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

Concluding observations of the Committee against Torture

The former Yugoslav Republic of Macedonia

1. The Committee against Torture (“the Committee”) considered the second periodic report of the former Yugoslav Republic of Macedonia (CAT/C/MKD/2) at its 822nd and 825th meetings, held on 7 and 8 May 2008 (CAT/C/SR.822 and 825), and adopted, at its 832nd and 831st meetings on 15 May 2008 (CAT/C/SR.832 and 833), the following Concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second periodic report of the former Yugoslav Republic of Macedonia as well as the replies to the list of issues which provided additional information on the legislative, administrative, judicial and other measures taken by the State party for the implementation of the Convention. The Committee also notes with satisfaction the constructive dialogue held with a high-level and multi-sectoral delegation.

B. Positive aspects

3. The Committee welcomes:

- the amendments in the Criminal Code in 2004, and notably the incorporation in domestic legislation of the crime of torture;
- the adoption of an action plan to implement the last recommendations of the European Committee on the Prevention of Torture, after its last visit in 2006;
- the implementation of a strategy to prevent and combat domestic violence;
- the introduction of a separate offence of trafficking in persons at the beginning of 2008;
- the wide-ranging reform aimed at improving the judicial system, such as the Law on the Judicial Council, the Law on the Academy for Training of Judges and Public Prosecutors and the Law on the Public Prosecutor's Office.

4. The Committee welcomes the State party's ratification of the Rome Statute of International Criminal Court on 6 March 2002.

C. Main issues of concerns and recommendations

Article 2

5. The Committee is concerned that the inclusion in the scope of the Amnesty Law adopted in 2002 of "all criminal acts related to the 2001 conflict", may create the conditions for impunity for serious violations of international human rights and humanitarian law, including violations of the Convention against torture.

The Committee, as recalled in its General Comment n° 2, considers that amnesties or other impediments which preclude prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment may violate the principle of non-derogability. In this respect, the State party, should ensure that serious violations of international human rights and humanitarian law are not included in any amnesty and are thoroughly investigated and – if appropriate – prosecuted and sanctioned.

6. The Committee, while noting the current legislative efforts to strengthen the independence of the Public Prosecution Office, is concerned at its inadequate functioning, in particular when it comes to promptly investigate allegations of torture and other cruel, inhuman or degrading treatment. This concern has also been articulated in various decisions of the European Court of Human Rights.

The State party should ensure the independence and the effective functioning of the Public Prosecution Office as to ensure, *inter alia*, that allegations of torture and cruel, inhuman or degrading treatment are promptly and impartially investigated and, if appropriate, prosecuted and sanctioned. To this end, the State party should swiftly complete the reform process aimed at strengthening the Office's independence and effectiveness.

7. The Committee notes that the Sector for Internal Control and Professional Standards (SICPS) within the Ministry of Interior is the body mandated to monitor the conduct of the police, but is concerned that an independent and external oversight mechanism for acts committed by the police is lacking. In this respect, while welcoming the adoption of a law strengthening the Office of the Ombudsman in 2003, it is concerned that this Office has still limited functions, and that its decisions are not binding.

The State party should intensify its efforts to establish a system of independent and impartial monitoring to investigate and monitor alleged police misconduct. In this respect, the State party should consider strengthening and extending the mandate of the Ombudsman, including the capacity to investigate acts committed by police officers. Furthermore, cooperation between the SICPS and the Ombudsman should be improved and adequate follow-up should be given to the Ombudsman's recommendations by all relevant authorities.

Article 3

8. The Committee is concerned at the inadequate functioning of the system for processing and determining asylum claims, especially with respect to those claims channeled through the so-called "accelerated procedure".

The State party should ensure that a thorough review of each individual case is provided for asylum claims. In this respect, the State party should ensure that effective remedies are available to challenge the decision not to grant asylum, especially when the claim is channeled through an accelerated procedure. Such remedies should have in any case the effect of suspending the execution of the above decision, i.e. the expulsion or deportation.

9. The Committee takes note of the State party's position that the SICPS has not found any wrongdoing of any officials of the Ministry of Interior or any other State party's authority in the well-known case of Mr. Khaled El-Masri. However - noting the concerns expressed by various international bodies, including the Council of Europe Committee on Legal Affairs and Human Rights on the matter - it is concerned that the events surrounding the arrest, detention and transfer to a third country of Mr. El-Masri have not been fully clarified.

The Committee recalls its position that responses to the threat of international terrorism adopted by States parties to the Convention must be in conformity with the obligations undertaken by them in ratifying it. In this respect, the State party should ensure that a new thorough investigation is undertaken in order to assess whether the treatment of Mr. El Masri has been in compliance with the Convention and other international human rights standards.

Article 4

10. The Committee notes with concern the data showing that very low penalties have been imposed to persons convicted for the crimes of torture (article 142 of the Criminal Code) and ill-treatment while carrying out official duty (article 143 of the Criminal Code) (arts. 4 and 16).

The State party should ensure that the acts of torture are punished by appropriate penalties which take into account their grave nature. The Committee, underlining that the conditions that give rise to cruel, inhuman or degrading treatment or punishment frequently facilitate torture and that, therefore, the measures required to prevent torture must be applied to prevent cruel, inhuman or degrading treatment or punishment, believes that appropriate penalties should likewise be applied to acts of cruel, inhuman or degrading treatment.

Article 5

11. The Committee is concerned that, in case of acts of torture committed abroad, the State party may only establish its jurisdiction thereto when the alleged offender is present in its territory if the punishment foreseen for the offences in the country where they have been committed is, at least, of five years of imprisonment. In this respect, the Committee is concerned that this may create situations of impunity, in cases where the country in which acts of torture are committed is not a party to the Convention, does not have a specific offence of torture in its legislation or sanctions it with penalties less than five years of duration.

The State party should consider abolishing the double criminality requirement for the crime of torture and apply the *aut dedere aut judicare* principle when an alleged offender for acts of torture committed abroad is present in its territory, in accordance with article 5, paragraph 2, of the Convention.

Article 6, 7, 8 and 9

12. The Committee, while welcoming the State party's ratification of the Rome Statute of the International Criminal Court (ICC), regrets the bilateral agreement concluded with another State party to the Convention aimed at exempting the latter's nationals present in the State party's territory from

being extradited to the ICC for crimes within the jurisdiction of the Court, including torture.

The State party, in accordance with article 6 and 8, should consider reviewing the relevant terms of those agreements which prevent the nationals of certain States who are on the territory of the former Yugoslav Republic of Macedonia from being brought before the International Criminal Court.

13. The Committee takes note of the information received by the State party with respect to the developments on the investigations and prosecution of the cases of enforced disappearances occurred during the conflict in 2001.

The Committee recommends that the State party complete a thorough investigation of the above-mentioned cases of disappearances, including those related to the four cases referred back to the State party from the International Criminal Tribunal for the Former Yugoslavia, and prosecute and punish the perpetrators of this crime. The State party should make the results of these investigations public as well as provide information in this respect to the Committee (arts. 6, 7, 8, 9, 12 and 13).

Article 10

14. The Committee notes the State party's efforts with respect to education and information regarding the prohibition of torture, including the training organized in cooperation with the OSCE for 5,500 police officers on "Police, Human Rights and Freedoms" in 2004 and 2005 as well as the plan to establish by the end of 2008 a new permanent Training Center for prison staff. However, the Committee is concerned that training programs for medical personnel for the identification and documentation of cases of torture, as well as for the rehabilitation of victims, seem to be lacking. Likewise, training to develop a more gender sensitive approach both in legal and medical institutions is inadequate.

The State party should:

- a) ensure that education and training of all law-enforcement personnel, are conducted on a regular basis;**
- b) include in training modules on interrogation rules, instructions and methods, and specific training for medical doctors on how to identify signs of torture and cruel, inhuman or degrading treatment;**
- c) regularly evaluate the training provided to its law-enforcement officials, as well as, ensure regular and independent monitoring of their conduct;**
- 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.**

Article 11

15. The Committee, while noting the extensive reform planned for the penitentiary system, including the construction of new facilities and the renovation of the existing ones, is concerned over the current material conditions of detention and the problems of overcrowding in the places of deprivation of liberty.

The State party should ensure the urgent implementation of the penitentiary system reform, including the duly establishment of a new network of penitentiary institutions as envisaged in the Law on Execution of Sanctions. The State party should also improve the material conditions of detention in places of deprivation of liberty, in particular with respect to hygienic conditions and medical care.

Articles 12, 13 and 14

16. The Committee is concerned over allegations of torture or cruel, inhuman or degrading treatment of punishment committed by law enforcement personnel and notes with concern a lack of prompt and effective investigations and prosecutions in this respect (see also *supra*, para. 5). In particular, the Committee is concerned at allegations reporting that the most serious abuses would be committed by a special unit of the police named "Alfi", mandated to counter urban crimes and work in plain clothes. In this respect, the Committee takes note of the information received by the delegation that the "Alfi" unit is going to terminate its activities soon.

The State party should ensure that:

- a) **all allegations of acts of torture or cruel, inhuman or degrading treatment of punishment committed by law enforcement officials - including those committed by members of the "Alfi" unit - are investigated promptly, independently and impartially and, when appropriate, prosecuted and punished;**
 - b) **laws and the regulations relating to the use of force and weapons by law enforcement officials are consistent with internationally recognized standards;**
 - c) **victims of torture or ill-treatment have the right to obtain redress and fair and adequate compensation, as provided for in article 14 of the Convention.**
17. The Committee notes with concern the State party's assertion 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.

The State party should ensure that appropriate services are available for the rehabilitation of victims of torture.

Article 15

18. The Committee is concerned that the State party lacks clear legislation totally excluding admission of evidence obtained as a result of torture. Furthermore, the Committee is concerned over reports indicating that in practice evidence obtained under ill-treatment has been used in criminal proceedings.

The State party should prohibit, in the legislation as well as in practice, admissibility and use in criminal proceedings of any evidence obtained as a result of torture or ill-treatment, in compliance with article 15 of the Convention.

Article 16

19. The Committee, while noting various measures undertaken by the State party, including the implementation of a strategy to prevent domestic violence and the inclusion, in 2004, of a separate crime of domestic violence in the Criminal Code, expresses its concern about the persistence of violence against women and children, including domestic violence. While appreciating the State party's intention to amend the elements of crimes of rape by abolishing the requirements of both penetration and active resistance by the victim, it is concerned at the low numbers of investigations and prosecutions for cases of domestic violence.

The State party should increase its efforts to prevent, combat and punish violence against women and children, including domestic violence, and ensure adequate implementation of the national strategy to prevent domestic violence. The State party is encouraged to conduct broader awareness raising campaigns and training on domestic violence for officials (law-enforcement agencies, judges, lawyers and social workers) who are in direct contact with the victims as well as for the public at large.

20. The Committee notes with concern reports of intolerance and hatred towards ethnic minorities, especially Roma. In this respect, the Committee is concerned at information showing that instances of ill-treatment by law enforcement officials, especially the police, often involve persons belonging to ethnic minorities.

The Committee recalls that the protection of certain minorities or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. In this respect, the State party should strengthen its efforts to combat ill-treatment of and discrimination against persons belonging to ethnic minorities, in particular Roma, including by ensuring that the relevant existing legal and administrative measures are strictly observed and that training curricula and information campaign constantly communicate the message that discrimination and violence will not be tolerated and will be sanctioned accordingly.

21. The Committee notes that corporal punishment of children is not explicitly prohibited in all settings and it is a common and accepted means of childrearing.

The State party, taking also into account the recommendation in the UN Secretary General's Study on violence against children, should adopt and implement legislation prohibiting corporal punishment in all settings, supported by the necessary awareness-raising and public education measures.

22. The Committee recognizes the efforts undertaken to combat human trafficking, including the recent introduction of a separate offence of trafficking, but it is still concerned that trafficking in women and girls, especially for the purpose of sexual exploitation, is a serious problem in the State party, and that recovery and reintegration services are insufficient.

The State party should continue to prosecute and punish trafficking in persons, especially women and children, and intensify its efforts to provide recovery and reintegration services to victims. The State party should also conduct nationwide awareness-raising campaigns and conduct training for law enforcement officials, migration officials and border police on the causes, consequences and incidence of trafficking and other forms of exploitation.

23. The Committee notes with appreciation the State party's statement that a draft Bill on ratification of the Optional Protocol to the Convention is currently under Governmental review. In this respect, it encourages the State party to ratify the Optional Protocol to the Convention in order to strengthen the prevention against torture.
24. The Committee invites the State party to become a party to the following human rights treaties, namely: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with Disabilities; and the International Convention for the Protection of All Persons from Enforced Disappearances.
25. 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. Information is further requested on compensation and rehabilitation provided to the victims.
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.4.

27. The Committee requests the State party to provide, within one year, information on response to the Committee's recommendations contained in paragraphs 5, 7, 12 and 19 above.
28. 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.
29. The State party is invited to submit its next periodic report, which will be considered as the third periodic report, by 30 June 2012 at the latest.