



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

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COMMITTEE AGAINST TORTURE

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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

ESTONIA

1. The Committee against Torture considered the fourth report of Estonia (CAT/C/80/Add.1) at its 793rd and 796th meetings (CAT/C/SR. 793 and 796), held on 13 and 14 November 2007, and adopted at its 804th meeting on 20 November 2007 (CAT/C/SR. 804) the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the fourth periodic report of Estonia, which generally follows the Committee's guidelines for reporting and expresses its appreciation for the written responses (CAT/C/EST/Q/4/Add.1) provided to its list of issues (CAT/C/EST/Q/4).

3. The Committee also appreciates the large and high-level delegation of the State party and the positive and frank dialogue conducted with it, as well as the additional oral information provided by the representatives of the State party to questions raised and concerns expressed during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the ratification, inter alia, of:

- a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2006;
- b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2004;
- c) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, in 2003;

- d) The United Nations Convention against Transnational Organized Crime, in 2003.
5. The Committee also welcomes the entry into force of:
- a) The Victim Support Act in 2004 and its amendment in 2007;
 - b) The State Legal Aid Act, in 2005;
 - c) The new Code of Criminal Procedure, in 2004;
 - d) The amendment to the Refugees Act, in 2003.
6. The Committee further notes with satisfaction the important effort made for the renovation of detention facilities, the closure of old arrest houses and the construction of new prisons, especially the Tartu prison which opened in 2002, to improve the general living conditions of all persons deprived of liberty in the State party, as well as to move from an old style camp-based system to a modern cell-based penitentiary system.
7. The Committee notes positively the publication of the reports of the European Committee for the Prevention of Torture and the responses by the State party, which enables a general debate by all interested parties.

C. Principal subjects of concern and recommendations

Definition of torture

8. While noting that the Convention has entered into force in the State party in 1991 and the Penal Code in 2002, the Committee continues to regret that the definition contained in article 122 of the Penal Code, even if read in conjunction with the criminal offenses of articles 291, 312 and 324 of the Penal Code, does not fully reflect all elements contained in article 1 of the Convention, notably mental pain and suffering, discrimination and acquiescence of a public official (art.1).

The Committee reiterates its previous recommendation (CAT/C/CR/29/5, para. 6 (a)) that the State party should bring its definition of torture fully into conformity with article 1 of the Convention. By naming and defining the offence of torture in accordance with the Convention and distinct from other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture, inter alia, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture and by improving the deterrent effect of the prohibition itself.

Fundamental legal safeguards of detained persons

9. The Committee is concerned about the practical implementation of the fundamental legal safeguards of detained persons, including access to an independent medical doctor, as well as about the registration of all detained persons (art. 2).

The State party should ensure that all detained suspects are afforded, in practice, fundamental legal safeguards during their detention, including the right to access a lawyer. and an independent medical examination, inform a relative and to be informed of their rights at the moment they are deprived of their liberty, including

about the charges brought against them, as well as to be promptly presented to a judge.

Administrative detention

10. The Committee is concerned about the possibility of “administrative detention in jail” and “administrative arrest” (paras. 89 and 215 of the State party report) and about the complete absence of information on such detention in the report as well as from the delegation, especially regarding the competent authority and the applicable legal safeguards (art. 2).

The State party should provide the Committee with detailed information on such “administrative detention” and insure that the fundamental legal safeguards also apply in such cases.

Chancellor of Justice

11. While noting that the Chancellor of Justice has been designated as the national protection mechanism pursuant to article 3 of the Optional Protocol the Convention, recognizing its role in inspecting places of detention and welcoming the publication of its reports in different languages, the Committee remains concerned about its independence, mandate and resources, as well as its ability to investigate all complaints of violation of the provisions of the Convention (arts.2 and 11).

The State party should consider establishing a national institution for the promotion and protection of human rights, in accordance with the Paris Principles (General Assembly resolution 48/134, annex) and provide it with the adequate resources to carry out its mandate.

Non-refoulement

12. While noting that the determination of “a safe country is done on an individual basis by the Citizenship and Migration Board” as well as the list of countries to which persons have been expelled, the Committee is still concerned that the application of the principle of “safe country” may prevent the State party from considering all elements of an individual case, thus not fulfilling all its non-refoulement obligations under the Convention (art. 3).

The State party should always assess its non-refoulement obligations under article 3 of the Convention on an individual basis and provide, in practice, all procedural guarantees to the person expelled, returned or extradited.

Appropriate penalties for acts of torture in the Penal Code

13. The Committee remains concerned about the inadequacy of the penalties applicable to torture, i.e. of articles 122, 291, 312 and 324 of the Penal Code, ranging from “pecuniary punishment” to a maximum of five years imprisonment (art. 4).

The State party should ensure that torture is punishable by appropriate penalties which take into account its grave nature, as set out in paragraph 2 of article 4 of the Convention.

Training and education on the provisions of the Convention

14. The Committee is concerned about the insufficient training regarding the provisions of the Convention for law enforcement personnel, including penitentiary staff, judges and prosecutors. The Committee also notes with concern the lack of specific training of medical personnel acting in detention facilities to detect signs of torture and ill-treatment (arts. 10 and 15).

The State party should reinforce its training programmes for all law enforcement personnel on the absolute prohibition of torture and other ill-treatment, as well as for prosecutors and judges on the State party's obligations under the Convention. This should include the inadmissibility of confessions and statements obtained as a result of torture.

The State party should also ensure adequate training for all medical personnel involved with detainees to detect signs of torture and other ill-treatment in accordance with international standards, such as outlined in the Istanbul Protocol.

Complaints, investigations and appropriate sentencing

15. The Committee notes the supervision activities of prisons by the Ministry of Justice, of arrest houses by the Police Board, of psychiatric institutions by the Health Board and of the Illuka Reception Centre for Asylum-Seekers by the Ministry of Social Affairs and the Defence Forces. The Committee is nevertheless concerned about the inadequate complaint mechanism existing for all places where persons are deprived of liberty and about insufficient oversight and monitoring of such places, as well as the small numbers of perpetrators of acts of torture or cruel, inhuman or degrading treatment or punishment convicted with appropriate sentences for the grave nature of the acts committed (arts. 12 and 13).

The State party should ensure that complaint mechanisms exist in all places where persons are deprived of liberty and that the oversight and monitoring of such places is adequate.

The State party should promptly, thoroughly and impartially investigate all allegations of acts of torture or other cruel, inhuman or degrading treatment or punishment, bring the responsible to justice and punish those convicted with sentences proportional to the gravity of their offence.

Inter-prisoner violence

16. The Committee is concerned about inter-prisoner violence, especially with regard to the incidents that occurred in Murru prison in 2006 where two prisoners were killed, as well as with the insufficient measures taken to prevent and investigate such violence (arts. 12 and 13).

The State party should promptly, thoroughly and impartially investigate all deaths in detention and all violence amongst prisoners, including any cases involving possible negligence on the part of law enforcement personnel, and bring the responsible to justice, in order to fulfill its obligations under article 12 of the Convention.

Code of Criminal Procedure

17. The Committee is concerned at the fact that, under the Code of Criminal Procedure, the court does not have the right to continue proceedings at its own discretion if prosecution drops charges (para. 64 of the State party report), and that prosecution may prolong pre-trial detention after the initial period of six months without any justification (art. 13).

The State party should consider revising its Code of Criminal Procedure in order to regulate the powers of prosecution vis-à-vis the judiciary as well as to establish an obligation for prosecution to justify before the court any prolongation of the initial six months pre-trial detention period.

Compensation and rehabilitation for victims

18. While welcoming the increase in compensation to victims of certain crimes, the Committee remains concerned about the apparent absence of compensation for victims of torture and other cruel, inhuman or degrading treatment or punishment, as well as with the lack of appropriate measures for the rehabilitation of victims of torture, ill-treatment, trafficking, and domestic and sexual violence (art. 14).

The State party should ensure that adequate compensation is provided to victims of torture and other ill-treatment and that the means for as full rehabilitation as possible are also made available to all victims of torture and other ill-treatment, trafficking, and domestic and sexual violence.

Overcrowding and conditions of detention

19. While welcoming the decrease in the prison population from approximately 4,800 detainees in 2001 to 3,600 in 2007, due to the introduction of various forms of expedited proceedings, which have ranged to 42 per cent of all criminal proceedings, and to alternative mechanisms of detention, the Committee remains concerned about the overall conditions of detention in the State party, including with regard to adequate HIV medical care (art. 16).

The State party should continue to alleviate the overcrowding of the penitentiary institutions and improve conditions of detention, especially in arrest houses where pre-trial detainees are held for long periods in poor and inadequate conditions and should also continue its efforts to reduce the pre-trial detention period.

The State party should provide adequate food to all detainees and improve the health and medical services in detention facilities, including by making available appropriate treatments, especially to HIV and tuberculosis infected detainees.

Trafficking in persons

20. While welcoming awareness-raising and prevention campaigns and programmes (including the EQUAL EU cooperation project) as well as the National Plan of Action on trafficking in human beings, the Committee remains concerned about this persistent phenomenon and the absence of specific legislative measures to prevent, combat and punish human trafficking (art. 16).

The State party should reinforce its legislation and adopt other effective measures in order to adequately prevent, combat and punish human trafficking, especially that

of women and children, and should promptly investigate, prosecute and punish all perpetrators of such crimes.

The State party should provide the Committee with statistical data on the incidence of trafficking as well as the objectives and results of the implemented measures, including investigations, prosecutions and convictions.

The State party should also adopt specific training and sensitization programmes for law enforcement personnel on human trafficking.

Domestic violence

21. While noting the existence of several programmes and plans aimed at combating domestic violence, the Committee remains concerned about the incidence of such violence and the absence of specific legal measures to prevent and combat it (art. 16).

The State party should adopt a specific type of criminal offence for domestic violence, and provide protection for victims and their access to medical and legal services, including counselling services.

The State party should also promptly investigate, prosecute and punish all perpetrators of such violence and ensure adequate training to sensitize law enforcement personnel on domestic violence, including sexual violence and violence against children.

Stateless persons

22. The Committee notes the concerns and recommendations of the Committee on the Elimination of Racial Discrimination, the Human Rights Committee and the Committee on the Rights of the Child. While welcoming the reduction of statelessness in the State party, the Committee remains concerned at the fact that approximately 33 per cent of the prison population is composed of stateless persons, while they represent approximately 8 per cent of the overall population of the State party (art. 16).

The State party should adopt all adequate legal and practical measures to simplify and facilitate the naturalization and integration of stateless persons and non-citizens.

The State party should also adopt the necessary measures to guarantee that stateless persons and non-citizens are informed of their rights in a language they understand and have access to the fundamental legal safeguards from the moment they are deprived of their liberty, without any discrimination.

The Committee reiterates its previous recommendation (CAT/C/CR/29/5, para. 6 (h) and (i)) that the State party should also address the causes and consequences of the disproportionate presence of stateless persons in the prison population and adopt the necessary measures to prevent this phenomenon.

The State party should further consider ratifying the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Brutality and excessive use of force by law enforcement personnel

23. While welcoming the establishment of a complaints hotline operated by a non-governmental organization, the Committee remains concerned at allegations of brutality and excessive use of force by law enforcement personnel, especially with regard to the disturbances that occurred in Tallinn in April 2007, well documented by a detailed compilation of complaints (art. 16).

The State party should promptly, thoroughly and impartially investigate all acts of brutality and excessive use of force by law enforcement personnel and bring the perpetrators to justice.

The State party should also reinforce its training programmes for law enforcement personnel, especially for all special police forces, and encourage the State party to adopt the draft code of ethics for the police.

Psychiatric facilities

24. While welcoming the improvement in the assistance of patients with psychiatric illnesses, including the implementation of the Mental Health Act into practice, the Committee is concerned about the general living conditions in psychiatric institutions and inadequate forms of treatment (art. 16).

The State party should improve the living conditions for patients in psychiatric institutions, ensure that all places where mental health patients are held for involuntary treatment are regularly visited by independent monitoring bodies to guarantee the proper implementation of the safeguards set out to secure their rights, and that alternative forms of treatment, especially community-based treatment, are developed.

Data collection relevant to the implementation of the Convention

25. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and penitentiary personnel, as well as on trafficking, domestic violence and sexual violence.

The State party should compile and provide to the Committee statistical data relevant to the monitoring of the implementation of the Convention at the national level, including complaints, investigations, prosecutions and convictions of cases of torture and other ill-treatment, trafficking, domestic, sexual violence and ethnically motivated violence, violence against vulnerable groups, inter-prisoner and inter-patient violence, as well as on compensation and rehabilitation provided to the victims.

26. The Committee recommends that the State party consider making the declarations under articles 21 and 22 of the Convention.

27. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party.

28. The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.4.

29. The Committee requests the State party to widely disseminate its report, together with the written answers to the Committee's questions and the conclusions and recommendations of the Committee, in all appropriate languages through official websites, the media and non-governmental organizations.

30. The Committee requests the State party to provide, within one year, information on its response to the recommendations in paragraphs 10, 16, 20, 22 and 23 above.

31. The State party is invited to submit its next report, which will be the fifth periodic report, by 30 December 2011.
