

Fact Sheet No.17, The Committee against Torture

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Introduction

The eradication of the practice of torture in the world was one of the major challenges taken up by the United Nations only a few years after its establishment. In order to ensure adequate protection for all persons against torture and other cruel, inhuman or degrading treatment or punishment, over the years the United Nations has adopted universally applicable standards. These standards were ultimately embodied in international declarations and conventions. The adoption on 10 December 1984 by the General Assembly of the United Nations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment rounded off the codification process to combat the practice of torture.

In developing this valuable instrument, the United Nations did not merely put in writing in a series of articles a body of principles and pious hopes, the implementation and observance of which would not be guaranteed by anything or anyone. It set up also a monitoring body, the Committee against Torture, whose main function is to ensure that the Convention is observed and implemented. The Committee met for the first time in April 1988 in Geneva and has since carried out intensive activities which, although often discreet, should make it known to the public at large.

A monitoring body

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted on 10 December 1984 by the General Assembly of the United Nations. Consisting of 33 articles, this instrument, which 58 States had ratified or acceded to as of 1 January 1992, entered into force on 26 June 1987.

The Committee against Torture was established pursuant to article 17 of the Convention and began to function on 1 January 1988.

The Committee consists of 10 experts of high moral standing and recognized competence in the field of human rights. The experts, who must be nationals of States Parties, are elected by those

States by secret ballot. They are elected for a term of four years and are eligible for re-election. The present composition of the Committee and the list of States Parties are indicated in the annexes.

The Committee constitutes a new United Nations body, entrusted with the specific supervision of a multilateral instrument for protection against torture and other inhuman treatment. The Convention sets out a number of obligations designed to strengthen the sphere of protection of human rights and fundamental freedoms, while conferring upon the Committee against Torture broad powers of examination and investigation calculated to ensure their effectiveness in practice.

At their initial meeting held at Geneva in April 1988, the members of the Committee against Torture adopted rules of procedure and defined the Committee's working methods, in conformity with the provisions of the Convention.

The Committee at work

The Committee normally holds two regular sessions each year. Special sessions, however, 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.

The Committee elects from among its members a Chairman, three Vice-Chairmen and a Rapporteur. These officers are elected for a term of two years and are eligible for re-election.

The Committee may invite specialized agencies, United Nations bodies concerned, regional intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council to submit to it information, documentation and written statements, as appropriate, relevant to the Committee's activities under the Convention. It submits an annual report on its activities to the States Parties and to the General Assembly of the United Nations.

Reports by the States Parties

Submission of reports by States Parties

Pursuant to article 19 of the Convention, each State Party shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures taken to give effect to its undertakings under the Convention. The first report must be submitted within one year after the entry into force of the Convention for the State concerned; thereafter supplementary reports shall be submitted every four years on any subsequent developments. Further reports and additional information may also be requested by the Committee.

At each session, the Secretary-General of the United Nations notifies the Committee of all cases of non-submission of the said reports. In such cases, the Committee may transmit to the State Party concerned a reminder about the submission of such report or reports.

As to the actual formulation of the report, the Committee has prepared general guidelines containing precise instructions on their form and content in order to inform fully the Committee on the situation in each State Party.

Examination of the reports by the Committee

For the examination of the reports, the Committee invites representatives of the States Parties to attend the meetings when their reports are considered. It may also inform a State Party from which it decides to seek further information that it may authorize its representative to be present at a specified meeting. Such a representative should be able to answer questions which may be put to him by the Committee and clarify, if need be, certain aspects of the reports already submitted by his State.

After its consideration of each report, the Committee, in accordance with article 19, paragraph 3, of the Convention, may make such general comments on the report as it may consider appropriate. It may, in particular, indicate whether it appears to it that some of the obligations of the State concerned under the Convention have not been discharged. The Committee's observations are transmitted to the State Party, which may reply to them.

Some 40 reports had been examined by the Committee by the end of its seventeenth session in November 1991.

Powers of investigation of the Committee

By virtue of article 20 of the Convention, the Committee is empowered to receive information and to institute inquiries concerning allegations of systematic practice of torture in the States Parties.

The procedure set out in article 20 of the Convention is marked by two features: its confidential character and the pursuit of cooperation with the States Parties concerned.

The competence conferred upon the Committee by this article is optional, which means that, at the time of ratifying or acceding to the Convention, a State may declare that it does not recognize it. In that case, and so long as that reservation has not been withdrawn, the Committee may not exercise the powers conferred upon it under article 20 in respect of that State Party.

Gathering of information

In respect of all the States which have accepted the procedure set out in article 20, the Committee is empowered to receive information concerning the existence of the practice of torture. If it appears to the Committee that the information received is reliable and contains well founded indications that torture is being systematically practised in the territory of a State Party to the Convention, the Committee invites that State to cooperate in its examination of the information and, to this end, to submit observations with regard to that information. It may also decide to request additional information either from the representatives of the State concerned or from governmental and non-governmental organizations as well as individuals, for the purpose of obtaining further elements on which to form an opinion.

Inquiry procedure

If it considers that the information gathered warrants it, the Committee may designate one or more of its members to make a confidential inquiry. In that case, it invites the State Party concerned to cooperate with it in the conduct of the inquiry. Accordingly, the Committee may request the State Party to designate a representative to meet with the members designated to conduct the inquiry in order to provide them with any information they consider necessary. The inquiry may also include, with the agreement of the State Party, a visit to its territory by the designated members, who may then conduct hearings of witnesses.

The designated members submit their findings to the Committee, which transmits them, together with its own comments or suggestions, to the State Party. It invites that State to inform the Committee of the action it takes with regard to the Committee's findings.

After all the proceedings regarding an inquiry have been completed, the Committee may decide to include a summary account of the results of the proceedings in its annual report. Only in that case is the work of the Committee made public; otherwise, all the work and documents relating to its functions under article 20 are confidential.

Inter-State complaints

The conduct, with respect to the States Parties, of proceedings relating to the inter-State complaints mentioned in article 21 of the Convention is subordinated to the recognition by those States of the competence of the Committee. With respect to those States which have deposited the declaration

specified in article 21, the Committee may receive and consider communications in which a State Party alleges that another State Party is not discharging its obligations under the Convention.

Recourse to the Committee

The procedure comprises two stages. If a State Party to the Convention considers that another State Party has violated one of its provisions it may in the first place, by written communication, bring the matter to the attention of that State Party. The State which receives the communication is required to furnish in writing and within three months any explanations necessary to clarify the matter. In the event that the two States Parties concerned are unable to settle the matter between themselves, it may be referred by either State to the Committee, whose meetings are always closed.

All domestic remedies available in the State accused of a violation of the Convention must have been exhausted before the Committee can deal with a matter, except where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the victim of the violation.

Friendly solution of the matter

If these conditions are met, the Committee endeavours to arrive at a friendly solution of the matter on the basis of respect for the obligations provided for in the Convention, by making available its good offices to the States Parties concerned and by setting up, when appropriate, an ad hoc conciliation commission. During this phase, any relevant information may be requested by the Committee from the States concerned, which may also make submissions orally or in writing and be represented when the Committee considers the matter.

The Committee shall, within 12 months, submit a report containing a brief statement of the facts and of the solution reached, if a friendly solution is found; otherwise, it submits only the facts with the submissions of the States concerned. The report shall then be communicated, through the Secretary-General of the United Nations, to the States Parties concerned.

Individual complaints

Like other international instruments relating to human rights, the Convention on Torture gives private individuals, in certain circumstances, the right to lodge with the Committee complaints regarding the violation of one or more of its provisions by a State Party. For the Committee to be able to admit and examine individual communications against a State Party, its competence in that regard must however have been expressly recognized by the State concerned.

Individual complaints are always examined by the Committee in closed meeting.

Submission of communications

A communication may be submitted by any private individual who claims to be the victim of a violation of the Convention by a State Party which has accepted the competence of the Committee under article 22 and which is subject to its jurisdiction. If the alleged victim is not in a position to submit the communication himself, his relatives or representatives may act on his behalf.

Consideration of admissibility

In its consideration of the communication, the Committee's first concern is to ascertain its admissibility and, if the conditions for admissibility are met, the Committee then proceeds to examine the merits. The Committee may be assisted, in the exercise of its functions, by a working group comprising not more than five of its members and expressly set up for the purpose.

The conditions for admissibility of communications are specified in the Convention and in the Committee's rules of procedure. 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;

Have been examined (or be under examination) under another procedure of international investigation or settlement.

Furthermore, all available domestic remedies must have been exhausted first (under the conditions specified for inter-State complaints).

The Committee may request the State Party concerned or the author of the communication to submit additional information, clarifications or observations relevant to the question of admissibility.

If a communication is declared to be inadmissible, the Committee informs those concerned; the same issue may, however, be reviewed at a later date in the event of the Committee receiving information to the effect that the reasons for inadmissibility no longer apply.

Consideration of the merits

If the Committee decides that a communication is admissible, after informing the author of the communication and transmitting its decision to the State Party concerned, it then considers the merits. Within six months, the State which has allegedly violated the Convention shall submit to the Committee explanations or statements clarifying the case and indicating any measures that may have been taken to remedy the situation. The author of the communication may also submit his observations or additional information to the Committee. In addition, the author of the communication or his representative may be present at the closed meetings of the Committee, if the latter deems it appropriate, in order to provide clarifications on the merits of the case. The representatives of the State concerned may also be invited to attend in the same way.

Provisional measures

In the course of the consideration of either the question of inadmissibility or the merits of the communication, and prior to any decision being taken, the Committee may request the State Party concerned to take steps to avoid a possible irreparable damage to the alleged victim of the violation. This provision offers persons who claim a violation of the Convention protection even before the Committee takes a decision on the admissibility or the merits of the case and at the same time does not prejudice the Committee's final decision.

Conclusion of the proceedings

In the light of all information made available to it by the individual and by the State concerned, the Committee considers the communication and formulates its views thereon. Any member of the Committee may express an individual opinion. The consideration proceedings conclude with the transmission of the final views to the author of the communication and the State concerned, which is also invited by the Committee to inform it of the action it takes in conformity with the Committee's views.

The Committee includes in its annual report a summary of the communications examined, of the explanations and statements of the States Parties concerned, and of its own views.

By the end of its seventh session, the Committee had adopted seven final views on individual communications submitted to it.

Cooperation with other bodies

There are other methods of combating torture at either the regional level or the international level. That raises the question of their relationships and the establishment of forms of cooperation to avoid any overlapping of tasks and activities and to strengthen, by means of joint action, the effectiveness of the international campaign against torture.

The Special Rapporteur on Torture

The Committee has considered on a number of occasions the question of cooperation with the Commission on Human Rights Special Rapporteur responsible for issues relating to the practice of torture in the world, as well as the possibility of sharing the tasks as between the Special Rapporteur and the Committee, in order to avoid duplication in the exercise of their respective mandates.

The Committee considers the mandate conferred upon it by the Convention and the mandate conferred on the Special Rapporteur by the Commission on Human Rights to be different but complementary. The Rapporteur is required to report to the Commission on the phenomenon of torture in general. To that end, he asks Governments for information on the legislative and administrative measures taken to prevent torture and to remedy its consequences whenever it occurs. He also visits certain regions of the world to hold consultations with government representatives who express the wish to meet him. His task extends to all States Members of the United Nations and to all States with observer status: from that point of view it is broader than that of the Committee (the functions of the Special Rapporteur on Torture are explained in Fact Sheet No. 4: *Methods of combating torture*).

In view of the complementary nature of their tasks, close contacts have been established between the Committee and the Special Rapporteur for the purpose of exchanging information, reports and documents of common interest.

The European Committee for the Prevention of Torture and the United Nations Voluntary Fund for Victims of Torture

In the course of its work, the Committee has also laid the foundations for establishing working relations with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as cooperation with the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture set up pursuant to General Assembly resolution 36/151 of 16 December 1981.

The cooperation between the Committee against Torture and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment regarding visits to States which are Parties both to the United Nations Convention and to the European Convention appears, however, limited because of the confidential character of the procedures respectively applicable to those visits.

Prevention or cure

The machinery provided for by the Convention on Torture for the consideration of communications-whether inter-State or individual-can be set in motion when human rights violations have already occurred. In some sense, it seeks to "remedy" such a violation by recording publicly (in the Committee's annual report) that a State has violated one or more provisions of the Convention, in order to induce the State concerned to remedy the violation. This is also the object of other international instruments on human rights questions established in the United Nations context.

Nevertheless, the establishment of international standards and of monitoring and inquiry procedures, relating to torture and other subjects, is not in itself sufficient to guarantee observance of human rights by the States Members of the United Nations which have undertaken to comply with them.

United Nations activities in this regard can be supplemented in a timely way by its technical assistance and advisory services programme, which operates at two levels.

In the first place, even when a State has accepted international obligations and is willing to respect them, it is not always in a position to do so because of the lack, at the domestic level, of the competent persons and infrastructures necessary for the application of the standards contained in the relevant international instruments. The United Nations can then provide its assistance and its advisory services to help the State concerned to ensure the realization of the rights that have been recognized.

In the second place, through its technical assistance programme, the United Nations also wages a campaign to prevent human rights violations. The setting up of national infrastructures for the protection and promotion of human rights, the organization of courses of study and in-service training for officials responsible for the realization of human rights at the national level (public officials, police forces, personnel of the judiciary) lay down the foundations for creating a human rights culture, which constitutes the best guarantee against the violation of those rights.

Annex III

Declarations made under articles 21 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as at 1 January 1992

Algeria	Netherlands
Argentina	New Zealand
Austria	Norway
Canada	Portugal
Denmark	Russian Federation
Ecuador	Spain
Finland	Sweden
France	Switzerland
Greece	Togo
Hungary	Tunisia
Italy	Turkey
Liechtenstein Britain	United Kingdom of Great and Northern Ireland (art.
Luxembourg 21 only)	Uruguay
Malta	Yugoslavia
Monaco	

Model communication

Date:

.....

Communication to:

The Committee against Torture
c/o Centre for Human Rights
United Nations Office
8-14 avenue de la Paix
1211 Geneva 10
Switzerland

submitted for consideration under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

I. Information concerning the author of the communication

Name First name(s)
.....

Nationality Profession

Date and place of birth
.....

Present address
.....

Address for exchange of confidential correspondence (if other than present address)
.....
.....
.....

Submitting the communication as:

(a) Victim of the violation or violations set forth below []

(b) Appointed representative/legal counsel of the alleged
victim(s) []

(c) Other []

If box (c) is marked, the author should explain:

(i) In what capacity he is acting on behalf of the victim(s) (e.g. family relationship or other personal links with the alleged victim(s)):

.....
.....

(ii) Why the victim(s) is (are) unable to submit the communication himself (themselves):

.....
.....

An unrelated third party having no link to the victim(s) cannot submit a communication on his (their) behalf.

II. Information concerning the alleged victim(s)
(if other than author)

Name First name(s)
.....

Nationality Profession

Date and place of birth
.....

Present address or whereabouts
.....
.....

III. State concerned/articles violated/domestic remedies

Name of the State party (country) to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment against which the communication is directed:

.....
.....

Articles of the Convention against Torture allegedly violated:

.....
.....

Steps taken by or on behalf of the alleged victim(s) to exhaust domestic remedies-recourse to the courts or other public authorities, when and with what results (if possible, enclose copies of all relevant judicial or administrative decisions):

.....
.....

If domestic remedies have not been exhausted, explain why:

.....
.....

IV. Other international procedures

Has the same matter been submitted for examination under another procedure of international investigation or settlement (e.g. the Inter-American Commission on Human Rights, the European Commission on Human Rights)? If so, when and with what results?

.....
.....

V. Facts of the claim

Detailed description of the facts of the alleged violation or violations (including relevant dates)*

.....
.....

Author's signature:

.....

* Add as many pages as needed for this description.