

Distr.
GENERAL

CAT/C/SRB/CO/1

21 November 2008
Original: ENGLISH

COMMITTEE AGAINST TORTURE
Forty-first session
3 – 21 November 2008

ADVANCE UNEDITED VERSION

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

Concluding observations of the Committee against Torture

SERBIA

1. The Committee against Torture considered the initial report of Serbia (CAT/C/SRB/1) at its 840th and 843rd meetings (CAT/C/SR.840 and CAT/C/SR.843), held on 5 and 6 November 2008, and adopted, at its 857th and 859th meetings (CAT/C/SR.857 and CAT/C/SR.859), held on 17 and 18 November 2008, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the initial report of Serbia which covers the period from 1992 to 2003 as well as the replies to the list of issues (CAT/C/SRB/Q/1/Add.1) which provided additional information on the legislative, administrative, judicial and other measures taken by the State party to implement the Convention. The Committee also notes with satisfaction the constructive dialogue held with a high-level delegation.

B. Positive aspects

3. The Committee welcomes the many legislative changes, including the adoption of:
 - a) A new Constitution which provides that no one may be subjected to torture which was adopted and entered into force in 2006;
 - b) The law that establishes the War Crimes Chamber, adopted in 2003;
 - c) The Criminal Code which defines and criminalizes torture, adopted in 2005;

- d) The Law on the Protector of Citizens, which establishes the Protector of Citizens (Ombudsman), adopted in 2005;
 - e) A Law on Criminal Procedure which was adopted in 2006 and entered into force in 2009; and
 - f) The Law on Asylum, which establishes the principle of prohibition of non-refoulement, which was adopted in 2007 and entered into force in 2008.
4. The Committee welcomes the ratification, in 2006, of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It also welcomes the ratification, in 2002 and 2003, respectively, of the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, as well as the ratification, in 2003, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

C. Main issues of concerns and recommendations

Definition of torture

5. While noting the criminalization of torture by several normative acts, the Committee is concerned that legislation is not yet fully harmonised with the Convention as, according to Article 137 of the Serbian Criminal Code, the penalties established are not proportionate to the gravity of the crime. The Committee regrets the Supreme Court ruling of 2005 where it applied a statute of limitation in respect of the crime of torture. However, the Committee takes note of the State party's statement that a new law will remedy the incompatibility between Serbia's law and the Convention with regard to the statute of limitation by the end of 2009. (art. 1)

The State party should continue to make efforts to bring its definition of torture in line with Article 1 of the Convention. In this respect, the State party should ensure that the penalties of the Criminal Code be brought in line with the proportional gravity of the crime of torture. The Committee urges the speedy completion of judicial reforms so that no statute of limitations will apply to torture.

Fundamental safeguards

6. The Committee notes that the Law on the Execution of Penal Sanctions provides for internal control by respective departments of the Ministry of Justice, that the Police Act passed in 2005 foresees the establishment of the Internal Control Sector and that internal control units have been established in all regional police centres. However, the Committee remains concerned at the lack of an independent and external oversight mechanism for alleged unlawful acts committed by the police. The Committee is also concerned that, in practice, the police do not respect the right of a detainee to access a lawyer of his or her own choice 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 absence of adequate protocols for the medical profession on how to

report on findings of torture and other cruel and inhuman or degrading treatment or punishment in a systematic and independent manner. (art. 2)

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 the right to access a lawyer of one's own choice and to contact a family member is respected in practice and that all detainees undergo a medical examination within 24 hours of detention, as previously recommended by the Committee in its inquiry procedure under Article 20. The State party should also establish adequate protocols for its medical professions to systematically report on findings of torture and other cruel and inhuman or degrading treatment or punishment.

Protector of Citizens (Ombudsman)

7. The Committee welcomes the establishment of the Ombudsman and the appointment of a deputy Ombudsman to improve the situation of persons deprived of liberty in institutions and prisons, including persons with mental, intellectual or physical disability and learning difficulties. However, the Committee remains concerned that the structures of the Ombudsman's office are not yet fully consolidated, that its independence is not fully ensured, that it has not been allocated adequate resources to fulfil its functions effectively and that, despite a large number of complaints (700), it does not have the capacity to analyse them. The Committee is also concerned that there is no specific mandate to monitor children's rights to be free from violence. (art. 2)

The State party should:

- a) **Intensify its efforts to ensure that the Ombudsman is able to independently and impartially monitor and investigate alleged police misconduct, including by strengthening the role and function of the deputy to the Ombudsperson on the protection of rights of persons deprived of liberty so as to include in his mandate the capacity to investigate acts committed by police officers;**
- b) **Ensure all relevant authorities follow-up on the recommendations issued by the Ombudsman;**
- c) **Encourage the Ombudsman to seek accreditation with the International Coordinating Committee for National Institutions for the Promotion and Protection of Human Rights to ensure that it complies with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), annexed to General Assembly resolution 48/134; and**
- d) **Consider taking the necessary measures to ensure the Ombudsman promote and protect children from violence and in particular consider the adoption of a Law for the Ombudsman for the Rights of the Child.**

Independence of the judiciary

8. The Committee remains concerned about new constitutional provisions providing for the election of judges of all levels by the National Assembly. The Committee is also

concerned with respect to the definition of rules of procedures of Courts and at the absence of legislation in respect of disciplinary measures against judges. (arts. 2 and 12)

The State party should guarantee the full independence and impartiality of the judiciary, by ensuring, inter alia, that judicial appointments be made according to objective criteria such as qualifications, integrity, ability and efficiency. The State party should also define the rules of procedures of Courts and establish an independent disciplinary body in this regard.

Refugees

9. The Committee notes the new Law on Asylum (2008), which establishes the principle of prohibition of non-refoulement, but remains concerned at the rules that interpret the application of the law with respect to the treatment of asylum seekers. (art. 3)

The State party should urgently adopt the necessary measures, especially of a legal nature, to put in practice the new Law on Asylum to protect the rights of asylum seekers and persons seeking refugee status. The State party should also put in place measures to protect asylum seekers and other foreigners in need of humanitarian protection.

Complaints, investigations and convictions

10. While acknowledging the reform process of the judiciary, including the new law on judges and the new Penal Code that is due to come into effect in 2009, the Committee expresses concern over the slowness of investigations and that officials are not suspended during the investigations into allegations of torture or ill-treatment. (arts. 4, 12, 13 and 16).

The State party should:

- a) **Ensure that investigations into allegations of torture and other prohibited cruel, inhuman or degrading treatment or punishment are undertaken thoroughly, effectively and impartially, including complaints made under the previous public administration, as previously recommended by the Committee in its Article 20 report;**
- b) **Suspend persons who have allegedly committed acts of torture during the investigation of such allegations, as previously recommended by the Committee in its Article 20 report; and**
- c) **Comply with the Committee's Views under Article 22 where it requests for further investigations in respect of individual communications and provide information to this effect in its next periodic report.**

Cooperation with the ICTY

11. The Committee welcomes the steps taken to enhance cooperation and progress made with regard to the International Criminal Tribunal for the Former Yugoslavia (ICTY) as well as the establishment of witness protection programs but it expresses concern over the

uncertain future of the cases after the scheduled closure of the ICTY as well as for the safety of those who have or are in the process of providing evidence. (art. 12)

The State party should ensure that:

- a) **Full cooperation is extended to ICTY, including through apprehending and transferring those persons who have been indicted and remain at large, as well as granting the Tribunal full access to requested documents and potential witnesses;**
- b) **All persons, including senior police officials, military personnel, and political officials, suspected of complicity in and perpetrators of war crimes and crimes against humanity, are brought to justice in adequate penal proceedings, including after the scheduled closure of the ICTY tribunal; and**
- c) **Witnesses are effectively protected throughout all stages of the proceedings and afterwards.**

Other war crimes investigations

12. The Committee regrets the lack of explanation by the State party about the outcomes of the investigations into the “Ovcara case” (November 1991), and particularly the role of the Supreme Court in 2006 in quashing the first court’s decision, and is concerned at the lack of information provided about the reasons for ordering a re-trial. (art. 12)

The State party should provide the Committee with information about the outcomes of the investigation into the “Ovcara case” (November 1991) and the reasons for ordering a re-trial in 2006.

Human rights defenders

13. The Committee expresses concern about the hostile environment for human rights defenders, particularly those working on transitional justice and minority rights and the lack of fair trials on cases filed against human rights defenders for alleged political reasons. (art. 16)

The State party should take concrete steps to give legitimate recognition to human rights defenders and their work, and ensure that when cases are brought against them, such cases are conducted in conformity with international standards relating to fair trial.

Training

14. The Committee notes the State party’s efforts with respect to training of prison staff by the Training Centre for the employees of the Directorate as of September 2004. However, it is concerned that the training is not targeted at education and information regarding the prohibition of torture and that training programmes for medical personnel for the identification and documentation of cases of torture in accordance with the Istanbul Protocol, is insufficient, as is the rehabilitation of victims. In addition, training to develop a more gender sensitive approach both in police legal and medical institutions are inadequate. (art. 10)

The State party should:

- a) **Ensure that education and training of all law enforcement personnel, are conducted on a regular basis;**
- b) **Include in the training modules on rules, instructions and methods of interrogation, the absolute prohibition of torture, and specific training for medical personnel on how to identify signs of torture, and cruel, inhuman or degrading treatment, in accordance with the Istanbul Protocol;**
- c) **Regularly evaluate the training provided to its law-enforcement officials as well as ensure regular and independent monitoring of their conduct; and**
- d) **Strengthen its efforts to implement a gender sensitive approach for the training of those involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.**

Conditions of detention

15. While noting that reforms of the prison system since 2004 include the construction of new facilities and reconstruction of existing facilities, the Committee is concerned about the current material conditions of detention, the problem of overcrowding in places of deprivation of liberty and the lack of independence of medical personnel in prisons. The Committee notes the statement by the delegation that no request by non-governmental organizations to monitor the institutions for the enforcement of prison sanctions was rejected, but is concerned that prior notice seems to be required to visit prisons. The Committee is also concerned that a system of inspection of the conditions of imprisonment by independent experts does not exist. (art. 11)

The State party should:

- a) **Ensure the speedy implementation of the prison system reform and, if necessary, seek technical assistance with the United Nations and other relevant organizations;**
- b) **Improve the material conditions of detention in places of deprivation of liberty, in particular with respect to hygienic conditions and medical care, including giving access to independent medical personnel on a systematic basis. In this regard, it is important that the State party ensure that the Ministry of Health monitor the exercise of professional duties of medical staff in prisons; and**
- c) **Set up a system of inspection of the conditions of imprisonment by independent experts, as previously reiterated by the Committee in its recommendation under its Article 20 report.**

Torture and disability

16. The Committee notes the State party's acknowledgement that poor and inadequate treatment takes place in some institutions and remains concerned at the reports of treatment of children and adults with mental or physical disability, especially at the forceful internment and long term restraint used in institutions that amount to torture or cruel, inhuman and degrading treatment or punishment in social protection institutions for persons with mental disability and psychiatric hospitals. The Committee is concerned that

no investigation seems to have been initiated with respect to treatment of persons with disability in institutions amounting to torture or inhuman or degrading treatment. (arts. 2, 12, 13 and 16)

The State party should:

- a) **Initiate social reforms and alternative community based support systems in parallel with the ongoing process of de-institutionalisation of persons with disability, and strengthen professional trainings in both social protection institutions for persons with mental disability and psychiatric hospitals; and**
- b) **Investigate reports of torture or cruel, inhuman or degrading treatment or punishment of persons with disability in institutions.**

Ethnic minorities, especially Roma

17. The Committee, while noting the measures undertaken by the State party, including bringing criminal charges against persons on charges of ethnically motivated violence towards ethnic minorities and the Action Plan for Roma Education Improvement (2005), expresses concern at the failure to protect minorities, especially when political events indicate that they may be at heightened risk of violence. (arts. 10, 12 and 16)

The State party should take all appropriate preventive measures to protect individuals belonging to minority communities from attacks especially when political events indicate that they may be at heightened risk of violence and ensure that the relevant existing legal and administrative measures are strictly observed. The State party should also ensure greater ethnic diversity among the police force to facilitate communication and contacts with all communities in Serbia and ensure that training curricula and information campaign constantly communicate the message that violence will not be tolerated and will be sanctioned accordingly.

Compensation, rehabilitation and reparations

18. The Committee notes information provided on compensation provided to certain war victims in the proceedings before the War Crime Chamber resulting from the Code of Criminal Procedure that also includes pecuniary compensation as well as the public apologies by the State party provided in 2003, 2004 and 2007. However, the Committee regrets the lack of a specific programme to implement the rights of victims of torture and ill-treatment to redress 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 psycho-social rehabilitation, provided to these victims. The Committee notes with concern the State party's statement that there are no services available in the State party to deal specifically with the treatment of trauma and other forms of rehabilitation for torture victims. Furthermore, the Committee is concerned at the lack of information about compensation, redress and rehabilitation for persons with disabilities. (art. 14)

The State party should:

- a) **Strengthen its efforts in respect of compensation, redress and rehabilitation in order to provide victims of torture and other cruel, inhuman or degrading treatment or punishment with redress and fair and adequate compensation, including the means for as full rehabilitation as possible;**
- b) **Develop a specific programme of assistance in respect of victims of torture and ill-treatment;**
- c) **Provide in its next periodic report information about any 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; and**
- d) **Strengthen its efforts in respect of compensation, redress and rehabilitation for persons with disabilities and provide in its next periodic report information about steps taken in this regard.**

Domestic violence and sexual abuse of women and girls

19. The Committee notes that domestic violence was defined as a misdemeanour in the adoption of the Misdemeanours Act (2007), but expresses concern over the prolonged proceedings prompting many victims to abandon them. The Committee is concerned about reports that sexual abuse of girls has been on the rise in the past few years and at the low penalties that are pronounced against the perpetrators of domestic violence, the slowness of the proceedings, the lack of protection measures and the lack of adequate prevention measures in place. (art. 16)

The State party should:

- a) **Increase its efforts to ensure that urgent and efficient protection measures are put in place and to prevent, combat and punish perpetrators of violence against women and children, including domestic violence;**
- b) **Ensure adequate implementation of the national strategy to prevent domestic violence;**
- c) **Conduct broader awareness-raising campaigns and training on domestic violence for officials (judges, lawyers, law enforcement agencies, and social workers) who are in direct contact with the victims as well as for the public at large; and**
- d) **Take necessary measures to increase cooperation with NGOs working to protect victims from domestic violence.**

Corporal punishment

20. The Committee notes that corporal punishment of children is not explicitly prohibited in all settings and that it is a common and accepted means of childrearing. (art. 16)

The State party, taking into account the recommendation in the United Nations Secretary General's Study on Violence Against Children, should adopt and implement legislation prohibiting corporal punishment in all settings, including

the family, supported by the necessary awareness-raising and public education measures.

Trafficking in persons

21. The Committee takes note of the inclusion of trafficking in the new Criminal Code (Article 389), which defines human trafficking and includes it as a criminal offence. However, the Committee is concerned about the reports of cross-border trafficking in women for sexual and other exploitative purposes and it regrets the low number of prosecutions in this respect. The Committee also regrets that the State party does not have an effective system in place to monitor and assess the extent and impact to address this phenomenon effectively. The Committee is concerned at the decrease in the minimum penalties from five to three years of imprisonment and that redress and reintegration services are insufficient for victims of trafficking. (art. 16)

The State party should:

- a) Continue to prosecute and punish perpetrators of trafficking in persons, especially women and children;**
- b) Intensify its efforts to provide redress and reintegration services to victims;**
- c) Conduct nationwide awareness-raising campaigns and conduct training for law enforcement officials, migration officials and border police on the causes, consequences and incidences of trafficking and other forms of exploitation;**
- d) Adopt a National Action Plan for combating human trafficking and ensure that programs and measures are put in place for treating children victims of trafficking; and**
- e) Increase cooperation by the police and the Agency for Coordination of Protection of Human Trafficking Victims with NGOs working against human trafficking.**

Kosovo

22. In considering Serbia's initial report, the Committee takes note of the State party's explanation of its inability to report on the discharge of its implementation with regard to the Convention in Kosovo, owing to the fact that civil authority is exercised in Kosovo by the United Nations Interim Administration Mission in Kosovo (UNMIK).

Data collection

23. The Committee requests the State party to provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials; on the related investigations, prosecutions, and penal or disciplinary sanctions; and on pre-trial detainees and convicted prisoners. The Committee further requests information on compensation and rehabilitation provided to the victims.

24. The Committee invites the State party to become a party to the core United Nations human rights treaties to which it is not yet a party, namely: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

and the Convention on the Rights of Persons with Disabilities. The Committee invites the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

25. The Committee stresses that its recommendations derived from its review of Serbia and Montenegro under its inquiry procedure pursuant to Article 20 are subject to follow up. In this sense, the Committee reiterates its recommendations (A/59/44, paras 213 (a) to (t)) and requests the State party to update the Committee with relevant information regarding steps taken to comply with its recommendations in its next periodic report.
26. The Committee is encouraged by the oral information provided during the consideration of the State party's report with respect to outstanding follow-up information on individual communications, under Article 22 of the Convention. The Committee notes that a new law provides for the re-consideration of a case on the basis of a decision of an international body established by an international treaty and welcomes a written response to the requests for specific follow-up to the Committee's views and compliance with the recommendations.
27. Further to the ratification by the State party of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 26 September 2006, the Committee reminds the State party of its exigency to promptly designate or establish an independent national preventive mechanism for the prevention of torture, in line with Articles 17 to 23 of the Protocol.
28. The Committee requests the State party to provide, within one year, information in response to the Committee's recommendations contained in paragraphs 6, 9, 11, 12, 13 and 16 (b) above.
29. The State party is encouraged to disseminate widely the reports submitted to the Committee and the concluding observations and summary records of the Committee through official websites, to the media and non-governmental organizations.
30. 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.
31. The State party is invited to submit its next periodic report, which will be considered as the second periodic report, by 21 November 2012 at the latest.
