

CANADA

CAT A/45/44 (1990)

218. The Committee considered the initial report of Canada (CAT/C/5/Add.15) at its 32nd and 33rd meetings, held on 17 November 1989 (CAT/C/SR.32 and 33).

219. The report was introduced by the representative of the State party, who recalled that Canada had participated actively in the working group of the Commission on Human Rights, which had elaborated the Convention, and had made its unilateral declaration against torture in 1982. Canada was also a regular contributor to the United Nations Voluntary Fund for Victims of Torture and strongly supported the optional provisions contained in articles 20, 21 and 22 of the Convention.

220. The representative also referred to the review of domestic laws carried out by Canada at the federal, provincial and territorial levels to ensure full compliance with the terms of the Convention before ratifying it. A new offence of torture had been added to the Criminal Code applying to acts committed by officials. Exceptional circumstances were expressly excluded as a justification for torture. The infliction of purely mental pain or suffering was covered by the new offence of torture and similar provisions existed in provincial instruments. Another amendment to the Criminal Code to ensure consistency with the Convention provided for universal jurisdiction in respect of acts of torture, and an amendment to Canadian law provided for the express prohibition of the use of evidence obtained as a result of torture.

221. With regard to preventive measures, the representative referred to guidelines, regulations and training courses to educate law enforcement personnel and others involved in the custody, interrogation or treatment of detainees concerning the prohibition of torture and similar acts. In order to educate the public at large, the Government of Canada had also prepared publications containing the report that it had submitted to the Committee and including information on the Convention and the United Nations Voluntary Fund for Victims of Torture.

222. With regard to government assistance to torture victims, the representative referred in particular to various measures taken to help Mrs. Quintana, a Chilean national, who had been burnt in Chile during a general strike in July 1986, as well as to financial assistance granted to the Canadian Centre for Victims of Torture, in Toronto which, together with the Vancouver Centre for Survivors of Torture, had developed several rehabilitation programmes. The Toronto and Vancouver centres had also been invited by the Minister of National Health and Welfare to submit a research proposal for a study on how torture affected the mental health of refugees and how effective treatment strategies could be developed. The terms of that proposal would be finalized in the near future.

223. In addition the representative pointed out that his country's report was the result of close collaboration between the federal, provincial and territorial governments of Canada. The preparation of reports of Canada under human rights instruments was facilitated by an intergovernmental committee of officials on human rights.

224. The members of the Committee commended the Government of Canada on its comprehensive report and on the measures it had taken to adapt its domestic legislation to the Convention, to support rehabilitation programmes for torture victims and to publicize the text and the implementation procedure of the Convention. They also thanked the representative of Canada for his detailed oral presentation.

225. Questions of a general nature were raised with regard to the constitutional organization of Canada and the distribution of jurisdiction, powers and responsibilities between the federal government and the governments of the provinces and territories, particularly with regard to instituting criminal proceedings, granting compensation to victims of torture and the police and prison services. It was noted that, unlike the position in other provinces, the legislation already existing in Newfoundland prior to the Convention's entry into force for Canada was in compliance with the Convention, and it was asked whether the federal government's legislation was different from that of the provinces with regard to the implementation of the Convention or whether the measures taken by the provinces giving effect to the Convention simply complemented those taken by the federal government.

226. In connection with article 2 of the Convention, it was asked what were the functions of community observers placed in institutions following a serious incident involving violence against staff of the correctional service and what serious accidents had taken place involving violence.

227. With regard to article 3 of the Convention, the question was raised whether that article was directly applicable in Canada or whether it must be promulgated in national legislation in order to be applicable by the federal government and the provincial governments.

228. With regard to article 4 of the Convention, it was inquired whether the maximum penalty for perpetrators of acts of torture would include either the death penalty or life imprisonment. It was noted from the report that all employees of the Ministry of Correctional Services were prohibited from using force against an inmate except in specific limited circumstances, and it was asked what legal consequences would be if a detainee died as a result of the application of such force.

229. In connection with article 5 of the Convention, it was inquired whether Canadians who had committed acts of torture aboard could be prosecuted in Canada.

230. In connection with articles 7 and 8 of the Convention, members of the Committee wished to know whether Canada applied the general principle of either extraditing a suspected offender or initiating criminal proceedings itself and whether, if Canada received a request for extradition from another State party with which it had no extradition treaty, it would consider the Convention as the legal basis for extradition in cases of torture.

231. In respect of article 9 of the Convention, it was observed that the information provided and the provisions mentioned in the report did not fully cover all aspects of the provisions contained in that title.

232. Turning to article 10 of the Convention, members of the Committee requested information on the training of medical officers, police officers and other persons involved in the guarding and

treatment of arrested persons. They also wished to know what employees were required to be informed of the prohibition of torture under the Correctional Institution Regulations, whether the term “employees” included all persons covered by article 10 of the Convention and how information was actually imparted. In addition, it was asked what were the duties of the Royal Canadian Mounted Police, who monitored the actions of its officers and whether any of them had been subject to disciplinary proceedings since the entry into force of the Convention for Canada.

233. Regarding article 11 of the Convention, it was observed that compliance with its provisions seemed to be differently interpreted in different provinces of Canada. Further information was also requested on the periodic reviews conducted by the Inspector-General with regard to compliance by institutions with the administrative policies and practices of the Correctional Service, as well as with the relevant regulations and legislation. It was asked, in particular, what was the maximum length of time a detainee could be remanded in custody during an investigation, who decided that a person should be detained and, if the period of custody was limited, who had the power to extend it, what was the meaning of “adequate and appropriate treatment” for persons being detained or under sentence, how control was exercised over the treatment of detainees and whether there was any difference in treatment between persons being detained and those already convicted.

234. With reference to article 13 of the Convention, members of the Committee wished to know what was the informal procedure for examining complaints, what was the legal status of the Public Complaints Commission and what were the exceptional circumstances in which the Commission could examine complaints before they had been studied by the police. They also inquired whether the detainee could freely choose the authority to which he addressed his complaints or whether there was some prescribed order of access, whether the Ombudsman was appointed independently by each province or whether appointments had to be approved by the federal government. Further details were requested about circumstances in which the opening of mail addressed to the Ombudsman could be authorized.

235. In connection with article 14 of the Convention, clarification was sought about measures taken by Canada to ensure compensation for victims of torture. It was asked, in particular, whether the victim had any guarantee with regard to compensation in cases where the perpetrator of the act of violence was acquitted for lack of evidence, and whether social assistance as well as financial compensation could be provided by the State to a person whose rights or freedoms had been infringed.

236. Statistics were requested, in connection with article 16 of the Convention, concerning the number of State officials who had been prosecuted for committing or authorizing acts of cruel, inhuman or degrading treatment or punishment.

237. In reply to general questions put by the members of the Committee, the representative of Canada explained the division of constitutional jurisdiction in Canada. He said that the federal government alone was competent to ratify an international instrument, but it was not competent to give effect in legislative terms to the provisions of that instrument. The federal government and the governments of the provinces and territories had to reach agreement on the necessary legislative and administrative measures to ensure the full and complete execution of the international obligations undertaken by Canada.

238. The representative explained that in Canada there was on the one hand the national police force which came under federal law, and on the other hand the provincial and municipal police, who were subject to provincial legislation. Similarly, there were federal prison establishments and provincial prison establishments. The Royal Canadian Mounted Police (RCMP), in particular, was governed by a federal statute, but as to actual police services, it complied with provincial directives. Because of the risk of overlap, there were consultation mechanisms at different levels in Canada: at the level of governments, the police administration, prison services and, above all, the federal and provincial officials and ministries responsible for human rights questions. In the event of conflict between a federal law and a provincial law, under the Constitution it was the federal law that prevailed. In respect to Newfoundland, in particular, the competent authorities found that the terms of domestic laws gave effect to all the provisions of the Convention. A manual designed to clarify certain aspects of the division of constitutional jurisdiction in Canada was being prepared and would be sent to the various human rights committees.

239. With regard to questions raised in connection with article 2 of the Convention, the representative explained that a serious incident in a prison establishment was an incident that resulted in the serious injury or death of a member of the prison staff following acts of violence. In such a case, independent observers were placed in certain sectors of prison establishments in order to observe the working of the service in an impartial manner. In addition, the Federal Correctional Investigator performed the functions of Ombudsman, and was empowered to investigate complaints from prisoners in federal establishments.

240. With regard to article 3 of the Convention, the representative referred to a judgement handed down by the Supreme Court of Canada, in which the Court had stressed that the courts must always bear in mind the international obligations entered into by Canada and, in particular, in the case concerned, the provisions of article 3 of the Convention.

241. In connection with article 3 of the Convention, the representative said that the maximum penalty a person committing an act of torture could incur was 14 years' imprisonment. The death penalty had been abolished in Canada, although it was still provided for in the Code of Military Justice for particularly serious military offences committed in wartime.

242. With regard to article 5 of the Convention, he said that a Canadian citizen could be tried in Canada for acts of torture committed aboard.

243. In reply to questions raised on articles 7 and 8 of the Convention, he said that Canada effectively applied the principle aut dedere aut judicare for all offences covered by the Convention and other international instruments relating to offences of an international character.

244. On article 9 of the Convention, he said that Canada's practice in the field of mutual judicial assistance between States was fully consistent with the provisions of that article.

245. In relation to article 10 of the Convention, the representative stated that members of the RCMP were subject to the general criminal law of Canada and to their Code of Conduct. Every complaint made against a member of the RCMP would be treated in the same way as a complaint against any other Canadian citizen, but the practices of the RCMP could not be investigated by a provincial

authority.

246. With regard to article 11 of the Convention, the representative provided information about the role of the Inspector-General, who was made specifically responsible by the Government for considering and evaluating in a systematic and independent manner all operations conducted within the framework of the Correctional Service at the departmental level. She also explained that the Penal Code stipulated that accused persons had to be brought before a judge within 24 hours of their arrest. The judge could order them to be kept in pre-trial detention, but the detention order must be reviewed after three months if the trial had not taken place. “Adequate and appropriate treatment” of detainees meant that the rules relating to respect for human rights dignity must be observed at all times. Supervision of the prison service was undertaken, *inter alia*, by the judicial system, which reviewed the decisions taken by prison officers and ordered compensation for prejudice suffered in the event of erroneous decisions. Persons awaiting trial and persons already convicted were not kept in the same prison establishment.

247. With regard to article 13 of the Convention, the representative said that the Public Complaint Commission was empowered to hear and examine complaints by individuals concerning the conduct of members of the RCMP. In its first annual report, that Commission stated that it had received 143 complaints. Its hearing would begin shortly and would be public. The representative also provided details of the procedure for examining complaints and explained that the “informal” procedure meant that the Commissioner of the RCMP tried to arrive at an amicable settlement between the complainant and the accused member of the RCMP. In exceptional circumstances, the Commission could investigate a complaint without the matter being examined by the RCMP, i.e., if the investigation was in the public interest because the complaint raised a question of principle such as freedom of the press or freedom of expression. The representative explained that a person ill-treated by the police while in their custody could bring a civil suit for damages or even criminal proceedings against the police officer who had injured him. Moreover, the duties of the Ombudsman were defined by provincial legislation. At the federal level, several persons performed the duties traditionally assigned to the Ombudsman. Correspondence from a detainee to the Ombudsman or other authorities could only be opened for security reasons or in order to bring combat smuggling. A prisoner who considered himself aggrieved had the right to bring a complaint before an independent public official.

248. With regard to article 14 of the Convention, the representative pointed out that Canadian legislation, both federal and provincial, established a governmental system of financial compensation which also covered the cost of medical treatment and social assistance to victims of torture. That system did not exclude appeals to civil courts. Legislation also provided for the compensation of victims who suffered acts of violence or injuries.

249. The representative also said that a number of points, relating, in particular, to the implementation of articles 10 and 11 of the Convention, which had been the subject of questions by the Committee would be elaborated upon in Canada’s next periodic report.

250. Concluding their examination of the report, members of the Committee expressed their gratification at the measures taken by Canada, at both the federal and provincial levels, to give full effect to the provisions of the Convention. They also thanked the representative of the State party

for the clear and detailed replies given to the questions asked.

CAT A/48/44 (1993)

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 initiative 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 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 Center for Victims of Torture and to various activities of the Center 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 article 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 divisions 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 Complaint 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 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 defense 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 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 any 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 to torture by the police, which included personal prosecution of the offence. Such actions may be brought before the individual under the provisions of the Criminal Code or the Canadian Charter of the 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 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.

CAT A/56/44 (2001)

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,¹ 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;

¹ R. v. Finta [1994] 1 S.C.R. 701.

(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;

(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 report² 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.

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

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;

(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.