

III.5 THE COMMITTEE AGAINST TORTURE (CAT)

The practice of torture was first prohibited in 1948 by the Universal Declaration of Human Rights and by the International Convention on the Prevention and Punishment of the Crime of Genocide. The concept was reaffirmed in 1966 by the ICCPR and in 1984 by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Despite all these efforts, torture continues to occur on a worldwide basis. The Convention entered into force in 1987. As of 11 January 2010, the Convention has been ratified or acceded to by 146 States (for details see annex VI.3), and 64 States parties recognize the competence of the Committee to receive and consider communications submitted by States parties and/or individuals according to Articles 21 and/or 22 of the Convention.

As indicated by Article 1, para. 1 of the Convention “the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.

According to the Convention each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction (Article 2, para. 1); no exceptional circumstances whatsoever (for instance state of war, threat of war, internal political instability or any other public emergency) may be invoked as a justification of torture (Article 2, para. 2). Moreover, important to note is the provision in Article 3, para. 1: “No State party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”.

Even though the prohibition against torture is one of the basic human rights norms, in the context of the fight against terrorism the acceptability of torture has been increasingly discussed, for instance in Israel, Spain and the United States. In the introduction to his Report on the Work of the Organization 2003, Kofi Annan pointed out that “human rights must not be sacrificed in the struggle against international terrorism” (para. 5). Also, the threat with torture is a severe violation of human dignity and belongs to the inhuman and degrading treatments which are banned by the Convention.

The Committee Against Torture

This Committee consists of ten experts. It monitors the implementation of the Convention. States parties to this treaty elect the members of the Committee for a four-year term who serve in their personal capacity. The Committee normally holds two regular sessions each year in Geneva, in May and in November. Special sessions may be convened by decision of the Committee itself at the request of a majority of its members or of a State party to the

Convention.

Article 19: Reports by States Parties

The Committee examines reports by States parties about the implementation of the provisions laid down in the Convention against Torture (see chart 14). In order to receive full information, the Committee has prepared general guidelines containing precise instructions on their form and content. Initial reports are to be submitted within one year after the Convention enters into force for the State party concerned, and thereafter every four years. These reports are public documents; the examination also takes place at public meetings where the representatives of the governments introduce the reports and answer to questions of the Committee members. Since its fifth session in 1990 every report is introduced by a member of the Committee serving as a rapporteur; since its 28th session in 2002 rapporteurs are nominated in order to follow up the implementation of the conclusions and recommendations of the Committee. The Committee examines an average of seven reports per session.

At each session of the Committee, the UN Secretary-General notifies the Committee of all cases of non-submission of the reports. Again and again the Committee expressed concern about the number of States parties that did not comply with their reporting obligations. States parties whose initial reports are more than 12 months overdue receive reminders every six months. Furthermore, it was suggested to examine the situation of States parties whose reports are overdue on the basis of information given by other bodies of the UN and NGOs.

In May 2007, the Committee adopted a new optional reporting procedure which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic reports. This procedure which should lead to more focused reports will be applied on a trial basis in relation to reports that are due in 2009 and 2010.

As at 15 May 2009, the situation with regard to overdue reports, a total of 210, was as follows: initial reports: 38; second periodic reports: 49; third periodic reports: 45; fourth periodic reports: 36; and fifth periodic reports: 30. Given this situation, the Committee decided to continue to publish lists of States parties whose reports are overdue at the end of each session in its annual reports to the General Assembly.

Article 20: Competences of Investigation

Under Article 20 of the Convention, the Committee may decide to conduct an inquiry if it receives reliable information about well-founded indications that torture is being systematically practiced in the territory of a State party. This possibility of an inquiry applies to all States parties except those which have declared, as permitted by Article 28 of the Convention, that they do not recognize the Committee's competence in this respect. The procedure set out in Article 20 of the Convention is marked by two features, namely its confidential character and the pursuit of cooperation with the States parties concerned. The Committee may, as indicated in Article 20, para. 5, after consultations with the State Party concerned, decide to include a summary

account of the results of the proceedings in its annual report to the UN General Assembly.

States parties may opt out of Article 20 upon signature, accession or ratification, but not after having accepted the procedure. Any State party having made a reservation may, at any time, withdraw this reservation by notification to the UN Secretary-General. As of 15 May 2009, the following nine States parties have declared, that they do not recognize the competence of the Committee provided for by Article 20 of the Convention:

Afghanistan	Israel	Poland
China	Kuwait	Saudi Arabia
Equatorial-Guinea	Mauritania	Syrian Arab Republic

Article 21: Inter-State Complaints

Under Article 21 of the Convention, a State party may at any time declare that it recognizes the Committee's competence to receive and consider a complaint by one State party that another State party does not fulfill its obligations under the Convention. In practice, the Committee can only become active if both States parties have made a declaration pursuant to Article 21 recognizing the Committee's competence to take such action. A total of 64 States parties have made such declarations (see the list of States parties which have made the declarations provided for in Articles 21 and 22; furthermore, Japan, Uganda, United Kingdom and the United States only made the declaration provided for in Article 21).

The procedure consists of two stages. If a State party to the Convention considers that another State party has violated one of its provisions it may, first of all, communicate in written form directly with that State party. The State party which receives the communication must react in written form within three months. If the two States parties concerned are unable to settle the matter between themselves, it may be referred by either State party to the Committee which tries to arrive at a friendly solution in closed meetings. No such complaint has yet been made.

Article 22: Individual Complaints

Under Article 22 of the Convention, a State party may at any time declare that it recognizes the Committee's competence to receive and consider complaints from, or on behalf of, individuals subject to its jurisdiction who claim to be victims of a violation of the provision of the Convention by a State party. As of 15 May 2009, a total of 64 of the States parties which have ratified or acceded to the Convention had recognized the competence of the Committee to receive and consider communications of this kind (the eight States parties in italic letters have only made the declaration provided for Article 22); these States parties are:

Algeria	France	Norway
Andorra	Georgia	Paraguay
Argentina	Germany	Peru
Australia	Ghana	Poland
Austria	Greece	Portugal

<i>Azerbaijan</i>	<i>Guatemala</i>	Russian Federation
Belgium	Hungary	Senegal
Bosnia and Herzegovina	Iceland	Serbia
<i>Brazil</i>	Ireland	<i>Seychelles</i>
Bulgaria	Italy	Slovakia
<i>Burundi</i>	Kazakhstan	Slovenia
Cameroon	<i>Korea (Rep. of)</i>	South Africa
Canada	Liechtenstein	Spain
Chile	Luxembourg	Sweden
Costa Rica	<i>Mexico</i>	Switzerland
Croatia	Malta	Togo
Cyprus	Monaco	Tunisia
Czech Republic	Montenegro	Turkey
Denmark	<i>Morocco</i>	Ukraine
Ecuador	Netherlands	Uruguay
Finland	New Zealand	Venezuela

Since April 2002, a four-member working group meets during the week prior to the meetings of the Committee in order to facilitate the procedure. In its consideration of the communication, the Committee's first concern is to ascertain its admissibility. These conditions for admissibility are specified in the Convention and in the rules of procedure of the Committee. For a communication to be declared admissible, it must not:

- be anonymous or incompatible with the provisions of the Convention;
- constitute an abuse of the right to submit a communication under Article 22; and
- have been examined (or be under examination) under another procedure of international investigation or settlement.

Furthermore, individuals who claim to be victims of the rights protected by the Convention must have exhausted all domestic possibilities of recourse.

The Committee may request the State party concerned or the author of the communication to submit additional information or clarification relevant to the question of admissibility (see chart 15). If the Committee decides that a communication is admissible, the author of the communication and the State party are informed. It then examines its substance. The State party has six months in which to submit its explanations to the Committee or to inform it of the measures it may have taken to remedy the situation. The authors may also provide it with further information and be invited, if the Committee deems it necessary, to participate in its private meetings. During this period the Committee may request the State party concerned to take steps in order to avoid irreparable damage to the alleged victim of the violation. This provisional measure does not prejudge the Committee's final decision, but is supposed to offer protection to persons who claim a violation of the Convention.

On completing consideration of a complaint, the Committee compiles its findings, which are then communicated to the author of the communication and to the State party concerned. The Committee invites the State party to inform it of the measures it has taken in the light of the findings communicated to it.

Communications under Article 22 of the Convention (see document 6) are considered in closed meetings; all documents are confidential. However, the Committee includes in its annual report a summary of the communications examined, of the explanations of the States parties concerned, and of its own views.

By the end of its 42nd session in May 2009, the Committee had registered 384 communications with respect to 29 countries. Out of them, 95 communications had been discontinued and 59 had been declared inadmissible. The Committee had adopted final decision on the merits with respect to 158 complaints and found violations of the Convention in 48 of them; 67 communications remained outstanding and four were suspended, pending exhaustion of domestic remedies.

Optional Protocol

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was adopted on 18 December 2002 by the General Assembly of the United Nations (see chart 15). This Protocol entered into force on 22 June 2006, 30 days after the date of deposit of the 20th instrument of ratification or accession. As of 11 January 2010 the Optional Protocol had been ratified by 50 States (for details see annex VI.3).

According to Article 1 of the Protocol its objective is “to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment”. Therefore, a Subcommittee to the Committee against Torture (SPT) was created which consists of ten members and started its work in February 2007. It is a new type of United Nations treaty body with a unique mandate establishing an international preventive mechanism with a global remit. After the 50th ratification of or accession to the Optional Protocol, the number of the members of the Subcommittee on Prevention increased to twenty-five. The members serve in their personal capacity and have to be independent and impartial. They are elected for a four-year term and are eligible for re-election once.

Each State party undertakes to ensure that one or several national mechanisms for the prevention of torture at the domestic level are established. According to Article 4 of the Optional Protocol the State party allows all domestic authorities and the Subcommittee visits “to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence”.

In order to fulfill its mandate the Subcommittee sets up, at first by lot, a programme of regular visits to the States parties. It visits police stations,

prisons, detention centers, juvenile justice establishments, mental health and social care institutions and any other places where people are or may be deprived of their liberty. Maldives, Mauritius and Sweden were the countries drawn by lot. From April 2008 through March 2009 additional visits to Benin, Mexico and Paraguay were carried out. Its recommendations on actions to be taken to improve the treatment of detainees are communicated to the States parties and, as the case may be, to the national preventive mechanism(s). In addition, the Subcommittee annually presents a public report on its activities to the Committee against Torture. In the report about its second year, the Subcommittee mentioned three factors which seriously inhibit its capacity to fulfil the mandate: (a) budgetary resources limiting preventive visits to only 3-4 per year, (b) no budget provision at all for direct work with national preventive mechanisms, and (c) lack of staff and lack of staff continuity.

NGO Participation

The Committee was the first one among the UN human rights treaty bodies to allow NGOs with consultative status with ECOSOC to submit information in the context of all its procedures. NGOs can be invited to submit written information before the examination of a State report; also, a meeting is held with NGOs in private, with interpretation, on the afternoon immediately before the consideration of each State party report under Article 19. The Committee expressed its appreciation to the national NGOs which provided immediate and direct information. States parties are encouraged to consult NGOs when preparing the reports.

Voluntary Fund for Victims of Torture

In December 1981, the General Assembly created the UN Voluntary Fund for Victims of Torture (Resolution 36/151). The purpose of the Fund is to receive voluntary contributions from governments, NGOs as well as individuals and to distribute them to NGOs and treatment centres for assisting victims of torture and their relatives whose human rights have been severely violated as a result of torture. The Fund is administered by the UN Secretary-General with a Board of Trustees acting in an advisory capacity. It comprises five members with wide experience in the field of human rights. Each May, the Board makes recommendations on grants to the OHCHR.

Unfortunately, the inadequacy of available resources is a limiting factor in the field of assistance to victims. The amounts available in 2007 for allocation to new grants came to 7,608 millions US dollars; they were allocated to 191 projects of assistance to victims of torture and members of their families around the world. In 1997, the General Assembly proclaimed the 26 June a "United Nations International Day in Support of the Victims of Torture" and appealed to all governments, organizations and individuals to contribute annually to the Fund.

Contributions to the Fund should be marked as follows: "*payee: United Nations Voluntary Fund for Victims of Torture, account CH*". Payment should be made by:

Bank transfer:

- (a) in United States dollars to “United Nations Geneva General Fund”, account No. 485001802, J.P. Morgan Chase Bank, New York, NY 10004, USA (Swift code: CHASUS33, ABA code: 021000021);
- (b) in euros to “United Nations Office at Geneva, account No. 23961901, J.P. Morgan Chase Bank, London, P.O. Box 440, Wollgate House, Coleman Street, London, UK (Swift code: CHASGB2L, Sorting code: 60-92-42, IBAN: GB25 CHAS 6092 4223 9619 01);
- (c) in sterling pounds to “United Nations Office at Geneva”, account No. 23961903, J.P. Morgan Chase Bank, London, P.O. Box 440, Wollgate House, Coleman Street, London, United Kingdom (Swift code: CHAS GB 2L, Sorting code: 60-92-42, IBAN: GB25 CHAS 6092 4223 9619 03);
- (d) in Swiss francs to “United Nations Geneva General Fund”, account No. 240-C0590160.0, UBS, rue du Rhône 8, Geneva 2, Switzerland (Swift code: UBSWCHZH12A);
- (e) in any other currency to “United Nations Geneva General Fund”, account No. 240-C0590160.1, UBS, rue du Rhône 8, Geneva 2, Switzerland (Swift code: UBSW CH ZH 12A; IBAN: CH65 0024 0240 CO59 0160 1);

Cheque payable to “United Nations” addressed to: Trésorerie, Nations Unies, Palais des Nations, CH-1211 Geneva 10, Switzerland.

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UNITED NATIONS / GENERAL ASSEMBLY: Report of the Committee against Torture. New York: UN, 2009, 392 (GAOR Sixty-fourth Session, Supplement No. 44 (A/64/44)) (also available in other official languages of the UN system).

This annual report informs about the 41st and 42nd session of the Committee (November 2008 and April/May 2009). Chapter II contains notes on the status of the submission of States reports. In Chapter III one finds the concluding remarks to 14 States reports. Annex VII contains the Second Annual Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. The decisions of the Committee to 10 individual complaints are revealed in Annex XIII.

UNITED NATIONS / GENERAL ASSEMBLY: Report of the Committee against Torture. New York: UN, 2008, 317 (GAOR Sixty-third session, Supplement No. 44 (A/63/44)) (also available in other official languages of the UN system).

This annual report for the General Assembly informs about the 39th and 40th session of CAT (November 2007 and April/May 2008). Chapter III deals with 14 reports submitted by States parties. Annex VI contains General Comment No.2 on the implementation of Article 2 and Annex VII the First Annual Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which covers the period February 2007 to March 2008.

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E-Resources

Committee Against Torture:

<http://www2.ohchr.org/English/bodies/cat>

Subcommittee on Prevention against Torture (SPT):

<http://www2.ohchr.org/english/bodies/cat/opcat>

General Comments:

<http://www2.ohchr.org/english/bodies/cat/comments.htm>

States reports:

<http://www2.ohchr.org/english/bodies/cat/sessions.htm>