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COMMITTEE AGAINST TORTURE

Twenty-third session

SUMMARY RECORD OF THE 393rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 9 November 1999, at 10 a.m.

Chairman: Mr. BURNS

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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)

Second periodic report of Malta (CAT/C/29/Add.6)

1. At the invitation of the Chairman, the delegation of Malta (Mr. Bartolo and Mr. Quintano) took places at the Committee table.

2. Mr. QUINTANO (Malta) said that the Government had taken certain measures to improve the situation in the country's correctional facility, the aim of which was no longer to punish prisoners but to help them become responsible and useful members of society. In June 1999, a new wing had been inaugurated for minors, offering a number of services, including a library, a workshop, a gymnasium and an education programme tailored to the needs of young offenders. The schooling could include up to six lessons a day in subjects such as Maltese, English, Italian, maths, computer services, life skills, chess and lateral thinking. Counselling and therapy were also given to young offenders' families.

3. The Government had begun recruiting more teachers with a view to extending the education programme to cover adult inmates as well. It had made a point of respecting the privacy of prisoners, for example by ensuring that each would have his or her own cell. Over 100 prisoners worked during the day at jobs ranging from cleaning and maintenance to construction and carpentry. Efforts were under way to establish an inmates' cooperative to permit them to work for establishments outside the correctional facility, so as to help ensure that they could find work at the end of their sentences.

4. The facility's staff attended special courses on communications skills and group dynamics, and high-ranking officials had attended a course on mental health in prisons, which had been organized by the World Health Organization. The Government had improved the staff's conditions of employment so as to attract more and better people to the profession.

5. Medical services were available at the correctional facility 24 hours a day, and pending construction of a full-fledged medical ward within the facility itself, for special treatment prisoners were referred to the general hospital. The Government had concluded agreements with voluntary organizations, which carried out drug rehabilitation programmes for the inmates.

6. The Government had ratified the Council of Europe's European Convention on Extradition with minor reservations, and the national legislation could be relatively easily invoked. To date, no person had been prosecuted under section 139 A of the Criminal Code, which prohibited torture. There had been no requests for extradition, and no applicants for asylum or refugee status had been turned back to a country where there was a risk of torture or cruel punishment.

7. The Government had recently finalized a comprehensive bill on asylum, which was to be the first such act adopted since independence in 1964, and which was due to be brought before Parliament in the near future. The director of the Emigrants Commission had stated that his

office, which worked closely and harmoniously with the Immigration Police, referred asylum requests to the Office of the United Nations High Commissioner for Refugees in Rome. Although Malta had issued a geographical reservation to the 1951 Convention relating to the Status of Refugees, limiting the right to asylum to people from European countries, Iraqi refugees were in fact the second largest group, after Yugoslavs.

8. Legal experts and members of the Attorney-General's Office regularly carried out training at the police academy, where part of the first-year curriculum covered torture and cruel and inhuman treatment by police officers. Cadets sat examinations on human rights.

9. Concerning the allegations of torture contained in a communication recently submitted to the Committee by Amnesty International, it was important to note that the Attorney-General's Office was entirely independent of the executive branch. Any decision to prosecute or to suspend proceedings was taken exclusively by that Office, without any interference on the part of the Government. The Attorney-General's Office had entrusted that particular case to the Deputy Attorney-General, an eminent criminal lawyer, who had instigated legal proceedings against the alleged perpetrator.

10. Mr. MAVROMMATIS thanked the delegation for the additional information provided during the oral presentation, which was all the more necessary as the country report was extremely brief. While the report did to some extent follow the Committee's guidelines, it failed to address a number of questions which had been raised during the Committee's consideration of Malta's initial report, and there had surely been some developments between the consideration of the initial report and the date at which the second report had been submitted. Perhaps in future those responsible for drafting the reports should refer to the summary records of the Committee's meetings, so that such questions could be addressed. It would also be most helpful if the report could be submitted on time.

11. The Committee's records and those of the European Committee for the Prevention of Torture both indicated that the situation in Malta was satisfactory, although as always there was some room for improvement. The Government had made an effort to comply with its obligations under the Convention and with the recommendations issued by the Committee and by the European Committee for the Prevention of Torture. Yet there had been some reports of overcrowding and isolated allegations of torture.

12. It was heartening that a bill on asylum was currently under consideration. It was to be hoped that the new law would be in line not only with the obligations of the 1951 Convention relating to the Status of Refugees, but also with the growing jurisprudence of the European Committee for the Prevention of Torture, the Human Rights Committee and the Committee against Torture. The Convention against Torture sometimes went further than the other instruments, insofar as it applied in nearly all cases where there was a risk of torture, regardless of whether the person in question might be a convicted criminal with no legitimate claim to asylum.

13. According to paragraph 2 of the second periodic report, no witness could be compelled to answer any question which tended to expose him to criminal prosecution. The Criminal Code provided an exception in the case of persons involved in games of chance. What was the reason

for that exception? While it was of interest that there was a large number of non-Europeans among asylum-seekers in Malta, the asylum bill currently under consideration should eliminate any provisions limiting the scope of asylum to persons from a certain geographical area. Could the delegation explain the processes under which application was made for refugee status or claims could be put forward relating to a risk of torture? Were such cases heard by an independent commission, and if so, who appointed its members? Were all cases automatically referred to the Office of the United Nations High Commissioner for Refugees in Rome, or were they subject to prior examination by the immigration authorities? If such cases were not always accepted, was there any procedure for judicial review?

14. Information would be welcome on the amounts of compensation for damages provided to victims of torture, and especially the amounts provided for moral damages. In paragraph 6 of the report, the Government stated that most detainees were informed or aware of their right to counsel. The first 24 to 48 hours after arrest were a crucial period, in which police officers were most likely to resort to torture in an attempt to extract admissions or confessions. It would therefore appear most important systematically to inform all detainees of their right to counsel. Did the Government have any plans to give effect to the Committee's recommendations in that regard?

15. Turning to paragraph 7 of the report, he asked how it was that in Malta any magistrate who failed or refused to attend to a lawful complaint concerning an unlawful detention was liable to imprisonment, contrary to the practice in most other countries, which was based on the principle of judicial independence.

16. With regard to refoulement, he wondered why only the European Convention on Human Rights had been incorporated into Maltese law and not the Covenant or the Convention against Torture. The three instruments varied in their emphasis, and countries like his own which incorporated them into their constitutions were bound by international law to apply the one which best protected the rights of the accused individual. He was surprised that the Maltese Government considered that no further legislation on refoulement was necessary, and that the courts followed the Soering judgement of the European Court of Human Rights. His understanding was that the latter case concerned only one aspect of non-extradition, namely the application of the so-called "death row phenomenon" in countries such as the United States, in cases where it was decided that a long stay on death row did not per se constitute a breach of the relevant article on cruel punishment.

17. Turning to paragraph 11 of the report, he asked for clarification regarding the recent events, which, according to the report, had enhanced Malta's concerns about the additional difficulties it faced in implementing article 3 of the Convention as a result of its geographical position.

18. In conclusion, he asked the delegation to comment on the information the Committee had just received from Amnesty International and the "Mid-Dlam ghad-Dawl" organization in connection with alleged ill-treatment of detainees in Malta. In particular he wished to know what procedures the Corradino Prison Visitors Board had followed in investigating the recent allegations of ill-treatment against three Libyan nationals detained in connection with an

alleged rape, and whether the Ta'Kandja correctional facility was still being used beyond its capacity, following the 1995 report of the Council of Europe's Committee for the Prevention of Torture (CPT) criticizing the conditions there.

19. Mr. EL MASRY, referring to the 1995 CPT report, asked whether the Special Assignment Group (SAG) of the Malta police, a force trained to intervene only in cases of civil disorder, was still responsible for the supervision of detention facilities for alleged illegal immigrants. He noted that, although the CPT report had commended Malta's draft code of practice, it had also recommended the inclusion of further provisions designed to ensure that officials conducting interrogations identified themselves, that special precautions were taken with vulnerable prisoners, and that any request made by persons in custody were recorded in writing. Had the Government followed those recommendations?

20. During the Committee's consideration of Malta's initial report, it had emerged that, owing mainly to technical difficulties, many people in Malta had had to wait several years before being brought to trial. What action had been taken since then to ensure expeditious trial? At that time the delegation had also stated that Malta had no administrative compensation scheme, while the second periodic report indicated that victims of torture were obliged to claim damages through the courts. In view of the requirement under article 14 of the Convention that each State party should ensure in its legal system that the victim of an act of torture obtained redress and had an enforceable right to fair and adequate compensation, he asked for more details about the current situation.

21. Reverting to the CPT report, he wondered whether it was still the case that persons detained under the Immigration Act were being held in regular prison facilities, notably the overcrowded Police Lock-Up at Floriana.

22. He welcomed the information in the report that the vast majority of Malta's refugees came from non-European countries. However, in the light of the fact that Malta historically had limited the scope of its obligations under the 1951 Convention on the status of refugees to cover only refugees from Europe, he emphasized the crucial importance of incorporating into the relevant legislation provisions which enforced the principle that risk of exposure to serious human rights violations was a more decisive factor than considerations based on race or geography.

23. Finally, referring to the cases described in the letter sent by Amnesty International to Malta's Minister for Home Affairs, to which Mr. Mavrommatis had referred earlier, he would particularly like to hear the delegation's response to the allegations concerning the Ebrima Camara case.

24. Mr. SØRENSEN, referring to the question of restrictions on compensation in torture cases, noted that article 14 of the Convention not only provided for the redress mentioned earlier by Mr. El Masry but also required that victims of torture should be given the means for as full a rehabilitation as possible. Was medical attention available in Malta in such cases, and were torture victims entitled to redress from the Government as well as through the courts? He welcomed the fact that the Maltese Government was already taking steps by contributing to the Voluntary Fund. Another, more straightforward, means of showing the Government's resolve

would be to dedicate 26 June as a day to remember torture victims, in line with the General Assembly's decision of December 1997. The experience in many other countries had shown the positive effects produced by governmental activities aimed at highlighting the plight of refugees.

25. Lastly, in connection with article 6 of the Convention, he asked whether the possibility existed in Malta of ordering the solitary confinement of a detainee on grounds of his possible collusion with other prisoners. If so, he wished to know under what conditions and by whose authority that was done.

The meeting was suspended at 11.15 a.m. and resumed at 11.45 a.m.

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

26. The CHAIRMAN invited Dr. Sørensen to report to the Committee on the Istanbul Protocol and on the activities of the Working Group on the Optional Protocol.

27. Mr. SØRENSEN said that the Istanbul Protocol had been developed as a complement to the Minnesota Protocol, which was basically a guide produced by experts on how to perform an autopsy to determine whether a dead person had been tortured. The Minnesota Protocol had been adopted by the United Nations as an official standard.

28. Work on the Istanbul Protocol, which by contrast concerned living victims of torture, had started five years previously. A 200-page document had been produced, which described all possible scenarios for diagnosing torture. It was intended for use in peacetime and in peaceful areas, for example during the examination of asylum-seekers, who needed to prove that they had been tortured in order to avoid being sent back to their own country. The Protocol was essentially of a medical nature and contained detailed procedures enabling doctors to deal with all aspects of torture cases. It had recently been endorsed by the major international symposium on torture held in New Jersey.

29. The second part of the Istanbul Protocol was a brief document entitled the "Principles", which set out the basic conditions to be fulfilled by Governments during visits by the European Committee for the Prevention of Torture or by the Committee against Torture acting under article 20. Its purpose was to avoid misuse of the main Istanbul Protocol by States parties.

30. The Principles had been submitted for official approval by the General Assembly, and the many countries which had participated in the preparatory work hoped that in due course the Protocol would also be adopted. Adoption of the former would greatly facilitate the Committee's work, in that it would clearly and officially indicate to member States where their duties lay when it came to the examination of alleged torture victims.

31. Mr. EL MASRY asked whether he was correct in thinking that the Istanbul Protocol would eventually replace the Minnesota Protocol. Would it be up to the United Nations to decide whether and when that happened?

32. Mr. SØRENSEN said that the Istanbul Protocol was intended to complement rather than to replace the Minnesota Protocol, which dealt only with autopsy procedures. That had proved its worth in posthumously establishing torture or maltreatment in cases such as the former Yugoslavia. The Istanbul Protocol dealt with ways of establishing whether torture had been practised on people who were still living.

33. The CHAIRMAN invited Mr. Sørensen to address his second topic.

34. Mr. SØRENSEN said that he had participated, as a representative of the Committee, for two days in the eighth meeting of the open-ended Working Group on the Draft Optional Protocol, held from 4 to 15 October 1999. The fact sheet issued by the Association for the Prevention of Torture (APT) explaining the purpose of the Draft Optional Protocol had been distributed to Committee members for their perusal. The essential idea was to establish an inspectorate system, like that of the Council of Europe's Committee for the Prevention of Torture (CPT). Discussions had begun in 1981 and had been taken up again in 1991 following several new suggestions. The Working Group had a new chairperson, Elizabeth Odio Benito, a long-standing member of the Board of Trustees of the Voluntary Fund and one of the initiators of the inspectorate idea. The new secretary was Alesha Bruni, well acquainted with the issues of torture through his work with the Committee.

35. There had been a fruitful discussion. Since the draft had reached the second reading, several paragraphs had already been finalized. The remaining issues had not all been solved but had been clearly identified, and divided into three “baskets”. Basket 1, covering the preamble and articles 1, 8, 12 and 13, dealt chiefly with definitions, such as what constituted a visit or periodic visit. The main outstanding problems concerned the modalities required for establishing systematic visits to countries. While some countries maintained that visits could take place only by invitation, the general feeling was that accession to the Protocol presupposed the acceptance of periodic visits. Other issues were how visits should be carried out, and how countries should be selected without preference; the keys there were transparency and impartiality. The European Committee for the Prevention of Torture (CPT) had solved that problem by drawing lots for the order of countries.

36. Many smaller issues remained to be discussed in further detail. There was, for instance, the question of who should be visited; some countries said only detainees, but others felt that was too narrow since detainees could be restricted to people held in prisons subsequent to trial and conviction. They wanted to be able to visit all persons detained against their will in any type of institution, including mental asylums, children's homes or police stations. Another important issue raised was the mandate specifically to visit both persons and premises. The inspectors should still be allowed to visit a police station even if no one was being held in it, in order to avoid the situation where police cells were emptied just hours before a visit to prevent an inspection, as had happened with the CPT.

37. The second basket of issues dealt only with article 18: reservations. Many countries felt that no reservations should be allowed; countries should either join the Protocol wholeheartedly or not at all. In the Council of Europe reservations were not permitted on the inspections system, but that issue still had to be solved regarding the Draft Optional Protocol.

38. The third basket of issues regarded reports. There was complete agreement that after every visit the delegation should make a confidential report and that the State party should receive a copy. Indeed the whole process was based on cooperation and confidentiality. There had been some suggestions that responsibility for reporting should lie with the Committee. The only power the inspection body would have would be to make a public statement if a State party failed to cooperate or continually refused to follow recommendations. A statement would then be issued to the effect that the country was not behaving correctly, but it had not been decided whether that should be the Committee's or the Sub-Committee's responsibility.

39. There were in fact very few links between the two bodies apart from a common desire to rid the world of torture. There was an overlap issue if a country was subject to a visit by the Committee under article 20 procedures and the Sub-Committee was also planning a visit. Evidently the two should then discuss whether they both needed to go. Visits and the reporting system were, however, the only two areas for joint action. It was important that the system should also function in countries where a regional system was already in place.

40. The CHAIRMAN asked how duplication could be avoided when universal and regional institutions were operating in the same sphere. He recalled that an earlier version of the Protocol had stated that when the Sub-Committee reported, the Committee against Torture would receive a copy so as to be immediately apprised of the Sub-Committee's work. Would that still be the case? Regarding visits, if there was a mission under article 20 by the Committee against Torture, surely by definition the Sub-Committee could not simultaneously undertake an inspection, since the jurisdiction of the Committee was broader and indeed embraced different issues. It would be awkward if the actions of the Committee were pre-empted by the Sub-Committee. The Special Rapporteur on torture had agreed that he would not undertake an inquiry if the Committee was engaged in a mission under article 20; could the same agreement be reached with the Sub-Committee?

41. Mr. SØRENSEN said that at a regional level that was solved by cooperation. However, taking a positive view of the overlap, in order to ensure universality the possibility of interventions by either or both should be retained. Nevertheless, article 11 of the Draft Optional Protocol, in its paragraph 1, did state "The Sub-Committee may decide to postpone a mission to a State Party if the State Party concerned has agreed to a scheduled visit to its territory by the Committee against Torture, pursuant to article 20, paragraph 3 of the Convention." Another article specified that a copy of every report should go to the Committee against Torture. However, the Committee would be obliged to maintain confidentiality unless the State party itself decided to publish the report, which would evidently be a step welcomed by the Sub-Committee.

42. Mr. EL MASRY recalled that the Independent Expert, Mr. Alston, in his report on the effective implementation of international instruments on human rights, had calculated that if all the outstanding reports were received from countries criticized for the lateness of their reporting, the Committee against Torture would need to meet in continual session for six years to catch up with the backlog, and other Committees would require much longer. In such circumstances, was it wise to proliferate treaty bodies and reporting mechanisms? Serious thought needed to be given to delegating the reporting procedure to existing mechanisms rather than creating new instruments. It was worth discussing whether the Committee against Torture could take on the

functions of the proposed mechanism, since the additional Optional Protocol and its related Sub-Committee constituted, in essence, a completely new treaty body. Certainly the Sub-Committee no longer acted as such; it was independent from the Committee against Torture, not subsidiary to it. It did not even report back to the Committee against Torture, but only sent the Committee its report for information. Mr. Alston's proposal made sense from the practical and financial points of view.

43. The CHAIRMAN asked Mr. Sørensen to explain the history of the relationship between the Committee against Torture and the Sub-Committee.

44. Mr. SØRENSEN said that the idea of creating the Sub-Committee had come up in the 1970s, but it had been considered too difficult to implement through the United Nations. The idea had been put on hold, and meanwhile, on 10 December 1984, in a wise and important move, the Committee against Torture had been unanimously agreed upon. The Committee against Torture had been the basis for further work, and had established the fundamentals on which the Council of Europe's CPT and the Sub-Committee had later been based. Mr. Alston might consider that the Committee against Torture and the Sub-Committee were interchangeable, but they were really completely different and only overlapped on missions pursuant to article 20. Taking over responsibility for the Sub-Committee's work would seriously affect the work of the Committee. Inspection effectively gave rise to a new treaty body, but since the creation of more treaty bodies was discouraged, the new body had been called a Sub-Committee. Annex 3 of the Committee against Torture's Annual Report listed States parties which had ratified the Convention and which had made declarations under articles 21 and/or 22 of the Convention. With 119 of the United Nations 188 Member States party to the Convention against Torture, it had the lowest ratification rate of any treaty except for that on migration. It was his hypothesis that if a country had not decided in favour of article 22, it was unlikely that it would ratify the Draft Optional Protocol, which meant only 41 States would potentially be affected, of which 27 were covered by the CPT. Moreover, the Council of Europe, 40 of whose 41 member States had ratified the Committee for the Prevention of Torture's right to make inspections, was extending membership of the CPT, by invitation, under CPT Optional Protocol No. 1, to non-member States of the Council of Europe. Canada, Australia and New Zealand were already hoping to join it. That would leave only 10 or 11 States parties to the Convention against Torture not covered by the CPT. The question thus arose, might the money be better used by strengthening the Committee against Torture and/or the other treaty bodies rather than by continuing the preparatory work for the Draft Optional Protocol?

45. The CHAIRMAN said that Mr. Alston's proposals, and the point raised by Mr. El Masry, would be dealt with under the appropriate agenda item.

46. Mr. EL MASRY thanked Mr. Sørensen for his elucidation, and suggested that the final number of countries covered only by the Draft Optional Protocol might in fact be less than 10, since some of the countries that had acceded to the articles of the Convention regretted having done so and would certainly not sign up for inspections.

47. In the absence of any further comments or questions to Mr. Sørensen, the CHAIRMAN thanked him for his update and suggested moving on to examine the request by the Deputy High Commissioner for Human Rights, Mr. Ramcharan, for advice and help on how to prevent torture.

48. Mr. SØRENSEN said that considerable work had been done on the prevention of torture in his country, and that he could provide the Committee with a seven-page document which could serve as a basis for that discussion. It would, however, take him several days to obtain it and for the Committee's purposes it was available only in English.

49. The CHAIRMAN agreed that the document would form a useful basis for the discussion and suggested postponing examination of the Deputy High Commissioner's request until members had had time to read the document.

50. It was so decided.

The meeting rose at 12.35 p.m..