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TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Report of the Third Committee

Rapporteur: Mr. Carles CASAJUANA (Spain)

I. INTRODUCTION

1. At its 3rd plenary meeting, on 23 September 1988, the General Assembly, on the recommendation of the General Committee, decided to include in its agenda the item entitled "Torture and other cruel, inhuman or degrading treatment or punishment" and to allocate it to the Third Committee.
2. The Committee considered the item jointly with items 97, 98, 99, 100 and 101 at its 39th to 43rd, 46th and 51st meetings, on 10, 11, 14, 15, 17 and 23 November 1988. An account of the Committee's discussion is contained in the relevant summary records (A/C.3/43/SR.39-43, 46 and 51).
3. For its consideration of the item, the Committee had before it the following documents:
 - (a) Report of the Committee against Torture; 1/
 - (b) Report of the Secretary-General on the Status of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment (A/43/519);
 - (c) Report of the Secretary-General on the United Nations Voluntary Fund for Victims of Torture (A/43/779);

1/ Official Records of the General Assembly, Forty-third Session, Supplement No. 46 (A/43/46).

(d) Letter dated 16 March 1988 from the Permanent Representative of Zimbabwe to the United Nations addressed to the Secretary-General, transmitting two communiqués issued by the Co-ordinating Bureau of the Movement of Non-Aligned Countries regarding the situation in the area around the Falkland Islands (Malvinas) and South Africa's decision to execute the Sharpeville Six (A/43/226-S/19649).

4. At the 39th meeting, on 10 November, the Under-Secretary-General for Human Rights made an introductory statement (see A/C.3/43/SR.39).

II. CONSIDERATION OF PROPOSALS

A. Draft resolution A/C.3/43/L.49

5. At the 46th meeting, on 17 November, the representative of the Netherlands, on behalf of Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Colombia, Costa Rica, Cyprus, Denmark, Ecuador, Finland, France, Germany, Federal Republic of, Greece, Guinea, Italy, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Peru, Portugal, Samoa, Spain, Sweden, Uruguay and Venezuela, introduced a draft resolution (A/C.3/43/L.49) entitled "Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment".

6. At the 51st meeting, on 23 November, draft resolution A/C.3/43/L.49 was adopted without a vote (see para. 12, draft resolution I).

7. After the adoption of the draft resolution, the representative of Japan made a statement in explanation of position.

B. Draft resolution A/C.3/43/L.51

8. At the 46th meeting, on 17 November, the representative of Sweden, on behalf of Australia, Austria, Belgium, Brazil, Canada, Cyprus, Denmark, Finland, France, Germany, Federal Republic of, Greece, Iceland, Ireland, Italy, Japan, Kenya, the Libyan Arab Jamahiriya, Luxembourg, the Netherlands, New Zealand, Norway, Senegal, Spain, Sweden, the United Kingdom of Great Britain and Northern Ireland and the United States of America, introduced a draft resolution (A/C.3/43/L.51) entitled "United Nations Voluntary Fund for Victims of Torture".

9. At the 51st meeting, on 23 November, draft resolution A/C.3/43/L.51 was adopted without a vote (see para. 12, draft resolution II).

C. Draft resolution A/C.3/43/L.52

10. At the 46th meeting, on 17 November, the representative of Zambia, on behalf of Algeria, Angola, Botswana, Bulgaria, the Congo, Costa Rica, Côte d'Ivoire, Denmark, Ethiopia, Guinea, Kenya, Morocco, Rwanda, Senegal, Swaziland, Sweden, the United Republic of Tanzania, Zambia and Zimbabwe, introduced a draft resolution (A/C.3/43/L.52) entitled "Torture and inhuman treatment of children in detention in

South Africa and Namibia". Subsequently, Austria, Burkina Faso, Cuba, Egypt, Greece, Ireland, the Libyan Arab Jamahiriya, Mongolia, Nigeria, Norway, the Philippines, the Sudan, Tunisia and Zaire joined in sponsoring the draft resolution.

11. At the 51st meeting, on 23 November, the Committee adopted draft resolution A/C.3/43/L.52 without a vote (see para. 12, draft resolution III).

III. RECOMMENDATIONS OF THE THIRD COMMITTEE

12. The Third Committee recommends to the General Assembly the adoption of the following draft resolutions:

DRAFT RESOLUTION I

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

The General Assembly,

Recalling article 5 of the Universal Declaration of Human Rights ^{2/} and article 7 of the International Covenant on Civil and Political Rights, ^{3/} both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Recalling also the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in its resolution 3452 (XXX) of 9 December 1975,

Recalling further General Assembly resolution 39/46 of 10 December 1984, by which it adopted and opened for signature, ratification and accession the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and called upon all Governments to consider signing and ratifying the Convention as a matter of priority, as well as its resolutions 40/128 of 13 December 1985, 41/134 of 4 December 1986 and 42/123 of 7 December 1987, as well as Commission on Human Rights resolutions 1987/30 of 10 March 1987, ^{4/} 1988/31 and 1988/36 of 8 March 1988, ^{5/}

^{2/} Resolution 217 A (III).

^{3/} See resolution 2200 A (XXI), annex.

^{4/} See Official Records of the Economic and Social Council, 1987, Supplement No. 5 (E/1987/18 and Corr.1 and 2), chap. II, sect. A.

^{5/} Ibid., 1988, Supplement No. 2 (E/1988/12), chap. II, sect. A.

Mindful of the relevance, for the eradication of torture and other cruel, inhuman or degrading treatment or punishment, of the Code of Conduct for Law Enforcement Officials 6/ and of the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment, 7/

Convinced of the importance of the finalisation of the draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 8/

Seriously concerned about the alarming number of reported cases of torture and other cruel, inhuman or degrading treatment or punishment taking place in various parts of the world,

Determined to promote the full implementation of the prohibition, under international and national law, of the practice of torture and other cruel, inhuman or degrading treatment or punishment,

Welcoming the decision of the Commission on Human Rights, in its resolution 1988/32 of 8 March 1988, 9/ to extend for two years the mandate of the Special Rapporteur to examine questions relevant to torture,

1. Welcomes the first report of the Committee against Torture; 10/

2. Takes note with appreciation of the report of the Secretary-General on the status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 11/

3. Recognises the importance of appropriate administrative and financial arrangements to enable the Committee against Torture to carry out in an effective and efficient manner the functions entrusted to it under the Convention, and to ensure the long-term viability of the Committee as an essential mechanism for overseeing the effective implementation of the provisions of the Convention;

6/ Resolution 34/169, annex.

7/ Resolution 37/194, annex.

8/ A/34/146, annex.

9/ See Official Records of the Economic and Social Council, 1988, Supplement No. 2 (E/1988/12), chap. II, sect. A.

10/ Official Records of the General Assembly, Forty-third Session, Supplement No. 46 (A/43/46).

11/ A/43/519.

4. Appreciates that the Committee against Torture gave early attention to the development of an effective reporting system on implementation by States parties to the Convention;

5. Requests the Secretary-General to ensure the provision of appropriate staff and facilities for the effective performance of the functions of the Committee against Torture;

6. Again requests all States to become parties to the Convention as a matter of priority;

7. Invites once again all States, upon ratification of, or accession to, the Convention, or subsequently to consider the possibility of making the declaration provided for in articles 21 and 22 of the Convention;

8. Requests the Secretary-General to submit to the Commission on Human Rights at its forty-fifth session and to the General Assembly at its forty-fourth session a report on the status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

9. Decides to consider the report of the Secretary-General at its forty-fourth session under the item entitled "Torture and other cruel, inhuman or degrading treatment or punishment".

DRAFT RESOLUTION II

United Nations Voluntary Fund for Victims of Torture

The General Assembly,

Recalling article 5 of the Universal Declaration of Human Rights, 12/ which states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Recalling also the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 13/

Noting with satisfaction the entry into force on 26 June 1987 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 14/

12/ Resolution 217 A (III).

13/ Resolution 3452 (XXX), annex.

14/ Resolution 39/46, annex.

Recalling its resolution 36/151 of 16 December 1981, in which it noted with deep concern that acts of torture took place in various countries, recognised the need to provide assistance to the victims of torture in a purely humanitarian spirit and established the United Nations Voluntary Fund for Victims of Torture,

Convinced that the struggle to eliminate torture includes the provision of assistance in a humanitarian spirit to the victims and members of their families,

Taking note of the report of the Secretary-General, 15/

1. Expresses its gratitude and appreciation to the Governments, organisations and individuals that have already contributed to the United Nations Voluntary Fund for Victims of Torture;
2. Calls upon all Governments, organisations and individuals in a position to do so to respond favourably to requests for initial as well as further contributions to the Fund;
3. Invites Governments to make contributions to the Fund, if possible on a regular basis, in order to enable the Fund to provide continuous support to projects that depend on recurrent grants;
4. Expresses its appreciation to the Board of Trustees of the Fund for the work it has carried out;
5. Expresses its appreciation to the Secretary-General for the support given to the Board of Trustees of the Fund;
6. Requests the Secretary-General to make use of all existing possibilities, including the preparation, production and dissemination of information materials, to assist the Board of Trustees of the Fund in its efforts to make the Fund and its humanitarian work better known and in its appeal for contributions.

DRAFT RESOLUTION III

Torture and inhuman treatment of children in detention in
South Africa and Namibia

The General Assembly,

Recalling its resolution 42/124 of 7 December 1987 as well as Commission on Human Rights resolution 1988/11 16/ of 29 February 1988,

Recalling also the relevant provisions of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 17/ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 18/ and the Declaration on the Rights of the Child, 19/

Welcoming the holding of the International Conference on Children, Repression and the Law in Apartheid South Africa at Harare, from 24 to 27 September 1987,

Appalled at evidence that children in South Africa and Namibia continue to be subjected to detention, torture and inhuman treatment,

Gravely concerned about reports of the increasing number of repressive measures targeted on children in South Africa and Namibia,

1. Expresses its profound outrage at evidence of detention, torture and inhuman treatment of children in South Africa and Namibia;
2. Vigorously condemns the apartheid racist régime for increasing detention, torture and inhuman treatment of children in South Africa and Namibia;
3. Demands the immediate and unconditional release of children held in detention in those countries;
4. Demands also the immediate dismantlement of the so-called "rehabilitation camps" and "re-education centres" in South Africa, since they only serve the racist régime's strategy of physically and mentally abusing black South African children;

16/ See Official Records of the Economic and Social Council, 1988, Supplement No. 2 (E/1988/12), chap. II, sect. A.

17/ Resolution 3452 (XXX), annex.

18/ Resolution 39/46, annex.

19/ Resolution 1386 (XIV).

5. Strongly condemns the racist régime of South Africa for its forced recruitment, torture and inhuman treatment of Namibian children with the objective of turning them into becoming their agents against the Namibian people;

6. Requests all relevant United Nations bodies, specialized agencies and non-governmental organisations to intensify the world-wide campaign aimed at drawing attention to, monitoring and exposing these inhuman practices;

7. Requests the Commission on Human Rights to continue to pay special attention to the question of detention, torture and other inhuman treatment of children in South Africa and Namibia;

8. Further requests the Secretary-General to submit a report to the General Assembly at its forty-fourth session on the implementation of the present resolution;

9. Decides to discuss at its forty-fourth session torture and inhuman treatment of children in detention in South Africa and Namibia under the agenda item entitled "Torture and other cruel, inhuman or degrading treatment or punishment".
