UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Reporting under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Training Guide

PART I – Manual

Reporting under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Training Guide

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Foreword by the United Nations High Commissioner for Human Rights

Torture and other cruel, inhuman or degrading treatment or punishment cause severe harm to human dignity. For this reason, the eradication of torture and other forms of ill-treatment has been at the heart of the work of the United Nations, almost since its creation. While significant progress has been made, these practices continue and much remains to be done.

Under international law, every State has the obligation towards the international community as a whole (*erga omnes*) to prohibit torture. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment plays a pivotal role in this enterprise, setting out specific obligations for States parties to prevent and prohibit torture and other forms of ill-treatment, to investigate acts, to prosecute perpetrators and, if convicted, to punish them with commensurate penalties, while providing redress to victims. The Convention requires the prosecution of perpetrators of acts of torture through either the obligation to prosecute or extradite (*aut dedere aut judicare*) or the application of universal jurisdiction in order to prevent impunity and the availability of safe havens for those who commit this crime.

Since the adoption of the Convention 40 years ago, the Committee against Torture has had a crucial role in monitoring the situation in States parties, providing them with guidance in the form of concluding observations, general comments and jurisprudence. The invaluable work of the Committee has strengthened and clarified the applicability of the Convention across a range of situations, including in the context of the excessive use of force, sexual and gender-based or domestic violence, female genital mutilation, the application of the death penalty, trafficking in persons, conflict-related violence and violence motivated by hatred.

The purpose of this manual on reporting under the Convention is to assist States parties in fulfilling their reporting obligations in a way that is timely and effective, and to strengthen their capacity to implement the recommendations made by the Committee. It also provides information for States considering accession to the Convention. The manual, which was developed by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in close collaboration with the Committee, is complemented by training materials, each component tailored to the Convention's provisions and available on the OHCHR website.

As we commemorate the fortieth anniversary of the adoption of the Convention in 2024, I hope that the guide will be a practical tool for States, supporting their efforts to eradicate torture and ill-treatment worldwide, to hold perpetrators accountable and to provide redress to victims.

Volker Türk
United Nations High Commissioner
for Human Rights

Foreword by the Chair of the Committee against Torture

Forty years ago, the General Assembly adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, with the stated purpose "to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world". Today, 174 States are parties to the Convention, making it one of the most supported international human rights treaties and highlighting the ever-increasing push towards the global eradication of this egregious violation of the dignity of human beings.

As part of their legal obligations under the Convention, States parties are required to submit regular reports on the measures they have taken to give effect to their undertakings under the Convention. While this commitment requires substantial efforts and resources from States parties, the reporting procedure under the Convention provides an excellent opportunity for them to conduct a self-assessment of the measures taken to harmonize their laws and policies with the provisions of the Convention, to identify difficulties and gaps in implementation and to monitor their progress. The reporting process serves as a platform for national dialogue on the prohibition and prevention of torture and ill-treatment, which should allow for the active participation of a wide range of stakeholders, including civil society organizations, national human rights institutions and national preventive mechanisms, ensuring national buy-in and ultimately benefiting rights holders.

The Committee against Torture is mandated to monitor the implementation of the provisions of the Convention by States parties through different procedures, including the mandatory reporting procedure (with a reporting periodicity of four years), optional inter-State and individual complaints procedures and confidential ex officio inquiries. In particular, the public consideration of a State party's report allows the Committee to engage constructively with representatives of the reporting State. It is an opportunity for the State party to seek guidance and advice on how to implement the treaty, and for discussion of best practices in the fight against torture. As a result of these dialogues, the Committee is able to provide specific recommendations tailored to address shortcomings. A State party's reports are thus of fundamental importance, as they constitute the basis for the dialogue between the Committee and the State party's delegation, and the formulation of subsequent recommendations.

The present manual is aimed at assisting States parties in their implementation of the provisions of the Convention by facilitating the reporting process and strengthening the capacity of States to fulfil their reporting obligations in a timely and effective manner. Based on the practice of the Committee, including its jurisprudence and general comments, it helps States parties to understand their obligations under the Convention, the measures they are required to take and the information they should include in the reports they submit to the Committee. Cross-referencing with other treaties and instruments included should facilitate a coherent approach to prevention and elimination of torture by States.

The fight against torture and ill-treatment is a collaborative one, and we must use all resources at our disposal. It is my sincere hope that the present manual will prove to be a useful resource in our collective toolbox to eradicate torture and ill-treatment worldwide.

Claude Heller
Chair
Committee against Torture

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About the manual

A. BACKGROUND

In January 2015, pursuant to General Assembly resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system, the Office of the United Nations High Commissioner for Human Rights (OHCHR) established the treaty body capacity-building programme with a view to supporting States parties in increasing their capacity to implement their treaty obligations. The capacity-building programme is based at the headquarters of OHCHR in Geneva, with a core team supporting capacity-building staff in its regional offices in Addis Ababa, Bangkok, Beirut, Bishkek, Dakar, Panama, Pretoria, Santiago, Suva and Yaoundé.

In paragraph 17 of its resolution 68/268, the General Assembly requested the Secretary-General, through OHCHR, to support States parties in building their capacity to implement their treaty obligations and to provide in this regard advisory services, technical assistance and capacity-building, in line with the mandate of the Office, in consultation with and with the consent of the States concerned.

The capacity-building programme aims to transform the perception of treaty body reporting from that of being a burden to one of being a specific benefit to States parties and ultimately to rights holders. The capacity-building programme provides assistance to the States parties in treaty-specific reporting, including the preparation of common core documents and the establishment or effective functioning of national mechanisms for implementation, reporting and follow-up.

In 2017, to underpin its activities, the capacity-building programme developed a training guide on reporting to the United Nations human rights treaty bodies.[1] The training guide is the first part of a comprehensive training curriculum on human rights treaty body reporting, with an emphasis on the procedural aspects of reporting. The training guide is divided into two complementary parts. Part I is a manual, which provides an overview of the United Nations human rights system and detailed information on the reporting processes of the treaty bodies, including procedures, requirements and the roles of different stakeholders. It also includes chapters on the preparation of States parties' reports and on national mechanisms for reporting and follow-up, in accordance with the guidance provided in a practical guide[2] and study[3] on such mechanisms published by OHCHR. There is also a specific section and checklist on the role of other stakeholders – the United Nations system, the national human rights institution and civil society organizations – in the reporting process. Part II is a guide for facilitators on designing and delivering training courses on treaty reporting. It includes facilitators' notes, session plans, presentation slides, videos, quizzes and so forth. The training guide has been transformed into an interactive online course on reporting to the treaty bodies.

The training guide is being progressively complemented by specific training materials on each core international human rights treaty. In addition to a training guide on the Convention on the Rights of Persons with Disabilities,[4] the capacity-building programme developed a practical guide on the

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1 OHCHR, *Reporting to the United Nations Human Rights Treaty Bodies Training Guide: Part I – Manual* (New York and Geneva, 2017) and *Reporting to the United Nations Human Rights Treaty Bodies Training Guide: Part II – Notes for Facilitators* (New York and Geneva, 2017). See also www.ohchr.org/EN/PublicationsResources/Pages/TrainingPackage.aspx.

2 OHCHR, "National mechanisms for reporting and follow-up: a practical guide to effective State engagement with international human rights mechanisms" (New York and Geneva, 2016).

3 OHCHR, *National Mechanisms for Reporting and Follow-up: A Study of State Engagement with International Human Rights Mechanisms* (New York and Geneva, 2016).

4 *The Convention on the Rights of Persons with Disabilities: Training Guide*, Professional Training Series No. 19 (United Nations publication, 2014).

role of national preventive mechanisms in preventing torture,[5] a training guide on reporting under the International Covenant on Civil and Political Rights[6] and a training guide on reporting under the International Convention for the Protection of All Persons from Enforced Disappearance.[7] The present guide has been developed in the same context.

To assist States parties with implementation of the recommendations of the human rights treaty bodies and other mechanisms, the capacity-building programme developed the National Recommendations Tracking Database, an interactive web application, that can be provided to States parties free of charge to cluster and prioritize recommendations addressed to them by human rights mechanisms, develop action plans for their implementation and coordinate follow-up action across line ministries.

B. OVERVIEW OF THE MANUAL

1. WHAT IS THE MANUAL?

The manual is aimed at assisting States parties in fulfilling their reporting obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Its objective is to facilitate understanding of the rights enshrined in the Convention and the corresponding obligations of the States parties in respecting, protecting and fulfilling those rights.

The manual is based on the provisions of the Convention, the general comments of the Committee against Torture, its jurisprudence on individual communications and its concluding observations on the initial and periodic reports of States parties, as well as its reporting guidelines, rules of procedure, working methods and other documents. The manual should be seen as a practical tool, while bearing in mind the constantly developing practice of the Committee in interpreting the Convention.

The present manual also constitutes a reference document for trainers who intend to design and deliver training courses on reporting to the Committee on the implementation of the provisions of the Convention. The manual can be used jointly with the training guide on reporting to the United Nations treaty bodies, which covers all the procedural aspects of the reporting process.

2. WHOM IS THE MANUAL FOR?

The manual is a reference source for States parties in preparing their reports to the Committee and for various other stakeholders, such as United Nations specialized agencies and United Nations country teams, national human rights institutions, national preventive mechanisms and civil society organizations seeking information on the Convention and reporting to the Committee, and their role in that process.

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[5] OHCHR, *Preventing Torture: The Role of National Preventive Mechanisms – A Practical Guide*, Professional Training Series No. 21 (New York and Geneva, 2018).

[6] OHCHR, *Reporting under the International Covenant on Civil and Political Rights Training Guide: Part I – Manual*, Professional Training Series No. 23 (New York and Geneva, 2021).

[7] OHCHR, *Reporting under the International Convention for the Protection of All Persons from Enforced Disappearance Training Guide: Part I – Manual*, Professional Training Series No. 25 (New York and Geneva, 2022).

3. HOW TO USE THE MANUAL

The manual provides States parties with condensed information, organized by chapters, on the provisions of the Convention. Chapter II contains a discussion of general issues, such as signature and ratification, reservations and declarations and limitation of rights, after which the role of the Committee and its task of examining States parties' reports is briefly explained. Chapter III comprises an article-by-article discussion of the rights enshrined in the Convention.

The article-by-article discussion includes: (a) comments on the relevant article of the Convention; (b) an explanation of the information that the Committee expects from States parties, in accordance with the reporting guidelines, and of the questions that the Committee normally addresses to States parties in writing or during the constructive dialogue; (c) reference to the relevant general comments, which provide further interpretation of the article; (d) reference to links with other articles of the Convention; (e) a non-exhaustive list of other international treaties and instruments relevant to the same article; (f) reference to selected concluding observations and jurisprudence related to the respective article; and (g) examples of the Committee's recommendations concerning the particular article and of the good practices of States parties in implementing them. The manual also includes a chapter on the linkages between the provisions of the Convention and the 2030 Agenda for Sustainable Development. The manual can be used as a general source of information for all actors playing a role in reporting under the Convention.

The manual will be complemented by another tool, namely the notes for facilitators, which closely follow the structure of Part I. The notes have been designed to assist facilitators in preparing and delivering a training course on reporting under the Convention. The notes will be published online on the OHCHR website and will be updated as necessary. They can be adapted to different audiences. The training sessions may be comprised of a mix of presentations and group activities, and include different training components: facilitators' notes, session plans, slide presentations, videos, quizzes and so on. The training sessions follow the training methodology of OHCHR,[8] which is based on a participatory approach. It is important that facilitators respect and use that approach to encourage enriching discussions and exchanges of information and experiences with and among the participants.

[8] *From Planning to Impact: A Manual on Human Rights Training Methodology*, Professional Training Series No. 6/Rev.1 (United Nations publication, 2000) and Equitas (International Centre for Human Rights Education) and OHCHR, *Evaluating Human Rights Training Activities: A Handbook for Human Rights Educators*, Professional Training Series No. 18 (Montreal, 2011).

II

Introduction to the Convention

A. CONTENT AND STRUCTURE

The Convention is the core international human rights treaty stipulating rights and obligations in the fight against torture and other cruel, inhuman or degrading treatment or punishment throughout the world.[9] The Convention was adopted on 10 December 1984 and entered into force on 26 June 1987. It has been supplemented by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted on 18 December 2002 and entered into force on 22 June 2006.[10] The Optional Protocol established an international mechanism to prevent torture, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and obliged States parties to establish similar mechanisms at the national level, known as the national preventive mechanisms.

The Convention is divided into three parts, in addition to a preamble. Part I (arts. 1–16) deals with the substantive provisions. Part II (arts. 17–24) sets out the provisions establishing the Committee and defining its functions. Part III (arts. 25–33) contains the final clauses concerning the ratification, entry into force and amendment of the Convention and includes two reservation clauses concerning the mandate of the Committee and the judicial settlement of disputes.

UN Photo/Harandane Dicko

[9] United Nations, *Treaty Series*, vol. 1465, No. 24841, p. 85.
[10] Ibid., vol. 2375, No. 24841, p. 237.

Part I	Content
Article 1	Legal definition of torture
Article 2	State obligation to prevent acts of torture Absolute prohibition of torture, no exceptional circumstances may serve as a justification of torture Principle of command or superior responsibility for acts of torture committed by subordinates
Article 3	Principle of non-refoulement
Article 4	Criminalization of the offence of torture
Articles 5 and 6	Duty to establish jurisdiction, including universal jurisdiction, over all acts of torture by the State party
Article 7	Obligation to prosecute or extradite
Article 8	Duty to extradite
Article 9	Mutual judicial assistance
Article 10	Duty to ensure education regarding the prohibition of torture
Article 11	Systematic review of interrogation rules, methods and practices for custody and treatment of persons deprived of their liberty
Article 12	Obligation to conduct a prompt and impartial investigation
Article 13	Obligation to guarantee the right to complain and to protect complainants and witnesses from reprisals
Article 14	Obligation to ensure redress and an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible
Article 15	Inadmissibility of evidence obtained by means of torture
Article 16	Cruel, inhuman or degrading treatment or punishment

B. SIGNATURE AND RATIFICATION OR ACCESSION

Only the States that have become parties to the Convention are bound by its provisions. States can become a State party through signature followed by ratification or accession to the treaty. Upon signature of the Convention, the State is obliged not to act contrary to its object and purpose.[11] By depositing its instrument of ratification, a State indicates its intent to be bound by the provisions of the Convention. Alternatively, a State can be bound by the Convention through accession. The Convention enters into force for a State party on the thirtieth day after the date of the deposit of its instrument of ratification or accession. There are 174 States parties to the Convention (as of 1 July 2024).[12]

[11] Vienna Convention on the Law of Treaties, art. 18.

[12] The status of signature, ratification and accession of the Convention may be consulted at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&clang=_en.

It is interesting to note that the Convention has been invoked before national and international judicial bodies, including the International Court of Justice, on numerous occasions.[13]

C. MONITORING AND REPORTING

Article 19

"1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph I of this article."

The Committee monitors States parties' compliance with the Convention. The States parties shall, pursuant to article 19 of the Convention, submit reports on the measures that they have adopted in order to give effect to the rights enshrined in the Convention and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the Convention for the State party concerned (initial report);

(b) Thereafter every four years (periodic reports).

The Committee sets out, in the final paragraph of its concluding observations on the State party's report, the date by which the next periodic report is due. Occasionally, the Committee may also ask for reports outside the four-year cycle. States that do not comply with their reporting obligations are subject to the provisions of rule 67 of the Committee's rules of procedure, which allow it to examine the measures taken by the State party to protect or give effect to the rights recognized in the Convention in the absence of a report, and adopt concluding observations. That rule has thus far only been applied in the case of long overdue initial reports.

[13] See, for example, the most recent: International Court of Justice, *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Kingdom of the Netherlands v. Syrian Arab Republic)*, Joint Application Instituting Proceedings, 8 June 2023.

The deadlines for submission of State party reports under the Convention are available from the United Nations Treaty Body database.

States parties' reports consist of two parts: a common core document and a treaty-specific document (e.g. initial or periodic report). The common core document should contain general information about the reporting State, the general framework for the protection and promotion of human rights, as well as information on non-discrimination, equality and effective remedies. The common core document should not exceed 42,400 words.

1. GUIDELINES FOR INITIAL AND PERIODIC REPORTS

States parties' reports[14] should be focused on specific issues relating to the implementation of the Convention and should avoid duplication of information already provided in the common core document. Although such reports should be comprehensive, they should be focused on the most urgent problems within the reporting period. The report should deal specifically with, and be structured to follow, the articles of the Convention. The reporting guidelines provide information to allow States parties to draft structured reports and enter into a structured dialogue with the Committee.

In their periodic reports, States parties should take into account:

- The Committee's concluding observations on the previous report.
- Summary records of the Committee's deliberations.
- Communications sent by the Committee's Rapporteur on follow-up to concluding observations.
- Examination of the progress made and the current situation concerning the enjoyment of Convention rights by persons within the territory or subject to the jurisdiction of the State party.

States parties should include information on:

- Any mechanism developed at the national level to ensure follow-up to the previous concluding observations, including information on the involvement of civil society.
- Any reservations or declarations in relation to the Convention with an explanation of the need to maintain them.
- Factors and difficulties affecting the implementation of the Convention, including their nature, extent and reasons, as well as steps taken to overcome them.

States parties should also include information on the following elements in their reports:

- National framework laws, policies and strategies to implement the Convention.
- Mechanisms to monitor progress towards full realization of Convention rights.
- Disaggregated data and statistics to enable the Committee to measure progress.
- A description of legal norms, the current situation and the practical availability, effect and implementation of remedies for violations of the Convention – with examples.

[14] See CAT/C/4/Rev.3 and CAT/C/14/Rev.1. See also the harmonized reporting guidelines under international human rights treaties (HRI/GEN/2/Rev.6).

2. STANDARD AND SIMPLIFIED REPORTING PROCEDURES

There are two reporting procedures available to States parties to submit their reports, namely the standard reporting procedure and the simplified reporting procedure. The Committee adopted the latter at its thirty-eighth session.[15]

States parties' reports submitted under the traditional reporting procedure. Once the State party's periodic report is received, a list of issues is prepared and adopted by the Committee. The State party is requested to provide the Committee with written answers by a specific deadline prior to the consideration of the report. The State party's report and the replies to the list of issues are the basis for the dialogue between the Committee and the State party's delegation. The Committee does not produce lists of issues for the initial reports of States parties.

States parties' reports submitted under the simplified reporting procedure. After the submission of the State party's response to the list of issues prior to reporting, no further list of issues is submitted to the State party. The State party's replies to the list of issues prior to reporting, which constitute its periodic report under article 19 of the Convention, are the basis for the dialogue between the Committee and the State party's delegation.

The difference between the two reporting procedures is that in the simplified reporting procedure, the State party does not prepare and submit a report as the first step. Instead, the State responds to a list of issues prior to reporting that contains specific questions on treaty implementation. The list of issues prior to reporting guides the preparation and content of the periodic report, facilitates the reporting process of States parties and strengthens their capacity to fulfil their reporting obligations in a timely and effective manner. A list of issues prior to reporting is prepared, adopted and transmitted to the State party concerned, at least one year in advance of the due reporting date. The State party's response to the list of issues prior to reporting constitutes its report under article 19 of the Convention.[16]

3. REPORTS SUBMITTED BY OTHER STAKEHOLDERS AND INFORMATION GATHERED FROM THE UNITED NATIONS SYSTEM

Besides States parties, other stakeholders, such as national human rights institutions, national preventive mechanisms, civil society organizations and United Nations entities, have an opportunity to engage in the reporting procedure at different stages.[17]

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[15] A/62/44, paras. 23 and 24.

[16] More information on the reporting procedures can be found in OHCHR, *Reporting to the United Nations Human Rights Treaty Bodies Training Guide: Part I – Manual*.

[17] Information on the ways in which other stakeholders may participate in the reporting process can be found at www.ohchr.org/en/treaty-bodies/cat/information-civil-society-ngos-and-nhris. Stakeholder participation in the reporting process is explained further in OHCHR, *Reporting to the United Nations Human Rights Treaty Bodies Training Guide: Part I – Manual.*

NATIONAL MECHANISMS FOR IMPLEMENTATION, REPORTING AND FOLLOW-UP

A national mechanism for implementation, reporting and follow-up is a national mechanism or structure that is mandated to coordinate and prepare reports to and engage with international and regional human rights bodies and mechanisms, and to coordinate and track national follow-up and implementation of the recommendations emanating from these bodies and mechanisms.

The national mechanism may be ministerial, interministerial or institutionally separate. It performs its functions in coordination with ministries, specialized State bodies (such as the national statistics office), parliament and the judiciary, as well as in consultation with the national human rights institution and civil society.

The creation of such national mechanisms helps to ensure timely and high-quality reporting to international and regional human rights bodies and mechanisms, including the Committee, and effective follow-up on their recommendations. Furthermore, the establishment of national mechanisms for implementation, reporting and follow-up improves the interaction between the State and the Committee, as well as with relevant stakeholders at the national level.

For comprehensive information about national mechanisms for implementation, reporting and follow-up, see:

(a) OHCHR, "National mechanisms for reporting and follow-up: a practical guide to effective State engagement with international human rights mechanisms";

(b) OHCHR, *National Mechanisms for Reporting and Follow-up: A Study of State Engagement with International Human Rights Mechanisms*.

4. REVIEW OF STATES PARTIES' REPORTS

The review of a State party's report by the Committee is conducted through a constructive dialogue between the members of the Committee and the State party's delegation. In addition to the written reports received, the dialogue helps the Committee understand and review the human rights situation in the State party as it pertains to the Convention. It serves as a basis for the Committee to address its concerns and recommendations to the State party in the form of concluding observations. The constructive dialogue provides an opportunity for States parties to inform the Committee about the most recent measures taken to implement the rights protected under the Convention and receive expert advice on compliance with their international human rights commitments.

The constructive dialogue with States parties is conducted in public, usually in two sessions, of up to three hours each, over two consecutive days. Observers, such as representatives of the United Nations system, national human rights institutions, national preventive mechanisms and civil society organizations, may attend the constructive dialogue. Constructive dialogues are webcast live and recorded so that they can also be watched at a later date.[18]

Based on the constructive dialogue with the State party and on information that it has received from the State concerned and other sources, the Committee adopts concluding observations, which relate both to positive aspects of a State party's implementation of the Convention and to areas of concern on which the Committee makes recommendations for further action to be taken by the State party.

[18] See https://webtv.un.org/en.

5. FORMAT AND SUBMISSION OF STATES PARTIES' REPORTS

Reports should be drafted in one of the six official languages of the United Nations (Arabic, Chinese, English, French, Russian and Spanish) and respect the word limits for each report, as mentioned below. An electronic version of the report, in Word, should be sent to ohchr-cat@un.org. The reports, lists of issues and lists of issues prior to reporting are available on the Committee's web page.[19] Initial reports should not exceed 31,800 words and periodic reports should not exceed 21,200 words. Reports exceeding the word limit are returned for redrafting. Footnotes are included in the total word count. Moreover, States parties should take into account that a formatted and edited United Nations cover page uses up to 50 words. Only documents submitted in Word format can be accepted. Annexes are not processed (formatted, edited, translated or issued as official United Nations documents).

D. FOLLOW-UP PROCEDURE

The adoption of concluding observations by the Committee is followed by the last stage of the reporting cycle, namely follow-up and implementation of those concluding observations.[20] The follow-up and implementation stage requires active engagement by the State party, in particular through the work of the national mechanism for implementation, reporting and follow-up.

> The follow-up procedure is an important means of assessing the degree to which compliance with the Committee's recommendations has had an impact. It is an integral part of the reporting cycle.

At its thirtieth session, held in May 2003, the Committee adopted a procedure to follow up on its concluding observations on States parties' reports submitted under article 19 of the Convention. Accordingly, the Committee applies a follow-up procedure whereby it identifies a limited number of recommendations that warrant a request for additional information following review and discussion with the State party (rule 71 (2) of the Committee's rules of procedure). Such recommendations are identified on the basis that they are serious, protective and can be implemented within a year. The Committee has appointed a Rapporteur to monitor compliance with those follow-up requests and analyse the information and clarifications provided by the State party.

According to the guidelines for follow-up to concluding observations,[21] the recommendations selected by the Committee for follow-up must contribute to the prevention of torture and the protection of victims, for example by resulting in:

- The strengthening of legal safeguards for persons deprived of their liberty.
- The conduct of prompt and impartial investigations of alleged cases of torture or ill-treatment.
- The prosecution of suspects and the punishment of perpetrators of torture or ill-treatment.
- The provision of redress to victims.

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[19] See www.ohchr.org/en/treaty-bodies/cat.
[20] For comprehensive information concerning the follow-up procedure, please refer to OHCHR, *Reporting to the United Nations Human Rights Treaty Bodies Training Guide: Part I – Manual.*
[21] CAT/C/55/3.

1. FOLLOW-UP REPORT BY STATES PARTIES

The follow-up report should provide the Committee, through its Rapporteur, with sufficient information to allow for an assessment of whether the recommendations have been implemented. The report should also include a schedule for the implementation of all or some of the remaining recommendations. The follow-up report should not exceed 3,500 words in length.

2. FOLLOW-UP SUBMISSIONS BY NATIONAL HUMAN RIGHTS INSTITUTIONS, NATIONAL PREVENTIVE MECHANISMS, NON-GOVERNMENTAL ORGANIZATIONS AND OTHER STAKEHOLDERS

National human rights institutions, national preventive mechanisms, non-governmental organizations (NGOs) and other stakeholders may, at any time after the adoption of the concluding observations, submit written information to the Committee under the follow-up procedure. However, the Committee encourages those entities to submit that information within three months of the deadline for submission by the State party concerned of its follow-up report, as doing so allows for comments on that report. Reports by those entities should focus only on the implementation by the State party of recommendations identified for follow-up and should not exceed 3,500 words in length.

3. IMPLEMENTATION PLAN

States parties are encouraged to provide the Committee, together with their follow-up reports, with a voluntary plan for the implementation of all or some of the remaining recommendations included in the concluding observations.

4. ANALYSIS OF INFORMATION ON THE STATUS OF IMPLEMENTATION OF THE RECOMMENDATIONS IDENTIFIED FOR FOLLOW-UP

The Rapporteur on follow-up to concluding observations assesses whether all the issues identified by the Committee for follow-up have been addressed by the State party and whether the information provided responds to the Committee's concerns and recommendations. That includes an assessment of the quality and extent of the information provided, as well as an assessment of the degree to which the recommendations identified for follow-up have been implemented.

Information received from national human rights institutions, national preventive mechanisms, NGOs or other stakeholders will also be taken into consideration by the Rapporteur, along with other relevant information.

The information provided on each follow-up recommendation will be assessed according to the following classification:

- The information is thorough and extensive, and relates directly to the recommendations (satisfactory/3).
- The information is thorough and extensive, but fails to respond fully to the recommendations (partly satisfactory/2).
- The information is vague and incomplete and/or fails to address the recommendations (unsatisfactory/1).

- The State party has not addressed the concern or recommendations in the response (no response/0).

Implementation of each follow-up recommendation will be assessed according to the following classification:

- The recommendation has largely been implemented: the State party has provided evidence that sufficient action has been taken towards the full, or almost full, implementation of the recommendation (A).
- The recommendation has been partially implemented: the State party has taken substantive steps towards the implementation of the recommendation, but further action is needed (B1).
- The recommendation has been partially implemented: the State party has taken initial steps towards implementation, but further action is needed (B2).
- The recommendation has not been implemented: the State party has taken no action to implement the recommendation or the action taken has not addressed the situation (C).
- The information provided is insufficient to assess implementation: the State party has not provided enough information on the measures taken to implement the recommendation (D).
- The recommendation has been counteracted: the State party adopted measures that are contrary or have results contrary to the recommendation of the Committee (E).

Implementation plans will be classified as follows:

- The implementation plan largely addresses all of the Committee's recommendations (A).
- The implementation plan addresses some of the Committee's recommendations (B).
- The implementation plan has not been provided (C).

5. COMMUNICATION SENT BY THE RAPPORTEUR FOR FOLLOW-UP TO CONCLUDING OBSERVATIONS

The Rapporteur communicates with States parties under the follow-up procedure once their reports have been received and assessed (between 15 and 18 months after the adoption of the concluding observations) on the basis of the analysis carried out by the Rapporteur, who specifies the pending issues and indicates a time frame for the reply (no less than six months). A request for additional information is sent no later than six months after the submission of the State party's follow-up report, in particular in cases concerning: partial or no implementation; insufficient information for an assessment to be made; or measures taken that are contrary to the recommendations of the Committee.

Questions about recommendations for follow-up that have not been fully implemented and instances in which the State party has failed to comply with the procedure are reflected in the list of issues or in the list of issues prior to reporting adopted during the next reporting cycle under a separate heading, namely "Follow-up questions from the previous reporting cycle".

All the follow-up decisions adopted are made public through the follow-up progress reports that are adopted at each session of the Committee and can be found in its annual reports at:

https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/FollowUp.aspx?Treaty=CAT&Lang=en.

III

Obligations of States parties to the Convention

A. ARTICLE 1 (DEFINITION OF TORTURE)

Article 1

"1. For the purposes of this 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.

2. This article is without prejudice to any international instrument or national legislation, which does or may contain provisions of wider application."

Article 1 contains the definition of torture for the purposes of the Convention. Under that provision, the State party's report should include:

- Information on the definition of torture in domestic law, including indications as to whether such a definition is in full conformity with the definition of the Convention.
- In the absence of a definition of torture in domestic law in conformity with the Convention, information on criminal and other legislative provisions that cover all acts of torture, as well as the jurisprudence of national courts when they have, in practice, interpreted the prohibition of torture in the light of the Convention's prohibition.
- Information on any international instruments or national legislation that contain or may contain provisions of wider application.

The legal definition of torture contained in article 1 of the Convention comprises four elements that need to be considered in qualifying an act as torture: (a) the nature and severity of the act; (b) the intention of the perpetrator; (c) the purpose of the perpetrator; and (d) the involvement of a public official or other person acting in an official capacity.

Nature and severity of the act. The term torture encompasses acts as well as omissions that inflict severe pain or suffering. When defining torture, the Convention refers to "severe pain or suffering, whether physical or mental". Accordingly, severe physical or mental pain or suffering, or a combination thereof, may amount to torture.

Some examples of acts that may inflict severe mental pain or suffering are:

- Threatening persons with torture.
- Threatening persons with their life or that of their relatives.
- Forcing persons to watch other persons being tortured, including their relatives.
- Threatening persons with infection with communicable diseases.
- Inducing fear through interrogation techniques, such as by using dogs.

Intention of the perpetrator. For an act to qualify as torture, the pain or suffering must be caused intentionally by the perpetrator. According to the Committee, the element of intent does not involve a subjective inquiry into the motivations of the perpetrators, but rather must be an objective determination under the circumstances.[22]

Purpose of the perpetrator. For an act to qualify as torture, the perpetrator must have a specific purpose. According to article 1 (1) of the Convention, that purpose can be, among others:

- To extract a confession.
- To obtain information from the person concerned or a third person.
- To punish the person concerned.
- To intimidate or coerce the person concerned.
- To discriminate against the person concerned.

According to the Committee, as in the case of intent, the element of purpose does not involve a subjective inquiry into the motivations of the perpetrators, but rather must be an objective determination under the circumstances. The person must inflict the pain or suffering and must do so for the purpose prohibited by the Convention. It is the prohibited purpose that renders torture a specific intent crime under international law.[23]

Involvement of a public official or other person acting in an official capacity. A public official or a person acting in an official capacity must be involved for an act to qualify as torture. According to the legal definition of torture, the pain or suffering must be inflicted:

(a) By a public official or other person acting in an official capacity; or

(b) At the instigation of a public official or other person acting in an official capacity; or

(c) With the consent or acquiescence of a public official or other person acting in an official capacity.

For instance, in one communication, the Committee considered the element of involvement of a public official to have been satisfied by the fact that the complainant had been placed in pretrial detention at the premises of the Ministry of Internal Affairs at the time his injuries were inflicted. Under those circumstances, the State party should be presumed liable for the harm caused to the complainant unless it provides a compelling alternative explanation.[24]

The Committee may recognize a non-State actor as exercising effective authority over a particular territory, in a situation in which its authority is comparable to that of a Government's authority, for example by having set up quasi-governmental institutions. Such recognition is made on a case-by-case basis, considering the circumstances in each country at a given time.

In situations in which public officials knew or should have known that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors in accordance with the Convention, the State party will be responsible considering the treatment took place with the consent, acquiescence or complicity of a public official.[25] The Committee has, for example, applied the

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[22] General comment No. 2 (2007), para. 9.

[23] Oona A. Hathaway, Aileen Nowlan and Julia Spiegel, "Tortured reasoning: the intent to torture under international and domestic law", *Virginia Journal of International Law*, vol. 52 (2012).

[24] *Evloev v. Kazakhstan* (CAT/C/51/D/441/2010), para. 9.2.

[25] *Dzemajl et al. v. Yugoslavia* (CAT/C/29/D/161/2000).

due diligence principle to the failure of States parties to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation and trafficking.[26]

Other international and regional instruments prohibiting torture:

- Universal Declaration of Human Rights (art. 5)
- International Covenant on Civil and Political Rights (art. 7)
- Convention on the Rights of the Child (art. 37)
- Convention on the Rights of Persons with Disabilities (art. 15)
- Rome Statute of the International Criminal Court (arts. 7 and 8)
- African Charter on Human and Peoples' Rights (art. 5)
- American Convention on Human Rights (art. 5)
- Inter-American Convention to Prevent and Punish Torture
- Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (art. 3)
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

The Convention defines torture in article 1 (2) without prejudice to any international instrument or national legislation that does or may contain provisions of wider application.


UN Photo/Martine Perret

[26] See, for example, *Ali v. Tunisia* (CAT/C/41/D/291/2006); *V.L. v. Switzerland* (CAT/C/37/D/262/2005); and *Njamba and Balikosa v. Sweden* (CAT/C/44/D/322/2007).

Examples of recommendations

The Committee urges the State party to establish in its national law a definition of torture in line with that provided in article 1 of the Convention. The State party should review and amend its legislation to ensure that all forms of torture are prohibited in line with the definition contained in article 1 of the Convention, noting that serious discrepancies between the Convention's definition of torture and that incorporated into domestic law create actual or potential loopholes for impunity. In addition, the Committee recommends that the State party ensure that penalties for torture are commensurate with the gravity of the crime, as set out in article 4 (2) of the Convention.

The State party should ensure that all forms of torture are prohibited in accordance with the definition contained in article 1 of the Convention, including acts of torture committed for the purpose of intimidating, coercing or obtaining information or a confession from a third person, attempted torture, and acts of torture 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.

The State party should, as a matter of priority, bring the legal definition of torture contained in the Criminal Code and other relevant pieces of legislation into line with article 1 of the Convention, namely by including the elements that distinguish the crime of torture from other forms of ill-treatment, and by adjusting the wording of the exclusion clause relating to "lawful sanctions" so as to minimize the possibility of it being misinterpreted. The State party should take legislative steps to exclude the possibility of plea bargaining and parole for crimes of torture and ill-treatment.

Examples of good practice

The Committee regularly welcomes legislative changes that bring the definition of torture in national law into partial or full compliance with the definition of torture in article 1 of the Convention. While considering the second period report of Qatar, the Committee welcomed the amendment to the definition of torture in articles 159 and 159 bis of the Criminal Code in conformity with article 1 of the Convention and the amendment to its national legislation in order to apply appropriate penalties for torture and ill-treatment.[27] Similarly, during the consideration of the third periodic report of Romania, the Committee noted with satisfaction that the legislation criminalizing torture and cruel, inhuman or degrading treatment in the State party closely mirrored the requirements found within the Convention and noted that Law No. 186/2021, amending Law No. 286/2009, removed the statute of limitations for the crime of torture.[28]

[27] CAT/C/QAT/CO/2, para. 8.
[28] CAT/C/ROU/CO/3, para. 7.

B. ARTICLE 2 (PREVENTION AND ABSOLUTE PROHIBITION OF TORTURE)

Article 2 (1)

"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 (1) introduces the obligation of the States parties to take effective measures to prevent acts of torture. The State party's report should contain pertinent information on effective measures taken to prevent all acts of torture, inter alia, with respect to:

- The duration of police custody and pretrial detention.
- Incommunicado detention.
- Arbitrary detention and the possibility to challenge detention.
- Rules governing the rights of arrested persons to consult a lawyer, undergo a medical examination and have contact with their family.
- Enforced disappearance.
- Rules governing the recording of interviews, including the audio and video equipment in police interrogation rooms.
- Rules governing places of detention in other types of facilities, such as psychiatric hospitals and social care homes.
- Emergency or anti-terrorist legislation that could restrict the guarantees of the detained person.

An assessment by the reporting State of the effectiveness of those measures, including measures to ensure that those responsible for torture and other cruel, inhuman or degrading treatment or punishment are brought to justice, should also be included in the report.

Persons deprived of their liberty are at particular risk of torture and other ill-treatment. There are certain basic guarantees that apply to all persons deprived of their liberty. Ensuring those basic guarantees may help prevent torture and other cruel, inhuman or degrading treatment or punishment, as well as document such treatment if it has occurred with a view to seek judicial and other remedies.

The Committee articulated some of those basic guarantees in its general comment No. 2 (2007) (paras. 13 and 14). Those are, among others:

- Maintaining an official register of detainees.
- The right of detainees to be informed of their rights and the reasons for their arrest.
- The right to promptly receive independent and effective legal assistance.
- The right to be promptly examined by an independent doctor.
- The right to promptly contact relatives or any person of choice.
- The right to be promptly presented before a judge.

- The need to establish impartial mechanisms for inspecting and visiting places of detention and confinement.
- The availability to detainees and persons at risk of torture or ill-treatment of judicial and other remedies that will allow them to have their complaints promptly and impartially examined, to defend their rights and to challenge the lawfulness, necessity or proportionality of their detention or treatment.
- Video and audio recordings of interviews with persons deprived of their liberty that are stored in a secure location under the supervision of the oversight mechanisms and are made available to investigators, detainees and lawyers.

Each State party should take effective measures to prevent acts of torture, not only in its sovereign territory, but also "in any territory under its jurisdiction", as required under article 2 (1) of the Convention. As indicated in paragraph 16 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, "any territory" includes all areas where the State party exercises, directly or indirectly, in whole or in part, de jure or de facto effective control, in accordance with international law. The Committee considers that the scope of "territory" under article 2 must also include situations in which a State party exercises, directly or indirectly, de facto or de jure control over persons in detention.

Article 2 (2)

"No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

Article 2 (2) affirms the absolute prohibition of torture.[29] The right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment may never be restricted under any circumstances. Grounds for restriction of rights that are permissible for other rights, such as protection of national security, public order, public health, morals and the rights and freedom of others, may not be invoked to justify acts of torture. Furthermore, no derogation is permitted from the right not to be tortured. In other words, no exceptional circumstances can be invoked as a justification of torture, whether a state of war, a threat of war, internal political instability or any other public emergency.

The State party's report should contain information on effective measures to ensure that no exceptional circumstances are invoked as a justification of torture. The State party should provide information to the Committee on whether legal and administrative measures exist to guarantee that the right not to be tortured is not subject to derogation during a state of war, a threat of war, internal political instability or any other public emergency, and information on whether any state of emergency was declared during the period under review.

The Committee affirmed, in its general comment No. 2 (2007), the absolute prohibition of torture and that the non-derogability applied to both acts of torture and other ill-treatment.[30] It further considered that "amnesties or other impediments which preclude or indicate unwillingness to provide prompt

[29] The prohibition of torture is also established under customary international law. It has the status of a peremptory norm (*jus cogens*), which is the highest standing, superseding all other treaties and customary laws.

[30] General comment No. 2 (2007), paras. 3 and 4.

and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability".[31] That also includes, for instance, statutes of limitations for the crimes of torture and ill-treatment.

Article 2 (3)

"An order from a superior officer or a public authority may not be invoked as a justification of torture."

Article 2 (3) provides that an order from a superior officer or a public authority to conduct an act that amounts to torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as a justification of torture.

The State party's report should include information on:

- Whether legislation and jurisprudence exist regarding the prohibition of invoking superior orders, including orders from military authorities, as a justification of torture. If such measures exist, information should be provided on their practical implementation.
- Whether there are any circumstances in which subordinates are permitted lawfully to oppose an order to commit acts of torture, the recourse procedures available to them and information on any such cases that may have occurred.
- Whether the position of public authorities with respect to the concept of "due obedience" as a criminal law defence has any impact on the effective implementation of this prohibition.

The Committee affirmed, in its general comment No. 2 (2007), that an order of a superior or public authority could never be invoked as a justification of torture and highlighted two aspects of that rule:

(a) Subordinates must be held to account individually and they may not use an order of their superiors to escape criminal responsibility;

(b) Those exercising superior authority, including public officials, cannot avoid accountability or escape criminal responsibility for torture or ill-treatment committed by subordinates in situations in which they knew or should have known that such impermissible conduct was occurring, or was likely to occur, and they failed to take reasonable and necessary preventive measures (command responsibility).[32]

[31] Ibid., para. 5.
[32] Ibid., para. 26.

Examples of recommendations

The State party should guarantee, in law and in practice, the right of all law enforcement officials and military personnel to refuse to execute, as subordinates, an order from their superior officers that would contravene the Convention. It should expressly indicate in its domestic legislation that, in full conformity with article 2 (3) of the Convention, the execution of such a superior order is not accepted as a justification for acts of torture. It should also establish an appropriate mechanism to protect subordinates from reprisal if they refuse to carry out such an order.

The Committee urges the State party to ensure that there are no mitigating circumstances or any other exceptions, including non-applicability of statutes of limitation, to the absolute prohibition against torture.

The State party should take appropriate steps to ensure that there is no possibility that exceptions to the absolute prohibition against the crime of torture under the Convention would be recognized.

The State party should ensure that the principle of command or superior responsibility for acts of torture committed by subordinates is recognized in domestic laws and that subordinates who refuse to obey orders that violate the Convention are protected from reprisal and retaliation by superior officers, including by establishing a specific protection mechanism.

The State party should ensure that all persons found guilty of committing acts of torture are subjected to criminal prosecution, and not only disciplinary measures, commensurate with the gravity of the crime committed.

The State party should ensure, in keeping with article 2 (3) of the Convention, that an order from a superior officer may not be invoked to justify torture and guarantee in practice the right of all law enforcement officials, military personnel and civil servants to refuse to execute, as subordinates, an order from their superior officers that would result in a violation of the Convention.

Examples of good practice

Following the recommendation of the Committee in its concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, namely to "refrain from enacting legislation that would grant amnesty or pardon where torture is concerned"[33] and follow-up by the Committee, in 2021, the Overseas Operations (Service Personnel and Veterans) Bill was amended to exclude torture and other serious international crimes and thus not limit accountability for torture and other serious international crimes allegedly committed by members of the armed forces of the United Kingdom overseas.

[33] CAT/C/GBR/CO/6, para. 33.

C. ARTICLE 3 (PRINCIPLE OF NON-REFOULEMENT)

Article 3

"1. No State Party shall expel, return ('refouler') 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.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

Article 3 prohibits the deportation of persons to a State where they might face a risk of torture. Deportation includes, but is not limited to, expulsion, extradition, forcible return, forcible transfer, rendition, rejection at the frontier, pushback operations (both on land and at sea) of a person or group of individuals from a State party to another State.

Individuals should not be deported to a country where they would be in danger of being subjected to torture. That principle, known as the principle of non-refoulement, applies to everyone without discrimination, in any territory under the State party's jurisdiction or any area under its control or authority.

The State party's report should include information on:

- Domestic legislation with regard to the principle of non-refoulement.
- Whether legislation and practices concerning terrorism, emergency situations, national security or other grounds that the State may have adopted have had any impact on the effective implementation of this prohibition.
- Guarantees provided to all asylum-seekers and other persons in need of international protection who attempt to arrive or arrive in the State party, regardless of their mode of arrival, to have access to fair, individual and efficient refugee status and non-refoulement determination procedures.
- Which authority determines the expulsion, extradition, removal or refoulement of a person and on the basis of which criteria.
- Whether there exists an effective mechanism to promptly identify victims of torture among asylum-seekers.
- Whether a decision on the subject can be reviewed and, if so, before which authority, the applicable procedures and safeguards and whether such procedures have suspensive effect.
- Examples of decisions taken on cases relevant to article 3 and the criteria used in those decisions, and the information on which the decisions are based and their sources, including cases involving diplomatic assurances and extradition treaties.
- The kinds of training provided to officials dealing with the expulsion, return or extradition of individuals.

The Committee adopted general comment No. 4 (2017) on the implementation of article 3 (non-refoulement) of the Convention, in which it provided authoritative guidance on the obligations of States parties arising from the Convention concerning deportation of a person to another State. In the general comment, the Committee reiterated the basic standards concerning the principle of non-refoulement and provided an indicative set of preventive measures to guarantee such a principle, as follows:

- Like the prohibition of torture, the principle of non-refoulement is absolute.[34]
- Protection against the removal of persons in danger of being subjected to torture in the State to which they would be deported should apply without prejudice to article 16 (2) of the Convention. The Committee confirmed that the obligation to prevent ill-treatment overlaps with and is largely congruent with the obligation to prevent torture and that, in practice, the definitional threshold between ill-treatment and torture is often not clear.[35] Experience demonstrates that the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment.[36] States parties should consider whether the nature of the other forms of ill-treatment that a person facing deportation is at risk of experiencing could likely change so as to constitute torture, before making an assessment on each case relating to the principle of non-refoulement.[37]
- The State party must apply the principle in any territory under its jurisdiction or any area under its control or authority, or on board a ship or aircraft registered in the State party.[38]
- The State party must apply the principle to any person without discrimination. That entails that the principle applies irrespective of whether individuals request or are in need of international protection, or of the nationality or statelessness or the legal, administrative or judicial status of the persons concerned.[39]
- The "substantial grounds" for believing that the person would be in danger of being subjected to torture in a State to which the person is facing deportation exist whenever the risk of torture is "foreseeable, personal, present and real".[40]
- Any person found to be at risk of torture if deported should be allowed to remain in the territory under the jurisdiction, control or authority of the State party concerned so long as the risk persists.[41]
- The person allowed to remain should not be detained without proper legal justification and safeguards and detention should be used only in exceptional cases and as a last resort, based on an individual assessment and subject to regular review.[42]
- Persons at risk should never be deported to another State where they may subsequently face deportation to a third State in which there are substantial grounds for believing that they would be in danger of being subjected to torture. The risk of "chain refoulement" must be assessed.[43]
- The State party must examine each case individually, impartially and independently through competent administrative and/or judicial authorities. Respect for procedural safeguards must be

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34 Ibid., para. 9.
35 Ibid., para. 3.
36 *A.N. v. Switzerland* (CAT/C/64/D/742/2016), para. 8.9.
37 General comment No. 4 (2017), paras. 16 and 28.
38 Ibid., para. 10.
39 Ibid.
40 Ibid., para. 11.
41 Ibid., para. 12.
42 Ibid.
43 Ibid.

ensured, notably the guarantee of a prompt and transparent process and the right of appeal by the person concerned against a deportation order to an independent administrative and/or judicial body within a reasonable period of time from the notification of that order and with the suspensive effect of the appeal on the enforcement of the order.[44]

- The person concerned should be informed of the intended deportation in a timely manner.[45]
- Collective deportation, without an objective examination of the individual cases with regard to personal risk, should be considered as a violation of the principle of non-refoulement.[46]
- The State party should not adopt dissuasive measures or policies that would compel persons to return to their country of origin despite their personal risk of being subjected there to torture or other cruel, inhuman or degrading treatment or punishment. Some examples of such measures or policies are detention in poor conditions for indefinite periods, refusing to process claims for asylum or prolonging them unduly, or cutting funds for assistance programmes to asylum-seekers.[47]
- During the assessment procedure, the State party should provide the person concerned with access to a lawyer, to free legal aid, when necessary, and to representatives of relevant international organizations of protection, in addition to other fundamental guarantees and safeguards. In that connection, it should develop administrative or judicial procedures concerning the person in question in a language that the person understands or with the assistance of interpreters and translators, and refer the person alleging previous torture to an independent medical and psychological examination free of charge, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).[48] The authorities should pay special attention to persons in particularly vulnerable situations, such as an unaccompanied minor, a person who has been subjected to violence or a person with disabilities. The guarantees and safeguards provided should include linguistic, legal, medical, social and, when necessary, financial assistance.[49]
- In the assessment, the State party must examine the negative physical and mental repercussions that the infliction of violent or abusive acts has on each individual, taking into account the relevant circumstances of each case. That includes the nature of the treatment, the sex, age and state of health and vulnerability of the victim and any other status or factors. Such an assessment should consider that severe pain or suffering cannot always be assessed objectively.[50]
- Furthermore, the Committee does not consider the so-called "internal flight alternative", that is the deportation of individuals or victims of torture to an area of a State where they would not be exposed to torture, unlike in other areas of the same State, as reliable or effective.[51] For example, in a case concerning the risk of torture upon return to Afghanistan, the Committee confirmed, referring to its previous jurisprudence, that the internal flight or relocation alternative did not represent a reliable and durable option where the lack of protection was generalized and the individual concerned would be exposed to a further risk of persecution or serious harm, in particular when the persecution of the civilian population by anti-government elements was often random in the complainant's country of origin.[52]

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[44] Ibid., para. 13.
[45] Ibid., paras. 13 and 41.
[46] Ibid., para. 13.
[47] Ibid., para. 14.
[48] Ibid., para. 18 (b)–(d).
[49] Ibid., paras. 40 and 41.
[50] Ibid., para. 17.
[51] Ibid., para. 47.
[52] *M.K.M. v. Australia* (CAT/C/60/D/681/2015), para. 8.9.

1. PREVENTIVE MEASURES AGAINST POSSIBLE VIOLATIONS OF THE PRINCIPLE OF NON-REFOULEMENT

As mentioned above, the Committee provided an indicative set of preventive measures to guarantee the principle of non-refoulement.

PREVENTIVE MEASURES AGAINST POSSIBLE VIOLATIONS OF THE PRINCIPLE OF NON-REFOULEMENT

"For the purpose of fully implementing article 3 of the Convention, States parties should take legislative, administrative, judicial and other preventive measures against possible violations of the principle of 'non-refoulement', including:

(a) Ensuring the right of each person concerned to have the case examined individually and not collectively and to be fully informed of the reasons why the person is the subject of a procedure that may lead to a decision of deportation and of the rights legally available to appeal such a decision;

(b) Providing the person concerned with access to a lawyer, to free legal aid, when necessary, and to representatives of relevant international organizations of protection;

(c) Developing an administrative or judicial procedure concerning the person in question in a language that the person understands or with the assistance of interpreters and translators;

(d) Referring the person alleging previous torture to an independent medical examination free of charge, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol);

(e) Ensuring the right of appeal by the person concerned against a deportation order to an independent administrative and/or judicial body within a reasonable period of time from the notification of that order and with the suspensive effect of the appeal on the enforcement of the order;

(f) Providing effective training for all officials who deal with persons under deportation procedures on respect for the provisions of article 3 of the Convention, in order to avoid decisions contrary to the principle of non-refoulement;

(g) Providing effective training for medical and other personnel dealing with detainees, migrants and asylum seekers in identifying and documenting signs of torture, taking into account the Istanbul Protocol."

General comment No. 4 (2017), para. 18 (footnotes omitted).


UN Photo/Marco Dormino

2. ASSESSMENT OF THE RISK OF TORTURE

Assessment of the risk of torture includes consideration of personal experience (past and potential), as well as the general human rights situation in the State to which the person may be deported (directly or through another State).[53]

States parties have to consider personal risk elements when examining the risk of torture in the State to which a person may be deported, including the individual's previous experience. States parties have to take into consideration whether these persons:

- Have been previously arbitrarily arrested or denied fundamental guarantees for a detainee in police custody.
- Have been victims of brutality or excessive use of force by public officials based on any form of discrimination in the State of origin or would be exposed to such brutality in the State to which they are being deported.
- Have been or would be a victim of violence, including gender-based or sexual violence, in public or in private, or gender-based persecution, as well as genital mutilation.
- Have been judged in the State of origin or would be judged in the State to which they are being deported by a judicial system that does not guarantee the right to a fair trial.
- Have been previously detained or imprisoned in the State of origin or would be detained or imprisoned, if deported, in conditions amounting to torture or cruel, inhuman or degrading treatment or punishment.
- Would be exposed to sentences of corporal punishment if deported.
- Were subjected or would run the risk of being subjected to slavery and forced labour or trafficking in persons.
- Are below the age of 18 years and would be deported to a State where their fundamental rights as children were previously violated or would be violated creating irreparable harm.[54]

[53] General comment No. 4 (2017), paras. 27 and 29.
[54] For additional indications of personal risk, see general comment No. 4 (2017), para. 45.

NON-EXHAUSTIVE SET OF INDICATIONS OF PERSONAL RISK

Indications of personal risk may include, but are not limited to, the complainant's:

- Racial or ethnic background.
- Political affiliation or political activities or that of the complainant's family members.
- Arrest or detention without a guarantee of fair treatment and trial.
- Sentence in absentia.
- Sexual orientation and gender identity.
- Desertion from the national armed forces or armed groups.
- Previous torture.
- Incommunicado detention or other form of arbitrary and illegal detention in the country of origin.
- Clandestine escape from the country of origin following threats of torture.
- Religious affiliation.
- Violations of the right to freedom of thought, conscience and religion, including violations related to the prohibition of conversion to a religion that is different from the religion proclaimed as State religion and where such a conversion is prohibited and punished in law and in practice.
- Risk of expulsion to a third country where the person may be in danger of being subjected to torture.
- Violence against women, including rape, female genital mutilation, and early and forced marriage.

States parties must consider the human rights situation in the State to which the person may be deported, namely, whether the person concerned would be deported to a State:[55]

- Where there are allegations or evidence of crimes of genocide, crimes against humanity or war crimes, or other serious violations of international human rights law or international humanitarian law, including those enumerated by the Geneva Conventions of 12 August 1949 and the additional protocols thereto.
- Where the inherent right to life is denied, including exposure of the person to extrajudicial killings or enforced disappearance.
- Where the circumstances and the methods of execution of the death penalty and the prolonged period and conditions of detention of the person sentenced to death could amount to torture or cruel, inhuman or degrading treatment or punishment.
- Where reprisals amounting to torture have been or would be committed against the person concerned, members of the person's family or witnesses of the person's arrest and detention, such as violent and terrorist acts against them, the disappearance of those family members or witnesses, their killing or their torture.

[55] Ibid., para. 29.

Examples of jurisprudence

In *T.T. v Australia*, the Committee concluded that, in the particular circumstances of the case, the evidence invoked by the complainant had not adduced sufficient grounds for believing that he would face a real, foreseeable, personal and present risk of being subjected to torture in case of his removal to Sri Lanka. For example, the Committee took note of the State party's submissions that some of the complainant's accounts were inconsistent and not plausible, and even if the complainant had been treated harshly by the police while trying to leave Sri Lanka, he had been of no further interest to the Sri Lankan authorities following the interrogation and had been allowed to leave. In addition, the authorities of the State party considered the possible risk of the ill-treatment of failed asylum-seekers upon return to Sri Lanka and gave appropriate consideration to the complainant's claim. The Committee thus considered that the material on file did not enable it to conclude that the return of the complainant would constitute a violation of article 3 of the Convention.[56]

In *N.U. v. Finland*, the Committee noted that, despite the finding that the complainant would be at risk of human rights violations in the Chechen Republic, the State party's authorities had concluded that his profile was not of such interest to the Chechen or other Russian authorities that he would be searched for in Petrozavodsk. The Committee considered that it was insufficient to dissipate the personal danger of a violation of article 3 of the Convention. The Committee noted an ongoing criminal investigation against the complainant in the context of which he had been subjected to beatings during interrogations and deplorable conditions of detention. The Committee noted the information provided by the parties about forced abductions to the Chechen Republic from other parts of the Russian Federation. In the light of the foregoing, the Committee concluded that the complainant would face a foreseeable, real and personal risk of being subjected to torture if he were returned to the Russian Federation and that his return to the Russian Federation would constitute a violation by the State party of article 3 of the Convention.[57]

3. DIPLOMATIC ASSURANCES

States parties occasionally resort to a practice of transferring a person to another State upon a formal commitment by the receiving State to the effect that the person concerned will be treated in accordance with conditions set by the sending State and with international human rights standards. Those "diplomatic assurances" should not be used in any way as a loophole to undermine the principle of non-refoulement in situations in which there are substantial grounds for believing that the person would be in danger of being subjected to torture in that State.[58] Such assurances should also be subject to subsequent monitoring to ensure their implementation.[59]

[56] CAT/C/77/D/946/2019, paras. 8.1–9.
[57] CAT/C/76/D/1044/2020, paras. 8.1–9.
[58] General comment No. 4 (2017), paras. 19 and 20.
[59] See, for example, CAT/C/GRC/CO/7, paras. 34 and 35; CAT/C/DNK/CO/8, paras. 14 and 15; CAT/C/NZL/CO/7, paras. 25 and 26; and CAT/C/SRB/CO/3, paras. 31 and 32.

Examples of jurisprudence

In *Abichou v. Germany*, the extradition request was accompanied by diplomatic assurances from Tunisia indicating that the alleged victim would be afforded a trial de novo, in which the rights recognized in the International Covenant on Civil and Political Rights would be respected and that, in the event of a new conviction, he would be incarcerated in a detention facility that complied with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Notwithstanding the diplomatic assurances that were provided, the Committee considered the actual human rights situation in Tunisia at the time of the extradition and concluded that the alleged victim faced a foreseeable, real and personal risk of being subjected to torture at the time of his extradition to Tunisia and his extradition constituted a violation of article 3 of the Convention.[60]

In *Boily v. Canada*, the Committee had to determine whether the diplomatic assurances in the specific case were of such a nature as to eliminate all reasonable doubt that the complainant would be subjected to torture upon his return, including follow-up procedures that would guarantee their effectiveness. The Committee was of the view that the agreed system of diplomatic assurances was not carefully enough designed to effectively prevent torture. The diplomatic and consular authorities of the State party were not given due notice of the complainant's extradition and not informed of the need to stay in close and continuous contact with him from the moment that he was handed over. The diplomatic assurances and the foreseen consular visits failed to anticipate the likelihood that the complainant would be at greatest risk of being tortured during the initial days of his detention. The concern about the risk proved to be justified since the State party did not take steps to check on his safety early enough. The Committee concluded therefore that the extradition of the complainant to Mexico constituted a violation by the State party of article 3 of the Convention.[61]

4. EXTRADITION TREATIES

States may be party to multilateral or bilateral extradition treaties, and conflicts may arise between their obligations under article 3 of the Convention and the obligations that they have undertaken under an extradition treaty. In that case, the relevant extradition treaty should be applied in accordance with the principle of non-refoulement. Furthermore, States parties to the Convention must ensure that there is no such conflict before becoming a party to an extradition treaty.[62]

5. NON-STATE ACTORS

States parties should refrain from deporting persons to another State in situations in which there are substantial grounds for believing that they would be in danger of being subjected to torture or other ill-treatment at the hands of non-State actors, including groups that are unlawfully exercising actions that inflict severe pain or suffering for purposes prohibited by the Convention, and over which the receiving State has no or only partial de facto control or whose acts it is unable to prevent or whose impunity it is unable to counter.[63]

[60] CAT/C/50/D/430/2010, paras. 11.5–13.
[61] CAT/C/47/D/327/2007, paras. 14.4–15.
[62] General comment No. 4 (2017), paras. 23–25.
[63] Ibid., para. 30.

Examples of recommendations

The State party should ensure that no persons may be expelled, returned or extradited to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture.

The State party should refrain from seeking and accepting diplomatic assurances, in the context of both extradition and deportation, from States where there are grounds for believing that persons would be at risk of torture or ill-treatment upon return, or where there are grounds to believe that chain refoulement may occur to a State where there are such grounds; the State party should also ensure that a deportation or extradition undertaken on the basis of diplomatic assurances is accompanied by continued and extensive monitoring of the person's situation in the receiving country and that diplomatic assurances are not used as a loophole to undermine the principle of non-refoulement as set out in article 3 of the Convention.

The State party should revisit legislation allowing for, and plans concerning, the externalization of its asylum policy, fully taking into account international standards and the guidance of international and regional bodies mandated to examine issues related to migration.

The State party should ensure that reviews of asylum status are undertaken solely on the basis of new information indicating a fundamental, stable and durable change in the conditions in countries of origin and that protection in countries of origin is effective and available.

The State party should ensure that all persons in the territory of the State party or under its jurisdiction, including those held at airports and other border crossing points, have effective access to the refugee status determination procedure; and that asylum-seekers have the opportunity to have their cases examined individually and enjoy procedural protection from refoulement and collective return.

The State party should ensure that procedural safeguards against refoulement are in place and that effective remedies with respect to refoulement claims in removal proceedings are available, including reviews of rejections by an independent judicial body, in particular on appeal.

The State party should promote the training of migration officials at border posts in accordance with international standards, and strengthen mechanisms to promptly identify victims of torture and trafficking among asylum-seekers and migrants at borders.

UN Photo/UNHCR/Phil Behan

Examples of good practice

In response to the Committee's recommendations made in its concluding observations following consideration of the State party's fifth periodic report, Cyprus introduced a new standard referral form aimed at improving the screening system for identifying vulnerable asylum-seekers, such as torture victims, increased the number of social welfare officers and drafted a separate standard operating procedure for the identification of victims of torture.[64]

In 2022, while considering the follow-up report of Belgium, the Committee noted with appreciation the application of the "qualification directive" (2011/95/EU), which indicates that the risks of serious harm to a person can justify the granting of international protection by applying the principle of non-refoulement in situations of international or internal armed conflict.[65]

In 2019, the Committee welcomed the adoption of new legislative provisions that enshrined the principle of non-refoulement, namely article 208 of the Criminal Code and article 20 of Act No. 2016-021 of 24 August 2016 on refugee status in Togo.[66]

While considering the initial report of Mauritania, the Committee noted with satisfaction the fact that a new title that had been added to the Code of Criminal Procedure in 2011 barred extradition if the person whose extradition was being requested would be in danger of being subjected to torture in the requesting State.[67]

[64] CAT/C/CYP/CO/5, para. 33; and CAT/C/CYP/FCO/5, paras. 24 and 25.

[65] CAT/C/BEL/CO/4, para. 26; CAT/C/BEL/FCO/4 (in French only at the date of publication of the present manual); and letter dated 15 November 2022 from the Committee to the Permanent Representative of Belgium to the United Nations Office and other international organizations in Geneva (available from https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FFUL%2FBEL%2F50780&Lang=en), p. 3 (in French).

[66] CAT/C/TGO/CO/3, para. 20.

[67] CAT/C/MRT/CO/1, para. 16.

D. ARTICLE 4 (CRIMINALIZATION OF TORTURE)

Article 4

"1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature."

Article 4 obliges States parties to enact legislation criminalizing torture in terms that are consistent with the definition in article 1, ensuring acts of torture are punishable by appropriate penalties. States parties must define the criminal offence of torture as distinct from common assault or other crimes. Torture and ill-treatment must also be established as separate offences and the crime of torture must include the elements contained in article 1 of the Convention. States parties must ensure in law that such acts are punishable by appropriate penalties, considering their grave nature, including when committed by public officials.[68]

The Committee has noted that serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity and highlighted the importance of this legal obligation in advancing the Convention's aim and in preventing torture and ill-treatment.[69]

By defining the offence of torture as distinct from common assault or other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture and ill-treatment. Naming and defining the crime will promote the Convention's aim, inter alia, by alerting everyone, including perpetrators, victims, and the public, to its special gravity. Codifying the crime will also (a) emphasize the need for appropriate punishment that takes into account the gravity of the offence, (b) strengthen the deterrent effect of the prohibition itself, (c) enhance the ability of responsible officials to track the specific crime of torture and (d) enable and empower the public to monitor and, when required, to challenge State action as well as State inaction that violates the Convention.[70]

The State party's report should include information on:

- Civil and military criminal provisions regarding these offences and the penalties related to them.
- Whether statutes of limitations apply to such offences.
- Whether the relevant provisions prohibit any exceptional circumstances whatsoever that may be invoked as justification for torture.

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[68] See, for example, CAT/C/SLV/CO/3 and CAT/C/SLV/CO/3/Corr.1, paras. 8 and 9; CAT/C/ISL/CO/4, paras. 9 and 10; CAT/C/BOL/CO/3, paras. 8 and 9; CAT/C/PSE/CO/1, paras. 12 and 13; and CAT/C/IRQ/CO/2, paras. 8 and 9.

[69] See, for example, CAT/C/BRA/CO/2, paras. 7 and 8; CAT/C/NIC/CO/2, paras. 7 and 8; and CAT/C/MWI/CO/1, paras. 7 and 8.

[70] General comment No. 2 (2007), para. 11.

- The number and the nature of the cases in which those legal provisions were applied and the outcome of such cases, the penalties imposed upon conviction and the reasons for acquittal.
- Examples of judgments relevant to the implementation of article 4.
- Existing legislation on disciplinary measures during the investigation of an alleged case of torture to be taken against law enforcement or prison personnel responsible for acts of torture (e.g. suspension) and information on how established penalties are commensurate with the gravity of the offence of torture.

Examples of recommendations

The State party should ensure that acts of torture and ill-treatment are punishable by appropriate penalties that take into account their grave nature, in accordance with article 4 (2) of the Convention. Moreover, the State party should ensure that the principle of the absolute prohibition of torture is incorporated into its legislation and that it is strictly applied, in accordance with article 2 (2) of the Convention and that, in accordance with article 2 (3) of the Convention, in no case may an order from a superior officer or authority be invoked as a justification for torture. Lastly, the State party should establish the criminal responsibility of those exercising superior authority for acts of torture or ill-treatment committed by subordinates in situations in which they knew or should have known that such impermissible conduct was occurring, or was likely to occur, yet failed to take any reasonable and necessary preventive measures.

The State party should consider amending the Crimes of Torture Act with a view to introducing mandatory minimum or graduated penalties leading up to the maximum penalty for acts of torture, including by citing aggravating factors, which take into account the gravity of the nature of the acts, as set out in article 4 (2) of the Convention.

The State party should ensure that penalties for torture are commensurate with the gravity of the crime, as set out in article 4 (2) of the Convention.

Examples of good practice

In 2023, the Committee took note with satisfaction of Law No. 186/2021, amending Law No. 286/2009, which removed the statute of limitations for the crime of torture in Romania.[71]

[71] CAT/C/ROU/CO/3, para. 7.

E. ARTICLE 5 (JURISDICTION)

Article 5

"1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law."

Article 5 obliges States parties to establish jurisdiction over the crimes mentioned in article 4. Traditionally, States assume jurisdiction in respect of criminal offences committed in their territory or by their nationals. Accordingly, the Convention provides that States parties shall assume jurisdiction in respect of acts of torture committed in a territory under their jurisdiction, including on board a ship or aircraft registered in the State party, as well as when the alleged perpetrator is their national. In addition, they may establish jurisdiction over the acts of torture if the victim is a national of that State party. Moreover, States parties shall also take measures to establish their jurisdiction if acts of torture were committed outside its territory by non-nationals if such alleged offenders are present in any territory under its jurisdiction, which guarantees that persons who committed torture or ill-treatment would be held responsible, irrespective of their nationality or the territory in which they committed the offence.[72]

The State party's report should include information on:

- Measures taken to establish jurisdiction in the cases covered under (a), (b) and (c) of article 5 (1); examples of cases in which (b) and (c) were applied should also be included.
- Measures taken to establish jurisdiction in cases in which alleged offenders are present in the territory of the reporting State and the latter does not extradite them to a State with jurisdiction over the offence in question; examples of cases in which (a) extradition was granted and (b) extradition was denied should be provided.

[72] See, for example, CAT/C/ESP/CO/7, paras. 39 and 40; CAT/C/BEN/CO/3, paras. 12 and 13; and CAT/C/SYC/CO/1 and CAT/C/SYC/CO/1/Corr.1, paras. 32 and 33.

The Committee found a violation of article 5 of the Convention for the first time in *Guengueng et al. v. Senegal* concerning the prosecution of the former Chadian dictator Hissène Habré for torture committed during his authoritarian rule in Chad.[73] According to the Committee, Senegal failed to uphold its obligation to take such measures as may be necessary to establish its jurisdiction, pursuant to article 5 (2), over the offences stipulated in article 4 in cases in which the alleged offenders are present in any territory under its jurisdiction and it does not extradite them pursuant to article 7. The Committee also considered that "the reasonable time frame within which the State party should have complied with this obligation has been considerably exceeded".[74]

Examples of recommendations

The State party should ensure that its legislation complies with all relevant provisions of the Convention, including by ensuring the establishment of jurisdiction over the offence of torture in any situation in which the alleged offender is present in its territory, even if the conduct in question occurred outside the territory of the State party and neither the perpetrator nor any of the victims were nationals of the State party, and the adoption of provisions to ensure that, in any case in which a person alleged to have committed torture is found in its jurisdiction, the State party, if it does not extradite the person, is to submit the case to its competent authorities for the purpose of prosecution.

The State party is urged to review its legislation in order to establish its jurisdiction in cases in which the alleged perpetrator of acts of torture is present in the territory of the State and extradition has not been granted to another State with jurisdiction over the crime in question.

The Committee encourages the State party to take the necessary steps to establish universal jurisdiction over crimes of torture in accordance with article 5 (2) of the Convention.

The State party should ensure the exercise of universal jurisdiction over persons responsible for acts of torture, including by seeking extradition. It should also provide information to the Committee on instances in which the Convention has been invoked in judicial decisions regarding extradition and universal jurisdiction, in accordance with article 5 of the Convention.

Examples of good practice

In considering the fifth periodic report of the United Kingdom, the Committee noted with satisfaction the reference made in the State party's strategy for the Prevention of Torture (2011–2015) to the obligations under the Convention to ensure that there were no "safe havens" for individuals accused of torture, and welcomed legislative changes that widen the competence of United Kingdom courts to prosecute international crimes.[75]

Concerning the fifth periodic report of Spain, the Committee acknowledged that the Spanish courts had pioneered the application of universal jurisdiction over international crimes, including torture, and noted a legislative amendment, Organization Act No. 1/2009 of 3 November, which established conditions for the exercise of such jurisdiction.[76]

[73] *Guengueng et al. Senegal* (CAT/C/36/D/181/2001).
[74] Ibid., para. 9.5.
[75] CAT/C/GBR/CO/5, para. 22.
[76] CAT/C/ESP/CO/5, para. 17.

F. ARTICLE 6 (CUSTODY AND PRELIMINARY INQUIRY)

Article 6

"1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 6 deals with the exercise of jurisdiction by the State party, particularly the issues concerning the investigation of persons who are in the territory and are alleged to have committed any offence referred to in article 4. Accordingly, persons who are alleged to have committed an act of torture or ill-treatment shall be taken into custody or their presence shall be ensured through other legal measures, for such time as is necessary to enable any criminal or extradition proceedings to be instituted. The State must then immediately make a preliminary inquiry into the facts.[77]

The State party's report should include information on:

- The domestic legal provisions concerning, in particular, the custody of a person alleged to have committed any offence referred to in article 4 or other measures to ensure the presence of such a person; the right to consular assistance; the obligation of the reporting State to notify other States that might also have jurisdiction that such a person is in custody; the circumstances of the detention; and whether the State party intends to exercise jurisdiction.
- The authorities in charge of the implementation of the various aspects of article 6.
- Any cases in which the above domestic provisions were applied.

[77] See, for example, CAT/C/ESP/CO/6, para. 14; and CAT/C/LKA/CO/3-4, para. 26.

G. ARTICLE 7 (EXTRADITION OR PROSECUTION (*AUT DEDERE AUT JUDICIARE* PRINCIPLE))

Article 7

"1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings."

Article 7 obliges States parties to initiate prosecutions relating to acts of torture whenever they have jurisdiction, unless they extradite the alleged offender.[78] The State party's report should include information on:

- Measures to ensure the fair treatment of the alleged offender at all stages of the proceedings, including the right to legal counsel, the right to be presumed innocent until proved guilty and the right to equality before courts.
- Measures to ensure that the standards of evidence required for prosecution and conviction apply equally in cases in which the alleged offender is a foreigner who committed acts of torture abroad.
- Examples of practical implementation of the measures referred to above.

Examples of recommendations

The State party should consider abolishing the double criminality requirement for the crime of torture and applying the principle of *aut dedere aut judicare* when individuals suspected of having committed acts of torture abroad are present in its territory and it does not extradite them, in accordance with article 5 (2) of the Convention.

The Committee reminds the State party that, in order to avoid impunity, it must apply the principle of *aut dedere aut judicare* when the alleged perpetrator of acts of torture is in its territory, in accordance with article 5 (2) of the Convention. The Committee also reiterates that the investigation and prosecution of acts of torture should not be constrained by the application of the statute of limitations.

[78] See, for example, CAT/C/ESP/CO/6, para. 14.

H. ARTICLE 8 (EXTRADITION)

Article 8

"1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for the extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States parties, as if they had been committed not only in the place in which they occurred but also in the territories of the State required to establish their jurisdiction in accordance with article 5, paragraph 1."

Article 8 provides that States parties undertake to recognize torture as an extraditable offence to facilitate the extradition of persons suspected of having committed acts of torture and the related crimes of attempting to commit, and complicity and participation in, torture.[79]

The State party's report should include information on:

- Whether torture and related crimes are considered by the reporting State as extraditable offences.
- Whether the reporting State makes extradition conditional on the existence of a treaty.
- Whether the reporting State considers the Convention as the legal basis for extradition in respect of the offences referred to above.
- Extradition treaties between the reporting State and other States parties to the Convention that include torture as an extraditable offence.
- Cases in which the reporting State granted the extradition of persons alleged to have committed any of the offences referred to above, or whether it has rejected, for any reason, the request of another State for the extradition of an individual suspected of having committed torture and whether it has started prosecution proceedings against such an individual as a result, including information on the status and outcome of such proceedings.

[79] See, for example, CAT/C/CPV/CO/1, paras. 32 and 33; and CAT/C/SLE/CO/1, para. 22.

Examples of recommendations

The State party should ensure that torture is considered an extraditable offence in bilateral and multilateral treaties regarding extradition; ensure that the Convention can be invoked as a legal basis for extradition with regard to the crimes enumerated in article 4 when receiving requests for extradition from States with which it does not have an extradition treaty; and provide the Committee with information on instances in which the Convention has been invoked in judicial decisions regarding extradition and universal jurisdiction.

The State party should amend the Extradition Act to ensure that the crimes enumerated in article 4 of the Convention are considered as extraditable offences.

The State party should take the necessary legislative and administrative measures to ensure that the Convention can be invoked as a legal basis for extradition in respect of the crimes enumerated in article 4 of the Convention when it receives a request for extradition from any other State party with which it has no extradition treaty, while at the same time observing the provisions of article 3 of the Convention.

I. ARTICLE 9 (INTER-STATE COOPERATION)

Article 9

"1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them."

Under article 9, States parties undertake to provide mutual judicial assistance in all matters of criminal procedure regarding the offence of torture and related crimes of attempting to commit, and complicity and participation in, torture.[80]

The State party's report should include information on:

- Legal provisions, including any treaties, concerning mutual judicial assistance that apply in the case of the above-mentioned offences.
- Cases involving the offence of torture in which mutual assistance was requested by or from the reporting State, including the result of the request.

[80] See, for example, CAT/C/USA/CO/3-5, para. 15; and CAT/C/SLE/CO/1, para. 22.

Examples of recommendations

The State party should take the necessary legislative and administrative measures to provide mutual judicial assistance to other States parties in all matters of criminal procedure regarding the crimes enumerated in article 4 of the Convention, including by incorporating into national legislation multilateral agreements with mutual assistance provisions already ratified by the State party.

The State party should provide information on measures taken to provide mutual judicial assistance to other States parties in all matters of criminal procedure regarding the crimes enumerated in article 4 of the Convention.

Examples of good practice

In 2024, the Committee welcomed the adoption of the ordinance of 28 November 2017 on cooperation with the International Criminal Court and other international tribunals in Liechtenstein, which followed enactment of the Law of 20 October 2004 on Cooperation with the International Criminal Court and Other International Tribunals.[81]

UN Photo/Rick Bajornas

[81] CAT/C/LIE/CO/5, para. 4.

J. ARTICLE 10 (EDUCATION AND TRAINING)

Article 10

"1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person."

According to article 10 of the Convention, States parties must ensure that medical and law enforcement personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of persons must be appropriately trained on the prohibition of torture and other ill-treatment.[82] Furthermore, the prohibition of torture and other ill-treatment should be included in the rules or instructions issued concerning their duties and functions.

The State party's report should include information on:

- Educational programmes developed by the State party to ensure that all law enforcement officials, prison staff, judges, prosecutors, court officials and military personnel are fully acquainted with the provisions of the Convention and are aware that violations will not be tolerated and will be investigated, and that any offenders will be prosecuted. The State party should also provide information on the programmes used in the training of police officers and other non-coercive investigation techniques.
- Information on the training of medical personnel dealing with detainees or asylum-seekers to detect physical and psychological marks of torture and training of judicial and other officers, so that they can identify cases of torture and ill-treatment, in accordance with the Istanbul Protocol.
- The nature (e.g. mandatory or optional, regular or ad hoc) and frequency of the instruction and training.
- Information on any training that ensures appropriate and respectful treatment of women, juveniles and members of ethnic, religious or other diverse groups, particularly regarding forms of torture that disproportionately affect these groups.
- Development and implementation of regular assessments of the effectiveness and impact of such training and educational programmes on the reduction of cases of torture and ill-treatment, as well as information on the methodology used to assess the effectiveness of those programmes in reducing cases of torture and ill-treatment.

[82] See, for example, CAT/C/KIR/CO/1, paras. 28 and 29; CAT/C/DNK/CO/8, paras. 38 and 39; CAT/C/EGY/CO/5, paras. 43 and 44; CAT/C/ROU/CO/3, paras. 25 and 26; and CAT/C/NZL/CO/7, paras. 55 and 56.

Examples of recommendations

The State party should develop mandatory initial and in-service training programmes to ensure that all public officials, in particular law enforcement officers and prison staff, are acquainted with the provisions of the Convention, especially the absolute prohibition of torture, and that they are made fully aware that violations will not be tolerated and will be investigated and that those responsible will be prosecuted and, if convicted, appropriately punished.

The State party should develop and apply a methodology for assessing the effectiveness of educational and training programmes in reducing the number of cases of torture and ill-treatment and in ensuring the identification, documentation and investigation of such acts and the prosecution of those responsible.

The State party should ensure that law enforcement personnel continue to receive training on the absolute prohibition of torture, on the detection and investigation of cases of torture and ill-treatment in accordance with the Istanbul Protocol, as revised, and on non-coercive interrogation and investigation techniques, which should incorporate the Principles on Effective Interviewing for Investigations and Information Gathering (the Méndez Principles); it should also continue to train all medical staff in contact with persons deprived of their liberty on the detection of cases of torture and ill-treatment in accordance with the Istanbul Protocol, ensuring that all suspected cases of torture and ill-treatment are brought to the attention of the competent judicial authorities.

Examples of good practice

With respect to follow-up to its concluding observations on the third periodic report of Montenegro, in 2024, the Committee commended the efforts made by the State party to recruit and train sufficient numbers of prison personnel to ensure the adequate treatment of detainees and strengthen the prevention, monitoring and management of inter-prisoner violence, with specific reference to the increased hiring of health-care professionals. The Committee encouraged the State party to continue its recruitment efforts to ensure that all forecasted posts were filled and to keep the Committee abreast of any developments in this regard.[83]

The Committee, in its concluding observations on the sixth periodic report of Australia, urged the State party to take all necessary measures to end the use of spit hoods in all circumstances across all jurisdictions and to provide adequate and regular training for those involved in detention activities on legal safeguards and monitor compliance and penalize any failure on the part of officials to comply.[84] On 14 April 2023, the Australian Federal Police announced an end to the use of spit hoods. In a review, it was found that their use was not a reasonable or proportionate response against individuals who assaulted police officers by spitting saliva or blood. Instead, the Australian Federal Police provide equipment and implement procedures to better protect its officers from spitting and biting.[85]

[83] CAT/C/MNE/CO/3, para. 15 (c); CAT/C/MNE/FCO/3, para. 6; and letter dated 15 April 2024 from the Committee to the Permanent Representative of Montenegro to the United Nations Office and other international organizations in Geneva (available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FFUL%2FMNE%2F58064&Lang=en).

[84] CAT/C/AUS/CO/6, para. 14.

[85] Australian Federal Police, media statement, 14 April 2023. Available at www.afp.gov.au/news-centre/media-release/media-statement-0.

K. ARTICLE 11 (INTERROGATION AND TREATMENT OF PERSONS IN DETENTION)

Article 11

"Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture."

Under article 11, States parties are obliged to keep under review interrogation rules, instructions, methods and practices, as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, with a view to preventing torture and other cruel, inhuman or degrading treatment or punishment.[86]

The State party's report should include information on:

- Laws, regulations and instructions concerning the treatment of persons deprived of their liberty.
- Information on measures requiring prompt notification of and access to lawyers, doctors, family members and, in the case of foreign nationals, consular officials.
- The degree to which the following rules and principles are reflected in the domestic law and practice of the State party: the Nelson Mandela Rules; the Basic Principles for the Treatment of Prisoners; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Code of Conduct for Law Enforcement Officials; the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders

[86] See, for example, CAT/C/MEX/CO/7, paras. 16 and 17; and CAT/C/LIE/CO/3, para. 25.

(the Bangkok Rules); the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); the Basic Principles on the Independence of the Judiciary; the Guidelines on the Role of Prosecutors; the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules); and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

- Any independent bodies or mechanisms established to inspect or monitor prisons and other places of detention and to monitor all forms of violence against all persons deprived of their liberty, including all forms of sexual violence and inter-prisoner violence, including authorization for monitoring by international organizations and civil society organizations.
- Information on measures to ensure that all such places are officially recognized and that no incommunicado detention or detention in secret or unofficial places is permitted.
- Mechanisms to review the conduct of law enforcement personnel in charge of the interrogation and custody of persons held in detention and imprisonment and the results of such reviews, along with any qualification or requalification procedures.
- Information on any safeguards for the protection of individuals especially at risk.
- The implementation of any progressive techniques in managing places of deprivation of liberty, such as the introduction of dynamic security principles.

ILLUSTRATIVE EXAMPLES OF PLACES OF DEPRIVATION OF LIBERTY

- Police stations
- Pretrial detention centres
- Remand prisons
- Prisons/penitentiary facilities
- Juvenile detention centres/juvenile correctional facilities
- Border police facilities and transit zones at land crossings, international ports and airports
- Immigration and asylum-seekers' detention centres
- Psychiatric institutions
- Security and intelligence service facilities
- Detention facilities under military jurisdiction
- Places of administrative detention
- Places of medical quarantine
- Means of transport for the transfer of detainees
- Social care homes provided by the State or subject to State regulations or licensing
- Unofficial places of detention (such as those operating secret detentions)

Source: OHCHR, *Preventing Torture: The Role of National Preventive Mechanisms – A Practical Guide*, p. 7.

In addition to the Committee, various human rights bodies and mechanisms in the United Nations system apply the concept of places of deprivation of liberty within their respective mandates. Their comprehensive approach to the definition of deprivation of liberty sheds light on how that concept has developed in international law. For example, the Subcommittee has recommended as extensive an approach as possible in determining what constitutes a place of deprivation of liberty.[87] The Subcommittee has established that places and forms of deprivation of liberty include not only prisons and police stations, but also house arrest, closed centres for foreigners and asylum-seekers, centres for children, social care homes, hospital and psychiatric institutions, facilities for military personnel (or detention centres under military jurisdiction), clandestine clinics that "treat" homosexuality, special boarding or religious schools, and *daaras* – all of which may constitute places of deprivation of liberty. The Subcommittee has also clearly stated that periods of deprivation of liberty during apprehension, transfer and removal are covered by the Optional Protocol.[88]

In 2024, the Subcommittee adopted its first general comment in which it defined places of deprivation of liberty.[89]


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[87] CAT/C/57/4 and CAT/C/57/4/Corr.1, annex, para. 2. See also CAT/OP/POL/ROSP/1 and CAT/OP/POL/ROSP/1/Corr.1, para. 26; and CAT/OP/PRT/1, para. 25.
[88] Subcommittee, general comment No. 1 (2024), para. 51.
[89] Ibid.

1. CONDITIONS IN PLACES OF DETENTION

States parties should ensure that conditions in places of detention do not constitute violations of the Convention. Accordingly, the State party's report should include information on:

- Placement of different groups of prisoners in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal basis for their detention and the necessities of their treatment. That applies, among others, to men and women; untried and convicted prisoners; and young prisoners and adults.
- Conditions of children who stay with a parent in detention, if it is in their best interests, including the availability and access to childcare facilities, as well as child-specific health care. In that connection, States parties should ensure that children in detention with a parent should never be treated as prisoners.
- Provision of adequate accommodation and how it takes account of health requirements and pays attention to climatic conditions, air, minimum floor space, lighting, heating and ventilation.
- Access to adequate water and sanitation facilities, as well as other facilities, for personal hygiene, which takes into account the dignity of persons deprived of their liberty.
- Provision of clean and proper clothing for prisoners who are not allowed to wear their own clothing. Such clothing shall not be degrading or humiliating. If prisoners are allowed to wear their own clothing, arrangements should be made to ensure that it is clean and proper.
- Provision of a separate bed and sufficient clean bedding.
- Access to drinking water and food of adequate nutritional value, which is well prepared and served.
- Time and facilities for suitable exercise and sport.
- Access to medical and health services, both physical and psychological, that are free of charge and without discrimination in prison, as well as information concerning the national authority (such as the Ministry of Health) in charge of prison medical staff. States parties should keep in mind that every prison should provide, among others: medical screening on entry; gender-specific health care; mental health care; prevention, treatment, care and support regimes for HIV and other infectious diseases; substance abuse treatment programmes; suicide and self-harm prevention protocols; preventive health-care services; and the services of a dentist. Medical confidentiality should be respected.
- Availability and access to facilities for detained persons with intellectual or psychosocial disabilities, whether it is a civil psychiatric hospital or a specially equipped psychiatric facility within the prison system. The report should contain information on whether such a facility must have adequate equipment and whether staff are appropriately trained according to internationally accepted professional and ethical standards.
- Guarantees provided to ensure prisoners' enjoyment of their freedom of religion or belief.
- The modalities and frequency of searches of prisoners and cells, including invasive and strip searches, and the reasons therefor. In that connection, such searches should always be conducted in a manner that is respectful of human rights and dignity, including respect for the privacy of the individual being searched, as well as the principles of proportionality, legality and necessity. Searches should not be used to harass or intimidate prisoners.
- Regimes in all categories of prisons, including access to fresh air/outside recreation (how many hours a day), recreational activities (information on the time and facilities for suitable exercise and sport) and contact with the outside world, under necessary supervision, so that detainees can communicate with their family and friends at regular intervals. That can take place through correspondence in writing or using telecommunication, as well as by receiving visits.

- Rehabilitation programmes, including access to education and vocational training, and other support for reintegration into society upon release, as well as access to a library adequately stocked with recreational and instructional books.
- Rules and practice concerning restrictions, discipline and sanctions and how they comply with international human rights law and standards; the duration, frequency and recording of such restrictions; procedures for imposing them; and access to appeal decisions on the imposition of such measures. States parties should ensure that such restrictions may never amount to torture or other cruel, inhuman or degrading treatment or punishment.
- Use of and practice on restraints, the legal basis therefor, and the purpose, frequency and recording of such restraints. In that connection, the authorities should apply them as a last resort and for the shortest possible time. In the rare instances when such measures are taken, States parties should ensure protection against abuse, including by regulating both the design and the use of means of restraint.

NON-CUSTODIAL MEASURES

It is often suggested that sending offenders to prison may not aid their rehabilitation but instead worsen their individual situation, which is, for example, the case in which, due to overcrowding, it is difficult to provide prisoners with education or vocational and recreational training for their reintegration into society following their release. Imprisonment has high financial and social costs, which should be reserved for the offenders of more serious and dangerous offences. In that context, the General Assembly adopted the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) on 14 December 1990. In addition to the Tokyo Rules, States parties should consider the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), when adopting legislative and other measures on the use of alternatives to detention. Non-custodial measures as alternatives to imprisonment should provide penalties that are proportionate to the offence committed and make the rehabilitation and reintegration of the offender into society possible.

The Committee has repeatedly recommended that States parties consider increasing the use of non-custodial measures and alternatives to detention, in keeping with the Tokyo Rules.

Some examples of non-custodial measures are:

- Community service orders
- Economic sanctions, such as fines and day-fines
- House arrest
- Conditional discharge

The Tokyo Rules set forth a set of principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment. Non-custodial measures should also be applied with full respect for human rights and dignity, including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. For example, such measures should not involve medical or psychological experimentation on, or undue risk of physical or mental injury to, the offender.

RULES AND PRINCIPLES CONCERNING THE RIGHT TO FREEDOM FROM TORTURE AND OTHER ILL-TREATMENT IN SITUATIONS OF DEPRIVATION OF LIBERTY
United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)[90]
Basic Principles for the Treatment of Prisoners[91]
Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment[92]
Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[93]
Code of Conduct for Law Enforcement Officials[94]
United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)[95]
United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)[96]
United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)[97]
United Nations Rules for the Protection of Juveniles Deprived of their Liberty[98]
Basic Principles on the Use of Force and Firearms by Law Enforcement Officials[99]

According to the aforementioned rules and principles concerning the right to freedom from torture and other ill-treatment in situations of deprivation of liberty, States parties must, at a minimum and among other things, provide information on how they guarantee the following standards:

- Non-discrimination in the application of procedural rules and safeguards, on the grounds of race, colour, gender, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or any other status, taking into account the individual needs of prisoners, in particular the most vulnerable groups in detention settings.
- Registration of all places of deprivation of liberty with a standardized prisoner file management system, which includes information on the identity of detainees, respecting their self-perceived gender; the reasons, date, time and place of arrest; the day and hour of their admission and release, as well as of any transfer; any visible injuries and complaints about prior ill-treatment; an inventory of personal property; and the names of family members, as well as emergency contact details.
- Paying attention to admission procedures and the specific needs of women, juveniles, persons with disabilities, lesbian, gay, bisexual and transgender persons, persons belonging to ethnic, racial, religious, age and health groups and other persons in vulnerable situations. That includes taking into account the gender-specific needs of women deprived of their liberty (e.g. ensuring that facilities and materials meet women's specific hygiene needs, including sanitary towels provided free of charge

[90] General Assembly resolution 70/175, annex.
[91] General Assembly resolution 45/111, annex.
[92] General Assembly resolution 43/173, annex.
[93] General Assembly resolution 37/194, annex.
[94] General Assembly resolution 34/169, annex.
[95] General Assembly resolution 65/229, annex.
[96] General Assembly resolution 40/33, annex.
[97] General Assembly resolution 45/110, annex.
[98] General Assembly resolution 45/113, annex.
[99] *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.2.

and a regular supply of water to be made available for the personal care of children and women, in particular women involved in the preparation of food and those who are pregnant, breastfeeding or menstruating), providing persons with disabilities with individualized reasonable accommodation and accessibility in prisons (e.g. the availability of trauma-informed and comprehensive mental health care and rehabilitation programmes) and providing facilities to contact relatives and access to legal advice, and information about prison rules and regulations, where to seek help when in need in a language that is understood etc. Prior to, or on admission, women with caretaking responsibilities should be permitted to make arrangements for their children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the child. The special needs of pregnant women deprived of their liberty should also be attended to.

- Providing information to prisoners upon admission about the prison law and applicable regulations, their rights and obligations, including information on lodging complaints, and all other matters to enable them to adapt to life in prison.
- Allowing prisoners to inform their family members and, in the case of foreign nationals, notify consular authorities.
- Reducing overcrowding in prisons, particularly through the wider application of non-custodial measures as an alternative to imprisonment and by implementing plans to develop prison infrastructure and improve conditions of detention.
- Taking the necessary steps to prevent violence in prisons and places of detention, including sexual violence, by law enforcement and prison personnel and other inmates. Such steps include separation of detained persons by gender, recruitment of a sufficient number of prison personnel to ensure an adequate ratio of prisoners to staff and the delivery of training to prison staff on the management of prisoners.
- Adopting strategies and programmes for the prevention, detection and treatment of chronic, degenerative and infectious diseases in prisons and strategies for the prevention of suicide and self-harm in custody. That includes introducing a risk assessment tool across the prison system.
- Taking measures to prevent deaths in custody, investigate deaths that have occurred and report on the results of the investigations, including information about whether relatives received compensation in any of the cases. The State party's report should also include information on statistical data regarding deaths in custody, disaggregated by place of detention, the sex, age and ethnicity or nationality of the deceased and the cause of death.
- Making sure that restrictions, discipline and sanctions comply with international human rights law and standards and never amount to torture or other cruel, inhuman or degrading treatment or punishment.
- Prohibiting the following practices:[100]
  - Indefinite solitary confinement.
  - Prolonged solitary confinement.
  - Placement of a prisoner in a dark or constantly lit cell.
  - Corporal punishment or the reduction of a prisoner's diet or drinking water.
  - Collective punishment.
- Providing appropriate protection and a respectful environment in cases in which persons are threatened with violence or have been victimized due to actual or perceived sexual orientation

[100] The Nelson Mandela Rules, rule 43.

or gender identity; without removing them from the general prison population, except with their consent.

- Ensuring that means of restraint are used only as a last resort to prevent the risk of harm to an individual or others and only when all other reasonable options would fail to satisfactorily contain the risk.
- Ensuring that the use of electrical discharge weapons (e.g. Tasers) is strictly compliant with the principles of necessity, subsidiarity, proportionality, advance warning (where feasible) and precaution; and that they are not included as part of the regular equipment of custodial staff in prisons and other places of deprivation of liberty.[101]
- Ensuring independent monitoring of all forms of violence, including all forms of sexual violence and inter-prisoner violence, including authorization for international monitoring or regular and unannounced visits by national preventive mechanisms or NGOs.
- Providing persons deprived of their liberty with adequate health care, including mental health care, age and gender-specific medical services, in particular for pregnant women and women held in detention with their children, and access to medicines and ensuring access to an independent doctor and mental health professionals, which is particularly important in the context of reporting and documenting complaints and allegations of torture or ill-treatment.
- Ensuring that detention in the context of immigration enforcement is only applied as a last resort, when determined to be strictly necessary and proportionate in the light of the individual's circumstances, and for as short a period as possible, given that migration management is an administrative, not a criminal, matter. States parties should establish statutory time limits for immigration detention and ensure access to an effective judicial remedy to review the necessity of the detention. They should further ensure that children and families with children are not detained solely because of their immigration status. States parties should therefore consider the availability of non-custodial, community-based alternatives to detention.
- Paying particular attention to the conditions endured by, and the treatment of, persons in special care institutions. Such settings include, among others, residential care centres for persons with disabilities, psychiatric institutions for persons experiencing mental health problems, nursing homes for older persons, orphanages and centres for homeless persons. States parties should develop policies and strategies aimed at deinstitutionalization, a shift from institutional to community-based care, which aims to better address the care and support needs of persons with disabilities, persons experiencing mental health problems, older persons, children, homeless persons and others. Furthermore, they should take all steps necessary to create community living that takes individuals out of institutions in which the risk of torture and other cruel, inhuman or degrading treatment or punishment is often higher.

[101] See, for example, CAT/C/GBR/CO/6, paras. 28 and 29.

2. LINKS WITH OTHER HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (A NON-EXHAUSTIVE LIST)

Ensuring respect for the human rights of persons deprived of their liberty concerns not only the right to be free from torture and other cruel, inhuman or degrading treatment or punishment, but also various other rights, including:

- The right to life.
- The right to liberty and security.
- The right to equality and non-discrimination.
- The right to an adequate standard of living, including the right to adequate food, water and sanitation.
- The right to freedom of thought, conscience and religion.
- The right to freedom of opinion and expression.
- The right to information.
- The right to health.
- The right to education.
- The right of the child to development.
- The right to privacy.
- The right to an effective remedy.
- The right to participate in cultural life, recreation and sport.

Examples of recommendations

The State party should continue to strengthen its efforts to ensure that all persons deprived of their liberty are afforded in practice all fundamental legal safeguards from the very outset of their detention, including the rights to be informed of their rights in a language that they understand; to be brought before a judge within the time frame prescribed by law; to request and receive an independent and confidential medical examination, free of charge, or by a doctor of their choice upon request; to challenge the lawfulness of their detention; and to prompt access to a lawyer and, if necessary, to free legal aid of adequate quality and through a properly funded and resourced legal aid bureau, including during the initial interrogation and inquiry. In that connection, the Committee encourages the State party to continue with its ongoing efforts to address the precarious situation of legal aid, including the ongoing instalment of the toll-free telephone services in police stations for arrested persons to access legal aid and eventual opening of the legal aid offices in all districts.

The State party should continue to install video and audio recording equipment in police interrogation rooms and ensure that recordings are made available to defendants and their counsel, at no cost to the defendant; and that they may be used as evidence in court.

The State party should establish a central register of detention for all detainees at all stages of their deprivation of liberty, including during transfers to different places of detention, and ensure that all persons have their deprivation of liberty properly registered at every place of detention.

The State party should increase its efforts to improve conditions of detention, including by significantly reducing overcrowding in prisons by making more use of alternatives to incarceration, such as suspended sentences for first offenders or for certain minor offences, and of alternatives to pretrial detention.

The State party should continue its efforts to improve and expand prison facilities in order to remodel those facilities that do not meet international standards, and allocate the resources required to improve conditions of detention and strengthen reintegration and rehabilitation activities.

The State party should put in place the measures required to ensure the strict separation of accused persons from convicts and adults from minors, and appropriate treatment for them; increase the number of qualified staff working with prisoners; ensure the availability of medical services in all prison facilities; and ensure that solitary confinement is used only as a last resort, for as short a time as possible, under strict supervision and with the possibility of judicial review, in accordance with international standards.

The State party should ensure that the regulations governing pretrial detention are scrupulously respected and that it is resorted to only in exceptional circumstances and for limited periods and in accordance with the law, taking into account the principles of necessity and proportionality.

The State party should actively promote the use of alternatives to pretrial detention within the prosecution service and among judges, in accordance with the Tokyo Rules and the Bangkok Rules.

The State party should review the case files of all persons held in pretrial detention and immediately release those who have already been in detention for periods exceeding the maximum sentences carried by the offences of which they stand accused and ensure that the Office of the Public Prosecutor complies with court orders to release pretrial detainees and immediately release those who have already served their sentences and are being held illegally.

The State party should amend the Code of Criminal Procedure to reduce the maximum duration of pretrial detention to bring it into line with international standards of due process.

UN Photo/Christopher Herwig

Examples of good practice

In 2021, the Committee recommended that Lithuania take further necessary steps to ensure that detention conditions were in line with relevant international human rights standards.[102] Subsequently, the State party took measures to improve the material conditions of detention and the quality of life of inmates, to extend the application of non-custodial measures and to strengthen the effectiveness of complaints mechanisms for reporting cases of violence. Lithuania made efforts to improve the implementation of dynamic security approaches, including through the provision of training to prison staff and the strengthening of the institutional capacities of the Seimas Ombudsman's Office, including by increasing its budget, as well as the improvement of remuneration for prison staff. It took measures to prevent the use of psychoactive substances in prisons, to decrease the number of prisoners infected by, among other things, HIV and to ensure access to coronavirus disease (COVID-19) vaccines for inmates. Lithuania also adopted the new Code of Enforcement of Sentences that entered into force on 1 January 2023.[103]

In 2021, the Committee welcomed the allocation of additional funds by Latvia for the purchase of medicines and medical supplies for prison dispensaries, the decrease in the number of complaints in relation to health care, as well as the steps taken to ensure sufficient numbers of medical staff in all places of detention – measures that were taken to implement recommendations in the concluding observations on the sixth periodic report of Latvia.[104]

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[102] CAT/C/LTU/CO/4, para. 16.

[103] Letter dated 26 June 2023 from the Committee to the Permanent Representative of Lithuania to the United Nations Office and other international organizations in Geneva (available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FFUL%2FLTU%2F53091&Lang=en).

[104] CAT/C/LVA/CO/6, para. 15; CAT/C/LVA/FCO/6, para. 12; and letter dated 29 March 2021 from the Committee to the Permanent Representative of Latvia to the United Nations Office and other international organizations in Geneva (available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fFUL%2flVA%2f44633&Lang=en).

In 2022, the Committee appreciated information provided by Tajikistan regarding internal regulations laid down under the Act on Conditions of Detention of Suspects, Accused Persons and Defendants, notably concerning the mandatory preventive medical examination of all detainees within 24 hours after admission to a remand centre and other information related to the medical care of individuals placed in detention facilities, as follow-up to the concluding observations on the third periodic report of Tajikistan.[105]

Following the Committee's review of the initial report of Lebanon,[106] the NGO Restart proposed a road map for the implementation of the recommendations contained in the Committee's concluding observations, notably those concerning fundamental legal safeguards against torture and ill-treatment. Its advocacy efforts with the national authorities contributed to an amendment to the Code of Criminal Procedure and the establishment of a medical centre for conducting medical examinations of detainees, including alleged torture victims.[107]

In October 2022, Slovakia passed a law introducing regular inspections in social care institutions. That measure came in response to a decision by the Committee adopted on 19 November 2021 in the context of an individual communication in which it found that the restraint of a woman with combined intellectual disabilities and autism spectrum disorder in a cage bed by a social care facility amounted to ill-treatment within the meaning of article 16 (1) of the Convention. In addition, the Committee found violations of several other provisions of the Convention due to the fact that a criminal complaint filed by the victim had been suspended, no effective investigation had been conducted and the victim had not received effective redress.[108]

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[105] CAT/C/TJK/CO/3, para. 18; CAT/C/TJK/FCO/3, paras. 15–44; and letter dated 4 May 2022 from the Committee to the Permanent Representative of Tajikistan to the United Nations Office and other international organizations in Geneva (available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fFUL%2fTJK%2f48596&Lang=en).

[106] CAT/C/LBN/CO/1.

[107] Eleanor Currie, "IRCT anti-torture advocacy at national level using United Nations mechanisms" (International Rehabilitation Council for Torture Victims, 2020).

[108] *Černáková v. Slovakia* (CAT/C/72/D/890/2018).

L. ARTICLE 12 (PROMPT AND IMPARTIAL INVESTIGATION)

Article 12

"Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."

States parties must ensure that their competent authorities proceed to a prompt and impartial investigation when there is a reason to believe that, under their jurisdiction, an act of torture or other ill-treatment has been committed.[109]

If State officials are suspected of having perpetrated acts of torture or ill-treatment, they must be immediately suspended from duty for the duration of the investigation.[110] Upon conviction, they must not be permitted to return to a position in which they may repeat acts of torture or ill-treatment.

The State party's report should include information on:

- The authorities competent to initiate and carry out the investigation of acts of torture and ill-treatment, both at the criminal and administrative levels, and measures taken to ensure that there is no institutional or hierarchical relationship between the body's investigators and the suspected perpetrators of such offences.[111]
- Applicable procedures, including whether there is access to an independent, effective, confidential and accessible complaints mechanism in all places of detention, including police custody facilities and prisons, and whether access to immediate medical examinations and forensic expertise is guaranteed. States parties should indicate whether they have procedures in place for appropriately maintaining registers used for recording injuries and for immediately reporting any injuries indicating torture or ill-treatment to the competent judicial authorities by medical personnel.[112]
- Whether the alleged perpetrator is suspended while the investigation is being conducted and/or prohibited from further contact with the alleged victim.[113]
- Statistics on the complaints filed, investigations conducted, prosecutions initiated and convictions handed down in cases involving allegations of torture and ill-treatment, including information on the charges filed, the results of the prosecutions and the punishments imposed.
- Legal provisions regulating statutes of limitations, amnesties and immunities that may hinder accountability for torture. In some jurisdictions, there is no statute of limitations for offences of torture, which means that persons suspected of having committed torture may be brought to justice even decades after the act was alleged to have taken place. The Convention itself is not explicit on the issue of statutes of limitations. However, a statute of limitations may raise concerns regarding

[109] See, for example, CAT/C/ROU/CO/3, paras. 13 and 14; and CAT/C/NZL/CO/7, paras. 43 and 44.
[110] See, for example, CAT/C/CYP/CO/5, paras. 12 and 13; and CAT/C/MKD/CO/3, para. 10 (a).
[111] See, for example, CAT/C/ETH/CO/2, paras. 40 and 41; CAT/C/BRA/CO/2, paras. 15 and 16; and CAT/C/CHN-MAC/CO/5, paras. 16 and 17.
[112] See, for example, CAT/C/KAZ/CO/4, paras. 27 and 28; CAT/C/SRB/CO/3, paras. 17 and 18; and CAT/C/URY/CO/4, paras. 16 and 17.
[113] See, for example, CAT/C/TKM/CO/2, paras. 8 (e) and 18 (e).

effective criminal prosecution and accountability. The Committee has therefore held that statutes of limitations, like amnesties and immunities, hinder accountability for torture.[114]

In its concluding observations, the Committee often refers to the Istanbul Protocol, which has been in use since 2004. The Istanbul Protocol was developed to enable States to effectively document torture and ill-treatment, for the purpose of bringing evidence to light so that perpetrators may be held to account for their acts. The second edition of the Istanbul Protocol was published in 2022.[115] The revised version reflects the most recent jurisprudence on torture prevention, accountability and redress, as well as lessons learned from using the Istanbul Protocol over the previous 20 years. It offers additional guidance for health professionals in documenting torture and ill-treatment in different contexts and guidance for States on how to effectively implement it. The revised version is the outcome of a six-year-long multisectoral engagement by civil society, and health and human rights professionals in the field, including members of United Nations anti-torture mechanisms.

The Istanbul Protocol is a central tool for inquiry, examination and documentation of torture, which provides expert guidance on:

- Relevant international legal norms and standards.
- Relevant ethical codes of legal and health professionals.
- Legal investigation of torture and ill-treatment, including interviewing and securing and obtaining physical and psychological evidence.
- The content of interviews and general considerations for interviews, including gender, sexual orientation and gender identity, the age of the interviewee, the cultural, religious, social and political context, and the risk of retraumatization of the interviewee.
- The role of health professionals in documenting torture and ill-treatment in different contexts.
- Effective implementation of the Istanbul Protocol.

In its jurisprudence, the Committee has dealt with allegations of a failure to conduct an effective investigation of torture and ill-treatment. For example, with respect to the alleged abuse of children in a State hospital, the Committee dismissed a State party's claims that the decision not to prosecute had been informed by a lack of evidence and a determination that there was no other countervailing public interest in proceeding with a prosecution. The Committee expressed concern that the authorities had not tried to find out if anybody else could be held responsible for the alleged violations, which raised doubts as to the effectiveness of the police investigation, which should have been capable of identifying those responsible for the violations. According to the Committee, the State party endorsed such an act, leading to impunity, despite its obligation to protect those in a vulnerable position against abuse and with no other legal possibility of presenting their allegations to the competent authorities. The Committee concluded that the State party's failure to conduct an effective investigation into the circumstances surrounding the acts of torture and ill-treatment suffered by the complainant while resident at the child and adolescent unit of the psychiatric hospital was incompatible with the State party's obligations under articles 12, 13 and 14 of the Convention to ensure that the competent authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture and/or ill-treatment has been committed.[116]

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[114] See, for example, CAT/C/GBR/CO/6, paras. 33 and 41 (f); CAT/C/MDV/CO/1, paras. 21 and 22; CAT/C/NIC/CO/2, paras. 19 and 20; and CAT/C/NER/CO/1, paras. 19 and 20.

[115] OHCHR, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,* Professional Training Series No. 8/Rev. 2 (New York and Geneva, 2022).

[116] *Zentveld v. New Zealand* (CAT/C/68/D/852/2017), paras. 9.5. and 9.9.

Examples of recommendations

The State party should ensure that all alleged acts of torture or ill-treatment are investigated promptly, effectively and impartially by an independent body, that there is no institutional or hierarchical relationship between the investigators and the suspected perpetrators, that the suspected perpetrators, including those in command positions, are duly brought before a court and, if found guilty, are sentenced to punishment commensurate with the gravity of their acts and that the victims receive appropriate redress.

The State party should ensure that, in cases of alleged torture or ill-treatment, suspected officials are suspended from duty immediately for the duration of the investigation, particularly in situations in which there is a risk that they might otherwise be in a position to repeat the alleged act, commit reprisals against the alleged victim or obstruct the investigation, subject to the principle of the presumption of innocence.

The State party should ensure that detainees are provided with access to professional and confidential medical assistance, that all injuries sustained by detainees are meticulously recorded in specially designated registers and that all relevant staff, including medical personnel, prosecutors and judges, are specifically trained to identify, document and investigate cases of torture and ill-treatment, in accordance with the revised version of the Istanbul Protocol.

The State party should compile and publish statistics on the number of investigations and prosecutions carried out, convictions handed down and penalties imposed in cases of torture or ill-treatment.

Examples of good practice

In 2018, the Committee urged Guatemala to adopt effective measures for investigating all allegations of murder, torture, ill-treatment, sexual abuse and trafficking of children and adolescents who had been placed in the Virgen de la Asunción orphanage. In 2020, Guatemala informed the Committee about the progress in the investigation of the former public officials accused in connection with the deaths of the 41 minors who had perished as a result of a fire at the Virgen de la Asunción orphanage on 8 March 2017. The Committee requested that the State party keep it informed about the outcome of those judicial proceedings, as well as the means of redress.[117]

[117] CAT/C/GTM/CO/7, paras. 24 and 25; and letter dated 5 August 2020 from the Committee to the Permanent Representative of Guatemala to the United Nations Office and other international organizations in Geneva (available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fFUL%2fGTM%2f42774&Lang=en).

M. ARTICLE 13 (RIGHT OF VICTIMS TO COMPLAIN)

Article 13

"Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."

article 13 obliges States parties to ensure that persons who allege to have been subjected to torture, under the jurisdiction of the State, have the right to complain to, and to have their cases promptly and impartially examined by, its competent authorities.[118] States must also take all necessary measures to protect the complainant and the witnesses because of the complaint or any evidence given.[119]

The State party's report should include information on:

- How persons deprived of liberty can make complaints, for example by telephone, complaints box etc., and the authorities to which they can complain. Any relevant information on the use of intermediaries in lodging complaints, for example in cases of guardianship, should also be included.
- Remedies available to individuals who claim to have been victims of acts of torture or other cruel, inhuman or degrading treatment or punishment.[120]
- Remedies available to the complainants in situations in which the competent authorities refuse to investigate their cases.
- Mechanisms for the protection of the complainants and witnesses against any kind of reprisal, intimidation, torture or ill-treatment as a result of their complaint and cooperation with the relevant authorities.[121]
- Statistical data disaggregated, inter alia, by sex, age, crime and geographical location on the number of complaints of torture and other ill-treatment submitted to the domestic authorities and the results of the investigations. An indication should also be provided of the services to which the persons accused of having committed torture and/or other forms of ill-treatment belong.
- Information on the access of any complainant to independent and impartial judicial remedy, including information on any discriminatory barriers to the equal status of all persons before the law, and any rules or practices preventing harassment or retraumatization of victims.
- Information relating to the independence of the judiciary and investigatory and prosecutorial services.
- Information on any officers within police forces and prosecutorial or other relevant offices specifically trained to handle cases of alleged torture or cruel, inhuman or degrading treatment or violence against women and persons belonging to ethnic, religious or other minorities.

[118] See, for example, CAT/C/NZL/CO/7, paras. 43 and 44.
[119] See, for example, CAT/C/KAZ/CO/4, paras. 29 and 30.
[120] See, for example, CAT/C/MDA/CO/3, paras. 26 and 32 (b); CAT/C/FIN/CO/7 and CAT/C/FIN/CO/7/Corr.1, para. 29 (d); and CAT/C/ETH/CO/2, paras. 56 and 57.
[121] See, for example, CAT/C/SOM/CO/1, paras. 27 and 28; and CAT/C/POL/CO/7, para. 32 (b).

- Information on available avenues of appeal against administrative and judicial decisions regarding such complaints.
- Information on the effectiveness of any such measures.

Examples of recommendations

The State party should establish an independent, effective, confidential and accessible complaints mechanism in all places of detention, including prisons and police custody facilities, and protect victims and witnesses and members of their families from any risk of reprisals.

The State party should take the measures necessary to strengthen the existing complaints mechanisms, including by ensuring confidential and unhindered access to such mechanisms in complete privacy and by ensuring that complainants are protected against any intimidation or reprisals as a consequence of their complaints.

The State party should establish an independent, effective, confidential and accessible complaints mechanism in all places of detention, including police custody facilities and prisons, and protect victims, witnesses and members of their families from any risk of reprisals; and compile and disseminate up-to-date disaggregated statistics on the complaints filed, investigations conducted, prosecutions launched and convictions handed down in cases involving allegations of torture and ill-treatment.

The State party should redouble its efforts and prioritize the compilation of statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions relating to cases of torture and ill-treatment, deaths in custody, sexual and gender-based violence, including domestic violence, working with international partners, as needed, to enhance its capabilities in this regard.

Examples of good practice

In 2023, following consideration of the follow-up report of Nigeria in response to the Committee's concluding observations in the absence of its initial report, the Committee noted that the Anti-Torture Act (2017) permitted a victim of human rights abuses to, either directly or through a proxy, seek legal assistance from the National Human Rights Commission, NGOs or private persons in filing a complaint, and that the National Human Rights Commission Act empowered the National Human Rights Commission to receive and investigate complaints concerning violations of human rights and make appropriate determinations as it deemed necessary. It also noted the drafting by the National Human Rights Commission of documents the purpose of which was to facilitate access to its complaints procedure.[122]

[122] CAT/C/NGA/COAR/1, para. 18; CAT/C/NGA/FCOAR/1, para. 28; and letter dated 27 April 2023 from the Committee to the Permanent Representative of Nigeria to the United Nations Office and other international organizations in Geneva (available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FFUL%2FNGA%2F52678&Lang=en).

N. ARTICLE 14 (RIGHT OF VICTIMS TO REDRESS)

Article 14

"1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law."

States parties must ensure that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation. The Committee considers that the term "redress" encompasses the concepts of effective remedy and reparation and therefore entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[123]

The State party's report should include information on:

- The procedures in place to obtain compensation for victims of torture and their families and whether these procedures are codified or in any way formalized.
- Whether the State is legally responsible for the offender's conduct and, therefore, obliged to compensate the victim.
- Statistical data or, at least, examples of decisions by the competent authorities ordering compensation and indications as to whether such decisions were implemented, including any information about the nature of the torture, the status and identification of the victim and the amount of compensation or other redress provided.
- The rehabilitation programmes that exist in the country for victims of torture, including those providing medical, psychological, social or other forms of assistance.
- Information on any measures other than compensation to restore respect for the dignity of victims, their right to security and the protection of their health, measures of non-repetition and measures available to assist in their rehabilitation and reintegration into the community.

[123] General comment No. 3 (2012), para. 2.

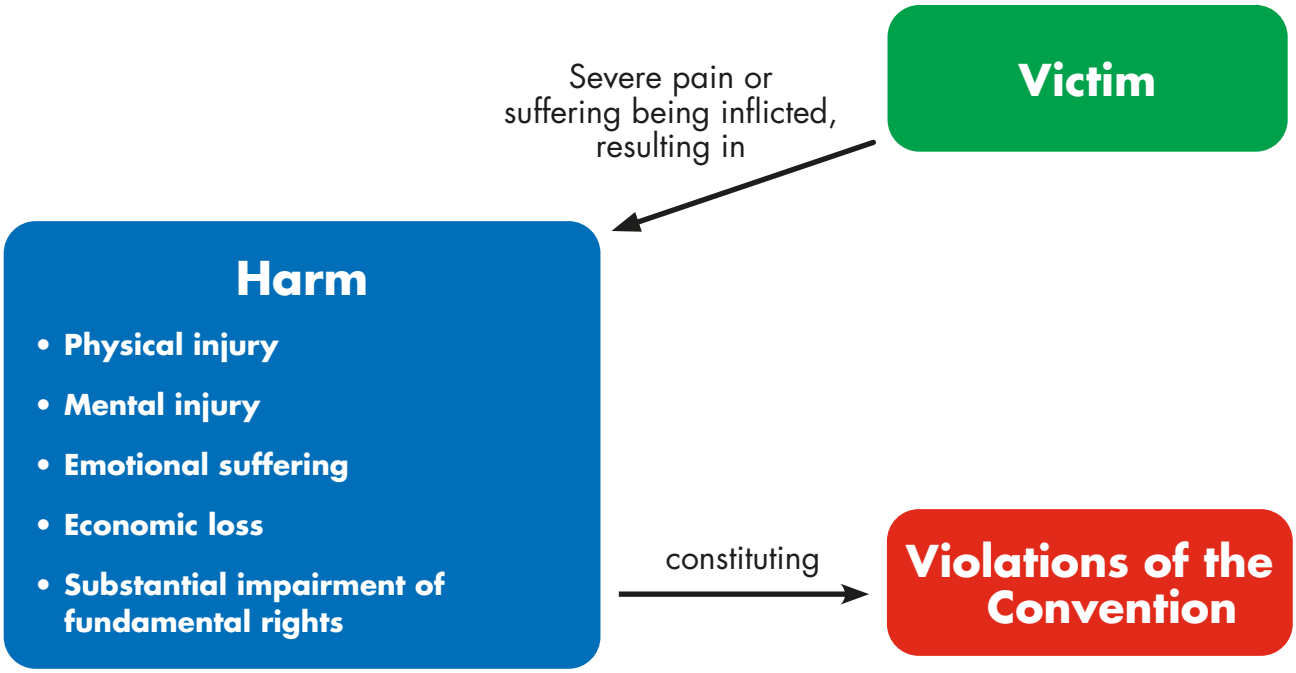
1. VICTIMS

The Committee considers victims as "persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention".[124]

According to the Committee: "A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim."[125] Thus, in situations in which the only avenue to obtain compensation for the harm suffered is through the pursuit of civil liability for the perpetrator, the obligation of States parties to provide compensation as part of redress is not sufficiently discharged. The Committee has stressed the obligation of States parties, under article 14, to provide redress to victims even in the absence of a complaint.[126]

Furthermore, the Committee considers that: "The term 'victim' also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization."[127]

In accordance with article 14 of the Convention, States parties must provide redress to victims of torture or ill-treatment. The Committee considers the restoration of the dignity of the victim as the ultimate objective in the provision of redress. Furthermore, it has emphasized the importance of victims' participation in the redress process.



[124] Ibid., para. 3.
[125] Ibid.
[126] Ibid., para. 27.
[127] Ibid., para. 3.

2. OBLIGATION OF STATES PARTIES TO PROVIDE REDRESS

States parties have both procedural and substantive obligations with respect to their duty to provide redress. The Committee considers the clear acknowledgement of violations of the Convention by the responsible State party "a crucial component of the right to redress".[128] Therefore, simply implementing development measures or providing humanitarian assistance, as a substitute for redress, is not sufficient. The Committee has further highlighted that States parties should ensure the enjoyment of the right to remedy and to obtain redress by all victims of torture or ill-treatment, regardless of when the violation occurred or whether it was carried out by or with the acquiescence of a former regime.[129]

The procedural obligations of States parties include:

- **Enacting legislation**. The Committee emphasized, in its general comment No. 3 (2012), the obligation of States parties to enact legislation specifically providing a victim of torture or ill-treatment with an effective remedy and the right to obtain adequate and appropriate redress.
- **Establishing effective and accessible complaints mechanisms**. States parties are under an obligation to establish mechanisms for complaints and investigation, including independent judicial bodies, capable of determining the right to and awarding redress for a victim of torture or ill-treatment. The Committee emphasized, in its general comment No. 3 (2012), the obligation of States parties to ensure the existence and effective functioning of such mechanisms, in particular "institutions competent to render enforceable final decisions through a procedure established by law to enable victims of torture or ill-treatment to secure redress".[130]

The substantive obligations of States parties include ensuring:

- **Restitution**. Restitution is a form of redress to re-establish victims in their situation before the act of torture or ill-treatment was committed. To do so, the specificities of each case must be considered. Examples may include restoration of liberty, reinstatement of employment, the return of property, return to the place of residence, restoration of citizenship, the return of victims to a prison closer to their families, discontinuation of the use of solitary confinement and reactivation of the right to receive visits.[131]
- **Compensation**. Victims must be awarded sufficient compensation, which is comprehensive and not limited to monetary compensation. Indeed, the Committee affirmed, in its general comment No. 3 (2012), that only monetary compensation is insufficient. Compensation may include, according to the Committee: reimbursement of medical expenses paid and provision of funds to cover future medical or rehabilitative services needed by the victim to ensure as full rehabilitation as possible; pecuniary and non-pecuniary damage resulting from the physical and mental harm caused; loss of earnings and earning potential due to disabilities caused by the torture or ill-treatment; lost opportunities such as employment and education; legal or specialized assistance; and other costs associated with bringing a claim for redress.[132]
- **Rehabilitation**. article 14 of the Convention refers to the obligation of States parties to ensure, among other things, "the means for as full rehabilitation as possible". The Committee affirms that that provision should be holistic and include medical and psychological care, as well as legal and social services. The Committee considers rehabilitation as "the restoration of function or the acquisition of new skills required by the changed circumstances of a victim in the aftermath of

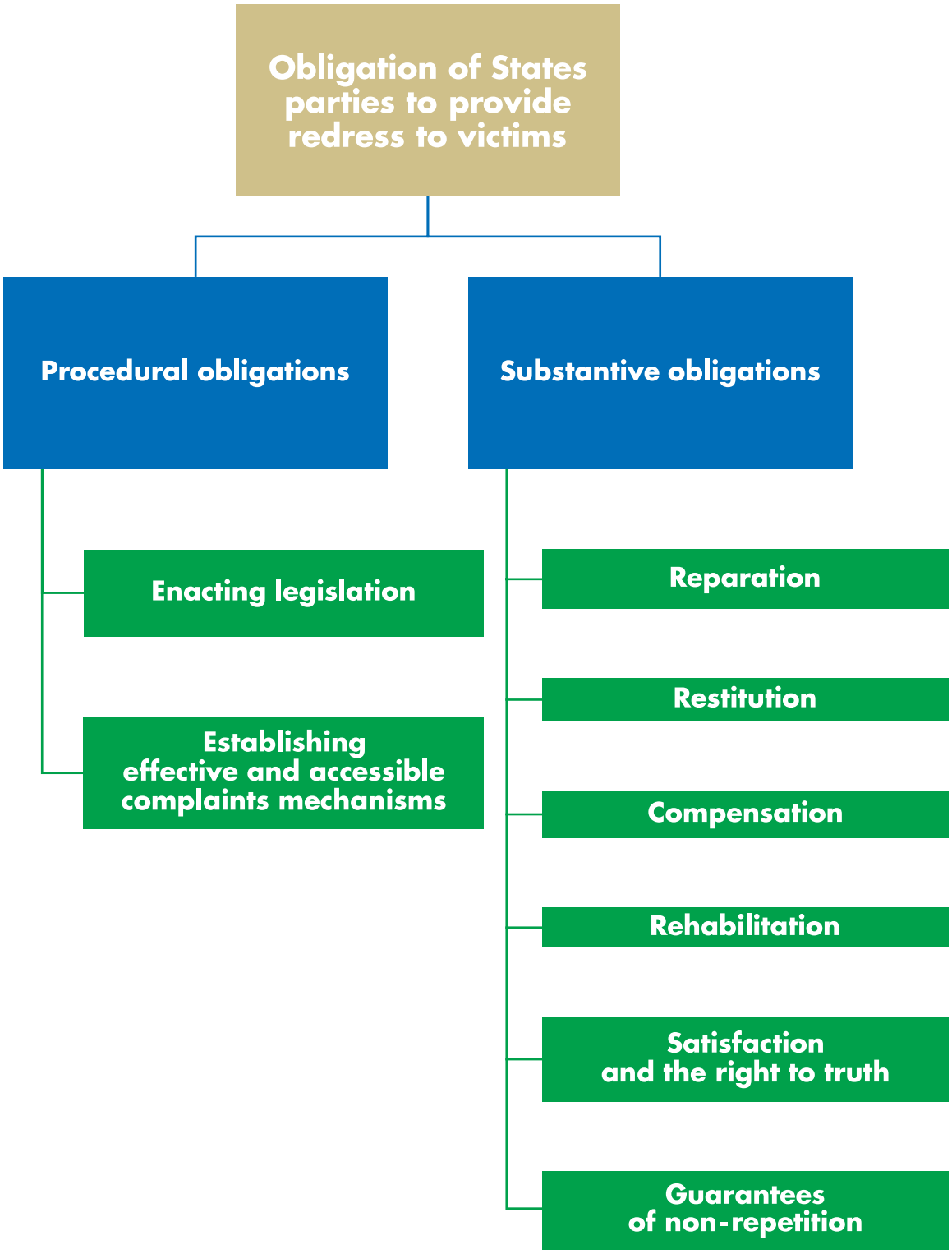
[128] Ibid., para. 37.
[129] Ibid., para. 40.
[130] Ibid., para. 24.
[131] See, for example, *Abbahah v. Morocco* (CAT/C/72/D/871/2018), para. 13.
[132] General comment No. 3 (2012), para. 10.

torture or ill-treatment [that] seeks to enable the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the person's physical and social environment".[133] The aim of the rehabilitation for victims should be restoring, as far as possible, their independence, physical, mental, social and vocational ability, and full inclusion and participation in society.

- **Satisfaction and the right to truth**. The Committee considers the following remedies as satisfaction: effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; the search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of victims' bodies in accordance with the expressed or presumed wishes of the victims or affected families; an official declaration or judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; judicial and administrative sanctions against persons liable for the violations; public apologies, including acknowledgement of the facts and acceptance of responsibility; and commemorations and tributes to the victims.[134]
- **Guarantees of non-repetition**. States parties should undertake measures to guarantee non-repetition of torture or ill-treatment. According to the Committee, such measures include issuing effective, clear instructions to public officials on the provisions of the Convention, especially the absolute prohibition of torture; civilian oversight of military and security forces; ensuring that all judicial proceedings abide by international standards of due process, fairness and impartiality; strengthening the independence of the judiciary; protecting human rights defenders and legal, health and other professionals who assist torture victims; establishing systems for regular and independent monitoring of all places of detention; providing, on a priority and continued basis, training for law enforcement officials, as well as military and security forces, on human rights law that includes the specific needs of marginalized and vulnerable populations and specific training on the Istanbul Protocol for health and legal professionals and law enforcement officials; promoting the observance of international standards and codes of conduct by public servants, including law enforcement, correctional, medical, psychological, social service and military personnel; reviewing and reforming laws contributing to or allowing torture and ill-treatment; ensuring compliance with article 3 of the Convention prohibiting refoulement; and ensuring the availability of temporary services for individuals or groups of individuals, such as shelters for victims of gender-related or other torture or ill-treatment.[135]

Lastly, the Committee considers that if a State fails to promptly and effectively investigate, criminally prosecute or allow civil proceedings related to allegations of acts of torture, that may constitute a de facto violation of the State's obligation to provide redress.[136]

[133] Ibid., para. 11.
[134] Ibid., para. 16.
[135] Ibid., para. 18.
[136] Ibid., para. 17.


Obligation of States parties to provide redress to victims
Procedural obligations
Substantive obligations
Enacting legislation
Establishing effective and accessible complaints mechanisms
Reparation
Restitution
Compensation
Rehabilitation
Satisfaction and the right to truth
Guarantees of non-repetition

3. IMPEDIMENTS TO THE ENJOYMENT OF THE RIGHT TO REDRESS

The Committee refers to several specific obstacles that impede the enjoyment of the right to redress.[137] Such impediments include, but are not limited to:

- Inadequate national legislation.
- Discrimination in accessing complaints and investigation mechanisms and procedures for remedy and redress.
- Inadequate measures to secure the custody of alleged perpetrators.
- State secrecy laws.
- Evidential burdens and procedural requirements that interfere with the determination of the right to redress.
- Statutes of limitations.
- Amnesties.
- Immunities.
- Failure to provide sufficient legal aid and protection measures for victims and witnesses.
- Associated stigma of torture and ill-treatment.
- Physical, psychological and other related effects of torture and ill-treatment.
- Failure of a State party to execute judgments providing reparative measures for victims, handed down by either national, international or regional courts.
- Inadequate or ineffective mechanisms in place to identify victims of torture, for example in situations of migration or trafficking in persons.
- Conduct of judicial and administrative proceedings such as to deter or undermine the participation of victims.

Reference materials

- General comment No. 3 (2012).
- OHCHR, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.
- Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.[138]

[137] Ibid., para. 38.
[138] General Assembly resolution 60/147.

UNITED NATIONS VOLUNTARY FUND FOR VICTIMS OF TORTURE

The United Nations Voluntary Fund for Victims of Torture was established, pursuant to its resolution 36/151, by the General Assembly in 1981. It is a unique tool to help heal the physical and psychological consequences of torture on victims, their families and communities. The Fund awards annual and emergency grants for civil society organizations to provide psychological, medical, legal and social assistance to survivors of torture. That reinforces the obligation of States under international law, including article 14 of the Convention, to provide reparation and effective remedies to victims of torture. Since its creation, the Fund has awarded more than $210 million to 660 organizations and rehabilitation centres worldwide, reaching an average of 50,000 victims every year (A/78/263, para. 44). The Committee has increasingly taken to recommending that States parties consider contributing to the Fund or, in cases in which States are already donors, increasing their contributions.

Examples of recommendations

The State party should ensure that all victims of torture obtain redress, including the enforceable right to fair and adequate compensation and the means for as full a rehabilitation as possible. The State party should also ensure continuous monitoring and evaluation of the effectiveness of rehabilitation programmes for victims of torture and collect data on the number of victims and their specific rehabilitation needs.

The Committee calls upon the State party to consider reviewing its legislation in order to ensure that all victims of torture are able to access remedy and obtain redress, wherever the acts of torture have occurred and regardless of the nationality of the perpetrator or the victim. As indicated in paragraph 22 of its general comment No. 3 (2012) on the implementation of article 14, the Committee has commended the efforts of States parties in providing civil remedies for victims who were subjected to torture or ill-treatment outside their territory. That is particularly important when a victim is unable to obtain redress in the territory in which the violation took place.

The State party should take the necessary legislative and administrative measures to ensure that civil proceedings for reparation can be brought by victims of torture or ill-treatment, their families or the person defending them, independently of any criminal proceedings that might have been initiated or completed, including in cases in which the perpetrator of the acts in question has not been identified.

The State party should compile and disseminate up-to-date statistics on the number of victims of torture and ill-treatment who have obtained redress, including medical or psychosocial rehabilitation and compensation, as well as on the forms of redress and the results achieved.

UN Photo/Sylvain Liechti

Examples of good practice

In 2023, while considering the follow-up report to the concluding observations on the fourth periodic report of Iceland, the Committee welcomed the steps taken by the State party to combat sexual and gender-based violence. It took note of the amendments introduced to the Code of Criminal Procedure in June 2022 that aimed to improve the legal position of victims and their access to compensation under certain circumstances. The Committee also took note of the adoption, in March 2023, of the national action plan on the processing of cases of sexual violence, as well as the increase in the number of police officers specializing in sexual crimes. Furthermore, it noted the information included in the follow-up replies regarding the increased number of complaints of domestic violence reported to the police in 2022.[139]

[139] CAT/C/ISL/CO/4, paras. 19 and 20; CAT/C/ISL/FCO/4, paras. 5–11; and letter dated 15 September 2023 from the Committee to the Permanent Representative of Iceland to the United Nations Office and other international organizations in Geneva (available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FFUL%2FISL%2F56188&Lang=en).

O. ARTICLE 15 (INADMISSIBILITY OF EVIDENCE OBTAINED UNDER TORTURE)

Article 15

"Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

Since acts of torture and ill-treatment are often inflicted to force a person into confessing a crime or providing information, exclusion of evidence obtained through such acts removes one of the root causes of torture or ill-treatment. States must exclude by law the use of evidence obtained through acts of torture or ill-treatment and must ensure such evidence is found inadmissible in practice by judicial authorities.[140] That rule does not apply to evidence against a person accused of torture.

The State party's report should include information on:

- Legal provisions concerning the prohibition of using a statement obtained under torture as an element of proof.
- Examples of cases in which such provisions were applied, including public information on criminal proceedings in which judges, either on their own initiative or at the request of parties to the case, have ruled that evidence obtained under torture is inadmissible and on any other measures taken in that regard.
- Information on whether officials who extract confessions through torture are immediately brought to justice and examples thereof.
- Information on whether derivative evidence is admissible, if applicable in the State party's legal system.
- Information on any training provided to law enforcement officers, prosecutors and judges on identifying the signs and sequelae of torture, including information on training on the revised version of the Istanbul Protocol, and on the link between non-coercive interrogation techniques,[141] the prohibition of torture and ill-treatment and the obligation of the judiciary to disallow confessions obtained under torture.

[140] See, for example, CAT/C/ETH/CO/2, para. 47; CAT/C/SOM/CO/1, para. 22; and CAT/C/MWI/CO/1, para. 16.
[141] See also the Méndez Principles, cited by the Committee in, for example, CAT/C/MWI/CO/1, para. 16 (b).

Examples of recommendations

The State party should ensure that confessions and statements obtained through torture or ill-treatment are not admitted as evidence in practice, except against persons accused of committing torture, as evidence that the statement was made under duress.

The State party should ensure, when it is alleged that a statement has been obtained through torture, that the allegation is investigated immediately, effectively and independently and that alleged perpetrators are prosecuted and, if found guilty, punished.

The State party should provide all police officers, national security officers and military personnel, judges and public prosecutors with mandatory training emphasizing the link between non-coercive interrogation techniques, the prohibition of torture and ill-treatment and the obligation of the judiciary to invalidate confessions and witness statements made under torture, taking note, in that regard, of the Méndez Principles.

The State party should take the necessary measures, including legislative measures, to ensure that confessions obtained through torture and ill-treatment are systematically declared null and void and to ensure that this obligation is met in practice.

Examples of good practice

In 2022, the Committee commended the United Arab Emirates for the introduction of Federal Decree-Law No. 28 of 2020, which amended article 2 of the Code of Criminal Procedure to explicitly prohibit the use of evidence obtained through torture.[142]

The Committee noted the guarantees set forth in subsection 269.1 (4) of the Criminal Code of Canada, which barred the admission in evidence of any statement obtained by torture for any purpose, except as evidence that the statement had in fact been obtained by torture.[143]

UN Photo/Sophia Paris

[142] CAT/C/ARE/CO/1, paras. 5 (i) and 33.
[143] CAT/C/CAN/CO/7, para. 42.

P. ARTICLE 16 (CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT)

Article 16

"1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion."

The Convention prohibits acts of cruel, inhuman or degrading treatment or punishment (ill-treatment) that do not amount to torture. The Convention does not provide an exact definition of ill-treatment or a precise distinction between torture and ill-treatment. Rather, it distinguishes torture from ill-treatment by negative delineation. Ill-treatment may "not amount to torture" either because it does not have the same purposes as torture, or it is not intentional, or the pain and suffering are not severe enough. In practice, the definitional threshold between cruel, inhuman or degrading treatment or punishment, on the one hand, and torture, on the other, is often not clear. The Committee established, in its general comment No. 2 (2007), that the obligation to prevent torture, laid down in article 2 of the Convention, is indivisible from and interdependent with the obligation to prevent cruel, inhuman or degrading treatment or punishment. Because the perpetrated acts may often be identical, elements such as the powerlessness of the victim, the severity of the treatment and the purpose of the ill-treatment make the distinction in qualifying an act as torture or ill-treatment. In situations in which the Committee is unable to find sufficient evidence to state with certainty that the established facts of the case constitute torture within the meaning of article 1, it may still find that they constitute, as a minimum, cruel, inhuman or degrading treatment or punishment within the meaning of article 16 of the Convention.[144]

[144] *E.L.G. v. Spain* (CAT/C/68/D/818/2017), para. 8.2.

ARTICLE 1 (1)	ARTICLE 16 (1)
"… '**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. …."	"Each State Party shall undertake to prevent in any territory under its jurisdiction **other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture** as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. …."

An act of ill-treatment perpetrated in a situation of powerlessness will more likely amount to torture. Such a situation of powerlessness can be, for instance, when the person is held in detention.

Ill-treatment must attain a minimum level of severity to constitute torture and other cruel, inhuman or degrading treatment or punishment. However, any pain or suffering caused is relative to the person and the context in which the act is committed. Therefore, the totality of all the circumstances of the case must be taken into consideration, including:

- The duration of the abusive act or treatment.
- The effects and consequences on the victim's mental and physical health.
- The powerlessness of the victim (under direct physical or equivalent control and unable to escape or resist, such as persons deprived of their liberty).
- The legal framework and country context (e.g. in situations in which abuse is prevalent and systemic).
- The status of the victim and intersectional factors (ethnic origin, cast, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, sex characteristics, disability, health status, economic status, the reason for which the person is detained, legal status (asylum-seekers, refugees or others under international protection) or any other identity factor).

To decide whether an act of ill-treatment attains the level of severity under article 3 of the European Convention on Human Rights, the European Court of Human Rights considers the duration of the treatment, its physical and mental effects, and the sex, age and state of health of the victim.[145]

The purpose of the perpetrator is a key element in deciding whether an act constitutes torture. Situations of severe pain or suffering, whether physical or mental, that arise as a result of negligence are thus more appropriately qualified as acts of ill-treatment.

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[145] *Ireland v. the United Kingdom*, application No. 5310/71, Judgment, 18 January 1978, para. 167; *Labita v. Italy*, application No. 26772/95, Judgment, 6 April 2000, para. 120; *Kudła v. Poland*, application No. 30210/96, Judgment, 26 October 2000, para. 92; *Gäfgen v. Germany*, application No. 22978/05, Judgment, 1 June 2010, paras. 89 and 91 and 101–108; *Orhan v. Turkey*, application No. 25656/94, Judgment, 18 June 2002, para. 360; *Simeonovi v. Bulgaria*, application No. 21980/04, Judgment, 12 May 2017, para. 90; *Ilaşcu and Others v. Moldova and Russia*, application No. 48787/99, Judgment, 8 July 2004, para. 427; *M.S.S. v. Belgium and Greece*, 2011, application No. 30696/09, Judgment, 21 January 2011, para. 220; *Tyrer v. the United Kingdom*, application No. 5856/72, Judgment, 25 April 1978, paras. 30 and 31; and *Bouyid v. Belgium*, application No. 23380/09, Judgment, 28 September 2015, para. 90.

The Convention must be interpreted in the light of present-day conditions and all the relevant circumstances of each case. Therefore, the threshold that must be attained for an act of ill-treatment to violate the Convention may change over time. An act that would not be considered as a violation of the Convention some time ago may be considered as amounting to torture and other cruel, inhuman or degrading treatment or punishment in the light of present-day conditions. Likewise, an act that is considered as cruel, inhuman or degrading treatment or punishment but does not attain the threshold to constitute torture may subsequently be considered as torture in the light of present-day conditions.

As regards article 16 of the Convention, the State party's report should include information on:

- The extent to which acts of cruel, inhuman or degrading treatment or punishment have been outlawed by the State party; and whether these acts are defined or otherwise dealt with in domestic law, including information on relevant legal provisions, the decisions of domestic courts and their interpretation.
- Measures that may have been taken by the State party to prevent such acts.
- Living conditions in all places of deprivation of liberty, including police detention centres, prisons, military units, migration detention centres, psychiatric institutions and any other place where persons are or might be deprived of their liberty. Specific information should be included on living conditions in places of deprivation of liberty for women and minors in conflict with the law, including whether they are kept separate from the rest of the male and adult population. Issues related to overcrowding, inter-prisoner violence, disciplinary measures against detainees or inmates, medical and sanitary conditions, the most common illnesses and the treatment thereof, access to food and drinking water, conditions of detention of minors and their access to education and meaningful activities should, in particular, be addressed.

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IV

Specific issues of concern to the Committee

There are some specific and cross-cutting issues related to torture or ill-treatment that are of concern to the Committee. In situations in which the issues are relevant to them, States parties should provide information relating to such issues when reporting to the Committee. While reporting on such cross-cutting issues, States parties should follow the reporting guidelines and provide information under each article, as relevant. Such cross-cutting issues include:

- The death penalty.
- Enforced disappearances.
- Excessive use of force by law enforcement officials.
- Harassment, intimidation, violence, arbitrary arrest and detention, prosecution and torture or ill-treatment of human rights defenders, political opponents, civil society activists, journalists and government critics.
- Sexual and gender-based violence, including conflict-related sexual violence, rape, domestic violence, female genital mutilation and violations of reproductive rights, including forced sterilization, forced abortion and restrictive abortion laws.
- Trafficking in persons.
- Violence against children, including corporal punishment.
- Violence and criminal acts motivated by hatred and intolerance.

A. DEATH PENALTY

The methods for carrying out the death penalty, as well as "the death row phenomenon" (i.e. the psychological effects, upon detainees, of being on death row for a prolonged period while awaiting an imminent execution under harsh conditions of detention and prolonged solitary confinement), may amount to torture or cruel, inhuman or degrading treatment.[146] Imposition of the death penalty based on a confession of guilt obtained under the duress of torture is contrary to the Convention.[147] Furthermore, the death penalty should never be imposed on children,[148] pregnant or nursing women, elderly persons or persons with psychosocial or intellectual disabilities.

The Committee has found that some methods of capital punishment violate article 16 by causing unnecessary suffering or violating the dignity of a person. That also includes cases of excruciating pain and prolonged suffering caused by procedural irregularities in the course of execution (cases of botched executions).[149]

The Committee has held that the manner in which death sentences are carried out – the secrecy and arbitrariness surrounding the execution of persons sentenced to death and the absence of advance notice of the date and time of executions either to the individuals on death row or to their families or representatives, resulting in the individuals not knowing at any moment whether their execution is imminent, the individuals and their families unable to have a final meeting, the body of the executed prisoner not being handed over to the family and the place of burial not being disclosed to them –

[146] See, for example, CAT/C/COD/CO/2, para. 36; CAT/C/VNM/CO/1, para. 32; CAT/C/MDV/CO/1, para. 33; and CAT/C/USA/CO/3-5, para. 25.
[147] See, for example, CAT/C/BLR/CO/5, paras. 54 and 55.
[148] See, for example, CAT/C/AFG/CO/2, paras. 33 and 34 (c).
[149] See, for example, CAT/C/MRT/CO/2, paras. 34 and 35; and CAT/C/USA/CO/3-5, para. 25.

can also constitute cruel, inhuman or degrading treatment.[150] The Committee has also held that the prolonged time spent on death row and continued delays in recourse procedures may cause prisoners sentenced to death to suffer uncertainty and distress. Such mental suffering may amount to cruel, inhuman or degrading treatment and, in certain cases, to torture, insofar as it corresponds to the threat of imminent death, which can be a form of torture.[151]

Reference materials

- The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of death penalty.[152]
- General Assembly resolutions on the moratorium on the use of the death penalty.[153]
- The third report to the Human Rights Council of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.[154]
- Protocols Nos. 6 and 13 to the European Convention on Human Rights.[155]
- The Protocol to the American Convention on Human Rights to Abolish the Death Penalty.[156]

Examples of good practice

In 2014, the Committee encouraged Sierra Leone "to accelerate its current legislative review and to abolish the death penalty, in line with the commitment made during the dialogue with the Committee".[157] In 2021, the Parliament of Sierra Leone officially abolished the death penalty and became the twenty-third country on the African continent to end capital punishment. The abolition of the death penalty was the result of considerable long-term efforts at the national level, which the Committee's recommendation contributed to.

B. ENFORCED DISAPPEARANCES

Victims of enforced disappearances are removed from the protective space of the law and are "disappeared" from society, thus deprived of all their rights. They are subjected to torture and other ill-treatment and are in constant fear for their lives, while their families are ignorant of their whereabouts and fate, sometimes for years. In the end, they may be disappeared and killed, or eventually released after having experienced severe physical and psychological suffering.

The International Convention for the Protection of All Persons from Enforced Disappearance defines enforced disappearance as "the arrest, detention, abduction or any other form of deprivation of liberty

[150] See, for example, CAT/C/BWA/CO/1, para. 23; and CAT/C/BLR/CO/4, para. 27.
[151] See, for example, CAT/C/USA/CO/3-5, para. 25; and CAT/C/IRQ/CO/2, para. 30.
[152] General Assembly resolution 44/128.
[153] See, for example, General Assembly resolutions 62/149, 63/168 and 65/206.
[154] A/HRC/10/44.
[155] Council of Europe, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of death penalty, 28 April 1983, European Treaty Series No. 114; and Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, 3 May 2002, European Treaty Series No. 187.
[156] Organization of American States, Protocol to the American Convention on Human Rights to Abolish the Death Penalty, 8 June 1990, OAS Treaty Series No. 73.
[157] CAT/C/SLE/CO/1, para. 12.

by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law" (art. 2).

Enforced disappearance constitutes a violation of the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The Committee considers enforced disappearance as a grave violation of the Convention. It affects not only the rights of disappeared persons, but also those of their relatives, who may be considered as primary victims together with the disappeared persons, because of the anxiety and anguish that they suffer as a result of the disappearance of their family members.[158] Relatives are also often under the threat that they may suffer the same fate themselves and that searching for the truth may expose them to even greater danger.

The State must criminalize enforced disappearance as a distinct offence. All allegations of enforced disappearance must be thoroughly and impartially investigated to establish the whereabouts of the individuals reported as missing[159] and those who appear to be responsible must be prosecuted and punished in proportion to the seriousness of their acts.[160] Victims, including relatives of disappeared persons, must be provided with full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible. Satisfaction for victims of enforced disappearance and their families may include the search for the whereabouts of the disappeared, for the identities of the children abducted and for the bodies of those killed, and assistance in the recovery, identification and reburial of victims' bodies in accordance with the expressed or presumed wishes of the victims or affected families.[161]

States parties to the Optional Protocol must establish national preventive mechanisms. The Committee on Enforced Disappearances considers those mechanisms as instrumental in preventing enforced disappearances.[162]

Reference materials

- OHCHR, *Enforced Disappearances*, Fact Sheet No. 6/Rev. 4 (New York and Geneva, 2023).
- Declaration on the Protection of All Persons from Enforced Disappearance.[163]
- General comment No. 3 (2012).
- General comment No. 4 (2017).

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[158] See, for example, *Guerrero Larez v. Bolivarian Republic of Venezuela* (CAT/C/54/D/456/2011), paras. 6.1–8.

[159] See, for example, CAT/C/BIH/CO/6, paras. 26 and 27; and CAT/C/CMR/CO/5, paras. 9 and 10.

[160] See, for example, CAT/C/SLV/CO/3 and CAT/C/SLV/CO/3/Corr.1, paras. 14 and 15; CAT/C/NIC/CO/2, paras. 23 and 24; CAT/C/KEN/CO/3, paras. 11 and 12; CAT/C/LTU/CO/4, paras. 19 and 20; and CAT/C/BGD/CO/1, paras. 14–16.

[161] General comment No. 3 (2012), para. 16.

[162] "The Committee welcomes the fact that the State party has ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and that it established the national preventive mechanism in October 2013, since it considers that those measures could be instrumental in preventing enforced disappearances and other violations of the rights and obligations contained in the Convention" (CED/C/ECU/CO/1, para. 17).

[163] General Assembly resolution 47/133.

C. EXCESSIVE USE OF FORCE BY LAW ENFORCEMENT OFFICIALS

Unnecessary or disproportionate use of force by law enforcement officials may amount to torture or other cruel, inhuman or degrading treatment or punishment, including due to indiscriminate or excessive application of law enforcement provisions, use of restraint techniques, use of certain equipment and weapons or the use of crowd control tactics and instruments.

Given the obligation of States parties to prevent such abuse, law enforcement officers must receive systematic training on the use of force, especially in the context of demonstrations and the use of non-violent and de-escalating means of crowd control. The principles of legality, necessity and proportionality must apply strictly during the policing of demonstrations. Furthermore, States parties should ensure that law and order are maintained, to the greatest extent possible, by the civilian authorities and that all officers can be effectively identified at all times when carrying out their functions to help to ensure individual accountability and protection against acts of torture and ill-treatment.

The State party's report should include information on measures taken to ensure that it has put in place clear, binding rules governing the use of force that are fully compatible with international standards, as well as on training on international standards, including on the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement* and *The Minnesota Protocol on the Investigation of Potentially Unlawful Death*, received by law enforcement officials. Excessive use of force and brutality by law enforcement officials must be thoroughly and impartially investigated and those who appear to be responsible must be prosecuted and punished in proportion to the seriousness of their acts. Victims must be provided with full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible.[164] States parties should report to the Committee on the related measures that they introduce and their impact. States parties should also provide statistical data on complaints of acts of torture, ill-treatment and excessive use of force recorded by the State authorities in the context of demonstrations and include information on investigations, disciplinary and criminal proceedings, convictions and the disciplinary or criminal sanctions applied. Furthermore, States parties should explain any measures adopted to ensure that there is no institutional or hierarchical relationship between investigators and the suspected perpetrators of such acts. The State party's report should include examples of relevant cases and judicial decisions. States parties should also indicate whether complainants and victims are duly informed of the progress and results of their complaints and which judicial remedies are available to them should a prosecutor decide not to pursue a case.

Use of force that cannot be justified according to international law may also amount to a violation of the right to peaceful assembly in the context of demonstrations.

States may also submit information pertaining to relevant regulations and measures aimed at preventing and prohibiting the production, trade and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment or punishment, which may be used in the context of peaceful assemblies.[165]

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[164] See, for example, CAT/C/SVK/CO/4, paras. 15 and 16; CAT/C/IRQ/CO/2, paras. 32 and 33; CAT/C/CUB/CO/3, paras. 42 and 43; CAT/C/BEL/CO/4, paras. 7 and 8; and CAT/C/LVA/CO/6, paras. 24 and 25.

[165] See, for example, CAT/C/ZAF/CO/1, para. 28.

In situations in which excessive use of force by law enforcement officials leads to extrajudicial killings, such force also constitutes a violation of the right to life. The Committee considers extrajudicial killings as a grave violation of the Convention.[166]

According to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials:

- "In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary" (principle 13).
- "In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9 [in cases of self-defence or defence of others]" (principle 14).

According to the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement:

- "In carrying out their duties, law enforcement officials shall, as far as possible, make use of non-violent means before resorting to the use of force or firearms. They may use force only if other means appear ineffective or without any promise of achieving the intended result" (principle 2.2).
- "Where necessary, law enforcement officials shall be equipped with appropriate personal protective equipment, such as helmets, shields, stab-resistant gloves and vests and bullet-resistant vests" (principle 2.2).
- "Any use of force by law enforcement officials shall comply with the principles of legality, precaution, necessity, proportionality, non-discrimination and accountability" (principle 2.3).

Reference materials

- United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*.[167]
- *The Minnesota Protocol on the Investigation of Potentially Unlawful Death*.[168]

Examples of recommendations

The Committee urges the State party to exercise strict control over the police and security forces to prevent them or any other person from committing extrajudicial executions; and to fully discharge its obligation to ensure that all allegations of extrajudicial, arbitrary or summary executions, as well as alleged assassinations of political opponents, are impartially investigated, with due regard for the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and that those responsible receive sentences commensurate with the gravity of the offence while fully respecting the principle of command responsibility or superior responsibility, according to which hierarchical superiors are held criminally responsible for the conduct of their subordinates where they knew or should have known that the latter had committed, or were likely to commit, extrajudicial, arbitrary or summary executions and they failed to take reasonable and necessary preventive measures.

[166] See, for example, CAT/C/IRQ/CO/1 and CAT/C/IRQ/CO/1/Corr.1, para. 12.
[167] OHCHR, *United Nations Human Rights Guidance on the Use of Less-Lethal Weapons in Law Enforcement* (New York and Geneva, 2020).
[168] OHCHR, *The Minnesota Protocol on Investigation of Potentially Unlawful Death (2016): the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* (New York and Geneva, 2017).

D. HARASSMENT, INTIMIDATION, VIOLENCE, ARBITRARY ARREST AND DETENTION, PROSECUTION AND TORTURE OR ILL-TREATMENT OF HUMAN RIGHTS DEFENDERS, POLITICAL OPPONENTS, CIVIL SOCIETY ACTIVISTS, JOURNALISTS AND GOVERNMENT CRITICS

The State party's report should include information on measures taken to protect human rights defenders, journalists, civil society activists, political opponents and government critics from acts of intimidation, harassment, violence, arbitrary arrest and detention, prosecution and torture or ill-treatment to which they may be exposed because of their activities, as well as on measures to promptly, effectively and impartially investigate any such allegations and punish those responsible. It should include statistical data on the number of related complaints, the outcomes of any investigations opened following these complaints and the sentences and penalties handed down.[169]

Examples of recommendations

The State party should ensure that human rights defenders, political opponents, members of civil society, journalists and persons critical of the Government are adequately protected against all forms of intimidation, harassment, violence, arbitrary arrest and detention, prosecution, torture and ill-treatment, enforced disappearance and extrajudicial execution to which they may be subjected as a result of their activities.

The State party should take all necessary steps to undertake prompt, effective and impartial investigations into the allegations of human rights violations, to punish those responsible with appropriate penalties and ensure that these are duly enforced, and to immediately release all persons being detained for exercising their right to freedom of expression, peaceful assembly and association.

The State party should take steps to promote the civic space and the right to freedom of expression and association and lift the remaining suspensions and sanctions on private and independent media outlets.

Examples of good practice

In 2023, the Committee welcomed the adoption by Brazil of the Programme for the Protection of Human Rights Defenders, Communicators and Environmentalists, in 2018, and the launch of the Information System on Threatened Human Rights Defenders, in 2014.[170]

[169] See, for example, CAT/C/MWI/CO/1, paras. 39 and 40; CAT/C/SLV/CO/3 and CAT/C/SLV/CO/3/Corr.1, paras. 36 and 37; CAT/C/SRB/CO/3, paras. 41 and 42; and CAT/C/UZB/CO/5, paras. 17 and 18.

[170] CAT/C/BRA/CO/2, para. 45.

E. SEXUAL AND GENDER-BASED VIOLENCE

Gender-based violence is described as "violence that is directed against a woman because she is a woman or that affects women disproportionately" and "a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men".[171] It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. It impairs or nullifies the enjoyment by women of their human rights, including the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment.[172]

Sexual and gender-based violence can be committed by public officials, non-State actors or private actors in peaceful times, as well as in the context of an armed conflict. The Committee has made clear that, in situations in which State authorities or others acting in an official capacity know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as responsible under the Convention for consenting to or acquiescing in such impermissible acts.[173]

Gender-based violence, with or without the direct involvement of State officials, may amount to torture or to cruel, inhuman or degrading treatment or punishment and thus violate the obligations of States parties under the Convention. States parties have an obligation to prevent gender-based violence and to thoroughly investigate such incidents and prosecute and punish those responsible. States parties must also provide victims of gender-based violence with redress. Therefore, a State party's report should


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[171] Committee on the Elimination of Discrimination against Women, general recommendation No. 19 (1992), paras. 1 and 6.

[172] Ibid., paras. 6 and 7. Furthermore, the Committee on the Elimination of Discrimination against Women held, in its general recommendation No. 35 (2017), para. 2, that the prohibition of gender-based violence against women had evolved into a principle of customary international law, binding all States.

[173] General comment No. 2 (2007), para. 18.

include information on any specific legislative and other measures adopted to criminalize and prevent gender-based violence and explain how it ensures that mechanisms are in place to encourage victims of such violence to come forward. States parties should also provide information on investigations and prosecutions conducted and convictions handed down, on measures taken to facilitate access to justice for victims, including in remote areas, for example, by protecting witnesses, establishing mobile courts, as necessary, or carrying out awareness-raising campaigns, as well as on resources allocated to victim support programmes.[174]

GENDER-BASED VIOLENCE

"State reports frequently lack specific and sufficient information on the implementation of the Convention with respect to women. The Committee emphasizes that gender is a key factor. Being female intersects with other identifying characteristics or status of the person such as race, nationality, religion, sexual orientation, age, immigrant status etc. to determine the ways that women and girls are subject to or at risk of torture or ill-treatment and the consequences thereof. The contexts in which females are at risk include deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes. Men are also subject to certain gendered violations of the Convention such as rape or sexual violence and abuse. Both men and women and boys and girls may be subject to violations of the Convention on the basis of their actual or perceived non-conformity with socially determined gender roles. States parties are requested to identify these situations and the measures taken to punish and prevent them in their reports."

General comment No. 2 (2007), para. 22.

Reference materials

- General comment No. 2 (2007).
- Committee on the Elimination of Discrimination against Women, general recommendation No. 35 (2017).
- Human Rights Committee, general comment No. 28 (2000).
- The Declaration on the Elimination of Violence against Women.[175]
- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.[176]
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol).[177]
- The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention).[178]

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[174] See, for example, CAT/C/ETH/CO/2, paras. 16, 17, 24 and 25; CAT/C/LUX/CO/8, paras. 33 and 34; CAT/C/IRQ/CO/2, paras. 38 and 39; and CAT/C/MNE/CO/3, paras. 28 and 29.

[175] General Assembly resolution 48/104.

[176] Organization of American States, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), 9 June 1994.

[177] African Union, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 11 July 2003.

[178] Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, 11 May 2011, Council of Europe Treaty Series No. 210.

1. CONFLICT-RELATED SEXUAL VIOLENCE

As noted by the Committee on the Elimination of Discrimination against Women,[179] conflict-related sexual violence is distinguished from other acts of sexual violence due to the environment of conflict in which it occurs and the profile of perpetrators and victims. When rape and other forms of sexual violence are carried out in the context of armed conflicts, they can constitute war crimes, crimes against humanity or a constitutive act with respect to genocide, if conditions for such types of crimes are present in the case.

States parties have an obligation under the Convention to protect their populations against any form of violence, including sexual violence in the context of armed conflicts, inflicted by State armed or security forces or non-State actors or armed groups. On numerous occasions, the Committee has highlighted the obligation of States parties to rescue victims in the captivity of armed groups or other non-State actors and take vigorous measures to eliminate the impunity enjoyed by the perpetrators of acts of sexual violence in the context of the armed conflict, whether they are State officials or non-State actors. In that connection, States parties should criminalize all forms of sexual violence in national legislation prohibiting torture, conduct prompt, impartial and thorough investigations, try the perpetrators of such acts and, if they are found guilty, sentence them to punishment commensurate with the gravity of their acts. Furthermore, any exemptions from criminal prosecution and sanctions for sexual violence should be prohibited, including routine reduction of sentences and replacement of imprisonment with fines. Moreover, States parties should ensure that victims are able to claim and receive effectively and expeditiously all relevant forms of redress, which include comprehensive, inclusive and survivor-centred rehabilitation programmes and guarantees of non-repetition. They should also provide access to shelter, medical and psychological care and rehabilitation and public services to victims fleeing such violence.[180]

Examples of recommendations

The State party should ensure that all cases of sexual and gender-based violence against women and girls committed in the context of the armed conflict are promptly and effectively investigated and that perpetrators, including instigators and accomplices, are prosecuted and, if convicted, punished with appropriate penalties.

The State party should (a) assess the needs of victims of acts of sexual and gender-based violence and ensure effective access to redress, including adequate compensation and specialized medical and psychological rehabilitation services; (b) increase the number of, and training for, judges specializing in sexual and gender-based violence in conflict-affected areas and strengthen their capacity; and (c) facilitate access to justice for victims, including in remote areas, by educating the public, protecting witnesses and establishing mobile courts, as necessary.

[179] Committee on the Elimination of Discrimination against Women, "Conflict-related sexual violence as gender-based violence against women and girls, CEDAW Convention, general recommendations (Nos 35 and 30) and practice of the Committee with recommendations and guidance to State parties to the Convention" (2022), available at www.ohchr.org/en/documents/tools-and-resources/conflict-related-sexual-violence-gender-based-violence-against-women.

[180] See, for example, CAT/C/COD/CO/2, paras. 30–35; CAT/C/LKA/CO/3-4, para. 22; CAT/C/GTM/CO/7, paras. 26 and 27; CAT/C/PER/CO/7, paras. 32 and 33; CAT/C/COL/CO/5, para. 14; CAT/C/COL/CO/6, paras. 18 and 19; and CAT/C/IRQ/CO/1 and CAT/C/IRQ/CO/1/Corr.1, para. 13.

Examples of good practice

In 2024, following consideration of the follow-up report of Iraq to the concluding observations to its second periodic report, the Committee welcomed the various steps taken by the State party to address conflict-related sexual violence, in particular the establishment of the General Directorate for Women Survivors at the Ministry of Labour and Social Affairs, a committee to review applications from survivors for pecuniary and non-pecuniary damages suffered and an investigation and fact-finding team to search for Yazidi missing persons in Sinjar Province. It also took note of the statistical data provided by the State party on victims rescued from the captivity of Da'esh.[181]

UN Photo/Martine Perret

[181] CAT/C/IRQ/CO/2, para. 21; CAT/C/IRQ/FCO/2, paras. 35–48; and letter dated 26 February 2024 from the Committee to the Permanent Representative of Iraq to the United Nations Office and other international organizations in Geneva (available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FFUL%2FIRQ%2F57645&Lang=en), pp. 2 and 3.

2. RAPE AND SEXUAL VIOLENCE

States parties have a duty to prevent rape and sexual violence, whether with or without the involvement of public officials, and to thoroughly investigate such incidents and prosecute and punish those responsible.[182] States parties must also provide the victims of rape and sexual violence with redress.

When rape is carried out by or at the instigation of or with the consent or acquiescence of public officials, it constitutes torture. It can occur in several contexts, for example, in places of deprivation of liberty,[183] and educational, social welfare and psychiatric institutions. It can also occur in the private sphere, for example, as a form of domestic violence, which then is a matter of State responsibility concerning due diligence in protecting individuals from individual acts of violence, including rape and sexual violence.

Examples of recommendations

The State party should revise the definition of rape in its national legislation so that it includes lack of consent, increase the number of rape crisis centres and ensure a higher rate of reporting, strengthen the support services available to victims of sexual violence and develop a low-threshold service network that also provides long-term support.

The State party should ensure that thorough and independent investigations are opened into all cases of sexual violence committed as a means of intimidation and political repression and that the alleged perpetrators, whether they are State actors or non-State actors having acted with the consent or acquiescence of public officials, are brought to justice and, if found guilty, are sentenced to penalties commensurate with the seriousness of their actions.

The State party should ensure that the women victims of this violence have access in practice to legal services, medical care and psychosocial support, as well as to effective remedies, reparation and protection measures, including against reprisals.

Examples of good practice

In 2023, Finland amended chapter 20 of its Criminal Code, which provides that the offence of rape is based on lack of consent.[184]

In 2023, the Committee welcomed Act No. 2208 of 29 December 2020, amending the Penal Code of Denmark and introducing a new consent-based definition of rape, and Act No. 69 of 5 May 2022 amending the Penal Code of the Faroe Islands and introducing a new consent-based definition of rape and criminalization of non-consensual sexual acts.[185]

[182] See, for example, CAT/C/SVN/CO/4, paras. 36 and 37; and CAT/C/ETH/CO/2, paras. 24 and 25.

[183] See, for example, *C.T. and K.M. v. Sweden* (CAT/C/37/D/279/2005), para. 7.5, which concerns deportation to Rwanda, in which the Committee concluded that, based on the medical evidence provided, and the State party's failure to dispute the claim, the complainant was repeatedly raped in detention and as such was subjected to torture in the past. On examining the dates of her detention and the date of birth of her son, the Committee considered that, without doubt, he had been the product of rape by public officials and was thus a constant reminder to the complainant of her rape.

[184] CAT/C/FIN/CO/8, para. 5 (b).

[185] CAT/C/DNK/CO/8, para. 4.

3. DOMESTIC VIOLENCE

The Committee on the Elimination of Discrimination against Women has stated that domestic violence is one of the most insidious forms of violence against women that exists in all societies, affecting women of all ages. Such violence can occur in any form, including rape, other forms of sexual assault, and mental and other forms of violence.[186]

Incidents of domestic violence are sometimes wrongly considered to be a private matter within the family or between spouses. States have an obligation to prevent harm being inflicted upon women, whether it occurs in a private or public context; and an obligation to thoroughly investigate such incidents and prosecute and punish those responsible. States must also provide victims of gender-based violence, including domestic violence, with redress. In that respect, the Committee against Torture has condemned the prevalence of violence against women and girls, including domestic violence, in its concluding observations and recommended that States parties take a wide range of measures against domestic violence, including adopting specific legislative and other measures to criminalize and prevent domestic violence and ensuring that mechanisms were in place to encourage victims of sexual and gender-based violence to report violations and to reinforce reporting by launching awareness-raising campaigns on reporting mechanisms and remedies. States parties should ensure that all allegations of violence are promptly, thoroughly and effectively investigated, that perpetrators are held accountable and that victims obtain adequate redress and have access to adequate medical and psychosocial support.[187]

Examples of recommendations

The State party should adopt specific legislative and other measures to criminalize and prevent domestic violence and violence on the basis of gender identity and sexual orientation, and should ensure that mechanisms are in place to encourage victims of sexual and gender-based violence to come forward, that all allegations of violence are promptly, thoroughly and effectively investigated, that perpetrators are held accountable and that victims obtain adequate redress and have access to adequate medical and psychosocial support.

Examples of good practice

In 2023, the Committee welcomed the establishment in Kazakhstan of crisis centres and shelters for victims of domestic violence in each region and the increased number of female investigators, and noted the amendments made to the Domestic Violence Prevention Act in 2020.[188]

In 2015, the Committee welcomed the adoption of the Law on Prevention of and Protection against Domestic Violence in 2014, and the information that that had resulted in fewer domestic violence incidents and had improved protection, including by means of education and monitoring, in North Macedonia.[189]

[186] Committee on the Elimination of Discrimination against Women, general recommendation No. 19 (1992), para. 23.
[187] See, for example, CAT/C/KAZ/CO/4, paras. 37 and 38; CAT/C/AUS/CO/6, paras. 21 and 22; CAT/C/LTU/CO/4, paras. 23 and 24; and CAT/C/UZB/CO/5, paras. 55 and 56.
[188] CAT/C/KAZ/CO/4, para. 37.
[189] CAT/C/MKD/CO/3, paras. 5 (b) and 17.

4. FEMALE GENITAL MUTILATION

Female genital mutilation is a harmful traditional practice that violates women's human rights, including the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. States have a duty to prohibit and criminalize the practice and to provide redress, including legal remedies, to the victims. The Committee has condemned female genital mutilation as a practice contrary to the Convention, which violates women's human rights. The Committee, in its concluding observations, has provided recommendations to explicitly criminalize the practice of female genital mutilation, to adopt measures to address discriminatory attitudes at the community level, including among actors in customary justice systems, and to eradicate female genital mutilation, including through increased awareness-raising among religious and traditional leaders and the general public, in cooperation with civil society, about the criminal nature of the procedure, its adverse effect on the human rights and health of women and the need to eradicate it and its underlying cultural justifications.[190]

Examples of recommendations

The State party should strengthen its efforts to eliminate female genital mutilation. The Committee recommends that the State party consider adopting legislation criminalizing female genital mutilation, along with launching an awareness-raising campaign on the dangers and prohibition of female genital mutilation.

The Committee recommends that the State party consider adopting legislation explicitly criminalizing female genital mutilation, along with launching an awareness-raising campaign on the dangers and prohibition of female genital mutilation, with a view to its elimination.

Examples of good practice

In 2023, the Committee welcomed the adoption of Act No. 10 of 2021 amending Act No. 58 of 1937, promulgating the Criminal Code of Egypt, which provides for harsher penalties for female genital mutilation, and the adoption of the National Plan for the Eradication of Genital Mutilation (2022–2026), as well as the establishment, in 2019, of the National Committee for the Eradication of Female Genital Mutilation.[191]

[190] See, for example, CAT/C/ARE/CO/1, paras. 31 and 32; CAT/C/KEN/CO/3, paras. 39 and 40; and CAT/C/SLE/CO/1, para. 15.
[191] CAT/C/EGY/CO/5, para. 51.

5. VIOLATIONS OF REPRODUCTIVE RIGHTS, INCLUDING FORCED STERILIZATION, FORCED ABORTION AND RESTRICTIVE ABORTION LAWS

The protection of reproductive rights is a matter of physical and psychological dignity.[192] Violations of reproductive rights often take place through restrictive laws on abortion, forced abortion or uninformed and involuntary sterilization. Women should not be compelled to continue with pregnancies in situations in which such pregnancies raise issues in relation to protection against torture and cruel, inhuman or degrading treatment. The denial of access to safe abortions to women who have become pregnant as a result of rape constitutes a violation of the right to freedom from torture and cruel, inhuman or degrading treatment.[193] Access to safe and legal abortions should be provided, at a minimum, in cases of rape or incest, threats to the life of the mother or when the fetus is not viable. On numerous occasions, the Committee has made recommendations to decriminalize the voluntary termination of pregnancy, considering the World Health Organization abortion care guideline, updated in 2022, since such criminalization has resulted in many women and girls resorting to clandestine and unsafe abortions, which put their lives and health at risk. It has also recommended that States parties facilitate access to legal voluntary termination of pregnancy under safe and dignified conditions without harassment or efforts to criminalize abortions or those that perform them and guarantee health care for women after they have had an abortion, regardless of whether they have done so legally or illegally.[194]

Compulsory, forced or involuntary sterilization adversely affects women's physical and mental health, entailing a violation of the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment. It is often the most marginalized groups who have been the target of such abusive practices, particularly women, especially those living in poverty, women living with HIV, women with disabilities, women belonging to minority or Indigenous communities, and transgender and intersex persons. The Committee has recommended that States parties adopt legislative and policy measures to prevent and criminalize forced or involuntary sterilization of women, for example, by clearly defining the requirement for free, prior and informed consent with regard to sterilization and by raising awareness among concerned women and medical personnel of that requirement. States parties should also carry out investigations, hold those responsible accountable and provide adequate redress to the victims.[195]

[192] The Human Rights Committee stated, in its general comment No. 28 (2000), that any violation of reproductive rights might entail a violation of the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment.

[193] The Human Rights Committee has held that denial of access to safe abortion to women who have become pregnant as a result of rape constitutes a violation of the right to freedom from torture and cruel, inhuman or degrading treatment or punishment (general comment No. 28 (2000), para. 11).

[194] See, for example, CAT/C/BRA/CO/2, paras. 49 and 50; CAT/C/SLV/CO/3 and CAT/C/SLV/CO/3/Corr.1, paras. 30 and 31; and CAT/C/POL/CO/7, paras. 33 and 34.

[195] See, for example, CAT/C/SVK/CO/4, paras. 23 and 24; CAT/C/KAZ/CO/4, paras. 41 and 42; CAT/C/POL/CO/7, paras. 35 and 36; and CAT/C/CAN/CO/7, paras. 50 and 51.


UN Photo/Eric Kanalstein

Examples of recommendations

The State party should continue its efforts aimed at enhancing women's access to sexual and reproductive health with a view to effectively reducing the maternal mortality rate.

The State party should review its Criminal Code to decriminalize the voluntary termination of pregnancy, considering the guidelines of the World Health Organization on abortion, updated in 2022.

The State party should ensure that all women and girls, including those belonging to disadvantaged groups, have access to legal voluntary termination of pregnancy under safe and dignified conditions without harassment or efforts to criminalize them or their medical providers, and guarantee health care for women after they have had an abortion, regardless of whether they have done so legally or illegally.

The State party should ensure that all women and girls in the State party have effective access to the means of terminating a pregnancy when not doing so is likely to result in severe pain and suffering, such as when the pregnancy is the result of rape or incest, when the life or health of the pregnant person is at risk and in cases of fatal fetal impairment. The State party should also ensure that women and girls have effective access to post-abortion health care and that neither patients nor their doctors face criminal sanctions or other threats for seeking or providing such care.

F. TRAFFICKING IN PERSONS

Victims of trafficking in persons experience severe pain and suffering, which may raise concern as regards their enjoyment of the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment under the Convention. Acts that constitute trafficking in persons must be thoroughly and impartially investigated and those who appear to be responsible must be prosecuted and punished in proportion to the seriousness of their acts. Furthermore, States parties should establish formal procedures for evaluating the vulnerability of a person subjected to trafficking, consider adopting comprehensive legislation against trafficking in persons, in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and promptly, thoroughly and effectively investigate allegations of trafficking in persons.[196] Victims must be provided with full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible. It is also important that law enforcement officials, prosecutors and members of the judiciary are trained in the detection and identification of victims of trafficking in persons to ensure that they are not criminalized for offences that they have committed as a result of their being trafficked. In that regard, States parties should ensure access to adequate protection and support, including temporary residence permits, for all victims of trafficking in persons, and develop referral mechanisms for those victims to the appropriate psychosocial and legal services.[197]

UN Photo/UNHCR/Phil Behan

[196] See, for example, CAT/C/LUX/CO/8, paras. 31 and 32; CAT/C/BRA/CO/2, paras. 43 and 44; and CAT/C/ISL/CO/4, paras. 21 and 22.

[197] CAT/C/ROU/CO/3, paras. 21 and 22.

Reference materials

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.[198]
- Recommended Principles and Guidelines on Human Rights and Human Trafficking.[199]
- International Labour Organization, Forced Labour Convention, 1930 (No. 29) and its Protocol.
- International Labour Organization, Abolition of Forced Labour Convention, 1957 (No. 105).
- International Labour Organization, Worst Forms of Child Labour Convention, 1999 (No. 182).

Examples of recommendations

The State party should continue and strengthen its efforts to combat trafficking in persons. In that respect, it should ensure the effective implementation of existing legislation and promptly, thoroughly and effectively investigate, prosecute and punish, with appropriate penalties, trafficking in persons and related practices, ensuring the allocation of all means required for such purpose.

The State party should encourage reporting by raising awareness of the risks of trafficking among vulnerable communities and train judges, law enforcement officials and immigration and border control officers in the early identification of victims of trafficking and their referral to appropriate social and legal services.

[198] United Nations, *Treaty Series*, vol. 2237, No. 39574, p. 319.
[199] E/2002/68/Add.1.

The State party should ensure that victims of trafficking are not prosecuted, detained or punished solely on the grounds of being trafficked, and consider offering immigration status options to such victims. Victims should be provided with adequate protection and support, including by establishing separate, well-equipped shelters with trained staff to address their specific needs and concerns, strengthen long-term reintegration measures for such victims and ensure that they receive redress, including adequate compensation.

Examples of good practice

In 2023, the Committee noted initiatives of Brazil to address trafficking in persons, such as the adoption of Law No. 13344 of 2016, amending the Criminal Code, which provided for the prevention and suppression of national and international trafficking in persons and measures to assist victims, and the third national plan to combat trafficking in persons, in 2018.[200]

G. VIOLENCE AGAINST CHILDREN, INCLUDING CORPORAL PUNISHMENT

The powerlessness of the victim is one of the primary considerations in determining whether an act constitutes torture or other cruel, inhuman or degrading treatment or punishment. Given children's intrinsic situation of powerlessness in the context of violence, States parties must take measures to prevent and combat violence against children, and abuse or neglect of children in all settings. That includes protection from, among others, trafficking, exploitation, harmful traditional practices, such as early and forced marriages, and corporal punishment. Corporal punishment must be prohibited in all settings, whether in the form of a judicial punishment or in private homes.

The obligation of States parties to protect children from violence extends to all settings, such as schools, alternative care and day-care settings, orphanages, child welfare facilities, as well as private homes. Furthermore, they must establish a child protection system with clear procedures for the identification and protection of child victims of violence.[201]

Examples of recommendations

The State party should amend the Criminal Code and the Persons and Family Code with a view to explicitly prohibiting the use of corporal punishment in all settings, including at home and in institutional child- and day-care centres in which adults exercise parental authority over children, and raise public awareness of positive, participatory and non-violent forms of discipline.

The State party should take all necessary measures to prevent attacks on children with albinism and to protect them from ritual attacks and other harmful traditional practices, including by ensuring that all acts of violence are investigated, perpetrators are brought to justice and victims are granted redress.

[200] CAT/C/BRA/CO/2, para. 43.

[201] See, for example, CAT/C/BGD/CO/1, paras. 48 and 49; CAT/C/ZAF/CO/2, paras. 40 and 41; and CAT/C/MDV/CO/1, paras. 41 and 42.

Examples of good practice

In 2015, Namibia adopted the Child Care and Protection Act, No. 3 of 2015, which complements the Education Act, No. 16 of 2001, and penalizes corporal punishment in the home, in the criminal system and in alternative care settings, as was noted by the Committee during its consideration of the second periodic report of Namibia.[202]

H. VIOLENCE AND CRIMINAL ACTS MOTIVATED BY HATRED AND INTOLERANCE

States parties have a duty to protect persons from ill-treatment inflicted by other private persons. That duty is particularly important as concerns violence and criminal acts motivated by hatred, discrimination, intolerance and negative stereotypes.[203] Such an obligation is particularly relevant with respect to the protection of persons who might be exposed to more vulnerable situations, such as persons with disabilities, lesbian, gay, bisexual, transgender and intersex persons and members of ethnic, racial, religious, age, health and other groups.[204]

Examples of recommendations

The State party should undertake prompt, effective and impartial investigations of all allegations of torture and ill-treatment perpetrated against lesbian, gay, bisexual and transgender persons by or with the consent or acquiescence of public officials. The State party should also take measures to prevent violence and discrimination against lesbian, gay, bisexual and transgender persons on the basis of their sexual orientation and gender identity, including by repealing the respective article of the criminal code and ensuring that its complaints mechanisms are accessible to and capable of facilitating effective protection for lesbian, gay, bisexual and transgender persons who are victims of or at risk of violence.

The State party should carry out awareness-raising activities for the general public in order to combat the social stigmatization of lesbian, gay, bisexual and transgender persons.

Examples of good practice

As was noted by the Committee during its consideration of the second periodic report of Montenegro, the State party had adopted the Strategy for the Advancement of Quality of Life for Lesbian, Gay, Bisexual and Transgender Persons 2013–2018 and the Law on Prohibition of Discrimination, which provided for protection against discrimination on the grounds of gender identity and sexual orientation.[205]

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[202] CAT/C/NAM/CO/2, para. 36.
[203] See, for example, CAT/C/SOM/CO/1, paras. 35 and 36.
[204] See, for example, CAT/C/SWE/CO/8, paras. 32 and 33; and CAT/C/FRA/CO/7 and CAT/C/FRA/CO/7/Corr.1, paras. 14 and 15.
[205] CAT/C/MNE/CO/2, para. 23.

Committee against Torture

The Convention establishes, pursuant to article 17, the Committee against Torture to supervise and monitor the implementation by States parties of the substantive provisions of the treaty. The Committee consists of 10 independent and impartial members from different backgrounds and from various regions of the world, elected by the States parties for a term of four years. It adopted its rules of procedure in accordance with article 18 of the Convention.[206] The Committee meets three times a year for up to four weeks at a time.

The Committee performs the following main tasks:

- **Review of States parties' reports**. The Committee considers initial and periodic reports from the States parties on the measures that they have taken to give effect to their undertakings under the Convention, identifies issues of concern and makes recommendations known as "concluding observations" (art. 19).
- **Consideration of complaints from individuals**. The Committee receives and examines complaints by individuals claiming to be victims of violations of the Convention by a State party and adopts decisions in such individual cases (art. 22).
- **Inquiries on systematic practices of torture**. The Committee initiates an investigation when there is reliable information that appears to contain well-founded indications that torture is being systematically practised in the territory of a State party (art. 20).
- **Consideration of inter-State complaints**. The Committee receives and examines complaints by one State party of violations of the Convention by another State party (art. 21).
- **Adoption of general comments**. The Committee interprets the provisions of the Convention in the form of general comments, covering both substantive and procedural aspects. It provides authoritative guidance to States parties on the interpretation of their obligations, including on providing the Committee with information that they should submit in State party reports relating to specific articles of the Convention.

While the mandate to examine the initial and periodic reports of States parties stems from the Convention, other competences of the Committee require additional explicit acceptance by a State party, which it may refuse. The so-called opt-in options by a State party include the following:

- The Committee may consider complaints from individuals when a State party has specifically declared that it recognizes such competence (art. 22).
- The Committee may examine inter-State complaints when a State party has specifically declared that it recognizes such competence (art. 21).

A State party may also opt-out of the inquiry procedure of the Committee:

- A State party may declare that it does not recognize the Committee's competence to initiate investigations under article 20 (art. 28).

[206] The latest rules of procedure are contained in CAT/C/3/Rev.7.

A. EXAMINATION OF STATES PARTIES' REPORTS UNDER ARTICLE 19

The review process by the Committee of periodic reports from the States parties on the measures that they have taken to give effect to their undertakings under the Convention is explained in detail in section II.C of the present manual.

B. INQUIRY PROCEDURE UNDER ARTICLE 20

Article 20

"1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs I to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24."

Under article 20, the Committee carries out a confidential inquiry if it receives reliable information that appears to it to contain well-founded indications that torture is being systematically practised in a State party.

However, if a State party has declared, in accordance with article 28, that it does not recognize the Committee's competence to initiate investigations under article 20, no inquiry shall be carried out, unless that State party subsequently withdraws its reservation in accordance with article 28 (2).

Recently concluded inquiries on Lebanon (2014), Egypt (2016) and Belarus (2024) confirmed that torture had been systematically practised on the territories of these States parties and the Committee provided recommendations to end and prevent such a practice.[207] A list of completed confidential inquiries and related documentation by State party can be found at www.ohchr.org/en/treaty-bodies/cat/confidential-inquiries-under-article-20-convention-against-torture.

SYSTEMATIC PRACTICE OF TORTURE

"The Committee considers that torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors, which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice."

A/48/44/Add.1, para. 39.

[207] A/69/44 (Lebanon), paras. 106–115; A/72/44 (Egypt), paras. 58–71; and A/79/44 (Belarus), paras. 34–48.

Inquiry procedure under article 20[208]

1. The Committee receives reliable information from individuals or civil society organizations that appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party.

2. The Committee invites the State party concerned to cooperate in the examination of the information.

3. The Committee takes into account the State party's observations and other relevant information available to it.

4. The Committee may decide to designate one or more of its members to carry out the confidential inquiry.

5. Such an inquiry may include, with the agreement of the State party, a visit to its territory.

6. The findings of the designated members of the Committee are then examined by the Committee.

7. The findings, together with comments and suggestions, are then transmitted to the State party. The Committee invites the State party to inform it of the measures taken in response to the findings and suggestions.

8. Upon completion of the proceedings, the Committee may decide, after consultation with the State party concerned, to include a summary account of the results of the proceedings in its annual report or, if agreed with the State party, to make public the full text of the report.

[208] Rules 75 to 90 of the Committee's rules of procedure provide further information on proceedings under article 20 of the Convention.

C. INTER-STATE COMPLAINTS UNDER ARTICLE 21

Article 21 (1) (a) and (b)

"(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;"

If a State party considers that another State party is violating the Convention, it may bring the matter to the attention of that State party and, in case the matter is not adjusted to the satisfaction of both parties, either party may refer the matter to the Committee.[209] However, the State party concerned must have declared that it recognizes the Committee's competence to receive inter-State complaints against it. The Committee then deals with the matter, after confirming that all effective domestic remedies have been invoked and exhausted. Remedies that are unreasonably prolonged or are unlikely to bring effective relief to the person who is the victim of the violation of the Convention are not considered effective. The Committee then holds closed meetings to examine communications and, when appropriate, sets up an ad hoc conciliation commission for the friendly solution of the dispute. The Committee may ask for the States parties concerned to supply any relevant information, and parties may be represented and make oral and/or written submissions when the matter is being considered by the Committee. The Committee then submits a report. If a solution is reached, the Committee confines its report to a brief statement of the facts and of the solution reached. Otherwise, the Committee confines its report to a brief statement of the facts; attaching the written submissions and record of the oral submissions made by the States parties concerned. The report is communicated to the States parties concerned.

The inter-State complaint mechanism provided for in article 21 has never been initiated.

[209] Rules 91 to 101 of the Committee's rules of procedure provide further information on proceedings under article 21 of the Convention.

Inter-State complaints procedure under article 21

1. A State party considers that another State party is violating the Convention and brings the matter to the attention of that State party.

2. Within three months, the receiving State should clarify the matter to the State that sent the communication. That communication should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available.

3. If the matter is not solved to the satisfaction of both parties within six months, either State may refer the matter to the Committee.

4. The Committee deals with the matter in closed meetings, after confirming that all effective domestic remedies have been invoked and exhausted. It may request information from the parties, which may also make submissions.

5. If appropriate, the Committee sets up an ad hoc conciliation commission for the friendly solution of the dispute.

6.a. If a solution is reached, the Committee confines its report to a brief statement of the facts and of the solution reached.

6.b. If a solution is not reached, the Committee confines its report to a brief statement of the facts, attaching the written submissions and the record of the oral submissions.

7. The Committee communicates the report to the States parties concerned.

D. INDIVIDUAL COMPLAINTS UNDER ARTICLE 22

Article 22 of the Convention provides for the Committee to receive and consider individual complaints on alleged violations of the Convention.[210] Any persons subject to the jurisdiction of a State party claiming that such a State party has violated their rights as stipulated in the Convention can submit a complaint. The complaint can be submitted through the online submissions portal, which provides step-by-step guidance to the complainants.

The complaint may be submitted by a victim of an alleged violation or by another person with the written consent of the victim. In some situations, the consent requirement can be waived (e.g. a victim is in prison and is inaccessible or is a victim of enforced disappearance).

While the procedure is confidential, the Committee's findings, known as "decisions", are public. Should complainants not wish to disclose their identity in such decisions, they should indicate so to the Committee during the registration stage.

The complaint should contain basic information about the victim, specify the State party, provide an account of the facts and explain why the said facts allegedly constitute a violation of the provisions of the Convention. The complainant should also indicate the specific remedies that a victim wishes to obtain.

The author of the communication should provide copies of all documents of relevance to the complaint, especially judicial and administrative decisions. If the documents are not in an official language of the United Nations, a full or summary translation should be provided in one of the four working languages (English, French, Russian or Spanish) of the secretariat of the Committee.

The complaint should be submitted as soon as possible after the exhaustion of domestic remedies. While there is no deadline for the submission of a complaint, the Committee may decide that the time elapsed since exhausting domestic remedies may render consideration of the claims unduly difficult by the Committee or the State party and find such a complaint inadmissible.

1. INTERIM MEASURES

In order to prevent irreparable harm, the complainant may request that the Committee issue a request for interim measures.[211] Such requests are issued to prevent actions that carry a risk of irreparable harm, that is, which cannot be reversed, for example execution of a death sentence or deportation of an individual facing a risk of torture or deprivation of life. A decision to request interim measures does not imply a decision on the admissibility or the merits of the complaint and it can be withdrawn in the light of information provided by the State party or the complainant.

The Committee cannot consider a complaint if the same matter has been or is being considered by another mechanism of international investigation or settlement. Such an international mechanism could be, for example, the European Court of Human Rights or the Inter-American Court of Human Rights, but not the Human Rights Council complaint procedure or complaints submitted to the special procedures of the Council.

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[210] Rules 102 to 121 of the Committee's rules of procedure provide further information on proceedings under article 22 of the Convention.
[211] Rules of procedure, rule 114.

2. PROCEDURE

The same matter =

- The same complainant(s)
- The same facts
- The same substantive rights

A complaint fulfilling prima facie registration criteria is sent to the Rapporteur on new complaints and interim measures who, on behalf of the Committee, decides on the registration of the case. Subsequently, once registered, it is sent to the State party for its observations on admissibility and the merits (six months' deadline). In exceptional cases, the State party may challenge (two months' deadline) the admissibility of the complaint and request a separate decision on admissibility (a split request). The Rapporteur decides whether to grant the split request. The observations of the State party are sent to the author of the complaint for comments. Each party can comment on the submission of the other party and send additional relevant information and documents. When comments are received from both parties, the case is ready for the Committee to make its decision. If the State party fails to respond, the Committee can decide the case on the basis of information available on file. A case may be discontinued at the request of the State party – for example, when it becomes moot – or at the request of the complainant – for example, when withdrawing a complaint.

Admissibility criteria

- The complaint must concern a State party that has recognized the competence of the Committee under article 22.
- *Ratione personae* – the complainant must be subject to the jurisdiction of the State party.
- *Ratione temporis* – the alleged violation occurred after the entry into force of the Convention in the respective State party → except for continuing effects of violations that predate the entry into force of the Convention.
- *Ratione materiae* – the alleged violation refers to rights stipulated in the Convention and is sufficiently substantiated → reservations and declarations need to be checked.
- Exhaustion of domestic remedies → unless ineffective or unreasonably prolonged.
- The same matter has not been and is not being considered by another international investigation mechanism.

The Committee may also request third-party submissions (submissions from other United Nations organs, bodies, specialized agencies and procedures and other independent sources, including regional human rights mechanisms, NGOs, national human rights institutions, other relevant specialized institutions, State agencies and offices, and academics) that may assist in the examination of the communication. The procedure for third-party submissions is described in the Committee's guidelines on third-party submissions under article 22 of the Convention.[212]

Once the Committee decides on the case, the decision is transmitted to the author and the State party simultaneously. The decision is posted on the OHCHR website as part of the Committee's jurisprudence and referred to in its annual report.

[212] CAT/C/86.

If the Committee decides that the complaint should be discontinued, is inadmissible or that there is no violation, the case is closed. If the Committee decides that the facts before it disclose a violation of the author's rights under the Convention, it requests that the State party provide information (within 90 days) on the steps that it has taken to give effect to its findings and recommendations. If the State party fails to take appropriate action, the Committee will take such further action as may be required under its follow-up procedure (request a meeting with the State party, send a reminder for observations etc.). A dialogue is pursued with the State party and the case remains open until satisfactory resolution. Information related to follow-up is contained in follow-up reports (posted on the website),[213] and the meetings during which it is discussed are public.

Reference materials

- OHCHR, "The Committee against Torture", Fact Sheet No. 17.
- Guidelines on third-party submissions under article 22 of the Convention.

REPRISALS AGAINST CIVIL SOCIETY ACTORS, HUMAN RIGHTS DEFENDERS, VICTIMS AND WITNESSES FOR THEIR ENGAGEMENT WITH THE TREATY BODY SYSTEM

Over the past few years, acts of intimidation and reprisals against those who cooperate with the United Nations treaty bodies have increased. Persons in detention are among those especially at risk of such reprisals. Such acts take many forms, ranging from smear campaigns, travel bans, threats, fines, arbitrary arrests, lengthy prison sentences to ill-treatment and torture. Victims and their family members, as well as civil society, can face such forms of reprisals for submitting information to the Committee in the context of its review of a State party's report, providing information on individual cases of human rights violations or during country visits under the inquiry procedure, including those to places of detention. Reprisals come in different forms and therefore if individuals believe that they are at risk of, or targeted by, intimidation or reprisal for engaging with a treaty body, such cases should be reported to the respective treaty body.

At its forty-ninth session, the Committee adopted a mechanism to prevent, monitor and follow up cases of reprisal against civil society actors, human rights defenders, victims and witnesses for their engagement with the treaty body system. It subsequently appointed a rapporteur on reprisals under article 19 and a rapporteur on reprisals under articles 20 and 22.

At its fifty-fifth session, the Committee adopted guidelines on the receipt and handling of allegations of reprisals against individuals and organizations cooperating with the Committee under articles 13, 19, 20 and 22 of the Convention (CAT/C/55/2). Those guidelines include a clear recognition of the value of the Guidelines against Intimidation or Reprisals (the San José Guidelines).

A list of public documents related to reprisals sent by the rapporteurs on reprisals to States parties can be found at www.ohchr.org/en/treaty-bodies/cat/reprisals.

[213] See www.ohchr.org/en/treaty-bodies/cat/follow-ups-communications.

VI

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which aims to prevent torture, was adopted in 2002 and entered into force in 2006. The Optional Protocol established an international torture prevention mechanism, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Pursuant to article 3 of the Optional Protocol, States parties should establish independent national bodies for the prevention of torture and ill-treatment at the domestic level, known as the national preventive mechanisms.

The Optional Protocol is divided into seven parts. Part I contains the general principles concerning the Subcommittee and the national preventive mechanisms. Part II contains provisions on the composition of the Subcommittee, the election of its members and the establishment of its rules of procedure. Part III establishes the mandate of the Subcommittee. Part IV contains provisions on the establishment, mandate and functioning of the national preventive mechanisms. Parts V to VII deal with technical questions, such as signature and ratification, declarations, entry into force and financial provisions.

For the status of signatures, ratifications and accessions to the Optional Protocol, consult the *United Nations Treaty Collection*.

UN Photo/Eskinder Debebe

A. THE SUBCOMMITTEE

The Subcommittee is a treaty body established by article 5 of the Optional Protocol. According to article 11 of the Optional Protocol, it has a mandate to visit places of detention and make recommendations to States parties and their national preventive mechanisms concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment.

The Subcommittee started its work in February 2007. It is composed of 25 independent and impartial members from different backgrounds and from various regions of the world. Members are elected by States parties to the Optional Protocol for a four-year term and can be re-elected once.

The Subcommittee produces a public annual report on its activities, which it presents to the Committee and the General Assembly in New York. In addition to its field work, the Subcommittee also convenes three times a year for a week-long session at the United Nations Office at Geneva.

Pursuant to article 11 of the Optional Protocol, the Subcommittee shall:

- Visit any place under the jurisdiction of a State party in which persons may be deprived of their liberty – this includes country visits, country follow-up visits, advisory visits to national preventive mechanisms and other advisory visits.
- Advise and assist States parties regarding the establishment and functioning of their national preventive mechanisms, and provide guidance on the mandate, powers and working methods of such mechanisms and any other related issues.
- Cooperate with the relevant United Nations organs and mechanisms, as well as with the international, regional and national bodies working for the prevention of torture.

The visit reports are confidential unless the State party consents to their publication. The public reports can be accessed on the OHCHR website at https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/CountryVisits.aspx?SortOrder=Chronological.

UN-OHCHR Photo

B. NATIONAL PREVENTIVE MECHANISMS

Pursuant to article 17 of the Optional Protocol, States parties have an obligation to establish national preventive mechanisms, which are independent bodies for the prevention of torture and ill-treatment at the domestic level. A national preventive mechanism is not an investigative body, it seeks to identify patterns and detect systemic risks of torture, rather than investigating or adjudicating complaints concerning torture or ill-treatment. States parties are responsible for ensuring that they have in place a national preventive mechanism that complies with the requirements of the Optional Protocol.

National preventive mechanisms are mandated to conduct visits to places in which persons are or may be deprived of their liberty, in order to regularly examine the treatment of persons in those places and to make recommendations to the relevant authorities. They have an advisory function, which they exercise with regard to legislative and other proposals, opinions, recommendations and reports on any issues within their mandate, including the review of rules and instructions concerning the treatment of persons deprived of their liberty. They have educational and communication functions, as they carry out educational, training and awareness-raising programmes aimed at increasing public awareness of the prevention of torture and ill-treatment and contributing to informing persons in places of deprivation of liberty, including the detention authorities, about the Optional Protocol and the prevention of torture and ill-treatment. Lastly, they have a mandate to cooperate with national, regional and international actors on the prevention of torture, including implementation of their recommendations, and on any urgent action procedures, including follow-up to cases of suspected torture and cases of possible reprisals. National preventive mechanisms should provide information to, and engage with, the Committee during the various stages of the reporting process.

More information about national preventive mechanisms can be found in OHCHR, *Preventing Torture: The Role of National Preventive Mechanisms – A Practical Guide*, Professional Training Series No. 21 (New York and Geneva, 2018), which was developed by the treaty body capacity-building programme.

Reference materials

- Guidelines on national preventive mechanisms (CAT/OP/12/5).


UN Photo/Basile Zoma

UN Photo/Tobin Jones

TECHNICAL ASSISTANCE AND THE SPECIAL FUND ESTABLISHED BY THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The States parties to the Optional Protocol can seek technical assistance from OHCHR for establishing or strengthening their national preventive mechanisms. They can request assistance through OHCHR field presences or the OHCHR treaty body capacity-building programme or submit a proposal for a grant to the Special Fund established by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Special Fund was established pursuant to article 26 of the Optional Protocol in 2011. The Special Fund supports projects implementing recommendations of the Subcommittee contained in its public visit reports, which focus on the establishment or strengthening of national preventive mechanisms. Applications to the Special Fund may be submitted by institutions of States parties to the Optional Protocol that have been visited by the Subcommittee and their national preventive mechanisms, and which have agreed to the publication of the Subcommittee's visit report. Applications may also be submitted by national human rights institutions that comply with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and by NGOs, provided that the proposed projects are implemented in cooperation with eligible States parties or national preventive mechanisms. In addition, applications may be submitted by national preventive mechanisms to support their educational programmes regardless of whether the State party has been visited by the Subcommittee.

SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

In 1985, the Commission on Human Rights established the mandate of a special rapporteur to "examine questions relevant to torture". Since 1985, the mandate has been renewed regularly, most recently in April 2023. The now named Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment covers all countries, irrespective of whether a State has ratified the Convention. The mandate comprises three main activities:

- Transmitting urgent appeals to States with regard to individuals reported to be at risk of torture, as well as communications on alleged cases of torture.
- Conducting country visits.
- Submitting annual reports on thematic issues and the activities and methods of work of the mandate holder to the Human Rights Council and the General Assembly.

When a State party to the Convention is under review, the Committee also uses information obtained through country visits of the Special Rapporteur to the country under review. The Special Rapporteur refers to the Convention, as well as the jurisprudence of the Committee, throughout the reports, communications and activities of the mandate holder.

Information about the work of the Special Rapporteur is available at www.ohchr.org/en/special-procedures/sr-torture.

On 12 December 1997, the General Assembly proclaimed, pursuant to its resolution 52/149, 26 June United Nations International Day in Support of Victims of Torture. On that occasion, each year, the Committee issues a joint statement with the Special Rapporteur, the Subcommittee and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture and the Special Fund established by the Optional Protocol.

VII

The Convention and the 2030 Agenda for Sustainable Development

A. HUMAN RIGHTS AND THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT

In September 2015, 170 States gathered at the United Nations summit for the adoption of the post-2015 development agenda in New York to adopt the 2030 Agenda for Sustainable Development with the objective of transforming the world. The 2030 Agenda serves as the overall framework to guide global and national development action. It succeeds the Millennium Development Goals, which were established following the Millennium Summit of the United Nations in 2000.

The 2030 Agenda consists of 17 Sustainable Development Goals and 169 targets to be achieved by all countries by 2030; the means of implementation that stipulate the resources and partnerships that are needed to implement the Goals and targets; and follow-up and review processes and mechanisms at the national, regional and global levels that will monitor and guide the progress made in reaching the Goals and targets.

> "We envisage a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity" (para. 8).
>
> "The new Agenda is guided by the purposes and principles of the Charter of the United Nations, including full respect for international law. It is grounded in the Universal Declaration of Human Rights, international human rights treaties, the Millennium Declaration and the 2005 World Summit Outcome Document" (para. 10).
>
> "We reaffirm the importance of the Universal Declaration of Human Rights, as well as other international instruments relating to human rights and international law. We emphasize the responsibilities of all States, in conformity with the Charter of the United Nations, to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status" (para. 19).
>
> 2030 Agenda (General Assembly resolution 70/1, footnotes omitted).

The 2030 Agenda is both grounded in international human rights law and aimed at realizing the human rights of all. It covers a wide range of objectives, related to all civil, political, economic, social and cultural rights and the right to development; and offers a people- and planet-centred and gender-sensitive sustainable development for people, the planet, prosperity, peace and partnerships. Its cross-cutting principle of leaving no one behind applies to all Sustainable Development Goals and targets and reflects the human rights principles of equality and non-discrimination.

The expertise of the United Nations human rights mechanisms, namely the treaty bodies, the universal periodic review and the special procedures of the Human Rights Council can assist in the realization of the Sustainable Development Goals. The follow-up and review processes of the 2030 Agenda, such as the voluntary national reviews,[214] provide just such an opportunity. To ensure policy coherence and

[214] See the Voluntary National Reviews Database (https://hlpf.un.org/vnrs).

effective implementation, further synergies should be created between the reporting and follow-up obligations of States parties regarding their human rights obligations and the follow-up and review processes of the 2030 Agenda.

DISAGGREGATED DATA

To make sure that no one is left behind, particular attention must be given to the situation of persons who are traditionally most left behind and suffer from a lack of enjoyment of human rights, because of their age, socioeconomic status, gender, ethnicity, geographical location or any other reason. That requires collecting disaggregated, high-quality and timely data across multiple dimensions.

States should collect such data for the purpose of using them in the follow-up and review processes of the 2030 Agenda. In that way, they can effectively and accurately track their successes, as well as their shortcomings, in the implementation of the 2030 Agenda and ensure that no one is left behind.

Collecting disaggregated, high-quality and timely data across multiple dimensions is also crucial in tracking the progress made by States parties in realizing their obligations under international human rights treaties. Human rights treaty bodies have often raised concerns about the lack of disaggregated data collected by States parties and recommended that they systematically collect such data.

B. THE CONVENTION AND THE SUSTAINABLE DEVELOPMENT GOALS

The 2030 Agenda is grounded in international human rights law, which includes the Convention. The 2030 Agenda seeks to realize everyone's human rights, including the right to freedom from torture and other ill-treatment and other rights guaranteed by the Convention. Indicative and non-exhaustive linkages between the Sustainable Development Goals and the rights and obligations under the Convention are explained below. In addition, those linkages are demonstrated in the relevant sections of the present manual.

Goal 2 calls upon States to end hunger, achieve food security and improved nutrition and promote sustainable agriculture. Everyone, without discrimination, has the right to adequate food, which entails that food must be available, accessible and adequate.[215] A lack of enjoyment of the right to adequate food by persons deprived of their liberty may amount to torture and other ill-treatment. States must satisfy the basic nutritional needs of persons deprived of their liberty, including prisoners in detention facilities, immigrants and asylum-seekers in detention or pre-removal centres, or persons living in special care facilities, such as psychiatric institutions or social care homes, and the reduction of a person's diet must never be used as a punishment. States must give particular attention to those who may have specific dietary needs, such as persons who are ill, older persons, women, children, persons with disabilities and persons living

[215] Committee on Economic, Social and Cultural Rights, general comment No. 12 (1999).

with HIV/AIDS. The targets of Goal 2 include ending hunger and ensuring access by all persons, in particular the poor and persons in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round.

Goal 3 calls upon States to ensure healthy lives and promote well-being for all at all ages. Everyone, without discrimination, has the right to the enjoyment of the highest attainable standard of physical and mental health. The right to health entails, among others: freedom from torture and other cruel, inhuman or degrading treatment or punishment; the right to be free from non-consensual medical treatment (such as medical experiments and research or forced sterilization); the right to prevention, treatment and control of diseases; access to essential medicines; maternal, child and reproductive health; equal and timely access to basic health services; and the provision of health-related education and information.[216] All health-care services, goods and facilities must be available in sufficient quantity; accessible; acceptable with respect to medical ethics, gender and cultural appropriateness; scientifically and medically appropriate; and of good quality. In the context of the Convention, Goal 3 is of particular relevance to persons deprived of their liberty;[217] women who face restrictions on their sexual and reproductive health and reproductive rights; persons subjected to non-consensual medical treatment; and in the context of the rehabilitation of victims of torture and other ill-treatment. Goal 3 targets include reducing global maternal mortality; ending preventable deaths of newborns and children under 5 years of age; ending the epidemics of AIDS, tuberculosis, malaria and neglected tropical diseases and combating hepatitis, water-borne diseases and other communicable diseases; and strengthening the prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol.

Goal 4 calls upon States to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all. Everyone has the right to education, which should be directed to the full development of the human personality and the sense of its dignity and to strengthening respect for human rights and fundamental freedoms. Education should be available, accessible, acceptable in its form and substance, and adaptable.[218] In the context of the Convention, Goal 4 is of particular relevance to children in special care settings; children deprived of their liberty; children in prison with a parent; and in the context of technical, vocational and tertiary education provided to persons deprived of their liberty with a view to reintegrating them into society upon their release. The targets of Goal 4 include ensuring equal access for all women and men to affordable and quality technical, vocational and tertiary education; substantially increasing the number of young persons and adults who have relevant skills, including technical and vocational skills, for employment, decent jobs and entrepreneurship; and ensuring that all young persons and a substantial proportion of adults, both men and women, achieve literacy and numeracy.

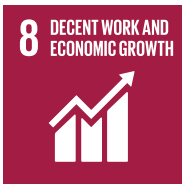
[216] Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000).

[217] Persons deprived of their liberty have complex health needs. They are more susceptible to disease, substance dependency and mental illness. They often face deteriorating health conditions due to unhealthy conditions, overcrowding and inadequate health-care services. Communicable diseases are of particular concern in places of deprivation of liberty. States must ensure that the provision of health care for persons deprived of their liberty is adequately funded and staffed. They must give particular attention to specific health-care needs, including preventive health care and psychological care, of persons who may have specific health-care needs, such as older persons, women, children, persons with disabilities and persons living with HIV/AIDS.

[218] Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999).

Goal 5 calls upon States to achieve gender equality and empower all women and girls. Goal 5 is of particular relevance to the Convention in the context of trafficking and sexual exploitation of women; the conditions of women deprived of their liberty, considering their specific protection needs in such settings; and gender-based violence, including domestic violence, female genital mutilation, violations of reproductive rights, including forced sterilization, forced abortion and restrictive abortion laws, and rape and sexual violence. The targets of Goal 5 include ending all forms of discrimination against all women and girls everywhere; eliminating all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation; and ensuring universal access to sexual and reproductive health and reproductive rights.

Goal 6 calls upon States to ensure availability and sustainable management of water and sanitation for all. Everyone has the right to sufficient, safe, acceptable and accessible water for personal and domestic use, which means water for drinking, personal sanitation, washing clothes, preparing food, and personal and environmental hygiene.[219] However, persons deprived of their liberty may suffer from lack of sufficient and clean drinking water, as well as water for sanitation, which may result in poor hygiene conditions and cause serious health consequences. That may constitute a violation of the Convention. The targets of Goal 6 include achieving access to adequate and equitable sanitation and hygiene for all and an end to open defecation, paying special attention to the needs of women and girls and those in vulnerable situations.



Goal 8 calls upon States to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. Goal 8 is of particular relevance to the Convention in the context of eradicating forced labour and labour exploitation, as well as opportunities for prisoners to work. The targets of Goal 8 include taking immediate and effective measures to eradicate forced labour.

Goal 10 calls upon States to reduce inequality within and among countries. It is of particular relevance to the Convention in the context of the obligation of States parties to protect against torture and other ill-treatment the members of vulnerable groups, such as persons with disabilities, lesbian, gay, bisexual, transgender and intersex persons and members of ethnic, racial, religious, age, health and other groups. That includes eliminating discriminatory laws, policies and practices and adopting appropriate legislation, policies and action. To give an example, in some countries transgender and intersex persons face abusive requirements, such as forced sterilization, to be able to change their gender in official documentation, which may amount to treatment contrary to the Convention. The targets of Goal 10 include ensuring equal opportunity and reducing inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard.

[219] Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002).

Goal 16 calls upon States to promote just, peaceful and inclusive societies. It addresses issues of, among others, personal security, access to justice and the rule of law, corruption, good governance, fundamental freedoms and non-discrimination. Goal 16 is of particular relevance to the Convention in the context of reducing violence that may amount to torture and other ill-treatment; promoting the rule of law and ensuring equal access to justice in the context of holding those responsible for acts of torture and other ill-treatment accountable and ensuring victims' right to redress; and developing effective, accountable and transparent institutions, including in the criminal justice system. The targets of Goal 16 include significantly reducing all forms of violence and related death rates everywhere; ending abuse, exploitation, trafficking and all forms of violence against and torture of children; promoting the rule of law at the national and international levels and ensuring equal access to justice for all; and developing effective, accountable and transparent institutions at all levels.

Goal 17 calls upon States to strengthen the means of implementation and revitalize the global partnership for sustainable development. It is particularly important for building a global constituency and strengthening the means of implementation, thus making the 2030 Agenda achievable and progressing the enjoyment of interlinked human rights. The targets of Goal 17 include strengthening domestic and international resources; assisting developing countries in attaining long-term debt sustainability; promoting technology transfer and capacity-building; enhancing policy and institutional coherence; respecting countries' policy space; promoting multi-stakeholder partnerships; and increasing the availability of disaggregated data.

Annex

REFERENCE MATERIALS

General comment No. 2 (2007) on the implementation of article 2 (CAT/C/GC/2).

General comment No. 3 (2012) on the implementation of article 14 (CAT/C/GC/3).

General comment No. 4 (2017) on the implementation of article 3 in the context of article 22 (CAT/C/GC/4). General comment No. 4 (2017) replaces general comment No. 1 (1997) of the Committee.

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The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147).

General Assembly resolutions on the moratorium on the use of the death penalty (for example, General Assembly resolutions 62/149, 63/168 and 65/206).

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International Labour Organization, Forced Labour Convention, 1930 (No. 29) and its Protocol.

International Labour Organization, Abolition of Forced Labour Convention, 1957 (No. 105).

International Labour Organization, Worst Forms of Child Labour Convention, 1999 (No. 182).

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (General Assembly resolution 70/175, annex).

The Basic Principles for the Treatment of Prisoners (General Assembly resolution 45/111, annex).

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173, annex).

The Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 37/194, annex).

The Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169, annex).

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (General Assembly resolution 65/229, annex).

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (General Assembly resolution 40/33, annex).

The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) (General Assembly resolution 45/110, annex).

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113, annex).

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