

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COMMITTEE AGAINST TORTURE 40<sup>TH</sup> SESSION ICELAND, 3<sup>RD</sup> REPORT 9 MAY 2008

Information submitted to the Committee.....	1
Themes and Issues.....	2
Definition of torture in domestic law .....	2
Use of evidence gained from torture .....	3
Oversight and monitoring mechanisms .....	3
Separation of powers.....	3
Non-refoulement and asylum .....	3
Unaccompanied minors.....	4
Trafficking, and training of border guards .....	4
Prisons.....	4
Other issues .....	5
Violence against women and children.....	5
Use of tasers .....	5
Training of peacekeeping forces.....	6
Exercise of jurisdiction.....	6
Rendition flights.....	6
Conclusions and next steps.....	6

### Information submitted to the Committee

Iceland submitted its 3<sup>rd</sup> periodic report to the Committee Against Torture (‘the Committee’) on 28 November 2005. The report was made available on 13 March 2006.<sup>1</sup> Iceland last came before the Committee in 2002, when it submitted its 2<sup>nd</sup> report for consideration. The latest report covered the period 2001-2005, and addressed developments relating to the domestic implementation of the Covenant, including legislation, measures taken by the Government, and judicial practice. Of note were the new *Application of Punishments Act*, provisions in the Penal Code providing for the punishment of trafficking, laws relating to violence against women and children, and the issuance of ethical rules for the police force on the excessive use of force. Also covered were developments in prisons and prisoners’ rights, immigration and refugee matters, and police misconduct. The report also contained information pertaining to the recommendations made pursuant to the second report, including the definition of torture, the use of evidence obtained as a result of torture, the recognition of torture by medical doctors, and inter-prisoner violence.

<sup>1</sup> CAT/C/ISL/3, 13 March 2006, <http://www2.ohchr.org/english/bodies/cat/cats40.htm>.

The Committee turned to the list of issues,<sup>2</sup> which contained questions regarding a number of articles. Issues of note included: the inspection of psychiatric facilities; the abolition of separate prisons for remand and convicted persons; the situation of women and juvenile offenders; measures to prevent trafficking; the treatment of refugees and asylum seekers; the extension of criminal jurisdiction by the State party; the training of State personnel on preventing torture; the review of detention measures by an independent body; the decrease in complaints of police brutality; cases in which compensation for torture was awarded by the courts; and the existence of violence against women and girls. The Committee also asked about the possibility of ratification of the Optional Protocol of the Convention Against Torture; legislation covering equipment specifically designed to inflict torture; and counter-terrorism measures. The State submitted written replies to the list of issues on 12 March 2008.<sup>3</sup>

Only one non-governmental organisation (NGO) submitted a report to the Committee. The Icelandic Human Rights Centre submitted a document providing additional information regarding many of the topics noted in the Committee's list of issues.<sup>4</sup> The report documented numerous individual cases alleging torture, and covered issues relating to the rejection of asylum seekers, the exercise of universal jurisdiction, training of peacekeepers and border guards, the use of solitary confinement, and conditions of detention and treatment of detainees.

### **Themes and Issues**

Iceland's delegation was headed by Ms Kristrun Kristinsdottir, Director of the Ministry of Justice of Iceland. Mr Thorbjorn Jonsson, Counsellor for the Permanent Mission of Iceland in Geneva, and Ms Bryndis Helgadóttir, Legal Advisor for the Ministry of Justice of Iceland, were also present.

Ms Kristinsdottir opened with a number of corrections and clarifications to the text of the State report and its replies. She next discussed compliance with two of the recommendations formulated after the second report – regarding the defining of torture as a specific offence, and the exclusion of evidence obtained through torture (see below).

The dialogue between the State and the Committee was fruitful and constructive. The Committee noted the many new or updated legislative enactments in Iceland, the State's collaboration with international bodies, and the fact that no complaints of torture had been received against Iceland since the second report. The delegation responded expansively to the Committee's questions, but also noted that some questions could not be immediately responded to and would need to be referred back to the home Government.

### **Definition of torture in domestic law**

In its report, the State explained the current status of the term 'torture' in its domestic law. 'Torture' is included in an amendment to the Constitution that also indicates the term's interpretation. This amendment and its particular elements create a term of certain, definable action, allowing for its prevention or sanction. Also noted was the fact that while certain acts were not described as torture, the acts remained criminal under the law of Iceland. The crime of rape was one example.

However, the Committee argued for additional action to be taken. The need for a clear and comprehensive law was stressed. Ms Sveaass, Ms Kleopas, and Mr Grossman all noted the need for a specific definition of the term 'torture' to be included in the domestic law as well as criminalisation of the act in the Penal Code. It would only be through this clear definition that real meaning, content, and continuity could be given to the term.

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<sup>2</sup> CAT/C/ISL/Q/3, February 2008, <http://www2.ohchr.org/english/bodies/cat/cats40.htm>.

<sup>3</sup> CAT/C/ISL/Q/3/Add.1.

<sup>4</sup> Available at <http://www2.ohchr.org/english/bodies/cat/cats40.htm>.

### **Use of evidence gained from torture**

Mr Wang commented on the procedure used to exclude evidence obtained by torture. While no conviction could be based on such evidence, he remained concerned by the fact that it was up to the judge of the case to determine whether tortuous practices led to the availability of the evidence. He argued that such evidence should be completely inadmissible and should not be placed before the judge at any point.

The delegation explained that such a procedure was inherent to the criminal justice system of Iceland. The judge was allowed to view all available evidence and make a determination on whether it may be directly used. While the judge was allowed to evaluate evidence, he or she remained bound by constitutional provisions on the presumption of innocence and the burden of persuasion. According to this system, it was for the judge to determine whether evidence was admissible.

### **Oversight and monitoring mechanisms**

Acknowledging the mandate of the Ombudsman to monitor prisons, the Committee suggested the creation of a broader independent monitoring mechanism. Ms Sveaass expressed interest in the creation of a national human rights institution as per the Paris principles, while Ms Gaer inquired about the possibility of an existing body taking on such a function. In response, Ms Kristinsdottir stated that the Ombudsman did not currently have sufficient staff to perform such a function. The creation of an independent body had been previously recommended, and Iceland was evaluating this possibility.

Ms Gaer also drew attention to the fact that the Ombudsman's report had stated that Government agencies were slow to respond to his requests for information and documents. The delegation noted that this complaint was common, and was a result of following the demanding bureaucratic process.

Ms Sveaass inquired about the monitoring of psychiatric facilities. The delegation noted that there was no independent body in existence, but the Surgeon General, who oversaw all hospitals, carried out this function. A complaints mechanism was also available.

Mr Wang questioned why some investigations involving complaints against the police had been dropped rather than followed through. Ms Kristinsdottir explained that some complaints may be unsubstantiated.

### **Separation of powers**

On the separation of powers, Ms Belmir noted some confusion over the functions of governmental branches. The Attorney General, for example, had the power to carry out criminal prosecutions, but certain matters were excluded (such as driving violations). The delegation said that the prosecutor and the police (subordinate to the prosecutor) came under the executive branch. The prosecutor was responsible for the handling of serious cases, and also directed the police. Minor violations were delegated to the police for prosecution.

### **Non-refoulement and asylum**

The Committee was very concerned about asylum and refugee procedures. Ms Sveaass noted the low number granted asylum status (two people in 20 years were granted asylum, although others were granted humanitarian or refugee status), and asked if the provisions relating to this were too strict. Ms Sveaass, Ms Gaer, and Mr Grossman asked questions on these issues, with particular reference to humanitarian concerns, the risk of torture in home countries, and denials based on national security. Mr Marino asked what importance was attached to the transit place of an applicant; specifically, if deference was given to previous decisions of EU countries of transit. Ms Sveaass and Ms Belmir also requested information about the procedure for appealing denials of status.

Regarding the low number of asylum applications granted, the delegation noted that many asylum seekers did not have to apply administratively as they were accepted by the UN High Commissioner for Refugees (UNHCR) and Red Cross under agreements with these agencies. The delegation added that the majority of other applications received had previously been denied elsewhere, and probably did not meet relevant criteria.

Ms Kristinsdottir also explained that Iceland participates both in the Dublin system and the Schengen Agreement. The Schengen system was one of open borders and free movement within the member states. Those applicants that came from member states within this system were not subject to border control under the rationale that the other member state had already conducted this function.

Regarding the administrative appeals system for denials, the delegation advised that appeals could be made through an administrative body of the immigration system. At the end of the administrative appeals, a complaint could also be made to the Ombudsman. The applicant could also appeal through the court system.

It was also noted by the delegation that all claims of torture were duly investigated.

### ***Unaccompanied minors***

Ms Sveaass asked about safeguards in place for unaccompanied minors in refugee cases. Ms Kristinsdottir pointed out that Iceland was a member of the Baltic Sea Cooperation, under which Iceland participated in work with minors (in refugee and trafficking cases, among others). In addition, a domestic action plan was in place for these children. Iceland noted that it was rare for children to seek entry to the country in this way.

### ***Trafficking, and training of border guards***

Ms Sveaass and Ms Kleopas requested information about trafficking, particularly the protection of victims and witnesses, and the identification of victims.

Committee members Ms Sveaass, Mr Wang, Ms Kleopas, and Mr Grossman inquired about the adequacy of training for border guards on aspects of refugee law and trafficking. Mr Wang also inquired about the training of the Coast Guard.

The delegation stated that border guards were trained on issues of border control, including the evaluation of documents and profiling of persons. With regards to trafficking, training on the identification of potentially trafficked persons was also provided. All training was conducted in collaboration with Frontex, an institution of the European Union. As a result of the geography of Iceland, foreign nationals did not often approach the country by boat. Thus, the Coast Guard was not provided the same training as the Border Guard.

### ***Prisons***

Many issues regarding prisons and detention concerned the Committee, including the use of solitary confinement, the occurrence of inter-prisoner violence, prison conditions, the incarceration of minors, cases of suicide in custody, and the performance of cavity searches.

Quoting figures provided by the Icelandic Human Rights Centre, Mr Wang questioned why such a high number of prisoners was placed in solitary confinement, while Ms Belmir inquired about the same treatment being applied to prisoners on remand. Ms Kristinsdottir responded that the numbers quoted by Mr Wang were likely to represent the total number of prisoners, not the number put into solitary.<sup>5</sup> She also stated that

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<sup>5</sup> There was disagreement between the delegation and Mr Wang on this point. The issue remained unresolved.

of 17 remand prisoners, only 3 were subjected to solitary confinement. Iceland also noted that prisoners may be put in isolation for their own protection or at their own request.

Ms Belmir and Ms Gaer inquired about the use of force to deter inter-prisoner violence, the effects of a recent policy to deter this violence, and the existence of a complaints mechanism for victims of such violence. The delegation responded that the issue was under constant surveillance – the situation was monitored both at the individual prisons and by the Prison and Probation Institute.

Mr Wang raised the allegation that the Reykjavik prison is substandard, and that there are 16 cells within the institution without proper sanitation. Ms Helgadóttir admitted that 16 cells are without sanitation. However, she added that the facility is minimum security (and thus open).

The situation of two children being imprisoned in adult facilities was introduced by Mr Wang. Ms Helgadóttir also acknowledged this. Two minors, 17 years of age, are imprisoned at the Reykjavik facility, as it had proved impossible to place the two minors with the child welfare department.

Ms Gaer inquired about reports of suicide of those in custody. The delegation stated that suicide cases are closely monitored and investigated. The last alleged case was determined to be a death from natural causes.

Ms Gaer also inquired about the existence of protective guidelines for body cavity searches. The delegation stated that while there were procedures and justifications required for such a search, the delegation members did not have the precise regulation before them.

Ms Belmir drew attention to the practice of recording interviews of custodial subjects. She noted a need for more stringent rules regarding this practice to protect the individual. Ms Kristinsdóttir commented that the recording could serve both as evidence of police misconduct as well as of the statements made.

## **Other issues**

### ***Violence against women and children***

Violence against women and children was raised by the Committee. Ms Sveaass noted that while domestic violence and rape were included in the penal code, the crimes were not clearly defined. Mr Wang requested information on the maximum term of sentences for rape. The possible sentence for child sexual assault was recently increased to 16 years. Ms Kleoplas expressed concern over adequate funding for a plan to combat domestic and inter-family violence. Mr Grossman also noted concerns about domestic violence.

The delegation reiterated that the introduction of specific definitions into the law, such as the definitions of torture and rape, would go against legal tradition in Iceland. The meaning of terms was to be interpreted by the court. The delegation undertook to provide, at a later date, information on the plan on women and children. As to the term of punishment for rape, the delegation stated that while the maximum possible sentence was currently 16 years, the actual sentence was often lower. However, a trend of stricter sentencing had recently emerged.

### ***Use of taser guns***

Ms Sveaass, Ms Belmir, and Mr Grossman all raised grave concerns over the use, or future use, of taser weapons by the police or prison officials. Ms Helgadóttir stated that the police had expressed the opinion that the weapons were necessary and were considering their use. However, no action had yet been taken to grant authority for their use. Tasers were not currently used in the prisons. The delegation undertook to forward to the appropriate authorities the opinion of the Committee on the matter.

### **Training of peacekeeping forces**

Mr Wang pushed for strengthened training of Iceland's peacekeeping forces. While the forces were trained to be mindful of international obligations and their training was harmonised with UN training procedures, Mr Wang suggested that peacekeepers also be trained in international human rights and humanitarian law. Mr Grossman also reiterated the importance of this. Mr Jonsson explained that the Ministry of Foreign Affairs coordinated the training of peacekeeping forces. A code of conduct was signed by the peacekeeper, which was similar to the requirements of the UN forces. A new policy that required all foreign ministry personnel, including peacekeepers, to receive humanitarian training had recently become effectual, but training had yet to commence.

### **Exercise of jurisdiction**

Ms Sveaass posed a specific question regarding the exercise of jurisdiction over a foreign government official accused of committing tortuous offences in another jurisdiction. In particular, she noted the visit to Iceland of a Chinese party official during which a legal claim relating to torture was made against him. The delegation responded that such charges were probably not pursued because the person concerned would have enjoyed immunity during the official visit.

### **Rendition flights**

Ms Sveaass requested more information regarding the allegation that United States intelligence (CIA) had used Icelandic airspace for the transport of detainees. Mr Jonsson stated that a study had been conducted on the matter that had produced inconclusive results on whether this had occurred. He added that Iceland considered that the airspace monitoring procedures in place at the time were adequate.

### **Conclusions and next steps**

In its concluding observations,<sup>6</sup> the Committee welcomed the comprehensive written responses provided by Iceland to the list of issues, and its efforts to comply with its obligations under the Convention, including through the development of relevant legislation. It recommended, among other things, that Iceland incorporate the definition of torture into its legislation; enhance the capacity of the Ombudsman to undertake monitoring of places of detention; consider establishing a Paris principles-compliant national human rights institution; ensure the separation of females from males, as well as juveniles from adults, in detention facilities; investigate the excessive use of solitary confinement; ensure that independent judicial recourse is available to asylum-seekers whose applications are rejected; provide adequate financial support for measures to prevent trafficking and assist its victims; continue efforts to address domestic violence through legislative and policy measures, in particular with respect to the criminalisation of rape.

Other treaty monitoring bodies have addressed similar issues to those that were raised by the Committee Against Torture in its review of Iceland. Violence against women has been noted by the Committee on Economic, Social, and Cultural Rights,<sup>7</sup> the Human Rights Commission,<sup>8</sup> and the Committee on the Elimination of Discrimination Against Women.<sup>9</sup> The Human Rights Committee has expressed concern about trafficking.<sup>10</sup> Issues concerning the rights of refugees and asylum seekers were commented on by the Committee on the Elimination of Racial Discrimination.<sup>11</sup>

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<sup>6</sup> These are available at: <http://www2.ohchr.org/english/bodies/cat/cats40.htm>

<sup>7</sup> E/C.12/1/ADD.89, paragraph 15.

<sup>8</sup> CCPR/CO/83/ISL, paragraphs 11, 12.

<sup>9</sup> A/57/38(SUPP), paragraph 246.

<sup>10</sup> CCPR/CO/83/ISL, paragraph 13.

<sup>11</sup> CERD/C/ISL/CO/18, paragraph 11.

The Committee set 30 June 2012 as the date for the submission of the next report of Iceland. It requested that the State submit, within one-year, information on its follow-up to the issues of solitary confinement, trafficking, and violence against women and children.

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