



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

Distr.: General
20 December 2013

Original: English

Committee against Torture

Concluding observations on the initial report of Andorra*

1. The Committee against Torture considered the initial report of Andorra (CAT/C/AND/1) at its 1190th and 1193rd meetings, held on 11 and 12 November 2013 (CAT/C/SR.1190 and CAT/C/SR.1193), and adopted the following concluding observations at its 1206th meeting (CAT/C/SR.1206) held on 21 November 2013.

A. Introduction

2. The Committee welcomes the initial report of Andorra (CAT/C/AND/1), which follows the Committee's guidelines on the form and content of initial reports (CAT/C/4/Rev.3). However, it regrets that the report was submitted five years late.

3. The Committee also appreciates the open and constructive dialogue with the high-level multisectoral delegation of the State party and the detailed supplementary information provided.

B. Positive aspects

4. The Committee welcomes the fact that, since its ratification of the Convention in 2006, the State party has ratified or acceded to the following international instruments:

(a) United Nations Convention against Transnational Organized Crime, on 22 September 2011;

(b) Council of Europe Convention on Action against Trafficking in Human Beings, which entered into force on 1 July 2011.

5. The Committee also welcomes the efforts of the State party to give effect to the Convention, such as giving precedence to all international treaties and agreements over national legislation and their direct application in domestic law as soon as they are published in the *Official Gazette*, in keeping with article 3.4 of the Constitution.

* Adopted by the Committee at its fifty-first session (28 October–22 November 2013).



C. Principal subjects of concern and recommendations

Definition of torture

6. The Committee is concerned that the State party has not changed the definition of torture in article 110 of the Criminal Code, which does not reflect all of the elements contained in article 1 of the Convention, such as the purpose of acts of torture, punishment of a person or a third person for suspected crimes, coercion, discrimination, complicity or participation in torture and mention of instigation by, or consent of, a person acting in an official capacity (arts. 1 and 4).

While noting that international treaties prevail over domestic law in Andorra, the Committee recommends that the State party amend article 110 of the Criminal Code to include a definition of torture in conformity with the Convention which covers all the elements contained in its article 1, including the purpose for acts of torture, punishment of a person or a third person for suspected crimes, coercion, discrimination, complicity or participation in torture, and mention of instigation by, or consent of, a person acting in an official capacity.

Punishment for acts of torture and statute of limitations

7. The Committee notes that notwithstanding the fact that torture is considered a crime against humanity in the Criminal Code, article 110 of the Criminal Code envisages a maximum sentence of imprisonment of only six years for acts of torture, with a possible increase of the sentence by up to half of the maximum penalty. It is also concerned that the crime of torture is subject to a statute of limitations of 10 years for prosecution and 15 years for punishment, which may result in impunity for perpetrators of acts of torture (arts. 2 and 4).

The State party should amend its Criminal Code with a view to introducing appropriate penalties for acts of torture and genocide beyond 10 years of imprisonment and ensure that the prosecution and punishment of the crime of torture is not subject to a statute of limitations, so that acts of torture can be investigated, prosecuted and punished without risk of impunity.

Fundamental legal safeguards

8. The Committee notes that, according to the information before it, there have been no complaints concerning torture. With regard to measures to guarantee the fundamental rights of persons deprived of their liberty, the Committee is concerned that in certain cases persons deprived of their liberty do not have access to a doctor of their choice, even at their own expense, from the very outset of their deprivation of liberty (arts. 2 and 16).

The State party should guarantee that all persons deprived of their liberty have the right to receive a medical examination by an independent doctor, if possible a doctor of their choice, from the outset of their deprivation of liberty.

Pretrial detention

9. Despite the State party's agreement to the recommendation made under the universal periodic review to introduce practical measures to lower the number of pretrial detainees, the Committee is concerned that no sufficient action has yet been taken in this regard (arts. 2, 11 and 16).

The Committee recommends that the State party adopt measures to reduce the number of pretrial detainees and devise alternative, non-custodial measures, taking into account the provisions of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the recommendation made during the universal periodic review.

Monitoring of police action

10. The Committee is concerned at the absence of an independent body to monitor police action and investigate allegations and complaints of ill-treatment by members of the police force (arts. 2, 10, 12, 13 and 16).

The State party should establish an independent mechanism to monitor action by the police and investigate allegations and complaints of ill-treatment by members of the police force and ensure that law enforcement officials receive training on the absolute prohibition of torture and ill-treatment.

Discrimination, hate speech and violence against vulnerable groups

11. The Committee is concerned at the absence of specific legislation to prevent and punish discrimination and incitement to violence, as well as measures against hate speech and other hate crimes (arts. 2, 12, 13, and 16).

The State party should take all necessary measures to prohibit and punish discrimination and incitement to violence against vulnerable groups and ensure that all hate crimes are always investigated, prosecuted and the perpetrators convicted and punished. In addition, the State party should take all necessary measures to prevent and condemn hate speech.

National human rights institution

12. While noting the State party's commitment during the universal periodic review in November 2010 to establish a national human rights institution in accordance with the Principles relating to the Status of National Institutions (the Paris Principles), the Committee is concerned that such an institution has not yet been established three years later (art. 2).

The Committee recommends that the State party establish an independent national institution for the promotion and protection of human rights, with an appropriate mandate and adequate financial and staffing resources, in full compliance with the Principles relating to the Status of National Institutions (the Paris Principles) and request accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

Violence against women

13. The Committee is concerned at the absence of specific legislation prohibiting all forms of violence against women and children, including domestic and sexual violence, as well as marital rape, and at the low number of investigations, prosecutions and convictions of the perpetrators of acts of violence against women (arts. 2, 12, 13, 14 and 16).

The State party should:

(a) **Amend its legislation with a view to ensuring that all forms of violence against women and children are offences under the Criminal Code, including domestic and sexual violence and rape;**

(b) **Ensure that reports of domestic violence, including sexual violence and violence against children, are registered by the police, that such incidences of violence are promptly, impartially and effectively investigated and perpetrators prosecuted and punished in accordance with the gravity of their acts;**

(c) **Sensitize and train law enforcement personnel and judicial officials in the Public Prosecutor's Office in investigating and prosecuting cases of domestic violence and conduct awareness-raising campaigns for the general public;**

(d) **Ensure that victims of domestic, including sexual, violence benefit from protection, including restraining orders for the perpetrators, and have access to medical and legal services, including psychosocial counselling, rehabilitation and safe and adequately funded shelters.**

Trafficking in human beings

14. The Committee is concerned that the Criminal Code does not specifically criminalize trafficking in persons and at the absence of legislative and policy measures to combat trafficking in persons for the purposes of forced labour or prostitution (arts. 2, 10, 12, 13 and 16).

The State party should:

(a) **Amend the Criminal Code with a view to specifically prohibiting trafficking in human beings as a criminal offence;**

(b) **Promptly, effectively and impartially investigate, prosecute and punish trafficking in persons and related practices;**

(c) **Increase the protection of and provide redress to victims of trafficking, including legal, medical and psychological aid and rehabilitation, as well as adequate shelters and assistance in reporting incidents of trafficking to the police;**

(d) **Provide specialized training to the police, prosecutors and judges on effective prevention, investigation, prosecution and punishment of acts of trafficking, and inform the general public through media campaigns of the criminal nature of such acts.**

Asylum

15. The Committee notes that national laws do not provide for the granting of asylum or refugee status and that there is no procedure for determination of refugee status (art. 3).

The State party should create a procedure for determination of refugee status for persons who could be recognized as refugees. It should also take clear legal measures to ensure that it does not expel, return (*refouler*) or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

Training

16. The Committee is concerned that law enforcement officials do not receive specific training on the provisions of the Convention, including the absolute prohibition of torture, and that medical professionals dealing with persons deprived of liberty and asylum seekers do not receive training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) (art. 10).

The State party should ensure training for law enforcement personnel, prison staff, border guards, judges and prosecutors on the absolute prohibition of torture and other provisions of the Convention. It should also ensure that the Istanbul Protocol is included in the training for all medical professionals and other public officials involved in work with persons deprived of their liberty and asylum seekers.

Solitary confinement

17. While noting that no detainees have been placed in solitary confinement for more than seven days since 2008 in prisons in the State party, the Committee is concerned that

current disciplinary regulations still allow for solitary confinement of up to 30 days as a disciplinary measure (arts. 11 and 16).

The Committee recommends that disciplinary regulations be amended to reduce the duration of placement in solitary confinement as a disciplinary measure to as short a time as possible and only if necessary.

Body searches

18. The Committee is concerned that prisoners are routinely subjected to complete strip searches before and after family visits, which may amount to ill-treatment (arts. 11 and 16).

The Committee recommends that prison staff refrain from routinely subjecting prisoners to complete strip searches that may amount to degrading treatment. Complete strip searches should be conducted exceptionally, using the least invasive method possible, only when strictly necessary and with respect for the dignity of the prisoner.

Electrical discharge weapons

19. While noting that electrical discharge weapons (such as “tasers”) have been used in very few instances, the Committee is concerned that they have been used in closed settings such as prisons and are included in the standard equipment of prison staff (arts. 2, 11 and 16).

The State party should ensure that the regulations concerning the use of electrical discharge weapons are modified so that they are not part of the standard equipment for prison staff and can be used exclusively in extreme and limited situations where there is a real and immediate threat to life or risk of serious injury, as a substitute for lethal weapons and by trained law enforcement personnel only. The State party should revise the regulations governing the use of such weapons, with a view to establishing a high threshold for their use and expressly prohibiting their use on children and pregnant women. The Committee is of the view that the use of electrical discharge weapons should be subject to the principles of necessity and proportionality and should be inadmissible in the equipment of custodial staff in prisons or any other places of deprivation of liberty. The Committee urges the State party to provide detailed instructions and adequate training to law enforcement personnel entitled to use electrical discharge weapons and to strictly monitor and supervise their use.

Corporal punishment

20. In light of the State party’s commitment under the universal periodic review to enact and implement legislation that prohibits all corporal punishment of children, the Committee is concerned that corporal punishment is not yet explicitly prohibited in all settings (art. 16).

The Committee recommends that the State party enact and implement legislation that explicitly prohibits corporal punishment of children in all settings.

Other issues

21. The Committee invites the State party to consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It also invites the State party to consider ratifying other United Nations human rights treaties to which it is not yet party, namely the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol thereto; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto; and the International Convention for the Protection of All Persons from Enforced

Disappearance. In addition, the State party should consider acceding to the Convention relating to the Status of Refugees and the Protocol thereto, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

22. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations in appropriate languages through official websites, the media and non-governmental organizations.

23. The State party is invited to submit its common core document, in accordance with the requirements contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6).

24. The Committee requests the State party to provide, by 22 November 2014, follow-up information in response to the Committee's recommendations relating to: (a) access to a doctor of their own choice for persons deprived of their liberty from the outset of deprivation of liberty; (b) sensitizing and training law enforcement personnel and judicial officials; and (c) strictly monitoring and supervising the use of electrical discharge weapons, as contained in paragraphs 8, 13 (c) and 19 respectively of the present document.

25. The State party is invited to submit its next report, which will be the second periodic report, by 22 November 2017. For that purpose, the Committee invites the State party to accept, by 22 November 2014, to report under its optional reporting procedure, consisting in the transmittal by the Committee to the State party of a list of issues prior to the submission of the report. The State party's response to this list of issues will constitute, under article 19 of the Convention, its next periodic report.
