



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

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Committee against Torture

List of issues prior to submission of the eighth periodic report of Luxembourg*

Specific information on the implementation of articles 1 to 16 of the Convention, in particular in relation to the Committee's previous recommendations

Issues identified for follow-up in the previous concluding observations

1. In its previous concluding observations (CAT/C/LUX/CO/6-7, para. 18), the Committee requested the State party to provide, by 15 May 2016, information on the action taken pursuant to the following recommendations: (a) improve the conditions of detention (para. 10); (b) impose punishments in all cases of discrimination and incitement to violence against vulnerable groups and investigate hate crimes (para. 12); (c) ensure that juvenile detainees are held separately from adults and are tried in juvenile courts (para. 13); and (d) consider abandoning the system which gives the public prosecutor discretion to decide whether or not to prosecute and launch impartial inquiries in all cases where there are reasonable grounds to believe that an act of torture has been committed (para. 15). The Committee regrets that the State party has not submitted a report on its follow-up to the concluding observations and considers that the recommendations contained in paragraphs 10, 12, 13 and 15 of the previous concluding observations require further implementation (see paragraphs 10, 17, 20 and 21 below).

Article 2¹

2. Please provide information on the measures taken to ensure in practice that all persons deprived of their liberty are afforded the right to inform a relative or person of their choice from the very outset of their deprivation of liberty. Please indicate what the time frame is for the adoption of bill No. 6758 on the strengthening of procedural guarantees in criminal cases. In addition, please indicate whether the new bill stipulates that any delay in the exercise of the right to inform a relative requires the agreement of the public prosecutor and that the reasons for the delay must be recorded in writing. Please also indicate whether the new bill or other administrative measures taken by the State party during the reporting

* Adopted by the Committee at its sixtieth session (18 April-12 May 2017).

¹ The issues raised under article 2 could also be raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, the obligation to prevent torture in article 2 is wide-ranging. This obligation and the obligation to prevent cruel, inhuman or degrading treatment or punishment, as set forth in article 16 (1), are indivisible, interdependent and interrelated. The obligation to prevent such ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the dividing line between ill-treatment and torture is often not clear. See also chapter V of the same general comment.



period ensure that: (a) all persons deprived of their liberty, whatever the reason, have access to a lawyer from the very outset of their deprivation of liberty; (b) persons deprived of their liberty have access to medical examinations performed out of the hearing and sight of police officers and non-medical personnel; (c) all persons deprived of their liberty, whatever the reason, are informed of all of their rights from the very outset of their deprivation of liberty; and (d) when minors are deprived of their liberty by the police, a trusted adult is informed from the very outset of their deprivation of liberty, and minors are not questioned by the police without the presence of a lawyer.

3. Please provide the following updated information as from June 2015 in relation to human trafficking:

(a) Annual statistical data, disaggregated by the age group, sex, country of origin and employment sector of the victim, on the number of victims of trafficking and the number of complaints lodged or reports registered by the police in connection with this offence, the number of persons investigated, including State agents suspected of involvement, the number of investigations that have led to prosecutions and convictions, and the punishments imposed in cases where the defendant has been found guilty;

(b) Strategies or action plans to combat human trafficking for the purposes of enforced labour which the State party envisages adopting, if any, in the light of the adoption on 29 June 2016 of a strategy for dealing with prostitution which also strengthens the fight against human trafficking for sexual purposes. Please also indicate what measures have been taken to establish a national mechanism to assist front-line professionals in identifying victims, particularly of forced labour and begging, and referring them to assistance and protection services;

(c) The means of redress provided to victims, including legal, medical and psychological assistance, the number of shelters and their occupancy rate, the procedure for obtaining compensation, the percentage of cases in which compensation was awarded and the average amount of such awards. Please explain what efforts have been undertaken to protect trafficking victims and witnesses from reprisals and from being returned to their countries of origin, particularly when they may be at risk of torture.

4. Please provide statistics on the number of complaints received since 2015 in relation to cases of torture and ill-treatment handled by the Advisory Commission on Human Rights in Luxembourg or the Ombudsman, along with information on the follow-up given to those complaints. Please provide information on the implementation by the State party of the recommendations issued since 2015 by the Ombudsman's external service for the monitoring of places of deprivation of liberty. Please also indicate which recommendations have not yet been implemented and the reasons why.

Article 3

5. Please provide annual statistical data for the period from 2015 onward, disaggregated by sex, country of origin and age group, on persons seeking asylum, including:

(a) The number of asylum applications registered;

(b) The number of applications for asylum, refugee status or other forms of humanitarian protection that were granted and the number of cases, if any, in which protection was granted in application of the principle of non-refoulement;

(c) The number of torture victims identified among asylum seekers as compared with the total number of asylum seekers, the procedures used to identify them and the measures taken to assist identified torture victims, indicating whether medical examinations that include an evaluation of the trauma suffered by victims are carried out upon their arrival at reception centres, international areas at airports or detention centres;

(d) The number of persons extradited, expelled or returned and the countries to which they were sent;

(e) The number of appeals filed against expulsion or extradition decisions on the grounds that applicants would be in danger of being subjected to torture in their countries of destination and the result of those appeals.

6. In view of the adoption on 18 December 2015 of the International Protection and Temporary Protection Act, please specify:

(a) The applicable criteria for granting free legal assistance to applicants for international protection and the authority empowered to grant such assistance;

(b) Whether there is an effective judicial remedy with automatic suspensive effect for challenging the deportation of persons seeking international protection and other undocumented migrants;

(c) The measures taken to provide a simple and rapid procedure for applying for international protection. In that regard, please indicate how much time, on average, passes between the filing of the application for international protection and the summoning of the applicant to present his or her application pursuant to article 6 of the Act and what types of support are available to applicants during that period;

(d) The measures that the State party has taken to ensure that, even under the Dublin system, a destination country's asylum policy offers sufficient guarantees that the person concerned will not be removed to his or her country of origin without a prior assessment of the risks involved.²

Articles 5, 7 and 8

7. Please indicate whether, since the consideration of the previous report, the State party has rejected, for any reason, any requests from another State for the extradition of an individual suspected of having committed acts of torture and has prosecuted the individual itself.

Article 10

8. In the light of the Committee's previous concluding observations (para. 14), please provide information on the training provided to all State agents involved in holding persons in custody or in the interrogation or treatment of any individual who is in any form of detention or imprisonment, specifying the overall size of the target group, the percentage of that group who have received training and how frequently training is provided, in the following subjects:

(a) The provisions of the Convention and the specific obligations incumbent on the staff in question;

(b) The guidelines provided for the detection of signs of torture and ill-treatment in accordance with international standards, particularly those outlined in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Istanbul Protocol);

(c) Non-coercive and non-restraint investigation techniques and the principle of the use of force only as a last resort;

(d) The identification of asylum seekers who have been the victims of trafficking, torture or sexual violence.

9. Please indicate whether the State party has developed specific methodologies for evaluating the effectiveness and impact of such training in terms of the prevention of torture and the observance of the absolute prohibition of torture.

² European Court of Human Rights, *Sharifi and others v. Italy and Greece*, No. 16643/09, 21 October 2014.

Article 11

10. With reference to the Committee's previous concluding observations (para. 10), please provide updated information on:

- (a) The occupancy rate of all places of detention, including police stations;
- (b) The number of pretrial detainees (disaggregated by sex, age group and ethnic origin or nationality), the proportion of the total number of prisoners who are in pretrial detention and the average and maximum duration of pretrial detention;
- (c) The measures taken to improve health conditions in prisons, including the roll-out of the project to screen off the toilet area in all cells, as well as in police stations, and the steps taken to provide mattresses in all short-term detention cells;
- (d) The measures taken to put an end to the practices of: (i) the use of security cells measuring 2 m² or less for interrogations and as holding cells for extended periods of time; (ii) the handcuffing of persons deprived of their liberty to immovable objects, for example the chairs in the lobby of the police response centre at the Luxembourg railway station.

11. With reference to the Committee's previous concluding observations (para. 11), please provide updated information on:

- (a) The measures taken to ensure that persons deprived of their liberty are guaranteed access to necessary medical treatment, including outside medical care;
- (b) The timetable for the opening and entry into operation of the psychosocial legal unit adjacent to the Luxembourg prison centre as a means of improving access to health care for prisoners with severe psychiatric disorders;
- (c) The measures taken to ensure in practice that a medical examination is performed within 24 hours of a person's arrival at a prison centre, State socio-educational centre or detention centre and that medical reports prepared on arrival or thereafter contain: (i) a full description of the medical findings, including any injuries, based on a thorough examination; (ii) any relevant statements made by the patient; and (iii) the comments of health professionals in connection with points (i) and (ii).

12. Please provide the following information regarding the disciplinary regime in prisons and detention centres:

- (a) The measures taken to abolish solitary confinement and to amend the law applicable to the practice of placing a prisoner in isolation as a disciplinary measure to ensure that: (i) it is used only as a last resort and for the shortest period of time possible, and there is a set limit on the maximum period of time that it can be applied; (ii) it is never applied to juveniles or persons with psychosocial disabilities; (iii) there are clear and specific criteria for its application; and (iv) detainees who are being held in isolation can have contact with their family during the application of this sanction. Please clarify how often a detainee's physical and mental condition is monitored while he or she is held in isolation. Please provide annual statistical data as from 2015 on the number of detainees placed in isolation and the maximum and average duration of such confinement during that period;
- (b) The measures taken to ensure that prisoners are heard in person by the authority responsible for ordering the imposition of such a disciplinary measure and are able to cross-examine witnesses against them before that measure is imposed;
- (c) The measures taken to ensure that decisions on the placement of prisoners in security units and on the extension thereof are reasoned and are communicated to those affected, and that those decisions can be appealed;
- (d) Steps taken to establish impartial mechanisms for recording and dealing with complaints by prisoners about their conditions of detention and the disciplinary measures imposed on them.

13. Please provide the following:

(a) Annual statistical data from 2015 onward, disaggregated by the place of deprivation of liberty, sex, age group and ethnicity of the victim, on: (i) the number of deaths in custody, with an indication of the cause of death in each case; (ii) the number of persons injured as a result of violence committed inside places of detention, along with an indication in each case of whether the perpetrator was a prison employee or another detainee. Please also provide detailed information on the outcome of investigations into such deaths or violence, including the penalties imposed on perpetrators of torture, ill-treatment or negligence causing death or injury. Please also indicate what information and remedies were provided to the victims of such violations and their families;

(b) Information on the measures taken to counter the problem of inter-prisoner violence, improve the detection and monitoring of at-risk detainees and prevent suicide;

(c) Information on the evaluation of the programmes in place to prevent suicide and reduce incidents of inter-prisoner violence and ill-treatment in places of detention.

14. Please clarify whether the State party has established guidelines for determining, on a case-by-case basis, the necessity and proportionality of placing undocumented migrants in administrative detention and for ensuring that they are detained only as a measure of last resort, after alternatives to detention have been duly examined and exhausted, and for as short a period as possible. Please also explain what measures have been taken to guarantee a prompt and thorough judicial review of decisions to deprive an individual of his or her liberty on the grounds of migration status.³

15. Please provide annual data for the period under review on:

(a) The percentage of asylum seekers and persons requesting international protection who have been detained per year, the legal basis for their detention, the average duration of their detention and the percentage of cases in which alternatives to detention were applied;

(b) The percentages of unaccompanied children and of families with children who have been detained, their conditions of detention, the type of establishment and the regime applied, the percentage of cases in which alternatives to detention have been applied and the average duration of their detention;

(c) The average duration of the detention of undocumented migrants and the percentage of cases each year in which alternatives to administrative detention were applied in practice as compared with the percentage of cases in which detention was imposed.

Articles 12 and 13

16. With reference to the Committee's previous concluding observations (para. 17), please provide detailed statistical data as from 2015, disaggregated by the offence committed and the ethnicity, age group and sex of the victim, on:

(a) The number of complaints filed and police reports issued regarding offences such as torture and ill-treatment, complicity or participation in such acts, the alleged excessive use of force by law enforcement officials or the use of such force with the knowledge or consent of such officials;

(b) The number of investigations initiated as a result of those complaints and the initiating authority;

(c) The number of investigations that were dismissed;

(d) The number of investigations that led to prosecutions;

(e) The number of trials that led to convictions;

(f) The nature of the penal and disciplinary measures applied and the length of the prison sentences imposed.

³ European Court of Human Rights, *M.A. v. Cyprus*, No. 41872/10, ECHR 2013 (extracts).

17. With reference to the Committee's previous concluding observations (para. 15), please indicate whether the State party is considering abandoning the system which gives the public prosecutor discretion to decide whether or not to prosecute, in order to remove all doubt as to the obligation of the competent authorities to launch impartial investigations immediately and systematically in all cases in which there are reasonable grounds for believing that an act of torture has been committed anywhere in the territory under its jurisdiction. Please also specify the number of ex officio investigations into cases of torture and ill-treatment and of corresponding ex officio prosecutions undertaken each year, the number of cases of torture or ill-treatment reported by doctors after they had performed medical examinations of detainees and the action taken in response to those reports.

18. With reference to the Committee's previous concluding observations (para. 16), please indicate:

(a) What the timetable is for the adoption of the necessary legislative and regulatory measures for the reorganization of the Inspectorate General of the Police, as indicated in the report of the Inspectorate General in 2015. Please describe the proposals that have been put forward for ensuring the independence and impartiality of this body;

(b) Whether all agents suspected of having engaged in torture or ill-treatment are suspended or reassigned during the corresponding investigation.

Article 14

19. With reference to the Committee's previous concluding observations (para. 17) and in the light of paragraph 46 of its general comment No. 3 (2012) on the implementation of article 14 by States parties, please provide information on:

(a) Redress (restitution, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition) and compensation measures ordered by the courts or other administrative bodies in favour of victims of torture and ill-treatment and their families since the consideration of the last periodic report. This should include the number of requests for compensation that have been made, the number that have been granted, the amounts awarded and the amounts actually provided in each case;

(b) Any rehabilitation programmes for victims of torture or ill-treatment, specifying whether they provide for medical and psychological assistance.

Article 16

20. In the light of the Committee's previous concluding observations (para. 12), please provide information on the fight against racism and xenophobia and, in particular, the measures taken to prevent, prohibit and establish punishments for acts of violence or incitement to hatred directed at vulnerable groups and the excessive use of force by the police against members of minority groups, as well as the measures taken to ensure that such acts are effectively investigated and that the perpetrators are prosecuted.

21. In the light of the Committee's previous concluding observations (para. 13), please provide information on the steps taken by the State party to enhance the rights of children in conflict with the law and to strengthen measures for their protection in places of detention and prisons. Please indicate in particular:

(a) What the timetable is for the opening and entry into operation of the security unit in the residential facility at the Dreibern State Socio-educational Centre and what measures have been taken to ensure that minors in Luxembourg prison are housed completely separately from adults in the meantime;

(b) What measures have been taken to ensure that persons under the age of 18 years who are in conflict with the law are deprived of their liberty only as a last resort and are tried in juvenile courts and with priority being given to the application of alternative measures. Please indicate the number of minors, disaggregated by age, sex and ethnic origin, who have been indicted and sentenced to imprisonment each year as compared to the number who have been given non-custodial sentences.

General information on other measures and developments relating to the implementation of the Convention in the State party

22. Please provide detailed information on any other relevant legislative, administrative, judicial or other measure taken since the consideration of the previous periodic report to implement the provisions of the Convention or the Committee's recommendations. This may include information on institutional developments, plans or programmes. Please indicate what resources have been allocated for these purposes and provide statistical data and any other information that the State party considers relevant.
