



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

Forty-sixth session

Summary record (partial)* of the 1000th meeting

Held at the Palais Wilson, Geneva, on Friday, 20 May 2011, at 10 a.m.

Chairperson: Ms. Belmir (Vice-Chairperson)

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention *(continued)*

Fourth and fifth periodic reports of Monaco (CAT/C/MCO/4-5)

1. *At the invitation of the Chairperson, the delegation of Monaco took places at the Committee table.*
2. **The Chairperson**, after welcoming the Monaco delegation, said that it was a great honour for her to preside over the historic 1000th meeting of the Committee against Torture since its creation 23 years previously. Over the years, the Committee had independently performed its monitoring duties, which were aimed at eliminating torture all over the world. She took the opportunity to pay tribute to both the current and previous members of the Committee, without forgetting those who had passed away. The Committee had considered nearly 280 reports submitted by 116 countries since 1988. It was a pity that 31 of the 147 States parties to the Convention had not yet submitted an initial report, and she invited the States concerned to engage in dialogue with the Committee. The Committee had also considered over 300 communications and had conducted 7 inquiries into the systematic practice of torture. General comment No. 3 was currently being prepared on the implementation of article 14, aimed at guaranteeing respect for the right of torture victims to compensation.
3. **Mr. Narmino** (Monaco) said that the delay in submitting his country's fourth and fifth periodic reports did not reflect any de facto or legal situation that would have prevented the State from fulfilling its treaty obligations. Since the submission of the previous periodic report, no act of torture had been brought to the attention of the public, administrative or judicial authorities, and no complaint of torture or other similar act had been registered by the appropriate Monegasque authorities. Nevertheless, the authorities remained vigilant in their efforts to prevent any act of torture, a task that was made easier by Monaco's small size.
4. Capital punishment and cruel, inhuman or degrading treatment were prohibited by article 20 of the Constitution of 17 December 1962, and since the submission of the previous periodic report, efforts had been made to revise Monegasque legislation; in particular, Act No. 1343 of 26 December 2007 on justice and liberty had amended certain provisions of the Code of Criminal Procedure on pretrial detention and police custody in order to bring them into line with international norms. The new provisions required further revision to take into account the decisions of the European Court of Human Rights.
5. Monaco had also adopted Act No. 1344 of 26 December 2007 on increased penalties for crimes and offences against children that amended the time limit for the public right of action and provided for criminal sanctions for offences committed against children, as a particularly vulnerable group. The amendment supplemented the provisions of articles 280 and 294-8 of the Criminal Code.
6. Bill No. 869 on combating and preventing specific forms of violence, which was due to be considered by the National Council on 28 June 2011, was another example of the evolution of Monegasque law. With the introduction in that text of new measures for prevention, protection and punishment, Monegasque law would take into account the vulnerability of women, children or persons with disabilities who were victims of any form of violence and would institute rules designed to prevent or, as appropriate, punish such violence. The Monegasque authorities were conscious of the importance of bringing the law and judicial and administrative practice into conformity with international norms, while respecting Monaco's particular characteristics.

7. Following the consideration of the previous periodic report, the Committee had expressed concern regarding the existence in the Monaco Criminal Code of the penalty of expulsion and the fact that individuals sentenced by Monegasque courts were transferred to French penitentiary establishments to serve all or part of their prison term. As the Monegasque authorities had informed the Committee, the provision for the penalty of expulsion had apparently never been applied and was due to be repealed under the reform of the Criminal Code. Due to the scale and complexity of the task, the reform process had been delayed, but, since the consideration of the provision concerned had been separated from the review of the other articles of the Criminal Code, the bill repealing the penalty of expulsion was nearing completion and domestic law would soon be consistent with practice. He also highlighted the adoption, on 10 May 2011, of the Act on legal aid and lawyers' fees that would modernize the financial coverage system for parties to litigation, particularly for victims of offences who did not have the means to defend themselves.

8. Regarding the transfer to France of individuals convicted in Monaco, negotiations between the judiciaries of the two countries had resulted in an agreement on the right of Monegasque judges to visit the detainees concerned. The corresponding diplomatic and administrative process would soon conclude.

9. **The Chairperson** (Country Rapporteur), while noting that the report under consideration had been submitted late, said she welcomed the fact that it had been drafted on the basis of the list of issues prior to reporting (CAT/C/MCO/Q/4) that had been transmitted by the Committee to the State party under the new optional reporting procedure.

10. The delegation of Monaco had stated that the Convention was part of Monegasque law and could be invoked directly in the courts. It was therefore unnecessary to incorporate provisions defining and prohibiting torture into the Criminal Code. However, according to the information given in paragraph 3 of the periodic report, the only reference to torture in the Code of Criminal Procedure related to acts committed abroad. It would therefore be advisable for the State party to close that gap by making legislative provision for the prosecution of suspected perpetrators of acts of torture that had been committed on national territory. In order to bring its domestic legislation into line with the provisions of the Convention, the State party should also adopt a law prohibiting exceptional circumstances or the orders of a superior from being invoked to justify torture, since that would be simpler than dealing with such situations on a case-by-case basis as they occurred.

11. Turning to the safeguards provided for in domestic legislation to ensure that all measures of expulsion conformed to the requirements of article 3 of the Convention, it was indicated in paragraphs 12, 13 and 15 of the State party's report that offenders were expelled or returned only to France, that decisions on expulsion or return were subject to appeal before the Supreme Court and that such appeal only "has suspensive effect if combined with a successful motion to stay execution". That information led her to ask what action was taken on extradition requests from countries other than France and why appeals to the Supreme Court did not automatically have suspensive effect. On the subject of measures to improve access to the procedure for requesting asylum, she enquired about the situation regarding the sovereignty of the Principality, given that the granting of refugee status in Monaco was subject to the approval of the French Office for the Protection of Refugees and Stateless Persons (OFPRA). Additional information on the application in the State party of article 3 of the Convention, which prohibited the expulsion of an individual to a country where there were substantial grounds for believing that he would be in danger of being subjected to torture, would also be appreciated.

12. The adoption of Act No. 1312 of 29 June 2006 making it obligatory to state the grounds for negative administrative decisions against individuals under Monegasque public law was welcome, as was the fact that the Supreme Court had already overturned refoulement decisions due to failure to state the grounds.

13. She would like to know whether the State party's criminal law had been revised to penalize all acts of torture or attempted acts of torture, and not just acts that fell under articles 228 and 278 of the Criminal Code, namely, as mentioned in paragraph 30 of the report, murders involving torture or cruelty.

14. It would be interesting to know whether Monaco could prosecute individuals who had committed acts of torture abroad, even if the acts in question were not prohibited by the legislation of the country where they had taken place.

15. **Mr. Gaye** (Alternate Country Rapporteur), referring to article 10, asked whether medical personnel responsible for detecting signs of physical or psychological torture received special training and particularly training on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). Concerning article 11, he wondered whether investigating judges made use of audio-visual recordings in cases where the records of interrogations were disputed. He also asked what the difference was between defence lawyers and lawyers practising at the Court of Appeal in Monaco. Noting that the appointment of a doctor to examine a person placed in custody was decided by the principal public prosecutor or the investigating judge, he wondered why there was no choice in that matter. He would also like to know what the maximum length of pretrial detention was. Noting from paragraph 69 of the report that the investigating judge could prohibit all forms of communication by the accused, he asked whether that prohibition could also be applied to the accused's counsel.

16. He requested the delegation of Monaco to offer a more detailed response to paragraphs 14 and 16 of the list of issues. Referring to articles 12 and 13 of the Convention, he asked what procedure a detainee must follow to lodge a complaint against law enforcement officers for torture or mistreatment suffered during arrest, interrogation or custody. Regarding article 14, he enquired whether there was a mechanism to offer medical and psychological support to the victims of torture and their families. On article 16, he observed that the response to paragraph 23 of the list of issues was incomplete, since the Committee was seeking information on the State party's domestic legislation, rather than on the international instruments that it had ratified. He noted that Monaco had signed the Statute of the International Criminal Court in 1998 but had still not ratified it, raising the question of why the judicial review of the Statute's compatibility with the Constitution of Monaco was taking so long. He also asked what was preventing Monaco from ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, noting that the reasons given in paragraph 149 of the report could not explain the State party's reticence on that matter. Details on the statutes, powers and resources of the Mediator attached to the Minister of State referred to in paragraph 155 of the report would be appreciated.

17. **Mr. Bruni**, referring to article 2 of the Convention, asked what remedies were available to contest an order from a superior officer or a public authority to commit an act of torture. Regarding article 3, he wondered what criteria the relevant authorities had adopted to determine whether an individual might be in danger of being subjected to torture following extradition. Paragraph 104 of the periodic report appeared to indicate that only victims of torture were entitled to compensation, raising the question of what legislative measures there were to give full effect to article 14, paragraph 1, of the Convention, since in cases where the victim died as a result of torture, his dependants were entitled to compensation. Referring to the complaint made in 2006 by persons claiming to have been handcuffed too tightly by police officers, he asked whether instructions had been issued to the police prohibiting the systematic use of handcuffs on persons placed in custody and putting an end to the practice of handcuffing too tightly.

18. **Ms. Sveaass** requested further information on the Human Rights Unit referred to in paragraph 154 of the report and, in particular, whether it was able to consider individual

complaints. She asked why civil society institutions were generally so inactive in Monaco. Citing sources alleging that a number of persons had been forcibly detained in psychiatric institutions for two to three days without a judicial warrant, she asked for further information on that matter. Noting the formulation of a law on specific forms of violence and violence prevention, she wondered what was meant by “specific forms of violence”. It would also be useful to know whether the State party intended to prohibit the corporal punishment of children in all contexts and to take measures to protect minority groups, particularly lesbian, gay, bisexual and transgender people. She further enquired whether racial motivation for committing an offence, or other discriminatory motivation as outlined in article 1 of the Convention, including sexual orientation, was considered an aggravating circumstance by the State party.

19. **Mr. Gallegos Chiriboga** said he had noted that a bill to combat and prevent specific forms of violence that was aimed at strengthening the protection of women, children and persons with disabilities had been submitted to the National Council. He wondered to what extent the bill conformed to the provisions of the Convention on the Rights of Persons with Disabilities and whether it would include the requirement of that Convention that health professionals must provide care of the same quality to persons with disabilities as to other members of society and must obtain the free and informed consent of the persons concerned. Also, would forced treatment and forced hospitalization be banned and did Monaco, having signed the Convention on the Rights of Persons with Disabilities, intend to ratify it in the near future?

20. **Ms. Kléopas** said that she welcomed Monaco’s adoption of the new optional reporting procedure. Given that Ms. Sveaass and Mr. Gallegos Chiriboga had already asked most of the questions that she had intended to put to the delegation, she would merely express the hope that the State party would take full account of the Committee’s observations regarding the rights of children and persons with disabilities.

21. **Mr. Mariño Menéndez** said that paragraphs 156 and 157 of the report indicated that the protection of human rights was ensured through the free exercise of judicial remedies, which were open to all natural or legal persons domiciled in Monaco, regardless of nationality or financial standing: did it therefore follow that persons who were not domiciled in Monaco had no such remedies? Information on their rights would be welcome. On the matter of asylum, it seemed that the award of refugee status was subject to the recognition of the French Office for the Protection of Refugees and Stateless Persons under agreements between Monaco and France on the movement and settlement of persons. He asked whether the 1951 Convention relating to the Status of Refugees and the various European directives on the status of refugees were applied in Monaco.

22. As for the treatment of detainees, it would be interesting to know whether they were transferred to French penitentiary establishments before or after they were tried. On the subject of monitoring the detention conditions for prisoners who were transferred to France from Monaco, the report stated that negotiations between the relevant French and Monegasque authorities to establish the details of visits by a representative of the Monegasque judiciary would shortly be initiated: what stage had that process reached? It had been explained in the State party’s response to the Committee’s concluding observations on the previous report (CAT/C/MCO/CO/4/Add.1) that, in order to implement the Committee’s recommendation to create a mechanism to monitor the treatment and physical conditions of detention of prisoners detained in French penitentiary establishments, there was a need for an agreement between the two States. While aware of the close relationship between the two countries, he noted that Monaco was a sovereign country and, as such, was required to discharge its treaty obligations directly, regardless of its links with neighbouring countries.

23. **Ms. Gaer** asked whether prisoners who were transferred to the French penitentiary authorities were informed of their rights and safeguards. Forty detainees had been transferred to French penitentiary establishments since 2004, and she would like to know how many of them were French nationals and of what kind of offences they had been convicted. Recalling that, in 2007, a British national had been transferred to Nice to serve an 8-year prison sentence, she asked for what crime he had been convicted, why he had spent over 2 years in the Monaco detention facility before being transferred and whether the Monegasque authorities had visited him in France. Noting the rise in the number of detainees transferred to France, she asked whether any such detainee had made a complaint of mistreatment. It would be useful to know what stage the negotiations to be conducted with the relevant French authorities on the conditions governing visits by a representative of the Monegasque judiciary to French penitentiary establishments had reached.

24. **Mr. Wang Xuexian**, welcoming the fact that no case of torture or mistreatment had been reported in Monaco during the period under review, said the State party's acceptance of 23 out of the 37 recommendations made following the universal periodic review of Monaco (A/HRC/12/3) bore witness to its commitment to respecting human rights. It would therefore be useful to know what measures had been taken to ensure that the priority system in the employment sector did not give rise to discrimination based on race, colour, nationality, religion, language, or ethnic or national origin; that the regulations on the acquisition of Monegasque nationality applied to everyone in the same way, regardless of sex; and that women who had acquired Monegasque nationality by naturalization were able to transmit it to their children. He also enquired whether steps had been taken to create an independent national human rights institution in conformity with the Paris Principles. The State party had not accepted the recommendation to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, maintaining that the measures taken to date, such as targeted support for the most vulnerable and thorough inspections of working conditions with a view to preventing all forms of exploitation, met the objectives in that sphere. In those circumstances, however, he did not see what was preventing Monaco from satisfying that instrument.

25. **Mr. Narmino** (Monaco) said that his delegation had listened carefully to the comments of the Committee members. It was important to hold a frank dialogue with the Committee and in that spirit his delegation would ensure that any answers that had not been given during the dialogue would be transmitted afterward. Several preliminary observations, however, would serve to enhance understanding of the context in which the Convention was applied. In order to truly comprehend the situation in Monaco, it should first be noted that the country was a micro-State less than 2 square kilometres in area with limited means that did not allow it to have all the administrative structures that a larger State might. Furthermore, Monaco was surrounded by French territory and therefore necessarily had close relations with its neighbour. There were no visible borders with France because there was a customs union in operation between the two States. Relations between the two countries were so close that there was no differentiation between the two nationalities. Monaco took the application of the international instruments to which it had freely acceded seriously, but for the reasons specified had concluded agreements with France, notably on the transfer of prisoners. According to that agreement, prisoners detained in Monaco were entrusted to the French prison administration after a certain period of time. Once in the hands of the French authorities, a prisoner only had recourse to the Monaco administration to apply for conditional release or clemency. In terms of day-to-day treatment, the prisoner was the responsibility of the French prison authorities and, if the case arose, it was to those authorities that any complaint of torture or mistreatment should be addressed. Regarding the British national referred to by Ms. Gaer, the individual concerned had been sentenced to 8 years in prison for armed robbery. If he had spent 2

years in the Monaco detention facility, it was while exhausting all available remedies in the country. The person concerned had since been given conditional release.

26. *The delegation of Monaco withdrew.*

The discussion covered in the summary record ended at noon.