



## OMCT E-Bulletin November - December 2018

### 65<sup>th</sup> session of the Committee Against Torture

This E-Bulletin is part of the OMCT's « Convention Against Torture Programme ». OMCT mobilizes and coordinates activities of civil society organizations during the sessions of the United Nations Committee Against Torture (CAT). It facilitates the engagement of civil society by building coalitions, sharing information, ensuring timely and effective report submissions, advising on advocacy opportunities and supporting effective access to the CAT. Find out more about our work on our [website](#).

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### Introduction

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During its 65<sup>th</sup> Session (12 November – 7 December 2018), the Committee Against Torture (CAT) considered the State party reports of Peru, Viet Nam, Guatemala, the Netherlands, Canada and Maldives. In accordance with Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, every four years States Parties submit a report to the CAT on new measures taken to implement the Convention. These reports are reviewed in public sessions, during which the respective State Party holds a constructive dialogue with the Committee Members. The day before the consideration of the report, NGOs who have submitted an

alternative report can raise their concerns during a private briefing with the CAT. At the end of each session, the CAT publishes its « [Concluding Observations](#) », which are specific recommendations for each reviewed State and issues for them to follow up on within one year. During this session, the discussions covered a broad range of topics, from migrants' treatment, gender-based violence, situation of human rights defenders to the excessive use of force by public security forces and detention conditions.



Left: NGOs representatives for Viet Nam; Right: Peruvian NGO activist ©Maud Marchand

## What's up

### OMCT workshop for Mexican journalists

From 12 to 17 November 2018, the OMCT conducted a workshop in Geneva for eight journalists coming from various regions of Mexico in preparation for the review of Mexico before the Committee Against Torture in April-May 2019. The training took place during the first week of the 65th CAT session, which gave them the opportunity to follow the CAT's review of Guatemala. The workshop aimed to strengthen their knowledge and understanding of UN anti-torture mechanisms, notably through presentations and meetings with OMCT staff, CAT experts, UN special procedures, INGOs, journalists from Geneva and from the international community. During their stay in Geneva, the participants were [interviewed](#) by RTS programme "Tout un monde" and a [news story](#) was published by Tribune de Genève, both highlighting the current risks and challenges journalists face in Mexico, which threaten their lives, integrity and freedom of expression, amidst one of the worst human rights crisis in Mexico's contemporary history.

## OMCT and WLW Thematic Briefing: Protecting women from violence through the UN Convention Against Torture

During the 65th CAT session, OMCT and Women's Link Worldwide (WLW) co-hosted a full day thematic briefing before the Committee against Torture on how it can provide an enhanced, effective and equal anti-torture protection framework for women and girls. Experts on international human rights law, women's human rights, and on the prevention of and protection from torture from different parts of the world briefed and took part in the discussions with the members of the Committee on the gender-dimensions of torture and the parallels between violence perpetrated by state actors and private actors and made concrete proposals.

Please find the concept note [here](#).

The briefing was co-sponsored by Amnesty International and Global Justice Centre.



Left: Mexican journalists attending the OMCT workshop and OMCT staff; Right: Mr Abdelwahab Hani, Member of the Committee against Torture, Ms Linda Loaiza López Soto, lawyer and survivor in the case against Venezuela, and Diego Rodríguez-Pinzón, Member of the Committee against Torture. ©Stella Anastasia and Helena Solà Martín.

## OMCT submissions

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### Guatemala

OMCT and a coalition of seventeen NGOs contributed to the review of Guatemala by submitting a joint alternative [report](#) on torture and other ill-treatment in the country. It considers different issues including the misuse of the National Preventive Mechanism and its interference with the judiciary system; the prevalence of violence against women and violations of women's reproductive and health rights; persistent attacks on human rights defenders as well as the excessive use of force during evictions of peasant communities.

## Summaries of the CAT State reviews

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### Peru

#### *Excessive use of force and lack of progress in the investigation of grave human rights violations committed during the armed conflict*

During the consideration of the seventh periodic [report](#) of Peru, the Committee welcomed the adoption of the National Plan on Human Rights 2018-2021 including, *inter alia*, the creation of a single register of cases of torture and ill treatment as well as the ratification of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. The experts expressed concern, though, about various aspects of the legal and institutional framework: the new definition of torture in Peru's Penal Code (article 321) does not include the purpose requirement of the definition; the Committee also inquired about the funding, mandate and independence of the National Preventive Mechanism, concluding that it did not have the functional autonomy and resources needed to discharge its mandate.

The Committee was particularly concerned about the number of deaths and injuries caused by the action of security forces (police and military) in the context of protests against mining and extractive industries' projects. The Committee called on the State party to effectively investigate and sanction instances of excessive use of force, including live ammunition, against protesters and to stop resorting to the imposition of states of emergency to crack down on protests.

The Committee was also alarmed by the limited progress made on investigations and prosecutions of cases of torture, including sexual violence against women and girls and enforced disappearances, committed in the context of the internal armed conflict between 1980 and 2000. The experts noted that the State party has not provided the required information on the current reparation programmes and concern was voiced about the exclusion from the status of victims of members of terrorist organizations and persons prosecuted for crimes of terrorism or apology for terrorism.

With regards to the access to therapeutic abortion, the Committee stated that it is still not guaranteed in practice. The experts recommended the review of existing laws in order to extend the voluntary termination of pregnancy to cases of rape, incest and severe fetal malformation and to prevent that health professionals who provide medical assistance to women who underwent clandestine abortions face criminal charges.

While welcoming the efforts made by the State to improve prison conditions, the Committee remained concerned over the high number of pre-trial detainees and the lack of separation between those and convicted prisoners, inadequate conditions of detention, deaths in custody, and the use of solitary confinement, up to 45 days, as disciplinary sanction.

Other issues addressed by the Committee include, among others, the need for the adoption of a protocol to guarantee the protection of human rights defenders, effective prevention and sanction of femicides, police violence and arbitrary detention against transgender women, forced sterilizations and ill-treatment of persons with disabilities held in psychiatric institutions.

**Issues for follow-up relate to:**

- ❖ National Preventive Mechanism;
- ❖ Forced sterilizations;
- ❖ Human Rights defenders and journalists.

**Read more :** [Concluding Observations](#) (Spanish only), [meeting summary](#) and [webcast](#).

### **Viet Nam**

*Reports of widespread torture and police brutality, especially on political prisoners, ethnic and religious minorities and human rights defenders*

Three years after its UNCAT ratification, Viet Nam submitted its initial [report](#) to the Committee Against Torture. During the review, the Committee expressed deep concerns over the inadequate legal framework to prevent and prosecute torture since there is no separate offence of torture nor an explicit definition in the Vietnamese legislation. This results in impunity for torture perpetrators reflected in the low number of complaints, investigations and prosecutions. When complaints are filed, reprisals against the victims or their families have been reported.

The Committee is furthermore seriously concerned by the alleged prevalence of the use of torture and ill treatment in police stations and other places of liberty deprivation, as well as the high occurrence of deaths in custody. The Committee thus urged Viet Nam to establish an independent monitoring mechanism to inspect all places of detention and to receive complaints. While the Committee presented a high amount of reported cases of torture and ill treatment in the country, the government's report stated that national courts had handled from 2010 to 2015 only ten cases of torture-related offences. During the session, the State delegation declared that cases of ill-treatment and torture presented by the Committee were false and groundless although they had been provided by UN bodies, international organisations and NGOs as recalled by the Chair.

The Committee further expressed concern that persons considered as a threat to security, social order or public safety may be detained administratively without a trial and respect for their fundamental legal safeguards. They have no access to legal counsel and cannot contact their family, which amounts to incommunicado detention. Moreover, the Committee is concerned by the reported disproportionate number of detentions and high number of deaths in custody, resulting

from ill-treatment and torture, of persons from ethnic and religious communities in police custody and detention centres. In addition, detainees are facing deplorable detention conditions including physical and psychological abuses, harsh disciplinary measures, forced work and denial of medical care. Furthermore, the Committee expressed its grave concerns over the widespread reports of confessions as a result of torture and forced signatures of confessions prepared by public officials.

Finally, the Committee deplored the fact that all the NGOs submissions received for the session originated from NGOs based abroad owing to the political situation in Viet Nam, which prevents independent civil society organisations working on human rights from operating in the country.

**Issues for follow-up relate to:**

- ❖ Investigation on all cases of excessive use of force, including cases of torture and ill-treatment by law enforcement officials and deaths in custody;
- ❖ Establishment of a central registry of detention;
- ❖ Prosecution and punishment of all officials who may have allowed evidence to be obtained as a result of torture.

**Read more:** [Concluding Observations](#), [meeting summary](#) and [webcast](#).

## Guatemala

### *Violence against human rights defenders and excessive use of force in case of evictions*

During the review of the seventh periodic [report](#) of Guatemala, the Committee expressed concern on repeated occasions about significant shortcomings and setbacks hindering the investigation and sanction of acts of torture and ill-treatment, as reflected by the fact that only four convictions for torture were registered between 2012 to 2018. According to the experts, high levels of corruption were among the factors that triggers pervasive impunity. In this regard, the Committee invited the State party to reconsider its decision not to renew the mandate of the International Commission Against Impunity in Guatemala (CICIG -in Spanish-).

Furthermore, the Committee, while taking note of the commitment to increase its insufficient budget, was alarmed about the instrumentalisation of the National Preventive Mechanism (ONPT) as attested by the interference with the independence of judges in charge of corruption investigations. The experts urged Guatemala to guarantee a fair and transparent selection process and to adopt regulations and working methods to secure effective monitoring and follow-up to their recommendations in line with the Optional Protocol.

The Committee also showed concern about multiple reports of evictions carried out with excessive use of force, intimidation and threats, with the involvement of the army and private security

companies, causing great impact, particularly on indigenous communities. The Committee recommended the adoption of urgent measures to put an end to the involvement of the armed forces in public order related tasks, increased oversight of private security companies and systematic training of law enforcement agents on the use of force according to the Basic Principles on the Use of Force and Firearms.

Furthermore, the Committee noticed the increase of murders of human rights defenders over the last years, with a peak of 24 murders registered from January to October 2018. Therefore, the Committee recommended the State to adopt and implement a Public Policy for the protection of human rights defenders and to raise awareness about the Protocol for the investigation of crimes committed against human rights defenders (General Instruction 5-2018 of the Public Ministry).

The Committee was also alarmed about the 307 femicides registered in 2018 and the increase of sexual violence. The Committee enjoined the State to ensure that all cases of gender-based violence and trafficking are investigated exhaustively and that the necessary financial resources are annually secured for the functioning of the Comprehensive Support Centres for Women Survivors of Violence (CAIMUS). Particularly with regard to death of 41 girls during the 6 March 2017 fire at the “Virgen de la Asunción” home, the experts urged the State party to thoroughly investigate all human rights violations, including torture, surrounding the case and to swiftly provide comprehensive reparation to the victims and their families.

Other concerns raised by the Committee included: the Bill 5272 (for the Protection of Life and Family); violence on grounds of gender identity and sexual orientation; conditions of detention, including 269.66 % to 500 % prison overcrowding levels and poor access to health services; the investigation and sanction of the intellectual and material authors of gross human rights violations committed during the internal armed conflict, guaranteeing the protection of victims and witnesses involved in ongoing criminal proceedings; and allegations of torture and ill-treatment of patients held in psychiatric institutions.

Issues for follow up to:

- National Preventive Mechanism.
- Deaths and cases of ill-treatment in children’s homes (*hogares de acogida*) and juvenile detention centres.
- Investigations into acts of torture and other grave human rights violations committed during the internal armed conflict.
- Violent deaths, evictions and internal security.

Read more: [Concluding Observations](#) (Spanish only), [meeting summary](#) and [webcast](#).

## The Netherlands

### *Restrictive detention regime in relation to counter-terrorism and the situation of migrants*

During the consideration of the Kingdom of the Netherlands' seventh periodic [report](#), the Committee expressed serious concern over the very restrictive detention regime in the two high-security prisons for persons accused or convicted of terrorism offences (TA) in the Netherlands. It noted among others, the prolonged use of solitary confinement, constant surveillance, invasive full-body searches, which could amount to torture and ill-treatment, and the lack of effective legal remedy in TA. Since both suspected and convicted inmates are automatically subjected to the same treatment, the Committee urged the State to set up prior individualized risk assessments to evaluate the necessity and proportionality of the detention regime for each inmate in TA.

The Committee also addressed the situation of Venezuelan migrants in the Caribbean part of the Kingdom, especially in Curaçao where they face appalling detention conditions in closed facilities and ill-treatment, including sexual assaults, by police officers and immigration personnel, who have not been prosecuted. Furthermore, the Committee raised strong concerns about the systematic and increased number of detentions in the past two years in closed facilities of asylum-seekers and undocumented migrants arriving by air at Schiphol airport in Amsterdam, recalling that detention should only be used as a measure of last resort. Placement of children in migration detention facilities should be avoided. It should also ensure that unaccompanied children asylum-seekers should have adequate access to appropriate assistance, including legal aid, throughout the asylum procedure. Similarities between the migrant and penal detention systems were also raised, with cases of migrants held in solitary confinement or being repeatedly detained, often exceeding the 18-month time limit laid down in the law. Besides, the Committee expressed concerns over numerous allegations of the State breaching the principle of non-refoulement, notably with regard to the fast-track asylum procedure; Afghan nationals who previously worked for the security service Khad/Wad; and Venezuelans nationals in Curaçao.

Moreover, the Committee expressed concerns over several issues related to children, such as the lack of assistance and protection for an increasing number of unaccompanied children asylum-seekers placed in detention, the juvenile justice system allowing minors aged 16 and 17 to be tried as adults under the ordinary law in cases of grave offences, the placement of children, including children victims of sexual violence, in closed youth care facilities and reports of unnecessary and irreversible surgery and medical treatment performed on intersex children without informed consent and impartial counselling.

Other issues raised by the Committee included the lack of harmonization of torture-related domestic legislation through the Kingdom, including the exclusive application of the OPCAT in the European part of the Kingdom, the lack of independence, efficiency and resources of the National



Preventive Mechanism, the high incidence of violence against women, reported hate crimes against LGBT persons, human trafficking and increased number of forced enrolments in psychiatric care institution.

**Issues for follow-up relate to:**

- ❖ Non-refoulement;
- ❖ Medical examinations as part of the asylum procedure;
- ❖ The National Agency for the Prevention of Torture (NPM).

**Read more:** [Concluding Observations](#), [meeting summary](#) and [webcast](#).

## Canada

### *Detention conditions of irregular migrants and involuntary sterilisation of indigenous women*

During the review of the seventh periodical [report](#) of Canada, the Committee was worried about the mandatory detention of irregular migrants and the inadequate medical and mental health care in immigration detention facilities. In addition to the removal of the requirement of mandatory detention of “irregular arrivals” in the law, the Committee recommended that detention of immigrants and asylum seekers should only be used as a measure of last resort, for the shortest time possible, and further stressed that children and families with children should never be detained merely on the basis of their immigration status.

The Committee also recalled that article 3 of the Convention on non-refoulement provides for absolute protection, regardless of the person’s character or danger the person may pose to society. The Canadian delegation stated that when resorting to diplomatic assurances, Canadian authorities could decide establishing post return monitoring mechanisms. The Committee noted with regret that it had not received any example of such a post-return monitoring mechanism arrangement between Canada and the receiving States and it warned that diplomatic assurances should never be used as a loophole to undermine the non-refoulement principle and that the merits of each individual case should be considered.

In relation to the continued use of prolonged and indefinite solitary confinement in Canada, the State delegation and Committee experts discussed Bill C-83, which would eliminate administrative and disciplinary segregation in the federal correctional system. However, the Committee remained concerned that the Bill continues to give wide discretion to heads of detention facilities in imposing isolation, while there is no required independent external review and oversight. Moreover, the Bill does not provide for a maximum length of stay in solitary confinement in the newly modelled structural intervention units nor does it prohibit the placement of inmates with mental disabilities in such units. Measures to limit disproportionate impact on indigenous people, women or other prisoners with special needs are equally not foreseen.

The Committee expressed concern about the reports of extensive or coerced sterilization of indigenous women and recommended that all allegations are impartially investigated, that persons responsible are held accountable, and that victims receive redress. Legislation to prevent and criminalise forced or coerced involuntary sterilizations of women should be adopted. The Committee further regrets the absence of data concerning gender-based violence, especially concerning violence against indigenous women.

**Issues for follow-up relate to:**

- ❖ Recommendation on diplomatic assurances;
- ❖ Adequate redress for the torture and ill-treatments of Canadians detained abroad;
- ❖ Security certificates;
- ❖ Involuntary sterilization of indigenous women.

**Read more:** [Concluding Observations](#), [meeting summary](#) and [webcast](#).

**Maldives**

*Lack of independent judiciary, “judicial flogging”, violence against women and detention conditions*

After a 12-year delay, the Maldives submitted its initial [report](#) and the Committee was finally able to review the State party’s obligations under the UNCAT. The Committee welcomed that the new government of the Maldives, that had taken office just days before the review, was committed to fight torture and acknowledged that the new government disassociated itself from the initial report.

During the discussion, the Committee experts commended the establishment of a Commission on Murders and Disappearances and the ratification of the Anti-Torture Act in 2013. However, the Committee pointed out several areas of concerns including the lack of an independent judiciary and the reluctance of the authorities to cooperate with the Human Rights Commission regarding the investigation of complaints of torture and other ill-treatment leading to impunity for acts of torture. The Committee highlighted that out of 275 cases of alleged torture reported to the Human Rights Commission since the enactment of the Anti-Torture Act, only 14 cases are presently under investigation. Furthermore, there has been only one proven case of torture by an officer of the Maldives Police Service, which however did not result in imprisonment.

Moreover, the Committee showed serious concern over the practice of “judicial flogging” administered under a restrictive interpretation of sharia penalties as a punishment for consensual extramarital sex. As the Committee’s experts pointed out, it is applied in a discriminatory manner, since 85 % of persons punished in this way are women and girls. The Committee further expressed concerns over the general persistence of violence against women, in particular domestic violence

and the absence of due diligence, effective protection mechanisms and the high burden of proof for the conviction for rape.

Deaths in custody and conditions of detention in the Maldives were also discussed during the session. The experts pointed out that the 23 deaths in custody investigated by the Human Rights Commission do not reflect the total number of actual deaths in custody that have occurred during the relevant time period. With regards to conditions of detention, the Committee referred to, inter alia, the inadequate sanitary and hygiene facilities, the insufficient quality and quantity of food, and the overcrowding.

Issues for follow-up relate to:

- ❖ Establishment of an impartial and effective transitional justice mechanism;
- ❖ Dealing with impunity for acts of torture;
- ❖ Enacting of a moratorium on flogging and other corporal punishments with a view to prohibiting them;
- ❖ Urgently undertaking the announced prison reform and taking urgent measures to improve material conditions of detention.

Read more: [Concluding Observations, meeting summary](#) and [webcast](#).

## Next sessions

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### **66th session of the CAT**

23 April – 17 May 2019

- ❖ Consideration of the State Party reports: Benin, Democratic Republic of Congo, Germany, Mexico, South Africa, United Kingdom of Great Britain and Northern Ireland.
- ❖ List of Issues Prior to Reporting: Dominican Republic, Honduras, Kuwait, Lesotho and Mongolia.
- ❖ List of Issues: Burkina Faso and Uzbekistan.
  - 28 January 2019: deadline for NGO submissions for the List of Issues and List of Issues Prior to Reporting.
  - 22 March 2019: deadline for NGO submissions for the State report reviews.

### **67th session of the CAT**

22 July – 9 August 2019

- ❖ Consideration of the State Party reports: Greece, Poland, Togo and Bangladesh.
  - 22 June 2019: deadline for NGO submissions for the State report reviews.

### **68th session of the CAT**

11 November – 06 December 2019

- ❖ Consideration of the State Party reports: Burkina Faso, Cyprus, Latvia, Niger, Portugal, Uzbekistan.
- ❖ List of Issues Prior to Reporting: Armenia, Ecuador, Finland, Monaco, Namibia.
- ❖ List of Issues: Cuba
  - 24 June 2019: deadline for NGO submissions for the List of Issues and List of Issues Prior to Reporting.
  - 14 October 2019: deadline for NGO submissions for the State report reviews.

## Stay up-to-date

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### OMCT Blog : Engaging with the UN Committee Against Torture

Our blog *Nothing can Justify Torture, engaging with the Committee Against Torture* aims to provide greater awareness of the CAT and the Convention Against Torture, and increase the mobilization of NGOs against torture making a more effective use of the CAT procedures.

If you are working on the Convention Against Torture or the CAT (Committee Members, representatives from NGOs, academics, journalists, etc.), we encourage you to share your experience and knowledge by submitting an article. Please contact [cbb@omct.org](mailto:cbb@omct.org) for more information.

### Live Webcast of the CAT sessions

During the sessions, the live stream is available at [webtv.un.org](http://webtv.un.org). Sessions are also archived and can viewed at a later date.

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## We thank

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