

E-bulletin of the World Organisation against Torture

49th session - Committee against Torture of the United Nations

N°3

Executive Summary:

- 49th Session of the Committee against Torture:

This 49th session took place in Geneva at the office of the United Nations, Palais Wilson, from 29 October to 23 November 2012. The examined states were: **Gabon, Mexico, Norway, Peru, Qatar, Russian Federation, Senegal, Tajikistan and Togo.**

- General Comment n°3:

The Committee adopted **General Comment n°3** providing important guidance to states on the implementation of the right to remedy and reparation for victims of torture and cruel, inhuman or degrading treatment (**Article 14** CAT).

- OMCT & GMEDIA:

Launch of a new initiative on **media empowerment and torture**.

- Upcoming Session of the Committee against Torture:

The next CAT session (50th Session) will take place from May 6 to May 31, 2013, and consider state reports from:

Bolivia, Estonia, Guatemala, Japan, Kenya, Mauritania, The Netherlands and United Kingdom.

49th Session of CAT:

During this session the following **nine State parties were scheduled to** present their reports about the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

Gabon, Mexico, Norway, Peru, Qatar, Russian Federation, Senegal, Tajikistan and Togo.



GABON (Initial report)

During the consideration of the initial report of Gabon, the Committee welcomed the **ratification** by Gabon of international instruments including the **Optional Protocol** to the Convention against torture and other cruel, inhuman or degrading treatments or punishments, and the optional Protocol to the **Convention on the elimination of all forms of discriminations against women**. It also noted the adoption of a number of important domestic law reforms, such as the revision of the criminal procedural code and a law on the abolition of the death penalty.

The Committee remains concerned over the absence of a **definition of the torture** in the Constitution and penal legislation, the lack of criminalization of attempted torture and of complicity in torture and the absence of explicit provisions on the exclusion of evidence obtained by torture. It is preoccupied over reports indicating the lack of implementation of fundamental legal **guarantees against torture**, such as access to lawyer and independent medical expertise. Another major concern is the malfunctioning and lacking institutional independence of the national commission of human rights and the failure so far of establishing an effective **national prevention mechanism**. The Committee also raised the **lack of independence** of the magistrates and the level of **corruption** that impede investigations into allegations of torture, by the conditions of detentions, ritual crimes and **feminine genital mutilations**.

Recommendations: Revise the legislation, in particular its Penal code, to adopt a definition of torture, clarify the status of the Convention in the internal legal order. To guarantee, in law and practice the right of a subordinate to refuse to execute an order emanating from its superior which is against the Convention, to ensure the functioning of the National commission of human rights, strengthen training programs intended for the members of law enforcement agencies, civilians or servicemen, in particular by watching that the Protocol of Istanbul is integrated into training programs, to improve the prison conditions, in particular by resorting more to measures not depriving persons of liberty (Tokyo Rules), to end the impunity by investigating in systematically any assertions of human trafficking, to facilitate the filing of complaints by the victims of feminine genital mutilations, and to revise the cases based on confessions obtained by through torture or ill-treatments.

<u>Follow-up procedure</u>: to provide a follow-up report on the measures taken to incriminate torture; on ensuring legal safeguards in police stations; on the improvement of prison conditions; and on investigations and sanctions against those responsible for acts of torture.

Useful Links:

Concluding observations and recommendations of the CAT (French)

During the consideration of the fifth and sixth report of Mexico, the Committee raised its preoccupation over reports of an alarming increase in the use of torture during interrogations
of persons and their arbitrary arrest by members of the military and state security bodies
within the context of the fight against organized crime. In the same sense, the Committee is
concerned about the allegations of torture and ill treatment of detainees under arraigo
detention, a form of preventive security detention, some of them at military facilities. The
Committee is also concerned about the increase in the number of disappearances allegedly
committed by public authorities or private individuals or criminal groups that act with direct
or indirect support of state agents. The Committee regrets that judges frequently rely on
confessions allegedly extracted under torture. The Committee highlighted the case of
Israel Arzate Melendez as paradigmatic to illustrate the persistence of these practices
even in those jurisdictions that have already implemented the new criminal justice system
that was meant to strengthen legal guarantees against torture. The Committee also noted
the continuous impunity of serious acts of violence against women, including those that
occurred in 2006 in San Salvador Atenco.

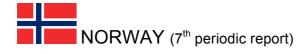
Recommendations: Amend its Code of Military Justice to exclude the jurisdiction of military courts to try cases of human rights violations and crimes against civilians; include the crime of torture in the Criminal Code of the State of Guerrero; eliminate the figure of arraigo in law and practice, both at the federal and local levels; ensure the safety and physical integrity of human rights defenders and investigate promptly, thoroughly and effectively all acts of intimidation and violence against them, and prosecute and punish the perpetrators with the corresponding sanctions. Ensure that any confession obtained under torture shall not be invoked as evidence in any proceedings.

Follow-up procedure: to provide a report on measures to ensure fundamental safeguards for those detained; the initiation of prompt, impartial and effective investigations; the sanctioning of those responsible for torture; and about the **protection of the media and human rights defenders** reporting on torture and the security forces.

OMCT organized a **public event** in order to allow for leading human rights defenders from the three national human rights organizations, which had submitted a **joint report**, to participate abroad in a round table discussion. The event was held on 30 October 2012 in Geneva.

Useful Links:

- Concluding observations and recommendations of the CAT (Spanish)
- Alternative report submitted jointly with the National Network of Human Rights Civil Society Organisations "All the rights for all". (Spanish)
- Alternative report submitted jointly with the Mexican Commission for the Defense and Promotion of Human Rights (Spanish)
- Alternative report submitted jointly with the Human Rights Centre Miguel Agustín Pro Juárez (Spanish)
- Joint press release OMCT partner organizations in Mexico (Spanish)



Following the consideration of the 7th periodic report of Norway the Committee recognized the State party's on-going effort to revise its legislation and to enhance the implementation of the recommendations of the Committee but remained concern about the lack of direct effect of the Convention in domestic law and before Norwegian Courts. The Committee asks the State party to reconsider its current definition of torture in order to include 'any form of discrimination' as an element of the definition of torture. The Experts also recommend to establish a national human rights institution and to revise its system of preventive detention, especially in order to adopt child friendly procedures for juvenile offenders. It should further abolish the use of police detention cells beyond the 48 hours term required by the law. The Committee raised concern over the use of coercive measures in mental health institutions. A core concern in the Committee's view is the widespread and prolonged use of solitary confinement in Norway. The Committee encourages the adoption of the Optional Protocol without however entering into details on a national preventive mechanisms, an issue raised by many Norwegian NGOs.

Recommendations: Take steps to improve and update the arrest techniques, ensure that educational programs and practical trainings for law enforcement personnel are regularly provided, ensure that minors are always held separately from adults and that they benefit from child friendly procedures, to reduce the length of detention for asylum seekers including those who enter the State party undocumented, and ensure access to free legal aid in deportation procedures. The Committee also asks for the incorporation of the Convention in domestic law and a series of measures against solitary confinement.

Follow-up procedure: to provide follow-up information in respect to the committee's recommendation on solitary confinement, detention of foreigners, missing minors and trafficking in human beings.

- Concluding observations and recommendations of the CAT



PERU (6th periodic report)

The Committee welcomes the States accession to several international instruments, amongst others the OPCAT, the **Convention on the Rights of Persons with Disabilities**, as well as its optional protocol and the Convention for the Protection of All Persons from Enforced Disappearance.

The Committee is concerned in particular about the high incidence of torture allegations in custody and the absence of thorough investigations and the small number of convictions for torture if any. It thus sets out a serious of recommendations to improve legal safeguards and to strengthen the system of investigations into torture. In addition, prompt steps should be taken to restrict the use of **pre-trial detention** and its duration. The State Party should take the necessary steps to reduce **overcrowding** in detention facilities and is asked to consider closing two facilities in Challapalca and Yanamayo. The Committee raised also concerns over the frequent imposition of **state of emergencies** in Peru lending to the risk of torture and with insufficient guarantees against torture. It calls for effective measures to combat all forms of **violence against women and girls** and amend its legislation to include domestic violence and forms of **sexual violence** as offence under its Criminal Code, and to stop criminalizing abortion including in cases of forced pregnancy and rape. The Committee also devotes attention to the continuous impunity over torture and enforced disappearances during the period of the armed conflict and the ineffective implementation of the right to remedy and rehabilitation, including access to medical and psychological rehabilitation.

Recommendations: The Committee asked Peru to review its legislation with regards to eliminate the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortion, to publicize policies regarding full and complete redress to victims of torture, to prohibit explicitly violence against children, in particular sexual violence and corporal punishment, to eradicate forced labour, and to protect the LGBT community from attacks and abuses.

Follow-up procedure: to provide a follow-up report on the conduct of investigations into torture; measures to strengthen legal safeguards of those detained; and the prosecution of those responsible for torture.

Useful Links:

- Concluding observations and recommendations of the CAT
- Joint report by gender coalition, APRODEH (member of OMCT SOS-Torture Network) and DEMUS.



QATAR (2nd periodic report)

During the consideration of second periodic report of Qatar, the Experts of the Committee welcomed the ratification of the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of Persons with Disabilities. However the Committee in an unusual step noted that no steps appear to have been taken to implement recommendations adopted in its previous observations, including reservations made under the articles 21 and 22 of the Convention. It is concerned over corporal punishment as criminal sanctions, and the limitations of monitoring of places of deprivation of liberty. Core concerns of the Committee include the lack of any data on investigations, complaints on torture and the insufficient implementation of legal safeguards especially for non-citizens. It raises particular concern over regimes of detention without charge under national security and counter-terrorism legislation resulting in arbitrary detention, aggravated by the lack of legal guarantees and minimal safeguards. The situation of human rights defenders and migrant workers are also part of the salient issues raised by the Committee against Torture. Finally, the Experts asked the State to ensure that acts of torture are subject to universal jurisdiction in its domestic laws in accordance with article 5 of the Convention.

Recommendations: fully ensure the independence of the judiciary, strengthen the National Human Rights Commission's full independence in line with the Paris Principles and allow it to visit places of detention, ensure the protection of human rights defenders from intimidation as a result of their activities, provide legal protection to migrant workers, including female domestic workers, ensure that all victims of violence against women are provided with adequate redress and reparation, create adequate conditions for victims to exercise their right to make complaints, ensure the full implementation of juvenile justice standards as well as the UN standard minimum rules for the administration of juvenile justice (the Beijing Rules), and develop and strengthen educational programmes and trainings for all officials dealing with persons deprived of liberty.

Follow-up procedure: to provide a follow-up report on the improvement of legal safeguards for those detained, the conduct of prompt, impartial and effective investigations; and the prosecution and sanctioning of perpetrators.

Useful Links:

Concluding observations and recommendations of the CAT

RUSSIAN FEDERATION (5th periodic report)

The Committee reviewed the **fifth periodic report** from the Russian Federation, and welcomed the State party's ratification of numerous international and regional instruments, as well as the establishment of the **Investigative Committee** and the **Public Oversight Committees** (POCs).

The Committee notes as overriding concern persistent reports of the widespread practice of torture in the Russian Federation, including as a means to extract confessions. The Committee expressed its preoccupation about the **lack of legal safeguards** in practice, such as various impediments in practice to access a qualified lawyer and to effectively exclude evidence obtained as a result of torture. The mismatch between complaints of torture and the number of investigations or convictions and in general the lack of investigations by public authorities and impunity for torture are the primary concerns in this report. It welcomes the recent creation of an **independent investigative committee** outside the Prosecutors office, which is widely regarded in Russia and the region, but calls for its proper resourcing and is preoccupied about accounts that its head has allegedly threatened those reporting on torture.

Other issues raised by the Committee concern the insufficient legal foundation prohibiting violence against women, the persistence of attacks against minorities, including Roma, and hazing within the armed forces. The Committee also addressed the persistent nature of torture and disappearances in the North Caucasus and the impunity for those crimes. It raises alarm over accounts by the State that it is not able to compel Chechen authorities to cooperate with relevant investigations and is concerned over the lack of publication and follow-up to the report by the Council of Europe Committee on the Prevention of Torture (CPT). The Committee asks particularly the State party to recognize that human rights defenders are at risk and that necessary steps to ensure their protection should be taken so that they can carry out their work properly. The general climate of impunity and the absence of a precise definition of torture were also criticized. The Committee also recommends establishing a system to provide rehabilitation for victims, ensure effective safeguards and supervision in psychiatric facilities and to expand the use of alternative non-custodial measures.

Recommendations: take immediate and effective measures to prevent all acts of torture and ill treatment throughout the country and to eliminate impunity for those allegedly responsible. The Experts also urged the State party to combat the practice of torture used to extract confessions, ensure that POCs members are effectively protected from reprisals. Promptly, impartially and effectively investigate the responsibility of officials including the lead investigator in the criminal case against Mr. Sergei Magnitsky's death in custody, bring to justice those responsible for ordering the killings of Ms. Anna Politovskaya and Ms. Natalia Estemirova and the beatings of Ms. Sapiyat Magomedova. The State party should also amend its legislation requiring human rights organizations that receive foreign funding to register as "foreign agents", define domestic violence in its legislation, eliminate hazing in the armed forces, undertake a study into the causes of suicides in detention, amend its legislation to address the right of torture victims to redress, in accordance with article 14 of the Convention.

Follow-up procedure: to submit information on the implementation of recommendations on monitoring of places of detention; on the intimidation, harassment and violent attacks on human rights defenders; and the hazing and ill-treatment within the armed forces.

Useful Links:

- Concluding observations and recommendations of the CAT
- <u>Alternative report submitted by IRNGO CAT, member of OMCT SOS-Torture</u> Network



The Committee against Torture reviewed the **third periodic report** from Senegal and welcomed amongst others, the abolition of death penalty, the ratification of the **Optional Protocol to the Convention against Torture** (OPCAT), of the **Rome Statute of the International Criminal Court**, and of the International Convention for the Protection of All Persons from Enforced Disappearances.

The Committee also raised its concerns on different matters such as the **definition of torture**, the reinforcement of fundamental legal safeguards for person deprived of their liberty, the impunity for crimes of torture, the prohibition of corporal punishments, and the situations of **human rights defenders**, **journalists**, **refugees**, and **migrants**.

The Experts of the Committee also addressed the issue of **Mr. Hissène Habré**, former president of the Chad, and heard the declaration of the delegation informing them that the trial should start in December 2012. **The Experts urged Senegal to do it in time** in order to **end the impunity** for persons responsible for acts of torture and other international crimes while being **on its own territory**.

Recommendations: Revise the Penal code, in particular the article 295-1 on the definition of torture so that it is totally in accordance with the provisions of Article 1 of the Convention, eliminate any amnesty for torture or ill-treatment, prohibit explicitly in the law the use of declarations obtained under duress or torture, follow very closely the situation of the talibés children to protect them, reform the Superior Council of the Judiciary, in particular by strengthening the independence of the magistrates, provide the necessary resources for the National Observer of the Places of Deprivation of Liberty to allow it to settle effectively the mandate of National Prevention Mechanism of Senegal, and create a confidential mechanism to receive and process complaints for acts of torture or ill treatments.

Follow-up procedure: to provide information on the recommendations concerning the establishment and implementation of legal and judicial guarantees for those detained; on the conduct of investigations and prosecutions of those responsible for torture.

Useful Links:

- Concluding observations and recommendations of the CAT
- Alternative report submitted by RADDHO (member organization of OMCT SOS-Torture Network) (French)



TAJIKISTAN (2nd periodic report)

The Committee reviewed the **second periodic report** of Tajikistan and while welcoming the legislative measures taken by the State, such as the transfer of arrest powers from the Prosecutors office to the judiciary, the Committee expressed concerns over the **ongoing practice of torture by law-enforcement officers**.

The Committee was concerned over the **persistent scope of allegations of torture** and ill-treatment of detainees especially by the **police** and within its armed forces, the **lack of investigations** on these allegations, **deaths in custody** and the lack of reporting publicly the outcomes of prosecutions about people responsible for these allegations. The Committee expresses its concern about the lack of **practical legal safeguards**, such as access to lawyers with the moment of arrest (due to lack of clarity in the law when detention starts) and that the fact that statements obtained by torture are invoked as evidence in proceedings and that the authorities should **review cases of convictions based solely on**

confessions. While welcoming the criminalization of torture it raised concern over the fact that punishment is only five years and for first time offender even less. The committee recommended in particular the creation of an independent body separate from the one prosecuting the offender. Of particular concern are to the committee detention by the State Committee of National Security and the Department for Organized Crime. The Committee addresses in addition the condition of detention, including the unnecessary and inhuman regimes for inmates serving life sentences, and concerns over the consideration of the number, location, capacity and the number of detainees in Tajikistan as 'state secret'. It also raises concern over the failure of an effective and confidential system for receiving and processing complaints regarding torture of ill treatment in all places of detention, and an efficient juvenile justice system.

It further expresses alarm over reports of abductions of persons in the territory of other CIS countries, including the Russian Federation.

Recommendations: The Committee asked the State to ensure judicial safeguards for detainees, to conduct prompt, independent and impartial investigations with regards to torture allegations, and to effectively sanction the authors of human rights establish an effective juvenile justice system and guarantee that the rights of children are respected in all place of detention. The State party is invited to take measures to violations. Furthermore, the State should strengthen training of law enforcement officials, eliminate the complete isolation of prisoners serving life imprisonment, to cease the practice of abducting individuals from other States and holding them in incommunicado detention, refrain from seeking diplomatic assurances from a State where a person would most likely be subject to torture and ill-treatment, and to take concrete steps aiming at ratifying the OPCAT. In addition, the State party should review its legislation to incorporate an explicit prohibition of corporal punishment in all settings and provide victims of domestic and sexual violence with protection, redress, shelter and rehabilitation.

Follow-up procedure: to provide follow-up information on measures taken on the conduct of prompt, impartial and effective investigations; on the strengthening of legal safeguards for those detained; and the prosecution and sanctioning of those responsible for torture.

Useful Links:

- Concluding observations and recommendations of the CAT



In its recommendations to the Togolese government, while welcoming amongst other, the abolition of death penalty, the Committee asked the authorities to accelerate the adoption of the new penal Code and the new Code of criminal procedure to explicitly define and criminalize torture.

The Committee worried about the **current penal legislation**, which does not contain measures guaranteeing redress and reparation for victims of torture and the **absence of current procedures demanding reparation**. The Committee expressed much concern about the **conditions in detention centres**, some of which amounting to torture. The conditions were described by the state itself as dreadful in the premises of police custody of commissionerships, **police stations** and **gendarmerie brigades**. The Experts also expressed their concern about the high and **increasing number of deaths in detention**, in particular due to the **lack of food and proper hygiene**, as well as by the violence between the prisoners. The Committee worried about the absence of specific legislation **condemning any kind of violence towards women**, including domestic and sexual violence, as well as the absence of **training** on the provisions of the Convention against Torture for policemen, gendarmes, officials empowered to make arrests and the staff in charge of the application of the law.

Of particular concern to the Committee were reports of torture in custody by the national intelligence services (ANR). While acknowledging the states assurance that they would no longer enjoy the power to detain, the Committee notes that the national human rights commission appears in turn deprived of visiting its facilities. It also notes with grave concern the circumstances that led to the departure of the chair of the human rights commission following the publication of the report on torture by the intelligence services.

Recommendations: The State party is invited to give clear instructions to the persons in charge of security forces on the absolute prohibition of torture, lead thorough, impartial and independent investigations on all the assertions of torture and ill-treatment, in order to assure that their authors are effectively pursued and punished, ensure that detainees can have access to an independent medical examination, free and provide redress to all persons irregularly or arbitrary detained, ensure free access, at any time, to all places of deprivation of liberty for the "Commission Nationale des Droits de l'Homme" (CNDH) and human rights organisations, set up public awareness campaigns on the prohibition of female genital mutilations in all the country.

Follow-up procedure: to submit follow-up information regarding the implementation of recommendations relating to the adoption of a new criminal and criminal procedural code; the improvement of prison conditions; the reinforcement of judicial guarantees; and on the criminal investigations and convictions for acts of torture.

Useful Links:

- Concluding observations and recommendations of the CAT (French)
- Alternative report of OMCT ACAT Togo CACIT FIACAT (French)
- Executive summary of the alternative report (English)
- Joint press release: not to torture is a negative obligation (French)

Follow-up of recommendations:

The Committee against torture asked States parties whose report has been examined during the 48th session to **send information on the follow-up** of the recommendations no later than **June 2013**.

Adoption of General Comment No. 3 on art. 14 (on the right to remedy and reparation)

On 16 November 2012, the Committee against Torture adopted its **General Comment N° 3** on **article 14** (the right of victims to obtain reparation).

The OMCT welcomes this adoption, as it is a significant step toward a **better understanding and application of the provisions of the Convention.** The General Comment is significant notably for the **full endorsement** of the modern concept of the right to remedy and reparation for torture victims.

Useful Links:

- General Comment No. 3 (Art. 14) of the Convention against Torture
- Summary of discussions on the occasion of the meeting on 22 November 2011 (English)

- Written contribution of OMCT (English)
- Oral declaration of OMCT on the occasion of the meeting on 22 November 2011 (English)

50th Session of the Committee against Torture (May 6th to May 31st, 2013)

The Committee **decided** to examine the reports of the following State parties at its next session:

Bolivia, Estonia, Guatemala, Japan, Kenya, Mauritania, The Netherlands and United Kingdom.

The deadline for NGO submissions of alternative reports is April 19, 2013.

For the adoption of the « List of Issue prior to reporting » (LOIPR), NGOs and NHRIs wishing to submit written information should send ii no later than two months before the opening of the session at which they will be adopted.

State parties identified by the Committee for its LOIPR for **2015** are divided in three groups:

- Those for which the Committee will prepare a LOIPR
 - Bulgaria, Finland, Kuwait, Mauritius, Monaco, Paraguay
- Those for which it will prepare a LOIPR, if they accept the optional reporting procedure
 - Ghana, Ireland, Slovenia, Turkmenistan
- Those receiving a reminder, either to accept the procedure or to submit a report under it
 - Bahrain, Belarus, Benin, Denmark, Djibouti, Georgia, Germany, Italy, Luxembourg, Madagascar, Morocco, Namibia, Sri Lanka, Ukraine, United States

TWITTER – Live tweeting of the CAT session

In order for people to follow the session of the CAT without live streaming, the OMCT has been live tweeting **@OMCTorg** the questions, answers and concerns of the Committee and the State party reviewed.

Follow us on Twitter: https://twitter.com/omctorg

OMCT & GMEDIA – Launch of a new initiative on media empowerment and torture

The OMCT jointly with the **GMEDIA Centre** launches at this session a new initiative of training journalists from reporting countries in parallel to the sessions of their country at the UN Committee Against Torture. A group of **journalists from Mexico** is the first to being trained on anti-torture standards and the **UN Convention Against Torture** from October 29th to November 3rd.

More information: www.gmediacenter.net

Press Release: http://bit.ly/Y5eArZ

WEBCAST - Live Webcast of the CAT session

Together with **other human rights organisations, OMCT** has for the 3rd time taken part in the live webcasting of the sessions of the Committee Against Torture.

During the sessions, the **live stream** is available under the following link: http://www.treatybodywebcast.org

To visit the **archives of earlier CAT sessions** (starting with the 48th session): http://www.treatybodywebcast.org/category/webcast-archives/

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