



**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**

Concluding observations of the Committee against Torture

HONDURAS

1. The Committee against Torture considered the initial report of Honduras (CAT/C/HND/1) at its 880th and 882nd meetings (CAT/C/SR.880 and 882), held on 6 and 7 May 2009, and adopted, at its 893rd meeting (CAT/C/SR.893), the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the submission of the initial report of Honduras and commends the State party for its frank and open assessment on the implementation of the Convention in the State party. Nevertheless, it regrets that the initial report was submitted with a 10-year delay. The Committee notes with satisfaction the constructive efforts made by the multisectoral State party delegation to provide additional information and explanations during the dialogue.

B. Positive aspects

3. The Committee welcomes the ratification of the following international instruments:

(a) Convention on the Rights of Persons with Disabilities and the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty (18 April 2008);

(b) International Convention for the Protection of All Persons from Enforced Disappearance (1 April 2008);

(c) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (1 April 2008);

(d) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (23 May 2006);

(e) Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (9 August 2005);

(f) Rome Statute of the International Criminal Court (1 July 2002);

(g) Convention on the Elimination of All Forms of Racial Discrimination (10 October 2002);

(h) The two Optional Protocols to the Convention on the Rights of the Child (18 May and 14 August 2002).

4. The Committee welcomes the fact that the death penalty is not in use in the State party.

5. The Committee notes with satisfaction that the State party has extended invitations to several special procedures mechanisms, such as the Working Group on Enforced or Involuntary Disappearances and the Working Group on Arbitrary Detention.

6. The Committee notes with satisfaction the ongoing efforts of the State party to reform its legislation, policies and procedures in order to ensure better protection of human rights, in particular the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, notably:

(a) The adoption on 28 September 2008 of the National Preventive Mechanism Act;

(b) The adoption of the new Code of Criminal Procedure, which came into force in 2002 and introduced a new system of proceedings based on oral and public hearings.

C. Principal subjects of concern and recommendations

Definition of torture

7. While noting the criminalization of torture by amendment to the Honduran Criminal Code in 1996, the Committee is concerned that the national legislation is not yet fully harmonized with the Convention, as article 209-A of the Honduran Criminal Code does not contain intimidation, or coercion of the victim or a third person and discrimination of any kind as a purpose or reason for inflicting torture. It further lacks provisions criminalizing torture inflicted at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The Committee also notes that, in contravention of article 1 of the Convention, the Honduran Criminal Code allows for adjustments in the sanction depending on the pain or

suffering inflicted. The Committee notes that the crimes of coercion, discrimination and ill-treatment are prohibited in other articles of the Criminal Code; it however expresses concern at the different sanctions provided for those crimes (art. 1).

The Committee encourages the State party to continue its commitment to revise the definition of torture contained in article 209-A of the Honduran Criminal Code and recommends that the provision be harmonized in strict conformity with article 1 of the Convention. It further recommends that the State party make torture an imprescriptible offence.

8. The Committee further notes with concern that members of the armed forces are not included as public officials in the definition of torture in article 209-A of the Honduran Criminal Code and that there exists a parallel definition in article 218 of the Military Code, however carrying significantly lower sanctions (art. 1).

The State party should abolish any parallel legislation on the criminalization of torture and harmonize the sentences for the crime of torture by any public official, including members of the armed forces, as foreseen in article 1 of the Convention.

Fundamental safeguards

9. The Committee notes that the new Code of Criminal Procedure contains fundamental safeguards, including the right not to be subjected to ill-treatment or torture during detention. While noting a certain increase in the number of public defenders and the draft legislation to enhance their independence, the Committee is concerned that in light of the high percentage of recourse to public defenders, their number may be inadequate. The Committee is further concerned that allegations of ill-treatment and torture are investigated by the police itself and that an independent and external oversight mechanism for alleged unlawful acts committed by the police does not exist. The Committee is also concerned that, in practice, law enforcement officials, in particular the preventive police, often do not respect fundamental legal safeguards, such as to promptly inform the detainee of the reason for arrest, the right of a detainee to access a lawyer and to access an examination by an independent doctor within 24 hours of detention and the right to contact his or her family. The Committee is also concerned at the obstacles experienced by medical professionals to exercise their duties, such as limited access to places of detention for reporting on possible torture and other cruel and inhuman or degrading treatment or punishment, including the application of internationally accepted guidelines for such reporting (arts. 2 and 11).

The State party should ensure that an independent oversight mechanism for alleged unlawful acts committed by all agents of the State is set up. The State party should ensure that, in practice, all detainees are immediately informed of the reason for arrest, that the right to access a lawyer and to contact a family member is respected and that all detainees undergo a medical examination within 24 hours of their detention. The State party should also take urgent measures to eliminate all obstacles experienced by its medical professionals in the exercise of their duties and to establish adequate guidelines for its medical professionals to report systematically on findings of torture and other cruel and inhuman or degrading treatment or punishment.

Independence of the judiciary

10. The Committee expresses concern at the State party's failure to establish an independent body to safeguard the independence of the judiciary and to supervise the appointment, promotion and regulation of the profession (arts. 2 and 12).

The State party should guarantee the full independence of the judiciary in line with the Basic Principles on the Independence of the Judiciary (General Assembly resolution 40/146 of December 1985) and establish an independent body to safeguard the independence of the judiciary and to supervise the appointment, promotion and regulation of the profession.

Enforced or involuntary disappearances

11. While welcoming the State party's invitation of the Working Group on Enforced or Involuntary Disappearances in 2007, the Committee expresses concern at the absence of full reparation for victims and families of enforced or involuntary disappearances under former authoritarian governments before 1982 and, in general, at insufficient investigation, punishment and compensation for these crimes. It further regrets that the State party has not established a truth and reconciliation commission. Moreover, the Committee expresses concern at reports of new cases of enforced and involuntary disappearances, including of children. The Committee further regrets that the Honduran Criminal Code does not contain a specific provision punishing the crime of enforced or involuntary disappearance (arts. 2, 4 and 16).

The Committee reiterates the recommendations by the Working Group on Enforced or Involuntary Disappearances and is concerned that they have not been fully implemented. The Committee urges the State party to take swift measures to ensure progress in the search of the missing persons, to establish a comprehensive programme of reparation and compensation for the victims and their families, to prevent new instances of enforced or involuntary disappearance and to amend the Honduran Criminal Code in line with the Convention for the Protection of All Persons from Enforced Disappearance.

Extrajudicial killings, including of children

12. The Committee takes note of the establishment of a special unit for the investigation of violent deaths of children within the Honduran Institute for Children and the Family, as well as the establishment of the Municipal Children's Ombudsman's Office, in charge of addressing ill-treatment and abuse of children. It is, however, very concerned at persistent reports of a high number of extrajudicial killings, particularly of children, as well as of members of the judiciary and at the information that some victims of extrajudicial killings appear to have been tortured before being killed. It is also very concerned at the absence of effective, thorough and impartial investigations of these incidents (arts. 2, 12 and 16).

The State party should take urgent measures to prevent extrajudicial killings, particularly of children, as well as of members of the judiciary, and ensure that thorough impartial investigations of allegations of extrajudicial killings are carried

out systematically, and that those responsible are swiftly prosecuted and adequately punished. It further recommends systematic disaggregated data collection on all incidents of violence, including against children.

Trafficking in persons

13. The Committee recognizes the efforts made by the State party to address trafficking in women and children, such as the prohibition of trafficking for commercial sexual exploitation in the Criminal Code and in the Anti-Trafficking Act. However, the Committee is concerned about persistent reports of internal and cross-border trafficking in women and children for both sexual and other exploitative purposes and it regrets that the legal provisions do not cover trafficking for reasons other than sexual purposes and that officials suspected of trafficking activities are not properly investigated (arts. 2, 10 and 16).

The State party should ensure that offenders are prosecuted and punished for the crime of trafficking in persons, and amend the Criminal Code to include all exploitative purposes of trafficking. The State party should continue to conduct nationwide awareness-raising campaigns, provide adequate programmes of assistance, recovery and reintegration for victims of trafficking and conduct training for law enforcement officials, migration officials and border police on the causes, consequences and incidence of trafficking and other forms of exploitation. The Committee further recommends that the State party increase its efforts to seek international, regional and bilateral cooperation with countries of origin, transit and destination to prevent trafficking.

Pretrial detention

14. While noting the progress made by the State party since the adoption of the new Code of Criminal Procedure in abolishing the obligatory pretrial detention and establishing the “*juez de ejecución*”, whose mandate is to monitor the legality of remand detention, the Committee is very concerned at reports of frequent ill-treatment and torture, excessive use of force on arrest, as well as acts of extortion by law enforcement officials and at the persistent high numbers of detainees, both children and adults, in prolonged pretrial detention. It further expresses concern at the various forms of derogations from the general rule for the duration of pretrial detention. The Committee regrets the lack of use, in practice, of alternatives to imprisonment (arts. 2, 11 and 16).

The State party should take effective measures to send a clear and unambiguous message to all levels of the law enforcement hierarchy that torture, ill-treatment, excessive use of force and extortion are unacceptable, and ensure that law enforcement officials only use force when strictly necessary and to the extent required for the performance of their duties. The State party should further take appropriate measures to increase the number of “*jueces de ejecución*”, to further reduce the duration of remand detention and derogations thereof, as well as detention before charges are brought. The Committee also urges the State party to implement alternatives to deprivation of liberty, including probation, mediation, community service or suspended sentences.

Training

15. The Committee notes with appreciation the detailed information provided by the State party on training programmes and sessions for law enforcement officials, the judiciary, prison staff, health-care specialists and psychologists, etc. However, the Committee regrets the limited information on monitoring and evaluation of these training programmes and the lack of available information on how effective the training programmes have been in reducing incidents of torture and ill-treatment (art. 10).

The State party should further develop educational programmes to ensure that all officials, including law enforcement officials and prison staff, are fully aware of the provisions of the Convention and its Optional Protocol, that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted. All relevant personnel should receive specific training on how to identify signs of torture and ill-treatment. The Committee recommends that the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) become an integral part of the training provided to physicians. Furthermore, the State party should develop and implement a methodology to assess the effectiveness and impact of such training/educational programmes on the reduction of cases of torture and ill-treatment.

Conditions of detention

16. The Committee welcomes the monitoring of places of detention through regular visits by the Ministry of Public Affairs, together with members of the National Human Rights Commission and civil society. It further welcomes the decisions by the Supreme Court on five habeas corpus applications and the efforts made by the State party to implement the Court's recommendations. Nevertheless, the Committee is very concerned at reports of high numbers of deaths in custody that have not been investigated. It further regrets the absence of a professionally staffed penitentiary system independent from the National Police.

The State party should investigate promptly, thoroughly and impartially all incidents of death in custody and provide adequate compensation to the families of victims. The State party should further undertake necessary reforms to create an independent penitentiary system.

17. The Committee is concerned at the poor conditions of detention, including overcrowding, at times lack of drinking water, insufficient provision of food, poor sanitary conditions, as well as the failure to separate accused persons from convicted ones, women from men and children from adults, in rural areas as well as in police holding cells. Furthermore, the Committee is concerned at the occurrence of inter-prisoner violence and lack of statistical data that may provide a breakdown by relevant indicators to facilitate the determination of root causes and the design of strategies to prevent and reduce such occurrences (arts. 11 and 16).

The Committee recommends that the State party:

(a) Continue its efforts to alleviate overcrowding of penitentiary institutions, including through the application of alternative measures to imprisonment and the increase of budgetary allocations to develop and renovate the infrastructure of prisons and other detention facilities;

(b) Take effective measures, including by allocation of budgetary resources, to improve living conditions in all detention facilities;

(c) Ensure the separation in all places of detention of convicts from prisoners on remand, men from women and children from adults;

(d) Monitor and document incidents of inter-prisoner violence with a view to revealing root causes and designing appropriate prevention strategies, and provide the Committee with data thereon, disaggregated by relevant indicators;

(e) Ensure the application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

Persons with mental impairment or illnesses deprived of their liberty

18. The Committee notes with concern that only two detention centres are equipped with hospitals, which, however, do not have the capacity to tend to persons with mental impairment or illnesses. It further regrets the absence of an effective system of referral to specialists, as well as a policy to provide care in the civilian system (arts. 11 and 16).

The State party should enhance health services in places of detention to include services for persons with mental impairment or illnesses deprived of their liberty. It further recommends that the State party establish an effective and functioning system for referrals to mainstream health-care institutions or professionals.

“Unlawful associations”

19. The Committee notes discussions in the State party on changing the provision on “unlawful associations” in article 332 of the Criminal Code. It is however concerned that a suspected member of an “unlawful association” can be arrested without an arrest warrant and that his/her detention on remand is mandatory. It is further concerned at the repressive social policy in combating “unlawful associations”, or “*maras*” or “*pandillas*”, which does not adequately consider the root causes of the phenomenon and may criminalize children and young people on the sole ground of their appearance (arts. 11 and 16).

The State party should revise article 332 of its Criminal Code and ensure that legal safeguards are provided without discrimination to all persons under arrest or detention. It further recommends that the State party undertake steps to monitor and document the phenomenon of “unlawful associations” with a view to revealing root causes and designing appropriate prevention strategies.

Impunity and absence of prompt, thorough and impartial investigations

20. The Committee notes with concern the existence of widespread impunity, acknowledged even by the State party, as one of the main reasons for its failure to eradicate torture. It is particularly concerned at the absence of an independent body to investigate allegations of ill-treatment and torture. The Committee is concerned at reports of several cases of serious allegations against members of the National Police that remain at the investigation stage and for which perpetrators have not effectively been brought to justice and at reports that alleged perpetrators continue exercising their duties. Moreover, the Committee is concerned at the killing of two environmentalists, whose perpetrators escaped from prison after being sentenced, and at the absence of any investigation or conviction of the instigators of the crime (arts. 12, 13 and 16).

The Committee urges the State party to take swift measures to counter impunity, including by:

(a) Ensuring prompt, thorough, impartial and effective investigations into all allegations of torture and ill-treatment committed by law enforcement officials. In particular, such investigations should not be undertaken by or under the authority of the police, but by an independent body. In connection with prima facie cases of torture and ill-treatment, the alleged suspect should as a rule be subject to suspension or reassignment during the process of investigation, especially if there is a risk that he or she might impede the investigation;

(b) Bringing the perpetrators to justice and imposing appropriate sentences on those convicted in order to eliminate impunity for law enforcement personnel who are responsible for violations prohibited by the Convention;

(c) Ensuring that an investigation is lodged against the instigators of the murder of the two environmentalists and that they are sentenced accordingly once identified. Furthermore, the State party should thoroughly investigate the escape from prison of the convicted perpetrators, ensure that they serve their sentence according to their conviction and, in general, take measures to prevent further escapes.

Violence against women

21. The Committee notes the establishment, in 2006, of the Inter-institutional Commission on Femicide and the Special Investigation Unit to investigate violent deaths of women within the Public Prosecutor's Office. It also notes the creation of a gender unit within the National Police. Nonetheless, the Committee is very concerned at the prevalence of many forms of violence against women and girls, including sexual abuse, domestic violence and femicide, and at the absence of thorough investigations into the incidence of violence against women (arts. 12, 13 and 16).

The State party should increase its efforts to ensure that urgent and efficient protection measures are put in place to prevent, combat and punish perpetrators of violence against women and children, including sexual abuse, domestic violence and femicide, and conduct widespread awareness-raising campaigns and training on violence against women and girls for officials (judges, lawyers, law enforcement agents, and social workers) who are in direct contact with the victims, as well as for the public at large.

22. The Committee is also concerned at reports of inspections of female private parts when entering a place of detention, in particular at the fact that such inspections may be carried out by unqualified persons, including by personnel without medical training (art. 16).

The Committee emphasizes that inspections of female private parts can constitute cruel or degrading treatment and that the State party should take measures to ensure that they are carried out only when necessary, by trained medical professionals and in taking the greatest care to preserve the dignity of the woman being examined.

Compensation and rehabilitation

23. The Committee regrets 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 also regrets 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 about other forms of assistance, including medical or psychosocial rehabilitation, provided to these victims (arts. 12 and 14).

The State party should:

(a) Strengthen its efforts in respect of reparation, compensation and rehabilitation in order to provide victims of torture and other cruel, inhuman or degrading treatment or punishment with fair and adequate reparation and compensation, including the means for as full a rehabilitation as possible;

(b) Develop a specific programme of assistance in respect of victims of torture and ill-treatment.

24. The Committee is concerned at the insufficient prosecution and sentencing of those criminally responsible for crimes against humanity, including possible acts of torture, committed under the authoritarian regime that governed until 1982. The Committee is also concerned at the lack of information on reparation, rehabilitation and other measures provided to the victims (arts. 12 and 14).

The Committee considers that the absence of prosecution and provision of adequate reparation, including rehabilitation, to victims contribute to a failure of the State party to meet its obligations under the Convention to prevent torture and

ill-treatment. The State party should ensure prompt, impartial and thorough investigations into all such acts, prosecute and punish perpetrators with appropriate penalties which take into account the seriousness of their acts, and offer reparation to victims, including rehabilitation measures, as well as taking steps to prevent impunity.

Human rights defenders, environmentalists and political activists

25. Despite the State party's affirmation that interim protection measures are adopted upon the request of human rights defenders, environmentalists and political activists who claim to be in danger, the Committee is concerned about reports of persisting acts of harassment and persecution, including threats, murders and other human rights violations, experienced by human rights defenders, environmentalists and other political activists, and about the fact that such acts go unpunished (art. 16).

The State party should adopt effective measures to prevent and protect human rights defenders, environmentalists and other political activists from any further violence. Furthermore, the State party should ensure the prompt, thorough and effective investigation and appropriate punishment of such acts.

Data collection

26. While noting that some statistics have been provided, the Committee regrets the lack of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement officials, as well as on trafficking in persons and domestic and sexual violence. The Committee also regrets the lack of statistics in respect of inter-prisoner violence (arts. 12, 13 and 16).

The State party should establish an effective system to gather all relevant statistical data in order to monitor the implementation of the Convention at national level, including complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, inter-prisoner violence, trafficking in persons and domestic and sexual violence. The Committee recognizes the implications in terms of confidentiality of gathering personal data and emphasizes that appropriate measures should be taken to ensure that there is no misuse of data collected.

27. The Committee invites the State party to ratify the principal United Nations human rights treaties to which it is not yet a party, namely the Optional Protocol to the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the Covenant on Economic, Social and Cultural Rights.

28. The Committee invites the State party to submit its core document in accordance with the requirements for the preparation of a common core document established in the harmonized reporting guidelines approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.5.

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

30. The State party is encouraged to disseminate widely its report submitted to the Committee and the Committee's concluding observations, through official websites, the media and non-governmental organizations.

31. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 9, 11, 13, 14, 18 and 19 above.

32. The State party is invited to submit its second periodic report by no later than 15 May 2013.
