



## OMCT E-bulletin n°4

### 50<sup>th</sup> session of the Committee against Torture - May 2013

#### 50<sup>TH</sup> SESSION OF THE COMMITTEE

This 50<sup>th</sup> session took place in Geneva from 6 May to 31 May 2013. The examined States were:

- [Bolivia](#)
- [Estonia](#)
- [Guatemala](#)
- [Japan](#)
- [Kenya](#)
- [Mauritania](#)
- [The Netherlands](#)
- [The United-Kingdom](#)

#### 25<sup>TH</sup> ANNIVERSARY OF THE CAT

May 2013 marks the [25th anniversary of the Committee against Torture](#), on that occasion OMCT organised a reception to celebrate this event.

#### OMCT AND GMEDIA

[second workshop](#) for journalists on “Media Empowerment Against Torture”.

#### UPCOMING SESSION

The next [CAT session \(51st session\)](#) will take place from 28 October to 22 November 2013 and consider State reports from Andorra, Belgium, Burkina Faso, Kyrgyzstan, Latvia, Mozambique, Poland Portugal and Uzbekistan.

#### LEARN MORE ABOUT...

How to [Take part of the CAT session](#).

## 50<sup>th</sup> session of the Committee against Torture



### **BOLIVIA** - *Praise for Acceptance of communication procedure and OPCAT ratification but concerns over impunity and overcrowding*

The Committee took note with satisfaction the recognition of its competence to receive and consider state and individual communications under article 21 and 22 of the Convention as well as the ratification of the of the Optional Protocol to the Convention against Torture (OPCAT).

The Committee reiterated its concern that Bolivia has still not brought the definition of the offence of torture contained in its legislation into line with the Convention. The experts were also preoccupied over the failure to promptly open and carry out investigations on alleged cases of torture, excessive use of force and death in custody. The **impunity over torture and violation of human rights during the military governments** (1964-82) was also part of the salient issues raised by the Committee. It worried about the persistence of **violence against women**, allegations of **sexual abuses in educational institutions of the State** and about the fact women who have become pregnant as a result of rape have to ask judicial authorization to abort. Other issues raised by the Committee were the non-respect of the **principle of non-refoulement**, **overcrowding** in detention facilities and the high level of **death in custody**. The Committee reminded that the OPCAT obliges the State to set up independent national body for the prevention of torture and ill-treatment at the domestic level.

**RECOMMENDATIONS:** Include in the legislation a definition of torture in conformity with the Convention; set up an independent mechanism for receiving complaints and conducting investigations into allegations of torture and ill-treatment, including complaints of detainees; institute investigations into allegations of violence against women, prosecute and punish the perpetrators and provide protection and assistance to the victims; conduct investigations on all cases of death in custody; set up independent national body for the prevention of torture and ill-treatment at the domestic level in conformity with the OPCAT; assure that women who have become pregnant as a result of rape and want to abort are ensured access to safe abortion.

#### **Key recommendations**

- Guarantee detainees are afforded the fundamental legal safeguards from the moment of arrest
- Ensure all allegations of acts of torture and ill-treatment are investigated, prosecute and punish the perpetrators and provide full redress to victims of torture
- Conduct investigations of all acts of torture and human right violations committed during the military governments (1964-82), prosecute and punish the perpetrators
- Adopt measures to prevent and investigate sexual abuses of children at school, investigate, prosecute and punish the perpetrators and provide assistance to the victims;
- Improve condition of detention in prisons

**FOLLOW-UP PROCEDURE:** Provide a follow-up report on the strengthening of legal safeguards for persons detained; the conduct of prompt, impartial and effective investigations on allegations of torture and ill-treatment as well as prosecute and punish perpetrators; measures adopted to prevent and investigate sexual abuses of children at school.

**Useful link:** [Concluding Observations and recommendations of the CAT](#)



## **ESTONIA** - *Lack of protection for woman from Domestic Violence and children deprived of liberty*

The Committee raised its preoccupation over persons deprived of their liberty may not enjoy all fundamental legal safeguards against torture and ill-treatment. The Committee regretted no prosecutions resulted from allegations of excessive use of force by law enforcement personnel during the events in Tallinn in April 2007. It was concerned over the absence of specific legislation to prevent and combat **domestic violence**. Similarly, it was preoccupied by the absence of legislation explicitly prohibiting **corporal punishment of children** in all settings. The fact that Estonia remains a source, transit and destination country for **human trafficking**, both for forced prostitution and forced labour, was also part of the core concerns raised by the Committee. Other issues highlighted by the Committee were **conditions of detention**, involuntary hospitalization and forced medication of persons with mental and psychosocial disabilities in psychiatric institution, but also the situation of stateless persons.

**RECOMMENDATIONS:** Amend the Penal Code to include a definition of torture in conformity with the Convention, adopt comprehensive legislation on violence against women that would establish domestic violence and marital rape as specific criminal offences; ensure asylum seekers enjoy all procedural guarantees; improve material conditions in all prisons; ensure effective supervision and independent monitoring by judicial organs of any involuntary hospitalization in psychiatric institutions of persons with mental and psycho-social disabilities as well as ensure that every patient is informed about their treatment and given the opportunity to refuse it; prohibit explicitly corporal punishment of children in all settings; adopt measures to simplify and facilitate naturalization and integration of stateless persons and non-citizens

### **Key recommendations**

- Conduct investigations into all allegations of torture, ill-treatment and excessive use of force by law enforcement personnel, prosecute and sanction officials found guilty of such offences with appropriate penalties
- Guarantee persons deprived of their liberty are afforded all the fundamental legal safeguards from the outset of their detention;
- Enforce the new anti-trafficking law and take effective measures to prevent human trafficking and increase protection of victims; investigate, prosecute and punish trafficking and provide redress to victims

**FOLLOW-UP PROCEDURE:** Provide follow-up information in response to the Committee's recommendations on the conduct of prompt, impartial and effective investigations; the strengthening of legal safeguards for persons detained; and the prosecution and sanctioning of perpetrators of torture and ill-treatment.

**Useful link:** [Concluding Observations and recommendations of the CAT](#)



## **GUATEMALA - Call for legal safeguards and steps to end impunity**

During the consideration of the fifth and sixth periodic report of Guatemala, the Committee welcomed the ratification of the Optional Protocol to the Convention against Torture (OPCAT).

However, the Committee remained concerned over the impunity that persists regarding most of the human rights **violations committed during the internal armed conflict**, including **enforced disappearances**. The Committee was also preoccupied by violence against women, including violent killings. A core concern in the Committee's view was acts of harassment and persecution, including threats and killings, experienced by **human rights defenders**, notably defenders of indigenous people. Another major concern was **conditions of detention**, including in juvenile detention centres and the large percentage of persons held in pretrial detention.

**RECOMMENDATIONS:** Ensure all allegations of acts of torture and ill-treatment are investigated, prosecute and punish the perpetrators and provide full redress to victims; strictly apply the National Reconciliation Act, which explicitly excludes any amnesty for the perpetrators of acts of torture and enforced disappearances; set up an independent commission to investigate cases of enforced disappearances during the internal armed conflict; take urgent measures to prevent and eradicate violence against women, including gender-based killings ; adopt effective measure to reduce the number of persons held in pretrial detention ; ensure detention of child is use as a measure of last resort and for the shortest period of time; improve condition of detention in juvenile detention centres.

### **Key recommendations**

- Ensure the initiation of prompt, effective and independent investigations of all acts of torture and other grave human right violations committed during the internal armed conflict
- Publicly recognize the crucial role of human rights defenders, take measure to facilitate their work and ensure the protection from any further violence
- Bring conditions of detention into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners;

**FOLLOW-UP PROCEDURE:** Provide follow-up report on the improvement of legal safeguards for persons detained; the conduct of prompt, impartial and effective investigations; the prosecution and sanctioning of perpetrators of torture and ill-treatment notably on women and human rights defenders.

**Useful link:** [Concluding Observations and recommendations of the CAT](#)



## **JAPAN - Reform of a confession based justice system and protection of woman from sexual violence highlighted**

During the consideration of the second periodic report of Japan, the Committee remained concerned over the use of lengthy detention for asylum seekers under a deportation order as well as the detention of unaccompanied children. The Committee raised its deep concern about the **Daiyo Kangoku system**, the way to conduct interrogation and that in practice the justice system relies on confessions obtained under torture or ill-treatment. Another major concern were **conditions of detention**, including the ones of prisoners on death row, and extensively use of solitary confinement.

The difficulties faced by victims of torture in obtaining redress and adequate compensations were also highlighted by the experts of the Committee. They also addressed the failure of the State to provide adequate redress and rehabilitation to the victims of **Japan's military sexual slavery** during the Second World War ("comfort women"), the failure to prosecute the perpetrators and bring them to justice as well as the continuing official denial of these facts. In addition, the Committee addressed its preoccupation over **gender-based violence** and the low number of complaints, investigations, prosecutions and convictions for such cases as well as insufficient legal protections for victims.

**RECOMMENDATIONS:** Bring all legislation and practices related to the detention and deportation of immigrants or asylum seekers in line with the absolute principle of non-refoulement and ensure the detention of asylum-seekers is only used as a last resort; limit the maximum time detainees can be held in police custody; improve condition of detention in prisons; ensure solitary confinement remains as a measure of last resort, ensure death row inmates are afforded all the legal safeguards and protections provided by the Convention; strengthen its efforts to prevent and prosecute all forms of gender-based abuse.

### **Key recommendations**

- Consider abolishing the Daiyo Kangoku system
- Ensure inadmissibility in court of confessions obtained under torture and ill-treatment in all cases
- Consider the possibility of abolishing the death penalty
- Ensure all victims of torture or ill-treatment can fully exercise their right to redress
- Take immediate and effective measures to find victim-centered resolution for the issues of "comfort women"

**FOLLOW-UP PROCEDURE:** Provide follow-up information in respect to the Committee's recommendations on the strengthening of legal safeguards for persons detained; the conduct of prompt, impartial and effective investigations; the prosecution and sanctioning of perpetrators of torture and ill-treatment; and the remedies and redress to the victims of "comfort women".

**Useful link:** [Concluding Observations and recommendations of the CAT](#)



## **KENYA - Impunity for Extrajudicial executions and torture to be addressed as priority**

During the consideration of the second report of Kenya, the Committee welcomed the delegation's commitment to invite the Special Rapporteur on Torture to visit the country.

However, the Committee raised its deep concerns by the allegations of **extrajudicial killing, enforced disappearances and excessive use of force by police officers**. The Committee remains preoccupied about detention conditions, the high number of detainees in pre-trial detention, the **investigation of the post-election violence** but also the allegations of **police violence in refugee camps**.

The Committee regretted the persistent problem of access to justice, particularly by those without economic resources and the continued absence of effective redress for victims of torture and ill-treatment. The experts of the Committee remained concerned by the prevalence of the practice of **female genital mutilation** despite the enactment of the Female Genital Mutilation Act in 2011. They also addressed the issue of forced and coerced sterilisation of HIV positive women and women with disabilities. In addition, the Committee raised its deep concern on cases of lynchings, in particular of elderly women accused of **witchcraft**. Core concerns of the Committee also include the fact that the **age of the criminal responsibility** remains at 8 years and by the high number of **death sentences** passed. The situation of **human rights defenders** is also part of the salient issues raised by the Committee against Torture.

**RECOMMENDATIONS:** Ensure all allegations of acts of torture by police officials are promptly and impartially investigated, duly prosecuted and punished appropriately; ensure the lack of resources should not be an obstacle to accessing justice; provide full redress to victims of torture; eradicate the practice of female genital mutilation; investigate allegations of involuntary sterilisations or other harmful practices in connection with reproductive health and punish those involved in such practices; rise the age of criminal responsibility;

### **Key recommendations**

- Ensure prompt and effective investigation of all allegations of excessive use of force, torture and extra-judicial killings by the police and the military during the post-election violence;
- Bring the conditions of detention into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners;
- Ensure all persons reporting on acts of torture are protected from intimidation and reprisals in any form.
- Amend the Witchcraft Act 1925
- Review its policy with a view of abolishing the death penalty;

**FOLLOW-UP PROCEDURE:** Provide follow-up information on measures taken to improve legal safeguards for persons detained; conduct of prompt, impartial and effective investigations; and prosecute and sanction perpetrators of torture and ill-treatment.

### **Useful link:**

- [Concluding Observations and recommendations of the CAT](#)
- [Alternative report submitted jointly with ICJ Kenya, LRF, KAACR, COVAW and OMCT](#)



## **MAURITANIA - Need to reform national security legislation and detention regime prone to torture**

During the consideration of initial report of Mauritania, the Committee welcomed the ratification of the Optional Protocol to the Convention against Torture (OPCAT).

However, the Committee remained preoccupied with the legislation does not contained a definition of torture in conformity with the Convention and does not criminalised torture and ill-treatment. The Committee was also concerned **persons suspected of terrorism or state security crimes can be kept in custody during 15 days, renewable twice**. The Committee was worried about allegations of **incommunicado detentions**, which may facilitate the perpetration of torture and enforced disappearances. The Committee reminded the OPCAT obliges the State to set up independent national body for the prevention of torture and ill-treatment at the domestic level. The Committee is deeply preoccupied by the absence of information on prosecutions into alleged offences of torture. It is also concerned by the lack of information on the case of Hassane Ould Brahim, detained in the prison of Dar Naïm (Nouakchott), who allegedly died in October 2012, after having been tortured by prison officials. The Committee expressed its deep concern about the law n°92-93 of June 1993 which grants an amnesty to security and armed forces. The Committee regretted the current criminal legislation does not contain any provisions guaranteeing redress for damage caused to victims of torture. Another major concerns were **conditions of detention, violence against women**, including domestic violence and the absence of legislation penalising **female genital mutilation**.

**RECOMMENDATIONS:** Revise the Penal Code to adopt a definition of torture in conformity with the Convention; ensure detainees are afforded all the legal safeguards; establish an update register of all persons deprived of their liberty available to the competent judicial authorities; set up independent national body for the prevention of torture and ill-treatment at a domestic level in conformity with the OPCAT; develop training programmes for law enforcement officials on the requirements of the Convention; take comprehensive legislative measures providing for effective redress for victims of torture; strengthen its efforts and increase funding to bring conditions of detention into line with international standards; conduct investigations on allegations of rape, trafficking and domestic violence, prosecute and punish the perpetrators;

### **Key recommendations**

- Abolish the duration of 15 days of custody for persons suspected of terrorism or state security crimes and replace it by a duration which not exceed 48 hours;
- Ensure all cases of acts of tortures, ill-treatment and excessive use of force by security forces and police officers are promptly, effectively and independently investigated, prosecute and punish the perpetrators;
- Establish in the Criminal Code the imprescriptibility of the crime of torture
- Adopt a law prohibiting the practice of female genital mutilation.

**FOLLOW-UP PROCEDURE:** Provide a report on measures to abolish the duration of 15 days of custody for persons suspected of terrorism or state security crimes; ensure detainees are afforded all the legal safeguards; to conduct, prompt, impartial and effective investigations on cases of torture and ill-treatment, prosecute and punish the perpetrators.

**Useful link:** [Concluding Observations and recommendations of the CAT](#)



## **THE NETHERLANDS - Serious concerns over detention of asylum seekers**

The Committee against Torture welcomed amongst others the ratification of the Optional Protocol to the Convention against Torture (OPCAT).

The Committee raised its concern on several issues in relation to **asylum seekers**. It was preoccupied by the **asylum accelerated procedure** and the intention of the government to abolish the article 29(1) (c) of the Aliens Act providing for residence permit based on humanitarian grounds. Moreover, asylum seekers arriving at Amsterdam's airport are systematically detained for average duration of 44 days due to a failure to comply with the necessary visa requirements. The Committee is also criticized that **unaccompanied children asylum-seekers** continue to be placed in detention centres if there is doubt about they have over eighteen.

The Committee is concerned about the lack of access to a lawyer during police interrogation, as this right is limited to those under the age of 18 and those accused of a crime carrying a prison sentence of six years or more. The Committee addressed the issue of the **high percentage of pre-trial detention**, the forced internment in mental health care, trafficking in human beings and incidents of death in places of detention some of which have been related to the excessive use of physical restraint.

**RECOMMENDATIONS:** Guarantee to persons in police custody an access to a lawyer from the moment of deprivation of liberty; verify the age of an unaccompanied child, if uncertain, before placing him in detention take alternative measures to avoid detention of children or their separation from families; reduce the use of pre-trial detention, ensure the decisions imposing pre-trial detention are substantiated and consider alternative measures to its use; develop alternative measures to reduce the number of forcibly interned persons with mental and psychosocial disabilities; carry out investigations of deaths and ascertain whether there is a link between the use of physical restraints in places of detention;

### **Key recommendations**

- Allow sufficient time for asylum-seekers, especially those in the accelerated procedures, to fully indicate the reasons for their application and obtain and present crucial evidence
- Allow for adequate legal assistance to all asylum-seekers
- Ensure detention of asylum-seekers is only used as a last resort, and where necessary, for a short period as possible and without excessive restrictions
- Prevent, investigate, prosecute and punish trafficking in persons and related practices, including trafficking of minors
- Provide adequate protection and means of redress to victims of trafficking

**FOLLOW-UP PROCEDURE:** Provide a report on measures to ensure or strengthen the right of access to a lawyer for persons in police custody; to conduct, prompt, impartial and effective investigations; statistics on prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 10, 23, and 30 of the Concluding Observations; follow-up information on detention of asylum seekers and foreigners based on migration law and forced internment in mental health care.

**Useful link:** [Concluding Observations and recommendations of the CAT](#)



**THE UNITED-KINGDOM - CAT addresses complicity into torture through intelligence services and Security services overseas**

During the consideration of the fifth report of the United Kingdom, the Committee highlighted some issues in relation allegations of torture overseas and the situation in Northern Ireland.

The Committee raised its preoccupation about the increasing number of serious **allegations of torture and ill-treatment overseas** committed by State's party officials, members of the security services or military personnel abroad, notably in Iraq and Afghanistan. Although the setting-up of some inquiries into allegations involving the State army in Iraq, the Committee remains concerned by the composition and the structural independence of the team set up to investigate and regrets that the State continues to refuse a full public inquiry. The Committee addressed the issue of the **extent of the use of Closed Material Procedures** in civil proceedings where "national security" is at risk. The Committee also expressed its preoccupation about the reliance on **diplomatic assurances** to justify deportation of foreign nationals suspected of terrorism. The experts of the Committee also raised their deep concern the **case of Shaker Aamer**, detained in Guantanamo Bay without charges for more than eleven years.

Other issues raised by the Committee concern the **principle of non-refoulement**, the **transitional justice in Northern Ireland**, the **age of criminal responsibility**, the detention conditions and notably the problem of **overcrowding** and the issue of the universal jurisdiction.

**RECOMMENDATIONS:** All measures used to restrict or limit fair trial guarantees based on national security grounds be fully compliant with the Convention; ensure torture or complicity in torture committed by State party's officials, members of the security services or military personnel abroad are subjected to appropriate penalties; ensure no individual, included persons suspected of terrorism who are extradited or deported, is exposed to the danger of torture; respect the principle of non-refoulement; raise the minimum age of criminal responsibility and ensure the full implementation of juvenile justice standards; reduce the high level of imprisonment and overcrowding; recognize the competence of the Committee against torture to receive and consider individual communications.

**Key recommendations**

- Establish an inquiry on alleged acts of torture and others ill-treatment of detainees held overseas committed by or at the instigation of or with the consent or acquiescence of British official
- Investigate allegations of torture in Iraq from 2003 to 2009 as well as establish responsibilities and ensure accountability
- Refrain from seeking and relying on diplomatic assurances where there are substantial grounds for believing that the person risks being tortured
- Ensure prompt release and return to the UK of Shaker Aamer
- Conduct prompt, thorough and independent investigations into deaths related to the Northern Ireland conflict

**FOLLOW-UP PROCEDURE:** Provide follow-up information on recommendations concerning inquiries into allegations of torture overseas; safeguards ensuring respect for the principle of non-refoulement ; ensuring the return to the UK of Shaker Aamer and adopting measure of transitional justice in Northern Ireland.

**Useful link:** [Concluding Observations and recommendations of the CAT](#)

## 25<sup>th</sup> Anniversary of the CAT

May 2013 marks the 25<sup>th</sup> anniversary of the Committee against Torture, which the Committee commemorated with a special event including two panel discussions focused on identifying the main achievements and challenges faced by the Committee and on the obligation of States parties with regard to redress for victims of torture, in light of General Comment 3 on Article 14 of the Convention against Torture.

The OMCT commemorated this anniversary with a reception in honour of the UN Committee Against Torture addressed by the Chair of the Committee, Claudio Grossman. Over the last twenty-five years the OMCT has accompanied the work of the Committee, including by ensuring effective civil society access to it through its global SOS Torture Network.

This celebration provided the opportunity to reflect on the achievements and remaining challenges in implementing the recommendations of the Committee at a time when the OMCT is launching a new initiative to reinforce the implementation of the Convention. The members of the committee, the OMCT Executive Board and staff, state delegations and members of the human rights community in Geneva attended the event.

*“The OMCT has played a particularly valuable role in supporting the work of the Committee Against Torture, by providing vital information from the field about the real situation of torture and ill-treatment. Without this it would have been difficult to engage in a credible dialogue with states on the implementation of the Convention”,* said Claudio Grossman, Chair of the UN Committee Against Torture.

**Useful link:** [OMCT calls upon States to renew commitments in making the Convention against torture a reality worldwide](#)

## OMCT and GMEDIA

The OMCT jointly with the **GMEDIA Centre** has organized the second workshop for journalists on “Media Empowerment Against Torture” from May 13<sup>th</sup> to May 17<sup>th</sup>, 2013. The objective of this seminar is training journalists from reporting countries in parallel to the sessions of their country at the UN Committee Against Torture. Thirteen journalists, four from Guatemala and nine from Kenya were trained on anti-torture standards and the UN Convention Against Torture.

**Useful link:** [OMCT and GMEDIA concluded its second workshop for journalists on “media empowerment against torture”](#)

## Upcoming session

The next CAT session (51<sup>st</sup> session) will take place from 28 October to 22 November 2013 and consider State reports from **Andorra, Belgium, Burkina Faso, Kyrgyzstan, Latvia, Mozambique, Poland Portugal and Uzbekistan.**

The deadline for NGO submissions of alternative reports is **11 October 2013.**

**Adoption of List of Issues prior to reporting (LOIPR):** The following countries that have accepted the new procedures with a targeted list of issues on which the report will focus includes Ghana, Ireland\*, Turkmenistan, Belarus\*, Djibouti, Germany\*, Madagascar, Bahrain.

\* procedure accepted

For the adoption of the LOIPR, NGOs and NHRIs wishing to submit written information should send it before **16 August 2013**.

Alternative reports and written information for the LOIPR should be sent to the following e-mail address: [cat@ohchr.org](mailto:cat@ohchr.org)

For more information see: [Participation of NGOs to the reporting process to the CAT](#)

## Learn more about the CAT

Take part of the CAT session!

- **WEBCAST – Live Webcast of the CAT session**  
Together with other human rights organisations, OMCT has for the 4<sup>th</sup> 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 archives of earlier CAT sessions (starting with the 48<sup>th</sup> session):  
<http://www.treatybodywebcast.org/category/webcast-archives/>
- **TWITTER – Live tweeting of the CAT session**  
In order for civil society representatives, advocates and those interested 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
- For more information about the activities of OMCT concerning the CAT, follow us online:  
Website: [www.omct.org](http://www.omct.org)  
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