



# 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 fifth periodic report of Panama\*

#### Specific information on the implementation of articles 1–16 of the Convention, including with regard to the Committee’s previous recommendations

##### Issues identified for follow-up in the previous concluding observations

1. In its previous concluding observations (CAT/C/PAN/CO/4, para. 50),<sup>1</sup> the Committee requested the State party to provide information on follow-up to the recommendations relating to fundamental legal safeguards (para. 11), deaths in custody (para. 21) and the national mechanism for the prevention of torture (para. 27). Bearing in mind that, on 22 August 2018, a response was received in relation to the information requested (CAT/C/PAN/CO/4/Add.1) and to the letter of 23 October 2018 from the Rapporteur for follow-up to concluding observations, the Committee considers that the recommendations contained in paragraphs 11, 21 and 27 of the previous concluding observations have been only partially implemented (see paras. 3, 22 and 4, respectively, below).

##### Articles 1 and 4

2. With reference to the Committee’s previous concluding observations (paras. 8–9), please indicate the measures taken to bring the content of article 156-A of the Criminal Code into line with article 1 of the Convention to expressly cover acts committed by third parties at the instigation or with the consent or acquiescence of a public official.<sup>2</sup> Please also indicate whether the legislation on the statute of limitations for the offence of torture has been amended.<sup>3</sup>

\* Adopted by the Committee intersessionally on 7 May 2020.

<sup>1</sup> Unless otherwise indicated, paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee.

<sup>2</sup> CAT/OP/PAN/1, paras. 30–31.

<sup>3</sup> Ibid., paras. 32–34.



**Article 2<sup>4</sup>**

3. With reference to the previous concluding observations (paras. 10–11) and the State party's follow-up replies,<sup>5</sup> please provide detailed information on measures taken to ensure that persons deprived of their liberty are afforded, in practice, all fundamental legal safeguards from the outset of their deprivation of liberty, including the rights to receive prompt legal assistance and to request an independent medical examination by a physician of their choosing, regardless of whether or not a medical examination is conducted at the request of the authorities.<sup>6</sup> Please also provide information on measures taken to ensure the provision of free quality legal assistance.<sup>7</sup>

4. In the light of the previous concluding observations (paras. 26–27) and the State party's follow-up replies,<sup>8</sup> please provide information on the concrete measures that have been adopted to ensure that the national preventive mechanism has the necessary resources to operate properly in accordance with the Optional Protocol to the Convention. Please indicate whether the national preventive mechanism enjoys financial and operational autonomy when carrying out its functions.<sup>9</sup> Please clarify whether the process of selecting and appointing the leadership and staff of the mechanism has been completed, in accordance with the guidelines for national preventive mechanisms (CAT/OP/12/5).<sup>10</sup> Please also indicate whether the regulations of Act No. 6 of 22 February 2017 have been adopted in accordance with article 45 of that Act.<sup>11</sup>

5. With regard to the previous concluding observations (paras. 46–47), please indicate the measures taken to ensure that indigenous justice is administered with full respect for human rights, including the prohibition of torture and cruel, inhuman and degrading treatment and punishment.

6. With reference to the preceding concluding observations (paras. 40–41), kindly provide information on the steps taken to combat gender-based violence, with particular regard to cases that involve actions or omissions on the part of State authorities or other entities that engage the State party's international responsibility under the Convention. Please also provide updated information on the protection and support services available to victims of gender-based violence related to acts or omissions by State authorities. Please include statistics, disaggregated by the victims' age and ethnic origin or nationality, on the number of complaints, investigations, prosecutions, convictions and sentences imposed in cases of gender-based violence since the consideration of the State party's previous periodic report.<sup>12</sup> Please provide updated information on training programmes aimed at raising awareness among law enforcement officers and justice officials about domestic and sexual violence and the measures taken to expand public awareness-raising campaigns concerning all forms of violence against women.

7. Please provide updated data, disaggregated by the victims' age, sex and ethnic origin or nationality, on the number of complaints, investigations, prosecutions and sentences handed down in cases of trafficking in persons since the consideration of the State party's previous periodic report. Please also provide information on:

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<sup>4</sup> The issues raised under article 2 may also touch on issues 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. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also chapter V of the same general comment.

<sup>5</sup> CAT/C/PAN/CO/4/Add.1, paras. 1–10.

<sup>6</sup> CAT/OP/PAN/1, paras. 37–38.

<sup>7</sup> *Ibid.*, paras. 39–43.

<sup>8</sup> CAT/C/PAN/CO/4/Add.1, paras. 16–32.

<sup>9</sup> CAT/OP/PAN/1, paras. 17–20.

<sup>10</sup> *Ibid.*, paras. 23–24.

<sup>11</sup> *Ibid.*, paras. 21–22.

<sup>12</sup> CRC/C/PAN/CO/5-6, paras. 22–23.

(a) Any new legislation or measures that have been adopted to prevent or combat trafficking in persons;<sup>13</sup>

(b) Measures taken to ensure that victims of trafficking have access to effective remedies and reparation;

(c) Measures taken to ensure that non-custodial accommodation is provided, with full access to appropriate medical and psychological support, for potential victims of trafficking while identification processes are carried out;

(d) Agreements signed with countries concerned to prevent and combat trafficking in persons.

### Article 3

8. In the light of the previous concluding observations (paras. 36–37), please elaborate on measures taken during the period under review to ensure that no person is returned to a country where he or she would be at risk of torture. In this respect, please clarify whether the work to amend Executive Decree No. 23 of 10 February 1998, which regulates the submission and processing of applications for refugee status, has been completed.

9. Kindly indicate how, in practice, the State party ensures effective access to the refugee status determination procedure. Please also indicate whether persons whose expulsion, return or extradition has been ordered are informed of the right to seek asylum and to appeal an expulsion decision, and whether such appeals have suspensive effect. Please provide information on how the State party ensures that asylum seekers have access to free legal assistance and interpretation services during the asylum procedure. Please include information on the compliance by the State party with the precautionary measures issued by the Inter-American Commission on Human Rights in favour of Venezuelan nationals with serious health problems who are subject to expulsion.<sup>14</sup>

10. Please provide updated information on the number of asylum applications received during the period under review, the number of successful applications and the number of asylum seekers whose applications were accepted because they had been tortured or might be tortured if returned to their country of origin. Please include information, disaggregated by sex, age and country of origin, on the number of persons who have been returned, extradited or expelled since the consideration of the previous periodic report. Please provide details on the grounds on which they were sent back, and include a list of the countries to which they were returned. Please indicate whether the State party has put in place mechanisms to monitor the situation of vulnerable individuals and groups in receiving countries after their return.

11. Please indicate the number of returns, extraditions and expulsions carried out by the State party during the period under review on the basis of the acceptance of diplomatic assurances or equivalent guarantees, and any instances in which the State party has offered such diplomatic assurances or guarantees. Please also provide details of the measures that have been taken in such cases with regard to subsequent follow-up.

### Articles 5 to 9

12. With regard to the previous concluding observations (paras. 38–39), please provide information on the legislative and other measures taken by the State party during the period under review to implement article 5 of the Convention, in particular to establish its jurisdiction over cases of torture where the alleged offender is present in any territory under its jurisdiction and it does not extradite him or her. Please also provide information on any extradition treaties concluded with other States parties and indicate whether the offences referred to in article 4 of the Convention are included as extraditable offences in such treaties. Please clarify what mutual judicial assistance treaties or agreements the State party has signed with other entities, such as countries, international tribunals or international

<sup>13</sup> *Ibid.*, para. 38.

<sup>14</sup> See resolution 81/2018, precautionary measure No. 490-18 M.B.B.P with respect to Panama, 15 October 2018.

institutions, and whether those instruments have resulted, in practice, in the transfer of any evidence in connection with prosecutions concerning torture and ill-treatment. Please provide examples.

#### **Article 10**

13. With reference to the previous concluding observations (paras. 28–29), please provide updated information on the training programmes on human rights and the prohibition of torture developed by the State party to ensure that all public servants, particularly members of the National Police and prison staff, are fully familiar with the provisions of the Convention and the absolute prohibition of torture, and are fully aware that breaches will not be tolerated, that they will be investigated and that those responsible will be prosecuted.<sup>15</sup> Please also indicate whether law enforcement officials receive adequate training on the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.<sup>16</sup> Please indicate whether the State party has reviewed its rules of engagement or regulations on opening fire to ensure consistency with international law. Please also provide information on the programmes used in the training of police officers and other law enforcement officials in non-coercive investigation techniques. Please indicate in each case the number, institutions and percentage of public servants that have benefited from such training programmes. Please indicate whether the State party has considered establishing a methodology for evaluating the effectiveness and impact of its training programmes in reducing the number of cases of torture and ill-treatment. If so, please provide information in this regard.

14. Please also provide updated information on training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detainees to enable them to detect and document the physical and psychological sequelae of torture. Please indicate whether such programmes include specific training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).<sup>17</sup>

#### **Article 11**

15. Please describe the procedures in place for ensuring compliance with article 11 of the Convention and provide information on interrogation rules, instructions, methods and practices or arrangements for custody, especially those adopted or revised since the consideration of the State party's previous periodic report. Please also indicate the frequency with which they are reviewed.

16. With reference to the previous concluding observations (paras. 16–17), please describe the measures taken to improve conditions of detention, especially those aimed at reducing prison overcrowding and promoting the use of alternatives to deprivation of liberty, both before and after trial.<sup>18</sup> Please provide statistical data, disaggregated by sex, age and ethnicity or nationality, on the numbers of pretrial detainees and convicted prisoners and on the occupancy rate of all places of detention.

17. Please comment on reports of poor hygiene and sanitary conditions and limited access to drinking water in the State party's prisons and police stations.<sup>19</sup> Please also provide information on the steps taken to ensure that sufficient resources are allocated to provide persons deprived of their liberty with an adequate diet<sup>20</sup> and medical care.<sup>21</sup> In this connection, please give details of the steps taken by the State party to implement the

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<sup>15</sup> CAT/OP/PAN/1, paras. 48–49.

<sup>16</sup> CAT/C/PAN/CO/4, para. 15.

<sup>17</sup> CAT/OP/PAN/1, paras. 90–91

<sup>18</sup> *Ibid.*, paras. 6, 55–64 and 75–77.

<sup>19</sup> *Ibid.*, paras. 65–68.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*, paras. 80–93.

precautionary measure requested by the Inter-American Commission on Human Rights concerning the Punta Coco temporary detention facility.<sup>22</sup>

18. In the light of the previous concluding observations (paras. 16 and 17 (c)), please provide information on the steps taken by the State party to meet the special needs of women<sup>23</sup> and minors<sup>24</sup> in detention. Please indicate whether protocols are in place to meet the needs of other groups of prisoners with special needs, such as persons with disabilities, older persons and lesbian, gay, bisexual, transgender and intersex persons.<sup>25</sup>

19. Please also provide information on the measures taken by the State party to ensure that its laws and practices regarding solitary confinement, including for “reflection periods” for minors deprived of their liberty,<sup>26</sup> are consistent with international standards.

20. Please provide information on the measures taken during the period under review to ensure security inside prisons.<sup>27</sup> In this respect, please comment on reports regarding the humiliating nature of full body searches of prisoners and their visitors.<sup>28</sup> Please also clarify whether the use of tear gas<sup>29</sup> and electric discharge weapons is permitted inside prisons. Lastly, please provide information on what measures have been taken to combat corruption in prisons.<sup>30</sup>

21. Please provide information on acts of inter-prisoner violence, including cases of possible negligence by prison officials, and on the number of complaints filed in that regard and the results of investigations into those complaints. Please indicate what preventive measures have been taken. As recommended by the Committee in its previous concluding observations (para. 21), please indicate the measures taken by the State party to investigate the smuggling of firearms into prisons.

22. With reference to the previous concluding observations (paras. 20–21) and the State party’s follow-up replies,<sup>31</sup> please provide statistical data on the number of deaths of persons deprived of their liberty during the period under review, disaggregated by place of detention, sex, age, ethnic origin or nationality of the deceased and cause of death. Please describe how these deaths were investigated, the outcome of the investigations and the measures adopted to prevent similar situations in the future. Please indicate whether, in any of the cases, the relatives of the deceased received compensation.

23. Please provide updated data on the number of asylum seekers and immigrants in an irregular administrative situation who are deprived of liberty in the State party. Please indicate any measures taken by the State party during the reporting period to ensure that detention of asylum seekers and immigrants in an irregular situation is only used as a last resort, where necessary and for as short a period as possible, and to further implement in practice alternatives to the deprivation of liberty.<sup>32</sup> Please also provide information on any measures taken to improve the conditions of detention in immigrant holding centres.<sup>33</sup>

24. Bearing in mind the previous concluding observations (paras. 42–43), please provide detailed information on any investigations that have been conducted during the period under review concerning allegations of ill-treatment of persons with disabilities and older persons placed in residential institutions (“homes”) and sudden deaths in these centres.<sup>34</sup> Please provide information on the number of persons deprived of their liberty in psychiatric

<sup>22</sup> CAT/C/PAN/CO/4, paras. 18–19.

<sup>23</sup> CAT/OP/PAN/1, paras. 94–105.

<sup>24</sup> *Ibid.*, paras. 106–119. With regard to the use of shackles, see paragraph 114. With regard to the age of criminal responsibility and the use of pretrial detention, see CRC/C/PAN/CO/5-6, paras. 39–40.

<sup>25</sup> CAT/OP/PAN/1, paras. 128–132.

<sup>26</sup> *Ibid.*, paras. 111 and 118.

<sup>27</sup> *Ibid.*, paras. 69–74.

<sup>28</sup> *Ibid.*, paras. 78–79.

<sup>29</sup> CAT/C/PAN/CO/4, para. 16 and 17 (e).

<sup>30</sup> *Ibid.*, para. 17 (f).

<sup>31</sup> CAT/C/PAN/CO/4/Add.1, paras. 11–15.

<sup>32</sup> CAT/OP/PAN/1, paras. 120–121.

<sup>33</sup> *Ibid.*, paras. 103–105 and 122–127; CRC/C/PAN/CO/5-6, para. 35.

<sup>34</sup> CAT/OP/PAN/1, para. 93.

hospitals and other institutions for persons with psychosocial disabilities.<sup>35</sup> Please also indicate what the situation is with respect to alternative forms of treatment, such as community-based rehabilitation services and other outpatient treatment programmes.

25. With regard to the previous concluding observations (paras. 24–25), please indicate what measures have been taken to ensure that all places of detention are regularly visited by the national preventive mechanism and other bodies responsible for their monitoring and inspection.<sup>36</sup> Please provide information on the visits to places of detention carried out by the mechanism during the period under review and on the measures taken by the State party in response to the recommendations made by the mechanism.<sup>37</sup> Please clarify whether non-governmental organizations are authorized to carry out activities inside prisons to verify and monitor respect for the rights of persons deprived of their liberty.<sup>38</sup>

#### **Articles 12 and 13**

26. With reference to the previous concluding observations (paras. 22–23), please provide information on the internal complaints and reporting mechanisms in the country's detention centres.<sup>39</sup>

27. Taking into account the previous concluding observations (paras. 12–17), please provide statistical data, disaggregated by sex, age, ethnic origin or nationality and place of detention, on allegations of torture, ill-treatment and excessive use of force during the reporting period. Please provide information on investigations, disciplinary and criminal proceedings, convictions and the criminal or disciplinary sanctions imposed.<sup>40</sup> Please provide examples of relevant cases or judicial decisions.

28. With reference to the previous concluding observations (paras. 32–33), please indicate any progress made in the investigation and prosecution of serious human rights violations, in particular cases of enforced disappearance, that occurred in the State party during the military dictatorship.

#### **Article 14**

29. Please provide information on redress and compensation measures, including the means of rehabilitation, ordered by the courts and actually provided to the victims of torture or their relatives since the consideration of the previous periodic report. The information should include the number of requests for compensation that have been made, the number of requests granted and the amounts ordered and actually provided in each case. Please also provide information on ongoing reparation programmes, including those providing for the treatment of trauma and other forms of reparation provided to victims of torture and ill-treatment, and on the material, human and budgetary resources allocated to those programmes to ensure their effective functioning. In the light of the previous concluding observations (paras. 30–31), please provide information on progress made by the State party in terms of providing redress and reparation for victims of human rights violations documented by the Truth Commission.

#### **Article 15**

30. With reference to the previous concluding observations (paras. 34–35), please provide examples of cases that have been dismissed by the courts because of the submission of evidence or testimony obtained by means of torture or ill-treatment.

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<sup>35</sup> Ibid., para. 92.

<sup>36</sup> Ibid., paras. 50–51.

<sup>37</sup> Ibid., para. 28.

<sup>38</sup> Ibid., para. 6.

<sup>39</sup> Ibid., paras. 44–45.

<sup>40</sup> Ibid., para. 35.

## Article 16

31. With respect to the previous concluding observations (paras. 48–49), please indicate the measures taken by the State party to prohibit the corporal punishment of children in all settings.<sup>41</sup>

## Other issues

32. With reference to the previous concluding observations (para. 51), please indicate whether the State party is considering making the declarations referred to in articles 21 and 22 of the Convention.

33. Please provide information on the measures taken by the State party to respond to threats of terrorism, and describe if and how those measures have affected human rights safeguards in law and in practice. Please also explain how the State party has ensured that those measures comply with its obligations under international law, especially the Convention. Please provide information on the relevant training given to law enforcement officers; the number of persons convicted under legislation adopted to combat terrorism; the legal remedies and safeguards available to persons subjected to counter-terrorism measures in practice; and whether there have been any complaints of terrorism and, if so, the outcome of these complaints.

34. Given that the prohibition of torture is absolute and non-derogable, including in the context of measures related to states of emergency and other exceptional circumstances, please provide information on the measures taken by the State party during the coronavirus disease (COVID-19) pandemic to ensure that its policies and actions comply with its obligations under the Convention. Please also specify what steps have been taken with regard to persons deprived of their liberty and in places of confinement, such as nursing homes, hospitals and institutions for persons with intellectual and psychosocial disabilities.

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

35. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the previous report to give effect to the provisions of the Convention or the Committee's recommendations. This may include information on institutional developments, plans or programmes and, in particular, resources allocated, statistical data or any other information that the State party considers relevant.

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<sup>41</sup> CRC/C/PAN/CO/5-6, para. 21.