



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

Distr.: General
28 August 2017
English
Original: Spanish

Committee against Torture

Concluding observations on the fourth periodic report of Panama**

1. The Committee against Torture considered the fourth periodic report of Panama (CAT/C/PAN/4) at its 1556th and 1559th meetings (see CAT/C/SR.1556 and 1559), held on 3 and 4 August 2017, and adopted the following concluding observations at its 1566th meeting, held on 10 August 2017.

A. Introduction

2. The Committee would like to express its appreciation to the State party for agreeing to follow the optional reporting procedure, as this allows for a more focused dialogue between the State party and the Committee. However, the Committee regrets that the periodic report was submitted 16 years late.
3. The Committee appreciates the dialogue held with the State party's delegation and the additional information provided during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the State party's ratification of or accession to the following international human rights instruments:
 - (a) The International Convention for the Protection of All Persons from Enforced Disappearance, on 24 June 2011;
 - (b) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 2 June 2011;
 - (c) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, on 7 August 2007;
 - (d) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 8 August 2001;
 - (e) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 9 February 2001;
 - (f) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 9 May 2001.

* Reissued for technical reasons on 4 October 2017.

** Adopted by the Committee at its sixty-first session (24 July-11 August 2017).



5. The Committee welcomes the following legislative measures taken by the State party in areas related to the Convention:

(a) The adoption of Act No. 6 of 22 February 2017 establishing the national mechanism for the prevention of torture in conformity with the Optional Protocol to the Convention;

(b) The adoption of Act No. 82 of 24 October 2013, which sets forth measures to prevent violence against women and amends the Criminal Code to criminalize femicide and punish gender-based violence;

(c) The adoption of Act No. 36 of 24 May 2013 on the smuggling of migrants and related activities;

(d) The promulgation of Act No. 35 of 23 May 2013 on the extradition procedure;

(e) The adoption of Act No. 79 of 9 November 2011 on trafficking in persons and related activities, and the establishment of the National Commission to Combat Trafficking in Persons.

6. The Committee commends the State party's efforts to adjust its policies and procedures in order to afford greater protection for human rights and to apply the Convention, in particular:

(a) The establishment of the Commission of 20 December 1989, pursuant to Executive Decree No. 121 of 19 July 2016;

(b) The establishment of a national standing committee responsible for ensuring compliance with follow-up to the national and international human rights commitments of Panama, pursuant to Executive Decree No. 7 of 17 January 2012.

7. Lastly, the Committee appreciates that the State party maintains a standing invitation to the special procedures mandate holders of the Human Rights Council.

C. Principal subjects of concern and recommendations

Definition and classification of the offence of torture

8. The Committee considers the definition of the offence of torture set forth in article 156-A of the Criminal Code to be incomplete, inasmuch as, contrary to what is prescribed by the Convention, it fails to expressly include acts of torture committed by a third person at the instigation of or with the consent or acquiescence of a public official. The Committee is also concerned that the State party maintains in its criminal law a statute of limitations for the crime of torture, although there is no statute of limitations in cases where torture is practised in a widespread and systematic manner against the civilian population (arts. 1 and 4).

9. The State party must make the offence of torture punishable as an offence under its criminal law, in accordance, at a minimum, with the elements of torture as defined in article 1 of the Convention. In that connection, the Committee wishes to draw the attention of the State party to paragraph 9 of its general comment No. 2 (2008) on the implementation of article 2 by States parties, in which it is stated that serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity. In addition, the Committee urges the State party to repeal the statute of limitations for the crime of torture and to take the action necessary to reinstate those investigations into acts of torture that have been discontinued owing to the statute of limitations.

Fundamental legal safeguards

10. Taking into account the procedural guarantees established in the Constitution and the Code of Criminal Procedure, the Committee regrets the paucity of available information on the procedures in place to ensure that those provisions are respected in practice, particularly in relation to the rights of detained persons to request an independent medical

examination and to receive prompt legal assistance. However, the Committee takes note of the increase in the number of public defenders providing free legal assistance (art. 2).

11. The State party should take effective measures to ensure that all persons deprived of their liberty are afforded, in practice, all fundamental legal safeguards from the very outset of their deprivation of liberty, in conformity with international standards, including the right to prompt access to and private consultation with a lawyer, particularly during the investigation and interrogation stages, and the right to request and promptly receive a medical examination by a qualified professional after admission to a place of detention, and to have access to an independent physician upon request.

Investigation, prosecution and punishment of acts of torture and ill-treatment

12. According to the information provided by the State party, between 1995 and 2016 there were four convictions for acts of torture, while the judgment of 11 January 2016 in the case of the Tocumen youth detention centre remains under appeal. The Committee regrets that the State party has not provided precise data on the number of prosecutions and disciplinary proceedings initiated for acts of torture or ill-treatment since the consideration of the last periodic report. Furthermore, the State party has not indicated the reasons why six criminal investigations into crimes of torture and ill-treatment resulted in a stay of proceedings or the number of investigations initiated ex officio into alleged acts of torture or ill-treatment during the period under review (arts. 2, 12, 13 and 16).

13. The Committee urges the State party to:

(a) Ensure that all allegations of torture or ill-treatment are investigated promptly and impartially by an independent mechanism and that there is no institutional or hierarchical connection between the investigators and the suspected perpetrators;

(b) Ensure that the authorities launch investigations ex officio whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed;

(c) Ensure that the alleged perpetrators are duly prosecuted and, if found guilty, receive penalties commensurate with the seriousness of their actions.

Excessive use of force against demonstrators

14. Although it is grateful for the explanations given by the delegation, the Committee remains concerned at reports of arbitrary arrests and excessive use of force by the security forces during a series of protests against mining operations and hydroelectricity production in the Ngobe Bugle indigenous region. The Committee also notes the adoption of Act No. 144/2015 and the approval of financial compensation measures for the victims of the human rights violations that occurred between 6 and 10 July 2010 during unrest in the town of Changuinola, Bocas del Toro province, which left 1 person dead and more than 100 wounded. However, it regrets that no cases have yet been brought before the courts as a consequence of those events (arts. 2, 11 and 16).

15. The State party should ensure that prompt, impartial and effective investigations are conducted into all allegations relating to the excessive use of force by the security forces, and that the perpetrators are prosecuted and the victims adequately compensated. The State party should also increase its efforts to systematically provide training to all law enforcement officials on the use of force, especially in the context of demonstrations, taking due account of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Conditions of detention

16. As acknowledged by the State party in its periodic report, overcrowding and inadequate conditions of detention continue to be among the main problems facing the prison system. The Committee appreciates the State party's efforts to improve conditions of detention, in particular the planned construction of three new prisons, the refurbishment of

existing facilities and the introduction of measures to reduce the number of detainees awaiting trial and the duration of pretrial detention. However, inadequacies in medical care services and the shortage of medical staff in prisons are worrisome. The Committee is also concerned at reports that the prison administration does not sufficiently consider the special needs of persons with disabilities and women prisoners in areas such as medical care, accessibility, the maintenance of family ties, and services and facilities for pregnant women and women with children. The Committee has also received reports that racial disproportionality exists in prisons and that Afrodescendent inmates receive worse treatment. Other matters of concern include frequent acts of violence among prisoners, the gang structure operating throughout the prison system, the permanent presence of police officers to maintain security inside prisons and complaints of excessive use of force against prisoners and misuse of tear gas. While taking note of the delegation's explanations concerning the training of staff as part of the implementation of Act No. 42 of 14 September 2016 establishing the prison career structure, the Committee regrets that no official timetable has been drawn up for the withdrawal of police units from prisons. Moreover, it notes with concern that extensive networks of corruption exist within the prison system (arts. 2, 11 and 16).

17. The State party should:

(a) Redouble its efforts to improve conditions of detention and to reduce prison overcrowding, in particular through the application of alternative measures to the deprivation of liberty;

(b) Ensure that prisoners are provided with proper medical and health care, in accordance with rules 24 to 35 of the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);

(c) Ensure that the special needs of persons with disabilities and women prisoners are met, in accordance with the Nelson Mandela Rules and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

(d) Ensure security inside prisons and the gradual withdrawal of police personnel by recruiting and providing appropriate training to a sufficient number of prison officers and by developing strategies to reduce violence among inmates;

(e) Ensure that tear gas is used in strict conformity with the principles of proportionality and necessity;

(f) Ensure the effective implementation of measures to combat corruption in the prison system.

Punta Coco temporary detention facility

18. The Committee considers that the State party has not provided sufficient explanation of the steps taken to implement the precautionary measure requested by the Inter-American Commission on Human Rights on behalf of persons deprived of liberty in the temporary detention facility of the Air and Naval Service on the island of Punta Coco (see resolution 10/17 of 22 March 2017). It is concerned that the poor conditions of detention, the remote location of the facility and the inadequate medical care provided to prisoners have led the Commission to extend precautionary measures in favour of all persons detained at Punta Coco, requesting, inter alia, their transfer to another facility that meets the international standards applicable to persons deprived of their liberty. A further cause for concern is that the Commission has requested the State party to take measures to protect the life and physical integrity of the human rights defenders Shirley Castañeda and Jessica Canto as a consequence of the humiliation and harassment to which they were reportedly subjected by military personnel during their visits to prisoners (arts. 2, 11 and 16).

19. The Committee urges the State party to take all necessary measures to comply with the precautionary measure requested by the Inter-American Commission on Human Rights in relation to the Punta Coco temporary detention facility.

Deaths in custody

20. The Committee expresses its serious concern about prison violence and the entry and smuggling of firearms into prisons. According to information provided by the State party's delegation, 11 out of 127 recorded deaths in the prison system since 2013 were caused by such weapons. At the same time, the Committee takes note of the delegation's explanations concerning the ongoing criminal proceedings and the reforms undertaken and investments made at the Tocumen youth detention centre following the deaths of five teenagers at that institution on 9 January 2011 (arts. 2, 11 and 16).

21. The Committee urges the State party to investigate the entry and smuggling of firearms into prisons and to take appropriate preventive measures. The State party should ensure that all deaths in custody are investigated promptly, thoroughly and impartially and that autopsies are carried out where appropriate. It should also investigate whether prison officials and members of the police are in any way responsible for such deaths and, if so, punish the guilty parties and provide the victims' family members with adequate redress.

Internal prison complaint mechanisms

22. According to the information provided by the State party, in 2017 three complaints of acts of torture in the prison system were made through the various complaints and reporting mechanisms available to persons deprived of their liberty. Although the delegation indicated that all of those complaints were being prepared for referral to the Public Prosecution Service, the Committee has not received any information about the disciplinary sanctions imposed on offenders, or about whether suspected perpetrators were suspended from duty during the investigation of allegations (arts. 2, 11, 12, 13 and 16).

23. The Committee urges the State party to ensure the independence and effectiveness of the complaints system available to persons deprived of liberty and the prompt and impartial investigation of all allegations and complaints of acts of torture or ill-treatment. The State party, while duly respecting the principle of the presumption of innocence, should ensure that alleged perpetrators of torture and ill-treatment are immediately suspended from their duties and remain suspended for the whole period of the investigation, particularly where there is a risk that they would otherwise be in a position to reoffend, carry out reprisals against the alleged victim or hinder the investigation.

Inspection of detention centres

24. Taking into account the explanations of the delegation concerning the monitoring activities undertaken at detention centres by the Ombudsman's Office and other bodies, the Committee regrets that the State party has not provided information on specific measures taken in response to the recommendations made by these bodies. The Committee takes note that a protocol on the entry of human rights organizations into prisons was signed in July 2014 and it reminds the State party that, in the same year, the network of non-governmental organizations (NGOs) Alianza Ciudadana Pro Justicia sent a letter to the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment alerting it to obstacles in accessing prisons (art. 2).

25. The State party should ensure that the Ombudsman's Office, NGOs and the newly established national mechanism for the prevention of torture have unhindered access to all places of deprivation of liberty. It should also ensure the effective follow-up of recommendations arising from their monitoring activities at detention facilities.

National mechanism for the prevention of torture

26. While welcoming the recent establishment of the national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment as a national directorate attached the Ombudsman's Office, the Committee is concerned that the appointments to the committee responsible for selecting the director and deputy director of the mechanism have not yet been finalized. The Committee also notes with concern that the implementing regulations of Act No. 6 of 22 February 2017, which will establish selection

criteria for the make-up of the national preventive mechanism and provide for the allocation of financial resources for the commencement of its activities, have not yet been adopted (art. 2).

27. **The Committee urges the State party to:**

(a) **Complete the process of selecting and appointing the leadership and staff of the national preventive mechanism;**

(b) **Provide the necessary resources for the functioning of the national preventive mechanism, in conformity with article 18 (3) of the Optional Protocol to the Convention;**

(c) **Ensure that the national preventive mechanism enjoys financial and operational autonomy in the performance of functions (see the guidelines on national preventive mechanisms (CAT/OP/12/5), para. 12);**

(d) **Ensure the follow-up and effective implementation of recommendations issued by the national preventive mechanism as a result of its monitoring activities (see CAT/OP/12/5, paras. 13 and 38);**

(e) **Adopt the implementing regulations of Act No. 6, in accordance with article 44 of that Act.**

Training

28. While it acknowledges the efforts made by the State party in respect of human rights training for members of the National Police and prison officials, the Committee regrets that it has not received any information on the evaluation of the training programmes' effectiveness in reducing the number of cases of torture and ill-treatment. The Committee takes note of the training given to staff of the Ministry of Health on torture prevention and to the forensic physicians and medical personnel of the Institute of Legal Medicine and Forensic Sciences on the application of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) (art. 10).

29. **The State party should:**

(a) **Continue to develop and implement mandatory training programmes in order to ensure that all public servants, particularly members of the National Police and prison officials, are fully familiar with the provisions of the Convention and are fully aware that breaches will not be tolerated, that they will be investigated and that those responsible will be prosecuted;**

(b) **Establish a methodology for evaluating the effectiveness of training programmes as a means of reducing the number of cases of torture and ill-treatment;**

(c) **Continue to ensure that all relevant staff, including medical personnel, receive specific training to identify and document cases of torture and ill-treatment in accordance with the Istanbul Protocol.**

Redress and rehabilitation

30. The Committee takes note of the information provided by the State party on the efforts made to provide redress and compensation to victims of human rights violations documented by the Truth Commission. However, it regrets that it has not received the requested information on redress and compensation measures, including rehabilitation measures, ordered by the courts or other State bodies and actually provided to the victims of torture or ill-treatment since the consideration of the previous report (art. 14).

31. **The Committee would like to draw the State party's attention to its general comment No. 3 (2012) on the implementation of article 14 by States parties, which describes in detail the nature and scope of States parties' obligation to provide full redress and the means for full rehabilitation to victims of torture. In particular, the Committee urges the State party to:**

(a) **Provide all victims of torture or ill-treatment with full redress for the harm they have suffered, which should include fair and adequate compensation and the fullest possible rehabilitation;**

(b) **Supply updated information on redress and compensation provided to victims of torture or their families.**

Enforced disappearance

32. The Committee notes with concern the lack of significant progress in the search for and identification of the remains of persons who disappeared under the military dictatorship. While grateful for the information provided by the delegation on the compensation awarded in the cases of Ricardo Baena, Heliodoro Portugal and Rita Wald, the Committee regrets that it has not received comprehensive information on redress and compensation measures ordered by the courts or other State bodies in favour of families of disappeared persons since the consideration of the previous report (arts. 2, 12, 13, 14 and 16).

33. **The State party should take appropriate measures to ensure effective and impartial investigations into all outstanding cases of alleged enforced disappearance, prosecute and, where appropriate, punish the perpetrators and provide compensation to the families of the victims.**

Coerced confessions

34. While noting the provisions of the Code of Criminal Procedure on the inadmissibility of evidence obtained through torture, threats or violations of fundamental rights, the Committee regrets that the State party has not provided information on decisions taken by the courts whereby confessions obtained under torture were declared inadmissible as evidence (art. 15).

35. **The State party should adopt effective measures that guarantee in practice the inadmissibility of coerced confessions or statements, except when invoked against a person accused of torture as evidence that the statement was made. The State party should also expand vocational training programmes for judges and prosecutors so as to ensure their ability to effectively identify torture and ill-treatment and investigate all allegations of such acts.**

Asylum and non-refoulement

36. While taking note of the ongoing work to amend Executive Decree No. 23 of 10 February 1998, which regulates the submission and processing of applications for refugee status, the Committee remains concerned at the high percentage of asylum claims that are declared inadmissible (about 98 per cent). It is also concerned at reports that the State party might be endangering asylum seekers by denying them access to its territory and to the procedure for determining refugee status at airport border posts and at the frontiers with Colombia and Costa Rica. Lastly, the Committee regrets that the State party has not provided the requested information on the number of asylum requests granted on the grounds that the applicants had been tortured or might be tortured if they were returned to their country of origin, or on the number of persons returned, extradited or expelled since the consideration of the previous periodic report; nor has it listed the countries to which these persons were returned (art. 3).

37. **The State party should:**

(a) **Ensure that no one may be expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would run a personal and foreseeable risk of being subjected to torture;**

(b) **Guarantee access to the procedure for determining refugee status and to the right to an effective remedy in which appeals are considered by an authority independent of the one that took the initial decision.**

Universal jurisdiction

38. The Committee is concerned that article 19 of the Criminal Code limits the exercise of universal jurisdiction for acts of torture to cases where such acts have been committed in a widespread and systematic manner (arts. 5 and 8).

39. **The State party should, in accordance with article 5 (2) of the Convention, take legislative and other measures necessary to establish its jurisdiction over crimes of torture and other related offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him or her.**

Gender-based violence

40. The Committee notes with concern that the number of reported cases of domestic violence has increased sharply in recent years. It is also concerned that few court convictions were secured for femicide, sexual violence and other forms of violence against women during the period under review (arts. 2, 12, 13 and 16).

41. **The Committee encourages the State party to redouble its efforts to combat all forms of gender-based violence and to ensure that all complaints are thoroughly investigated and that suspected offenders are prosecuted and, if convicted, punished appropriately. The State party should also ensure that victims receive full redress for the harm suffered, including fair and adequate compensation and the fullest rehabilitation possible. It should also provide mandatory training on the prosecution of gender-based violence to law enforcement and justice officials and continue awareness-raising campaigns on all forms of violence against women.**

Ill-treatment of persons with disabilities and older persons

42. The Committee expresses concern over reports of degrading treatment suffered by persons with disabilities and older persons placed in residential institutions (“homes”). It regrets the lack of information from the State party regarding the investigation into the death of a person with tetraplegia and five other residents of the same establishment within a short space of time (arts. 2, 12, 13 and 16).

43. **The Committee urges the State party to investigate allegations of ill-treatment of persons with disabilities and older persons in residential institutions and all cases of sudden deaths occurring in residential settings.**

Violence and arbitrary detention on grounds of sexual orientation or gender identity

44. The Committee is troubled by reports alleging that transgender persons are subjected to ill-treatment, extortion and arbitrary detention by members of the National Police (arts. 2, 12, 13 and 16).

45. **The State party should ensure the personal safety of transgender persons in all spheres, including in places of detention. It should also ensure that assaults motivated by a person’s sexual orientation or gender identity are investigated and the persons responsible brought to justice.**

Indigenous justice

46. The Committee expresses its concern at the use of punishment devices such as the *cepo* (the stocks) for the application of penalties in the administration of indigenous justice (arts. 2 and 16).

47. **The State party should take the necessary measures to ensure that indigenous justice is administered with full respect for human rights, including the prohibition of torture and cruel, inhuman or degrading treatment or punishment.**

Corporal punishment of children

48. The Committee takes note of the work of the National Intersectoral Committee for the Prevention of Violence against Children and Young Persons, but notes with concern

that the State party does not yet have specific legislation expressly prohibiting corporal punishment in all circumstances (art. 16).

49. **The State party should equip itself with a body of legislation prohibiting corporal punishment of children in all circumstances, undertake campaigns to raise public awareness about its harmful effects and promote positive non-violent forms of discipline as alternatives to corporal punishment.**

Follow-up procedure

50. **The Committee requests the State party to provide, by 11 August 2018, information on the follow-up given to the Committee's recommendations on fundamental legal safeguards, deaths in custody and the national mechanism for the prevention of torture (see paras. 11, 21 and 27 above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.**

Other issues

51. The Committee encourages the State party to consider making the declaration under article 22 of the Convention recognizing the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction.

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

53. The Committee invites the State party to submit its fifth periodic report by 11 August 2021. To that end, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its fifth periodic report under article 19 of the Convention.
