



## Consultation on draft General Comment No. 33 of the Human Rights Committee

### Selected Comments by the World Organisation Against Torture

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The World Organisation Against Torture (OMCT) appreciates the opportunity provided by the Human Rights Committee to comment on its draft General Comment No. 33 on **States Parties' obligations under the first Optional Protocol to the International Covenant on Civil and Political Rights**. This draft Comment concerns a subject of fundamental importance for the effective functioning of the procedures involving individual communications, including, ultimately, the effective results that these communications may have on the victims' right of redress for violations of States Parties' legal responsibilities under the ICCPR, read in conjunction with the Option Protocol.

The OMCT welcomes the draft Comment, which contains clarifications of States Parties' legal obligations under the Optional Protocol. It believes, however, that the General Comment could in some respects be strengthened by being partly reorganised and by amendments to some of the paragraphs. The OCMT is of the opinion that such changes would better reflect the States Parties' legally binding obligations under the Optional Protocol in conjunction with the Covenant itself.

To this end, the OMCT recommends, in particular, that the Committee makes the following amendments to the text as it flows in the draft presented:

#### Paragraph 4, last sentence:

OMCT proposes that the adjective "legally" be inserted before "are" and "obliged", so that the sentence would begin: "States parties are legally obliged...".

It is further proposed to add the following sentence at the end of this paragraph:

"Such hindrance constitutes, *per se*, a violation of the States parties' legal obligations under the Optional Protocol."

#### Paragraph 7:

It is suggested that this paragraph be moved up to become paragraph 5, thereby logically following on paragraph 4, which deals with Article 1 of the Optional Protocol, where the terms "individuals" and "communications" are dealt with for the first time in the operative paragraphs thereof.

### **Paragraph 8**

OMCT does not see the particular utility of this paragraph and believes that it could, in principle, be deleted. Should it be retained, it is recommended that it be amended as follows and moved up to become **paragraph 6**:

“The terminology of Article 1, as read in conjunction with Article 5(1) and (4) of the Optional Protocol, similarly reflects the nature of the role of the Human Rights Committee in receiving and considering communications: Subject to the communication being regarded as admissible, after considering the communication ‘in the light of all written information made available to it by the individual and by the State Party concerned’, ‘the Committee shall forward its views to the State Party concerned and to the individual’.”

If this wording is adopted, footnote 1 can be deleted.

### **Paragraph 10:**

For purposes of clarity, the OMCT recommends that the **first sentence** reads:

“In the experience of the Committee, some States parties have failed to comply with the preceding legal obligation laid down in Article 4(2) of the Optional Protocol.”

With regard to the **second sentence**, the OMCT suggests that the phrase “is then compelled to” be replaced by “has no option but”.

### **Paragraph 10 (bis):**

The OMCT suggests that this paragraph be modified as follows:

“In this respect the Committee points out that, if the subject of a communication relates to a matter that appears to be arising before the entry into force of the Optional Protocol with regard to the State party concerned (the *ratione temporis* rule), it is for that State party to expressly raise this matter in responding to the communication. In case the State party fails so to invoke this time element, it will be precluded from subsequently relying on it in the proceedings before the Committee in the relevant case.”

### **Paragraphs 12 onwards, concerning the legal value of the Committee’s views:**

The Committee explains at great length the legal nature of its views in the draft General Comment. The OMCT considers, however, that this part of the draft needs to be considerably redrafted and strengthened. While the legal nature of the Committee’s views is an interesting subject matter for the legal doctrine, the Committee should not get involved in a discussion of the various views expressed in this respect by legal scholars. Indeed, in the opinion of the OMCT, as the General Comment is now drafted, this approach rather considerably weakens the Committee’s position on this important issue. The present drafting conveys the impression that the Committee is not itself fully convinced of the hard legal value of its views, which are, after all, based on two intrinsically linked treaties that are legally binding on the States parties concerned, namely the International Covenant on Civil and Political Rights and the Optional Protocol thereto.

Consequently, the OMCT strongly recommends that the Committee deletes **all** references to the doctrine in its General Comments and simply states its own opinion on the matter. This will, in our view, considerably strengthen the General Comment.

**Paragraph 20:**

The OMCT proposes that the word “further” be inserted between “is” and “reflected” in the first line of the paragraph.

**Paragraph 23:**

The last sentence of this paragraph is self-evident and needs no footnote with reference to the doctrine. The footnote should therefore be deleted.

**Paragraph 28:**

The OMCT has some doubts about the expression “grave breach” in paragraph 28, since the distinction between what might be called a “simple” breach and a “grave” breach is not to be found either in the Covenant or the Optional Protocol, which is limited to the term “violation” or “violations”. The distinction is a reminder of the terms used in international humanitarian law. The question arises as to what should be the criteria for concluding that a violation is “grave”. One consideration could of course be the fact that a State party has taken “irreversible” measures that cause “irreparable” harm to the victim as intimated in the draft Comment, but the Committee might then wish to state this clearly. The OMCT has no strong position on this issue, but wants to draw the Committee’s attention to a potential interpretative problem.

With regard to the last sentence of this paragraph, OMCT suggests that it be modified as follows:

“By failing to comply with interim measures decided by the Committee, States parties undermine the effective legal protection of both the Covenant itself and the Optional Protocol. When such failure causes irreparable harm to the individual concerned, the Committee considers that the effective legal protection of the individual under the Covenant and the Optional Protocol is rendered nugatory. An application in good faith of the States parties’ legal obligations under these treaties requires that they at all times strictly comply with the interim measures decided by the Committee.”

**Paragraph 31:**

The OMCT suggests that the adverb “totally” be deleted and that “in law” be inserted after “unfounded”.

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