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COMMITTEE AGAINST TORTURE

Thirty-fourth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 654th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 12 May 2005, at 4.05 p.m.

Chairperson: Mr. MARIÑO MENÉNDEZ

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* The summary record of the first part (closed) of the meeting appears as document CAT/C/SR.654.

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The public part of the meeting was called to order at 4.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 6) (continued)

Initial report of Uganda (continued) (CAT/C/5/Add.32)

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

2. The CHAIRPERSON invited the delegation to reply to the questions raised by the Committee at its meeting the previous day.

3. Mr. SONKO (Uganda), replying to questions about the Uganda Human Rights Commission, said that the commission of inquiry set up in 1986 to investigate abuses committed since 1962, the date of Ugandan independence, had recommended establishing a human rights commission. The Commission had been established in 1995, the year in which the Constitution had been promulgated. It was an independent institution established under article 51 of the Constitution on the basis of the principles relating to the status and functioning of national institutions for protection and promotion of human rights (the Paris Principles). It was composed of a Chairperson and at least three other persons appointed by the President with the approval of Parliament. There were currently six commissioners, who had to be persons of high moral character and proven integrity. They served for six years and were eligible for reappointment.

4. The functions of the Commission as laid down in the Constitution were: to investigate human rights violations on its own initiative or on the basis of a complaint by a person or group of persons; to visit places of detention or related facilities in order to inspect conditions and make recommendations for improvements; to establish a human rights research, education and information programme; to make recommendations to Parliament regarding effective measures to promote human rights, including the provision of compensation to victims of human rights violations and their families; to generate awareness of the Constitution as the fundamental source of law and to encourage people to defend it against abuse; to formulate, implement and oversee programmes to inculcate awareness among citizens of their civic responsibilities and their rights and obligations; to monitor the Government's compliance with international human rights treaties; to review the cases of people restricted or detained under emergency laws and to order their release or uphold their continued detention; and to publish periodic reports of its findings and submit annual reports to Parliament on the state of human rights and freedoms in the country.

5. The Commission had the power of a court to summon or order a person to appear before it and to produce documents or records deemed to be of relevance to an investigation. A person could be committed for contempt of the Commission's orders. If it was satisfied that violation of human rights had occurred, the Commission could order the release of a detained or restricted person, payment of compensation or any other legal redress. Anyone dissatisfied with an order had the right to appeal the decision to the High Court.

6. The Commission was barred from investigating any matter that was pending before a court, involved relations between the Government and foreign States or international

organizations, or related to the exercise of the prerogative of mercy. It had established a Department of Complaints and Investigation, a Legal and Tribunal Department, a Department of Education, Research and Training, a Finance and Administrative Department, and a Monitoring and Treaties Department.

7. With regard to follow-up to Commission recommendations, when a report was submitted to Parliament, the Ministry responsible for queries contained in the report was required to investigate the issues raised and report back to Parliament through the Minister.

8. The Human Rights Commission Act mandated the Commission to establish offices at district and other levels as it saw fit. It had already created a number of regional offices and planned to create more as soon as funds became available.

9. Both the Constitution and the Human Rights Commission Act authorized the Commission to visit places of detention. Access to prison and police facilities was usually granted. However, there were special regulations governing military and security installations. The Commission had to seek permission 24 hours in advance of any visit to a detention centre in a military camp.

10. With regard to unofficial places of detention, the so-called "safe houses", Uganda had experienced a wave of terrorist attacks, especially in Kampala and its suburbs, during the period from 1997 to 2000. As it had not been possible to place the perpetrators in the same cells as ordinary offenders, the security agencies had designated places known as safe houses where they could be held in isolation with provision for additional security measures. However, when the Human Rights Commission's annual report had been discussed by Parliament in 2002, the Minister of State for Security had been questioned about the issue and said that there had not been enough properly trained staff to handle terrorist suspects. The safe houses had subsequently been phased out and the inmates transferred to regular prisons.

11. The Human Rights Desk of the Uganda People's Defence Force (UPDF), which conducted investigations in military detention centres, submitted its findings and recommendations to the Office of the Chief Political Commissar, who issued instructions for appropriate action. In some cases, investigations were instituted by the army's special investigation bureau to verify inmates' allegations of ill-treatment. If the allegations were well-founded, action, including prosecution, was taken against the perpetrators. The Compensation Committee at the Ministry of Defence was in some cases requested to assess damages and the amount to be paid as compensation.

12. The Joint Anti-Terrorism Task Force (JATF) was composed of members of the different security organs. Allegations of the existence of a JATF detention centre in Kololo were unfounded. The building in question contained JATF offices. It was located in the vicinity of executive residences and embassies and was often visited by members of the Human Rights Commission and parliamentary committees.

13. With regard to internally-displaced persons (IDPs) in camps in the conflict areas of northern Uganda, he said that the Government had enhanced security through the recruitment of auxiliary forces and through constant aerial surveillance. Military personnel at regular army bases were given special training to familiarize them with IDP rights and the correct way of

handling people in the camps. The Government's policy on IDPs, adopted in October 2004, was in line with the United Nations Guiding Principles on Internal Displacement. Military personnel had not yet been familiarized with the new policy. The Human Rights Commission, in close collaboration with the UPDF Human Rights Desk, was in the final stages of setting up civil-military centres in the four districts of northern Uganda. The centres would receive complaints of human rights violations and forward them to the relevant authorities for action. They would also promote exchanges of information between civilians and the military, and monitor compliance with human rights norms by all persons on the ground.

14. The insurgency in northern Uganda had claimed a great many lives. The Government was more than willing to reach a peaceful settlement and had enacted an Amnesty Act to encourage the rebels to denounce the insurgency and rejoin their families. Some, including high-ranking rebel commanders, had taken advantage of the offer. The Government had also established a peace team to engage in negotiations, but the rebels were still evasive. However, in fulfilment of its constitutional duty to safeguard the lives of Ugandan citizens, the Government sometimes had no option but to repulse the attacks.

15. Mr. TWARUHUKWA (Uganda) said that although the Convention had not yet been incorporated in domestic law, article 44 of the Constitution made it clear that no circumstances whatsoever could be invoked to justify torture or cruel, inhuman or degrading treatment or punishment. The Anti-Terrorism Act and the Police Act also specifically prohibited torture.

16. No act of Parliament dealt specifically with superior orders, but a pocketbook issued to all law enforcement officials stated clearly that no person under any form of detention could be subjected to torture or cruel, inhuman or degrading treatment or punishment, and that those officials had the right and indeed the duty to disobey any order to carry out such acts. No law enforcement official was allowed to inflict, instigate or tolerate any act of torture or ill-treatment nor could he or she invoke superior orders or exceptional circumstances such as a state of war or threat of war, political instability or other public emergency as a justification for such acts. The pocketbook stated that the duty to disobey an unlawful order took precedence over the duty to obey orders.

17. Article 44 (d) of the Constitution stipulated that there could be no derogation from the right to habeas corpus. Court orders of habeas corpus directing the Inspector-General of Police to produce or release detained persons were always complied with. The unit commanders concerned were immediately ordered to release the suspects.

18. Discussions were currently under way on ratification of the Optional Protocol to the Convention. A consultative seminar held the previous month in Kampala had focused on promoting awareness of the provisions of the Protocol. Some misgivings had been expressed regarding, for instance, the financial implications of the establishment of a national preventive mechanism within one year of ratification. Some participants had suggested that the Human Rights Commission could be designated as the mechanism since it was already discharging a similar mandate. The seminar had been attended by representatives of the Ministry of Foreign Affairs, the police, the prison authorities, the Human Rights Commission, the press, NGOs and others. The final document urged the Government to consider ratification of the Protocol. He expected that a decision would be taken in the near future.

19. Administrative circulars for the police and related literature such as the human rights pocketbook were not legal documents and were not intended as a substitute for the requisite legislation. The Government viewed them as supplementary guidelines to ensure respect for human rights by law-enforcers. Police officers carried the pocketbook with them at all times and could refer to it as necessary.

20. On the question of funding for counsel and medical services for detainees, he said legal representation was a recognized right and his Government wished legal services to be available to all. However, owing to budgetary constraints, it was possible to provide free legal aid only to those facing capital charges.

21. Detainees requiring medical care were referred to the nearest government health facility for free treatment. No one was denied access to private treatment, however, if that was their preference and they could pay for it.

22. On prosecution procedures, he said the Directorate of Public Prosecution (DPP) was an office established under the Constitution, which could initiate or take over proceedings, or discontinue criminal proceedings it had itself initiated. The independence of the DPP was established in law. In deciding whether to prosecute, the DPP must take into account the public interest, the interests of the administration of justice and the need to prevent abuse of legal procedure.

23. Victims were also constitutionally entitled to institute private proceedings. The DPP had the power to take over such proceedings and also to discontinue them, with the consent of the trial court.

24. On the question of protecting torture victims from perpetrators, he said ad hoc measures were taken where necessary, but there was no explicit or formal procedure in such cases.

25. Where a court or the Human Rights Commission established that torture had taken place, the Government was ordered to pay damages in accordance with the principle of vicarious liability for the actions of government agents or servants. In addition, disciplinary action was taken against the perpetrator and the Ministry concerned was required to report to Parliament on the action taken. In a recent case, the perpetrator had been ordered to personally compensate the victim.

26. On the question of international treaties on police cooperation, he said that, under arrangements between States within the same Interpol region, people suspected of committing crimes could be extradited even where no extradition treaty existed. His Government would prefer to conduct such matters under an extradition treaty but took the view that, where a suspect crossed into another State with which Uganda had no such treaty, the requirements of justice outweighed the bureaucratic requirement. Arrangements of that kind between States ensured that justice was done and was seen to be done.

27. Confessions were legally admissible as evidence, provided they had been made in the presence of a magistrate or of a senior police officer of sufficiently high rank to ensure that the

confession was indeed voluntary. However, if a confession was challenged, the magistrate would conduct an inquiry during the trial in order to establish whether it had been made voluntarily; if not, it would not be admitted.

28. The Committee had requested information on "mob justice", which was admittedly a problem, particularly in urban areas. However, efforts were being made to address the issue: community policing was being stepped up and programmes were being put in place to raise awareness among the public at large. Statistics on cases would be sent at a later date, along with the figures requested on torture involving sexual violence and on human trafficking.

29. With regard to the duration of police custody, he said that it was not always possible to bring suspects before a court within 48 hours of their arrest. In such cases, unless they had been arrested for a capital offence, detainees were given a police bond. The problem was being addressed, notably through the issuance of administrative circulars advising police not to make an arrest until extensive inquiries had been carried out. They were also urged not to make arrests on a Friday evening, since the 48-hour time limit would expire over the weekend.

30. Mr. DAVID (Uganda) said visits by inspectors or by the Human Rights Commission to police detention facilities or prisons did not need to be announced. In addition, the International Committee of the Red Cross (ICRC) was allowed to interview prisoners in private. Visits to facilities within army installations, however, required clearance by the military authorities. Such clearance had always been given.

31. The death penalty was applied, by hanging, for treason, murder, rape and aggravated robbery. Abolition was an issue that was constantly under discussion in government and civil society, but in a referendum in 2003 the people had voted to retain the death penalty for the most heinous crimes.

32. The issue of customary torture in Karamoja was being addressed by the Government. The Karamojong were a nomadic people who lived by cattle-raiding, a practice that caused much suffering. Attempts were being made to disarm members of the group and to provide alternative income-generating activities. In addition, the police presence was being reinforced in the area and judicial institutions strengthened. NGOs were assisting and some improvements had been noted.

33. Where deaths occurred in custody, the police were immediately informed and a post-mortem carried out, in accordance with the law. A medical certificate was issued stating the cause of death.

34. Sexual violence in prison had not been considered a major problem in Uganda. Male and female prisoners were segregated and homosexuality was not only illegal but also strongly stigmatized. The sheer lack of space in prisons also made it rather difficult to engage in sexual violence. However, studies were now under way, prompted in part by an instruction recently issued by the President, to the effect that prison officers should take an interest in issues of sexuality in prison, in order to enable them help prevent the spread of HIV/AIDS.

35. On the question of torture in local government prisons, he said that, once the new legislation on prisons came into force and central Government took over control of all prisons,

torture was expected to become a thing of the past, since central government officials were prohibited from using torture. In the meantime, however, central Government had already taken over inspections of local government prisons, using trained personnel, a move that should reduce the incidence of torture in prisons. In addition, the Human Rights Commission had been conducting training with local government officials.

36. Uganda had a legal aid scheme administered by the Uganda Law Society, and legislation was currently being drafted to improve the scheme. Free legal services were also provided by certain NGOs.

37. The 360-day and 120-day limits on remand, for capital charges and non-capital charges respectively, had been instituted under the Constitution as a response to the enormous backlog of cases that had built up, mainly owing to budgetary constraints and the shortage of judges. A project was now under way to clear the backlog by providing appropriate support to the police in their investigations and to prisons and the judiciary; remand periods had been considerably reduced as a result.

38. He could not comment on the figures cited for prison deaths, but the majority of deaths among the prison population were attributable to HIV/AIDS and related complications, as among the population at large. Retroviral medication was now provided free of charge, however, which should help reduce the number of deaths.

39. Mr. BERNARD (Uganda), responding to Committee members' concerns that Uganda's new legislation on NGOs might adversely affect the partnership between Government and civil society, said the bill was currently under consultation and civil society was participating in that process. He reassured the Committee that no moves were under way that might affect the harmonious mutual relationship between Government and NGOs.

40. On the issue of refugees, he said that, given Uganda's strategic location at the centre of the Great Lakes region, it was vital to understand and contain the problem, and the Government was attempting to do so with the help of UNHCR. The relevant legislation was being reviewed to take account of the needs for protection, voluntary reintegration and repatriation, and to ensure equal opportunities for all groups without discrimination.

41. Ms. BYAKUTAGA (Uganda), responding to questions on the relationship between international and domestic law, said that, under the Ratification of Treaties Act, a ratified treaty did not become applicable automatically. The ratified treaty must be presented to Cabinet and Parliament and finally passed into law. Once a treaty had been transferred to domestic law, it became a local law like any other and enjoyed the same status, so the question of primacy did not arise.

42. Regarding the Government's initiative to ensure that the provisions of the Convention were incorporated into national legislation, the line ministry initiated the process with a memorandum to be presented to Cabinet, which in turn directed the first parliamentary council, a government department charged with drafting of laws, to draft the bill, which was then presented to parliament to pass into law. That process was due to be initiated shortly.

43. On whether international conventions could be invoked directly before the courts, she said that they could only be invoked once they had been transferred into domestic law. The law applicable in Uganda was enumerated in the Adjudicature Act and ranked in the following manner: the written law, and where there was no written law, the common law and equity, and any established and current custom or usage. As no reference was made to international law, it followed that international conventions could not be invoked until they had been incorporated into domestic law.

44. On whether the Convention could be used in lieu of the Extradition Act, under the current law the Convention could not be used in lieu of the Act, although in certain cases other means were used and the authorities overlooked the letter of the law.

45. As to the extraterritorial jurisdiction of the offence of torture, under the Anti-Terrorism Act of 2002, the courts were empowered with extraterritorial jurisdiction to try terrorist offences committed in Uganda and outside its borders, including on board vessels flying the Ugandan flag, or in aircraft registered under Ugandan law.

46. Mr. NAGGAGA (Uganda) said that his Government would continue to observe transparency on torture and other human rights issues, and looked forward to further dialogue with the Committee.

47. Mr. MAVROMMATIS (Country Rapporteur), referring to the application of the Convention in lieu of the Extradition Act, said that the State party could fully comply with the Convention provided that it had in place the necessary domestic legislation. Following transfer into internal law, the Convention covered a number of areas in addition to extradition, such as return and expulsion. Therefore the Convention could be used in lieu of legislation on those procedures, especially as a means of contributing to universal international efforts to combat torture. However, the State party must first adopt a series of legislative and practical measures. The Committee hoped that in its additional written replies the State party would outline a definite programme for tackling torture.

48. He would welcome clarification on the Ugandan Human Rights Commission. The Commission's purpose in visiting places of detention was clearly defeated if it was required to give notice. He hoped that the question would be reconsidered and the Commission and other organizations would be allowed to conduct visits unannounced.

49. Regarding the adoption of the Optional Protocol, the Human Rights Commission constituted a successful medium for that purpose, and should expedite the process.

50. With regard to confessions, he welcomed the fact that the Judges' Rules were adhered to and that confessions were made before a magistrate.

51. Mr. CAMARA (Alternate Country Rapporteur) said it was important that articles 20, 21 and 22 of the Convention should be taken into account by the Government, as their implementation gauged the State party's will to implement the Convention as a whole.

52. When the Convention referred to extradition, it did so not in general terms, but in the context of perpetrators of torture, which was considered a crime against humanity under international law. The Convention provided that, in the absence of domestic provisions relating to extradition, the State party should consider article 8 as the legal basis for extradition.

53. He understood the problems posed by the fact that Uganda was a dualist State, but drew the delegation's attention to the precedent set by the United Kingdom in the Pinochet case. When the United Kingdom had faced difficulties in accepting Pinochet's extradition as a result of its legal system, the Committee had recalled the terms of the Vienna Convention on the Law of Treaties, which provided that States parties should not use internal legal difficulties as an excuse for not fulfilling an international obligation. Even if the State party did not extradite a person, it should try the case; there should not be fundamental juridical obstacles.

54. Mr. PRADO VALLEJO requested clarification on whether the police were authorized to imprison people directly without a court decision. He noted that the worst abuses against citizens were committed by the police, including torture, ill-treatment and incommunicado detention, and it appeared that little had been done to resolve the problem. The Government should also resolve the situation of opposition politicians, who were threatened almost constantly.

55. Mr. EL-MASRY welcomed the fact that the State party had accepted 200,000 refugees and strictly respected the principle of non-refoulement. In connection with the atrocities committed by the Lord's Resistance Army (LRA), he wondered whether the improvement in bilateral relations with Sudan and cooperation along the border had yielded any positive results.

56. Given that the lack of resources, especially police resources, had contributed to the continuing atrocities, he would be interested to learn whether the international community had offered assistance in providing the ability to police the camps. The international community often made recommendations which could not be put in place without the necessary resources.

57. Ms. GAER said that she would be interested to hear whether the Government thought the investigation by the International Criminal Court (ICC) should be continued.

58. She would welcome clarification on how the multiple agencies involved in arresting and detaining people cooperated, and whether there was a clear hierarchy of response. Perhaps details of the agencies with powers of arrest could be included with the statistics to be submitted at a later date.

59. She understood that a parliamentary study had been conducted on the ungazetted safe houses. If it was available, the Committee would be interested in reviewing the information contained therein.

60. Mr. WANG Xuexian, referring to the situation of torture in local government prisons, which had been described as alarming in the report, wondered whether that continued to be the case. If so, he would be interested to hear about the measures being taken by the Government, which should be considered a priority.

61. Mr. SONKO (Uganda), responding to the question on the restoration of diplomatic relations with the Sudan, said that one of the major results had been that the Sudanese Government had allowed Ugandan forces to go deep into Sudan to pursue LRA rebels. Relations were expected to improve further following the signing of the peace accord between the central Government of Sudan and the authorities of southern Sudan.

62. On the question of support by the international community, the United Nations World Food Programme was involved in distributing food to the camps in northern Uganda. NGOs such as Save the Children also worked with former child soldiers, although much remained to be done in that regard. One area where NGOs could be of particular assistance, for example, would be in establishing special schools for those children. The international community had not been involved in policing in the context of the conflict, but had assisted in training the military and police, and the United States Government had recently made a donation for that purpose.

63. Mr. TWARUHUKWA (Uganda) said that his delegation had noted the comments on the contention that the police were the chief perpetrators of torture. On the question whether the police had received assistance in general, he said that assistance was normally provided according to what the international community believed was required and programmes were designed by the countries providing the funding. It would be helpful if the police themselves were involved in deciding what was required, as they had first-hand knowledge of the problems they faced.

64. As to the organs involved in arrests, because of security concerns, it had sometimes been necessary, in cases such as terrorism, to bring together several organs to share intelligence among key players. For example, the JATF (see para. 12) was composed of officers from the police, specifically the special branch and the Criminal Investigation Department, the External Security Organization, the Internal Security Organization and the Chieftaincy of Military Intelligence.

65. Mr. DAVID (Uganda) said he agreed with the comments on visits to detention centres. Discussions on the subject had been ongoing but had not as yet been conclusive; they would be intensified on the delegation's return to Uganda. Police and prison facilities were open to the Ugandan Human Rights Commission and sometimes also to the ICRC.

66. As to torture in local government prisons, he repeated that inspections were now carried out by inspectors from central government prisons and were funded by the Government. Perpetrators of human rights abuses in local government prisons had been punished and the victims compensated. Training by the Human Rights Commission and NGOs had been extended to local government prisons. The situation was expected to improve significantly once the Prisons Bill became an act of Parliament.

67. Mr. NAGGAGA, responding to the question on the ICC, said that he was awaiting a response from the Government on its definitive position on the investigation, which he would submit to the Committee once it was received.

The meeting rose at 6.05 p.m.