**Regional Human Rights Arrangements**

**Project of the Advisory Committee (HRC Decision 32/115)**

**Experiences of the Committee against Torture (CAT), a core human rights treaty body**

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Thank you for the invitation to reflect on some of the experiences of the Committee against Torture with regional human rights bodies and instruments, specifically in connection with the development of your new report on regional arrangements for the promotion and protection of human rights.

**Introduction**

The Committee against Torture is one of the core international human rights treaty bodies. As the entity which monitors compliance with the 1984 Convention against Torture, the CAT Committee carries out several activities: It examines periodic state reports from all 158 states parties presenting information on the measures taken to give effect to the obligations under the Convention. It offers its views on individual complaints lodged under article 22 of the Convention (which 66 States parties have accepted). It conducts inquiry proceedings into reports of systematic torture under article 20. And it offers general comments providing advice to the States parties on aspects of the Convention.

Regional arrangements have been relevant to all of these procedures of the CAT, in differing ways: as sources of information, of legal standards, and of implementation of international norms. They also have served as institutional models in some cases, such as the European Ctte for the Prevention of Torture which was a model for OPCAT – the Subcommittee against Torture.

Regional human rights bodies – committees, commissions, courts, and other specialized mechanisms (including rapporteurs, envoys, etc.) serve as authoritative bodies based in the region that often examine and address similar concerns to those before CAT. When there are facts reported by these regional arrangements, Committee members commonly study them and, as warranted, ask questions to States parties to probe whether the State party has addressed concerns identified by the regional arrangements, and whether their recommendations on such matters have been taken into account.

In addition, regional arrangements offer advice and locally-based support regarding the legal standards being utilized. Sometimes their decisions and cases press the Committee to look more closely, in a more progressive way, at some of the legal standards it utilizes, and sometimes, the decisions of regional arrangements reinforce the Committee’s own jurisprudence.

**The European Court of Human Rights and CAT**

If we look at the relationship between the Committee against Torture (CAT) and the European Court of Human Rights (ECtHR), we can see that there is a mutually supportive relationship regarding individual complaints and decisions: the European Court has utilized the conclusions and case specific jurisprudence of CAT and that CAT also utilizes the case specific jurisprudence of the European Court.

Many case judgments published by the European Court of Human Rights (ECtHR) make reference to the United Nations Committee Against Torture (CAT). I looked at many of these, and I found that ECtHR court judgments reference CAT in three main ways:

1) Complainants to ECtHR use reports by CAT to support their cases

2) ECtHR uses reports by CAT (or references by third parties to CAT) to document human rights abuses, ill-treatment, and general conditions of countries of interest

3) ECtHR cites CAT decisions, rules of procedure, case jurisprudence or general comments as legal rules or guidelines in its own decisions.

1. *Complainants cite CAT reports and conclusions to support their claims*

Many complainants to the ECtHR seek redress for torture or ill-treatment or attempt to stop a request for extradition. Many such complainants cite CAT reports following the review of a country’s compliance about country compliance to strengthen their case-specific allegations.[[1]](#footnote-1) In such cases CAT’s input is often valued by the court in regard to country conditions. This is comparatively common in asylum or extradition cases under article 3.

1. *The court uses reports by CAT or references of reports by CAT by third parties to document human rights abuses, ill-treatment, and general conditions of countries of interest*

This was by far the overwhelming way in which CAT was mentioned in court judgments. In almost every case analyzed, ECtHR relied on reports by CAT or references to CAT by third parties to establish tendencies of human rights abuses and document country conditions.

In many extradition cases, the court reference reports and recommendations from CAT to analyze the likelihood of an applicant being tortured or ill-treated in the country requesting extradition. In the case of *Babar Ahmad and Others v. The United Kingdom* (2012), the court referenced CAT’s recommendations against **solitary confinement[[2]](#footnote-2)** as one example of why the applicants would likely experience violations of Article 3 if extradited to the US.

In a **reproductive justice** case, *I.G. and Others v. Slovakia* (Fourth Section, 2012), the court used a report by CAT on Slovakia to back allegations of continued involuntary sterilization of Roma women.

The court also references CAT in relations to **submissions by third parties** like Amnesty International, who often cite CAT in their submissions. These references to CAT are very frequent in ECtHR judgments and show CAT’s authoritative stature for the regional level.

1. *The court uses rules of CAT as applicable international law instruments*

The court uses case-law analysis and state submissions to CAT to analyze international law in many of its judgments. For example, in *Mamatkulov and Abdurasulovic v. Turkey* (2003) the court used Rule 108 § 9 of the Rules of Procedure of CAT as a relevant international law instrument on interim measures. The rule enables interim measures to be adopted in proceedings brought by individuals alleging a violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The court used this case-law to show how CAT applied the procedural rule in other scenarios before applying it to the case at hand. There were not many judgments that used CAT as a means of enacting specific international law but, in the cases where it was mentioned, the court demonstrated high regard for the rules and opinions of CAT.[[3]](#footnote-3)

**CAT’s References to the European Court:**

My search of the Committee against Torture’s database showed 19 country reviews in which concluding comments on periodic reports from states parties have referenced the European Court.  Moreover, there were 51 distinct communications in which CAT explicitly referenced the European Court.

In most communications (25), the complainant cites the European court’s judgement in an attempt to bolster their case against the state party, but in other cases (11), states parties cite the court to argue that procedure, time limits, or other administrative or substantive positions of the court should be determinative.  In four cases, both parties raised the European court, and in two cases, the CAT itself raised the Court’s standards even when the parties did not.

Despite the many times CAT cites the European Court decisions in various cases, the actual decision is made without directly discussing ECtHR jurisprudence – even when CAT adopted exactly the same position as ECtHR. I only found 3 cases in which CAT used a decision of the European Court to interpret the Convention against Torture:  (ABAO v France, Sogi (citing the Chahal case), and TPS v Canada).

In at least 8 of the cases I examined, the matter had been submitted to the ECtHR, and the obligation not to admit a case pending before another international tribunal came into play.

In other cases, I found the following:

*1) Complainants cite ECtHR case decisions to support their claims*

1. *The State Party  uses reports by ECtHR (or third parties) to raise  human rights abuses but more often, cites rules and issues of timing and procedure of the ECt to make their claim*
2. *CAT cites rules of ECtHR and its findings as applicable international law .*

**Inter-American Commission on Human Rights**

I also conducted a brief survey of the jurisprudence of the Inter-American Commission on Human Rights, based on its on-line materials going back some 10 years. I found a very similar pattern:

Complainants and/or the Inter-American Commission cite CAT reports and conclusions to adduce facts and support claims. This can be seen for example, in the Commission’s decisions or recommendations to the Inter-American Court on cases involving specific countries, where CAT conclusions on the reports of Peru, Guatemala and Mexico, to cite only three examples, are referenced to demonstrate factual concerns about the context of the cases under consideration.

Similarly, the Inter-American Commission cites CAT decisions as applicable international legal standards to be applied also at the regional level. This emerged, for example, with regard to issues such as femicide, the recognition of rape as a form of torture, the application of article 15 of the Convention which prohibits information obtained through coerced confessions from being introduced into legal cases, and recognition that torture can be committed by omissions, among others.

**African Court and other Regional Arrangements**

As Vice Chairperson of CAT, I participated in the 2012 Addis Ababa meeting of treaty body chairpersons and had an opportunity to explore first-hand how well known the Committee’s decisions are in Africa and where opportunities for communication and mutual cooperation exist. I learned that while there is considerable knowledge that the other bodies are in existence, there had been little interaction or use of materials or decisions from one used by the other. It was gratifying at that meeting to see that Memoranda of Understanding were endorsed to ensure a regular flow of information in both directions between the UN treaty bodies and African regional bodies. I look forward to studying the results of those agreements and others which have followed them. Perhaps they can be part of the Advisory Committee’s study. I regret that I did not have time before this session to do a thorough review of this myself.

**Other cooperation and interaction with regional arrangements**

While time does not permit me to go through all these contacts and other findings in more detail today, it is important to note that the CAT takes into account the jurisprudence of the regional human rights bodies as a more or less routine matter, especially in its reviews of periodic reports.

In addition, CAT has participated in treaty body chairpersons’ meetings in Brussels, Addis Ababa, and San Jose, deepening contacts and awareness of the diverse approaches of each of the regional arrangements, and familiarizing them with CAT’s work as well. At the recent chairpersons’ meeting in New York, CAT joined in an appeal regarding the financial crisis of the Inter-American Commission on Human Rights. Last year, CAT participated in an OHCHR workshop in Strasbourg on regional and sub-regional courts (October 2015). With the establishment of the Convention against Torture Initiative, there are numerous other opportunities for interaction and cooperation with regional and sub-regional arrangements in an effort to promote and protect human rights.

Last year, CAT spent a half day in a seminar/briefing on the issue of non-refoulement, a subject that is at issue in some 80-90% of all complaints under article 22. An ECtHR judge, Mark Villiger, attended and presented a summary of the ECtHR practices, criteria for decisions, and decisions in this area.  There are undoubtedly other issues and areas in which consultation between members of the two bodies would benefit one another, and the CAT Committee is exploring ways to carry this out. Both CAT members and the OHCHR secretariat can learn from the ECtHR judgements how they might better present decisions on their legal interpretations. Additionally, when a case is lodged with CAT and it is already registered at ECtHR or any of the other regional courts or mechanisms, it would be useful to explore new ways of communication between the different bodies so that there is no duplication.

These are only a few of many suggestions that could be made at this time. OHCHR and others have worked to train and offer advisory services to the regional systems, such as in the sharing and accessibility of documentation. It seems clear that there is much more that could be done on a practical level to address the issues of overlap and cooperation – from the opportunity to reference facts to devising better legal standards to other operational matters. Concerns over the proliferation of regional and sub-regional mechanisms have been discussed in other contexts.

The Advisory Committee has identified obstacles that have resulted from the regional arrangements in human rights – from problems with legal frameworks to issues of the inability of the mechanisms to respond to non-compliance and to dealing with ‘flagrant’ abuses and more. These undermine the effort to promote and protect human rights.

In the effort to address ways to strengthen the universality of rights, this examination of regional arrangements can help everyone in the UN human rights system –from treaty bodies to the Human Rights Council – to think again about ways to develop greater interaction, coordination, and coherence. If identified, that can help advance human rights protections for all.

Thank you for your attention.

1. . In *Bouyid v. Belgium* (Grand Chamber, 2015) the complainant used  CAT’s conclusions on Belgium to support their case under Article 3 of the European convention. In *Aksoy v. Turkey* (Chamber, 1996) the complainant referenced CAT’s report on its article 20 inquiry on Turkey to show that other international bodies support the allegation that the torture of detainees continued to be systematic and widespread in Turkey. This was also the case in *El Haski v. Belgium* (2012) when the complainant used case-law of CAT to argue that that evidence obtained by means contrary to Article 3 must be excluded from his case. [↑](#footnote-ref-1)
2. “Solitary confinement for long periods of time may constitute inhuman treatment” [↑](#footnote-ref-2)
3. Another case was *Pădureţ v. Moldova* ( 2010) where the court was able to interpret relevant domestic law by analyzing a report submitted by Moldova to CAT. In the document the government states that the arrest of a student who was subjected to beatings and torture before his release is an example of illegal actions in the country. [↑](#footnote-ref-3)