

Committee against Torture

Concluding observations on the initial report of Viet Nam*

1. The Committee against Torture considered the initial report of Viet Nam (CAT/C/VNM/1) at its 1685th and 1688th meetings, held on 14 and 15 November 2018 (CAT/C/SR.1685 and CAT/C/SR.1688), and adopted the following concluding observations at its 1708th meeting (CAT/C/SR.1708) held on 29 November 2018.

A. Introduction

2. The Committee welcomes the dialogue with the State party's delegation and the oral and written replies provided to the concerns raised by the Committee.

B. Positive aspects

3. The Committee welcomes the State party's accession to and ratification of the following international instruments:

- (a) Convention on the Prevention and Punishment of the Crime of Genocide, on 11 August 1950;
- (b) Slavery Convention, on 14 August 1956;
- (c) Geneva Conventions, on 28 June 1957;
- (d) Additional Protocol I to the Geneva Conventions, on 19 October 1981;
- (e) Convention on the Elimination of All Forms of Discrimination against Women, on 17 February 1982;
- (f) International Convention on the Elimination of All Forms of Racial Discrimination, on 9 June 1982;
- (g) International Covenant on Civil and Political Rights and the Optional Protocol thereto, on 24 September 1982;
- (h) International Covenant on Economic, Social and Cultural Rights, on 24 September 1982;
- (i) Convention on the Rights of the Child, on 28 February 1990;
- (j) International Labour Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, on 19 December 2000;
- (k) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 20 December 2001;

* Adopted by the Committee at its sixty-fifth session (12 November-7 December 2018).

- (l) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 20 December 2001;
- (m) United Nations Convention against Corruption, on 19 August 2009;
- (n) Convention against Transnational Organized Crime, on 8 June 2012;
- (o) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (the Palermo Protocol), on 8 June 2012;
- (p) Convention on the Rights of Persons with Disabilities, on 5 February 2015.

4. The Committee welcomes the State party's initiatives to revise its legislation in areas of relevance to the Convention, including the adoption of:

- (a) The Law on Human Trafficking, which explicitly prohibits forced labour and sexual exploitation, in 2011;
- (b) The amendment to the Law on Vietnamese Nationality, which facilitates the acquisition of Vietnamese nationality by refugees and stateless persons, in 2014;
- (c) The amendment to the Law on Enforcement of Custody and Temporary Detention, which provides, *inter alia*, for the right to family visits and legal assistance, in particular during police investigations, in 2015;
- (d) The amendment to the Law on Legal Aid, which expanded the list of beneficiaries of legal aid, in 2017;
- (e) Amendments to the Criminal Code and the Criminal Procedure Code that, *inter alia*, provide for the right to access to counsel at all stages of criminal proceedings and broaden eligibility for free legal counsel; introduce the video and audio recording of interrogations of accused persons by investigation authorities in official premises; in 2015, with entry into force on 1 January 2018.

5. The Committee also welcomes the initiatives of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including the:

- (a) Development of the National Action Plan on Human Trafficking (2011-2015);
- (b) Development of the Project on the popularization by the Ministry of Justice of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the organization of training courses for staff in charge of the legal dissemination and education related to human rights in general and the right not to be subjected to torture in particular, in 2015;
- (c) Establishment of Family and Juvenile Tribunals in Ho Chi Minh City and in Dong Thap Province under the 2014 Law on Organization of People's Courts (arts. 30, 38 and 45), in 2016;
- (d) Dissemination by the Ministry of Information and Communication of information at workshops and conferences on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment organized by the Ministry of Foreign Affairs in 2014 and the Ministry of Public Security in 2016.

C. Principal subjects of concern and recommendations

Definition and criminalization of torture in national legislation

6. While noting that the right not to be subjected to torture and various offences such as applying corporal punishment and obtainment of testimony by duress that amount to torture are enshrined in the Constitution and other domestic laws, the Committee is concerned that the State party's criminal legislation, and in particular the amended Criminal Code, do not criminalize torture in a separate provision specifically prohibiting this crime. It is also concerned at the absence of a definition of torture in national legislation. In addition, the Committee is concerned at reports that committing acts of torture at the instigation of or with

the consent or acquiescence of a public official or other person acting in an official capacity, as outlined in article 1 of the Convention, is not covered adequately in the laws of the State party (arts. 1, 2 and 4).

7. **The State party should:**

(a) **Amend national legislation, including the 2015 Criminal Code, in order to introduce and explicitly criminalize acts of torture;**

(b) **Introduce a definition of torture that includes all the elements set out in article 1 of the Convention. In that regard, the Committee draws attention to its general comment No. 2 (2007) on the implementation of article 2 of the Convention by State parties, in which it states that serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity (para. 9).**

Punishment for the crime of torture and impunity

8. While taking note that article 27 of the 2015 Criminal Code provides for 5 years of imprisonment for less serious crimes; 10 years for serious crimes; 15 years for very serious crimes; and 20 years for especially serious crimes, the Committee is concerned that these punishments concern offences in general as well as torture offences whose definitions are contained in different articles and are vague. It is also concerned that article 373 of the Criminal Code on "The Use of torture" states that "Any person who, in the course of proceedings, trial, or implementing of measures including mandatory attendance at a correctional institution or rehabilitation centre, uses torture or brutally treats or insults another person in any shape or form shall face a penalty of 06–36 months of imprisonment", without aggravating circumstances, which means that a person committing acts of torture in correctional and rehabilitation institutions can actually be penalized by as little as 6 months of imprisonment. (arts. 1, 2 and 4).

9. **The State party should:**

(a) **Ensure that both the crime of torture and the attempt to commit such a crime are punishable with appropriate penalties that are commensurate with the gravity of their nature, as set out in article 4 (2) of the Convention, regardless of whether there are aggravating circumstances;**

(b) **Provide information to the Committee whether the coming into force on 1 January 2018 of amendments to the Criminal Code has resulted in a larger number of cases of torture for prosecution and whether further amendments to the Criminal Code are envisaged in order to provide a simpler and clearer basis for the prosecution of torture.**

Statute of limitations for the crime of torture

10. The Committee is concerned that less serious crimes have a statute of limitations of 5 years while especially serious crimes have a statute of limitations of 20 years, which may encompass acts of torture, result in impunity and be in violation of the Convention (arts. 1, 2 and 4).

11. **The State party should amend the Criminal Code in order to ensure that there is no statute of limitations for the crime of torture and that all acts of torture may be prosecuted and punished independently of the time that has passed since the crime was committed. The law should also be amended so that the granting of amnesty and pardon is inadmissible when torture offences are concerned.**

Superior orders and complicity in acts of torture

12. The Committee is concerned:

(a) That the Law on the People's Public Security Forces; the Law on Viet Nam People's Army Officers and the Law on Cadres and Civil Servants, stipulate that officers have the responsibility to strictly implement the directions, directives and orders of their superiors, while at the same time bearing no responsibility for the consequences of the

execution of such orders, which they have to promptly report to the immediate superiors or higher authority of the order issuers, if they have grounds to believe that such orders are unlawful;

(b) That the Criminal Code stipulates that the accomplice shall not take responsibility for unjustified force used by the perpetrator while accomplices comprise of organizer, perpetrator, instigator or abettor and that a person who has complicity acts or participation in torture-characterized offences and related offences must take criminal responsibility for his/her crime on the basis of nature and degree of participation, which may amount to the person who ordered the torture not being prosecuted.

13. The State party should:

(a) Ensure that the principle of the absolute prohibition of torture is incorporated in its legislation and is strictly applied in practice, in accordance with article 2 (2) of the Convention;

(b) Ensure that national legislation covers specifically complicity in acts of torture that would allow to establish criminal responsibility on the basis of the nature and degree of participation in acts of torture, including with regard to the organizer, instigator or abettor; as well as in cases when the persons concerned are not public officials but acting by or at their instigation, with their consent or acquiescence;

(c) Ensure that the principle of command or superior responsibility for acts of torture committed by subordinates is recognized in domestic laws;

(d) Ensure the protection of subordinates against reprisal and retaliation by superior officers for subordinates who refuse to obey orders in violation of the Convention, including by establishing a specific protection mechanism;

(e) Ensure that all persons found guilty of committing acts of torture are subjected to criminal prosecution, and not only disciplinary measures, which are commensurate to the gravity of the crime committed;

(f) Ensure, in keeping with article 2 (3) of the Convention, that an order from a superior-ranking officer may not be invoked to justify torture, and guarantee in practice the right of all law enforcement officials, military personnel and civil servants to refuse to execute, as subordinates, an order from their superior officers that would result in a violation of the Convention.

Allegations of torture and ill-treatment

14. The Committee is seriously concerned at:

(a) Allegations of the widespread use of torture and ill-treatment, in particular in police stations, but also in other places where persons are deprived of their liberty;

(b) Reports that the overwhelming majority of reported cases of torture take place in police stations, in order to extract confessions or information to be used in criminal proceedings, and that they sometimes result in deaths in custody only hours after apprehension;

(c) Reports that medical doctors have participated in the physical abuse of detained persons in order to force them to confess or have denied them medical care;

(d) The low number of investigations and prosecutions of cases of torture and ill-treatment; that only 10 cases of torture had been brought before domestic courts between 2010 and 2105;

(e) Reports of reprisals against victims or their relatives when they complain about acts of torture (arts. 2, 12, 13 and 16).

15. The State party should:

(a) Acknowledge and publicly unequivocally condemn at the highest level all acts of torture and ill-treatment of all persons deprived of their liberty;

(b) Ensure that investigations are systematically carried out, that perpetrators are prosecuted and convicted in accordance with the gravity of their acts, in keeping with article 4 of the Convention, and that victims are afforded appropriate redress;

(c) Establish an independent mechanism to exercise oversight over the police and other relevant authorities so that there is no institutional or hierarchical connection between the investigators and the alleged perpetrators, and ensure that all persons under investigation for having committed acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation, while ensuring that the principle of presumption of innocence is observed;

(d) Prosecute and punish medical doctors who participate in physical abuse of detained persons or deny them medical care;

(e) Ensure that medical doctors receive mandatory training on the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, and in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(f) Establish a database on the number of investigations, prosecutions, convictions, sanctions and compensation granted to victims of torture and members of their families, and report these figures to the Committee in its next report.

Fundamental legal safeguards

16. While noting that the amendments to the Criminal Procedure Code have resulted in improvements regarding the right of persons deprived of their liberty such as the introduction of the principle of presumption of innocence; the right to remain silent; access to legal counsel, and to present evidence independently from the Government, the Committee is concerned at reports that detained persons do not enjoy all fundamental legal safeguards in practice. This includes the right to be informed of the reasons for the arrest or detention; to contact family members or other persons of their choice about their detention; the right to request and receive a medical examination by an independent doctor; have prompt access to legal counsel or legal aid; and have their detention recorded in a register. In that context, the Committee is gravely concerned that persons accused of offences relating to national security are not afforded in practice legal safeguards, such as the right to legal counsel and to contact their family, which amounts to incommunicado detention (art. 2).

17. The State party should:

(a) Guarantee that all detained persons are afforded, in law and in practice, all fundamental legal safeguards from the very outset of their deprivation of liberty, including the right to be informed immediately of the charges against them; have prompt access to a lawyer or to free legal aid during all proceedings;; are able to notify a relative or another person of their choice about their detention or arrest; the right to request and receive a medical examination from an independent doctor, including by a doctor of their choice upon request; and to have their deprivation of liberty recorded in registers at all stages;

(b) Establish a central register of detention regarding all persons at all stages of their deprivation of liberty, including transfers to different facilities, inform the Committee on the type of information recorded and on specific measures taken to ensure accurate record-keeping as an important safeguard against incommunicado detention and enforced disappearance;

(c) Monitor the compliance by all public officials with the fundamental legal safeguards, investigate, prosecute and penalize any failure on part of officials to comply;

(d) Provide information on the number of complaints received regarding failure to respect fundamental legal safeguards and on the outcome of such complaints since the entry into force of the amended Criminal Procedure Code.

Direct application of the Convention by domestic courts

18. While noting that in case of conflict of domestic legal normative documents and an international treaty to which Viet Nam is a party, the international treaty shall be applied, except for the Constitution, the Committee is concerned that, in the absence of implementing legislation, the Convention is not a treaty that can be directly applied by the domestic courts (arts. 2, 4 and 12).

19. The State party should:

(a) Amend its legislation in order to ensure the full and direct applicability of the relevant provisions of the Convention in national legislation so that it can be invoked in national courts;

(b) Widely disseminate the Convention in the State party to all officials concerned, in all official and other relevant languages.

Excessive use of force and deaths in custody

20. The Committee is concerned at:

(a) Reports that deaths in custody in facilities run by the police are prevalent in the State party. It is concerned in particular about the documented 14 cases of death in custody in the period 2010-2014 due to police violence; 4 cases of unexplained death in police custody; 9 cases of death in custody allegedly attributed either to suicide or illness even when visible signs or proof of torture and ill-treatment exist, as well as at reports that the actual number of such cases may be much higher. As an illustration, a minor, 17 year-old Do Dang Du reportedly died in custody on 5 February 2015 as a result of severe injuries to the head and body while in police custody in Chuong My district, Hanoi, for a “less serious” offence, by three of his teenage cellmates who were allegedly instructed with carrying out the assault on Do Dang Du;

(b) The reported excessive use of force by the police, including severe ill-treatment and humiliation, during the dispersal of demonstrations in June 2018 (2, 10, 11, 12, 13, 14 and 16).

21. The State party should:

(a) Ensure that all alleged cases of deaths in custody and complaints of excessive use of force, both in premises of institutions and on the street, are promptly, effectively and impartially investigated by an independent mechanism with no institutional or hierarchical connection between the investigators and alleged perpetrators;

(b) Ensure that alleged perpetrators of torture and ill-treatment and deaths in custody are immediately suspended from duty for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act; and that, if found guilty, ensure that the perpetrators are punished in a manner that is commensurate with the gravity of their acts;

(c) Elucidate the death in police custody of Do Dang Du and inform the Committee about the outcome;

(d) Take preventive measures, including the establishing an oversight mechanism, to ensure that police officers use force while respecting the principles of necessity and proportionality required by the situation and that they receive mandatory training on the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and on the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);

(e) Establish an independent police complaints commission with which citizens can file complaints against the police;

(f) Ensure that redress and rehabilitation, including medical and psychological assistance, are provided to all victims of torture and ill-treatment, and that redress is provided to the families of the deceased;

(g) Collect and provide to the Committee comprehensive statistical information at the national level on the number of deaths in custody, disaggregated by place of deprivation of liberty, sex, age, ethnicity or nationality of the deceased, the cause of death, and on the outcomes of their investigations during the period under review, as well as on any redress provided to relatives.

Disproportionate detention of members of religious and ethnic communities

22. The Committee is concerned:

(a) At the reported disproportionate number of detentions and the high number of deaths in custody of members of ethnic and religious minorities as a result of torture and ill-treatment in police stations and other places of deprivation of liberty, in particular of those living in remote areas of the country;

(b) At the treatment of persons associated with minority religious or ethnic communities, and their subsequent suspicious deaths in custody, as is the case with: Buddhist Nguyen Huu Tan who was detained and subsequently died while the police alleged suicide, with no independent investigation of the death and whose family was subjected to reprisals from the local police after complaining to the authorities; Hmong Christian Ma Seo Sung who was arrested and detained by the police and allegedly also committed suicide by hanging, and whose family also received threats of reprisals; pastor Ksor Xiem of the Motagnard evangelical church, who died of injuries sustained in police custody; and Montagnard Christian Y Ku Knul who died while under arrest and whose body showed signs of electric shocks;

(c) About the situation of leaders of the Unified Buddhist Church of Vietnam such as Thich Quang Do who is allegedly under house arrest in a monastery (arts. 1, 2, 11, 12, 13, 14 and 16).

23. **The State party should:**

(a) **Ensure that the treatment of members of religious and ethnic communities by public officials or other persons acting in an official capacity in contravention of the Convention is not based on discrimination of any kind;**

(b) **Ensure that all alleged cases of torture and ill-treatment by law enforcement officials; deaths in custody and complaints of excessive use of force are promptly, effectively and impartially investigated; that alleged perpetrators are immediately suspended from duty for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act; and that, if found guilty, the perpetrators are punished with sentences commensurate with the gravity of their crime;**

(c) **Elucidate the deaths of in police custody of Buddhist Nguyen Huu Tan, Hmong Christian Ma Seo Sung, pastor Ksor Xiem of the Motagnard evangelical church, and Montagnard Christian Y Ku Knul, and inform the Committee about the outcome;**

(d) **Provide updated information regarding the situation of Thich Quang Do, a leader of the Unified Buddhist Church of Vietnam.**

Pre-trial detention

24. The Committee is concerned:

(a) **The frequent and prolonged use of pre-trial detention;**

(b) **That while the time limit for temporary detention of suspects for investigation shall not exceed 2 months, 3 months and 4 months for, respectively, less serious; serious; and very serious and especially serious offences, these periods of pre-trial detention can be extended and that suspects held in pre-trial detention, in**

particular those accused of national security infringements, may in practice be held incommunicado and for much longer periods;

(c) That the Criminal Procedure Code does not provide for appeal of pre-trial detention decisions nor does it allow for their legality to be reviewed by a court of law (arts. 2, 11 and 16).

25. The State party should:

(a) Take all necessary measures to ensure that pre-trial detention is closely monitored so that it does not become a systematic and widespread practice and is not arbitrary prolonged and in cases of allegedly national security does not result in incommunicado detention;

(b) Amend the Criminal Procedure Code in order to provide the possibility to appeal pre-trial detention decisions and for pre-trial detention decisions to be reviewed by a court of law;

(c) Monitor the use of pre-trial detention; ensure that pre-trial detainees are held separately from convicts, that juveniles are not held with adults; and ensure that it is used as a measure of last resort;

(d) Promote alternatives to pre-trial detention, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules).

Administrative detention

26. The Committee is concerned that persons considered as a threat to security, social order or public safety but who are not subject to penal liability may be detained administratively, without trial, in administrative detention facilities, including compulsory education facilities, reformatory schools, social protection centres and compulsory detoxification centres. It is particularly concerned at reports that fundamental legal safeguards such as access to legal counsel and notification of family members do not apply to these detainees and that they do not have the same conditions of detention as other persons deprived of their liberty, including in some institutions the obligation to work many hours. The Committee is also concerned that persons in such facilities can be held without a trial for several years, which may amount to incommunicado detention. (arts. 2, 11 and 16)

27. The Committee recommends that the State party:

(a) Provide information on the number and type of facilities and institutions where persons are held in administrative detention without trial, as well as on the number and profile of the persons detained;

(b) Ensure that persons in administrative detention enjoy fundamental legal safeguards such as access to a lawyer or legal aid, the right to notify their family about their detention; and that their conditions of detention and treatment are not inferior to those of other persons deprived of their liberty;

(c) Introduce a judicial, and not only administrative, process for placing people in such institutions and ensure that administrative detention there is not used as a surrogate for ordinary criminal detention;

(d) Ensure that all persons held in administrative detention have the right to appeal their placement in administrative detention institutions.

Inadmissibility of statements made as a result of torture

28. While noting the recent changes in legislation, the Committee is gravely concerned at reports of widespread practice of torture and ill-treatment of persons deprived of their liberty with a view to extracting confessions and other information from them. It is also concerned at the information that from 2010 to 2015, People's Courts had not handled any cases regarding the obtainment of testimony by duress and bribing or forcing another person to give false testimony or provide false documents. The Committee is also concerned at reports that some detained persons are forced to sign statements previously prepared by the relevant state officials as well as to read confessions in public, and that some prosecutors and

examining judges reportedly do not investigate allegations of torture and ill-treatment . Lastly, the Committee is concerned that confessions resulting from torture of suspects have reportedly resulted in sentences that include the death penalty (arts. 2 and 15).

29. The State party should:

(a) Amend national legislation, including the Code of Criminal Procedure, in order to ensure, in law and practice, that any statement resulting from torture or cruel, inhuman or degrading treatment is not invoked as evidence in court, except against the persons who carried out those acts;

(b) Ensure that courts dismiss in practice all cases in which evidence was obtained as a result of torture; and that prosecutors and judges investigate and prosecute all such allegations of torture and ill-treatment;

(c) Prosecute and punish all officials who may have allowed evidence to be obtained as a result of torture, including persons providing false testimony and false documents;

(d) Ensure that all law enforcement, investigative, judiciary and medical officials are fully aware of the Convention's provisions regarding the inadmissibility of coerced confessions in court;

(e) Inform the Committee about all cases that were dismissed in court because evidence was obtained as a result of torture during the period under review.

Conditions of detention

30. The Committee is concerned at reports about:

(a) A dramatic increase over the last decades in the incarceration rate and the prison population in the State party;

(b) Material conditions in penitentiary facilities that do not meet the minimum international standards, such as the absence of adequate sanitary and hygiene facilities, insufficient lighting and ventilation, insufficient quality and quantity of food, lack of physical exercise outdoors, inadequate health care and severe overcrowding, all of which taken together may amount to ill-treatment or even torture; some of which are reported to be maintained deliberately as additional punishment of inmates;

(c) The use of "security rooms" and "disciplinary rooms" where prisoners can be isolated in solitary confinement or small groups for up to three months ; with reported use of corporal punishment, shackling, and harsh disciplinary measures against inmates by prison officials or other prisoners who act under their instructions;

(d) Restricted communication with family; punitive transfers, including multiple transfers, of certain prisoners between detention facilities so that they are far away from their families, and without informing their families about the transfers; stealing by prison staff of food, medicine and personal items sent to prisoners by their families;

(e) Poor medical care; negligence; and deliberate withholding of medical treatment by the medical staff in prisons; non-separation of healthy prisoners from those with contagious diseases; and the lack of independence of doctors who are employed by the penitentiary authorities;

(f) Subjecting dissident prisoners to psychological torture and the administering of unspecified drugs and medication with adverse effects;

(g) Subjecting prisoners to labour in manufacture and agriculture as well as hazardous industries such as the processing of cashew nuts (arts. 2, 11 and 16).

31. The State party should:

(a) Urgently take all necessary measures to improve material conditions in all places of deprivation of liberty, including overcrowding, in keeping with the Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules); and consider using alternatives to imprisonment in conformity with the United Nations Standard

Minimum Rules for Non-custodial Measures (the Tokyo Rules) in order to decrease the prison population;

(b) Abolish the practice of using poor conditions of detention as additional punishment of inmates; and ensure that death row prisoners are subjected to the same regime as other inmates;

(c) Establish strict rules for the use of “security rooms” and “disciplinary rooms” and refrain from corporal punishment, shackling, and harsh disciplinary measures; and inform prison staff that they and prisoners acting under their instructions will be held accountable for committing acts of ill-treatment and torture;

(d) Avoid using punitive transfers to separate prisoners from their families;

(e) Ensure sufficient numbers and capacity of prison staff to manage penitentiary institutions; ensure by means of rigorous stock-management that they do not steal food and personal items sent to prisoners by their families; and ensure that prisoners receive adequate medical care and medication, without the prison staff deliberately withholding the medication sent by their families;

(f) Hire additional medical doctors and nurses who are competent and committed to carrying out their jobs; and ensure prompt referrals and ambulances for specialist health care outside detention facilities;

(g) Ensure that prison medical staff do not deliberately withhold medical treatment and neglect and ensure the independence of the doctors employed by penitentiary institutions;

(h) Prevent prisoners from contracting infectious diseases during their imprisonment, including by separating healthy prisoners from those suffering from severe contagious diseases;

(i) Introduce health screening of inmates upon admission to places of detention, including ensuring the early identification of cases of ill-treatment and torture; take steps to provide adequate treatment to persons infected with HIV/AIDS, hepatitis and tuberculosis, as well to persons with psychosocial disabilities;

(j) Ensure that no prisoner, including dissident prisoners, are subjected to torture and the administering of unspecified drugs and medication with adverse effects on their health.

Prisoners on death row

32. The Committee is concerned about reports of the physical and psychological suffering of persons sentenced to the death penalty as a result of their particularly harsh conditions of detention that may amount to torture or ill-treatment, including solitary confinement in unventilated cells; inadequate food and drink; being shackled round-the-clock; being subjected to physical abuse; and who often commit suicide and develop psychological disorders as a result (arts. 2, 11 and 16).

33. The State party should take urgent measures to render equivalent the material conditions of detention of persons sentenced to death in line with the Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), including access to adequate food and drink, meaningful social contacts, without restraints and protected against physical abuse.

Monitoring places of detention

34. The Committee is concerned that the State party has not established a national system to independently monitor and inspect all places of detention and receive complaints. Furthermore, the Committee is concerned at the absence of visits by international organizations including the lack of access to prisons by the International Committee of the Red Cross (arts. 2, 11, 12, 13 and 16).

35. The State party should:

(a) Consider acceding to the Optional Protocol to the Convention against Torture;

(b) In the meantime: Establish a national mechanism that independently, effectively and regularly monitors and inspects all places of detention without prior notice; Which is able to meet in private with detainees and receive complaints; Which has institutional independence; And which reports publicly on its findings and is able to raise detention conditions or conduct in places of detention amounting to torture or ill-treatment with the authorities;

(c) Grant access to independent organizations, in particular ICRC, to all detention facilities in the country.

Corporal punishment of children

36. The Committee is concerned that corporal punishment of children is not prohibited in the home, in alternative care and in day care settings (arts. 2 and 16).

37. The Committee recommends that the State party amend its legislation to expressly prohibit corporal punishment of children in all settings, including in the home and in particular in public institutions, through acts or omissions by State agents and others who engage the State's responsibility under the Convention. In that context, it invites the State party to include a provision on the prohibition of corporal punishment in all settings in the draft amendments to the Law on the Protection, Care and Education of Children.

Expulsion, asylum and diplomatic assurances

38. The Committee is concerned that the State party does not have specific provisions in its legislation concerning non-expulsion of persons who are criminally or administratively deported when there is ground to believe that the deported persons may be subjected to torture in the country of return, which may result in a violation of the Convention and the principle of non-refoulement. Furthermore, it also concerned that the State party does not have a law addressing asylum or a system of protection for refugees. Lastly the Committee is concerned that the State party has accepted diplomatic assurances in such cases (art. 3).

39. The State party should:

(a) Enact asylum legislation and establish a functioning national asylum system that provides for fair and effective refugee status determination procedures, in line with international standards;

(b) Designate or establish a Government agency responsible for receiving and processing claims from asylum-seekers and other persons who may require international protection;

(c) Request the support of the Office of the United Nations High Commissioner for Refugees (UNHCR) to provide training in relation to refugee law and on refugee status determination procedures;

(d) Comply with its non-refoulement obligations under article 3 of the Convention by ensuring the proper assessment of persons who are criminally or administratively deported before proceeding with expulsions or deportations in order to prevent them from returning to countries where they may risk being subjected to torture;

(e) Thoroughly examine the merits of each individual case for deportation, including the overall situation with regard to torture in the country concerned.

Training and instructions

40. While taking note that discrepancies exist regarding the legal and professional capacities of public officers; and that competent authorities have certain problems in managing and training cadres, the Committee is concerned at the serious absence of investigative skills and capacity of public officials given the reported prevalence and high

incidence of coerced confessions and suspicious deaths in custody. It is also concerned that specific training on the provisions of the Convention, and in particular the absolute prohibition of torture, is not part of the training of public officials such as police and law-enforcement officers, investigators, judicial personnel, military officers and prison staff. In addition, the Committee is concerned that the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is not part of the mandatory training provided to medical personnel and other persons in the custody, interrogation or treatment of persons subjected to any form of arrest, detention or imprisonment (art. 10).

41. The State party should:

(a) Ensure that police and law-enforcement officers, investigators, judicial personnel, military officers and prison staff receive training and instructions on the provisions of the Convention, and in particular on the absolute prohibition of torture;

(b) Provide specific training to investigators on the use non-coercive methods of investigation and interrogation that comply with international standards, so that they avoid committing acts that may amount to torture;

(c) Communicate that breaches of the Convention will not be tolerated and that such breaches will be investigated and perpetrators prosecuted;

(d) Ensure that medical personnel and other persons involved with the custody, interrogation or treatment of persons subjected to any form of arrest, detention or imprisonment receive mandatory training on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);

(e) Develop and implement a methodology to assess the effectiveness and impact of any such training.

Data collection

42. The Committee urges the State party to establish an effective system for collecting statistical data at the national level, which should include information about complaints, investigations, prosecutions, trials and convictions in cases of torture or ill-treatment; about measures of redress, particularly compensation and rehabilitation, provided for victims or their relatives; on the use of the death penalty and number of prisoners on death row; on the overall prison population, including the number of unsentenced detainees; and on trafficking in persons, disaggregated by sex, age, ethnicity or nationality, location, socio-economic and other relevant status.

Follow-up procedure

43. The Committee requests the State party to provide, by 7 December 2019, information on follow-up to the Committee's recommendations on investigating all cases of excessive use of force, including cases of torture and ill-treatment by law enforcement officials and deaths in custody; on establishing a central register of detention regarding all persons at all stages of their deprivation of liberty; on prosecuting and punishing all officials who may have allowed evidence to be obtained as a result of torture, including persons providing false testimony and false documents; (see paras. 21 (a), 17 (b), and 29 (c)). In the same 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

44. The Committee invites the State party consider making the declarations envisaged under articles 21 and 22 of the Convention and consider withdrawing any declaration that limits the scope of the Convention.

45. The Committee invites the State party to ratify the Optional Protocol to the Convention and any core United Nations human rights treaties to which it is not yet party.
46. The Committee recommends that the State party issues an invitation to the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention; and the Special Rapporteur on the situation of Human Rights Defenders to visit the country.
47. 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).
48. The Committee invites the State party to consider availing itself of the technical support, capacity-building and training offered by OHCHR, and where relevant, by UNHCR.
49. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations and to inform the Committee about its disseminating activities.
50. The Committee invites the State party to submit its next periodic report, which will be its second periodic report, by 7 December 2022. To that end, it invites the State party to agree, by 7 December 2019, to avail itself of the simplified reporting procedure in preparing that report. Under that procedure, the Committee will 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 second periodic report under article 19 of the Convention.
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