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74th Session of the Committee Against Torture

This E-Bulletin is part of the OMCT's Anti-Torture Programme. The OMCT mobilises and coordinates activities of civil society organisations during the sessions of the United Nations Committee Against Torture (CAT). It facilitates the engagement of civil society by building coalitions, sharing information, ensuring timely and effective report submissions, advising on advocacy opportunities and supporting effective access to the CAT. Find out more about our work on our [website](#).

Table of Contents

<u>INTRODUCTION</u>	2
<u>WHAT'S UP?</u>	2
<u>OMCT SUBMISSIONS</u>	4
<u>SUMMARIES OF THE STATE REVIEWS</u>	9
<u>NEXT SESSIONS</u>	15
<u>STAY UP TO DATE</u>	15
<u>WE THANK</u>	13

Introduction

In accordance with Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention), State Parties should submit a report to the CAT every four years on new measures taken to implement the Convention. These reports are reviewed in public sessions during which the respective State Party holds a constructive dialogue with the Committee members. Before the consideration of the report, civil society organisations (CSOs) who have submitted alternative reports can raise their concerns during a private briefing with the CAT. At the end of each session, the CAT publishes its [Concluding Observations](#), which are specific recommendations for each reviewed State and issues for them to follow up on within one year.

What's Up?

For the 74th CAT session, the hybrid format was retained for CSO briefings, which allowed CSOs globally to participate. The review sessions were conducted in-person at Palais Wilson in Geneva, Switzerland.

NO-SHOW NICARAGUA

The CAT's consideration of Nicaragua's second periodic report took place on July 14, 2022 in the absence of the State party's delegation. The Nicaraguan Government sent a letter to the CAT dated June 29, 2022, indicating its unwillingness to cooperate with the CAT and questioning its independence. The Chair of the CAT and Country Rapporteur for Nicaragua, Mr Claude Heller, reiterated the Committee's concern about the authorities' deliberate and systematic policies which undermine the rule of law and violate human rights. He also recalled that Nicaragua had chosen to ratify the Convention against Torture as a sovereign State, and that the remarks made against the Committee were unacceptable. The second Rapporteur, Mr Erdogan Iscan, recalled that the United Nations has an essential role in maintaining peace and, at its essence, is composed of sovereign and independent Member States who have drawn up international human rights conventions. The expert Mr Sébastien Touzé deplored not only the situation of non-cooperation on the part of the State but also the extreme accusations made against the Committee, which are unprecedented. He called on the CAT to stand firm in its denunciation of these remarks.

THEMATIC BRIEFING ON COVID-19 AND DETENTION



On July 18, 2022, the OMCT organised a thematic briefing for the CAT entitled ‘Impacts, urgent actions and lessons learnt on COVID-19 management in places of detention from the perspective of the UN Convention Against Torture’, featuring members of its COVID-19 Crisis Action Group (CAG). This group, which convenes for bi-monthly meetings chaired by Helena Solà Martín, Senior Legal Policy Adviser at the OMCT, includes 13 experts and practitioners from different regions of the world. The OMCT has previously produced two Guidance Notes as a result of the group’s meetings and the COVID-19 and Detention project. The [first](#) Guidance Note was on access to information for detainees during the pandemic, and the [second](#) was on restoring contact between detainees and their families after restrictions. The aim of the thematic meeting was to reveal the impact of the pandemic on detention conditions in places of deprivation of liberty and to discuss how to avoid the recurrence of the abuses observed during the pandemic in future cases of emergency. The meeting revealed that the management of the COVID-19 crisis at the international level has exacerbated existing issues related to detention. Overcrowding in prisons facilitated the spread of the virus, and the restrictive measures taken against the spread of the virus inadvertently increased the incidence of inhuman and degrading treatment and torture. The conditions that detainees have suffered include confinement in cells for up to 23 hours a day, deprivation of visits from family, lawyers or medical personnel, the non-application of sanitary protocols, and the imposition of sanitary measures without consultation, which have led to riots.

The OMCT and CAG members also underlined that it is still difficult to assess the impact of the health crisis on places of detention. Indeed, data collection on the number of infections and deaths caused by COVID-19 in places of detention is still difficult to estimate. Furthermore, the National Preventive Mechanisms (NPMs) were not able to visit places of detention during the crisis, even though their mandate is essential in the fight against torture and visits could have been conducted in accordance with health protocols while limiting the spread of the virus. Ana Racu, a member of the group, highlighted the importance of the information shared by the OMCT through the CAG and encouraged the OMCT to report cases of Convention violations to the CAT, as well as to share the information collected with members of NPMs, NGOs and national human rights institutions. The OMCT, CAG members and the CAT all noted the intersectional aspect of this crisis, which affects both the medical and legal fields, and stressed not only the importance of respecting the Mandela Rules but also of reflecting on changes to these rules with regard to the issues encountered during the health crisis, such as taking better account of the mental health of detainees.

FOLLOW-UP MISSION TO THE DRC



The OMCT conducted a high-level mission to the DRC from July 3-9, 2022, returning to the country for the first time in five years, as part of its advocacy on the implementation of the CAT's priority recommendations. The mission delegation was led by Aminata Dieye, Chair of the Working Group on Migration and Torture, and also included Isidore Ngueuleu, Senior Human Rights Officer for the Africa Region, Gaelle Tchouta, Regional Human Rights Officer for the Africa Region, and Mr Henri Wembolua, of the Alliance for the Universality of Fundamental Rights (*Alliance pour l'Universalité des Droits Fondamentaux*, AUDF) and a member of the SOS-Torture network. The mission included meetings with representatives of the Ministry of Justice, the Minister of Human Rights and the President of the National Human Rights Commission of the DRC, as well as with local human rights defenders and victims of torture. One of the key advocacy goals was to follow up on the revision and implementation of the 2011 Criminalisation of Torture Act, which does not contain an effective prohibition of torture and remains unknown, even among law enforcement officials. The discussions with different government representatives revealed a need for training on the anti-torture legal framework. The mission has also focused on establishing a National Preventive Mechanism (NPM): an independent monitoring body that visits places of detention and makes recommendations to governments based on their findings. This was one of the CAT's priority recommendations from its 2019 review of the DRC. However, an independent and uniform NPM has not yet been established. The delegation conducted a visit to the country's main prison in Kinshasa and monitored the dire detention conditions and overcrowding, especially in the context of COVID-19. The prison has a capacity for 1,500 detainees, but currently holds 9,200, who lack adequate food and medication and whose fundamental rights and legal safeguards are weakly protected. The third focus of the mission was on the situation of human rights defenders, especially those at risk. Authorities have recognised the urgency of adopting a law to protect them and to facilitate the release of those in detention. The mission was an important way to build a stronger network in the country and to lay the groundwork for continuing advocacy and follow-up on implementation of CAT recommendations.

OMCT Submissions

UAE

OMCT contributed to two joint alternative reports and a solo alternative report for the CAT's review of the United Arab Emirates.

The first joint alternative [report](#) was submitted in collaboration with the Gulf Centre for Human Rights (GCHR), The International Service for Human Rights (ISHR) and the International Campaign for Freedom in the UAE (ICFUAE). The report highlights the UAE's brutal treatment and repression of human rights defenders and activists within the State, with a particular focus on freedom of speech and torture practices. Furthermore, the report emphasises barriers to justice in the UAE, citing a lack of accountability for perpetrators of torture and no mechanisms for victim redress. Not only do detainees –and, in particular, detained human rights defenders, have limited-to-no access to justice, but they face inhuman conditions within detention facilities. Victims have reported being subjected to arbitrary detentions, enforced disappearances, prolonged isolation, unfair trials, harsh prison sentences, and varying degrees of torture. Although the UAE claims to uphold the prohibition of such acts through both domestic and international laws, there is little evidence of implementation of these laws, which are severely limited under the UAE's current legal framework. Beyond this, the report raises concerns over the UAE's practised impunity, which foreign leaders indirectly support by continuing to sign political and economic agreements with it. The authors voiced concern over the UAE's blatant lack of compliance with the Convention, and issued a number of recommendations for the UAE's consideration at the upcoming CAT sessions. These include the ratification of OPCAT and the removal of the reservation on Article 20, the end to solitary isolation in detention, the amendment of the UAE anti-terrorism law, the creation of an independent investigation mechanism for instances of torture, and the amendment of the UAE Penal Code to ensure compliance with the Convention's definition of torture. In making these recommendations, the report seeks to advocate for human rights defenders and activists facing limitations on their civil liberties and to urge the CAT Committee to thoroughly consider the situation in the UAE during its first ever review of the State.

The OMCT collaborated with a Yemeni CSO, Mwatana for Human Rights, to publish another joint alternative [report](#) on torture facilities in Yemen. The report primarily focuses on the arbitrary arrest, detention, and torture of Yemeni civilians by UAE forces, as well as the illegality of the detention centres and the conditions within them. Furthermore, the report addresses gross accounts of injustice, as perpetrators are not held accountable and victims are unable to seek redress. Since 2015, the UAE has provided significant military and financial support to the Saudi-led operation in Yemen. Although the UAE officially withdrew its forces from Yemen in 2019, around 90,000 UAE military personnel remain there where they continue on-the-ground operations. Reports indicate that the majority of detentions of Yemeni civilians were conducted by the UAE on the basis of suspected extremist affiliation with groups such as ISIS and Al-Qaeda. Suspects faced arbitrary arrests and forced disappearances before being brought to unofficial detention facilities, where they would then be tortured. The UAE offered monetary compensation to civilians who informed on suspicious

individuals, incentivising informing and increasing abuses. Forms of torture perpetrated by UAE forces include beatings, kicking, burning, waterboarding, hanging, deprivation of food and water, religious violations, and sexual abuse. The UAE failed to uphold its obligations under the Convention, and protected perpetrators from accountability under law.

Lastly, the OMCT submitted a solo alternative [report](#) focusing on the devastating effects on the human rights and lives of Yemeni civilians, inflicted by the naval blockade that has been imposed upon them by a coalition of nine Gulf countries, led by Saudi Arabia and the UAE. The naval blockade was first imposed in 2015, when the coalition intervened in the civil war at the request of the Yemeni government, in an effort to target areas controlled by the government opposition forces, the Houthis. The report uses evidence gathered to show that the UAE, as a member of the coalition, plays one of the more active roles in maintaining the blockade through the provision of equipment and personnel. The report's primary argument is that in restricting the supply of food, water, fuel, medicine and humanitarian aid from reaching civilians, the UAE and the coalition have a direct hand in the creation or worsening of inhumane living conditions, which in some cases amount to torture or cruel and degrading treatment. The deaths of tens of thousands of Yemeni civilians due to lack of access to fuel, food and other necessities, should not be regarded as 'collateral damage' of the conflict, but as a direct result of a cruel policy which has deliberately deprived people of access to these essential resources. The 'deliberate' nature of the violation is corroborated by evidence showing that the devastating impacts of blockade are being used to pressure the Houthis to surrender. The report concludes by outlining the international responsibility of the UAE under the Convention for its role in the blockade, and asks the Committee to implore it to cease its role in the blockade and ensure reparative measures are delivered to surviving victims and their families.

NICARAGUA

The OMCT, along with partner organisation CENIDH, published a joint alternative [report](#) for the review of Nicaragua. This report discusses the human rights situation in the country, particularly since the re-election of Daniel Ortega as President in 2018, who has since been conducting large-scale political repression against his political opponents. The report notes a climate of total impunity for acts of torture committed by State agents, as a result of changes made in the legal system to facilitate this repression. The definition of the concept of torture in the Nicaraguan Criminal Code does not comply with the Convention against Torture, as indicated in the observations already made by the CAT. It fails to establish adequate sanctions against perpetrators, accomplices or officials who practice torture, leaving a legal vacuum, which promotes a climate of impunity. The Nicaraguan Criminal Code, as it is currently drafted, is based on an inquisitorial model that breaks with the principle of presumption of innocence, meaning that political prisoners are convicted and found guilty without clear evidence. Furthermore, no investigations or court cases regarding complaints of torture against officials have been carried out. Instead, officials have been rewarded with promotions for their repression of the population. In addition, social protest has been criminalised,

and since 2018, political prisoners have been jailed without real legal grounds. In April 2018, social protests broke out and arbitrary detentions increased, more than 1,600 people were imprisoned between 2018 and 2022 with a wave of arbitrary detentions taking place during the 2021 elections. In addition, the conditions of detention in prisons and police units constitute numerous human rights violations, including overcrowding, precarious basic health and hygiene conditions and poor nutrition, as well as cruel, inhumane and degrading treatment inflicted against detainees by officials. The government of Nicaragua has developed a strategy of criminalising critical voices, civil society organisations and independent media, increasing the persecution, threats, and harassment of independent media and human rights defenders, particularly those who defend the rights of political prisoners. This has forced human rights defenders and journalists into exile to save their lives. Several laws that make it difficult for human rights defenders and NGOs to work have also been enacted: for example, by removing their legal status. This climate of repression has had a significant impact on Nicaraguan society, as members of these organisations who continue their work to defend and protect human rights are forced to do so under extremely restrictive and precarious conditions.

The second alternative [report](#) published jointly by the OMCT and its different partners, examines the respect of Nicaragua's obligations with regard to the Convention against Torture by addressing the following themes: impunity for acts of torture (Articles 1 and 4); legal guarantees during detention (Article 2); conditions of detention and, more particularly, the conditions of detention for women (Article 11); obligations to investigate cases of torture and the right of individuals to complain about acts of torture (Articles 12 and 13); the prohibition on obtaining confessions under torture (Article 15); violence against women, girls, and children; violence against the opposition, human rights defenders, and journalists; and other issues.

The report notes that despite OHCHR recommendations, the State failed to condemn, dismantle, or disarm pro-government armed groups and favoured paramilitary groups, which continued to play a key role in the violence and intimidation of the opposition, relatives of political prisoners, human rights defenders, feminists, journalists, students, and political, business, and religious leaders. Journalists who covered the 2018 social protests in particular are subject to violence, acts of repression and stigmatisation. In 2019, the Nicaraguan government also passed Amnesty Law 996, which is a State mechanism to generate impunity relating to the acts of torture that took place in the 2018 protests.

In addition, the OMCT and its partners note that Nicaragua does not intend to adopt essential safeguards for detainees during their detention. Indeed, to date 180 people considered as political opponents are still imprisoned, and there are numerous reports of enforced disappearances lasting up to 90 days, where those captured were unable to communicate their place of detention to their relatives. Nicaragua also refuses to comply with the recommendations of the United Nations working groups and the provisional measures granted by the Inter-American Court of Human Rights regarding cases of people detained in connection with the November 2021 elections. The Nicaraguan penal system is thus at the service of the government's repression, and the Human Rights Ombudsman (PDDH), which is intended to be the national mechanism for the prevention of torture,

is not an independent body in the sense of the Paris Principles; it is totally subordinate to the Executive, and has therefore not visited places of deprivation of freedom. People imprisoned for political reasons are mostly charged with organised crime, terrorism and obstruction of public services, murder, carrying or possessing firearms, threats, and robbery with violence. As part of their imprisonment, they are subjected to inhuman detention conditions (lack of sunlight, water and food, medicines, personal cleaning materials, books and writing materials, etc.). These prisoners also suffer from overcrowding –with many sleeping on the floor– and face constant abuse, cruel and inhumane treatment by prison authorities, which subject them to severe beatings or prolonged isolation. They are forbidden to see their relatives. As a result, in its resolutions of June 24 and November 4, 2021, the Inter-American Court recalled Nicaragua's obligations under the ACHR to ensure that a person is detained in conditions compatible with respect for his or her human dignity. There have been cases where persons deprived of their liberty have died without an effective investigation being carried out. Furthermore, the care provided to prisoners during COVID-19 was deficient: despite the release of many prisoners in 2020 as part of the fight against the pandemic, no political prisoners were released. Women are particularly affected by poor prison conditions, being subject to recurrent assaults that are often encouraged by guards and carried out by ordinary prisoners. Sexual torture is also a systematic practice against political prisoners –and women in particular– which has a serious impact on their lives and integrity.

Nicaragua has failed to investigate acts of torture and cruel treatment inflicted by its State or paramilitary forces, primarily because of its lack of an independent judiciary, which in turn is due to nepotism in appointment processes and the ruling party's influence and manipulation.

In addition, the government of Nicaragua is failing to protect women, as evidenced by the increase in the number of feminicides in the country, which is facilitated by the lack of criminal sanctions. The government persecutes women's rights organisations and has revoked the legal status of many of them. What is more, the country has an absolute ban on abortion, despite the high incidence of sexual violence against young girls, and does not provide reliable official figures on the number of deaths from unsafe abortions or the number of girls forced to continue a pregnancy as a result of rape. Women human rights defenders were subjected to attacks and serious human rights violations, including arbitrary detentions, threats of death, rape, and attacks on family members and property. The report also denounces the near-ethnocide of indigenous peoples by the Nicaraguan government with impunity for the increase in human rights violations against them, violent colonisation of their territories, a legislative system that prevents them from accessing their lands, exploitation of their natural resources, not to mention violent attacks and massacres of the indigenous population by settlers. On March 23, 2020, the IACHR urged the State of Nicaragua to put an end to the violations of the rights of indigenous peoples, and the High Commissioner for Human Rights, Michelle Bachelet, also denounced this violence.

Finally, human rights defenders, activists, journalists, and relatives of political prisoners have experienced restrictions on leaving Nicaragua's territory or, conversely, on returning to the country, causing serious psycho-emotional impacts that correspond to cruel, inhuman, and degrading treatment, and resulting in impacts such being unable to visit and/or reunite with family members, to access medical treatment, and the use of irregular travel routes, which entails risks of kidnapping and death, among others.

Summaries of the State Reviews

UAE

Pattern of torture and ill-treatment against human rights defenders and persons accused of offences against State security and torture attributable to UAE forces in Yemen

In the review of UAE's initial report, the Committee focused on the domestic definition and criminalisation of torture; the implementation of the Convention; fundamental legal safeguards of detainees; allegations of torture and cruel, inhuman and degrading treatment; and State involvement in the conflict in Yemen.

While noting the prohibition of torture in the State party's Constitution, Criminal Code and Code of Criminal Procedure, the Committee regrets the absence in the UAE legal framework of a definition of the offence of torture in accordance with the Convention. The CAT also deplores that the definition of torture is limited to public officials who use torture against an accused person, a witness or an expert; the lack of a provision in UAE legislation for a total prohibition of torture without any exceptional circumstances; a statute of limitations of only five years in certain cases for the act of torture. The Committee therefore urges the UAE to amend its national legislation to establish a definition of the crime of torture in accordance with Article 1 of the Convention and to criminalise all forms of torture included in the Convention. The Committee also demands: i) that torture is established as an absolute, non-derogable crime in national legislation; ii) and that sentences of torture are commensurate with the gravity of this crime in accordance with Article 4(2) of the Convention.

The CAT is further concerned about the situation of detainees in the UAE, who despite the legislative framework, have difficulties accessing medical care and legal counsel, seeing family members, and are deprived of their right to contest their detention. The Committee recommends the State party takes all necessary measures to ensure that detainees benefit from all fundamental legal guarantees from the outset of their detention.

The CAT is also concerned about allegations of torture and ill-treatment against human rights defenders and persons accused of offenses against State security or terrorism or, in the case of reprisals, for their cooperation with the United Nations. The Committee therefore urges the UAE to: i) ensure that State party officials unequivocally reaffirm the absolute prohibition of torture and publicly condemn all practices of torture; ii) ensure that human rights defenders can work safely and effectively; iii) ensure that anti-terrorism laws and laws relating to State security comply fully with international human rights standards; (iv) strengthen the training of all security and law enforcement officers on the absolute prohibition of torture and the provisions of the Convention.

The Committee raises concerns about reports of serious human rights violations in Yemen by the

security forces of the UAE, as well as non-State groups whose acts are attributable to the State party. In this regard, the Committee regrets the lack of information provided by the State party concerning the number of complaints, investigations, prosecutions and convictions for cases of torture and ill-treatment in the context of the conflict in Yemen. The CAT also highlights that the notion of jurisdiction within the meaning of the Convention includes any territory or facility and must be applied to protect any person, citizen or not, without discrimination, subject to the legal or factual control of a State party. The Committee urges the UAE to: (i) take effective measures to prevent acts of torture or ill-treatment in all areas where the State party exercises jurisdiction and by all persons acting at the instigation of the State party or with its consent; (ii) promptly, impartially and thoroughly investigate all allegations of torture or ill-treatment in any territory under its jurisdiction and by all actors whose acts are attributable to the State party; (iii) ensure the training of military personnel; (iii) provide information to the Committee regarding the number of complaints, investigations, prosecutions and convictions for cases of torture and ill-treatment examined and implemented by the State party in the context of the conflict in Yemen; iv) ensure that all victims of acts of torture and ill-treatment have the right to complain, to have their case examined promptly and impartially, and that they can obtain redress and compensation.

Issues for follow-up:

- ❖ Definition and criminalisation of torture
- ❖ Prevention of acts of torture and ill-treatment and provision of redress for victims in the context of the conflict in Yemen
- ❖ Counter-terrorism measures and legislation
- ❖ Gender-based violence and harmful practices

Read more: [Concluding Observations](#), [Meeting Summary](#) and [webcast](#).

NICARAGUA

Repression of civil society and political opponents, arbitrary detention and deleterious conditions of detention

In the review of the second periodic report of Nicaragua, the Committee first regrets the explicit refusal of the Nicaraguan authorities to collaborate with the Committee and rejects the terms of a letter dated June 29, 2022, addressed to the Committee by the State Party, questioning the legitimacy and integrity of the Committee. The Committee also focused on the criminalisation and Statute of limitations? of torture, fundamental legal safeguards, the administration of justice and conditions of detention.

The Committee reiterates its concern that the offence of torture as defined in Article 1 of the Convention has not been criminalised in the domestic legal order of the State party. As in its previous recommendations, the CAT invites the State party to amend its national legislation to align the definition of torture in Article 486 of the Criminal Code with Article 1 of the Convention. The Committee also urges Nicaragua to ensure that the crime of torture is not subject to any statute of limitations, to exclude any possibility of impunity in the investigation, prosecution and punishment of acts of torture.

The Committee is concerned about reports received that the procedural safeguards set out in the State party's legislation are not effectively implemented in practice, particularly in the case of persons detained following the April 2018 protests. The CAT heard of cases of arbitrary detention without arrest warrants, with difficulties gaining prompt access to a lawyer, incommunicado detention, interrogation without legal representation, beatings, threats and sleep deprivation, lack of access to a medical examination, or ineffective *habeas corpus* remedies. The State party enacted Law 1060 in 2021, which gave the Public Prosecutor's Office the possibility to authorise pre-trial detentions of 48 hours to 90 days without the need to complete a preliminary investigation, present evidence against the accused, charge the accused with any crime or assess the necessity and proportionality of the deprivation of liberty. CAT recommends that Nicaragua: (i) ensures that all persons in detention are afforded, in law and in practice, all fundamental safeguards against torture from the outset of their deprivation of liberty; (ii) ensures that all persons in police custody or pre-trial detention are registered at the place of detention; (iii) takes the necessary legislative and other measures to ensure that the maximum duration of police custody does not exceed 48 hours; and (iv) ensures that sanctions are applied to responsible officials where persons deprived of their liberty do not benefit from these fundamental guarantees.

The Committee also reiterates its concern about the lack of independence and impartiality of the judiciary from the Executive and the lack of separation of powers where the State party facilitates the use of criminal law to criminalise political dissent. The Committee therefore urges Nicaragua to guarantee the full independence, impartiality and effectiveness of the judiciary and the Nicaraguan Attorney General's Office, including through reform in accordance with international standards.

The Committee regrets the lack of updated information on the construction plan for the new prison, in addition to the lack of official, up-to-date statistics on the prison population. The CAT is concerned about the seriousness of the detention conditions reported to it, particularly for women. The CAT is aware that prisons face problems of overcrowding, insalubrity, lack of ventilation and access to natural light, malnutrition and limited access to drinking water, medicines and care –particularly during the COVID-19 crisis–, sexual assault. There is also a lack of information on the results of investigations into all deaths in custody. The situation is particularly worrying in the prisons of La Modelo and La Esperanza in Tipitapa, the *Dirección de Auxilio Judicial in Managua* ('El Chipote') and the judicial complex of the National Police, Evaristo Vásquez Sánchez ('Nuevo Chipote'). The Committee urges Nicaragua to: (i) ensure that conditions of detention fully comply with the Mandela Rules and the Bangkok Rules; (ii) ensure the strict separation of pretrial detainees from those serving

sentences; (iii) ensure that all deaths in custody are promptly and impartially investigated by an independent body; (iv) allow independent, unannounced monitoring of places of detention by national agencies and international organisations without hindrance and without notice; (v) collect and publish data on maximum capacity and occupancy rates, as well as the number of convicted and remand prisoners in all places of detention in the Nicaragua.

Issues for follow-up:

- ❖ The incommunicado regime, disciplinary sanctions and punishments;
- ❖ The Office of the Human Rights Prosecutor;
- ❖ The criminalisation of protest and acts of repression;
- ❖ Gender-based violence;
- ❖ Voluntary interruption of pregnancy

Read more: [Concluding Observations](#), [Meeting Summary](#) and [webcast](#).

PALESTINE

Allegations of widespread torture or ill-treatment in detention and lack of accountability

During the consideration of Palestine's initial report, the Committee focused on: the incorporation of the Convention and other aspects of the domestic legal system (criminalisation of torture, harmonisation of the legal system, and absolute prohibition of the crime of torture); fundamental legal safeguards and conditions of detention.

The Committee welcomes the State party's ratification of the Convention without any reservations, but is concerned about the decisions of the Constitutional Court, which limit its application by affirming that international treaties only take precedence over national law insofar as they are compatible with the national, religious and cultural identity of the Palestinian Arab people. The CAT therefore calls on the State party to ensure that this interpretation does not adversely affect individuals' enjoyment of their rights under the Convention. The Committee is also concerned about the lack of publication of the Convention in the official gazette and therefore calls on Palestine to take all the necessary measures to integrate the Convention at the national level, including its publication in the official gazette.

The Committee is further concerned that torture is considered misdemeanour, that not all the penalties are commensurate with the gravity of the acts and are subject to amnesty, as well as the Statute of limitations. The CAT calls on Palestine to amend its criminal legislation so that it covers all elements of the definition and offence of torture within the meaning of Articles 1 and 4(2) of the Convention.

Moreover, the Committee noted with concern the information it received on the impossibility for lawyers to meet their clients during the period of investigation, the lack of systematic and timely access to independent medical examinations to discover signs of torture, and on the presentation of detainees to a judge well beyond the 24-hour legal limit. The Committee therefore calls on the State party to put an end to these practices and ensure fundamental legal safeguards for detainees.

The Committee is also concerned about reports of overcrowding and poor material conditions of detention. In particular, the Committee mentioned the unsuitable material conditions of detention for women and girls, notably pregnant women and women with babies, in the West Bank and the Gaza Strip. Of further concern are the alleged prolonged use of solitary confinement and the ill-treatment of detainees in the Gaza Strip. The Committee therefore urges the State party to intensify its efforts to bring the conditions of detention in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). The Committee also asked the State party to ensure prompt, impartial and effective investigations into all allegations relating to acts of torture and ill-treatment.

Issues for follow-up:

- ❖ Definition and criminalisation of torture
- ❖ Adoption of legislation establishing an Independent Commission for Human Rights
- ❖ Monitoring of detention facilities

Read more: [Concluding observations](#), [Meeting Summary](#) and [webcast](#).

BOTSWANA

Use of death penalty and corporal punishment compromising the State's obligation under the Convention

During the consideration of Botswana's initial report, the Committee focused on: the incorporation of the Convention against Torture and human rights treaties into the domestic legal order; the lack of specific criminalisation of the crime of torture in domestic law and other aspects of the legal system; reservations made by the State party to the Convention; the practice of the death penalty; and corporal punishment.

The Committee regrets that the State party has not yet been able to complete the process of incorporation of human rights treaty bodies into its domestic law and urged Botswana to comply with its international legal obligations as soon as possible.

The Committee notes several non-compliant provisions in domestic legislation. Firstly, torture is not defined as an offence, despite the existence of various pieces of general legislation that constitute the basis to prosecute torture. This discrepancy between the general laws and the Convention fosters a climate of impunity for acts of torture. The Committee urges Botswana to review its legislation to ensure that all forms of torture are prohibited in accordance with the Convention and to: (i) ensure that the prohibition of torture is established in domestic law as absolute and non-derogable and that it cannot be justified by any exceptional circumstances; (ii) ensure that the penalties for torture are proportionate to the gravity of the crime; (iii) ensure that there is no statute of limitations for acts of torture to allow for the investigation of perpetrators and accomplices; (iv) ensure that criminal sanctions are applied not only to officials who directly practice torture but also to those who 'consent' or 'acquiesce' to it. In addition, the Committee raises concerns about legislation that defines torture in a specific area, in particular Section 66 of Botswana Defence Forces Act No. 3 of 2018, which exempts from this definition certain acts that could nevertheless qualify as torture under the Convention. The Committee therefore urges the State party to adopt amendments to this Act in order to comply with its commitments under Articles 1 and 4 of the Convention. Finally, the Committee deplores the inadequacy of the legislation with respect to the obligations under the Convention relating to Articles 1 and 2, paragraphs 3 and 5-9, and invites Botswana to amend its domestic legislation to comply with these provisions.

CAT is particularly concerned about Botswana's reservation to Article 1 of the Convention, under which the State party states that it considers itself bound by the definition contained in Article 1 of the Convention only to the extent of conduct that is prohibited under Section 7 of the Constitution of the State party. This reservation limits the State party's obligation to prohibit torture, not only under the Convention but also under customary international law. It therefore urges the State party to withdraw this reservation and reconsider the State's position, which seeks to limit the prohibition of torture.

The Committee takes into account the information provided by Botswana that the issue of the death penalty is being debated and that further public discussions are planned in the context of the constitutional review. However, the CAT remains concerned that the State party continues to practice the death penalty, including through the use of mandatory death sentences that are not subject to individualised review, and is concerned about the conditions under which death sentences are carried out, which in themselves constitute cruel, inhuman and degrading treatment (execution by hanging, refusal to hand over the body to the family). CAT urges Botswana to take these concerns into consideration as a matter of priority and to commute all death sentences already passed, to establish a moratorium on the death penalty, with a view to its abolition, while ensuring that the conditions of detention of convicts do not constitute cruel, inhuman or degrading treatment.

CAT is concerned that corporal punishment remains lawful in a variety of contexts in Botswana, such as the caning of children as part of school discipline and in the administration of justice by customary courts, as well as the reduction of diet, as a disciplinary measure in prison settings, notwithstanding

Rule 43 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

. The Committee therefore calls upon the State party to explicitly prohibit corporal punishment in all settings, to adopt national legislation to prevent such punishment, to remove the reference in the law to so-called 'acceptable' punishment and to immediately suspend the use of reduced diet in prisons.

Issues for follow-up:

- ❖ Confessions obtained under torture or ill-treatment
- ❖ Detention conditions
- ❖ Refoulement of Refugees
- ❖ Treatment of refugees, asylum seekers and migrants in deportation and refugee camps

Read more: [Concluding Observations](#), [Meeting Summary](#) and [webcast](#).

Next Sessions

75th session of the CAT

October 31 – November 25 2022

- ❖ The Committee considers the State Party reports of Australia, Chad, El Salvador, Malawi, Somalia and Uganda
- ❖ List of issues (LOI): Ethiopia and Kazakhstan
- ❖ List of issues prior to reporting (LOIPR): Cyprus, Latvia, Maldives, Niger and Tunisia
- ❖ The **deadline** for CSO submissions for the State report reviews at the 75th session is **October 3, 2022**.
- ❖ The **deadline** for CSO submissions for the LOI and LOIPR at the 75th session was **June 13, 2022**.

Stay Up to date

OMCT Blog

Our [blog](#) aims to provide greater awareness of the anti-torture work of the OMCT and its partners around the world, the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its monitoring Committee, the CAT, to build a larger

anti-torture movement, increase CAT's visibility and intensify CSO mobilisation around the CAT.

The OMCT invites and encourages CSOs, experts, academics, journalists and other stakeholders to share their experience in fostering the implementation of the United Nations Convention against Torture, their experiences with the CAT and other anti-torture initiatives anywhere in the world by submitting an article for the blog. Please contact cbb@omct.org for more information.

Live Webcast of the CAT Sessions

During the sessions, the live stream is available at webtv.un.org. Sessions are also archived and can be viewed later.

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