



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

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## Committee against Torture

Forty-sixth session

9 May-3 June 2011

### Consideration of reports submitted by States parties under article 19 of the Convention

#### Concluding observations of the Committee against Torture

##### Kuwait

1. The Committee against Torture considered the second periodic report of Kuwait (CAT/C/KWT/2) at its 986th and 989th meeting (CAT/C/SR.986 and 989), held on 11 and 12 May 2011, and adopted, at its 1007th meeting (CAT/C/SR.1007), the following concluding observations.

##### A. Introduction

2. The Committee welcomes the submission of the second periodic report of Kuwait, which has been submitted in accordance with the new optional procedure of the Committee consisting of replies of the State party to a list of issues prepared and transmitted by the Committee (CAT/C/KWT/Q/2) to allow for a more focused dialogue. However, the Committee regrets the lack of detailed information of the report, including statistical data, as well as that the report was submitted nine years late. This has prevented the Committee from conducting an on-going analysis on the implementation of the Convention in the State party.

3. The Committee notes with appreciation that a high-level delegation from the State party met with the Committee, and also notes with appreciation the opportunity to engage a constructive dialogue covering various areas of concern under the Convention.

##### B. Positive aspects

4. The Committee welcomes the fact that since the consideration of the initial report, the State party has ratified or acceded to the following international instruments:

(a) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts;

(b) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

5. The Committee welcomes the establishment of the Higher Committee on Human Rights in 2008 which is in charge of reviewing existing laws and regulations and proposing amendments, to integrate fundamental concepts of human rights into school and university curricula.

6. The Committee notes with satisfaction that on 12 May 2010 the State party has extended invitations to all special procedures mechanisms of the Human Rights Council.

## **C. Principal subjects of concern and recommendations**

### **Definition and criminalization of torture**

7. The Committee welcomes the commitment of the State party made by its representatives during the dialogue to enact a specific law to adopt a definition of torture in full conformity with article 1 of the Convention as well as to amend its national legislation in order to ensure appropriate penalties for torture and ill-treatment. However, the Committee notes with concern that current legal provisions fail to give a definition of torture and to ensure appropriate penalties applicable to such acts, as they set the maximum penalty of three years and/or a fine of 225 dinars for arrest, imprisonment or detention not prescribed by law and seven years only if such acts are combined with physical torture or threats of death (arts. 1 and 4).

**The Committee reiterates its previous recommendation (A/53/44, para.230) that a crime of torture, as defined in article 1 of the Convention, be incorporated into the penal domestic law of the State party ensuring that all the elements contained in article 1 of the Convention are included.**

**The State party should revise its national legislation to ensure that acts of torture are offences under criminal law and are punishable by severe penalties which take into account the grave nature of these acts, as required by article 4, paragraph 2, of the Convention.**

### **Fundamental legal safeguards**

8. While noting that the Code of Criminal Procedure (17/60) and the Prison Regulation Act (26/1962) contain provisions providing some legal safeguards to detainees such as the right to have access to a lawyer, to notify a relative, to be informed about the charges laid against them and to appear before a judge within a time limit in accordance with international standards, the Committee notes with concern that these provisions are little respected. In addition, while noting that article 75 of the Code of Criminal Procedure guarantees to an accused person the right to hire a lawyer to defend him or her and attend the interrogation session, the Committee is concerned that the lawyers may only speak with the permission of the investigator (art. 2).

**The State party should promptly take effective measures to ensure that all detainees are afforded, in practice, all fundamental legal safeguards from the very outset of the detention, including the rights to have prompt access to a lawyer and an independent medical examination, to notify a relative, to be informed of their rights at the time of detention, including about the charges laid against them, and to appear before a judge within a time limit in accordance with international standards.**

### **Monitoring and inspection of places of detention**

9. The Committee takes note of the statement in the replies to the list of issues that, according to the Judiciary Reorganization Act (23/1990), Act No. 26 of 1962 and article 56 of decree-law No. 23 of 1990, the Kuwaiti legislation guarantees several types of control and supervision over prisons. However, the Committee is concerned at the lack of systematic and effective monitoring of all places of detention, including regular and unannounced visits to such places by national and international monitors (art. 2).

**The Committee calls upon the State party to establish a national system to effectively monitor and inspect all places of detention and follow up on the outcome of such systematic monitoring. This system should include regular and unannounced visits in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. The State party is encouraged to accept monitoring of places of detention by relevant international mechanisms.**

### **Complaints and prompt, thorough and impartial investigations**

10. While noting that, according to the information provided to the Committee during the dialogue, the Kuwaiti Ministry of Interior has set up a special department to record public complaints and to follow up on grievances of abuse of authority filed against any officer working at the Ministry of Interior, the Committee regrets the lack of an independent complaint mechanism for receiving and conducting prompt, thorough and impartial investigations of torture reported to the authorities, and for ensuring that those found guilty are appropriately punished (art. 13).

**The State party should establish a fully independent complaint mechanism, ensure prompt, impartial and full investigations into all allegations of torture and prosecute alleged perpetrators and punish those who have been found guilty.**

11. While noting that for the period of 2001 – 2011 there were 632 trials on cases of torture, ill-treatment and corporal punishment, and that in 248 cases sentences perpetrators were punished, the Committee however notes that the State party failed to provide information on the exact types of penalties applied to the convicted perpetrators (arts. 4, 12 and 13).

**The Committee requests the State party to provide information, including statistics, on the number of complaints filed against public officials on torture and ill-treatment, as well as about the results of the proceedings, at both the penal and disciplinary levels, with examples of relevant sentences.**

12. The Committee deeply regrets the death of Mohamed Ghazi Al-Maymuni Al-Matiri, subjected to torture in January 2011 by the law enforcement officials while he was in police custody. The Committee takes note of the indictment of 19 persons who participated in acts of torture related to this case (art. 12).

**The Committee requests the State party to provide detailed information on the judicial developments concerning this case, as well as on measures of compensation to the relatives of the victim.**

13. The Committee expresses its concern at the case of eight persons released from Guantanamo Bay and returned to Kuwait who are allegedly arrested and tried in Kuwait upon their return.

**The Committee requests the State party to provide information on the exact circumstances of this case, as well as on any new judicial development.**

14. The Committee notes that in the concluding observation of the Human Rights Committee of 2000 (CCPR/CO/69/KWT, para.11) reference was made to a list of 62

persons detained in 1991 in the aftermath of the war, who had subsequently disappeared. The Committee notes that the State party acknowledged only one case. The Committee is concerned that the information about disappearance of persons detained following the 1991 war is recurrent and the issue has been raised by a non-governmental organization during the examination of the report of Kuwait by the universal periodic review mechanism in May 2010.

**The State party should provide detailed information to clarify cases of detained and disappeared persons following the 1991 war brought to its attention.**

#### **Non-refoulement**

15. The Committee regrets the lack of information to item 5 (CAT/C/KWT/2, paragraph 18) of the State party's responses to the Committee's list of issues (CAT/C/KWT/Q/2), on statistical information for the past five years (2005 – 2010) on asylum applications, in particular, those submitted by asylum-seekers who had been tortured or might be tortured if returned to their country of origin (art. 3).

**Under no circumstances should the State party expel, return or extradite a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or ill-treatment. The Committee requests the State party to provide information, in detail, on the precise number of asylum applications received, the number of successful asylum applications, the number of asylum-seekers whose applications were accepted because they had been tortured or might be tortured if returned to their country of origin, the number of deportations with an indications of (a) the number of deportations relating to asylum-seekers, and (b) the countries to which deportations have been carried out. The data should be disaggregated by age, sex and nationality.**

#### **Refugees**

16. The Committee notes that in spite the existing cooperation with the UNHCR, the State party has not yet ratified the 1951 Refugee Convention and its 1967 Optional Protocol.

**The State party is encouraged to consider becoming a party to the 1951 Refugee Convention and its 1967 Optional Protocol.**

#### **Imposition of the death penalty**

17. While noting the information provided by the delegation that the death penalty has not been applied in the State party since 2006, the Committee is concerned at the lack of information provided on the number of persons executed before 2006. It is also concerned at the wide number of offences for which death penalty is imposed, as well as the lack of information on the number of persons currently on death row. The Committee is further concerned at the provisions of article 49 of the Code of Criminal Procedure which allows for the use of excessive force on death row detainees (arts. 2 and 16).

**The Committee recommends that the State party consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. In the meantime, the State party should review its policy with a view to restricting to the most serious crimes the imposition of the death penalty. The State party should ensure that all persons on death row are afforded the protection provided by the Convention against Torture and treated humanely and that no discriminatory measures and ill-treatment are applied to these persons. The Committee requests the State party to provide information on the precise number of persons executed since the consideration of the previous report in**

**1998 and for which offences. The State party should also indicate the current number of persons on death row, disaggregated by sex, age, ethnicity and offence.**

### **Training**

18. The Committee notes with appreciation that the State party organized several trainings of law enforcement officials on human rights. However, the Committee is concerned at the lack of specific training of law enforcement officials, security personnel, judges, prosecutors, forensic doctors and medical personnel dealing with detained persons, on the provisions of the Convention and on how to detect and document physical and psychological sequelae on torture and other cruel, inhuman or degrading treatment or punishment. The Committee also regrets the lack of information on trainings on human trafficking, domestic violence, migrants, minorities and other vulnerable groups, as well as on monitoring and evaluation of the impact of any of its training programmes in reducing incidents of torture and ill-treatment. (art.10)

**The State party should further develop and strengthen educational trainings and programmes to ensure that all officials, including law enforcement, security and prison officials, are fully aware of the provisions of the Convention, that breaches of the Convention will not be tolerated and will be promptly and effectively investigated, and that offenders will be prosecuted. Furthermore, all relevant personnel, including medical personnel, should receive specific training on how to identify signs of torture and ill-treatment. To this effect, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), should be included in the training material. The State party should also develop educational trainings for all officials on human trafficking, domestic violence, migrants, minorities and other vulnerable groups. In addition, the State party should assess the effectiveness and impact of training/educational programmes on the absolute prohibition of torture.**

### **Conditions of detention**

19. The Committee welcomes that a Bill has been submitted to amend article 60 of the Criminal Law Procedure of 1960 in order to reduce the maximum period of police custody without written order from four days to 48 hours maximum. However, the Committee is seriously concerned at the general conditions of detention in all types of detention facilities (arts.11 and 16).

**The Committee requests the State party to provide detailed information on general conditions of detention, including the rate of occupancy in all types of detention facilities. The State party should take urgent measures to bring the conditions of detention in all detention facilities into line with the Standard Minimum Rules for the Treatment of Prisoners, improving the food and the health care provided to detainees and strengthening the judicial supervision and independent monitoring of conditions of detention.**

### **Conditions in psychiatric hospitals**

20. The Committee takes into account the information provided during the dialogue about persons with mental disabilities. The Committee regrets, however, that little information was provided on the conditions and legal safeguards for persons placed in involuntary treatment in psychiatric facilities. (art. 16)

**The Committee recommends that the State party take all necessary measures to ensure that persons in involuntary treatment have access to complaint mechanisms.**

**The Committee requests the State party to provide information on conditions for persons in psychiatric hospitals.**

**Redress, including compensation and rehabilitation**

21. While noting that the legislation of the State party contains general provisions that arguably provide possibilities for victims of torture a right to obtain compensation by the State, including restitution of his or her rights, adequate and equitable financial remedies, medical care and rehabilitation, the Committee is concerned at the lack of a specific programme to implement the rights of victims of torture and ill-treatment to receive adequate reparation and compensation. The Committee is also concerned at the lack of available information regarding the number of victims of torture and ill-treatment who may have received compensation and the amounts awarded in such cases, as well as the lack of information on other forms of assistance, including medical or psychosocial rehabilitation, provided to these victims (arts. 12 and 14)

**The State party should ensure that the victims of torture and ill-treatment obtain the enforceable right to redress, including fair and adequate compensation and as full rehabilitation as possible. Furthermore, the State party should provide information on redress and compensation measures ordered by the courts and provided to victims of torture. This information should include the number of requests made, the number granted, and the amounts ordered and actually provided in each case. In addition, the State party should provide information on any on-going reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, as well as the allocation of adequate resources to ensure the effective functioning of such programmes.**

**Migrant domestic workers**

22. The Committee expresses its concern at reports referring to widespread abuse of migrant domestic workers, and in particular, women. It appears that this fragile group is constantly exposed to ill-treatment in complete impunity and without legal protection. The Committee also regrets the lack of statistics regarding the number and type of complaints filed with authorities that assume supervision of domestic labour, and on how these complaints are resolved. The Committee takes note of the State party's commitment made by its representatives during the consideration of its report at the eighth session of the universal periodic review in May 2010, to make efforts to create legislation against human trafficking and the smuggling of migrants in line with the United Nations Convention against Transnational Organized Crime and the Protocol thereto (arts. 1, 2 and 16).

**The State party should adopt, as a matter of urgency, labour legislation covering domestic work and providing legal protection to migrant domestic workers, in particular, women, in its territory against exploitation, ill-treatment and abuse. The State party should also provide to the Committee statistics, including on the number and type of complaints filed with authorities, as well as the action taken to solve cases that caused these complaints.**

**Violence against women**

23. The Committee notes with concern numerous allegations on violence against women and domestic violence, on which the State party has not provided information. The Committee is concerned at the absence of a specific law on domestic violence, as well as the lack of statistical information on the overall complaints of domestic violence reported and the number of investigations, convictions and punishments meted out (arts. 2 and 16).

**The Committee:**

- (a) **Calls upon the State party to enact, as a matter of urgency, legislation to prevent, combat and criminalize violence against women, including domestic violence;**
- (b) **Recommends that the State party carry out research and data collection on the extent of domestic violence, and provide the Committee with statistical data on complaints, prosecutions and sentences;**
- (c) **Encourages the State party to organize the participation of its public officials in rehabilitation and legal assistance programmes and to conduct broad awareness campaigns for officials such as judges, law officers, law enforcement agents and welfare workers, who are in direct contact with victims. The population at large should be made aware of those programmes.**

**Human trafficking**

24. The Committee is concerned at the lack of specific legislation to prevent, combat and criminalize human trafficking. The Committee is further concerned at the lack of information on trafficking in persons, including the existing legislations and statistics, particularly the number of complaints, investigations, prosecutions and convictions of perpetrators of trafficking, and the lack of information on practical measures adopted to prevent and combat such phenomena, including medical, social and rehabilitative measures (arts. 2, 4 and 16).

**The State party should combat trafficking in human beings by adoption and implementation of specific anti-trafficking legislation ensuring that trafficking is defined as a crime in the State party in accordance with international standards. These offences should be punishable by appropriate penalties. The State party should provide protection for victims and ensuring their access to medical, social, rehabilitative, counseling and legal services.**

**Discrimination and violence against vulnerable groups**

25. The Committee is concerned at reports that vulnerable groups such as lesbian, gay, bisexual and transgender (LGBT) persons are subjected to discrimination and ill-treatment, including sexual violence, both in public and domestic settings. (arts. 2 and 16)

**The State party should investigate crimes related to discrimination directed towards all vulnerable groups and pursue ways in which hate crimes can be prevented and punished. The State party should also promptly, thoroughly and impartially investigate all cases of discrimination and ill-treatment of these vulnerable groups, and punish those responsible for these acts. The State party should conduct awareness-raising campaigns for all officials who are in direct contact with victims of such violence, as well for the population at large.**

**Situation of “Bidun” persons**

26. The Committee expresses its concern at the situation of at least 100,000 people, who are not legally recognized by the State, known as the “Bidun” (without nationality) and allegedly victims of various types of discrimination and ill-treatment (art. 16).

**The State party should enact specific legislation in order to protect “Bidun” people and recognize their legal status. The State party should adopt all adequate legal and practical measures to simplify and facilitate the regularization and integration of these persons and their children. It should ensure that these persons enjoy all human rights without discrimination of any kind. The State party should also adopt the necessary measures to guarantee that these persons 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.**

#### **National human rights institution**

27. The Committee notes with concern that the State party has not yet established a national human rights institution to promote and protect human rights in the State party, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134, annex) (art. 2).

**The State party should establish an independent national human rights institution, in accordance with the Paris Principles**

#### **Data collection**

28. 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, security, intelligence and prison personnel, as well as on trafficking, ill-treatment of migrant workers, and domestic and sexual violence.

**The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, trafficking, ill-treatment of migrant workers and domestic and sexual violence as well as on compensation and rehabilitation provided to the victims.**

29. The Committee recommends that the State party consider ratifying the Optional Protocol to the Convention.

30. The Committee welcomes the commitment of the State party made during the dialogue to withdraw its reservation to article 20 of the Convention.

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

32. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely, the Convention on the Rights of Persons with Disabilities, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention for the Protection of All Persons from Enforced Disappearance.

33. The Committee invites the State party to ratify the Rome Statute on the International Criminal Court, the Convention on the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

34. The Committee invites the State party to present its next periodic report accordance with its reporting guidelines and to observe the page limit of 40 pages for the treaty-specific document. The Committee also invites the State party to update its common core document in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6), approved by the Inter-Committee meeting of the human rights treaty bodies, and to observe the page limit of 80 pages for the common core document. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

35. The State party is encouraged to disseminate widely the reports submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

36. The Committee requests the State party to provide, within one year, follow-up information in response to the Committee's recommendations contained in paragraphs 10, 11 and 17 and to provide information on the follow-up to its commitment referred to in paragraph 6 of the present concluding observations.

37. The State party is invited to submit its next periodic report, which will be the third report, by 3 June 2015.

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