

## LIBYAN ARAB JAMAHIRIYA

### CAT A/47/44 (1992)

148. The Committee considered the initial report of the Libyan Arab Jamahiriya (CAT/C/9/Add.7) at its 93<sup>rd</sup> meeting, on 14 November 1991 (CAT/C/SR.93).

149. The report was introduced by the representative of the State party, who noted that the provisions of the Convention were binding nationally and that any person was entitled to invoke them before a Libyan court. Concerning domestic legislation that offered protection from torture and other cruel, inhuman or degrading treatment, the representative referred, in particular, to article 2 of the Civil Code, which entitled any person to complain of non-observance or abuses with regard to respect for fundamental freedoms of the individual in general; article 435 of the Penal Code, which provided that any official committing or ordering torture of accused persons was liable to imprisonment; article 36 of the Code of Criminal Procedure, which provided that no person could be arrested except by the competent authorities and by order of the judicial authorities; and article 30 of the Code of Criminal Procedure, which upheld article 13 of the Convention.

150. Fundamental freedoms were further safeguarded by article 35 of the Provisional Constitutional Declaration, which stated that no legislation contrary to the basic principles of justice might be enacted. Legal guarantees and the functions of the Supreme Court ensured that justice was administered in accordance with the principles of the Provisional Constitutional Declaration and article 14 of the Convention. In that connection, article 166 of the Civil Code provided for compensation for an individual whose rights had been violated. Compensation could be requested in both civil and criminal courts.

151. With reference to the functioning of the courts, the representative stated that the People's Court was competent to hand down rulings on all matters relating to the freedoms and rights of citizens on the basis of relevant sections of part 4 of the Penal Code and where the matter in question had not previously been dealt with by the competent authorities. Recourse to the courts was free and the courts were required to ensure that all judicial safeguards, including access to defence counsel and legal assistance, were provided. Domestic legislation provided that the courts could not use confessions extracted from detained persons: such confessions were regarded as null and void and a court could inquire into the circumstances under which charges originated and statements were made. The Supreme Court could order the release of any detained person when the procedure adopted by the officials responsible for the detention was incompatible with legal provisions or where the officials had exceeded their mandate.

152. With reference to the treatment of prisoners, the representative informed the Committee, inter alia, that prison authorities were required to monitor prison conditions and the conduct of prison officials and were entitled to authorize other competent persons to inspect prisons. The Department of Public Prosecutions was authorized to take step to prevent the ill-treatment of prisoners and to prosecute those responsible for any ill-treatment which might occur.

153. Referring to article 10 of the Convention, the representative stated that steps were being taken to ensure that relevant education and educational materials were made available at secondary and university level, particularly in law faculties.

154. Finally, the representative stated that where violations occurred, the Convention could be invoked in order to safeguard rights and freedoms. He pointed out that there had been specific cases where legal and disciplinary action had been taken against state officials who had exceeded their authority and where penalties of imprisonment and fines had been imposed.

155. Members of the Committee thanked the Libyan Government for its report and its representative for his oral statement providing additional information. Members of the Committee observed, however, that further information was necessary with regard to the legislative provisions relating specifically to torture, and that the relevant texts of the legislation should be provided. They wished to know, in particular, how the police force was appointed and educated; how judges were appointed and whether they could be removed; what rules governed the actions of prosecutors; who conducted investigations into crimes; what hierarchy existed in the courts and what were the respective jurisdictions; whether persons suspected of an offence could be held in custody before being charged and for how long and by whom; whether such custody could be in the form of incommunicado detention; and what was the length of the period of detention which was provided for in the Libyan Penal Code in the case of acts of torture.

156. With regard to article 1 of the Convention, members of the Committee asked whether the definition of torture had been incorporated into Libyan legislation. In the context of article 2, they wished to know whether domestic legislation provided that exceptional circumstances could not be invoked as a justification of torture and whether a superior officer or official who ordered acts of torture was liable to prosecution. In connection with article 3 of the Convention, members noted that no mention had been made in the report of refoulement and requested information on relevant legislation and on the officials who were responsible for handling such matters, as well as relevant statistics. Regarding article 4 of the Convention, clarification was requested as to the penalties provided by article 431 of the Libyan Penal Code in respect of acts of violence by a public official. In connection with articles 6 and 7 of the Convention, it was asked what legal regime existed in the Libyan Arab Jamahiriya to deal with a foreigner suspected of having committed torture in another country and whether the Libyan Arab Jamahiriya had universal jurisdiction to try in its territory torturers who might have committed crimes elsewhere and could not be extradited or returned.

157. In connection with article 9 of the Convention, members wished to know whether the Libyan Arab Jamahiriya had mutual judicial assistance arrangements with other countries, and if so, whether such assistance extended to the crime of torture and cruel and inhuman treatment. In the context of article 10 of the Convention, clarification was requested as to whether education and information on the prohibition against torture were offered to all categories of persons mentioned in that article. With reference to articles 11 and 16 of the Convention, members of the Committee wished to know what were the current rules and methods of interrogation and the proposed amendments to the relevant legislation, and how the penitentiary system operated.

#### Concluding Observations

158. The Committee was generally of the opinion that further information was necessary to assess the implementation of the Convention in the Libyan Arab Jamahiriya, particularly in respect of articles 5, 9, 13, 14, and 15. It therefore requested the Libyan Arab Jamahiriya to submit an additional report by February 1992, in accordance with rule 67, paragraph 2, of the Committee's rules of procedure, so that the Committee could discuss it at its April 1992 session. The report should be consistent with the Committee's guidelines and should contain a general section on policy, referring to the Convention article by article and indicating how it was applied in legislation and in practice. It should also state whether there had been any cases of torture and, if so, under what circumstances and how often, and what the response of the authorities had been. It would also be useful if the main legislative provisions referred to in the introductory statement of the representative of the Libyan Arab Jamahiriya would be included. The Committee recalled, in the foregoing connection, that assistance in the preparation of the additional report could be requested from the Centre for Human Rights.

159. The representative of the Libyan Arab Jamahiriya assured the Committee that his Government would comply with its request.

## **CAT A/48/44 (1993)**

181. The Committee considered the additional report of the Libyan Arab Jamahiriya (CAT/C/9/Add.12/Rev.1) at its 130<sup>th</sup> and 135<sup>th</sup> meetings, on 17 and 19 November 1992 (see CAT/C/SR.130, 135/Add. 2).

182. The report was introduced by the representative of the State party, who highlighted the information contained in it with regard to the political system, the legislative, the executive and the judicial authorities of the Libyan Arab Jamahiriya, as well as the legal framework for the implementation of the Convention. The representative also stressed that the report dealt with other questions raised by the members of the Committee during their consideration of the initial report.

183. Generally, members of the Committee wished to receive more information on the way in which the Convention was implemented in the Libyan Arab Jamahiriya. It was asked, in this connection, whether the Convention had become part of the country's legislation, whether the courts applied the Convention directly and whether an individual could base his actions on the principles embodied in the Convention. More information was also requested on the structure and functioning of the judiciary. It was asked, in particular, how judges were appointed, whether judges could be dismissed, and if so, by which authority, whether there was a disciplinary body to ensure that they carried out their duties properly, whether the Supreme Court operated as a Constitutional Court and whether it had the function of determining the legality of legislation and the consistency of law with the Great Green Document on Human Rights in the Age of the Masses. It was also asked whether there was any organic link between the police officer or the department who arrested an individual and the authority which instituted criminal proceedings on the one hand, and the investigating authorities and the courts which handed down sentences, on the other; whether the Attorney General was responsible for investigations or whether it was the examining magistrate or another body; who had the authority to consider questions concerning detention by the police and whether Libyan law provided that no case could be heard in the absence of a defence lawyer. In addition, members of the Committee sought clarification about the People's Court and its relationship with civil, criminal and other courts, the role of the personal status courts which applied Islamic law, and the legal effects of the individual amnesty. It was further asked whether the Libyan Arab Jamahiriya was prepared to accept the optional provisions contained in articles 21 and 22 of the Convention.

184. In connection with article 2 of the Convention, members of the Committee raised several questions to clarify what rights a detained person had, especially during the critical period immediately after he had been taken in charge by the police. They wished to know, in particular, whether a person could be held incommunicado, whether he was entitled to medical examination, and when and how the accused was able to obtain the assistance of a defence counsel. It was observed that the information provided in the report with regard to police custody and interrogation of an arrested person was somewhat confusing and required clarification. It was asked, in this connection, how preventive detention was defined in the Libyan Arab Jamahiriya, what the legal time-limits were and when it was applied.

185. Turning to article 3 of the Convention, members of the Committee wished to know whether the provisions of that article were being applied directly in the Libyan Arab Jamahiriya, whether the

non-extradition of any person who would be in danger of torture was effectively guaranteed under the law and, in this connection, what the difference was between the acts of a freedom fighter and a terrorist act and what criteria were used to decide to which category an act belonged.

186. With regard to article 4 of the Convention, clarification was sought about the types of penalties provided by the Libyan Penal Code for persons guilty of torture and the sentences handed down by the criminal courts in cases of acts of torture, particularly when those acts had resulted in the death of the victim. Members of the Committee also asked for clarification on the scope of the term “torture”, as used in article 435 of the Penal Code, on whether it covered both physical and mental or moral suffering and on how mental torture was punished under Libyan law. Furthermore, it was noted that, under article 167 of the Civil Code, a person would be held responsible for his unlawful acts committed at a time when he was able to distinguish between right and wrong and it was asked what criteria were applied in law to distinguish between right and wrong.

187. Concerning article 8 of the Convention, it was asked whether, if the Libyan authorities learned of the presence in the country’s territory of a person who was a national of a country with which the Libyan Arab Jamahiriya had no extradition treaty and who was accused of torture in a country with which no extradition treaty existed either, jurisdiction existed under domestic law so that the person concerned might be arrested and brought to trial.

188. With regard to article 9 of the Convention, it was asked what arrangements had been made by the Libyan Arab Jamahiriya in respect of mutual judicial assistance and whether relevant treaties had been signed with other State parties to the Convention.

189. Referring to article 10 of the Convention, members of the Committee wished to know how special education in matters relating to torture for border police, doctors and members of the health profession was provided in the Libyan Arab Jamahiriya and whether the Universal Declaration of Human Rights and the Convention were included in the training programmes.

190. It was noted that the report contained no reference to article 11 of the Convention and information was requested on the implementation of its provisions. It was asked, in particular, whether prison inspections by representatives of non-governmental organizations were permitted.

191. In connection with article 12 of the Convention, reference was made to a particular case included in the report of the Special Rapporteur of the Commission on Human Rights on questions relating to torture (E/CN.4/1992/17) and since no reply on the case had been given by the Libyan authorities, information was requested in that regard.

192. In respect of article 13 of the Convention, members of the Committee wished to know who the parties were who could bring allegations of torture, whether injured parties could request the Attorney General to initiate criminal proceedings and, in case of refusal, whether there was any alternative remedy. Statistics on the number of complaints actually made were also requested.

193. As for article 14 of the Convention, members of the Committee wished to know whether it was necessary to await a verdict before a claim for compensation could be filed, whether the State assumed responsibility for compensation in the case of a public official guilty of torture who was

unable to pay and what the competence was of administrative courts in matters relating to compensation. It was also asked whether the Libyan Arab Jamahiriya supported the United Nations Voluntary Fund for Victims of Torture and intended to set up special medical centres to treat victims of torture.

194. In connection with article 16 of the Convention, members of the Committee wished to know how the death sentence was imposed, whether executions were public, whether there were statistics on how many persons had been sentenced to death and how many sentences had been carried out. They noted that economic crimes were punishable by death under the Libyan Penal Code and they observed that such a penalty seemed to be out of proportion to the nature of the crime.

195. In his reply, the representative of the State party provided detailed information on the structure and functioning of the judiciary in his country. He stated, in particular, that the Libyan judicial system was based on the principle of accusation and defence and that members of the Department of Public Prosecutions were selected during the People's Congress. Judges were appointed by the General People's Committee and could be sanctioned or revoked for violation of the rules governing their functions, or for incapacity in general, following an investigation and on the decision of the Ministry of Justice. The Supreme Court could hear motions for annulment or appeals against judgements handed down in the civil, criminal or administrative courts. It also played the role of a constitutional court and had the power of annul laws if they were found to be unconstitutional. Furthermore, the representative explained that preliminary investigations were carried out by a legally qualified official of the Department of Public Prosecutions. The record of the investigation was then transmitted to the Attorney General. Bodies responsible for legal proceedings were independent of those that handed down judgements. Under the law, any person who had been charged could be assisted by a lawyer; the court itself designated a lawyer where necessary. The representative also pointed out that the People's Court was competent to hear appeals against measures or decisions prejudicial to the freedom and basic rights of citizens and its competence was quite different from that of the civil, criminal and administrative courts. Islamic courts heard only cases connected with civil status, marriage, divorce, the custody of children etc. Amnesty, both general and individual, removed the criminal taint of the offence committed and expunged the punishment. If a person had committed a large number of offences, only those listed in the amnesty order were pardoned. An individual amnesty was granted in respect of either a specific crime or a particular person.

196. Referring to article 2 of the Convention, the representative provided information on the conditions of police custody and stated that police custody could not exceed 24 hours from the time of arrest. In the case of particularly serious crimes, the investigation was conducted in secret. In such cases the accused was entitled to the services of a lawyer; if he lacked the necessary measures, the State had to assign one to him. The accused had the right to remain silent. If there was enough proof against the accused, the Department of Public Prosecutions could extend his detention up to six days for purposes of the investigation. Any further extension had to be justified by that Department and decided by the judge or the Indictment Division, as appropriate. The representative stressed that, according to the Libyan Penal Code, preventive measures could be imposed only within the limits specified by the law.

197. In connection with article 3 of the Convention, the representative stated that under the Libyan

Penal Code the extradition of a person charged with a criminal offence which was politically motivated was prohibited. Equally, a political refugee or a person likely to be tortured could not be extradited. In any case, the provisions of article 3 of the Convention were enforceable in the Libyan Arab Jamahiriya.

198. In respect of article 4 of the Convention, the representative explained that the period of imprisonment for a person found guilty of torture varied from a minimum of three years up to a maximum of seven years. Hard labour was a secondary punishment supplementing the main one. Even though torture was punishable under Libyan law, the Penal Code did not contain a definition of torture, nor specific provisions concerning mental torture. As for the distinction between right and wrong, he stated that it depended, as in any society, on the philosophy underlying legislation.

199. With reference to articles 8 and 9 of the Convention, the representative stated that if a foreigner engaged in acts of torture, he would be tried in accordance with Libyan legislation and in the light of the provisions of the Convention. The Libyan Arab Jamahiriya had not concluded any extradition agreement with other States concerning torture. Extradition agreements concerning criminals had, however, been concluded in the framework of the Arab League.

200. Referring to articles 10 and 11 of the Convention, he stated that ways of instructing police and medical personnel in human rights matters were under discussion in his country and that the possibility of allowing external bodies to visit Libyan prisons was still being studied.

201. In connection with article 13 of the Convention, the representative explained that, under Libyan criminal law, a complainant could request the Department of Public Prosecutions to bring a public action on his behalf in certain cases. However, with regard to crimes involving torture, article 435 of the Penal Code provided for a public action by that Department and sanctions against a public official who ordered or committed torture, regardless whether the victim had filed a complaint or not. Any alleged victim of torture could submit a complaint directly to the Attorney General, who was required by law to prosecute the accused. In addition, the provisions of the Convention could be invoked before the courts.

202. Referring to article 14 of the Convention, the representative explained that, under Libyan law, requests for compensation for torture victims could be handled by the criminal courts or could be the subject of an independent action in a civil court. It was for the victim to choose the course that was more favourable to him. If the person found guilty of torture was a civil servant, damages were paid by the State. The representative also stated that his country had contributed in the past to the United Nations Voluntary Fund for Victims of Torture and that the Libyan authorities would examine the desirability of establishing a special centre for the rehabilitation of torture victims.

203. In connection with article 16 of the Convention, the representative indicated that capital punishment was carried out in the prison itself or in other closed premises. Four murderers had recently been sentenced to death. The general tendency was to restrict the application of capital punishment to a limited number of crimes. Economic crimes punishable by death were defined in article 4 of the Law on Economic Crimes and included deliberate sabotage of installations, such as those for petroleum production, which were vital for the national economy. Executions were not carried out in public, but television programmes were referring to them when they dealt with

problems connected with criminality. The list of the death sentences that had been handed down would be transmitted to the Committee at a later stage.

### Conclusions and recommendations

204. The Committee expressed its thanks to the Libyan Arab Jamahiriya and its representative for having provided, in the additional report and during the presentation of that document, replies to the questions raised by the Committee during its consideration, in November 1991, of the initial report. The replies provided enabled the Committee to evaluate the efforts made by the Libyan Arab Jamahiriya to implement the Convention; the Committee considered that the Libyan legal system was in conformity with the Convention.

205. The Committee also stated that it was awaiting with impatience the second periodic report of the Libyan Arab Jamahiriya, due in June 1994, and that it would be grateful if that report would describe the application of the Convention article by article.

206. The Committee's attention had been drawn to a few cases of torture in the country in connection with which the Libyan Arab Jamahiriya had taken legal action. The Committee noted that action taken and urged the Libyan Arab Jamahiriya to continue to take the necessary measure to eliminate and prevent torture.

207. The Committee requested information on the number of cases of torture in which proceedings had been instituted and on the results of those proceedings. It appreciated the way in which the Libyan Arab Jamahiriya, through its representative, had made sincere efforts to reply to its questions.



## **CAT A/50/44 (1995)**

95. The Committee considered the second periodic report of the Libyan Arab Jamahiriya (CAT/C/25/Add.3) at its 201<sup>st</sup> and 202<sup>nd</sup> meetings, held on 15 November 1994 (see CAT/C/SR.201 and 202 and Add.2), and adopted the following conclusions and recommendations.

### **A. Introduction**

96. The Libyan Arab Jamahiriya submitted its report in a timely manner. The contents of the report were enhanced by a valuable introduction by the Libyan delegation.

### **B. Positive aspects**

97. The Committee notes with satisfaction that the Libyan Arab Jamahiriya has met its reporting requirements under the Convention.

98. The Committee also notes with satisfaction that the terms of the Convention have been generally incorporated in the domestic law of the Libyan Arab Jamahiriya and, in particular, that the State party has defined a separate crime of torture.

### **C. Matters of concern**

99. The Committee is concerned that in the Libyan Arab Jamahiriya incommunicado detention continues to create conditions which may lead to violations of the Convention.

100. The Committee is also concerned that allegations of torture in the State party continue to be received from reliable non-governmental organizations which have provided well-founded information in connection with other monitoring activities of the Committee.

### **D. Recommendations**

101. The Committee recommends that the Libyan authorities guarantee the free access of a person deprived of his liberty to a lawyer, to a doctor of his choice and to his relatives at all stages of detention.

102. The Libyan Government should continue to fight against torture by: (i) sending clear messages and instructions to that effect to its police and providing educational programmes to them; (ii) ensuring that those who commit the offence of torture are prosecuted in accordance with the law.

103. The Committee encourages the Libyan Government to consider making the declarations provided for under articles 21 and 22 of the Convention.

104. Finally, the Committee looks forward to the next report and invites the Government of the Libyan Arab Jamahiriya to submit to it replies in writing to those questions which have remained unanswered.

## **CAT A/54/44 (1999)**

176. The Committee considered the third periodic report of the Libyan Arab Jamahiriya (CAT/C/44/Add.3) at its 378th, 381st and 385th meetings, held on 5, 6 and 10 May 1999 (CAT/C/SR.378, 381 and 385), and has adopted the following conclusions and recommendations.

### **1. Introduction**

177. The Committee welcomes the timely submission of the report prepared in accordance with the guidelines of the Committee. Likewise, the Committee welcomes the oral report of the representatives of the State party and the dialogue with them.

### **2. Positive aspects**

178. The Committee wishes to reiterate its satisfaction, expressed in its conclusions when dealing with the State party's second periodic report, that the legal provisions of the State party generally conform with the requirements of the Convention.

179. Progress has been made in the efforts to improve education and information regarding prohibition against torture in the training of law enforcement personnel as well as medical personnel.

180. The Committee notes with satisfaction that application of corporal punishment has not been used in recent years.

### **3. Factors and difficulties impeding the application of the provisions of the Convention**

181. The effect of the embargo on the State party, in force since 1992, which has not been lifted completely, causes severe difficulties in its economic and social life. However, such difficulties may not be invoked as justification of breaches of the provisions of the Convention, especially articles 1, 2 and 16.

### **4. Subjects of concern**

182. It is a matter of concern for the Committee that neither the report nor the information given orally by the representatives of the Libyan Arab Jamahiriya provided the Committee with comments and answers that addressed substantially the subjects of concern indicated and the recommendations made by the Committee when dealing with the second periodic report of the State party in 1994. Consequently, the Committee reiterates, inter alia, the following subjects of concern:

(a) Prolonged incommunicado detention, in spite of the legal provisions regulating it, still seems to create conditions that may lead to violation of the Convention;

(b) The fact that allegations of torture in the State party continue to be received by the Committee.

183. It is a matter of concern for the Committee that, in practice, the State party had, in one incident,

extradited persons to a country where there are substantial grounds for believing that they are in danger of being subjected to torture. The Committee did not agree with the State party that it was legally obliged to do so.

184. It is also a matter of concern that the wording of article 206 of the Penal Code could be an obstacle to the creation of independent human rights non-governmental organizations.

## 5. Recommendations

185. The Committee encourages the Libyan Government to consider making the declarations provided for under articles 21 and 22 of the Convention.

186. It also recommends that the law and the practices of the State party be brought in line with article 3 of the Convention.

187. The Committee further recommends that the Libyan authorities guarantee the free access of a person deprived of his liberty to a lawyer and to a doctor of his choice and to his relatives at all stages of detention.

188. The State party should send a clear message to all its law-enforcement personnel that torture is not permitted under any circumstances. In addition, those who committed the offence of torture should be subjected to a prompt and impartial investigation and rigorously prosecuted in accordance with the law.

189. Although corporal punishment has not been practised in recent years, it should be abolished by law.