



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

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## Committee against Torture

### Concluding observations on the fifth periodic report of Estonia, adopted by the Committee at its fiftieth session (6–31 May 2013)

1. The Committee against Torture considered the fifth periodic report of Estonia (CAT/C/EST/5) at its 1154th and 1157th meetings, held on 22 and 23 May 2013 (CAT/C/SR.1154 and CAT/C/SR.1157), and adopted the following concluding observations at its 1166th meeting (CAT/C/SR.1166) held on 30 May 2013.

#### A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and for submitting its fifth periodic report in a timely manner by providing replies to the list of issues (CAT/C/EST/Q/5), which focuses the examination of the report as well as the dialogue with the delegation.

3. The Committee also appreciates the open and constructive dialogue with the high-level delegation of the State party and the detailed supplementary information provided.

#### B. Positive aspects

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

(a) The Convention on the Rights of Persons with Disabilities, on 30 May 2012;

(b) The 1973 ILO (International Labour Organization) Convention No. 138 concerning Minimum Age for Admission to Employment in 2007.

5. The Committee welcomes the State party's efforts to revise its legislation in areas of relevance to the Convention, including:

(a) Amendments to the Penal Code in April 2012 which criminalize trafficking in human beings as a distinct provision in the Penal Code;

(b) Amendments to the Code of Criminal Procedure which expedite judicial proceedings, enhance the protection of minors and strengthen the rights of detainees, that entered into force on 1 September 2011;

(c) The entry into force on 1 January 2009 of the Equal Treatment Act which ensures the right to effective remedy to victims of direct and indirect discrimination and harassment.

(d) An amendment to Section 133 of the Penal Code that entered into force in March 2007 which improves the definition of the elements of enslavement.

6. The Committee also welcomes the efforts of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:

(a) The adoption in 2010 of the final implementation report on the Government Development Plan for Combatting Trafficking in Human Beings 2006–2009;

(b) The adoption in April 2010 of the Development Plan for the Reduction and the Prevention of Violence 2010–2014 and of the National Action Plan on Domestic Violence for the period 2008–2011;

(c) The adoption in 2010 of a new police regulation on how to treat victims of domestic violence and how to investigate and record cases of domestic violence;

(d) The adoption in 2010 by Parliament of the Guidelines for Development of Criminal Policy until 2018;

(e) The launching in 2009 of the programme funded by the European Fund for the Integration of Third-Country Nationals to offer language courses for all persons “with undetermined citizenship” or citizens of third countries;

(f) The operation since 2008 by the Estonian Women’s Shelters Union of the nationwide free helpline for women experiencing violence;

(g) The adoption on 14 December 2007 of an Integration Strategy and of the State Integration Programme for 2008–2013;

(h) The operation since 2004 of a helpline for the prevention of human trafficking and for counselling, financed since 2006 by the Ministry of Social Affairs and run by Living for Tomorrow, a non-governmental organization.

## C. Principal subjects of concern and recommendations

### Definition of torture

7. While taking note of the delegation’s assertion that Estonia intends to amend its Penal Code to bring it in line with the Convention, and recalling its previous concluding observations (para. 8), the Committee is concerned that the definition of torture in section 122 of the Penal Code does not reflect all of the elements contained in article 1 of the Convention, such as infliction of mental pain (arts. 1 and 4).

**The Committee recommends that the State party amend its Penal Code to include a definition of torture in conformity with the Convention which covers all the elements contained in article 1 of the Convention.**

### Penalties for acts of torture

8. Recalling its previous concluding observations (para. 13), the Committee is concerned that the penalty in the Penal Code for acts of torture of up to five years of imprisonment is not commensurate with the grave nature of the crime. It is also concerned by the discrepancy between the penalties for torture and those for trafficking in human beings, which is also a form of torture, of up to 15 years’ imprisonment, and that sentences served for acts of torture are usually of approximately one-and-a-half years according to the representatives of the State party (arts. 2 and 4).

**The Committee recommends that the State party amend its Penal Code to include penalties for acts of torture which take into account their grave nature, in accordance with article 4, paragraph 2, of the Convention and taking into consideration the Committee’s General Comment No. 2.**

**Fundamental legal safeguards for persons deprived of their liberty**

9. The Committee is concerned that persons deprived of their liberty may not enjoy all fundamental legal safeguards against torture and ill-treatment from the very outset of their detention, in particular the right to a lawyer and the right to inform a person of their own choice. It is also concerned by reports that detention registers in police stations are not always kept in a regular manner (arts. 2, 12, 13 and 16).

**The State party should:**

(a) **Take effective measures to guarantee that all persons deprived of their liberty are afforded, by law and in practice, all the fundamental legal safeguards from the outset of their detention, namely, the rights to be informed of the reasons for their arrest and of the charges against them; to be informed of their rights; to have prompt access to an independent lawyer and, if necessary, to legal aid; to inform a person of their own choice; to receive a medical examination by an independent doctor, if possible, a doctor of their choice; to be brought before a judge without delay; and to have the legality of their detention examined by a court, in accordance with international standards;**

(b) **Ensure that the State party monitors the provision of safeguards by all public officials to persons deprived of their liberty, including by documenting relevant information in detention registers, and ensuring regular monitoring of officials' compliance with these documentation requirements;**

(c) **Ensure that any public official who denies fundamental legal safeguards to persons deprived of their liberty is disciplined or prosecuted;**

(d) **Provide data to the Committee on the number of cases in which public officials have been disciplined for such conduct and the nature of the discipline.**

**Charges under the Code of Criminal Procedure**

10. The Committee is concerned that the Code of Criminal Procedure has not been amended to allow courts to continue criminal proceedings at their own discretion if the prosecution drops the charges (arts. 2, 12 and 13).

**The Committee reiterates its recommendation that the State party consider revising its Code of Criminal Procedure in order to regulate the powers of prosecution vis-à-vis the judiciary so that withdrawal of charges by the prosecution does not result in termination of criminal proceedings or acquittal but is decided by a court.**

**Use of force**

11. The Committee is concerned by information that no prosecutions resulted from official applications to the Chancellor of Justice or the Public Prosecutor's Office in relation to allegations of brutality and excessive use of force by law enforcement personnel during the events which took place in Tallinn in April 2007. It is further concerned by instances of "excessive" use of force by law enforcement officers, that the State party's investigation into the events were inadequate, and that the authorities did not made an attempt to obtain additional evidence, be it by questioning the applicants in person or by interviewing the witnesses, as found by the European Court of Human Rights (arts. 2, 10, 12, 13, 14 and 16).

**The State party should:**

(a) **Conduct prompt, thorough, effective and impartial investigations into all allegations of torture, ill-treatment and excessive use of force by law enforcement personnel, and prosecute and sanction officials found guilty of such offences with appropriate penalties;**

(b) Establish a specific registry for allegations of torture and cruel, inhuman or degrading treatment and punishment and establish an independent mechanism to investigate allegations of torture and ill-treatment;

(c) Ensure that all victims of torture and ill-treatment obtain redress and have a legally enforceable right to fair and adequate compensation, including the means for the fullest possible rehabilitation, in accordance with article 14 of the Convention;

(d) Ensure that law enforcement officials receive training on the absolute prohibition of torture and on international standards on the use of force and firearms, including on the liabilities in cases of excessive use of force;

(e) Ensure that law enforcement personnel are trained in professional techniques which minimize any risk of harm to apprehended persons.

#### **Domestic violence**

12. Recalling its previous concluding observations (para. 21) and the new plans and guidelines for reducing such violence, the Committee remains concerned by the continued absence of specific legislation to prevent and combat domestic violence and the fact that domestic violence is not a distinct crime in the Penal Code (arts. 1, 2, 4, 12, 13, 14 and 16).

#### **The State party should:**

(a) Adopt, as a matter of priority, comprehensive legislation on violence against women that would establish domestic violence and marital rape as specific criminal offences;

(b) Ensure the effective implementation of the Development Plan for the Reduction and the Prevention of Violence 2010–2014;

(c) Establish an effective and independent complaints mechanism for victims of domestic violence;

(d) Ensure that all allegations of domestic violence, including sexual violence and violence against children, are registered by the police, that all allegations of violence are promptly, impartially and effectively investigated, and that perpetrators prosecuted and punished;

(e) Ensure that victims of domestic violence benefit from protection, including restraining orders, and have access to medical and legal services, including counselling, and to rehabilitation as well as to safe and adequately funded shelters;

(f) Sensitize and train law enforcement personnel in investigating and prosecuting cases of domestic violence;

(g) Compile disaggregated data on the number of complaints, investigations, prosecutions and sentences handed down for acts of domestic violence, on the provision of redress to the victims and on the difficulties experienced in preventing such acts; and provide such data to the Committee.

#### **Trafficking**

13. While welcoming amendments to the Penal Code in relation to trafficking in human beings, the Committee is concerned that the State party remains a source, transit and destination country for human trafficking, both for forced prostitution and forced labour purposes (arts. 1, 2, 4, 10, 12, 13, and 14).

**The State party should:**

- (a) **Vigorously enforce the new anti-trafficking law and take effective measures to prevent human trafficking and increase protection to its victims;**
- (b) **Promptly, thoroughly, effectively and impartially investigate, prosecute and punish trafficking in persons and related practices;**
- (c) **Provide redress to victims of trafficking, including legal, medical and psychological aid and rehabilitation, as well as adequate shelters and assistance in reporting incidents of trafficking to the police;**
- (d) **Prevent the return of trafficked persons to their countries of origin where there are substantial grounds to believe that they would be in danger of torture, and enhance international cooperation with regard to preventing and punishing trafficking;**
- (e) **Provide specialized training to the police, prosecutors and judges on effective prevention, investigation, prosecutions and punishment of acts of trafficking, and inform the general public of the criminal nature of such acts;**
- (f) **Compile disaggregated data on the number of complaints, investigations, prosecutions and sentences handed down for acts of trafficking, on the provision of redress to the victims and on the difficulties experienced in preventing such acts; and provide this information to the Committee.**

**National human rights institution**

14. Recalling its previous concluding observations (para. 11) which noted that the Chancellor of Justice had been designated as the National Prevention Mechanism, inspects places of detention and has issued reports, the Committee is nonetheless concerned that there has not been an effort for it or another institution to be accredited as a national human rights institution by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (art 2).

**The State party should consider seeking accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights for the Chancellor of Justice or another institution to serve as a national human rights institution and provide it with adequate resources to carry out its mandate.**

**Situation of asylum seekers**

15. The Committee is concerned:

- (a) That persons seeking asylum may not enjoy all the procedural guarantees, including the right of appeal against negative decisions, including in cases where Estonian border authorities reportedly reject, within the admissibility or accelerated procedure, all asylum applications filed by persons who have arrived in Estonia via the Russian Federation;
- (b) That the risk of *refoulement* exists with regard to decisions under the accelerated procedure made by border guards who are not trained, equipped or resourced to conduct personal interviews, examine applications for international protection and undertake the legal analysis of the asylum claims;
- (c) By the conditions prevailing in the Harku Expulsion Centre for irregular migrants, such as poor food, routine handcuffing during transfers to hospitals or courts, disproportionate use of force and verbal abuse by staff.

**The State party should:**

(a) **Ensure that all persons seeking asylum in the State party, including at its border-crossing points, enjoy all procedural guarantees, including the right of appeal against negative decisions, as well as access to legal assistance and interpreters;**

(b) **Ensure that decisions concerning asylum, including under the accelerated procedure, are taken by the Police and Border Guard Board (formerly the Citizenship and Migration Board) or a determining authority which meets relevant international criteria;**

(c) **Take immediate steps to improve conditions at the Harku Expulsion Centre so that they conform to international standards, and provide training and instruction to prison personnel regarding the use of force and the prohibition of verbal abuse.**

**Training**

16. The Committee is concerned that no specific methodologies exist to evaluate the efficiency of training or educational programmes for law enforcement and medical personnel, judges and prosecutors, as well as persons working with migrants and asylum seekers on the absolute prohibition of torture and ill-treatment (art. 10).

**The State party should:**

(a) **Develop specific methodologies to evaluate the training and educational programmes provided on the absolute prohibition of torture and ill-treatment to law enforcement and medical personnel, judges and prosecutors, as well as persons working with migrants and asylum seekers;**

(b) **Ensure that the Istanbul Protocol is made a mandatory part of the training for all medical professionals involved in the documentation and investigation of allegations of torture and ill-treatment in order to permit, inter alia, the proper diagnosis of signs of torture.**

**Conditions of detention**

17. The Committee is concerned by information suggesting that conditions in some prisons and police arrest houses do not meet international standards, including with regard to infrastructure, hygiene and sanitary conditions, hot water, heating, windows, ventilation, lighting, furniture and living space. It is concerned that unsatisfactory conditions have also been reported by the Chancellor of Justice in some new or renovated facilities. The Committee is particularly concerned by the use of cells with unsuitable conditions in some police stations. It is also concerned by the failure of the prison authorities to ensure the right of prisoners to have their complaints about the conditions of detention heard (arts. 2, 11, 12, 13 and 16).

**The State party should:**

(a) **Take immediate steps to improve the material conditions in all prisons and police arrest houses, including newly built and renovated ones, with a view to improving the infrastructure, hygiene and sanitary conditions, hot water, heating, ventilation, lighting and furniture, and repairing broken windows, in accordance with international standards;**

(b) **Take steps to ensure minimum international standards of at least four square meters of living space for each detainee;**

(c) Ensure that the construction of planned additional prisons and the expansion and renovation of existing places of detention continue according to schedule;

(d) Ensure the existence of impartial mechanisms to deal with the complaints of prisoners about their conditions of detention and provide effective follow-up to such complaints.

#### **Categorization of prisoners according to their language proficiency**

18. The Committee is concerned by reports that since 2011, prisoners' name badges include information about their proficiency in the Estonian language, which some consider to be discriminatory and humiliating (arts. 2, 11 and 16).

**The Committee recommends that the State party put an end to any discrimination against prisoners on the basis of their proficiency in the Estonian language and ensure that prisoners are not penalized with regard to administrative or disciplinary matters if they do not have a sufficient understanding of the language. Translation services should be provided for prisoners with an insufficient knowledge of the Estonian language.**

#### **Use of restraints**

19. The Committee is concerned by reports of unjustified use of restraints in prisons, including handcuffs, owing to an insufficient assessment of the situation and the options to deal with it by the prison officers (arts. 2, 11, 12, 13 and 16).

**The Committee recommends that the State party ensure strict adherence by all prison officers to the new, more specific regulations concerning the use of restraints in prisons in force since 2011, as well as adherence to the protocols and filling in of registers documenting the use of restraints, including the reasons for use, duration of use and particular method of restraint used. The State party should ensure that all complaints of violations concerning the use of restraints are promptly and independently investigated and the persons responsible are held to account.**

#### **Persons with disabilities**

20. While taking note of the 1 September 2012 amendments to the Mental Health Act, the Committee is concerned by reports of shortcomings in judicial oversight regarding the involuntary hospitalization and forced medication of persons with mental and psychosocial disabilities in psychiatric institutions. It is also concerned by the lack of a complaints mechanism regarding involuntary placement of treatment. In addition, the Committee is concerned by information that persons with psychosocial disabilities or their legal guardians are not often denied the right to be sufficiently informed about criminal proceedings and charges against them, the right to a fair hearing and the right to adequate and effective legal assistance (arts. 2, 10, 11, 12, 13 and 16).

#### **The State party should:**

(a) **Ensure effective supervision and independent monitoring by judicial organs of any involuntary hospitalization in psychiatric institutions of persons with mental and psychosocial disabilities; and ensure that every patient, whether voluntarily or involuntarily hospitalized, is fully informed about the treatment to be prescribed and given the opportunity to refuse treatment or any other medical intervention;**

(b) **Ensure effective legal safeguards for persons in such institutions, including the right of effective appeal;**

(c) **Ensure the right of persons with mental and psychosocial disabilities or their legal guardians to be sufficiently informed about criminal proceedings and charges against them, the right to a fair hearing and the right to adequate and effective legal assistance for their defence;**

(d) **Provide training to medical and non-medical staff on how to administer non-violent and non-coercive care, and establish clear and detailed regulations on the use of restraints and other coercive measures in psychiatric institutions;**

(e) **Establish an independent complaints mechanism, and counsel and effectively and impartially investigate all complaints of violations of the Convention, bring those responsible to justice, and provide redress to victims.**

#### **Corporal punishment of children**

21. While taking note that corporal punishment is unlawful in schools and in the penal system, the Committee is concerned by the absence of legislation which explicitly prohibits corporal punishment in all settings (arts. 2 and 16).

**The Committee recommends that the Child Protection Act be amended to prohibit explicitly corporal punishment of children in all settings, including at home and in alternative care settings, as an offence under the law.**

#### **Stateless persons**

22. While welcoming the significant reduction of statelessness in the State party from 32 per cent in the 1990s, and noting the information provided by the representatives of the State party, the Committee is concerned that some 7 per cent of the population continues to have “undetermined citizenship” and by the low level of registration as citizens of children born in Estonia to non-citizen parents (art. 2).

#### **The State party should:**

(a) **Adopt legal and practical measures to simplify and facilitate the naturalization and integration of stateless persons and non-citizens, including by revisiting the requirements for the granting of citizenship;**

(b) **Consider offering language courses free of charge to all non-citizens who wish to apply for Estonian citizenship;**

(c) **Continue and enhance the efforts by the Citizenship and Migration Board to raise the awareness of parents whose children are eligible for naturalization through the simplified procedure of the requirements for citizenship, and consider granting automatic citizenship at birth, without previous registration by parents, to the children of non-citizen parents who do not acquire any other nationality;**

(d) **Ensure the effective implementation of the Integration Strategy and of the State Integration Programme for 2008–2013, and extend the Programme beyond 2013;**

(e) **Despite the information provided by the State party regarding its decision not to ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the reduction of statelessness, reconsider such ratification as a matter of priority.**

#### **Data collection**

23. While appreciating the data provided on complaints and convictions on torture and ill-treatment as well as on trafficking and other items, the Committee regrets the information from the State party that statistical data is not collected in ways that would



permit a fuller analysis of who is complaining, where, for what reason, by whom, and with what result. Accordingly, the Committee regrets that this data is not disaggregated by crime or other characteristics, regarding complaints, investigations and prosecutions of cases of torture and ill-treatment by law enforcement, military, security and prison personnel, as well as on inter-prisoner violence, trafficking, violence against women, children and other vulnerable groups, including domestic and sexual violence, as well as means of redress provided to the victims (arts. 1, 2, 4, 11, 12, 13, 14 and 16).

**The State party should establish an effective system for national data collection that compiles statistical data relevant to the monitoring of the implementation of the Convention at the national level, including disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and prison personnel, inter-prisoner violence, trafficking, violence, including domestic and sexual, against women, children and other vulnerable groups, as well as on means of redress, including compensation and rehabilitation, provided to the victims.**

#### **Other issues**

24. While taking note of the State party's position in this regard, the Committee reiterates its recommendation that the State party consider making the declarations under articles 21 and 22 of the Convention.

25. The Committee invites the State party to consider ratifying the other United Nations human rights treaties to which it is not yet party, namely the International Convention for the Protection of All Persons from Enforced Disappearance; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

26. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, including in Russian, through official websites, the media and non-governmental organizations.

27. The Committee requests the State party to provide, by 31 May 2014, follow-up information in response to the Committee's recommendations relating to: (a) conducting prompt, impartial and effective investigations; (b) ensuring or strengthening legal safeguards for persons detained; and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 9, 11, 12 and 14 of the present document.

28. The State party is invited to submit its next report, which will be the sixth periodic report, by 31 May 2017. For that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.