



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

COSTA RICA

1. The Committee considered the second periodic report of Costa Rica (CAT/C/CRI/2) at its 818th and 821st meetings, held on 5 and 6 May 2008 (CAT/C/SR.818 and CAT/C/SR.821), and, at its 830th and 831st meetings (CAT/C/SR.830 and CAT/C/SR.831), adopted the following concluding observations.

A. Introduction

2. The Committee notes with satisfaction the presentation of the second periodic report of Costa Rica, welcomes the sincere and open dialogue with the delegation from the State party and expresses appreciation for the written replies to the list of issues (CAT/C/CRI/Q/2/Add.1 and 2), which facilitated the discussions between the delegation and the Committee members. The Committee also thanks the delegation for the replies given to the questions posed and the concerns expressed during consideration of the report.

B. Positive aspects

3. The Committee notes with appreciation that during the period since the initial report was considered, the State party has ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, as well as the Rome Statute of the International Criminal Court.

4. The Committee notes with satisfaction the efforts being made by the State party to revise legislation, policies and working practices so as to ensure greater protection of the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, and specifically:

(a) The legislative reform criminalizing torture, by means of Law No. 8189 of 6 December 2001 (addition to article 123 bis of the Criminal Code);

(b) The establishment of various means, including a free telephone line, to facilitate the lodging of complaints and habeas corpus applications;

(c) The adoption of a law criminalizing violence against women by the Legislative Assembly in April 2007;

(d) The adoption of a law to enhance efforts to combat the sexual exploitation of minors in June 2007.

Principal areas of concern and recommendations

Pretrial detention

5. The Committee endorses the concerns expressed by the Human Rights Committee (CCPR/C/CRI/CO/5) regarding the duration of pretrial detention and the legally authorized regime of incommunicado detention. It also expresses its concern at the high number of persons held in pretrial detention owing to a general increase in violence in the country, as the State party has acknowledged (art. 2).

The State party should take prompt steps to restrict the use of pretrial detention, as well as its duration, using alternative methods whenever possible when the accused does not represent a danger to society.

Alternative measures

6. The Committee is concerned at the increase in the prison population and the factors that have contributed to this situation - in particular the limited use of alternative measures, longer prison terms, the criminalization of certain behaviour and the use of pretrial detention as a preventive measure (art. 2).

The Committee takes note of the bill introducing a new Criminal Code which will incorporate alternative measures, and urges the State party to speed up the reforms needed to enable the judiciary to impose alternatives to imprisonment.

Non-return

7. The Committee notes with concern that the Migration Bill makes no mention of a right to appeal against the decisions of the Visa and Refugee Commission. The Committee is also concerned at the power which the Migration Bill grants to immigration officials to reject illegal

immigrants within a radius of 50 kilometres from the border (with no administrative remedy against such decisions), a power which could affect the principle of *non-refoulement* laid down in article 3 of the Convention, as well as the protection of victims of trafficking (art. 3).

The State party should take steps to ensure that, in the context of migration management, a proper analysis can be conducted of the situation in each case and the situation in the countries from which the “immigrants” come, so as to guarantee respect for the principle of *non-refoulement*. These steps should include appropriate continuing training of migration officials.

Situation of applicants for refugee status

8. The Committee expresses concern at continued excessive delays in determination of refugee status.

9. The Committee expresses concern at the statements made by senior officials linking the rise in crime in the country with the presence of refugees, as the Human Rights Committee has already done (CCPR/C/CRI/CO/5).

The State party should take the necessary steps, in cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR), to speed up the processes of determination of refugee status.

The State party should ensure that its officials refrain from making statements which could encourage the stigmatization of refugees and applicants for refugee status.

Detention of non-citizens

10. The Committee expresses concern at the failure to limit the length of administrative detention of aliens. The Committee takes note of the efforts made by the State party to improve conditions in the Detention Centre for aliens, and the plans to modernize the regional offices and border posts so as to provide suitable conditions for immigrants. However, the conditions in the centres for immigrants remain a matter for concern, especially as regards overcrowding and the lack of procedures or machinery for identifying victims of trafficking in persons and others who are entitled to international protection (arts. 2, 3 and 11).

The State party should ensure that legislation provides for alternatives to custody for migrants. The State party should also set a maximum legal period for detention pending deportation, which should in no circumstances be indefinite.

The Committee invites the State party to continue its efforts to improve detention conditions for all immigrants, in cases where administrative detention is absolutely necessary, in accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Minimum Rules for the Treatment of Prisoners.

The Committee recommends the adoption of protocols and the provision of proper training for border officials and personnel working in centres for the administrative detention of aliens for the identification of victims of trafficking and others who are entitled to international protection.

Ill-treatment and abuse of authority

11. The Committee takes note of the efforts made by the State party to address cases of abuse of authority by border guards and prison staff, including specific recommendations that officials should avoid actions or omissions which violate rights. However, the Committee remains concerned at cases of abuse of immigrants and citizens, especially on the grounds of their sexual orientation and/or transsexual identity. The Committee considers that, in particular, the rules on public morals can grant the police and judges discretionary power which, combined with prejudices and discriminatory attitudes, can lead to abuse against this group (arts. 2, 11 and 16).

Through training and awareness creation among those concerned, the State party should foster a policy of respect for human rights for all without discrimination. The State party should take steps to ensure continuous monitoring and periodic evaluation of the impact of the training and awareness creation provided for police officers, border guards and prison personnel.

Complaints, investigations and proper convictions

12. The Committee notes with satisfaction the cases where the Convention has been directly applied by domestic courts. However, the Committee notes that only one complaint of torture has been registered and that no convictions have been handed down for torture since the new law entered into force. The Committee notes with concern that some possible cases of torture have been investigated as abuses of authority despite their gravity. It also notes with concern reports that victims and witnesses are not provided with adequate protection (arts. 2, 11 and 13).

The State party should ensure that legislation on torture is effectively applied and that all those involved, especially police officers and prison staff, border guards, medical personnel and judicial personnel, receive proper training in the new legislation. Detainees should also be given information on the Convention and domestic legislation and on the rules and guidelines for police officers and prison personnel relating to torture.

The Committee welcomes the bill on victim and witness protection and urges the State party to ensure that the victims and witnesses of serious human rights violations are provided with proper protection as soon as possible.

Training on the prohibition of torture

13. The Committee expresses concern at the fall in the number of hours devoted to human rights in basic police training (art. 10).

The State party should ensure that the police forces receive specific and appropriate training in human rights and on the Convention.

Conditions of detention

14. The Committee notes with satisfaction the efforts made by the State party to improve the prison infrastructure, solve problems of overcrowding and ensure better health care and better nutrition for prisoners, as well as guaranteeing the right to education and the right to work, including the opening of the Care Centre for Young Adults in September 2005 and the setting up of a unit for prisoners' children aged under 3 (the "Casa Cuna").
15. The Committee regrets the inadequate budget of the Department, which leads to problems with equipment, allocation of technical and administrative staff and security personnel requirements.
16. The Committee reiterates the concern it expressed on the occasion of the damage to communal centre F in the La Reforma centre and the detention regime comprising 23 hours of confinement and 1 hour outside (A/56/44, paras. 130-136).
17. The Committee expresses concern at the general conditions governing access to health care for prisoners. The Committee is particularly concerned that when medical care is not provided in detention centres, security personnel are responsible for decisions on transfers to hospitals without having the necessary technical skills. The Committee also expresses concern at the conditions facing women prisoners.
18. The Committee expresses concern at the reports of sexual abuse and physical violence against homosexual and transsexual prisoners.

The State party should ensure that the Department has the funds it needs so that conditions of detention are in keeping with international rules and principles relating to the rights of persons deprived of their liberty. The State party should also take steps to improve the infrastructure of communal centre F in the La Reforma centre.

The Committee recommends that the State party should take steps to boost protection for the most vulnerable population against sexual violence, through such measures as the use of confidential machinery for reporting such violence.

The State party should continue its efforts to reorganize the health service so that the conditions in which health care is provided are appropriate and the requisite medical personnel are available in prisons.

The National Institute of Criminology should apply a gender-specific policy for women prisoners. It should also pursue the regionalization of women's prisons so as to avoid the uprooting of women prisoners.

The Committee notes with satisfaction the establishment of the Casa Cuna centre for prisoners' children aged under 3, and recommends the establishment of similar units in the regional centres.

Compensation and rehabilitation for victims

19. The Committee reiterates the concern at the lack of State programmes for the rehabilitation of victims which it expressed when considering the initial report of the State party (A/56/44, paras. 130-136) (art. 14).

The State party should ensure that victims of torture, other ill-treatment, trafficking and domestic and sexual violence are enabled to benefit from the fullest possible rehabilitation. The Committee urges the State party to include in its next periodic report statistics on measures of compensation ordered by the courts and actually made available to female torture victims.

Data collection

20. The Committee notes the lack of data on persons deprived of their liberty broken down by age, sex and civil status. It also notes that the Department of Legal Discipline in the Ministry of Public Security has no data broken down by sex, age, ethnic group or minority group.

The next report should contain data on persons deprived of their liberty broken down by age, sex and civil status. The State party should also devise an appropriate system for the collection of data on cases of abuse, broken down by sex, age, ethnic group or minority group.

Manufacture of torture equipment

21. The Committee notes with concern that there is no legal provision banning the manufacture and marketing of equipment specifically designed for purposes of torture.

The State party should consider the possibility of devising rules and regulations to ban the manufacture and marketing of equipment specifically designed for purposes of torture.

Trafficking in persons

22. The Committee takes note of the efforts made by the State party to combat trafficking in persons, including the executive decree in 2005 establishing the national coalition to combat illegal smuggling of immigrants and trafficking in persons and the Institutional Protocol for Care for Victims of Trafficking drafted by the National Children's Trust (PANI). However, the Committee expresses concern at the fact that trafficking in persons is not an offence in domestic legislation (art. 16).

The State party should criminalize trafficking in persons in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime.

Corporal punishment

23. The Committee notes with satisfaction that corporal punishment is banned in education and in juvenile prisons. However, in the family, article 143 of the Family Code states that parents have the right to correct children in a moderate manner, which has been interpreted as allowing the use of corporal punishment (art. 16).

The Committee takes note of the bill to abolish physical punishment of children and young people submitted to the Legislative Assembly by the Ombudsman, and the setting up of a group to discuss the issue. It encourages the State party to expedite the complete prohibition of corporal punishment of children.

Domestic violence and violence against women and children

24. The Committee takes note of the efforts made by the State party to eradicate domestic violence. The Committee welcomes the information provided by the representative of the State party indicating that there is no legal obstacle to the application of Act No. 7586 on domestic violence to same-sex couples. However, according to information received by the Committee, the authorities often fail to register or properly investigate reports of domestic violence lodged by persons with a partner of the same sex (art. 16).

25. The Committee regrets the lack of data broken down by sex and age and the lack of precision in the conceptualization of violence against women and children and the categories of analysis and variables used (art. 16).

The State party should ensure the protection of all victims of domestic violence and other ill-treatment without any discrimination through the registration and investigation of all cases of torture, as well as the prosecution and conviction of those responsible for such acts. The Committee encourages the State party to set up appropriate programmes to raise awareness among the security forces of domestic violence, including sexual violence and violence against children.

The Committee urges the State party to devise a system for the collection of disaggregated data, studies and analyses on the issue of violence against women and children.

26. The Committee notes with satisfaction the creation of the post of Ombudsman as a means of preventing torture under the Optional Protocol to the Convention against Torture and recommends that it should receive adequate funds to perform that function effectively.

27. The State party is urged to disseminate widely the reports it submits to the Committee, its replies to the list of issues, the summary records of the meetings and the concluding observations, and the summary records of the Committee, in the appropriate languages, by means of official websites, the media and non-governmental organizations.

28. The Committee invites the State party to submit its core document in accordance with the harmonized guidelines on reporting (HRI/MC/2006/3).

29. The State party is requested to communicate to the Committee within one year its reply to the recommendations made in paragraphs 5, 6, 7, 10 and 12 of the present concluding observations.

30. The Committee invites the State party to submit its next periodic report, the third, by 30 June 2012 at the latest.
