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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Convention

1. As at 30 April 1993, the closing date of the tenth session of the Committee against Torture, there were 72 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and opened for signature and ratification in New York on 4 February 1985. It entered into force on 26 June 1987 in accordance with the provisions of its article 27. A list of States which have signed, ratified or acceded to the Convention together with an indication of those that have made declaration under articles 21 and 22 of the Convention is contained in annex I to the present report.

2. The texts of the declarations, reservations or objections made by States parties with respect to the Convention are reproduced in document CAT/C/2/Rev.2.

B. Opening and duration of the sessions

3. The Committee against Torture has held two sessions since the adoption of its last annual report. The ninth and tenth sessions of the Committee were held at the United Nations Office at Geneva from 9 to 20 November 1992 and from 19 to 30 April 1993.

4. At its ninth session, the Committee held 18 meetings (119th to 136th meeting) and at its tenth session the Committee held 17 meetings (137th to 153rd meeting). An account of the deliberations of the Committee at its ninth and tenth sessions is contained in the relevant summary records (CAT/C/SR.119-153).

C. Membership and attendance

5. The membership remained the same as during 1992. The list of the members, together with an indication of the duration of their term of office, appears in annex II to the present report.

6. All the members attended the ninth session of the Committee; Mr. Dipanda Mouelle attended a part of the session. The tenth session of the Committee was attended by all the members.

D. Officers

7. The following members of the Committee acted as officers during the reporting period:

Chairman: Mr. Joseph Voyame

Vice-Chairmen: Mr. Alexis Dipanda Mouelle
Mr. Ricardo Gil Lavedra
Mr. Dimitar N. Mikhailov

Rapporteur: Mr. Peter Thomas Burns

E. Agendas

8. At its 119th meeting, on 9 November 1992, the Committee adopted the following items, listed in the provisional agenda submitted by the Secretary-General in accordance with rule 6 of the rules of procedure (CAT/C/19), as the agenda of its ninth session:

1. Adoption of the agenda.
2. Organizational and other matters.
3. Submission of reports by States parties under article 19 of the Convention.
4. Consideration of reports submitted by States parties under article 19 of the Convention.
5. Consideration of information received under article 20 of the Convention.
6. Consideration of communications under article 22 of the Convention.
7. Preparatory activities relating to the World Conference on Human Rights.

9. At its 137th meeting, on 19 April 1993, the Committee adopted the following items, listed in the provisional agenda submitted by the Secretary-General in accordance with rule 6 of the rules of procedure (CAT/C/22), as the agenda of its tenth session:

1. Adoption of the agenda.
2. Organizational and other matters.
3. Submission of reports by States parties under article 19 of the Convention.
4. Consideration of reports submitted by States parties under article 19 of the Convention.
5. Consideration of information received under article 20 of the Convention.
6. Consideration of communications under article 22 of the Convention.
7. Future meetings of the Committee.
8. Action by the General Assembly at its forty-seventh session:
 - (a) Annual report submitted by the Committee against Torture under article 24 of the Convention;
 - (b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights.

9. Preparatory activities relating to the World Conference on Human Rights.
10. Annual report of the Committee on its activities.

F. Working methods of the Committee

Ninth session

10. At its 136th meeting, on 20 November 1992, the Committee exchanged views on possible ways to make its methods of work more effective and requested the Secretariat to prepare a report which would provide information on the working methods of other human rights treaty bodies and give the Committee general ideas on how it could improve its work.

Tenth session

11. In connection with this question, the Committee had before it an informal note by the Secretariat providing information on the working methods of other human rights treaty bodies.

12. Owing to lack of time, the Committee decided, at its 152nd meeting, on 29 April 1993, to postpone consideration of this question until its eleventh session, in November 1993.

G. Cooperation between the Committee and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture

13. The Committee and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture held a joint meeting on 28 April 1993, during the 151st meeting of the Committee. The Chairman of the Committee and the Chairman of the Board of Trustees, Mr. Jaap Walkate, provided information on the most recent activities of both organs and the members exchanged views on how to make public opinion better informed of their work. Mr. Bent Sørensen, at the Committee's invitation, provided information on the activities of the European Committee established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, of which he had been member and First Vice-Chairman since September 1989.

H. Question of a draft optional protocol to the Convention

14. At the 119th meeting, on 9 November 1992, the Chairman of the Committee informed the other members that he had attended a meeting of the Working Group set up by the Commission on Human Rights to prepare a draft optional protocol to the Convention. 1/ The Working Group had held its first session at the United Nations Office at Geneva from 19 to 30 October 1992. It had welcomed the comments of the Committee against Torture on the draft optional protocol which had been submitted to it in a working document (E/CN.4/1992/WG.11/WP.1/Add.2).

15. The Chairman of the Committee provided information on the discussion which had taken place in the Working Group with his participation. He pointed out that the Working Group had decided to invite, at its following sessions, a member of the Committee who would attend the meetings of the Group, give his contribution to the discussions, and provide information on matters of mutual concern for both the Group and the Committee.

16. The Committee agreed to designate Mr. Bent Sørensen as its observer in the future sessions of the Working Group.

I. Preparatory activities relating to the World Conference on Human Rights

Ninth session

17. At the 119th meeting, on 9 November 1992, Mr. Sørensen, who had been designated by the Committee as its representative to the Preparatory Committee for the World Conference on Human Rights, reported on the activities of the Preparatory Committee at its third session, held at the United Nations Office at Geneva from 14 to 18 September 1992, as well as on his participation in the discussions. Mr. Ben Ammar informed the Committee about his participation as representative of a non-governmental organization in the African Regional Preparatory Meeting for the World Conference, which had taken place at Tunis from 2 to 6 November 1992.

18. At the same meeting, and at its 126th, 127th and 136th meetings, on 13 and 20 November 1992, the Committee discussed how it should participate in the various meetings to be held in connection with preparations for the World Conference on Human Rights, and the Conference itself to be held at Vienna from 14 to 25 June 1993.

19. The Committee decided that Mr. Sørensen would continue to act as its representative to the Preparatory Committee for the Conference and Mr. Mikhailov as its alternative representative. The Committee postponed until a later stage a decision on its representation at the Conference itself.

20. In addition, at its 136th meeting, on 20 November 1992, the Committee, pursuant to the request made by the General Assembly in paragraph 10 of resolution 45/155, adopted the following recommendations to the Preparatory Committee for the World Conference on Human Rights, and to the Conference itself:

"The Committee against Torture,

"Pursuant to paragraphs 9 and 10 of General Assembly resolution 45/155 of 18 December 1990 and paragraph 5 of Commission on Human Rights resolution 1991/30 of 5 March 1991,

"1. Appoints Mr. Sørensen as representative and Mr. Mikhailov as alternate to the meetings of the Preparatory Committee for the World Conference on Human Rights;

"2. Recommends that:

"(a) With a view to eradicating torture by the year 2000, the subject matter should be included in the agenda of the World Conference;

"(b) An energetic and concerted effort should be made both during the process of preparation for the World Conference and at the Conference itself to encourage:

"(i) States that have not yet done so to become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including its articles 20, 21 and 22;

"(ii) Those States parties to the Convention which have not done so to declare in favour of the provisions of articles 20, 21 and 22;

"(c) In view of the unfortunate rise of ethnic violence, torture and other human rights breaches in all their manifestations in various regions of the world, the possibility should be examined of:

"(i) Preventing human rights violations, especially the crime of torture, and other cruel, inhuman or degrading treatment or punishment, within the scope of the activities of the Committee;

"(ii) Increasing the United Nations budgetary resources allocated to human rights;

"3. Would welcome the opportunity, within the framework of the World Conference, for a meeting to be convened with the participation of the chairpersons and/or representatives of the United Nations human rights treaty bodies and the chairpersons and/or representatives of each of the principal regional and other human rights organizations to deal with the matters referred to;

"4. Would also welcome the Preparatory Committee and the World Conference exploring the following broader issues:

"(a) The establishment of a high commissioner for human rights;

"(b) The creation of an international court for human rights;

"(c) The establishment of a research institute for human rights connected with the Centre for Human Rights of the United Nations Secretariat;

"(d) Cooperation and coordination with regional systems for the protection of human rights;

"5. Suggests that, with a view to improving the implementation of existing human rights standards and instruments, the following topics should be considered as appropriate ones for inclusion by the World Conference in its agenda:

"(a) An examination of the issues relevant to the implementation of the Convention against Torture;

"(b) An evaluation of the effectiveness of United Nations monitoring methods and mechanisms;

"(c) A formulation of concrete recommendations for improving the effectiveness of United Nations mechanisms (especially the functioning of the Convention against Torture) aimed at promoting, encouraging and monitoring respect for human rights and fundamental freedoms."

Tenth session

21. At the 147th meeting, on 26 April 1993, Mr. El Ibrashi reported on his participation in the Asian regional meeting for the preparation of the World Conference on Human Rights, which had been held at Bangkok from 29 March to 2 April 1993.

22. At the 148th meeting, on 26 April 1993, Mr. Sørensen reported on his participation in the fourth session of the Preparatory Committee for the Conference, which was being held at Geneva from 19 to 30 April 1993.

23. At its 151st meeting, on 28 April 1993, the Committee decided that its Chairman would represent it at the World Conference on Human Rights. Mr. Sørensen would act as his alternate. Mr. Ben Ammar and Mr. Burns, who would also participate in the Conference on behalf of non-governmental organizations, would also represent the Committee, with Mr. Sørensen being the Committee's primary spokesman.

Committee when the information is gathered. The Committee also looked forward to receiving the other information that the representative of the United Kingdom agreed to forward to it.

Canada

284. The Committee considered the second periodic report of Canada (CAT/C/17/Add.5) at its 139th and 140th meetings, on 20 April 1993 (see CAT/C/SR.139 and 140).

285. The representative of the reporting State introduced the report and indicated that the preparation of the report had entailed close cooperation between the federal, provincial and territorial governments and had provided those governments with the opportunity to review the state of implementation of the Convention within their respective areas of competence. He also outlined the recent activities undertaken by his Government in both international and domestic forums to counter torture, excessive force and other cruel, inhuman or degrading treatment or punishment.

286. With regard to initiatives taken at the international level, the representative mentioned, in particular, his Government's support of efforts aimed at providing for the operation and expenses of all human rights treaty bodies, including those of the Committee against Torture, from the United Nations regular budget. He also referred to the importance his Government attached to the elaboration of an optional protocol to the Convention against Torture. In addition, he spoke of the regular contribution his Government made to the United Nations Voluntary Fund for Victims of Torture.

287. Concerning initiatives at the domestic level, the representative referred to measures being taken to improve general conditions of incarceration for women, especially in meeting the needs of aboriginal women in correctional settings. In this regard, he outlines the innovative developments which had resulted from the recommendations of a recent Task Force on Federally Sentenced Women.

288. The representative also made reference to police reforms in Quebec, providing details of the new Code of Ethics for Quebec police officers, adopted on 1 September 1991, which had established duties and standards of conduct for police officers in their relations with the public. Information was also provided on two new bodies, namely the Commissioner for Police Ethics and the Comité de déontologie policière, which had been created to ensure respect for the standards prescribed in that Code.

289. Additionally, the representative described recent developments in police force training standards introduced in the province of Ontario. He further indicated that the effectiveness, safety and success of those new measures were being monitored carefully and that their use was expected to extend to police agencies throughout Canada.

290. Finally, the representative made reference to the work of the Canadian Centre for Victims of Torture and to various activities of the Centre for which the Government provided funding.

291. Members of the Committee asked various questions of a general nature. They asked what measures had been taken at the level of domestic law, prior to the ratification of the Convention, to ensure its compatibility with the provisions of the Convention. They also wished to receive further details of the legal competence of the different levels of government in the Canadian federal system in the application of the provisions of the Convention, especially with regard

to the jurisdiction of judges, and of any difficulties the federal system had posed in the compilation and provision of statistics on torture-related matters. Further information was also sought on matters relating to the alleged maltreatment of two immigrants of Chinese origin by the police authorities in Vancouver and the ill-treatment of Mohawk Indians by Quebec police forces in 1990, especially in relation to the outcome of those complaints and the impartiality of any inquiries undertaken on those incidents.

292. Referring to article 2 of the Convention, members of the Committee requested clarification as to the application of different provisions of the Criminal Code for the offence of torture, especially regarding the effect of the inclusion of section 7 (3.71) of the Criminal Code, which made war crimes and crimes against humanity a criminal offence.

293. In connection with article 3 of the Convention, members of the Committee requested further information on the action taken by the Government of Canada to ensure compatibility with the provisions of that article, especially on the issue of non-refoulement. In this connection they recalled that persons who were refused entry or refugee status should not be returned to countries where there was a risk that they might be subjected to torture. Moreover, it was asked whether the Government of Canada considered that extraditing a person to a country where he could face the death penalty subjected that person to inhuman and degrading treatment.

294. Concerning articles 5 to 9 of the Convention, members of the Committee wished to receive further information on the legislative measures taken to provide judges in Canada with the competence of universal jurisdiction on torture-related matters. They also wished to know more about the application of mutual judicial assistance between Canada and other States, especially with regard to the offence of torture, where no bilateral agreement existed.

295. With regard to article 10 of the Convention, members of the Committee wished to know whether education on torture-related matters was being applied restrictively or in the widest possible manner and in this connection they wished to know of any special training on torture-related matters being given to the military and border police, and to all medical personnel in Canada.

296. In connection with articles 12 and 13 of the Convention, members of the Committee requested further information on the procedures available to individuals to initiate charges and proceedings against ill-treatment or abuse of power committed by police authorities. In particular, they sought information on the work of the Public Complaints Commission, the Commissioner for Police Ethics and the Comité de déontologie policière.

297. Concerning article 14 of the Convention, members of the Committee sought further information not only on the possibilities available for the rehabilitation and treatment of torture victims but also on the remedies and compensation available to victims of ill-treatment even in cases where the alleged perpetrator had been acquitted.

298. With regard to article 16 of the Convention, attention was drawn to acts which constituted cruel, inhuman or degrading treatment and to the seeming association between society's tolerance of physical chastisement in the home environment and the acceptance of violence. In this connection, it was asked whether corporal punishment of children by parents was practised in Canada and what was the legal basis for that practice.

299. Replying to the questions of a general nature, the representative of the reporting State informed the Committee of the changes that had been made to

Canadian law prior to the Convention's ratification so as to ensure its compliance with specific provisions of the Convention. The representative also provided information and explanations with regard to the division of legislative powers under the federal structure of Canada. He stated that collection of statistical information on matters related to the Convention was complicated by the division of powers in Canada. Consultations with relevant government departments responsible for collecting such data would be held and more information of that nature would be included in the next report. Furthermore, with regard to the alleged ill-treatment of two persons in Vancouver, the representative indicated that the Committee would be provided with an updated report on the findings of the independent commission appointed by the Province of British Columbia to inquire into municipal policing. He also informed the Committee that the independent Public Complaints Commission had already carried out an investigation and that the two persons in question had apparently instituted proceedings against the officers concerned. In connection with the allegations of ill-treatment of Mohawk Indians by Quebec police forces in 1990, the representative stated that four of the cases had been raised before 1 September 1990 and had thus been considered under the former system through submission to the Complaints Committee of Quebec's Department of Public Security, which had rejected the cases on various grounds. However, the Committee's decisions were subject to appeal. Under the new provisions on police conduct in Quebec all complaints would be considered in the first instance by the Commissioner for Police Ethics. This had happened in one case which had occurred after 1 September 1990 and, as a result of the inquiry by the Commissioner, certain police officers had been brought before the Comité de déontologie policière, which would decide on the matter in the autumn of 1993.

300. Regarding article 2 of the Convention, the representative explained that the Criminal Code contained not only the offence of torture but also war crimes and crimes against humanity and that, while crimes against humanity could well include torture, such crimes also demanded that other conditions be met, for example, that the offending act had been committed against a civilian population or identifiable group of persons. Where an accused was charged with conduct which fulfilled the definition of both sections, the accused could be convicted of only one offence. Moreover, the defence of obedience to de facto authority was not available to an individual charged with a war crime or a crime against humanity.

301. With regard to article 3 of the Convention, the representative told the Committee that Canada's refugee determination system fully complied with the Convention's requirements relating to torture allegations. In this connection, he described the training given to immigration officers, which had been developed with the assistance of the Office of the United Nations High Commissioner for Refugees (UNHCR), and the various provisions and procedures available to individuals to make a claim for refugee status. He also indicated that the success rate for refugee claimants in Canada had been recognized by UNHCR as the highest in the world and that the refugee determination system would be kept under continuous review to maintain its high standards. With regard to the concern raised that a person might be extradited to face the death penalty the representative referred to various debates on the issue in the Human Rights Committee and in the Supreme Court of Canada.

302. In connection with article 5 of the Convention, the representative explained that, in the Canadian Criminal Code, the offence of torture was subject to universal jurisdiction. Thus, any judge, whether provincial or federal, who had the authority to hear criminal trials could rely on the universal jurisdiction of that Code.

303. Concerning articles 8 and 9 of the Convention, the representative indicated that Canada could cooperate with another country in accordance with those articles regardless of whether bilateral treaties on mutual legal assistance existed. As an example of how the procedure of mutual legal assistance was applied in practice, information was given on the assistance given by Canada at the request of Chile in connection with a torture-related prosecution there.

304. With regard to article 10 of the Convention, the representative informed the Committee of the training on the Convention and other related matters given to various public officials, including members of the correctional service and recruits for the Royal Canadian Mounted Police. Canadian armed forces called upon to assist civil authorities during a riot or disturbance in Canada or participating in United Nations peace-keeping and humanitarian operations outside Canada received specific training in, inter alia, the use of minimum force. The representative also indicated that he was unaware of specific training given to medical doctors on the detection of torture and more information on that subject would be sought.

305. In connection with articles 12 and 13 of the Convention, the representative outlined the procedures available to an individual alleging torture by the police, which included personal prosecution of the offence. Such actions may be brought by the individual under the provisions of the Criminal Code or the Canadian Charter of Rights and Freedoms, or through the filing of a complaint with the Royal Canadian Mounted Police. Moreover, civil redress may be sought under the Crown Liability Act or at common law. Since the Royal Canadian Mounted Police Public Complaints Commission had become operational in 1988 it had held 12 hearings, 5 of which had concerned excessive force.

306. With regard to article 14 of the Convention, the representative outlined several aspects of compensation arrangements in Canada for criminal injuries following a police investigation. He indicated, for example, that compensation might be provided in the case of an accused person acquitted on the merits of a charge or in the case of an acquittal on technical grounds. Such compensation provisions stemmed from special funds established by the Government. Equally, an injured party might seek compensation or other remedies through the courts, even if the offender was a government official.

307. Concerning article 16 of the Convention, the representative informed the Committee of the statement by the Supreme Court of Canada, in the case of Regina V. Smith, that there were certain punishments which would always offend the protection against cruel and unusual punishment in section 12 of the Canadian Charter of Rights and Freedoms and that included corporal punishment. Furthermore, the Federal Government was re-examining a provision of the Criminal Code which permitted reasonable force by a parent or schoolteacher in the correction of a child.

Conclusions and recommendations

308. The Committee expressed its appreciation to the Government of Canada, not only for its comprehensive report but also for the measures and efforts undertaken by the Canadian authorities in compliance with the provisions of the Convention.

309. The Committee also expressed its thanks for the excellent presentation by the Canadian delegation and in this regard noted with satisfaction the various clarifications provided by the delegation in response to the questions raised by members of the Committee during its examination of the State party's report.

310. Nevertheless, the Committee expected to be provided with further details on the training of health personnel and the outcome of the inquiries conducted by the Canadian authorities relating to two immigrants of Chinese origin, in addition to the statistics requested by the Committee.

Panama

311. The Committee considered the second periodic report of Panama (CAT/C/17/Add.7) at its 141st and 142nd meetings, on 21 April 1993 (see CAT/C/SR.141 and 142).

312. The report was introduced by the representative of the State party, who informed the Committee of the efforts his Government had made to improve and adapt the Panamanian penal and penitentiary system to contemporary requirements and of the progress that had been made in bringing the Panamanian justice system into conformity with the Convention. He indicated that those tasks had not been made easier following the events of 20 December 1989, which had led to the destruction of the penitentiary centres and an increase in crime.

313. The representative also provided further information of general interest, relating to the separation of powers between the legislative, judicial and executive branches of government and to the organization and structure of the administration of justice in Panama. In particular, reference was made to the powers and composition of the Supreme Court of Justice and its four chambers, one of which, namely the Administrative Division, following the adoption of a recent law, had the power to annul any administrative decisions that undermined the protection of human rights or were not in conformity with the standards provided for in the international human rights instruments to which Panama was a party.

314. The representative also provided a description of the role of the Public Prosecutor, the Attorney General and the staff of the Public Prosecutor's Department in the prosecution of crimes. It was indicated that an inquiry into the prosecution of a crime could be opened by the Public Prosecutor on the basis of information received from the media or other sources without the necessity of an individual complaint or accusation. The legal process in place for the prosecution of crimes consisted of three stages. During each stage all the guarantees of due process were respected, for example, presumption of innocence, right to, and contact with, a lawyer, provision of instructions relating to preventive detention, recourse to habeas corpus and prohibition of coercion. The inquiry procedure, or first stage, was of a maximum duration of two months except in exceptional circumstances, when it could be extended for another two months. Once the inquiry had been completed, the process entered its second or intermediate phase with the accused brought before the competent court. Within 15 working days the court had to decide on the merits of the inquiry. In extreme cases, the court could return the case to the Public Prosecutor in order that further inquiries be undertaken. The third stage was preceded by a given period to permit the defence to gather the necessary evidence and to determine whether to challenge the evidence presented by the prosecutor and appeal against the proceedings so far undertaken. On the basis of the evidence before the court, a decision by the court would be pronounced within 10 days. The accused had the right to appeal to a higher court against any sentence handed down to him.

315. In addition, the representative indicated the measures taken by Panama to ensure the impartiality and independence of the judiciary. He mentioned, in particular, the Council of Judicial Ethics, which evaluated and handed down rulings on complaints from victims of violations of certain ethical or moral principles during judicial procedures.