

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COMMITTEE AGAINST TORTURE 38<sup>TH</sup> SESSION, 30 APRIL – 18 MAY 2007 OVERVIEW OF THE SESSION

Introduction.....	1
Main themes and issues of the session.....	1
Denmark.....	1
Italy.....	2
Japan.....	3
Luxembourg.....	3
The Netherlands.....	3
Poland.....	4
Ukraine.....	4

### Introduction

The Committee against Torture (the Committee) held its 38<sup>th</sup> session in Geneva from 30 April – 18 May 2007. It considered the periodic State Party reports of Denmark, Italy, Japan, Luxembourg, the Netherlands, Poland and the Ukraine under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention).

### Main themes and issues of the session

The main themes and issues of the session were: the definition of torture in national law; the application of the Convention to women, juveniles, gender, migrants, refugees, asylum-seekers and non-citizens; prison conditions and the treatment of prisoners and detainees; pre-trial detention and the right to a fair trial; extraordinary rendition and *non-refoulement*; mental and psychological torture; the accountability of State actors; the human rights training of legal enforcement officials; the independence of the judiciary; and the payment of compensation to victims of torture.

### Denmark - 5<sup>th</sup> periodic report

The examination of Denmark's 5<sup>th</sup> periodic report covered both Denmark and Greenland, as Denmark continues to control Greenland's foreign affairs. The Committee welcomed its open and constructive dialogue with the State Party. More prominent discussion addressed the lack of a definition of torture in Danish

national law, Denmark's complicity in the extraordinary rendition of 34 Afghans, and the acquittal of Danish soldiers accused of torturing prisoners in Iraq.

Other issues addressed by the Committee included: Denmark's Military Criminal Code and its application to cases of alleged torture by military personnel; the statute of limitations for torture in Denmark's criminal code; the use of solitary confinement or 'exclusion' in prisons, including juvenile solitary confinement and pre-trial solitary confinement; the conditions of detention of non-citizens, refugees and asylum-seekers, the legal status of non-citizens and the disappearance of unaccompanied children from asylum centres; and the 15 December 2004 riot in Denmark's Nyborg prison. The Committee also addressed conditions of detention and the use of solitary confinement in Greenland.

In its conclusions and recommendations, the Committee asked Denmark to provide within one year updated information on the steps that it has taken to: ensure that all allegations of violations committed by law enforcement officials, and in particular, any deaths in detention, are investigated promptly, independently and impartially, and that victims of police misconduct obtain redress and fair and adequate compensation; and to review its process for handling allegations of excessive use of force by law enforcement officials and ensure prompt and impartial investigations into all complaints or allegations of misconduct. Denmark was also requested to provide to the Committee within one year detailed statistical data on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and the attached penal or disciplinary sanctions.

Parallel reports were submitted to the Committee by non-governmental organisations (NGOs) that included Amnesty International and Rehabilitation and Research Centre for Torture Victims (RCT). Denmark is to submit its 7<sup>th</sup> periodic report to the Committee by 30 June 2011.

### **Italy - 4<sup>th</sup> periodic report**

Italy's 4<sup>th</sup> periodic report did not conform to the Committee's reporting guidelines, a fact that the Committee lamented. The main issues of concern to the Committee during its examination of Italy were the absence of the crime of torture in national legislation, and cases of people being expelled from Italy or returned to States in which they may face torture or ill-treatment, contravening the principle of *non-refoulement*.

Other issues addressed in the examination included: pre-trial detention and the right to a fair trial; prison conditions and the treatment of prisoners; the right to asylum and access to fair and prompt asylum procedures; allegations surrounding Italy's involvement in the extraordinary rendition of persons; conditions of juvenile detention; the sanctions attached to gender-based crimes; reported acts of violence against Roma, foreigners and Italians of foreign origin; human rights violations committed by members of the Italian armed forces in Somalia in 1993 and 1994; accusations of police brutality during public demonstrations in Naples and Genoa in 2001; and the payment of compensation to victims of torture.

Parallel reports were submitted to the Committee by NGOs that included Amnesty International, the International Federation for Human Rights (FIDH) and Unione Forense per la Tutela dei Diritti dell'Uomo.

In its conclusions and recommendations, the Committee asked Italy to provide within one year updated information on the measures it has taken to: ensure that the fundamental legal safeguards for persons detained by the police are respected; thoroughly examine the merits of each individual case and to ensure that adequate judicial mechanisms for the review of the decision are in place when determining the applicability of its *non-refoulement* obligations; alleviate overcrowding in its prisons and improve living conditions in immigration centres; and to strengthen its efforts to provide compensation, redress and rehabilitation to victims of torture.

Italy is to submit its 6<sup>th</sup> periodic report to the Committee by 30 June 2011.

## **Japan - Initial periodic report**

The Committee welcomed its first dialogue with Japan, examining the State Party's initial periodic report. The comprehensive examination addressed: the status of the Convention in national law; the treatment of detainees, including length of detention, interrogation practices, and the weight given in court to confessions extracted under interrogation; conditions in penal institutions, including the use of solitary confinement, strip searches and the mechanisms in place to prevent acts of sexual violence; the treatment of prisoners on death row and the use of the death penalty, namely hanging; violence against women and the payment of reparations to 'comfort women'; the treatment of asylum-seekers and non-citizens; and conditions in mental health institutions.

CAT Network Japan, FIDH, Japan Federation of Bar Associations, Japanese Workers' Committee for Human Rights, World Organisation against Torture (OMCT) and Asia Japan Women's Resource Centre submitted parallel reports to the Committee.

In its conclusions and recommendations, the Committee asked Japan to provide within one year updated information on the measures it has taken to: ensure that its practices relating to the detention and deportation of immigrants fully conform with the Convention; ensure that conditions of pre-trial detention conform with international minimum standards, in particular by amending its 2006 Prison Law to limit the use of police cells for pre-trial detention; systematically monitor the interrogation of detainees in police custody and substitute prisons; and to combat sexual violence and violence against women, including domestic violence and gender-based violence.

Japan is to submit its next periodic report to the Committee by 30 June 2011.

## **Luxembourg – 5<sup>th</sup> periodic report**

The Committee welcomed its positive and constructive dialogue with Luxembourg during the examination of the State Party's 5<sup>th</sup> periodic report. The Committee's main interests included the detention of asylum-seekers in prisons, the detention of juvenile offenders, the use of solitary confinement, and the principle of discretionary prosecution which could enable prosecutors to choose not to prosecute cases of torture. The Committee also raised the issues of domestic violence and corporal punishment.

NGO parallel reports were submitted to the Committee by ACAT and Info-Prison and Global Initiative to End All Corporal Punishment of Children.

In its conclusions and recommendations, the Committee asked Luxembourg to provide within one year updated information on the measures it has taken to: reinforce training of law enforcement personnel and prison staff on respect for the physical and mental integrity of all prisoners; conduct inquiries into allegations of abuse in prisons; regulate the practice of 'strict cell procedure' and subject it to enhanced judicial oversight; ensure that minors with social and behavioural problems are separated from minors in conflict with the law in detention, and that no minors are housed in adult prisons; and to revise its prosecution system to ensure that allegations of torture are investigated in an independent and impartial manner.

Luxembourg is to submit its 7<sup>th</sup> periodic report to the Committee by 30 June 2011.

## **The Netherlands – 4<sup>th</sup> periodic report**

The Committee welcomed its open and frank dialogue with the Netherlands during its examination of the State Party's 4<sup>th</sup> periodic report. Chief among the Committee's concerns in the examination were: the rights of detained persons and the right to a fair trial; the rights of asylum-seekers, including unaccompanied children and young asylum-seekers; the principle of *non-refoulement*; the treatment of detained and imprisoned

persons, particularly juveniles in the Netherlands Antilles; and investigations into allegations of assaults committed by prison staff in the Aruban prison.

The Johannes Wier Foundation and the Dutch section of the International Commission of Jurists submitted a parallel report to the Committee.

In its conclusions and recommendations, the Committee asked the Netherlands to provide within one year updated information on the measures it has taken to ensure that detained and imprisoned juveniles are separated from adult offenders, and to establish mechanisms through which prisoners can submit sexual abuse complaints.

The Netherlands is to submit its 6<sup>th</sup> periodic report to the Committee by 30 June 2011.

### **Poland – 4<sup>th</sup> periodic report**

The Committee expressed satisfaction at its constructive and comprehensive exchange with Poland during the examination of the State party's 4<sup>th</sup> periodic report. The examination covered a broad range of issues, foremost among which was: Poland's failure to include a definition of torture in its Penal Code; the rights and treatment of persons held in police custody; the rights of non-citizens, refugees and asylum-seekers; and the principle of *non-refoulement*.

Other issues addressed by the Committee included: the status of the Convention in national law; the independence of the judiciary; the rights of detainees, including access to legal representation; overcrowding in prisons; excessive use of force by police; the extraordinary rendition and secret transfer of prisoners and the possible existence of secret prisons in Poland; gender-based breaches of the Convention; the treatment of juveniles in detention; and the abuse of young soldiers in military units.

Parallel reports were submitted to the Committee by NGOs including the Helsinki Foundation for Human Rights and the International Commission of Jurists.

In its conclusions and recommendations, the Committee asked Poland to provide within one year updated information on the measures it has taken to: ensure that persons are not unduly pressured into agreeing to be tried by the 'shortened trial procedure' provided in the Code of Criminal Procedure; adopt a law providing free access to legal aid; share information collected by the Polish Parliament that refutes the existence of secret detention facilities in Poland housing aliens suspected of terrorist activities; eradicate the practice of 'hazing' (ritualistic and degrading tests and tasks often used to initiate new recruits) in the armed forces; and to incorporate into its Penal Code acts of intolerance and incitation to hatred and violence based on sexual orientation, defining such offences as hate crimes.

Poland is to submit its 6<sup>th</sup> periodic report to the Committee by 30 June 2011.

### **Ukraine – 5<sup>th</sup> periodic report**

The Committee's examination of the 5<sup>th</sup> periodic report of the Ukraine focused mainly on: the definition of torture in the Ukraine Penal Code; measures taken to prevent hazing in the military; prisons and detention conditions; and the principle of *non-refoulement* with specific regard to Uzbek asylum seekers. The Committee welcomed the Ukraine's comprehensive approach to dialogue and its ratification of the *Optional Protocol* to the Convention.

The examination also addressed: the status of the Convention in national law; the monitoring of detention facilities; investigations and prosecutions of alleged cases of torture; and domestic violence.

Amnesty International, Human Rights Watch and Kharkiv Human Rights Protection Group submitted parallel reports to the Committee.

In its conclusions and recommendations, the Committee asked the Ukraine to provide within one year updated information on the measures it has taken to, among other things: ensure that all detained suspects are afforded, in practice, fundamental legal safeguards during their detention; establish an effective and independent oversight mechanism to ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment during criminal investigations; give formal status to the 'mobile groups', composed of representatives of civil society and staff of the Ministry of Interior, tasked with visiting police detention facilities to monitor the situation of detainees and prevent acts of torture; ensure prompt, impartial and effective investigations into all ethnically motivated violence and discrimination, including that directed against Roma, Jews, persons of African and Asian origin and non-citizens, and to prosecute and punish perpetrators; ensure that all persons, including those monitoring human rights, are protected from any intimidation or violence as a result of their activities; and to ensure that under no circumstances are persons expelled, returned or extradited to States where there are substantial grounds for believing that the person would be in danger of being subjected to torture.

The Ukraine is to submit its 6<sup>th</sup> periodic report to the Committee by 30 June 2011.

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## **ABOUT THE PUBLICATION**

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