

## OMCT E-Bulletin – December 2016

### 59<sup>th</sup> session of the Committee Against Torture

This E-Bulletin is published within the framework of OMCT’s “Convention Against Torture Programme”. We mobilise and coordinate activities of civil society organisations (CSOs) during the sessions of the Committee Against Torture (CAT), facilitate civil society engagement by building coalitions, sharing information, ensuring timely and effective report submissions, advising on advocacy opportunities and supporting effective access to the CAT during the private NGO briefings. Find out more on our [website](#).

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*Nothing can justify **torture** under any circumstances*

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During its 59<sup>th</sup> session (7 November – 7 December 2016) the CAT considered the State reports submitted by Ecuador, Finland, Monaco, Sri Lanka, Namibia, Turkmenistan and Armenia. It also reviewed Cape Verde even though the State had not submitted its initial report, which was already due in 1993. In accordance with Article 19 of the Convention Against Torture, every four years State Parties submit a report to the CAT on any new measures taken to give effect to their undertakings under the Convention. These reports are reviewed in public sessions, in which the respective State Party has a constructive dialogue with the CAT. The day before the considerations of the report, NGOs who have submitted an alternative report have the opportunity to attend the private NGO briefing with the CAT to raise and discuss their concerns. At the end of each session, the CAT publishes its “[Concluding Observations](#)” with recommendations for each State reviewed, including issues for follow up within one year.



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## WHAT'S NEW

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### **Non-reporting Cape Verde reviewed**

Cape Verde ratified the Convention Against Torture in 1992 and its initial report to the Committee Against Torture was due in 1993. Cape Verde has never complied with its reporting obligation under the Convention and the Committee decided to schedule Cape Verde's review for its 59<sup>th</sup> session in the absence of a State report. Unfortunately, Cape Verde did not either send a State delegation to attend the review, making the exercise all the more difficult. The members of the Committee nevertheless discussed and evaluated the implementation of the Convention against Torture in Cape Verde, issuing a list of recommendations in hope to start a constructive dialogue with the State.

The review of another non-reporting State, Antigua and Barbuda, which ratified the Convention in 1993, is scheduled for the CAT's 61<sup>st</sup> session.

### **Turkey asked to urgently submit a follow-up report**

The CAT reviewed Turkey during its 57<sup>th</sup> session (April-May 2016) and, in accordance with the follow-up procedure of the CAT, Turkey was requested to submit a follow-up report to the Committee's recommendations by 13 May 2017. In view of worrying news of detentions, torture and ill-treatment of journalists, judges, prosecutors, soldiers and others since the July coup d'état, at the end of August the CAT formally asked Turkey to urgently submit, by 7 November 2016, a follow-up report to be considered by the CAT during its 59<sup>th</sup> session. The letter mentioned the CAT's specific concerns and specific clarifications requested. On 8 November, the CAT received the [information requested](#).

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## OMCT SUBMISSION

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### **Alternative report on Sri Lanka**

OMCT and the Global Justice Center submitted a joint alternative report on Sri Lanka to the CAT. It draws attention to the discriminatory consequences for girls and women of certain provisions of the Penal Code, which dates back to 1883. The report specifically highlights the criminalization of abortion in all cases except when the mother's life is at risk – even in cases of rape or fetal unviability. It also considers the narrow definition of rape allowing for marital rape and leaving the burden of proof on the victim, contrary to international standards. The alternative report finally draws attention to the fact that child marriage is still common practice in Sri Lanka, especially in the Muslim community where girls of 12 years of age or younger can be married. Find the [report on our website](#).

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## SUMMARY OF THE CAT STATE REVIEWS

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### Ecuador

#### Reinforce the National Preventive Mechanism

During the *seventh periodic review of Ecuador*, the Committee acknowledged the positive legislative steps taken, such as the criminalization of torture by the new criminal code. Yet, to be effective in putting an end to impunity, the definition should comply with Article 1 of the Convention.

The Committee called on the State of Ecuador to provide the National Preventive Mechanism (NPM), the national component of the preventive system established by the Optional Protocol to the Convention Against Torture ([OPCAT](#)), with a solid legal basis and the necessary resources to comply with its mandate. NPMs aim at strengthening the protection of people deprived of their liberty, who are most vulnerable to ill-treatment, through a system of visits or inspections to places of detention. The CAT urged Ecuador to adopt the bill aimed at strengthening the role of the *Defensoría del Pueblo* (Ombudsman), which has a specific section on the NPM.

Concern was raised about deportations in breach of the *non-refoulement principle*, with particular reference to the Cuban asylum seekers deported in July 2015. The Committee deplored the existence of legal provisions allowing persons who are considered to be a threat to national security to be returned to countries where they are in danger of being tortured.

While the Committee commended the work of the Truth Commission on cases of alleged torture, forced disappearances and extra judiciary killings between 1984 and 2008, it pointed out that progress has been slow and only very few cases have been investigated and resolved.

The Committee said it is seriously concerned about the persistent violence against minors in the education centres (343 complaints were registered between 2012 and 2014), and insisted that the necessary steps had to be taken to eliminate this form of abuse, bring perpetrators to court, and provide the minors with redress.

Other matters raised were the threat to independence of the judiciary, the deplorable prison conditions; the lack of coordination between indigenous and ordinary justice; the power of the State to dissolve NGOs; the use of excessive force in the 2015 demonstrations; and the existence of clandestine centres for “sexual reorientation therapies” of LGTBI persons.

Issues for follow-up are:

1. Complaints of torture and ill-treatment in centres of detention;
2. Protection of victims and witnesses; and
3. Sexual violence and abuses minors in education centres.

Read more:

- [Concluding Observations](#)
- [Webcast](#)

## **Finland**

### **Dealing with increasing numbers of asylum seekers**

As part of *Finland's seventh periodic report*, the Committee said it feared that, considering the tenfold jump in the number of asylum seekers in the country – which rose to 32,000 in 2015 from 3,600 in 2014 – recent legal changes and practices might reduce safeguards for asylum-seekers and heighten the risk of their *refoulement*. More stringent restrictions on the attribution of legal aid for asylum seekers and speedier status determination procedures leading to their expedited expulsion from Finland, raised concern that victims of torture may not be identified among the asylum seekers and sent back home. The Committee recommended that all asylum requests be evaluated on an individual basis to exclude all risk of *refoulement*.

The Committee referred to reports of extended delays in the notification of custody, particularly affecting foreigners without a residence permit in the country and who do not speak Finnish. The inadequate medical care of persons in custody and the lack of a systematic medical screening upon arrival were also matters of concern. The Committee recommended Finland to ensure that legal safeguards are put in place in these areas for all persons deprived of their liberty.

While the law prescribes the use of physical restraints as a discretionary measure, persons deprived of liberty in Finland are systematically handcuffed during transport and at least one police station uses restraint beds. The Committee also urged to revise the regulations concerning electrical discharge weapons in closed environments such as police stations, the making sure that they are only used in absolutely extreme situations and that they are not part of the equipment of custodial staff in prisons.

Every third woman in Finland reportedly suffers violence from her intimate partner at least once in her lifetime. To prevent and respond to violence against women, Finland should establish an effective complaints mechanism and provide sufficient and adequately funded shelters.

Other matters raised referred to included the insufficient funding of the Parliamentary Ombudsman office as Finland's NPM; the lengthy detention of remand prisoners; the lack of separation of juvenile and adult detainees; and the poor implementation of anti-trafficking legislation.

Issues for follow-up are:

1. National Preventive Mechanism;
2. Transfer of responsibility for remand prisoners held at police facilities to the administrative branch of the Ministry of Justice; and
3. Separation of juvenile and adult detainees in all places of detention.

Read more:

- [Concluding Observations](#)
- [Webcast](#)

## **Monaco**

### **Lack of monitoring of detainees transferred to French prisons**

During the *sixth periodic review of Monaco* the members of the Committee noted with satisfaction that no complaints of torture had been filed since the last review. Nevertheless the experts asked Monaco to modify its penal legislation and to include a definition of torture in line with Article 1 of the Convention Against Torture that acknowledges the imprescriptible character of the crime.

The Committee members asked Monaco to make the information about the legal procedures for refugees more precise and intelligible for all. They were concerned about the role of the French Office for the Protection of Refugees and Stateless People and the legal foundation governing its involvement, since this office is not necessarily in conformity with the Convention.

The experts also expressed concern about the fact that detainees serving long sentences are transferred to French prisons of Tarascon and Nice, which is particularly overcrowded, and that the Monaco judge responsible for the follow up cannot monitor the prisons as needed. These transfers should at least be done with the explicit consent of the detainees.

Other issues discussed included the possibility of placing children under the age of 13 in custody; the placement of the judiciary under the Directorate of Legal Services, thus jeopardizing its independency; and the lack of specific provisions for compensation to victims of torture and ill-treatment.

Issues for follow-up are:

1. Establish precise and accessible procedures for asylum demands; and
2. Recommendations referring to the conditions of transferred prisoners.

Read more:

- [Concluding Observations](#)
- [Webcast](#)

### **Sri Lanka**

#### **« White Van » abductions and detention in secret prisons**

During the review of *Sri Lanka's fifth periodic report*, the Committee members expressed deep concern about consistent reports, among others by the United Nations Special Rapporteur on Torture, that torture is common practice in criminal investigations in a large majority of cases by the Criminal Investigation Department of the police. Furthermore, numerous reports seem to confirm that impunity prevails in most cases of torture. Only 17 cases were filed since 2012 and only two resulted in convictions, suggesting that very few allegations of torture have actually been investigated.

According to credible reports, people suspected to have connections with the Liberation Tigers of Tamil Eelam (LTTE) have been abducted in so-called “white van” abductions and taken to secret locations where they have been brutally tortured at least until 2015. Therefore the Committee urged to ensure that all allegations of unlawful detention, torture and sexual violence by security forces are duly investigated by an independent body, and that a list of detentions centres is published, including those closed down and unofficial sites.

Considering the widespread practice of torture during, and in the aftermath of, the civil war, the Committee is seriously concerned about the failure to carry out an institutional reform of the security sector. The presence of the Chief of National Intelligence, Sisira Mendis, as part of the Sri Lankan delegation at the review was particularly alarming. Mr Mendis allegedly had exercised supervisory authority from March 2008 to June 2009 over sites where torture was perpetrated. The Committee deeply regretted that the delegation did not respond to the many specific questions Mr Mendis was asked during the session.

Other matters of concern included enforced disappearances; prolonged pre-trial detention under the Prevention of Terrorism Act; the lack of legal safeguards of detainees; the alarming conditions of detention; reprisals against victims and witnesses; the limited resources and power of the Human Rights Commission; and the harassment of human rights defenders and journalists.

Issues of the follow up are:

1. Role and responsibilities of Mr Mendis with regard to torture;
2. Establishment of a judicial mechanism to investigate allegations of torture, enforced disappearances and other human rights violations; and
3. Establishment of an efficient complaints mechanism for victims.

Read more:

- [Concluding Observations](#)
- [Alternative report by OMCT and GJC](#)
- [Webcast](#)

## **Namibia**

### **Rape goes unpunished, girls mostly affected**

During the review of the second periodic report by Namibia, which was submitted with a 16-year delay, the Committee urged Namibia to speed up the adoption of the Prevention and Combating of Torture Bill to ensure that a definition of torture is clearly enshrined in the legislation. Cruel, inhuman and degrading treatment should also be fully covered by the bill.

In addition to noting overcrowding in some detention centres, the Committee members said they were deeply concerned about reports about the high incidence of HIV/AIDS in prisons and the lack of access to antiretroviral therapy. They recommended Namibia to put in place mechanisms to prevent and control further spread of the disease, while ensuring the respect for the rights and dignity of detainees infected.

In relation to the Caprivi High Treason case, the Committee voiced concern about reports of denial of fundamental legal safeguards and severe torture of detainees during the trials. The Committee recommended immediate measures to guarantee a fair and speedy trial and to make sure that evidence obtained under torture is dismissed. Allegations of denial of fundamental rights, torture and death in detention should be effectively and impartially investigated.

The Committee expressed concern about the high numbers of women murdered by their intimate partner and of children victims of sexual violence. Despite the new law criminalising rape, rapists are seldom brought to court, as families prefer private, discreet settlements. The Committee recommended that Namibia strengthens its efforts to raise public awareness against gender-based violence and ensures that the perpetrators are prosecuted and punished. The Committee also asked Namibia to accelerate the modernization and reform of the justice system, to shorten the duration of pre-trial detention, to recruit additional judges and ensure the availability of youth facilities so that juveniles are held separately in pre-trial detention.

Other issues raised included ill-treatment of LGTBI people in detention; harmful traditional practices against children; forced sterilization of people with HIV/AIDS; corporal punishment on children; and human trafficking.

Issues for follow-up are:

1. Adoption of the Prevention and Combating of Torture Act;

2. Conditions of detention; and
3. Respect for the principle of *non-refoulement*.

Read more:

- [Concluding Observations](#)
- [Webcast](#)

### **Turkmenistan**

#### **Prohibition of torture must be absolute**

During the consideration of *the second periodic report of Turkmenistan*, while the Committee welcomed the inclusion of the prohibition of torture in the draft Constitution and the criminal code, it said Turkmenistan should make sure this prohibition is absolute and non-derogable, and that perpetrators are not eligible for amnesty.

The Committee inquired about consistent allegations of widespread torture at the moment of apprehension and during pre-trial detention in order to extract confessions. The State party answered it had not received a single torture complaint during the reporting period, which is why no officials had been prosecuted. Furthermore, long-term incommunicado detention of some 90 prisoners is a matter of deep concern, as it amounts to forced disappearance, the Committee said. The cases of Boris and Konstantin Shikhmuradov, Batyr Berdyev and Rustam Dzhumayev and others connected to the murder attempt of the former President in November 2002 were highlighted. The Committee reiterated its commendation to abolish incommunicado detention and ensure that prisoners are either released or charged and tried under the rule of law.

The Committee further urged to take steps to prevent reprisals and violence against human rights defenders, journalists and civil society activists, and allow them to carry out their work freely. The cases of Altymurad Annamuradov, who was tortured and killed in prison, and Ogulsapar Muradova, who allegedly committed suicide while autopsy showed death from torture, were brought up. In this context, the members of the Committee asked for firm reassurance that no reprisals would be taken against any person who had contributed with this review of Turkmenistan.

Furthermore, the Committee made observations about the appalling prison conditions, the unreported prevalence of tuberculosis among inmates, the degrading living conditions of incarcerated women, the deaths in custody allegedly due to torture, the prevalence of domestic violence against women, and the lack of systematic application of fundamental legal safeguards to persons deprived of their liberty.

Issues for follow-up are:

1. Fates and whereabouts of all people held in incommunicado detention;
2. Intimidation and reprisals of human rights defenders and journalists; and
3. Establishment of a truly independent national human rights institution.

Read more:

- [Concluding Observations](#)
- [Webcast](#)

## **Armenia**

### **Excessive use of force when containing demonstrations**

During the review *fourth periodic report of Armenia*, the Committee welcomed several legislative measures taken to explicitly criminalize and prevent torture. Nevertheless it regretted that statutory limitations were maintained, and that perpetrators could be pardoned or amnestied.

Committee members further expressed concerns about the excessive use of force during demonstrations and regretted that no progress has been made in the investigation of the deaths of 10 people during the presidential election protests in March 2008. Reports alleged the use of water cannons by the police, mass arrests and alleged arbitrary detentions with denial of legal fundamental guarantees during demonstrations in July 2015.

Despite the general improvements made on detention conditions, the Committee showed concern about the poor material conditions in certain prisons. It mentioned the worrying reports of persistent discrimination and violence against homosexual prisoners, high incidence of inter-prisoner violence, and of self-harm. It also noted the alarmingly high numbers of suicides and deaths in custody. Therefore, effective early-prevention programmes should be put into place to identify persons at risk and provide them with medical and psychological assistance.

Other matters of concern included the absence of a comprehensive juvenile justice system; the lack of systematic redress for victims; the lack of evaluation of training programmes on torture; the detention at borders of asylum seekers; and insufficient legal safeguards for detained persons. The Committee also brought up reports of violence and ill-treatment of children in special schools such as the Vanazdor Children's Home and the Vanazdor Care and Protection Centre.

Issues of the follow up are:

1. Statute of limitations, amnesty and pardon;
2. Excessive use of force during demonstrations; and
3. Deaths in custody, including suicides;

Read more:

- [Concluding Observations](#)
- [Webcast](#)

## **Cape Verde**

### **Review in the absence of a State report or delegation**

Cape Verde ratified the Convention in 1992 but has to date not submitted its initial State report. As the review took place in the absence of a State report and delegation, it was seriously limited by the lack of information.

While welcoming the inclusion of the crime of torture in the criminal code, it expressed concern that the law is not in strict conformity with the definition of torture laid down in Article 1 of the Convention. The

Committee recommended to explicitly include discrimination among the purposes of inflicting torture. Statute of limitations, amnesty or pardon should be inadmissible for torture offences.

The experts expressed concern about overcrowding in prisons (since 1997, the prison population has doubled), which has encouraged trafficking of drugs, insufficient health services and gender-based violence. The Committee asked Cape Verde to bring the national prison system in compliance with the Mandela Rules and to reduce overcrowding by making use of alternative forms of punishments.

Consistent reports refer to police brutality and allegations of racial profiling during security operations particularly against migrants of West African regions. The Committee asked Cape Verde to submit information on the complaints received by the National Commission for Human Rights and Citizenship and the National Police Council in relation these issues.

The Committee discussed the large number of children exploited in prostitution, begging, drug dealing and street vending, rendering them also vulnerable to trafficking. It recommended the amendment of the criminal code to include the prohibition of promotion of prostitution of children between 16 and 18 years old, and said effective investigations should be conducted into cases of trafficking.

Other issues the Committee raised included fundamental legal safeguards, slowness of the judiciary and the resulting mistrust of victims on the criminal justice system; the need to systematically register all asylum claims and to adopt legislative measures in accordance with the principle of *non-refoulement*; and the prevalence of domestic violence against women and children that goes often unreported because the perpetrators are relatives of the victim.

Issues of the follow up are:

1. Fundamental legal safeguards;
2. Police brutality; and
3. Independence of the National Commission for Human Rights and Citizenship

Read more:

- [Concluding Observations](#)
- [Webcast](#)

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## NEXT SESSIONS

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The **60<sup>th</sup> session** of the CAT will take place from 18 April to 12 May 2017.

### Consideration of State Reports:

- [Afghanistan](#)
- [Argentina](#)
- [Bahrain](#)
- [Lebanon](#)
- [Pakistan](#)
- [Republic of Korea](#)

### Lists of Issues Prior to Reporting:

- [Colombia](#)
- [Luxembourg](#)
- [New Zealand](#)
- [Romania](#)
- [The former Yugoslav Republic of Macedonia](#)

### Lists of Issues:

- Rwanda

The deadline for NGO submissions for the State report reviews is 20 March 2017.

The deadline for NGO submissions for the List of Issues is 23 January 2017.

The **61<sup>th</sup> session** of the CAT will take place from 24 July to 11 August 2017.

**Consideration of State Reports:**

- Antigua and Barbuda
- Ireland
- Panama
- Paraguay

The deadline for NGO submissions for the State report reviews is 26 June 2017.

The **62<sup>th</sup> session** of the CAT will take place from 6 November to 6 December 2017

**Consideration of State Reports:**

- Bosnia and Herzegovina
- Bulgaria
- Cameroon
- Italy
- Mauritius
- Republic of Moldova
- Rwanda
- Timor-Leste

**Lists of Issues prior to reporting:**

- Austria
- Malawi
- Serbia
- Slovakia
- Spain
- Switzerland

**Lists of Issues:**

- Tajikistan

The deadline for NGO submissions for the State report reviews is 9 October 2017.

The deadline for NGO submissions for the List of Issues is 26 June 2017.

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## STAY UP-TO-DATE ON OMCT ACTIVITIES CONCERNING THE CAT

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### OMCT Blog: Engaging with the Committee Against Torture

The OMCT blog entitled “Nothing can Justify Torture, engaging with the Committee Against Torture” was launched on 3 November 2014, which marked the first day of the 53<sup>rd</sup> CAT session and the celebration of the 30<sup>th</sup> anniversary of the Convention Against Torture.

The blog’s objective is to provide greater awareness of the work of the CAT and the Convention against Torture, to increase mobilisation of civil society organisations (CSOs) around the CAT, as well as to encourage CSOs, experts and other stakeholders to share their experience and learning in seeking an effective use of the CAT procedures to foster the implementation of the Convention.

Recent articles include:

- [Grant Shubin \(GJC\), “Torture in plain sight: how national laws violate women’s human rights](#)
- [OMCT, “Human rights defenders are the heroes of human rights and of the CAT”](#)

OMCT invites and encourages persons working on the Convention Against Torture and with its monitoring Committee, including Committee members, representatives from CSOs, academics and journalists, to participate in this exchange of experience by submitting an article for the blog. Please contact [cbb@omct.org](mailto:cbb@omct.org) for more information.

### Live Webcast of the CAT sessions:

During the sessions, the live stream is available at [www.treatybodywebcast.org](http://www.treatybodywebcast.org). Sessions are also archived and can be viewed at a later date.

### Follow us on:



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