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## **Report of the Committee against Torture**

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*Note*

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#### **D. Recommendations**

**53. The Committee recommends that:**

**(a) The State party ensure that all States and territories are at all times in compliance with its obligations under the Convention;**

**(b) The State party consider the desirability of providing a mechanism for independent review of ministerial decisions in respect of cases coming under article 3 of the Convention;**

**(c) The State party continue its education and information efforts for law enforcement personnel regarding the prohibition against torture and further improve its efforts in training, especially of police, prison officers and prison medical personnel;**

**(d) The State party keep under constant review the use of instruments of restraint that may cause unnecessary pain and humiliation, and ensure that their use is appropriately recorded;**

**(e) The State party ensure that complainants are protected against intimidation and adverse consequences as a result of their complaint;**

**(f) The State party continue its efforts to reduce overcrowding in prisons;**

**(g) The State party continue its efforts to address the socio-economic disadvantage that, *inter alia*, leads to a disproportionate number of indigenous Australians coming into contact with the criminal justice system;**

**(h) The State party keep under careful review legislation imposing mandatory minimum sentences, to ensure that it does not raise questions of compliance with its international obligations under the Convention and other relevant international instruments, particularly with regard to the possible adverse effect upon disadvantaged groups;**

**(i) The State party submit its next periodic report by November 2004, and ensure that it contains information on the implementation of the present recommendations and disaggregated statistics.**

#### **Canada**

54. The Committee considered the third periodic report of Canada (CAT/C/34/Add.13) at its 446th, 449th and 453rd meetings, held on 17, 20 and 22 November 2000 (CAT/C/SR.446, 449 and 453), and adopted the following conclusions and recommendations.

### **A. Introduction**

55. The Committee welcomes the third periodic report of Canada which, although submitted with a delay of three years, conforms to the guidelines for the preparation of State party periodic reports. The Committee particularly appreciates the detailed statistical and other information responding to the Committee's requests during the review of the second periodic report. The Committee welcomes the constructive dialogue with the delegation and the frank and forthright replies furnished by the delegation to the issues raised by the Committee, including the written materials provided.

56. The Committee further welcomes the assurances of the State party of the seriousness with which it regards requests by the Committee for interim measures in individual cases under article 22. The Committee recalls that the State party asked the Committee to oversee its methods of work to ensure non-extendable time limits for the review of individual complaints. The Committee once again underlines that the time limits provided by its rules of procedure are established to allow States parties to submit full responses to allegations made and the Committee to do an in-depth examination.

### **B. Positive aspects**

57. The Committee welcomes the following:

(a) The extensive legal protection against torture and other cruel, inhuman or degrading treatment or punishment that exists in the State party and the efforts pursued by the authorities to achieve transparency of its institutions and practices;

(b) The entry into force of new legislation, the Crimes against Humanity and War Crimes Act, which overcomes many of the obstacles to the prosecution of persons accused of these crimes that were posed by the Finta case,<sup>1</sup> and the ratification of the Statute of the International Criminal Court;

(c) The systematic review, beginning in December 1999, of all allegations against individuals involved in genocide, war crimes and crimes against humanity;

(d) The introduction of proposed legislation under which the criteria for granting refugee protection would include grounds outlined in the Convention;

(e) The appointment of a Correctional Investigator, independent of the Corrections Service, to act as an ombudsman for detained federal offenders, and the establishment of a Human Rights Division in the Correctional Service of Canada to assist in monitoring and evaluating policies and practices and to strengthen a human rights culture;

(f) The development of a national strategy on aboriginal corrections and other measures taken to address the historical social and economic disadvantages experienced by the indigenous population;

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<sup>1</sup> R. v. Finta [1994] 1 S.C.R. 701.



(g) The policy of the State party to seek the views of non-governmental organizations in preparing its reports to the Committee, and its assurances that "criticisms and concerns" of such organizations will be explicitly included in the next report by the State party;

(h) The increase in the State party's contribution to the United Nations Voluntary Fund for the Victims of Torture and the continued support to national rehabilitation centres for torture victims.

### **C. Subjects of concern**

58. The Committee expresses concern about the following:

(a) Allegations of actions not in conformity with the Convention, including the inappropriate use of pepper spray and force by police authorities to break up demonstrations and restore order, notably with regard to the demonstrations surrounding the 1997 summit meeting of the Asia-Pacific Economic Cooperation (APEC) forum;

(b) Allegations that female detainees have been treated harshly and improperly by the authorities of the State party, and that many recommendations of the Arbour report<sup>2</sup> have yet to be implemented;

(c) Allegations of the use of undue force and involuntary sedation in the removal of rejected asylum-seekers;

(d) The over-representation of aboriginal people in prison throughout the criminal justice system in the State party;

(e) The position of the State party in arguments before courts, and in policies and practices, that when a person is considered a serious criminal or a security risk, he/she can be returned to another State even where there are substantial grounds for believing that the individual would be subjected to torture, an action which would not be in conformity with the absolute character of the provisions of article 3, paragraph 1, of the Convention;

(f) The public danger risk assessment carried out without interview or transparency prior to the refugee determination procedure, and that persons considered to be a security risk are not eligible to have their cases examined in depth under the normal refugee determination procedure. In addition, the Committee notes that at present both the review of security risk and the review of the existence of humanitarian and compassionate grounds are carried out by the same governmental body; the Committee is also concerned that the alleged lack of independence of decision-makers, as well as the possibility that a person can be removed while an application for humanitarian review is under way, may constitute obstacles to the effectiveness of the remedies to protect the rights in article 3, paragraph 1, of the Convention;

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<sup>2</sup> Commission of Inquiry into Certain Events at the Prison for Women at Kingston, Commissioner: The Honourable Louise Arbour, Canada, 1996.

(g) The lack of adequate measures taken with regard to breaches of the norms of the Convention as required by article 7, paragraph 1;

(h) Notwithstanding the new War Crimes and Crimes against Humanity Bill and the assurances of the State party, the possibility that an accused torturer could still plead a number of defences that would grant him/her immunity, including that foreign proceedings had been conducted for the purpose of shielding the accused from criminal responsibility; that the offence was committed in obedience of the law in force at the time; or that the accused had a motivation other than an intention to be inhumane.

#### **D. Recommendations**

**59. The Committee recommends that the State party:**

**(a) Comply fully with article 3, paragraph 1, of the Convention prohibiting return of a person to another State where there are substantial grounds for believing that the individual would be subjected to torture, whether or not the individual is a serious criminal or security risk;**

**(b) Enhance the effectiveness of the remedies to protect the rights granted by article 3, paragraph 1, of the Convention. Noting the assurances that the proposed new Immigration and Refugee Act provides for a pre-removal risk assessment “available to all persons under a removal order”, the Committee encourages the State party to ensure that the proposed new legislation permits in-depth examination by an independent entity of claims, including those from persons already assessed as security risks. The Committee urges the State party to ensure that obstacles to the full implementation of article 3 are removed, so that an opportunity is given to the individual concerned to respond before a security risk decision is made, and that assessments of humanitarian and compassionate grounds are made without demanding a fee from a person who seeks protection.**

**(c) Prosecute every case of alleged torture in a territory under its jurisdiction where it does not extradite the alleged torturer and the evidence warrants it, and prior to any deportation;**

**(d) Remove from current legislation the defences that could grant an accused torturer immunity;**

**(e) Consider the creation of a new investigative body for receiving and investigating complaints regarding the Convention, such as those pertaining to the subjects of concern cited above, including allegations relating to members of the indigenous population;**

**(f) Continue and enhance training of military personnel on the standards required by the Convention and related human rights matters, including those regarding discriminatory treatment;**

**(g) Submit its fourth periodic report, which was due in July 2000, in the most timely manner possible.**

### **Cameroon**

60. The Committee considered the second periodic report of Cameroon (CAT/C/17/Add.22) at its 448th, 451st and 454th meetings, held on 20, 21 and 23 November 2000 (CAT/C/SR.448, 451 and 454), and adopted the following conclusions and recommendations.

#### **A. Introduction**

61. The Committee expresses its appreciation for the submission of the report of Cameroon, which covers the period until the end of 1996. The report, which was submitted seven years late, was prepared in conformity with the guidelines for the preparation of periodic reports.

62. The Committee also expresses its appreciation to the delegation of Cameroon for its professionalism and the diligence with which it provided detailed replies to the questions asked by the Committee, thereby demonstrating the interest taken by the State party in the work of the Committee.

#### **B. Positive aspects**

63. The Committee takes note with satisfaction of the following elements:

(a) The remarkable efforts made by the State party to carry out far-reaching reforms of its legislation and practice in order to fulfil its obligations under the Convention;

(b) The agreement to receive the visit of the Special Rapporteur on the question of torture, who was able to complete his mission unhindered;

(c) The willingness of the State party to allow International Committee of the Red Cross (ICRC) inspectors to visit places of detention on their own terms;

(d) The scrupulous respect shown by the courts and political authorities in Cameroon for the State party's obligations under article 3 of the Convention, thus ensuring that a person was not extradited to a country where he was in danger of being subjected to torture or sentenced to death;

(e) Cooperation with the International Criminal Tribunal for Rwanda in the extradition of some indicted persons to Arusha;

(f) The promise by the representatives of the State party to permit the National Commission on Human Rights to visit detention centres on the terms recommended by the Special Rapporteur;

(g) The State party's decision to make the declarations provided for in articles 21 and 22 of the Convention;