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COMMITTEE AGAINST TORTURE

Thirty-fourth session

SUMMARY RECORD (PARTIAL)* OF THE FIRST PART** OF THE 648th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 9 May 2005, at 3 p.m.

Chairperson: Mr. MARIÑO MENÉNDEZ

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

** The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.648/Add.1.

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The public part of the meeting was called to order at 4.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 6) (continued)

Fourth periodic report of Switzerland (continued) (CAT/C/55/Add.9; CAT/C/34/L/CHE)

1. At the invitation of the Chairperson, the members of the delegation of Switzerland took places at the Committee table.

2. The CHAIRPERSON invited the delegation to reply to the questions raised by the Committee at the meeting on 6 May 2005.

3. Mr. STADELMANN (Switzerland), citing Switzerland's fourth periodic report (CAT/C/55/Add.9), said that during the period from 1996 to 2000 there had been no extradition decisions in violation of the principles of the Convention. However, when extraditions entailing a risk of violation of human rights had been effected, they had been made subject to guarantees by the requesting State that the rights of the person to be extradited would be respected. The requesting State was required, for instance, to guarantee that the conditions of detention would not be inhuman or degrading within the meaning of article 3 of the European Convention on Human Rights. Any treatment that might cause physical or mental harm should be prohibited and the detainee should have access to proper medical care. Such guarantees were requested in only about 10 cases a year out of some 150 cases of extradition. A further requirement was that anybody representing Switzerland in the country of extradition should be free to visit the extradited person. The visits should not be monitored and the detainee should be able to contact the representative at any time. The representative should also be admitted to legal proceedings pertaining to the extradited person, even when they were held in camera.

4. As demonstrated by the case of G.K. v. Switzerland, which the Committee had considered under article 22 of the Convention, guarantees were usually requested through diplomatic channels. However, in the case of States with a federal structure in which individual States were not bound by guarantees provided by the central Government, guarantees were sought from the competent local authorities. Where difficulties arose in connection with the guarantees provided, the Federal Department of Justice and the Federal Department of Foreign Affairs intervened jointly. In most cases a formal request to the State concerned was sufficient to remedy the situation. In one case concerning India, however, the Indian authorities had proved unable or unwilling to respect the guarantees provided. As a result, Switzerland intended to inform the Indian authorities officially that, in principle, it would not respond favourably to any further requests for extradition, especially in cases where guarantees were required.

5. Incommunicado detention no longer existed in Switzerland, since it was incompatible both with the Constitution and with the European Convention on Human Rights, which had been incorporated in domestic legislation. In exceptional cases, however, Swiss law permitted restrictions on freedom of movement and contacts with fellow inmates as a disciplinary measure for a limited period. Such measures were subject to appeal and contacts with counsel were not prohibited. There were no statistics regarding the frequency or duration of such measures.

6. With regard to the translation of documents informing accused persons of their rights, in the Canton of Geneva article 107 A of the Code of Criminal Procedure had been translated into 18 languages and a copy was provided to anyone suspected of having committed an offence.

7. In prisons in the districts of Dielsdorf and Zurich, the Canton of Zurich had established women's divisions that were completely separate from the rest of the prison. The original idea of building a separate prison for women had been abandoned because of the relatively small number of women prisoners.

8. The idea of creating a separate unit for detainees with mental problems had also been dropped following the expansion of prison psychological and psychiatric services in the Canton of Zurich, including individual assistance to inmates with integration problems. In February 2005, the people of Zurich had voted in favour of the construction of a forensic security unit at the Rheinau psychiatric clinic.

9. Swiss prison facilities had no special procedures or structures for monitoring sexual assaults on inmates. However, inmates were under constant surveillance in shower rooms and during recreation and employment. Moreover, Swiss prisons were usually small, well designed and easy to monitor because of the prevalence of a group-based enforcement regime.

10. His Government's response to the third report of the European Commission against Racism and Intolerance (ECRI) had been published on the ECRI web site. With regard to the allegations of body searches of nationals of African countries, sometimes in public places and solely on account of the colour of their skin, Switzerland emphasized that all procedures were conducted in accordance with the law and that the measures taken were by no means arbitrary. The actions of officials were transparent and subject to oversight. Complaints could be filed in all cases. Police training courses systematically addressed the issues of xenophobia, racism and police violence. Switzerland had replied in detail to similar allegations made by the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

11. With regard to asylum-seekers, some 10 cantons had either increased the staff of cantonal decision-making bodies since 2001 or were currently training new staff. The directives on forced repatriation by air required the cantons to arrange special staff training courses under the auspices of the Conference of Heads of Cantonal Departments of Justice and Police (CCDJP). Targeted instruction was also provided at the Swiss Police Institute, which had requested the Association for the Prevention of Torture to produce a training manual which also covered forced repatriation.

12. The use of drugs without consent to tranquillize a person to be repatriated by air was strictly regulated by directives prepared by the CCDJP and the Swiss Academy of Medical Science. The administration of sedatives required medical approval. A medical examination was conducted prior to removal. There should be reason to believe, on the basis of such persons' behaviour, that they might injure themselves or another person or endanger their life or that of others. The sedative should be administered by a doctor or at a doctor's request, and a person with medical training should monitor the person concerned throughout the journey. Statistics

regarding the number of cases of forced medication of repatriated persons in 2003 would be provided within about two weeks. It could already be reported that the numbers had decreased significantly since the entry into force of the new directives. The sedative used depended on the doctor involved, who treated such cases as part of his or her ordinary medical work. No psychological assistance was provided to the escorting staff because the police force already had structures in place to deal with such circumstances.

13. Following the visit by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe, the Federal Council had instructed the Federal Department of Justice and Police to transmit to the CCDJP a circular recommending, in particular, that police officers should respect the rights of foreigners held in custody, and reminding them that allegations of ill-treatment of such persons would be investigated and that those found guilty would be severely punished.

14. As measures of restraint constituted, by definition, a violation of fundamental rights, they had to be based in law, respond to a public interest and respect the principle of proportionality. In Switzerland the codes of criminal procedure stipulated, for instance, the precise circumstances in which a person could be arrested, premises could be searched and items could be confiscated. However, the means used by the police to implement measures of restraint were generally not spelt out in Swiss legislation. Where rules existed, they tended to take the form of orders or instructions. In many cases, it was left to the courts to determine after the fact whether the restraint and the means used were permissible.

15. To remedy that shortcoming, a bill on the use of restraints was currently being considered. The bill had three aims: to introduce uniform regulations governing the use of force by the authorities; to ensure respect for the rule of law (existence of a legal basis, public interest, proportionality, respect for international law); and to ensure respect for basic rights (equality, non-discrimination, non-arbitrariness, right to life and liberty, procedural guarantees). Some means such as handcuffs were authorized. Others such as full-face helmets, gags or other procedures that could block the respiratory tract were prohibited. The use of physical force in a manner that could endanger health was also prohibited. Weapons (truncheons, defensive batons and electric shock devices) could only be used as a last resort and the bill specified which weapons could be used in those circumstances. The bill on the use of restraint measures was applicable only to cases involving asylum-seekers and aliens and to the transport of persons ordered by a federal authority. Consequently, it replaced cantonal regulations governing means of restraint only in those circumstances. In other circumstances, the means used could include firearms, defensive sprays or police dogs. Under the bill, the use of sprays and other irritants was not permitted during removals by air.

16. Turning to questions regarding compensation, he said that actions for damages did not depend on the existence of a criminal conviction or a disciplinary sanction. The fact that misconduct by a public official was not a precondition for State responsibility and that action had to be taken against the State rather than against individual officials represented an advantage for victims, primarily because in the case of the State there was a guarantee of solvency. Under the Aid to Victims of Offences Act, victims of offences committed, inter alia, by a public official could obtain immediate and long-term assistance, including financial assistance.

17. A Swiss national or a person living in Switzerland who was tortured abroad could obtain compensation in Switzerland under certain circumstances. He or she could obtain compensation, for example, under article 11, paragraphs 2 and 3, of the Aid to Victims of Offences Act if the torture occurred abroad, if the victim failed to obtain adequate compensation from the State concerned, and if he or she was of Swiss nationality or resident in Switzerland when the acts occurred. In another context, a Tunisian national with refugee status in Switzerland had filed a suit for damages against a former minister who had allegedly tortured him in Tunisia. The case had two special dimensions: it required recognition by the Swiss court of the principle of jurisdiction of necessity (for de nécessité); and the court would have to determine whether the former minister enjoyed any kind of immunity. As the case was sub judice, he was unable to comment further. However, the jurisprudence of the International Court of Justice, in particular its Judgment of 4 February 2002 in the Democratic Republic of the Congo v. Belgium case, was of some relevance.

18. He said the Fribourg Code of Criminal Procedure was in line with the Vienna Convention on Consular Relations. All foreign nationals imprisoned in Switzerland were informed in writing, as soon as they were deprived of their liberty, of their right to contact the consular authorities of their country of origin. However, consular authorities would be notified of the arrest only at the express request of the individual concerned, since, under article 36 of the Vienna Convention, the State party had no obligation in that regard otherwise.

19. Mr. ZUMWALD (Switzerland), replying to Committee members' questions on asylum procedures, said that on the question of a daily walk in the open air for asylum-seekers retained at Zurich airport, a minimum of one hour's walk outside was now guaranteed upon request. He was, however, still waiting to hear from the airport authorities whether asylum-seekers were automatically apprised of that right. He would forward that information in writing when he received it.

20. Turning to the procedure applied when an asylum-seeker was denied temporary admission and confined to the airport, he said admission was temporarily denied only when it was not possible to establish immediately whether the conditions for entry were met. The asylum-seeker was confined to the airport for the duration of the examination of his claim, up to a maximum of two weeks. Should the authorities fail to reach a decision within that period, the asylum-seeker was automatically authorized to enter the country and begin the normal asylum procedure.

21. The statistics showed that two appeals had been lodged against such decisions, but did not reveal whether either of them had been on the grounds of the duration of the confinement. Asylum-seekers were given written notice of the decision, for which they were required to provide a receipt, and the decision was explained to them in a language they understood.

22. Judicial supervision of confinement was the responsibility of the Asylum Appeals Commission (CRA). Confinement to the airport was not deemed to constitute a deprivation of liberty, within certain time limits, but rather a curtailment of liberty, provided certain conditions were met, as the CRA had found they were at Zurich airport.

23. With regard to the Kreuzlingen reception centre and Amnesty International's letter of 14 April 2005, he said Amnesty International had been invited to a meeting to discuss the allegations of ill-treatment. No independent inquiry had been opened into the cases mentioned in the letter, but he could provide some information based on the internal inquiries that had been conducted.

24. In the case of Hassan Faysal, the asylum-seeker's statements conflicted not only with those of the security staff but also with testimony given by another asylum-seeker. Moreover, a member of the security staff had been injured and both parties had lodged complaints, which were now pending. The asylum-seeker had a history of violent action against officials.

25. In the second case, the facts as reported had been contested on the basis of testimony from other asylum-seekers, according to which the Sri Lankan asylum-seeker had attacked a member of the security staff, prompting other security officials, in self-defence, to eject him from the centre. He had never returned to the centre, but it was acknowledged that the action taken had been irregular and the security company had taken steps to ensure it would not be repeated. The hunger strike taking place on the same day in protest at the authorities' decisions on various cases had involved some 20 asylum-seekers out of 130.

26. The Federal Office for Migration (ODM) was not aware of the third case mentioned by Amnesty International.

27. With regard to the extension of residence in Switzerland after a divorce arising out of domestic violence, he said that, under current law, a foreign woman who had been married to a Swiss man for more than five years was entitled to a permanent residence permit that was valid regardless of her civil status. Where the marriage had lasted less than five years, a non-European Union divorcee was entitled to an annual residence permit, renewable at the discretion of the canton.

28. Under the new draft legislation, a divorced foreign wife would be entitled to renewal of her residence permit, particularly where there were special grounds such as domestic violence. Thus the right of residence in such cases did not depend on the duration of the marriage.

29. Referring to the Committee's query as to whether the requirement for an asylum-seeker to demonstrate the risk of torture beyond all reasonable doubt was legally enforceable, he said the requirement was not binding in Swiss law since it stemmed from CRA decisions interpreting article 3 of the European Convention on Human Rights in the light of the case law of the European Court of Human Rights.

30. CRA case law also showed, however, that in practice there was no requirement to demonstrate a certainty of torture; the risk factor must naturally be high, but the CRA held that it was the likelihood of a specific and serious risk that needed to be substantiated to a satisfactory degree. Thus, even where the general situation in a country might not lead to the conclusion that there was a risk to the individual, it might nevertheless be an indicator of the likelihood that such a risk existed.

31. Guarantees from the country of origin could be requested only in extradition proceedings and never as part of asylum proceedings. Asylum-seekers' personal details could never be communicated to the country of origin if that would place them in danger; and even for repatriation purposes only the bare minimum of information could be provided in order to obtain travel documents.

32. The Committee had asked, with reference to paragraph 34 of the report, why its finding in respect of an individual complaint did not in itself constitute grounds for review. In fact, in the CRA's view, facts or evidence presented to the Committee, or emerging out of the Committee's procedure, could open the way to a review or, at the very least, require the ODM to look into those facts and either reconsider its initial decision or treat the case as a new application for asylum. Thus, while the Committee's findings were not binding in the same way as decisions of the European Court of Human Rights, an asylum-seeker whose return had been declared unlawful would at least be granted temporary admission to the country.

33. On the question of the reduction of the deadline for appeal to five days, he pointed out that the period was in fact five working days and that, in any case, it applied only to appeals against decisions not to consider an application (i.e. the application was clearly unfounded or fraudulent - around 25 per cent of cases in 2004) and not to substantive decisions on the merits, which were subject to a 30-day deadline for appeal.

34. Before any non-consideration decision the ODM was obliged by law either to convene a full hearing or at least to interview the asylum-seeker, depending on the circumstances of the specific application.

35. On the question whether a five-day deadline was an impediment to effective remedy, he said the CRA had found that, provided certain safeguards were in place, the mere obligation to appeal within five days did not in itself constitute such an impediment.

36. On the question of non-consideration for inability to produce identity papers in time, he recalled that the five-day deadline applied not to the authority's decisions but to appeals against those decisions. In any case, a non-consideration decision could not be taken solely on the grounds of failure to produce valid papers, and the ODM had a duty to give the asylum-seeker a hearing in the presence of an NGO, in order to establish the grounds for the application, the reasons for any lack of documentation and any credible evidence of persecution.

37. Referring to the question whether a person without papers could be expelled and whether being undocumented constituted an offence, he said that a distinction must be made between the situation of asylum-seekers and that of foreigners under the Federal Act on the Temporary and Permanent Residence of Foreigners (LSEE). Under the asylum procedure, an asylum-seeker was entitled to remain in Switzerland until the end of the procedure, even if he did not have any papers. In addition, the absence of papers did not automatically result in a decision not to consider the asylum application. Even in the case of non-consideration decisions, the person was expelled not because of the absence of papers but as a result of the decision, and the expulsion was considered lawful because of the absence of evidence of persecution.

38. Under the LSEE, a foreigner who had entered or was staying in Switzerland without the necessary documents was committing an offence. With the exception of citizens of the European Union, a foreigner who did not have a residence permit could be deported at any time, simply on the grounds that he did not have such a permit.

39. On the question whether a canton could raise objections and appeal the decisions of the ODM before the CRA, before taking a decision on cases involving serious personal distress the ODM was required to request from the canton a report on the applicant's employment and family situation, the schooling of his children and his general behaviour. In that report, the canton proposed either provisional admission or execution of the expulsion order. If the ODM carried out an expulsion even though the canton had proposed provisional admission, the canton could appeal the ODM's decision to the CRA.

40. The applicant was entitled to the presence of an NGO representative at asylum hearings. However, if the representative did not appear, the hearing could take place in his absence. The authorities communicated the dates of hearings to the Swiss central refugee assistance organization at least five working days in advance. The representative had access to the records of preliminary hearings two hours before the scheduled hearing. The representative could take notes during the hearing, but they could be submitted to the applicant only at the end of the first-instance proceedings, or could be passed on to a representative or third party with the applicant's consent.

41. As to the procedure followed in the case of grounds for asylum specific to women, if there were concrete indications of sexual persecution or if the situation in the country of origin suggested that such persecution existed, the asylum-seeker was heard by a person of the same sex. That rule must be applied automatically, failing which the procedure would have to be recommenced. If such indications were identifiable during the summary hearing at the registration centre, a note was added to the file so that the necessary arrangements could be made for the hearing on the grounds for asylum.

42. Consequently, in addition to the interviewing team being made up entirely of women, a traumatized person would be heard by a person specially trained for hearings of that nature. A group specialized in "sexually-related persecution" had been formed to organize training courses and offer advice and information to female staff on the situation of women in the country of origin, and particularly to ascertain whether the State had the will or the ability to combat the persecution of women by third parties. The process, which was still in course of development, had made it possible to identify more closely the various cases which arose and had increased awareness of the specific nature of problems relating to the right to asylum. In 2004, for example, it had led to asylum being granted in cases of sexual abuse, forced marriage, excision and "crimes of honour".

43. Mr. RECHSTEINER (Switzerland), responding to questions about the police, said that, although there were no general statistics, complaints about police behaviour were on the increase. It should be noted that the increase over the past 10 years had accompanied the increase in the number of large demonstrations. The general increase in offences of a violent

nature had a tendency to bring about an equivalent response on the part of the police. It had recently been noted that ordinary identity checks had culminated in complaints not because of the use of violence, but rather because administrative instructions had not been followed. It would seem that the staff shortages experienced by many police forces was a contributory factor.

44. Regarding the suggestion that an independent federal body should be established to deal with complaints against the police, he said the organization of the police came under the competence of the cantons, which could establish bodies either to deal with complaints or to supervise the activities of the police, along the lines of the ethics commissioner, an independent institution set up in Geneva.

45. Although independent monitoring bodies did not yet exist everywhere, the tendency was towards the establishment of units specialized in "internal inquiries" that was linked to the growing importance attached to respect for human rights. In the framework of the introduction of the federal police officer diploma in 2004, one of the four areas examined was "police ethics and human rights".

46. With regard to the draft unified code of criminal procedure, there were plans to place restraint measures ordered or carried out by the police in the framework of the inquiry under the control of the tribunal on restraint measures, to be established by each canton to judge, ex officio or on appeal, the legality of the measure in question.

47. Referring to the identification of police officers in the context of crowd control operations, he said that the "balle marquante" case which had occurred in Geneva in 2003 had demonstrated that the absence of identifying signs did not prevent the identification of the officer responsible for the use of that weapon. In such cases, the ordinary mechanisms of criminal and administrative procedure applied. In crowd control cases, the anonymity of the police officer was preserved because it might be necessary to protect the officer and the use of restraints against a group of people was often the responsibility of senior officers.

48. As to complaints against the police in the context of demonstrations, in 2004 one complaint had been lodged in Graubünden, not against police officers, but against the persons responsible for crowd control procedures at one of the access points to Davos. The case was ongoing. In the canton of Zurich two complaints had been lodged against four police officers in relation to the World Economic Forum held at Davos, but there had been no convictions. Two complaints had been lodged against the municipal police in Zurich in connection with the demonstrations on 1 May 2004, and the cases were ongoing.

49. Regarding the use of dogs by the police, since April 2003 the Geneva police had had instructions on operations in which dogs could be used as a means of restraint; their use must be consistent with the principles of proportionality and appropriateness. In the event that their use was allowed, it must be preceded by a warning.

50. Mr. GROSSMAN thanked the delegation for its complete answers, which had provided all the necessary information.

51. Mr. EL-MASRY requested clarification on two points. Should the Committee infer that the Government would not initiate a move to amend the bill to cancel the authorization of electric shock devices in the context of deportations? With regard to compensation, did the Government not feel responsible for the death of Mr. Chukwu from Nigeria? That had been attributed to a lack of training on the part of the officers who had handled his forcible deportation. He wondered whether the Government envisaged compensating the victims in that case and also in the case of the Palestinian, Mr. Abuzarifa.

52. The CHAIRPERSON thanked the delegation for its satisfactory responses, such as that concerning the distinction between torture as a war crime and torture as a general crime. He would be interested in learning more about a number of cases before the Swiss courts, but it was not appropriate to ask questions about them at the present time.

53. Mr. STADELMANN (Switzerland) said that responses to Mr. El-Masry's question on compensation would be sent in writing at a later date. With regard to the use of electric shock devices, the bill in question was currently at the consultation stage in the cantons, the political parties and other organizations. The electric shock device had been criticized in the course of the consultations, but it was not clear what the decision of the Federal Council would be with regard to maintaining that device in the bill to be submitted to Parliament.

The public part of the meeting rose at 5.15 p.m.