Qatar

From implementation to effectiveness

Submission to the list of issues in view of the consideration of Qatar's third periodic report by the Committee against Torture

Alkarama Foundation – 22 August 2014

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2 Introduction

The Committee against Torture (hereinafter "Committee") reviewed Qatar's initial report (CAT/C/58/add.1) during its 36th session in May 2006 and issued its concluding observations (CAT/C/QAT/CO/1) on 25 July 2006. In 2012, Qatar submitted its second periodic report upon which the Committee adopted its recommendations on 29 November 2012 (CAT/C/QAT/CO/2). In March 2014, Qatar presented complementary information in follow-up to the Committee's concluding observations (CAT/C/QAT/CO/2/Add.1).

While acknowledging, in its 2012 observations, the various steps taken by Qatar to bring its legislation in line with the Convention, the Committee stressed that many of its recommendations had not been implemented, and regretted that most of the issues raised remained of concern. The Committee claimed that despite its continuous requests, most of the required statistical information had not been provided by Qatar and called upon the State party to do so.

Alkarama carefully reviewed the information provided by Qatar in March 2014 to the Committee and, while acknowledging the efforts made in order to comply with international standards stemming from the Convention, highlighted several remaining loopholes in Qatar's domestic law and practice.

Alkarama wishes, with the present submission to the List of Issues, to contribute to the upcoming review of the State party, hoping that a constructive dialogue will be established between the Qatari authorities and the Committee's experts in order to clarify the present situation – with the objective of improving it.

3 Definition and criminalisation of torture

Alkarama notes with satisfaction the incorporation by Qatar of the definition of torture enshrined in article 1 of the Convention in its domestic legislation in article 159 *bis* of the Criminal Code that states that:[1]

> Shall be punished by imprisonment for a term not exceeding five years, every public official, or other person acting in an official capacity, the use of torture or instigated or approved or stayed about the use of torture, with someone else.
>
> If as a result of this torture the victim sustains injuries leading to permanent disability, the offender shall be punished by imprisonment for a term not exceeding ten years. The penalty shall be death or life imprisonment, if as a result of the torture the victim dies.
>
> Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purposes of obtaining from him, or from anyone else, information or a confession; punishing him for an act he or someone else has committed, or is suspected of having committed, or intimidating or coercing him or anyone else, or for any reason based on discrimination of any kind. This does not include pain or suffering arising only from, inherent or incidental to lawful sanctions.

Alkarama also notes that the practice of torture is criminalised in article 159 of the Criminal Code which reads as follow:

> "Any public servant who uses or orders the use of torture, force or threats against an accused person, a witness or an expert for the purpose of obtaining a confession to an offence, coercing the person into making a statement or providing information about an offence or covering up an offence shall be liable to a penalty of up to 5 years' imprisonment. If, as the result of an act committed by a public official, the victim sustains an injury which causes permanent disability, the perpetrator shall be liable to a penalty of up to 10 years' imprisonment. If the victim dies as a result of the act, the perpetrator faces a penalty of death or life imprisonment."

[1] Law No. 28 of 2006 Amending Certain Provisions Under the Penal Code Issued By Law No. 11 of 2004

Alkarama welcomes the transposition of the definition of torture enshrined in the Convention but was unable to examine the judicial enforcement and effective implementation of Qatar's anti-torture law. We thus regret the lack of information over the effective referral and application of these provisions before domestic courts. Taking into account the statement[2] made by the United Nations Special Rapporteur on the independence of judges and lawyers, on 26 January 2014, inventorying various irregularities in the courts' functioning, Alkarama expresses concerns over the fair character of eventual offenders' trials.

Lastly, although we welcome the transposition of the CAT convention's definition of torture, we would like to ask the State if he provided legal guidelines as to the interpretation by its judiciary of the different elements of the definition namely: the severity of pain and suffering; the definition of the intention to cause high level of pain and suffering including through recklessness; the distinction of the element of intention and the element of purpose the latter relating to the motivation or the reason behind the infliction of pain and suffering[3]; the extension of the definition to both acts and omissions; the levels of involvement of State officials in torture that suffice to make him accountable which are infliction, instigation, consent and acquiescence.

Even if pain or suffering inherent in or incidental to lawful sanctions are expressly excluded from the definition of torture under article 1, it should be reminded that a preferable interpretation of this exclusion is understanding "lawful" as denoting a compliance with international law standards rather than merely domestic law standards.

Questions:

1. *Could the State party provide detailed cases in which anti-torture provisions were invoked before or by a court?*
2. *Could Qatar provide measures taken to promote access to justice to the victim of torture or ill-treatment and ensure no legal, institutional or social barrier prevent the referral to the competent authority?*
3. *Could the State party explains how it is providing legal guidelines as to the interpretation of the elements constituting torture and other ill-treatment and if so, to tell what these guidelines are? If no guidelines are provided as to the interpretation of the Convention to its judiciary and law enforcement as well as military forces, we strongly recommend to the State party to provide information and training on the elements of torture described above.*

4 Absolute and non-derogating prohibition of torture

Alkarama notes that the Qatari legal framework does not include any provision as to ensure that no exceptional circumstances whatsoever; including a state or threat of war, internal political instability or any other public emergency, and that no order from a superior officer or a public authority may be invoked as a justification of torture or ill-treatment.

Alkarama acknowledges that Article 36 of the Qatari Constitution guarantees the right to freedom from torture or degrading treatment by affirming that:

> "Personal freedom shall be assured. No one may be arrested, imprisoned, searched, compelled to reside at a given location or have his freedom of residence or movement curtailed, except in accordance with the law. No one may be subjected to torture or degrading treatment. Torture is an offence that is punishable by law." Nonetheless, this provision does not expressly affirm the absolute character of the prohibition of torture as requested by the Convention and that no exceptional circumstances may be invoked as a justification of torture or ill-treatment."

[2] http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14202&LangID=E

[3] The distinction is crucial in the sense that Alkarama adopts the view that in order to maximise the protection offered by article 1, any malicious – even sadistic – purpose should fulfil this requirement.

The non-derogability of the prohibition of torture is reinforced by the principle embodied in article 2, paragraph 3, that an order of a superior or public authority can never be invoked as a justification of torture. This principle should be contained in the specific dispositions incriminating torture and within bodies of law applicable to both civil and military forces. The counterpart of this principle is that those exercising superior authority cannot avoid accountability or escape criminal responsibility for torture or ill-treatment committed by subordinates where they ***knew or should have known*** that such impermissible conduct was, or was likely, to occur, and **they took no reasonable and necessary preventive measures**. The criteria for assessing superior's responsibility for acts of torture committed by its subordinate as described above should be enshrined in Qatar domestic law and should be applicable to civil and military superiors equally. Special protection against retaliation of any kind should be provided for subordinates who refuse to follow an illegal order. The same protection should be extended to those who report CAT violations to their authorities.

Questions:

1. *Does the State party recognise the absolute and non-derogating character of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment?*
2. *What is the legal threshold adopted by the state party in order to differentiate between torture and other forms of ill-treatment?*
3. *Could the State party indicate if it has adopted legal provisions to implement the principle of absolute prohibition of torture in its domestic law without any possible derogation?*
4. *Could the State party provide clear provisions stating that no order from a superior officer or a public authority may be invoked as a justification of torture or ill-treatment and no one should be exempted from liability for committing torture by invoking an order from a superior officer or a public authority?*
5. *What are the legal standards used to assess superior's responsibility in case of torture committed by his subordinates?*

5 Other forms of inhuman and degrading treatment: arbitrary detention and conditions of detention and CAT provisions

Qatar has adopted provisions to ensure the protection of detainees from torture and ill treatment. Indeed, Article 39 of the Constitution and articles 40, 43, 112 and 113 of the Code of Criminal Procedure provide legal safeguards to detainees, such as the right not to be detained without warrant, to be informed of the reasons of arrest and charges, to contact a legal counsel or a person of his choosing and to be brought before the competent authority within 24 hours. Such measures by putting the detained under the protection of the law are crucial to prevent instances of torture and ill treatment in custody and during detentions.

However and in this regard, Alkarama has documented the cases of Mr Al Mansoori and Mr. Al Baker, in which cases Qatar failed to abide by their own domestic law. Indeed, on 22 March 2013, Mr Al Mansoori and Mr Al Baker were stopped at a checkpoint on the main road in the Umm Saeed region. They were arrested without being notified the reasons and taken to Doha Central Police Station where they were detained. Their lawyers were not given access to them despite their requests. On 18 April 2013, Mr Al Mansoori and Mr Al Baker were released without any prior or further legal procedures. Alkarama recalls that *incommunicado* detention of up to five days or longer have been considered by the Committee against Torture as *per se* amounting to cruel, inhuman and degrading treatment under article 16 of the Convention[4].

[4] Concluding Observations on Spain, (1997), UN doc. A/58/44, § 61; Concluding Observation on Russian Federation, (1997) UN doc. A/52/44, § 42.

Alkarama welcomes the implementation of the principles of adequate redress required by the Convention in its Article 14 as confirmed by the cases of Messrs Abdullah Ghanem Mahfoud Al Kowar and Salem Hassan Khalifa Rashed Al Khowari, whose cases Alkarama referred to the Special Procedures, and who were both compensated after being subjected to torture and arbitrary detention.

However, Alkarama has identified several issues in the information provided by Qatar in follow-up to the Committee's the concluding observations (CAT/C/QAT/CO/2/Add.1). First, the notions of "custody during preliminary investigation" and "pre-trial detentions" are not clearly limited and the role of the prosecution during each phase is not clear. Thus, the Qatari authorities seem to use indifferently these two notions, maintaining a confusion that could affect the detainee's guarantees against arbitrary detention.

Second, the provisions relating to the length of pre-trial detention are specified. Paragraph 8 of Qatar's report states that "the Office of the Public Prosecutor [...] may extend the detention period for up to 30 days, renewable for a similar period or **periods**" while paragraph 9 sets that the detention may be extended "for a maximum period of 45 days, renewable for a similar period or **periods**" by the criminal court. No limit to the renewal is provided.

Third, paragraph 10 of the report states that "the pre-trial detention must not exceed half of the maximum penalty established for the offence" which could result on an extended pre-trial detention and seriously affect the detainee's rights in case of long sentence, such as life sentence.

Thus, it results from these three paragraphs that pre-trial detention can be renewed indefinitely which is contrary to the rights of detainees as guaranteed by international standards, and can lead to the practice of torture and ill-treatment while in detention and constitutes cruel, inhuman or degrading treatment under Article 16 of the Convention.

Questions:

1. *Has the State party planned a policy including campaigns, trainings, awareness programmes towards both judicial and security authorities as well as civil society to ensure the enforcement of legal provisions and to end arbitrary detention as well as promote detainees rights?*

2. *Could the State party provide information on the steps taken to ensure that all detainees are effectively informed of their rights at the time of arrest and of the charges against them and are promptly brought before a judge?*

3. *Could the State party provide information on the steps taken to ensure that all persons deprived of their liberty are effectively guaranteed access to a lawyer of their choice, the right to notify a relative or trusted individual of their detention, and the right to be assisted by an interpreter, when required?*

4. *Has Qatar taken measures pursuant the recommendations of the United Nations Special Rapporteur on the independence of judges and lawyers to ensure the respect of the independence of judges and prosecutors as described above?*

5. *Does the State party make a clear distinction between custody which is ordered at the preliminary investigation's stage and the pre-trial detention as requested by international standards?*

6. *Could the State party amend its domestic law in order to fulfil its obligations under Convention relating to the fair trial principles, particularly concerning a reasonable length of the pre-trial detention?*

7. *Has the State party made efforts to establish a national system to effectively monitor and inspect all places of detention and to react to the findings of the systematic review?*

6 Concerns related to the legal framework and practice in counter-terrorism and terrorism prevention

Qatar enacted Law No. 17 of 2002 on the 'Protection of Society', and in 2004 acceded to the Gulf Cooperation Council Convention on Combating Terrorism and passed Law No. 3/2004 on Combating Terrorism. These provisions reduce the safeguards enshrined in the Code of Criminal Procedure.

The Committee against Torture has been calling upon Qatar, since its initial review, to amend the Protection of Society Law and the Law on Combating Terrorism to bring them into conformity with the Convention. It should be reminded that interrogation techniques used in counter-terrorism operations must be under strict scrutiny and that no exceptional circumstances whatsoever including terrorism threats may be invoked as a justification of torture. The use of interrogation techniques that amounts to torture and ill treatment should not be justified by the fact that it could prevent future terrorist attacks[5]. Unfortunately, Qatar seems to keep on ignoring such recommendations.

Moreover, Alkarama wishes to highlight that the non-use of statements obtained through torture or other ill-treatment in judicial proceedings is guaranteed by article 15 of the CAT Convention. This obligation applies to both statements made by a tortured person about himself and about third parties. The CAT Committee previously confirmed that in processes of extradition each State party must "ascertain whether or not statements constituting part of the evidence of a procedure for which it is competent have been made as a result of torture."[6]

Question:

1. *Is the State party considering revising its legislation concerning the definition of terrorism to bring it into conformity with the relevant international requirements in order to ensure the protection of human rights while countering terrorism?*

2. *What are the specific safeguards in law and practice that the State had taken in order to ensure that interrogation techniques used in counter-terrorism operations are not breaching its obligation under the convention?*

3. *What are the legal safeguards implemented by the State party in order to ensure that no evidence obtained under torture or inhuman and degrading treatment whether inside or outside of its jurisdiction during counter-terrorism operations are excluded from all proceedings before its courts? In this regard what are the legal safeguards that the State party has taken in order to ensure that it is not participating, directly or indirectly to illegal rendition of suspected terrorist?*

7 Expulsion, return or extradition

Alkarama remains concerned about the lack of legal provisions expressly prohibiting the expulsion, return or extradition of a person to another State where there were substantial grounds for believing that he or she would be subjected to torture as stipulated in article 3 of the Convention, as well as the absence of an effective appeals process available to persons likely to be subjected to such treatment.

During the review of Qatar's initial report (CAT/C/58/Add.1) on 9 and 10 May 2006, Qatar expressed its intention to incorporate article 3 of the Convention into domestic law. To date, no step has been taken to fulfill this obligation.

For example, on 18 October 2010, the Qatari authorities ordered the extradition of a Yemeni citizen, Mr Awadh Mohammed Awadh Al Hayki, from Doha to Saudi Arabia. Transferred to Al Qasim prison

[5] As confirmed previously for example in Israel's Second Periodic Report under the Convention Against Torture, (1996) UN doc. CAT/C/33/Add.2/Rev.1 §§ 2-3, and 24.

[6] *P.E. v. France* (CAT193/01), § 6.3.

upon his arrival, Mr Al Hayki was detained in solitary confinement for almost a year and subjected to torture and ill-treatment. Suffering from health problem, he was deprived of medical care. Consequently, Qatar has failed in fulfilling its obligation to protect the physical integrity of anyone who is under its jurisdiction. This case highlights the need for the Qatar to adopt specific legislation in this regard as to implement article 3 of the Convention and grant the individuals facing expulsion, return or extradition the right to efficiently refer to a judicial authority.

Alkarama also expresses great concerns over a group of individuals, suspected by the Egyptian authorities of belonging to Muslim Brotherhood, which is now considered a "terrorist organisation" and for whom they have requested their extradition from Qatar to Egypt. Alkarama has extensively documented cases of torture in Egypt, which constitutes a systematic practice, and is being used also against supporters of the Muslim Brotherhood. Since there is no express Qatari provision prohibiting the extradition to a state where torture is practiced, Alkarama fears for their physical integrity if they were to be extradited to Egypt. To date, the Qatari authorities have delayed the extradition of the concerned individuals but there is no guarantee that they will extradite them in the near future.

Questions:

1. *Is Qatar planning on incorporating article 3 of the Convention into its domestic law?*
2. *Does Qatar conduct inquiries as to ensure that the individuals at risk of extradition are not sent back to a state where he/she could face torture?*
3. *Could the State party provide detailed information on the procedure applied before an extradition, an expulsion or a refoulement with a specific mention to the measures taken to ensure the concerned people is not in danger of being tortured? What are the conditions adopted by the State to ask for diplomatic insurances in cases where an individual is returned to another State and where there is a risk of torture or ill-treatment?*
4. *Are individuals facing expulsion, refoulement or extradition, informed of their right to seek asylum and appeal a deportation decision?*

8 The plight of migrants workers

Qatar employs approximately 1.2 million migrant workers, and their number has been increasing over the last years, mainly in the construction industry.

Migrants working conditions are largely denounced by the media which reported that an important number of migrants died over the last years. Migrant workers are denied important rights and freedom. For instance, the Kafala (sponsorship) system places them at the mercy of their employers. We recall that States have positive obligations as to ensure that no State or actor within the state's jurisdiction is committing acts amounting to torture and inhuman and degrading treatment under article 16. In this sense, not prosecuting private persons that are known by public official to commit acts amounting to torture and other ill-treatment toward their employees can be considered as acquiescence that is a form of liability of State officials.

Reacting to these critics, Qatar has been implementing reforms which were qualified as positive legislative developments by the Special Rapporteur on Migrants[7] who visited Qatar in November 2013. Despite these positive efforts, the Special Rapporteur called upon Qatar to effectively implement existing legislation, "including by enforcing the prohibition against the confiscation of passports, prosecute violations and impose meaningful sanctions" as well as to adopt legislation that fully protect the migrants workers and establish effective compliance mechanisms and employers sanctions.

In May and July 2014, the minister of labor and social affairs, Abdullah Saleh Mubarak al-Khulaifi, announced that new reforms to improve migrant workers situation were approved. These reforms

[7] UN Special Rapporteur on the human rights of migrants concludes country visit to Qata, Doha (10 November 2013):http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13974&LangID=E#sthash.9VWWgJqs.dpuf

consist on replacing the Kafala system with a system of employment contract between the worker and its employer. Also, other reforms contain regulations on maximum working hours, health and safety as well as standards for salary payments.

Questions:

1. *Has Qatar defined a specific deadline to definitely incorporate the alleged reforms and adopt legislation that fully protects migrant workers?*

2. *Could the State party provide the measures adopted to ensure that victims of human rights trafficking have access to effective remedies and reparation?*

3. *Could the State party expose in detail the approved measures taken to apply the Special Rapporteur on Migrants' recommendations and to protect migrant workers and sanction employers and companies who do not comply with international labour standards and human rights principles?*

9 Conclusion and General Recommendations

Since more than a decade, Qatar has been adopting important reforms in the field of human rights and making ongoing efforts to comply with international standards by revising its legislation and ensuring a stronger protection of human rights. Qatari legislation grants its citizens fundamental rights and freedoms; however, its application leaves room for improvement.

In addition to the above recommendations, Alkarama call upon the State party to:

1. *To take effective steps both in its law and in its practice in order to enforce all its positive duties under the CAT in order to prevent and minimize breaches including: its duty to enact and enforce legislation implementing the CAT; its duty to investigate allegations; its duty to compensate victims.*

2. *Amend its domestic legislation in order to ensure the Convention is applicable at all times, whether in peace, war, armed conflict or while countering terrorism in any territory under its jurisdiction;*

3. *Establish appropriate mechanisms to ensure the judicial enforcement and effectiveness of national and international provisions and organise educational programmes developed to ensure that all law enforcement officials, security and prison personnel, are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that any offenders will be prosecuted;*

   Adopt specific policies to effectively guarantee the detainees rights and promote human rights at national level;

4. *Take actions to ensure the respect of the independence of the judiciary;*

5. *Define all necessary measures to permit migrant workers to benefit from protection under the law and comply with international labour norms;*

6. *Guarantee and ensure de jure and de facto equality of treatment for all individuals under its jurisdiction without exception*

7. *Apply the same labour law and worker's protection to all workers within its territory regardless of their nationality and gender*

8. *To free the five detainees aforementioned as to comply with the principle of equality of treatment for all citizens;*

9. *Ratify the International Covenant on Civil and Political Rights as promised by Qatari authorities;*

10. *Consider withdrawing reservations on articles 21 and 22 of the Convention against Torture and ratifying the Optional Protocol (OPCAT).*