



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

Concluding observations of the Committee against Torture

Monaco

1. The Committee against Torture considered the fourth and fifth periodic reports of Monaco (CERD/C/MCO/4-5) at its 1000th and 1003rd meetings (CAT/C/SR.1000 and 1003), held on 20 and 23 May 2011, and adopted the following concluding observations at its 1015th meeting (CAT/C/SR.1015).

A. Introduction

2. The Committee welcomes the fourth and fifth periodic reports of Monaco and the fact that they were submitted in accordance with the new optional reporting procedure, under which the State party replies to a list of issues sent to it by the Committee (CAT/C/MCO/Q/4). The Committee thanks the State party for agreeing to submit its report under this new optional procedure, which facilitates cooperation between the State party and the Committee.

3. The Committee welcomes the frank and constructive dialogue with the State party's high-level delegation, which it thanks for its clear, specific and detailed answers during the dialogue, and also for the additional written replies provided.

B. Positive aspects

4. The Committee notes with satisfaction that the State party has ratified the following international human rights instruments during the reporting period:

(a) Convention on the Elimination of All Forms of Discrimination against Women, in 2005;

(b) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2008.

5. The Committee takes note with satisfaction of:
- (a) The entry into force of Act No. 1,343 of 26 December 2007 on justice and liberty, amending certain provisions of the Code of Criminal Procedure, which guarantees the rights of persons held in police custody or pretrial detention. The Act also establishes a system of compensation for unjustified pretrial detention;
 - (b) The entry into force of Act No. 1,344 of 26 December 2007, on increased penalties for crimes against children;
 - (c) The entry into force of Act No. 1,312 of 29 June 2006 on the obligation to justify administrative decisions, including refoulement decisions, failing which they will be deemed null and void;
 - (d) Sovereign Ordinance No. 605 of 1 August 2006, giving effect to the United Nations Convention against Transnational Organized Crime and its two additional protocols.
6. The Committee also takes note with satisfaction of the organization of various training and awareness-raising activities in the field of human rights, inter alia for judges and police officers.

C. Principal subjects of concern and recommendations

Definition and criminalization of torture

7. The Committee notes that article 8 of the Code of Criminal Procedure, which establishes the jurisdiction of the courts for acts of torture committed abroad, refers to article 1 of the Convention. However, it remains concerned that the Criminal Code, despite having recently been revised, does not include a definition of torture that fully accords with article 1 of the Convention. The Committee is also concerned at the lack of any specific provision making torture an offence (arts. 1 and 4).

The State party should incorporate in its criminal law a definition of torture that is fully consistent with article 1 of the Convention. The Committee considers that States parties, by naming and defining the offence of torture in accordance with articles 1 and 4 of the Convention and by making it distinct from other crimes, will directly advance the Convention's overarching aim of preventing torture, inter alia, by alerting everyone, including perpetrators, victims and the public, to the particular gravity of the crime of torture and by increasing the deterrent effect of the prohibition of torture.

Absolute prohibition of torture

8. While noting that articles 127 to 130 of the Criminal Code, on abuse of authority, severely punish unlawful orders issued by public authorities, the Committee is concerned that the recent revisions of the State party's Criminal Code do not include provisions expressly prohibiting the invocation of exceptional circumstances or an order from a superior officer or public authority as a justification of torture (art. 2).

The State party should adopt specific provisions prohibiting the invocation of exceptional circumstances or an order from a superior officer as a justification of torture, as recommended by the Committee in its previous concluding observations. The State party should take effective legislative, administrative, judicial and other measures to prevent acts of torture, including by strengthening safeguards for any officer who refuses to carry out an illegal order given by a superior officer.

Non-refoulement

9. The Committee regrets that an appeal to the Supreme Court against a return (refoulement) or expulsion order has suspensive effect only if combined with a motion to stay execution. Moreover, given that the granting of refugee status in Monaco is subject to approval by the French Office for the Protection of Refugees and Stateless Persons (OFPRA), the Committee regrets the lack of follow-up by the State party to asylum applications dealt with by the French authorities, and also notes the practical difficulties facing asylum-seekers in Monaco who wish to appeal against a rejection of their application (art. 3).

The State party should establish a mechanism for following up on the cases of asylum-seekers dealt with by the French Office for the Protection of Refugees and Stateless Persons. It should also ensure that appeals against return (refoulement) or expulsion orders automatically have suspensive effect, in order to uphold the principle of non-refoulement. Moreover, although foreigners are expelled or returned only to France, which is also a party to the Convention, the Committee is particularly concerned at the lack of follow-up in cases of expulsion concerning, inter alia, non-European nationals who could subsequently be expelled to a State where they might be in danger of being subjected to torture or ill-treatment.

Monitoring detention conditions

10. The Committee notes that the State party has entered into negotiations with the French authorities on an agreement that will set out the details of a “right to visit” for prisoners convicted by the Monegasque courts and serving their sentence in a French penal institution. However, the Committee is concerned at the lack of monitoring in the case of prisoners held in France, and regrets that the practice of obtaining the express consent of a person convicted in Monaco to his/her transfer to France is not formally enshrined in law (art. 11).

The State party should establish a body that reports directly to the Monegasque authorities to facilitate monitoring of the treatment of such prisoners and the conditions in which they are held. The State party is encouraged to incorporate in the agreement with France a clause requiring the express consent of convicted prisoners to their transfer.

Domestic violence

11. The Committee notes that Bill No. 869, on efforts to combat and prevent specific forms of violence against women, children and persons with disabilities, was submitted to the National Council in October 2009. It remains concerned, however, at the delay in the process of adopting this important legislation (arts. 2, 13, 14 and 16).

The State party should ensure that Bill No. 869 is adopted quickly in order to prevent and combat all forms of violence against women, children and persons with disabilities. It should also ensure that corporal punishment for children is explicitly prohibited in all areas of life and that domestic violence is punished. The Committee further recommends that the State party should organize training or awareness-raising campaigns aimed specifically at informing victims of domestic violence about their rights.

Redress for victims of torture

12. Despite the fact that there were no allegations of torture during the reporting period, the Committee is concerned about the absence of specific provisions on redress and compensation for victims of torture or ill-treatment (art. 14).

The Committee recommends that the State party should include in its bill on specific forms of violence explicit provisions on compensation for victims of torture or ill-treatment, in accordance with article 14 of the Convention, which also stipulates that, in the event of the death of the victim as a result of an act of torture, his or her dependants shall be entitled to compensation.

Training

13. The Committee takes note of the information the State party has provided on the various training programmes for judges and police officers. Nevertheless, it regrets that the training provided was not entirely as specified in the Convention (art. 10).

The Committee encourages the State party to continue to organize training sessions on human rights and recommends that the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) should be incorporated in training programmes for medical personnel and other professionals. The State party should also assess the effectiveness and impact of these programmes.

Measures to combat terrorism

14. Although no cases of terrorism were recorded during the reporting period, the Committee reiterates the concerns expressed by the Human Rights Committee (see CCPR/C/MCO/CO/2) about the broad, ill-defined definition of terrorist acts contained in the Criminal Code, including the lack of clarity in the definition of “environmental” terrorism (arts. 2 and 16).

The State party should adopt a more precise definition of terrorist acts while ensuring that all measures taken to combat terrorism comply with all its obligations under international law, including article 2 of the Convention.

National human rights institution

15. While noting the work done by the Human Rights Unit and the Mediator, and the bill currently under consideration to strengthen the mandate of the latter, the Committee regrets the State party’s reluctance to establish a national human rights institution (arts. 2, 12, 13 and 16).

The Committee encourages the State party to establish an independent national human rights institution in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles, in the annex to General Assembly resolution 48/134) and to provide that institution with the human and financial resources needed for it to effectively fulfil its role, including the investigation of allegations of torture.

16. The Committee invites the State party to consider ratifying the core human rights instruments to which it is not yet a party, namely, the Optional Protocol to the Convention against Torture, the Convention on the Rights of Persons with Disabilities, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Rome Statute of the International Criminal Court.

17. The State party is encouraged to disseminate widely the reports it has submitted to the Committee and the latter’s concluding observations through official websites, the media and non-governmental organizations.

18. The Committee invites the State party to submit its next periodic report, observing the 40-page limit. It further invites the State party to update, if necessary, its core document

of 27 May 2008 (HRI/CORE/MCO/2008), in accordance with the instructions relating to the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.6), as approved by the Inter-Committee Meeting of the human rights treaty bodies, and to observe the 80-page limit for the common core document. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

19. The Committee requests the State party to provide it, within one year, with information on the follow-up to the recommendations formulated in paragraphs 9, 10 and 11 above.

20. The Committee requests the State party to submit its next (sixth) periodic report by 3 June 2015.
