

## OMCT E-Bulletin – December 2015

56<sup>th</sup> session of the Committee Against Torture

This E-Bulletin is published within the framework of OMCT's "Global CAT Civil Society Programme" launched in 2014 to mobilise and coordinate activities of civil society organisations (CSOs) in relation to the Convention Against Torture and its Committee (CAT). We facilitate civil society engagement by building coalitions, sharing information, ensuring timely and effective report submissions, advising on advocacy opportunities and supporting effective access to the CAT during the private NGO briefings. Find out more on our [website](#).

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### *Nothing can justify **torture** under any circumstances*

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During its 56<sup>th</sup> session (9 November-9 December 2015) the CAT considered the reports submitted by **Liechtenstein, Azerbaijan, Austria, Denmark, China-Hong-Kong-Macau and Jordan**. In accordance with Article 19 of the Convention Against Torture, every four years State Parties submit a report to the CAT on any new measures taken to give effect to their undertakings under the Convention. These reports are reviewed in public sessions, in which the respective **State Party** has a **constructive dialogue about their report with the CAT**. The day before the Considerations of the report, NGOs who have submitted an alternative report have the opportunity to meet for a **private NGO briefing with the CAT** to raise and discuss their concerns. At the end of each session, the CAT publishes its "concluding observations" with recommendations for each State reviewed, including issues for follow up within one year.



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## WHAT'S NEW

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### **Guidelines for Follow-Up to Concluding Observations**

The Committee adopted new guidelines for follow-up to concluding observations at its 55<sup>th</sup> session (27 July-14 August 2015). A working group composed of three CAT members had previously reviewed the procedure and presented proposals on ways to strengthen it and at the same time contribute to the harmonisation of the treaty bodies' methods of work. According to the new guidelines, a maximum of four recommendations should be selected for follow-up and formulated in such a way as to facilitate their implementation and monitoring. Moreover, States are encouraged to submit a voluntary implementation plan regarding all or some of the remaining recommendations included in the concluding observations and to prioritise and start implementation early on in the reporting cycle. The state party's follow-up report should be concise and not exceed 3,500 words. This also applies to follow-up reports by NGOs which are encouraged to submit information within three months of the deadline for submission by the State party concerned of its follow-up report as this allows for comments on the State party's report. The quality and extent of the information provided by States, the progress in implementing the recommendations selected for follow-up and the thoroughness of the implementation plan will be assessed using a grading system. Follow-up evaluations shall make up a part of the concluding observations of the next cycle in the sections "Positive aspects" and "Principle subjects of concern".

### **Guidelines on the Receipt and Handling of Allegations of Reprisals**

At its 55<sup>th</sup> session, the Committee also adopted the guidelines on the receipt and handling of allegations of reprisals against individuals and organisations cooperating with the CAT under Articles 13, 19, 20 and 22 of the Convention against Torture. These complement the previous decisions to establish a mechanism to prevent, monitor and follow up cases of reprisal against CSOs, human rights defenders, victims and witnesses engaging with the human rights treaty body system and the designation of rapporteurs on reprisals. Moreover, the CAT decided to follow the Guidelines against Intimidation or Reprisals ("San José Guidelines") adopted by the Chairs of the human rights treaty bodies at their 27<sup>th</sup> meeting held in San José (22-26 June 2015) in handling allegations of reprisals, thereby contributing to a joint treaty body policy against reprisals.

### **CAT Members' Elections 2015**

On 8 October 2015 new members were elected to the CAT and will replace those whose terms end on 31 December 2015. The new members include Mr. Abdelwahab Hani (Tunisia), Ms. Ana Racu (Moldova), Mr. Claude Heller Rouassant (Mexico) and Mr. Sebastian Touzé (France). The four current CAT members leaving by the end of the year include Mr. Claudio Grossman (the Chair since 2008 up to this session), Mr. George Tugushi, Mr. Satyabhoosun Gupt Domah and Mr. Abdoulaye Gaye. This brings the number of women on the CAT to four for this upcoming four-year cycle beginning on 1 January 2016.

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## OMCT SUBMISSION

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### Azerbaijan Alternative Report

The OMCT together with the International Partnership for Human Rights submitted an Alternative Report on Azerbaijan to the Committee Against Torture for its 56<sup>th</sup> session. This report was completed with the aid of domestic and international non-governmental organisation (NGO) representatives, lawyers and family members of detained Human Rights Defenders (HRDs). Taking its cue from the CAT's 2009 concluding observations on Azerbaijan, the report highlights the legal restrictions of the work of HRDs, the arbitrary detention and criminal prosecution of HRDs, the harassment of defence lawyers who represent HRDs as well as torture and ill treatment in detention to break HRDs.

Find the [full report on our website](#).

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## SUMMARY OF THE CAT STATE REVIEWS

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### Liechtenstein

#### Treatment of Persons Deprived of their Liberty

During the fourth periodic review of Liechtenstein, the Committee commended Liechtenstein for the absence of reports of any cases of torture since its accession to the Convention in 1990. However, the Committee was concerned with the conditions of detention in the State. While the Committee was aware that the State only has one prison with a capacity for only 20 inmates, for 17 men and 3 women, it expressed concern in view of an often sole female prisoner and the possibility that this may lead to a situation of unintended solitary confinement. Also given the prison's small size, the Committee questioned the instances of non-separation of different categories of detainees such as convicted prisoners and persons detained on remand. Moreover, the Committee was concerned about the absence of a full-time nurse and other medical personnel leading to prison personnel distributing medications to detainees breaching medical confidentiality. Other concerns brought to the attention of the State party were the tendency to overlook the vulnerability of asylum seeking women and girls and female migrants potentially leading to cases of human trafficking, the non-existence of a separate offence of torture in Liechtenstein's legislation as well as the lack of a national human rights institution.

Issues for follow-up are:

1. Definition of torture;
2. Treatment of persons deprived of their liberty;
3. Violence against women; and
4. Training.

Read more:

- [Concluding Observations](#)
- [Webcast](#)

## **Azerbaijan**

### **Arbitrary Imprisonment and Ill-treatment of Human Rights Defenders**

The fourth periodic review of Azerbaijan was peppered with questions regarding the imprisonment of HRDs. There have been numerous allegations that HRDs and their lawyers have been arbitrarily deprived of their liberty and have been subjected to ill treatment and denied adequate medical treatment as a result of their work in Azerbaijan. The Committee highlighted the cases of Rasul Jafarov, Ilgar Mammadov, Intigam Aliyev, Rashadat Akhudnov, Rashad Hassanov, Arif and Leyla Yunus. The Committee found the case of Leyla Yunus exceptionally shocking due to the insufficient medical treatment provided in light of her life threatening health problems.\* Apart from the situation of human rights defenders, the Committee was also appalled that there was not a single case of prosecution for torture related crimes in the State's judicial system. This led to questions concerning impunity in the State. The Committee wanted to know the reasons for not instituting legal proceedings in cases where public officials have allegedly committed acts of torture or ill-treatment. Other issues raised concerned the independence of the judiciary and the Ombudsman's office, the training of judges, material conditions, suicides and tuberculosis in prisons, access to lawyers, hazing in the Armed Forces, the juvenile justice system and the practice of forced marriage.

\* Both Arif and Leyla Yunus were recently released from prison: Arif Yunus was conditionally released on the second day of the Azerbaijan review and Leyla Yunus was released on probation on the last day of the Committee's session.

Issues for follow-up are:

1. Eradication of widespread torture and ill treatment;
2. Eradication of arbitrary imprisonment and alleged torture of human rights defenders;  
and
3. Ensuring the respect of fundamental legal safeguards.

Read more:

- [Concluding Observations](#)
- [Alternative Report](#)
- [Webcast](#)

## **Austria**

### **Detention Conditions and Police Conduct**

The sixth periodic review of Austria brought to the forefront the conditions in Austria's prisons and other places of detention. Concerns over the shortage of prison personnel, prison

overcrowding, lack of sufficient information provided on cases of deaths in custody, the length of stay in solitary confinement and reports of ill-treatment of minors in detention fuelled the dialogue between the Committee and the Austrian delegation. The delegation stated that there would be an expansion of detention centres to account for the overcrowding in prisons and that more information would be provided regarding deaths in custody once the investigations have been concluded. The delegation further noted that the State had created 130 new jobs in the penitentiary system to tackle the shortage of prison personnel.

The Committee further raised the issue of the use of tasers by the police force and recalled that the use of tasers should be strictly subject to the principles of necessity and proportionality and totally inadmissible in the equipment of custodial staff in prisons or any other place of detention. The under-representation of women and ethnic minorities in the police force (and correction system) and the lack of specific training on the Convention against Torture for members of the police force were also raised. Other issues discussed included the extremely low number of sentences handed down for torture and ill-treatment in comparison to the high number of allegations of torture, ill-treatment and other police misconduct, the treatment of unaccompanied minors and women migrants, and reports on cases of medical treatment to which intersex children would have been subjected without their informed consent.

Issues for follow-up are:

1. The presence of a lawyer during questioning;
2. Establishment of an independent mechanism to investigate allegations of torture and ill-treatment by law-enforcement officials;
3. Use of detention pending deportation;
4. Prompt thorough and impartial investigations of all allegations of acts of torture or ill treatment; and
5. Use of electrical discharge weapons in prison settings.

Read more:

- [Concluding Observations](#)
- [Webcast](#)

## **Denmark**

### **The Use of Solitary Confinement**

During the sixth and seventh periodic review of Denmark, the Committee reiterated its concern about the fact that torture does not exist as an offence *per se* in the Danish Penal Code and it recommended making torture a distinct offence in accordance with Articles 1 and 4 of the Convention. The Committee also recommended the incorporation of the Convention in the Danish law in order to be used in courts as a basis for a case.

Other concerns discussed during the dialogue were the conditions in the Danish prisons, in particular solitary confinement, the frequency of its use and its length. While Denmark had declared that since 2011 no person under the age of 18 has been put in solitary confinement,

the Committee expressed concern at the Danish Administration of Justice Act, which allows for the placement of a minor in solitary confinement for up to four weeks. The Committee recommended the abolishment of solitary confinement of minors and in general the limitation of the length of permissible solitary confinement to a maximum of 15 days instead of the eight weeks now permitted under the law for adults. Concerns regarding the lack of separation of women and men in prisons, as there are no prisons solely for women, and the placement of minors with adults were also discussed during the dialogue. Despite protection measures in place, the Committee emphasised that Denmark should be alert that these measures continue to protect minors placed with adults and women in mixed gender prisons against abuse and exploitation. The Committee further encouraged Denmark to undertake a study on both regimes, identifying the advantages and risks.

The Committee also expressed concern about the lack of a regular mechanism for the identification of torture victims and the lack of adequate medical examinations throughout the asylum process. Denmark was recommended to put in place procedures for systematic screening and medical examination of alleged torture victims by qualified personnel. Furthermore, victims of torture should not be held in places of deprivation of liberty and should have prompt access to rehabilitation services.

Issues of the follow up are:

1. Incorporation of the Convention in domestic law;
2. Deportation of vulnerable individuals;
3. Screening of and assistance to asylum-seekers victims of torture; and
4. Separation of convicts and remand prisoners.

Read more:

- [Concluding Observations](#)
- [Webcast](#)

## China

The fifth periodic review of China covered the mainland as well as the Hong Kong and Macao Special Administrative Regions.

### **China Mainland: Lack of Data and Shortcomings in the Judicial System**

The Committee noted some progress through the adoption of legislative and administrative measures and policies, including the 2012 amendments to the Criminal Procedure Law, incorporating the prohibition of using confessions obtained under torture as evidence in proceedings and requiring audio or video recording of interrogations in major criminal cases; the 2013 amendment to the Law on State Compensation, permitting the possibility of granting awards for psychological harm; and the abolition in 2014 of the “re-education through labour” (RTL) system of administrative detention. However, both during the dialogue and in its



concluding observations, the Committee voiced deep concern about an extensive list of subjects: The lack of a comprehensive definition of torture in Chinese legislation, the prolonged pre-trial detention permissible without charge of up to more than 30 days, the denial of the right to access a lawyer and to notify custody, the practice of residential surveillance at a designated location and the crackdown on defence lawyers and activists beginning in July of this year were just a few of the Committee's initial concerns. Moreover, the Committee reiterated its concern about the lacking independence of investigations of torture allegations and cases of death in custody as a result of torture or resulting from a lack of prompt medical treatment in detention. In this context, as well as in relation to various other aspects, the Committee emphasised that the information and statistical data provided by the state party were insufficient, if provided at all, and called for the declassification of information related to torture. In particular, the Committee requested statistical data about officials prosecuted for operating illegal detention facilities and respective outcomes, on detainees in isolation by duration, on penalties for those found guilty of torture and on the total number of torture related complaints received from all sources. Furthermore, the use of solitary confinement as a "management tool", the lack of an independent oversight body to monitor/inspect places of detention, the use of broadly-defined offences such as "picking quarrels and provoking trouble", crimes against ethnic minorities, forced repatriations to the Democratic People's Republic of Korea and the applicability of statutes of limitations to claims for redress made by victims of torture or ill-treatment against the state were all areas of concern of the Committee. The Committee was worried that the judicial system in China was not functioning well, leaving room for impunity, and reminded China that while it is good to have legal provisions, their implementation in practice is paramount. China appreciated the Committee's interest in follow-up on specific cases, but said it proved difficult to provide complete information in short time. Moreover, it asserted that new provisions on "disruption of court order" are not intended to restrict rights of human rights defenders and denied the occurrence of torture in interrogation chairs.

Issues for follow-up are:

1. Restrictions to the rights to access a lawyer and to notify custody;
2. Reported crackdown on lawyers and activists;
3. Independence of the investigations of torture allegations; and
4. State secret provisions and lack of data.

### **Hong Kong Special Administrative Region: Excessive Use of Force when Containing Demonstrations**

Turning to Hong Kong, the Committee was concerned about the reports of excessive use of force during the 79 day protest of the "Umbrella or Occupy Movement" in 2014. The Committee was appalled at the reports of the use of tear gas, batons and sprays against protesters and reports that police resorted to violence against more than 1,500 people out of which more than 500 were subsequently admitted into hospitals. The Committee members

also wondered whether investigations had been carried out concerning alleged law enforcement behaviour during the Umbrella Movement. Moreover, the Committee expressed concern about reports of violence perpetrated by counter demonstrators during the protest. Another issue examined was that of transgender persons required to have completed sex reassignment surgery in order to obtain legal recognition of their identity. Although the Committee commended the establishment of the Inter-Departmental Working Group on Gender Recognition, it remained concerned about reports on the long-term physical and psychological damage caused. Similar concerns were expressed with regard to the forced surgery of intersex children to determine their sex at a very young age. Other issues raised include the provision of fundamental legal safeguards to detainees, the exploitation of migrant workers and forced labour, the length of stay in solitary confinement and the use of mechanical restraint.

Issues for follow-up are:

1. Non-refoulement procedures;
2. Establishment of an independent national preventive mechanism; and
3. Ensuring the respect of fundamental legal safeguards.

### **Macao Special Administrative Region: Ensuring Prompt, Impartial And Independent Investigations**

As for Macao, the Committee was concerned about its failure to provide training for health care professionals on identification and documentation of cases of torture in spite of the Committee's respective previous recommendation. Moreover, the Committee was worried about the use and length of solitary confinement, including the lack of a prohibition of its use for juveniles, despite progress being reported by the State delegation. Another issue of concern was the very low number of prosecutions and convictions of offenders of trafficking and the few cases of forced labour registered, in spite of the large number of complaints, as well as the lack of a specific programme to address the problem of child sex tourism, even though more than half of the victims were under 18 years of age. The Committee called upon Macao to include a definition of torture in the Criminal Code that fully conforms with the Convention during the upcoming review of the legislative provisions dealing with the crime of torture and recommended that the crime of torture should constitute a single offence subject to the relevant aggravating circumstances. The Committee was also very concerned about the conflict of interests given that inquiries into complaints of unlawful acts, including torture or ill-treatment, committed by the police, are conducted by police officials, leading to the vast majority of complaints being dismissed as unfounded, and it urged Macao to take the requisite steps to allow for confidential complaints and independent investigations. Further issues worrying the Committee include the use of body worn electric shock devices and the surrender of fugitive offenders to China mainland in the absence sufficient legal safeguards to protect them against torture or ill-treatment upon return or upon indirect transfer.



Issue for follow-up: Measures for investigations of cases of torture and ill-treatment.

Read more:

- [Concluding Observations](#)
- [Webcast](#)

## **Jordan**

### **Definition of Torture and the Protection of Fundamental Legal Safeguards**

During the third periodic review of Jordan, the Committee remained concerned that the definition of torture in the Penal Code of Jordan is not in line with Articles 1 and 4 of the Convention. Moreover, torture is considered a misdemeanour instead of a crime and punishments do not correspond to the gravity of the acts. The Committee urged Jordan to adopt a definition that covers all the elements contained in Article 1 of the Convention and to ensure that torture is considered a crime under criminal law with adequate punishment.

The Committee expressed concern that the public prosecutor can prohibit communication between inmates and their lawyers for up to 10 days without due cause. The delegation was also requested to provide more details on situations considered as “cases of urgency” by judges allowing them to question a detainee without the presence of a lawyer. While the delegation replied during the dialogue that a Legal Aid Office was created to support anyone who does not have the possibility to contact a lawyer, the Committee referred to the reports that detainees are frequently denied timely access to a lawyer (and a medical doctor and their right to notify a person of their choice). This concerns particularly detainees who are held in facilities of the General Intelligence Directorate (GID) and the Public Security Directorate (PSD) where suspects are reportedly facing torture and ill-treatment at the hands of security and law enforcement officials. The Committee recommended Jordan to ensure that all detainees are afforded, by law and in practice, all fundamental legal safeguards from the very outset of their deprivation of liberty.

Gender-based violence, including domestic violence and crimes committed in the name of “honour” remain widespread in Jordan. Provisions in the Penal Code exempt rapists from criminal liability when they are marrying the victim or receive reduced sentences when the crime is committed in the name of “honour”. The Committee expressed its concern that at the same time, women and girls victims of violence are placed in administrative detention under the pretext of protecting them and asked the delegation for more data on the number of women and in “protective custody”. The Committee reiterated its previous recommendation to ensure that women who are victims of violence and migrant workers who have fled abusive employers are not held in “protective custody” and that the focus should instead be on investigating all cases of violence against women, prosecuting and punishing the perpetrators without exemptions and making sure that the victims obtain redress.

Other issues of concern raised include overcrowding of detention centres, the living conditions of refugees, the different tribunals that operate in the country and the persistence of the special courts system.

Issues of the follow up are:

1. Fundamental legal safeguards;
2. Administrative detention;
3. Special courts; and
4. Coerced confessions.

Read more:

- [Concluding Observations](#)
- [Webcast](#)

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## ADOPTION OF LISTS OF ISSUES AND LISTS OF ISSUES PRIOR TO REPORTING

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### Lists of Issues

- [France](#)
- [Mongolia](#)
- [Saudi Arabia](#)
- [Tunisia](#)
- [Turkey](#)

### Lists of Issues Prior to reporting

- [Ghana](#)
- [Kenya](#)
- [Kyrgyzstan](#)
- [Latvia](#)
- [Netherlands](#)
- [Poland](#)
- [Portugal](#)

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## NEXT SESSIONS

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The 57<sup>th</sup> session of the CAT will take place from 18 April to 13 May 2016.

### Consideration of State Reports:

- [France](#)
- [Israel](#)
- [Philippines](#)
- [Saudi Arabia](#)
- [Tunisia](#)
- [Turkey](#)

The deadline for NGO submissions for the State report reviews is 28 March 2016

The deadline for NGO submissions for the List of Issues is 25 January 2016.

The 58<sup>th</sup> session of the CAT will take place from 25 July to 12 August 2016.

**Consideration of State Reports:**

- [Honduras](#)
- [Kuwait](#)
- [Cape Verde](#)
- [Mongolia](#)
- [Burundi](#)

The 59<sup>th</sup> session of the CAT will take place from 7 November to 7 December 2016

**Consideration of State Reports:**

- [Armenia](#)
- [Ecuador](#)
- [Finland](#)
- [Monaco](#)
- [Namibia](#)
- [Sri Lanka](#)
- [Turkmenistan](#)

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## **STAY UP-TO-DATE ON OMCT ACTIVITIES CONCERNING THE CAT**

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### **OMCT Blog: Engaging with the Committee against Torture**

The OMCT [blog](#) entitled "[Nothing can Justify Torture, engaging with the Committee against Torture](#)" was launched on 3 November 2014, which marked the first day of the 53<sup>rd</sup> CAT session and the celebration of the 30<sup>th</sup> anniversary of the Convention against Torture.

The blog's objective is to provide greater awareness of the work of the CAT and the Convention against Torture, to increase mobilisation of civil society organisations (CSOs) around the CAT, as well as to encourage CSOs, experts and other stakeholders to share their experience and learning in seeking an effective use of the CAT procedures to foster the implementation of the Convention.

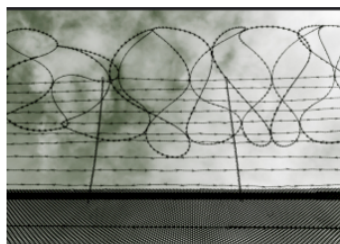
Recent articles include:

- [Chiara Cosentino, "Involuntary sterilization: a means of torture against Roma women in Slovakia"](#)
- [OMCT, "Urgent need to prevent transfers to torture"](#)
- [Felice Gaer, "Violence against Women by private actors: Is there State responsibility under the Convention against Torture?"](#)



## Involuntary sterilization: a means of torture against Roma women in Slovakia

During its 55th session held in July-August 2015, the United Nations (UN) Committee against Torture (CAT) issued its Concluding Observations on Slovakia and expressed concern for the ongoing practice



## «Urgent need to prevent transfers to torture»

«Urgent need to prevent transfers to torture» Successful expert briefing on non-refoulement to the UN Committee against Torture On 6 August 2015 during the 55th session of the UN Committee against

CONTINUE READING --



### ABOUT

The OMCT is the main international coalition of non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances, arbitrary detentions and all other cruel, inhuman and degrading treatment or punishment.

MORE --

FOLLOW US

The OMCT invites and encourages persons working on the Convention Against Torture and with its monitoring Committee, including Committee members, representatives from CSOs, academics and journalists, to participate in this exchange of experience by submitting an article for the blog. Please contact [cbp@omct.org](mailto:cbp@omct.org) for more information.

### Live Webcast of the CAT sessions:

During the sessions, the live stream is available at [www.treatybodywebcast.org](http://www.treatybodywebcast.org). Sessions are also archived and can be viewed at a later date.

### Follow us on:



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