates would have access to inspectors and Ombudsmen and would have recourse to a complaints procedure. Following amendments to the Penal Institutions Act which had entered into force in 1995, inmates might not be placed under mechanical restraint except in the case of absolute necessity and a written order signed by a visiting justice was required if the inmate was to be kept under mechanical restraint for more than 24 hours.

7. In respect of article 3, he said that the Office of the United Nations High Commissioner for Refugees had appointed a permanent representative in New Zealand, who was authorized to attend any appeal against decisions on refugee status and advise various government departments on issues of general policy relating to refugees.

8. With regard to article 8, he said that the need to review New Zealand's extradition legislation in order to simplify extradition procedures between New Zealand and countries outside the British Commonwealth was described in the report (paragraph 8) and a draft law on extradition would soon be submitted to Parliament with the aim of rationalizing and simplifying the three existing regimes relating to extradition. Parliament had just adopted an amendment to the Mutual Assistance in Criminal Matters Act, which allowed New Zealand to provide special assistance to States parties to the Convention even if there were no formal cooperation arrangements (article 9 of the Convention).

9. In respect of article 10 and following the recommendations of the ministerial inquiry into incidents at Mangaroa prison (paragraphs 16-22 of the report), the training given to prison officers was to be improved. Thirty-nine competency standards for prison staff had already been drawn up by the project team responsible for training.

10. The Ministry of Health had closely monitored the implementation of the Mental Health (Compulsory Assessment and Treatment) Act since its entry into force in 1992. In June 1997, guidelines had been published to facilitate its interpretation (article 11 of the Convention).

11. In respect of the implementation of article 12 of the Convention, the Code of Health and Disability Services Consumers' Rights, mentioned in paragraph 24 of the report, had entered into force on 1 July 1996. Procedures to ensure the prompt and impartial investigation of allegations made by persons detained in public penal institutions had been substantially amended, following the above-mentioned restructuring of the justice sector and the ministerial inquiry into the incidents at Mangaroa prison. The report of the inquiry, known as the Logan report, had been published and some of its recommendations had already been implemented, including the establishment of an internal complaints procedure in each prison, the establishment of a unit within the Office of the Ombudsman to deal with inmates' complaints, more information for inmates about their rights, a review of recruitment procedures for prison officers and training for those responsible for recruiting prison officers to ensure that the candidates selected had the necessary skills.

12. As to article 13 of the Convention, he said that new regulations adopted in 1996 ensured that care institutions for children and young people had a complaints procedure to which all residents had easy and free access. Complaints had to be dealt with promptly. The procedure did not replace the requirement that any serious allegation against a staff member of the institution must be reported to the police. The interests of the child were paramount in all cases.

13. The Committee's questions about the situation of refugees in New Zealand who were survivors of torture had been answered in paragraphs 38 to 40 of the report. Since the preparation of the report, two centres had been set up to help with the psychosocial rehabilitation of the refugees and increase community awareness of issues related to resettlement.

14. All the legislative and practical improvements he had mentioned formed part of the continuous assessment and review process which was essential for the effective implementation of the Convention and were consistent with the New Zealand Government's desire to protect all citizens against the risk of torture and ensure that any allegations of torture were fully investigated in accordance with the Convention. The New Zealand delegation was at the Committee's disposal to answer any questions which members might wish to ask about the second periodic report.

15. Mr. YAKOVLEV (Country Rapporteur) said that he welcomed the submission of the second periodic report, which referred to the Convention article by article, and the information it contained. The delegation's oral introduction had also been most interesting. The only point that required clarification was whether the police inquiry into incidents at Mangaroa prison had been completed for the purpose of gathering sufficient evidence to recommend to the Solicitor-General that one or more officials should be investigated under the 1989 law on crimes of torture. If so, the Committee would like to know what conclusions had been reached and whether the persons responsible had been punished.

16. Mr. ŽUPANČIČ (Country Rapporteur) said he was pleased to note that New Zealand did not have any of the problems on which the Committee's questions normally focused. He would therefore concentrate on the mental health sector and psychiatric establishments. With regard to the new Mental Health (Compulsory Assessment and Treatment) Act (1992), which was discussed in paragraph 13 of the report, he would welcome further information on the procedural guarantees protecting the mentally ill who were considered to be a danger to themselves and to others and who had been committed: who took the decision to commit them, in accordance with what criteria and on the basis of what information? Was that decision reviewed by a psychiatric authority outside the establishment in which the patient was accommodated and how often? Clearly, to be deprived of one's freedom in a psychiatric establishment was no less distressing than in a prison; consequently, the procedural guarantees applicable to criminal matters should also be applied, where necessary, in connection with psychiatric confinement, as was now the accepted practice in the United States, for example.

17. Paragraph 14 of the report stated that a child or young person could not be held in secure care for more than 72 hours. Was such detention comparable

to police custody and, if so, given that police custody was apparently limited to 24 or 48 hours, why was the time limit for secure detention for minors so much longer? Was electric shock treatment used in psychiatric hospitals in New Zealand, was such treatment subject to regulation and, if so, what was its nature? Electric shock treatment was banned in some countries; where it was not, it was not infrequently used for preventive purposes, to ensure docile behaviour on the part of patients.

18. He had been most favourably impressed by the fact that, contrary to usual practice, a private detective agency had been hired to conduct the inquiry into the incidents at Mangaroa prison. It would be interesting to receive information on the size of the prison population in New Zealand in 1997 and whether its racial composition was comparable to that of the population as a whole.

19. He requested further details on the Simpson v. Attorney-General case discussed in paragraph 28 of the report. He requested confirmation that the Court of Appeal's decision stated the right of the injured party to be compensated by the State when his rights had been breached by a public servant. Lastly, paragraph 38 of the report stated that New Zealand currently had between 16,000 and 20,000 refugees; where did they come from, to what extent had they been subjected to torture in other countries and had it been found that they suffered from post-traumatic stress?

20. Mr. SORENSEN, congratulating New Zealand on its report and its very clear introduction, said that he had only a few questions. The first related to article 10 of the Convention. The training given to prison staff in New Zealand was all the more commendable in that few countries provided training for such personnel. It would be very useful for the Committee to receive a copy of the 39 competency standards for prison staff that had been mentioned by the delegation in its statement.

21. Article 10 also dealt with the training of medical staff; it should be emphasized that such persons should receive training not only in the mental health field, as stated in the report, but also specifically regarding the prohibition of torture. That was particularly important for New Zealand, which received a large number of refugees, many of whom suffered the after-effects of torture; once those refugees had moved away to different parts of the country, they would be dealing with general practitioners, who should therefore know how to treat such patients. It should not be difficult to organize training of that kind in New Zealand, where new centres specializing in matters relating to torture had been opened. He asked whether the prohibition against torture featured in the curriculum for medical staff and, if not, he hoped that that gap would be filled in the near future.

22. New Zealand's implementation of article 14 of the Convention was entirely satisfactory. In that connection, the General Assembly of the United Nations had decided by consensus, on 12 December 1997, to proclaim 26 June 1998 the first United Nations International Day in Support of Victims of Torture. There were many ways in which New Zealand, which had done so much for those victims, could commemorate the day; for instance, it might announce that it would increase its contribution to the United Nations Voluntary Fund for Victims of Torture.

23. Mr. YU Mengjia said he was pleased to note that no case of torture had been reported in New Zealand during the period under consideration and that he had only two questions for the delegation. First, considerable attention was paid in the report to the placement of children in institutions; were such children particularly exposed to the risk of ill-treatment? Secondly, he would welcome further information on the Code of Health and Disability Services Consumers' Rights, mentioned in paragraph 24 of the report, and on its connection with the Committee's mandate.

24. Mr. EL MASRY said that he was also very satisfied with the report submitted and the oral introduction by the New Zealand delegation; the only point on which he would like clarification concerned extradition. It appeared that a person accused of torture could be extradited from New Zealand without the need for a treaty, and that was a very welcome procedural simplification. It was to be hoped that other countries would follow New Zealand's example, as torturers would then no longer feel safe anywhere. Did that measure relate only to torture or did it apply also to crimes against humanity or terrorism, for example?

25. The CHAIRMAN thanked the New Zealand delegation and invited it to continue the dialogue at the next meeting.

26. The New Zealand delegation withdrew.

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