

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

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Committee against Torture Seventy-eighth session

Summary record of the 2050th meeting* Held at the Palais Wilson, Geneva, on Wednesday, 8 November 2023, at 10 a.m.

Chair: Mr. Heller

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* No summary record was issued for the 2049th meeting.

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The meeting was called to order at 10 a.m.

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

Eighth periodic report of Denmark (CAT/C/DNK/8; CAT/C/DNK/QPR/8)

1. **Mr. Melgaard** (Denmark) said that Denmark continued to be the main sponsor of the draft omnibus resolution on torture that was put before the General Assembly every three years. It also regularly submitted draft thematic resolutions on that topic to the Human Rights Council.

2. Since 2014, together with Chile, Fiji, Ghana, Indonesia and Morocco, it had been leading the Convention against Torture Initiative to promote the universal ratification and better implementation of the Convention. Among its many other achievements since its inception, the Initiative had secured 19 new ratifications of the Convention.

3. Denmark was also the second-largest contributor to the United Nations Voluntary Fund for Victims of Torture, the main donor to non-governmental organizations Dignity – Danish Institute against Torture and the International Rehabilitation Council for Torture Victims and one of the main donors to the Association for the Prevention of Torture.

4. At the beginning of 2023, the Danish Government had decided to make some relatively fundamental changes to the Criminal Code by introducing separate and specific provisions that criminalized torture and new provisions on crimes against humanity and war crimes. To that end, an expert advisory committee had been established in June 2023 to draft the new provisions, and the resulting bill was expected to be passed in early 2024. The committee included representatives of the Government, the Danish Institute for Human Rights, Dignity and Amnesty International, as well as law professors.

5. Several recent changes had been made to the Criminal Code, including the criminalization of non-consensual sexual acts, the introduction of a new provision on anti-trafficking related to labour exploitation and the establishment of an amended disciplinary system in the Prison and Probation Service aimed at decreasing the use of solitary confinement as a disciplinary measure, in line with the Committee's previous concluding observations (CAT/C/DNK/CO/6-7).

6. In the area of asylum, the Refugee Appeals Board had introduced a more child-friendly procedure for its oral proceedings in asylum cases concerning unaccompanied minors, and a range of officials involved in such proceedings had received training in the application of the interview procedure.

7. Special focus was given to families staying at return centres. Pedagogical services had improved notably at the Return Centre in Avnstrup, where the most vulnerable families could also be accommodated in a separate house. A nursery for the youngest children had been established.

8. Denmark had drawn up a 10-year action plan for the improvement of psychiatric care, which was focused on prevention, early intervention and equitable access to high-quality care in order to promote mental well-being and alleviate the burden of mental health disorders. Under the plan, negotiations on a new ambitious political goal to reduce the use of coercive measures by 2030 would be launched in late 2023. Special attention would be paid to the use of compulsory restraints and forced medication, with a particular focus on children and youth. Less intrusive forms of coercive measures would be explored, provided that they did not lead to more extensive use of coercion. The Danish Health Authority would look to other countries to expand its knowledge.

9. The authorities were taking steps to reduce serious prison overcrowding, by renting prison cells in Kosovo, constructing a new prison and expanding existing prisons in Denmark, as well as improving the general conditions for prison staff.

10. A representative of Denmark, speaking on behalf of the government of Greenland, said that the government of Greenland had stated in its two-party coalition agreement that it would defend and protect international human rights. Furthermore, Greenland had established its own Council for Human Rights in 2013. A new law on equality and the

prohibition of discrimination on any grounds was expected to be adopted in November 2023. There was also an increasing knowledge and awareness that the Convention, which had been translated into the local language, also applied to contexts beyond the law enforcement and justice sector, and thus to spheres that were under the competence of the government of Greenland.

11. **A representative of Denmark**, speaking on behalf of the government of the Faroe Islands, said that the Faroe Islands was self-governing and had separate jurisdiction and exclusive competence in most areas. The Faroese legislature had adopted the provisions of seven of the United Nations human rights treaties that had been ratified by Denmark. However, many of the obligations set out in the Convention, such as the enforcement of sentences and the operation of correctional facilities, fell under the competence of the central Danish authorities. There was therefore a need for collaboration across jurisdictions.

12. The government of the Faroe Islands had taken the initiative and reached an agreement with Denmark on building the first prison in the Faroe Islands, which would replace the existing inadequate detention facilities.

13. Since the submission of the periodic report, amendments had been made to the Faroese Criminal Code, with the introduction, in 2022, of a new definition of rape that criminalized non-consensual sexual acts. The government now provided structured support services for survivors of rape and sexual assault in the Faroe Islands. Furthermore, it had decided to amend the Criminal Code to include a new separate provision on psychological violence in close relationships. The latter measure was in line with the national 20-point action plan to prevent domestic violence and violence in close relationships that the government would present to the Faroese parliament in late 2023. In 2023, an ambulatory care centre for victims of violence had been opened.

14. Since January 2010, the number of people living in the Faroe Islands who were nationals of countries outside the Nordic region had grown from 883 to 2,917. A new law was being drafted that would stipulate the fundamental rights and obligations of newcomers, as well as the obligation of the authorities to provide a suitable integration process.

15. The government of the Faroe Islands planned to establish a human rights institution in accordance with principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and was examining feasible solutions in that regard.

16. **Ms. Pūce** (Country Rapporteur) said that the Committee remained concerned that torture had not been established as a distinct punishable offence in the State party's legislation and was merely considered an aggravating circumstance. The Committee would appreciate more detailed information on the work of the expert advisory committee that was drafting specific provisions criminalizing torture as a separate offence and on the status of the legislative amendments envisaged.

17. Given that the work of the advisory committee did not appear to extend to Greenland and the Faroe Islands, she would welcome information on any plans to define torture as a separate offence in the relevant legislation.

18. It would also be useful to know how the provisions of the Criminal Code that established torture as an aggravating circumstance had been applied in court cases, including in Greenland and the Faroe Islands, since 2020, and what the outcome of those cases had been.

19. She would welcome details of how the authorities ensured the independence of the Ombudsman, which was the State party's national preventive mechanism and was accountable to Parliament. Information on the members of the national preventive mechanism would also be useful. She wished to know how many visits to places of detention had been undertaken per year since 2020, whether they had been targeted or general visits, whether they had been announced or unannounced and what the outcome of the visits had been.

20. It would be useful to know whether the national preventive mechanism had identified any systemic issues as a result of the visits and, if so, whether any steps had been taken to address those issues.

21. It was unclear whether the territorial competence of the national preventive mechanism extended to Greenland. If it did not, she would welcome information on any plans to consider such an extension. It would be useful to hear about any visits to police stations and prisons in Greenland, including what body had conducted them, how many had been made since 2020 and what their outcomes had been. It would be interesting to learn how issues that were under the competence of the government of Greenland were monitored.

22. Since the work of the national preventive mechanism did extend to the Faroe Islands, she would welcome information on the number and type of visits and the outcome of any dialogues. Clarification of the specific competences of the government of the Faroe Islands in applying the Convention would be particularly appreciated.

23. Statistical data for every year since 2020 on the number of complaints submitted to the Independent Police Complaints Authority, on the number of resulting investigations, on the outcomes of those investigations and on complainants' gender and nationality would be useful. She also wished for information on how the Authority examined such complaints, on the avenues through which they could be submitted – including whether they must be filed by the complainants' lawyers – and on how and when detainees were informed of their right to make such complaints. It would be interesting to hear whether, when acts of torture or ill-treatment were found to have been committed, the Authority was competent to impose disciplinary sanctions or to refer the case to a criminal court.

24. She would appreciate any statistics that might be available on complaints by prisoners – both on remand and convicted – of torture or ill-treatment. It would be useful to hear the details of how prisoners were informed of their right to make such complaints, how they could be filed, what safeguards existed against reprisals and how complaints were then processed. Statistical data for every year since 2020 on the number of complaints submitted by psychiatric inpatients and on the outcomes of those complaints would be helpful, as would information on how such complaints were filed and on whether it could be done with the assistance of family members or a lawyer. She would be grateful for information on whether complaints made in Greenland and the Faroe Islands were recorded in separate systems and, if so, for equivalent statistical data and an explanation of those systems.

25. She would like to hear about how, in line with long-standing recommendations by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the rights of persons in police custody and pretrial detention to immediately seek legal counsel, to inform their next of kin and to consult a doctor were realized. Information on detainees' rights to interpretation and translation services would be useful. She hoped to hear about the normative legal framework governing detention conditions.

26. She was eager for an explanation of the very high rate of pretrial detention, which accounted for over 40 per cent of persons deprived of their liberty. She would appreciate statistical data for every year since 2020 on the proportions of persons awaiting trial who were detained, who were placed under electronic surveillance or who were subject to other measures. She would be interested to learn about any training given to judges on the need for extensions of pretrial detention to be based on solid grounds. Details of the institutions that housed remand prisoners in Greenland and of how pretrial detention there was regulated would be useful, as would information on pretrial detention in the Faroe Islands.

27. She would welcome an explanation of the extensive judicial imposition on remand detainees of conditions amounting to solitary confinement. She wished to know the proportions of those in pretrial detention on whom the courts had imposed full or partial restrictions on contact with the outside world. She hoped to hear about any plans to reduce prison occupancy rates from around 100 per cent, since such high rates limited the authorities' ability to move and separate inmates. She wondered what proportion of prison guard, medical professional, psychologist and social worker posts were currently vacant and how the State party planned to fill such vacancies.

28. She was curious about how persons newly arrived in pretrial detention were medically screened and by whom, and about any records kept of injuries identified during such screenings. She wondered whether the persons conducting those screenings were given training on HIV, tuberculosis and hepatitis B and C. She would be interested to hear about how the medical service in Danish prisons was organized and whether the State party planned to make the Ministry of the Interior and Health responsible for that service. It would be helpful to learn whether prison doctors were obliged to report any signs of violence identified on patients.

29. Lastly, she wished to know whether police, prison, migration and psychiatric hospital staff, including those entrusted with investigating complaints, received ongoing training on preventing torture and ill-treatment, in particular on the Convention and on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

30. Mr. Liu (Country Rapporteur), lauding the State party for its active role in torture prevention activities, said that he would be interested to learn whether the consent-based definition of rape incorporated into the Criminal Code had resulted in an increase or a decrease in the reporting of such offences. He would welcome disaggregated statistical data on all rape cases reported since the revision of the Criminal Code, including the relationships between perpetrators and victims and the number of reports that had resulted in investigations, charges and convictions. He would be grateful for details of any measures the State party had taken to destignatize rape and other types of domestic and gender-based violence and to encourage their reporting. Statistical data on cases relating to violence against women would be useful, as would an explanation of the State party's implementation of its due diligence obligations under article 16 of the Convention. He wished to hear the delegation's response to domestic and international calls - including from the Committee on the Elimination of Discrimination against Women – for the State party to liberalize access to abortion later in pregnancy, in particular for women who were more vulnerable because of either age or disability, and for those who became pregnant as a result of a sexual assault.

31. He would appreciate information on whether all female asylum-seekers had been informed that they could request female caseworkers and interpreters for their asylum interview. Given that, in the State party, residence permits were based on marriage to a Danish national, he wished to know whether the authorities planned to take action to ensure that, if there was reason to believe that a woman had suffered threats or acts of violence, she could retain her residence permit after divorce.

32. Although the State party had taken a number of measures to prevent trafficking in persons and forced labour, including the establishment of a new police unit, only two perpetrators of those offences had been convicted over the past four years, whereas several hundred victims of trafficking had been identified in that time. He therefore wished to know what steps the State party was taking to ensure that the police used effectively those resources which had been earmarked for combating trafficking, and to channel more funding to victim support services. He was concerned about the difficulties reportedly experienced by trafficking victims in obtaining asylum in the State party and would be grateful for an update on the case of Elezjana Elezaj, whose deportation to Albania had been the subject of a communication examined by the Human Rights Committee (CCPR/C/137/D/2858/2016). He would be interested to hear the State party's response to the latter Committee's decision that the victim's removal would violate the principle of non-refoulement, and to know the current situation of the author of the complaint. He wondered what efforts the State party made to uphold the rights, as enshrined in the Convention, of the author and other non-nationals who suffered torture or ill-treatment in territories under the State party's jurisdiction.

33. It would be useful to know what steps the State party was taking to upgrade ageing prison infrastructure. Given that electronic tagging was provided for in law but rarely handed down as a sentence, he would like to know whether the State party planned to make greater use of alternative sentencing. Furthermore, he wished to know what action the State party was taking to prevent inter-prisoner violence, which was reportedly increasing, and whether it had put in place complaints procedures for inmates who were subjected to such violence. He would be grateful to know the outcome of the investigations conducted by the Independent Police Complaints Authority into the six deaths in police custody that had

occurred between January 2014 and May 2019, and in particular whether, in the view of the Authority, the police had been negligent and the Convention had been violated. He was keen to know what measures the State party had taken to monitor the use of pepper spray by the police and to ensure that such use met the requirements of necessity and proportionality, and to adequately regulate the use of pepper spray by prison officers. He wondered whether there was a special mechanism for prisoners to lodge complaints about the improper use of pepper spray by prison staff. In the light of claims that the police were using strip-searches more frequently and without good reason, the delegation might also wish to clarify the rules governing that practice.

34. While the State party was to be lauded for making a number of improvements to, and increasing the funding for, psychiatric care, it would nevertheless be useful to know what steps it had taken to ensure that coercive measures, such as mechanical restraint, were used or maintained only in specific circumstances, and that any use of those measures was comprehensively documented and justified, particularly where it exceeded a few hours. He wished to know what steps the State party had taken to ensure that doctors properly assessed and monitored the continuous use of belt restraints, and to provide adequate training to mental health professionals on the use of such restraints. Given that, following an inspection of psychiatric wards, the Ombudsman had found that certain practices and interventions provided for in the regulations of those wards were inconsistent with the Mental Health Act, he would like to know whether the State party planned to regulate such practices and interventions. He would be interested to learn whether and how the State party planned to reduce the use of coercive measures against children in psychiatric institutions and whether patients below the age of 18 years were able to complain about being subjected to such measures. He wondered whether the State party planned to amend legislation to ensure that children under the age of 15 years benefited from the same procedural safeguards and standards as persons over the age of 15 years.

The Committee noted that the Danish Military Manual, published in 2016, set out 35. rules for the armed forces in connection with the deprivation of liberty. He was keen to learn whether the Manual provided for the investigation of suspected violations of the Convention that occurred during the transfer of prisoners from the custody of the State party's forces into the custody of the forces of other States. He would be grateful to know what steps the State party had taken to ensure that its armed forces acted in accordance with the Convention abroad, and what action it had taken against those members of its armed forces who had been found to have violated the Convention. Moreover, he would be interested to hear what mechanisms were in place for the investigation of misconduct by military or government officials abroad, how many such investigations had been conducted and what the outcomes of those investigations had been. It would be useful to know what safeguards were in place to protect whistle-blowers who came forward with substantial evidence of torture being committed by agents associated with the State party. He was curious as to what training was provided to individuals entering conflict zones to educate them about appropriate conduct and the identification and prevention of torture and other inhuman or degrading practices. He would welcome clarification of how the State party ensured that the rights of victims of torture and ill-treatment under article 14 of the Convention were guaranteed in law and in practice in extraterritorial operations.

36. Several municipalities in the State party had reportedly been found liable for historical abuse suffered by children in care homes and had provided redress to a number of victims in out-of-court settlements. However, not all victims had received redress and some had struggled to successfully sue the authorities. The Committee invited the State party to indicate what measures it had taken to provide redress to all persons who had suffered abuse, negligence and maltreatment in the care system, and whether it planned to establish an independent board of inquiry with the power to investigate cases of such treatment and to provide compensation as appropriate. He wondered whether victims who were non-nationals could seek redress and benefit from the same legal protections as nationals of the State party.

37. He urged the State party to provide official data on how many of the refugees and asylum-seekers under its jurisdiction had been subjected to torture and ill-treatment, given that unofficial estimates put the figure at 30 per cent. It was unclear whether compensation was provided to all such victims, how many of them typically benefited from treatment and

rehabilitation each year, what their living conditions were like and how long it took for them to receive treatment following their arrival in the State party. He would like to know whether the State party was making any particular effort to remove practical barriers to health care for refugees and asylum-seekers, for example by providing free interpretation and reimbursing transportation costs. In that regard, it would be useful to know how much funding and administrative support was provided to health-care facilities to enable them to provide treatment to refugees and asylum-seekers, whether those facilities were accessible from all parts of the State party's territory, and whether the State party collected data on the victims' socioeconomic characteristics and medical histories.

38 He wished to know whether the State party might consider amending its legislation to ensure that civil proceedings pertaining to torture and ill-treatment were not subject to any statute of limitations. In the specific case of intersex persons, concerns had been raised during the State party's third universal periodic review in 2021 about reports of unnecessary and irreversible surgery and other medical treatment to which intersex children had been subjected before the age of 15 years, when their informed consent was required. The statute of limitations might long since have expired by the time they had understood the full extent of the harm that had been caused to them by surgical procedures in their early childhood. He wondered what criminal or civil remedies were available for intersex persons who had undergone involuntary sterilization or unnecessary and irreversible medical or surgical treatment during childhood, and whether those remedies were also subject to a statute of limitations. Against that backdrop, he wished to know how many involuntary, non-urgent and irreversible surgical and other procedures had been carried out on intersex children who were too young to provide informed consent, and what steps the State party had taken to provide intersex children with appropriate advice and to ensure that non-urgent and irreversible medical interventions were postponed until those children were mature enough to give their consent. He also wished to know whether the State party planned to decentralize health care for intersex persons so that it was more readily accessible, and what measures it was taking to provide intersex persons, and the parents of intersex children, with free and effective psychological support.

39. **Mr. Touzé** said that he wished to have more information on the scope of the board of inquiry that had been established to investigate the fitting of contraceptive devices, at the initiative of the Danish authorities, in around 4,000 young Inuit women in Greenland in the 1960s and 1970s, without their consent, and which in some cases had led to repeated infection and infertility. He wondered whether the role of the board would be to establish the facts or to propose the establishment of mechanisms to compensate the victims, and whether the victims might be entitled to any other form of redress. He would like to know whether the State party planned to honour the requests for immediate reparation made by the approximately 60 victims who were elderly and might not live long enough to see the conclusion of the inquiry.

40. **Mr. Buchwald** said that he wished to know what status was granted, under domestic law, to persons whose asylum application had been denied and who had submitted a petition to the Committee under article 22 of the Convention and were awaiting its decision. He also wondered what the process was for providing a stay of deportation in such cases, how the State party handled requests for interim measures and what rules governed the treatment of petitioners. As the State party did not treat the Committee's decisions as legally binding, he would also be grateful to learn what rules were followed when deciding whether to abide by the Committee's decisions and which agencies were involved in that decision-making process.

41. As the maximum period of detention for the purpose of return could be extended to 12 months in special circumstances, such as where there was a lack of cooperation on the part of the foreign national, he wondered what constituted a lack of cooperation and whether, for example, it could include situations where the recipient country was unwilling to accept the return of a person who refused to refrain from participating in political action or to admit to having committed an offence. In the light of reports regarding challenging conditions in deportation centres, he would like to know how the State party ensured that dissuasive measures were not used against persons whose asylum applications were still under consideration.

42. **Mr. Iscan** said that he would welcome clarification regarding the State party's agreement to rent prisons in Kosovo for the detention of third-country nationals who were serving sentences under Danish law. In particular, he wished to know what the status of the agreement was; what the State party's plan was for the future of that arrangement; how the State party – and in particular its Ombudsman – would exercise jurisdiction in a sovereign country; whether abuses would be investigated by the Danish authorities or the authorities in Kosovo; and how the State party would ensure fundamental legal safeguards, including access to lawyers, family visits and medical care. Similarly, he would also welcome further information about the State party's plans to sign agreements with other European countries on the transfer of asylum-seekers.

43. **Mr. Tuzmukhamedov** said that he would be curious to know why the State party had submitted territorial exclusions to the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of the Faroe Islands and Greenland. It would also be interesting to learn how Danish law governed the separation of authority between the Faroe Islands and continental Denmark with regard to policing, law enforcement and foreign policy on participation in international treaties. Noting that the Faroe Islands had adopted the provisions of certain international human rights instruments, he wondered how that process had been carried out and what impact it had had on the implementation of the instruments.

The meeting was suspended at 12.20 p.m. and resumed at 12.30 p.m.

44. Mr. Melgaard (Denmark) said that the Ombudsman was highly independent, as a matter of both tradition and law, which was why it had been selected to serve as the national preventive mechanism. Parliament had a hand only in setting the Ombudsman's budget and appointing its members and did not have the authority to hand down instructions to it. The Ombudsman must have a legal background and must not be a member of the legislature. While the majority of the Ombudsman's staff also had a legal background, advisers with a psychology background were also employed. As part of its role as the national preventive mechanism, a specialized branch of the Ombudsman carried out visits to public and private places of deprivation of liberty, including prisons, probation facilities, psychiatric wards and social residential facilities, in cooperation with Dignity - Danish Institute against Torture and the Institute for Human Rights. The mechanism also monitored the forced deportation of foreign nationals, including forced deportations arranged by other European Union member States at the request of the European Border and Coastguard Agency (Frontex). Each year, the Ombudsman selected a theme for the mechanism's activities and produced a thematic report on the topic.

45. A representative of Denmark said that torture was already included as an aggravating circumstance in the Criminal Code and the Military Criminal Code. The definition of torture used in those provisions was aligned with that set out in the Convention. The expert advisory committee that had been set up was now focused on drafting the proposed provisions for the criminalization of torture, crimes against humanity and war crimes.

46. **Mr. Melgaard** (Denmark) said that the Government was in favour of including torture, crimes against humanity and war crimes as separate offences in the domestic legislation. As the Government currently held a majority, it seemed likely that the proposals would be adopted.

47. **A representative of Denmark** said that the principle of non-refoulement was inscribed in domestic law. The Immigration Services and the Refugee Appeals Board were responsible for assessing asylum applications. They had a legal obligation to take into account the country's international obligations in that regard. To that end, they had drafted various memorandums on the legal protections to which asylum-seekers were entitled under international law. Those memorandums, which were published on the website of the Board, formed the basis of all asylum application assessments and decisions.

48. Asylum-seekers who showed signs of having been trafficked were assessed in parallel to the processing of their asylum applications. Generally, a decision on whether they had been subjected to trafficking was made before the decision on their asylum application.

Caseworkers were aware of the need to refer potential victims to the Danish Centre against Human Trafficking. Cases were assessed on an individual and specific basis to determine whether victims of trafficking would be at risk of abuse if repatriated. While the fact of being a victim of trafficking was not grounds in itself to approve an asylum application, the trafficking relationship could be a decisive factor if the authorities of the person's country of origin did not provide adequate protection from the identified risks of abuse.

49. The Refugee Appeals Board had the authority to reopen asylum cases where the Committee decided that the principle of non-refoulement had not been upheld. Since the country's previous periodic review before the Committee in November 2015, there had been nine such cases in which the Board had ultimately decided to issue residence permits to the applicants. In another eight cases, the complainants had been found to be absent from their appointed place of accommodation or to have left Denmark; the law stipulated that those cases could not be reopened. In 16 cases, following a thorough review, the Board had upheld the decision of the Immigration Services. The Board took into account the Committee's observations during all such decisions. With regard to the communication submitted to the Human Rights Committee (CCPR/C/137/D/2858/2016), the Board had assessed the case and had found that the complainant would face no risk of abuse if repatriated.

50. In June 2021, Parliament had passed legislation permitting the Government to sign agreements with other countries on transferring asylum-seekers to those countries while their asylum applications were being processed. No such agreements had yet been signed, however. Any such arrangements would be subject to due diligence, with proper consideration of the country's obligations under the Convention. The Government was currently working to reform the European asylum system, taking into consideration its international obligations.

51. A representative of Denmark said that, in 2018, the statute of limitations had been changed to enable victims of public abuse or negligence during childhood to maintain their right to redress without limitation. As the court system was fully capable of handling such cases, there was no need for a parallel system of redress. Since 2013, the State had provided annual funding to the organization Children's Welfare to support victims of public negligence or abuse during childhood in pursuing redress. The organization screened cases, gathered relevant files and referred claimants to lawyers.

The meeting rose at 1 p.m.