



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

Distr.:General
28 July 2014

Original: English

Committee against Torture

List of issues prior to submission of the seventh periodic report of Canada, due in 2016*

At its thirty-eighth session (A/62/44, paras. 23 and 24), the Committee against Torture established a new optional procedure which consists in the preparation and adoption of a list of issues to be transmitted to the State party concerned prior to the submission of its periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations¹

Articles 1 and 4

1. Please explain if, and eventually how, the rights contained in the Convention have been invoked in national courts, either as grounds for a case or as interpretative guidance for legal norms. Please cite examples, if any, of cases in which the provisions of the Convention have been invoked before and by the courts, and to what effect.
2. Please provide examples of judgements that can be considered relevant to the implementation of the provisions of article 4, and penalties that, in practice, take into account the grave nature of torture. Please also provide detailed information on the number and nature of the cases in which those legal provisions were applied and the outcome of such cases, in particular, the penalties imposed upon conviction and the reasons for acquittal.

* Adopted by the Committee at its fifty-second session (28 April to 23 May 2014).

¹ Paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee and issued under the symbol CAT/C/CAN/CO/6.



Article 2²

3. Further to the recommendations made by the Committee in its previous concluding observations (para. 8), please provide updated information on the measures taken to ensure that all the provisions of the Convention have been incorporated into Canadian law in order to allow persons to invoke the Convention in courts, give prominence to the Convention and to raise awareness of its provisions in the legal and judicial system as well as among the public at large. Please also provide detailed information on the steps taken to ensure that provisions of the Convention that give rise to extraterritorial jurisdiction can be directly applied before domestic courts.

4. Please provide information on the measures adopted to ensure that medical examinations of detainees that focus on past torture and ill-treatment are thorough and impartial. What measures have been taken to ensure that the medical experts conducting examinations use forms that are in line with annex IV of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) and that they provide a statement of opinion regarding their findings?

5. With regard to the previous concluding observations (para. 13) and to the follow-up report submitted by the State party (CAT/C/CAN/CO/6/Add.1), please inform the Committee about the steps taken to modify Bill C-31, which introduced numerous changes to the Immigration and Refugee Protection Act and to the State party's refugee determination system, and the impact thereof on the State party's compliance with the Convention, in particular in relation to:

(a) The mandatory detention of groups of individuals, including children, who enter Canada irregularly;

(b) The necessity for all refugee claimants to be provided with access to a full appeal hearing before the Refugee Appeal Division;

(c) The impact of the list of "designated safe countries" in the light of the obligations of the Convention;

(d) The provisions of the five-year ban imposed on "irregular arrivals" regarding applying for permanent residence and how this rule could also impact the families of refugees and their eventual reunification;

(e) Actions taken to ensure that detention is used as a measure of last resort, that a reasonable time limit for detention is set, and that non-custodial measures and alternatives to detention are made available to persons in immigration detention.

6. Further to the recommendations made by the Committee in its previous concluding observations (para. 12) and to the follow-up report submitted by the State party, please inform the Committee about:

² The issues raised under article 2 could also imply other articles of the Convention, including but not limited to article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2008) 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 (hereinafter "ill-treatment") under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps, 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 further chapter V of the same general comment.

(a) The measures adopted to reconsider its policy of using administrative detention and immigration legislation to detain and remove non-citizens on the grounds of national security;

(b) The steps taken to review the use of security certificates and to ensure the prohibition of the use of information obtained by torture, in line with relevant domestic and international law;

(c) The present status of the case of Mohamed Harkat.³

7. Further to the recommendations made by the Committee in its previous concluding observations (para. 17) and to the follow-up report submitted by the State party, please provide detailed information on the steps taken to modify the Ministerial Directions issued to the Canadian Security Intelligence Service (CSIS) in order to bring it into line with Canada's obligations under the Convention.⁴ What activities have been implemented to strengthen the provision of training on the absolute prohibition of torture in the context of the activities of intelligence services?⁵

8. Please provide detailed information on the measures taken to enact legislation specifically addressing alleged domestic violence so as to make it a criminal offence and to ensure that victims of domestic violence have access to immediate means of redress and protection and that perpetrators are prosecuted and appropriately punished. Please identify factors impeding the adoption of such legislation. Please also provide statistical data on complaints, investigations, prosecutions, convictions and penalties imposed for acts of domestic violence, disaggregated by province, ethnicity and age.

9. Please provide information on steps taken to further increase protection of and assistance to victims of trafficking, including prevention measures, social reintegration, access to health care and psychological assistance, in a culturally appropriate and coordinated manner, including by enhancing cooperation with non-governmental organizations and countries of origin.

10. Please provide updated information, disaggregated by victims' age, gender and ethnic origin or nationality, on the number of complaints, investigations, prosecutions, convictions and sentences handed down in cases of human trafficking, since the consideration of the State party's previous report.

Article 3

11. With regard to the Committee's previous concluding observations (para. 9), please provide information on measures taken to amend relevant laws, including the Immigration and Refugee Protection Act, with a view to unconditionally respecting the principle of non-refoulement. Please indicate the number of cases of refoulement, extradition and expulsion carried out by the State party during the reporting period through the acceptance of diplomatic assurances or the equivalent thereof, as well as any instances in which the State party has offered such diplomatic assurances or guarantees. What is the minimum content of any such assurances or guarantees, whether given or received, and what measures with regard to subsequent post-return monitoring mechanisms have been taken in such cases. Please provide information on the situation of the prisoners transferred by Canadian Forces in Afghanistan into the custody of other countries who have experienced torture and ill-treatment (para. 11). Please provide details on:

³ CAT/C/CAN/CO/6/Add.1, para. 5.

⁴ Ibid., paras. 27–33.

⁵ Ibid., para. 34.

(a) Policies put in place to clearly prevent the transfer of any non-national to another country, when there are substantial grounds for believing that he or she would be in danger of being subjected to torture;

(b) Measures taken to recognize that diplomatic assurances and monitoring arrangements cannot be relied upon to justify transfers when a substantial risk of torture exists.

12. Further to the recommendations made by the Committee in its previous concluding observations (para. 10) and recalling the Committee's views under article 22 of the Convention, please provide an update on the cases of: (a) Tahir Hussain Khan, communication No. 15/1994, who was not recognized as a refugee despite high risks of persecution and attacks on his life if returned to Pakistan; (b) Mostafa Dadar, communication No. 258/2004, who was removed to Iran, despite the Committee finding a violation of the Convention if that were the case; (c) Bachan Singh Sogi, communication No. 297/2006, who was deported to India on the grounds of being a threat to security, despite the Committee's repeated requests for interim measures; (d) Ivan Apaolaza Sancho, who was chained to his seat on the flight on which he was deported to Spain, after being detained for 16 months without charge in Canada; and (e) Adel Benhmuda, who was deported to Libya in 2008 with his family, including two children born in Canada, and was allegedly ill-treated in a Libyan prison. Please explain the procedure followed, the guarantees received as well as the monitoring mechanisms, and how such practice is compatible with the State party's non-refoulement obligation under the Convention.

13. Please provide data, disaggregated by age, sex and nationality, on:

(a) The number of asylum requests registered and approved;

(b) The number of asylum seekers whose requests were granted because they had been tortured or might be tortured if they were returned to their country of origin;

(c) The number of forcible deportations or expulsions (please indicate how many of them involved rejected asylum seekers) and the countries to which the persons were expelled;

(d) Detailed information on the reasons for the returns and a list of the countries to which the persons were returned.

Articles 5, 6, 7, 8 and 9

14. Since the consideration of the previous report, please indicate whether the State party has rejected, for any reason, any request for extradition by a third State for an individual suspected of having committed the offence of torture, and thus engaging its own prosecution as a result. If so, please provide information on the status and outcome of such proceedings.

15. Please inform the Committee of any extradition treaties concluded with other States and indicate whether such instruments cover offences subject to extradition, as provided for in article 4 of the Convention.

16. Please indicate what treaties or agreements on mutual judicial assistance have been concluded between the State party and other entities, such as countries, courts or international institutions, and whether, in practice, such agreements have resulted in the transfer of evidence relating to proceedings having to do with torture or ill-treatment. Please provide examples.

Article 10

17. With regard to the Committee's previous concluding observations (para. 17), please provide updated information on the development by the State party of training programmes dealing specifically with the prohibition of torture, which are aimed at ensuring that members of the armed forces, police officers and other law enforcement personnel in particular are fully aware of the provisions of the Convention and that violations of its provisions will not be tolerated, that such violations will be investigated and that violators will be prosecuted. In addition, please provide information on whether the State party has developed a methodology for assessing the effectiveness of training programmes in reducing the number of cases of torture and ill-treatment and the results of those programmes. If the training programmes do lead to a reduction in torture and ill-treatment, please provide information on the content and application of the methodology.

18. Please provide updated information on training programmes for judges, prosecutors, forensic physicians and medical personnel who deal with detainees, which are aimed at enabling them to detect and document the physical and psychological effects of torture. Do such programmes include specific training on the Istanbul Protocol and, more specifically, on how to detect signs of torture?

Article 11

19. With regard to the Committee's previous concluding observations (para. 19), please provide information on measures taken to ensure that detention conditions in all places of deprivation of liberty are in conformity with the Standard Minimum Rules for the Treatment of Prisoners, in particular with regard to steps taken to:

- (a) Adopt effective measures to improve material conditions in prisons, reduce the current overcrowding and properly meet the basic needs of all persons deprived of their liberty;
- (b) Increase the capacity of treatment centres for prisoners with intermediate and acute mental health issues;
- (c) Limit the use of solitary confinement as a measure of last resort for as short a time as possible under strict supervision and with a possibility of judicial review;
- (d) Abolish the use of solitary confinement for persons with serious or acute mental illness;
- (e) Adopt effective measures to improve conditions of women in detention, particularly when they are afflicted by serious health and mental issues.⁶

20. With regard to the Committee's previous concluding observations (para. 22), please explain what measures have been put in place by the State party to strengthen its efforts to ensure that all allegations of ill-treatment and excessive use of force by the police are impartially investigated by an independent body. Also, have those responsible for such violations been prosecuted and punished with appropriate penalties?

21. With regard to the Committee's previous concluding observations (para. 20), please inform the Committee if the State party and/or the Province of Ontario have undertaken an inquiry into the Ontario Provincial Police's handling of incidents at Tyendinaga township, Ontario, and into all aspects of the policing and security operations at the G8 and G20 summits held in Ontario in 2010.

⁶ See also A/HRC/WG.6/16/CAN/3, para. 41.

22. Please provide information on measures taken to ensure that prisoner screening is in place to certify the mental state of the prison population, in conformity with the Standard Minimum Rules for the Treatment of Prisoners.

23. Please inform the Committee about any measures taken to stop and prevent abuses on indigenous women in the Province of British Columbia. Please provide information on steps taken at any level to address the issue of disappearances and murder of indigenous girls and women.

Articles 12 and 13

24. With regard to the Committee's previous concluding observations (para. 20), please provide updated information on the progress made to clarify cases of disappearances of indigenous women and girls. Please also provide updated information on the existing legal framework for the protection of persons from enforced disappearance. Has work been completed in relation to the development of a coordinated and comprehensive national plan of action which includes measures to ensure impartial, prompt and effective investigation, and prosecution, conviction and sanction of those responsible for disappearances and murder of indigenous women and girls?⁷

25. Please provide statistics, disaggregated by gender, age, ethnic origin or nationality and place of detention, including migrant holding centres, on the number of complaints registered in connection with acts of torture or ill-treatment during the reporting period. How many formal investigations have been opened in alleged cases of torture and ill-treatment? Please provide information on open judicial proceedings and disciplinary procedures as well as convictions, criminal sentences and disciplinary measures imposed. In that connection, provide examples of relevant judicial decisions or resolutions.

26. Please provide information on the mandate of the recently established provincial mechanism for civilian investigation of police misconduct, namely, the Independent Investigations Office that was established in British Columbia in late 2012, including on how its mandate is in line with the provisions of the Convention.

Article 14

27. With regard to Committee's previous concluding observations (para. 15) and further to paragraphs 45 and 46 of the Committee's general comment No. 3 (2012) on the implementation of article 14 by States parties, please provide relevant information on:

(a) Measures of redress and compensation, including rehabilitation measures, ordered by courts and actually provided to victims of torture or their family members, since the consideration of the last periodic report. Such information should include the number of claims submitted, the number of claims settled and the amounts awarded and actually paid in each case;

(b) Measures taken to ensure that all victims of torture are able to access remedy and obtain redress wherever acts of torture have occurred and regardless of the nationality of the perpetrator or victim. Has the State party taken steps to amend the State Immunity Act in order to remove obstacles to redress for all victims of torture?

28. Further to the recommendation in the Committee's previous concluding observations (para. 16), please update the Committee on:

⁷ Ibid., para. 42.

(a) The steps taken to ensure that Abdullah Almalki, Ahmad Abou Elmaati and Muayyed Nureddin have received redress, including adequate compensation and rehabilitation;

(b) The case of Omar Khadr, who was detained at Guantánamo Bay, and the status of his transfer application. Has he received appropriate redress for the human rights violations that he suffered, as ruled by the Canadian Supreme Court? Please indicate whether compensation was awarded and the amount of such compensation. Please also inform the Committee if any type of assistance was provided to Mr. Khadr in order to prevent potential psychological sequelae deriving from the torture that he experienced.

29. Please provide information on redress programmes, including programmes for the treatment of physical and psychological trauma, and other types of rehabilitation provided to victims of torture and ill-treatment, as well as on the allocation of adequate resources to ensure the effective functioning of such programmes. Please provide information on the extent to which collaboration with specialized non-governmental organizations exists in this respect and indicate whether the State party provides financial and/or other support for its effective functioning.

Article 15

30. With regard to the Committee's previous concluding observations (para. 17), please provide information on measures adopted to ensure that confessions obtained under torture or ill-treatment are not admitted in court proceedings, in line with article 15 of the Convention. Furthermore, please indicate whether any officials have been prosecuted and punished for extracting confessions under torture and, if so, please provide details of cases and any penal or administrative sanctions imposed on those responsible. Please provide information on any cases in which the court did not accept confessions or evidence obtained as a result of torture.

Article 16

31. Further to the Committee's recommendation in its previous concluding observations (para. 20), please indicate which actions and measures have been taken to strengthen the State party's efforts to exercise due diligence to intervene to stop and sanction acts of torture or ill-treatment committed by non-State officials or private actors, and to provide remedies to victims. What efforts has the State party made to end all forms of violence against indigenous women, girls and two-spirited and LGBT persons?⁸

32. With regard to the Committee's previous concluding observations (para. 21), please inform the Committee about the measures taken to ensure that electrical discharge weapons (Tasers) are used exclusively in extreme and limited situations. Also, please provide information on whether the State party has revised or adopted new regulations governing the use of such weapons and whether the State party has conducted any research on the risk deriving from the use of electrical discharge weapons. Has the State party adopted a legal framework to govern the testing and approval for use of all weapons used by law enforcement personnel? Has the State party take any steps to relinquish the use of electrical discharge weapons?

33. Please provide updated information on measures taken to adequately prevent, combat and punish violence against women, in particular indigenous women. In that respect, please indicate whether corporal punishment of girls and women in all settings,

⁸ Ibid., para. 7.

including schools, institutions and the home, is explicitly prohibited under national law and, if not, what efforts are being undertaken to remedy that.

Other issues

34. Please provide updated information on the measures taken by the State party to respond to any threats of terrorism, and describe if and how those anti-terrorism measures have affected human rights safeguards in law and in practice. How has the State party ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions,⁹ in particular resolution 1624 (2005)? Please describe the relevant training given to law enforcement officers, the number and types of convictions handed down under such legislation, the legal remedies available to persons subject to antiterrorist measures, whether there are complaints of non-observance of international standards and the outcome of those complaints.

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

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

⁹ See Security Council resolutions S/2001/1221; S/2002/886; S/2003/1103; S/2004/945; S/2005/1624 and S/2006/903.