



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

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COMMITTEE AGAINST TORTURE

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Geneva, 3 - 21 November 2008

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

Concluding observations of the Committee against Torture

MONTENEGRO

1. The Committee considered the initial report of Montenegro (CAT/C/MNE/1) at its 848th and 851st meetings (CAT/C/SR.848 and CAT/C/SR.851), held on 11th and 12th November 2008, and adopted, at its 861st meeting (CAT/C/SR.861), held on 19 November 2008, the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the submission of the State party's initial report and the replies to its list of issues (CAT/C/MNE/Q/1). The Committee expresses appreciation for the constructive dialogue held with the high-level delegation.

B. Positive aspects

3. The Committee welcomes the many legislative and administrative measures taken by the State party in areas of relevance to the Convention, including the adoption of:

- (a) The new Constitution in 2007 which defines torture and stipulates that international treaties have supremacy over national legislation;

- (b) The Law on Protection of Rights of Mental Health Patients, the establishment of the Committee on Ethics and the Council for the Protection of Rights of Mental Health Patients in 2006;
- (c) The Asylum Law in July 2006 with application as of 25 January 2007;
- (d) The Strategy for the Reform of the Judiciary for the period 2007 – 2012; and
- (e) The Code of Police Ethics in January 2006.

4. The Committee also welcomes the ratification of the Rome Statute of the International Criminal Court in 2006.

C. Main subjects of concerns and recommendations

Definition of torture

5. While noting that article 9 of the Constitution provides that international treaties may be directly applicable by the courts and that the provisions of international treaties have precedence over domestic law, the Committee remains concerned that the definition of torture provided in domestic legislation is not fully in conformity with the definition of article 1 in the Convention. In particular, the Committee is concerned that the Criminal Code does not explicitly criminalize consent or acquiescence of torture by a public official and does not specifically cover mental suffering inflicted as torture (art. 1).

The State party should bring its definition of torture in domestic legislation in accordance with article 1 of the Convention.

Fundamental legal safeguards

6. The Committee is concerned that, in practice, detainees are not always afforded the right to access a lawyer, an independent doctor, if possible of their choice, and to contact a relative from the outset of deprivation of liberty. The Committee is also concerned that pre-trial detainees do not have in all circumstances the right to confidential communication with their legal counsels (art. 2).

The State party should take effective measures to ensure that all detainees are afforded, in practice, fundamental legal safeguards during their detention. These include, in particular, the right to access a lawyer, an independent doctor, if possible of their own choice, and to contact a relative as from the outset of deprivation of liberty. Furthermore, the State party should ensure the right of detainees to have confidential communication with their legal counsels in all circumstances.

The Protector of Human Rights and Freedoms (Ombudsman)

7. While welcoming the establishment in 2003 of the Ombudsman, with a mandate, inter alia, to monitor the conditions of detention, including treatment of detainees, in prisons and other premises

in which individuals are deprived of their liberty, the Committee remains concerned that the Ombudsman has not been able to conduct regular visits to places of detention. The Committee is also concerned that the independence of this institution is not fully ensured and that adequate human and financial resources have not been allocated in order to effectively fulfill its mandate (art. 2).

The State party should take appropriate legal measures to ensure the full independence of the Ombudsman and provide adequate human and financial resources to enable his office to carry out its mandate to independently and impartially monitor and investigate alleged ill-treatment perpetrated by law enforcement personnel. The State party should pursue speedily the recommendations issued by the Ombudsman.

Independence of the judiciary

8. The Committee is concerned that the new constitutional provisions for the appointment and dismissal of judges by the Judicial Council do not yet fully protect the independence of the judiciary (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 that judicial appointments are made according to objective criteria concerning qualification, integrity, ability and efficiency. Furthermore, the State party should adopt an independent monitoring mechanism of Court proceedings with the view to further enhancing the independence of the judiciary.

Juvenile justice system

9. The Committee notes that the State party is considering the adoption of a separate Law on Juvenile Justice in line with international standards. However, the Committee is concerned at reports that juveniles in conflict with the law are often treated under the same laws and procedures applicable to adults, that they are held for long periods in pre-trial detention and share open spaces with adult detainees (art. 16).

The State party should take measures to protect juveniles in conflict with the law in line with international standards, including the United Nations Standards Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules, adopted by General Assembly resolution 40/33 of 29 November 1985) and to speedily adopt a comprehensive Law on Juvenile Justice in accordance with the above-mentioned standards.

Refugees and asylum-seekers

10. The Committee notes with satisfaction that the Constitution of Montenegro guarantees the right to seek asylum and that in July 2006 the State party adopted its first Asylum Law, the implementation of which started on 25 January 2007. However, the Committee remains concerned that the Law is not yet fully implemented, including the establishment of facilities for the accommodation of asylum-seekers (art. 3).

The State party should provide the necessary human and financial resources to the administrative bodies responsible for the implementation of the Law on Asylum and promulgate the necessary regulations and operating instructions for the full implementation of the Law on Asylum. The State party should ensure that the principle of non-refoulement is duly observed as enshrined in article 3 of the Convention.

Displaced persons

11. The Committee is concerned that the State party has not yet regularized the legal status of a large number of “displaced persons” from Croatia and Bosnia-Herzegovina and “internally displaced persons” from Kosovo (art. 3).

The Committee reiterates the recommendations made by the Commissioner for Human Rights of the Council of Europe, following his visit to the country from 2 to 6 June 2008 (CommDH(2008)25). In this regard, the State party should:

- (a) Take concrete measures for the local integration of “displaced persons” from Croatia and Bosnia-Herzegovina and grant them a legal status and full protection against expulsion in violation of their legal rights,**
- (b) Regularize the status of “internally displaced persons” from Kosovo residing in Montenegro by granting them a proper legal status to minimize the risk of statelessness, and**
- (c) Consider ratifying the Convention on the Reduction of Statelessness adopted in 1961.**

Impunity for war crimes

12. The Committee is concerned at the reported climate of impunity surrounding war crimes which remain unaddressed or in the investigation phase, with little or no result to date. The Committee takes note of the information provided by the State party on the developments with regard to the cases “Kaluderski Laz”, “Morinj”, “Deportation of Muslims” and “Bukovica”(arts. 12 and 16).

The Committee urges the State party to expedite and complete its investigation of war crimes, and ensure that all perpetrators, in particular those bearing the greatest responsibility, are brought to justice. The Committee requests the State party to provide it with information in this respect.

Cooperation with the International Criminal Court

13. While welcoming the State party's ratification of the Rome Statute of the International Criminal Court (ICC), the Committee regrets the bilateral agreement between the United States of America and Montenegro whereby United States nationals in the territory of Montenegro cannot be transferred to the International Criminal Court to be tried for war crimes or crimes against humanity (arts. 7 and 8).

The State party should take appropriate measures to review the terms of this agreement which prevent the transfer of United States nationals in the territory of Montenegro to the International Criminal Court, in accordance with the provisions of the Convention.

Training

14. The Committee welcomes the detailed information provided by the State party on training programmes for law enforcement officials, prison staff, judges and prosecutors. However, the Committee regrets the lack of information on monitoring and evaluation of the effectiveness of these programmes in reducing incidents of torture and ill-treatment (arts. 10 and 16).

The State party should:

- (a) Further develop educational programmes to ensure that all officials, including civil or military, law enforcement personnel, medical personnel and other officials who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, are fully aware of the provisions of the Convention;**
- b) Ensure that all relevant personnel receive specific training on how to identify signs of torture and ill-treatment and report such incidents to the competent authorities;**
- c) Ensure that the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1999) becomes an integral part of the training provided to physicians and other officials undertaking investigations and that it is translated into all appropriate languages; and**
- d) 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

15. While welcoming the measures taken by the State party to improve considerably the conditions of detention, including the construction of new facilities and the renovation of existing ones, the Committee remains particularly concerned at the overcrowding and the poor material conditions in

Podgorica Prison. The Committee is also concerned at the lack of information on sexual violence in prisons, including inter-prisoner violence. (arts. 11 and 16).

The State party should strengthen the implementation of the national prison reform process, including the allocation of sufficient funds to further improve the infrastructure and, in particular, of Podgorica Prison. In addition, the State party should ensure regular provision of hygienic articles and regular visits by family members. The Committee also recommends that the State party take appropriate measures to prevent sexual violence in prisons, including inter-prisoner violence.

Minorities

16. While noting the various measures adopted by the State party, including the Strategy for Minority Policy; the Strategy for the Improvement of the Position of Roma, Ashkali and Egyptian populations (RAE) in Montenegro for the period 2008-2012; the Action Plan for the Implementation of the Project “Decade of Roma Inclusion 2005-2015” and the establishment in 2006 of the “Funds for Minorities”, the Committee is concerned at information regarding the discriminatory treatment suffered by Roma, as well as their deplorable living conditions resulting from such treatment, which may amount to degrading treatment (art. 16).

The State party should ensure that Roma living in the State party are protected from discriminatory treatment. Furthermore, it should strengthen its efforts to implement the various plans and strategies addressing minorities, including Roma, so as to improve their extremely precarious living conditions and ensure their access to education, employment, including in the public administration, health care and social welfare, in a non-discriminatory manner.

Prompt, thorough and impartial investigations

17. While welcoming the adoption of various measures to combat and prevent police brutality, including the adoption of the Code of Police Ethics, the Committee remains particularly concerned at the number of allegations of torture and ill-treatment by the police and the lack of prompt and impartial investigation of such cases (art. 12).

The State party should ensure that all allegations of ill-treatment and excessive use of force by the police are promptly and impartially investigated. 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 influence the investigation. The State party should prosecute the perpetrators and impose appropriate sentences on those convicted in order to eliminate impunity for law enforcement personnel who are responsible for acts prohibited by the Convention.

The Committee notes the information provided by the State party's delegation on the specific cases put to it during the dialogue. However, the Committee wishes to reiterate the obligation of the State party to undertake an independent, thorough, and impartial investigation on all allegations of torture and ill-treatment. The Committee requests the State party to keep it informed of any developments, within the context of the ongoing dialogue, and, in particular, with regard to the report submitted by the Youth Initiative for Human Rights alleging torture by police officers.

Individual complaints

18. The Committee is concerned at the lack of an effective complaint procedure for individuals who allege to be victims of torture or ill-treatment by law enforcement officials and in particular that they do not have access to their medical file to substantiate their claims. In practice, access to the medical file is granted only upon the decision of an investigating judge (arts. 13 and 16).

The Committee recommends that the State party ensure that every individual who alleges that he or she has been subjected to torture or ill-treatment has the right to complain to the competent authorities without any impediment. Furthermore, the State party should ensure that all persons deprived of their liberty should have access to their medical file upon their request, irrespective of the decision by the investigating judge.

19. The Committee welcomes the adoption in 2004 of the law on Witness Protection which came into force on 1 April 2005, but regrets the lack of any information on its implementation, in particular on measures undertaken to protect complainants of torture or ill-treatment (arts. 13 and 16).

The Committee recommends that the State party ensure that protection is provided to complainants of torture and ill-treatment in order to ensure their effective right to file a complaint.

Compensation and rehabilitation

20. The Committee notes the information provided by the delegation that compensation has been awarded in only one case for violations under the Convention and that no other victim of such violation has claimed compensation (art. 14).

The State party should ensure that victims of acts of torture have an enforceable right to claim from the State party fair and adequate compensation, including the means for as full rehabilitation as possible. The State party should develop 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. The State party should provide information, including statistical data, in this regard in its next periodic report.

Violence against women

21. While noting that a Bill on Protection from Domestic Violence is under consideration, the Committee expresses its concern at the prevalence of violence against women and, in particular, domestic violence (art. 16).

The State party should:

- (a) Complete consideration and adopt the draft law on domestic violence;**
- (b) Increase its efforts to prevent, combat and punish violence against women, including domestic violence, by providing, inter alia, free legal aid to the victims;**
- (c) Conduct broader awareness-raising campaigns and training on domestic violence for judges, lawyers, law enforcement officials and social workers who are in direct contact with the victims; and**
- (d) Take effective measures to ensure the immediate protection and long term rehabilitation of victims of violence.**

Corporal punishment

22. The Committee notes that corporal punishment of children is not explicitly prohibited in the home and in alternative care settings (art. 16).

Taking into account the recommendation in the United Nations Secretary General's Study on Violence Against Children (A/61/299), the State party should adopt and implement legislation prohibiting corporal punishment in all settings, supported by the necessary awareness-raising and educational campaigns.

Trafficking in persons

23. While noting that the trend in trafficking in persons has decreased in the last years, the Committee is concerned at reports that trafficking in persons, particularly women, remain a considerable problem. The Committee is also concerned that Montenegro is a transit country (arts. 2, 10 and 16).

The State party should undertake effective measures, including through regional and international cooperation, to combat and prevent

trafficking in persons, conduct training for law enforcement officials, particularly border and customs officials, continue to prosecute and punish perpetrators, and ensure the provision of free legal aid, recovery and reintegration services to victims of trafficking.

24. The Committee notes with appreciation the State party's statement that a Bill on the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is under the consideration of the Parliament. In this regard, the Committee recommends that the State party proceed with the ratification of the Optional Protocol to the Convention in order to strengthen the prevention against torture.

25. The State party is encouraged to consider becoming a party to the core United Nations human rights treaties to which it is not yet a party, namely: the International Convention of the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities. It also recommends that the State party ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

26. 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.5.

27. The State party is encouraged to disseminate widely the report it submitted to the Committee, its replies to the list of issues, the summary records of meetings and the conclusions and recommendations of the Committee, in all appropriate languages, through official websites, the media and non-governmental organizations.

28. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 6, 11, 12 and 17 above.

29. The State party is invited to submit its next periodic report, which will be considered as the second report, by 21 November 2012.
