
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948, art. 5)
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1976, art. 7)

[T]he 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.

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (1984, art. 1, para.1)

Introduction

Torture seeks to annihilate the victim's personality and denies the inherent dignity of the human being. The United Nations has condemned torture from the outset as one of the vilest acts perpetrated by human beings on their fellow creatures.

Torture is a crime under international law. According to all relevant instruments, it is absolutely prohibited and cannot be justified under any circumstances. This prohibition forms part of customary international law, which means that it is binding on every member of the international community, regardless of whether a State has ratified international treaties in which torture is expressly prohibited. The systematic or widespread practice of torture constitutes a crime against humanity.

In 1948, the international community condemned torture and other cruel, inhuman or degrading treatment in the Universal Declaration of Human Rights adopted by the United Nations General Assembly. In 1975, responding to vigorous activity by non-governmental organizations (NGOs), the General Assembly adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

During the 1980s and 1990s, progress was made both in the development of legal standards and instruments and in enforcement of the prohibition of torture. The United Nations Voluntary Fund for Victims of Torture was established by the General Assembly in 1981 to fund organizations providing assistance to victims of torture and their families. The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment was adopted by the General Assembly in 1984 and came into force in 1987. Its implementation by States parties is monitored by a body of independent experts, the Committee against Torture. The first Special Rapporteur on torture, an independent expert mandated to report on the situation of torture in the world, was appointed by the Commission on Human Rights in 1985. During the same period, the General Assembly adopted resolutions in which it highlighted the role of health personnel in protecting prisoners and detainees against torture and established general principles for the treatment of detained persons. In December 1997, the General Assembly proclaimed 26 June United Nations International Day in Support of Victims of Torture.

The United Nations has repeatedly acknowledged the important role played by NGOs in the fight against torture. In addition to lobbying for

the establishment of United Nations instruments and monitoring mechanisms, they have made a valuable contribution to their enforcement. Individual experts, including the Special Rapporteur on torture and the Special Rapporteur on violence against women, and treaty monitoring bodies such as the Committee against Torture rely heavily on information brought to their attention by NGOs and individuals.

I. Pertinent international instruments

Standard Minimum Rules for the Treatment of Prisoners (1955)

The Standard Minimum Rules for the Treatment of Prisoners were adopted in 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by Economic and Social Council resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

The Standard Minimum Rules seek “to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions”. They apply to all categories of detainees, including sentenced prisoners, those under administrative detention and persons detained without charge. On the whole, they represent “the minimum conditions which are accepted as suitable by the United Nations”.

The Rules lay down minimum standards for registration; separation and classification of detainees; accommodation; sanitary installations; provision of food, drinking water, articles necessary for personal hygiene, clothing and bedding; religious practice; education; exercise and sport; medical services; and treatment of mentally ill prisoners. They regulate disciplinary and complaints systems, the use of instruments of restraint and the transport of detainees. In particular, all cruel, inhuman or degrading punishments, including corporal punishment, are completely prohibited as punishments for disciplinary offences. There is also a section regulating the qualifications and behaviour of institutional personnel.

In resolution 2858 (XXVI) of 20 December 1971, the General Assembly recommended to Member States that the Standard Minimum Rules should be effectively implemented in the administration of penal and correctional institutions. It invited them to consider incorporating the Rules in their national legislation.

Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975)

The Declaration was adopted by General Assembly resolution 3452 (XXX) of 9 December 1975. Article 1 defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.

2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

Article 3 of the Declaration stipulates that no exceptional circumstances such as a state or a threat of war, internal political instability or any other public emergency may be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Code of Conduct for Law Enforcement Officials (1979)

The Code of Conduct for Law Enforcement Officials was adopted by General Assembly resolution 34/169 of 17 December 1979. It contains guidelines for the use of force, including firearms, and the provision of medical treatment to persons in custody. The term “law enforcement officials“ is widely interpreted as including all officers of the law who exercise police powers, especially powers of arrest and detention.

The prohibition of torture in article 5 derives from the Declaration against Torture:

[n]o law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

According to the commentary to article 5, the term “cruel, inhuman or degrading treatment or punishment” should be interpreted “so as to extend the widest possible protection against abuses, whether physical or mental”.

The Code authorizes law enforcement officials to use force “only when strictly necessary and to the extent required for the performance of their duty” (art. 3). It may thus be used only for the prevention of crime or in effecting or assisting in the lawful arrest of offenders, and its use must be proportionate to the legitimate object to be achieved. Firearms should be used only in the event of armed resistance or jeopardy to the lives of others and only where less extreme measures are not sufficient to apprehend the suspect. Law enforcement officials should fully protect the health of persons in their custody and take immediate action to secure medical attention when required (art. 6).

In 1989 the Economic and Social Council adopted Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials (resolution 1989/61), in which it urged States, inter alia, to reflect the principles embodied in the Code in national legislation and practice, and to establish effective mechanisms to ensure the internal discipline, external control and supervision of law enforcement officials.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)

The Basic Principles were adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba, on 7 September 1990. They address the lawful use of force and firearms, the policing of unlawful assemblies and of persons in custody or detention, and reporting and review procedures concerning the use of force and firearms in the line of duty. Principle 7 states that the arbitrary or abusive use of force and firearms by law enforcement officials should be punished as a criminal offence under domestic law. Principle 8 stipulates that exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from the principles.

Force and firearms may be used only if other means remain ineffective or without any promise of achieving the intended result (principle 4). Law enforcement officials should act in proportion to the seriousness of the offence and the legitimate object to be achieved. Damage and injury

should be minimized, medical assistance rendered to injured persons, and relatives or close friends informed at the earliest possible moment (principle 5).

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 (1982)

The Principles of Medical Ethics were adopted by General Assembly resolution 37/194 of 18 December 1982. In the preamble, the General Assembly expresses alarm “that not infrequently members of the medical profession or other health personnel are engaged in activities which are difficult to reconcile with medical ethics”. States, professional associations and other bodies are urged to take measures against any attempt to subject health personnel or members of their families to threats or reprisals for refusing to condone the use of torture or other inhuman or degrading treatment or punishment. On the other hand, health personnel, particularly physicians, should be held accountable for contraventions of medical ethics.

Principle 1 states that health personnel have a duty to protect the physical and mental health of prisoners and detainees and to provide medical treatment of the same quality and standard as is afforded to those who are not detained. Active or passive participation in or support of any form of torture or ill-treatment constitutes a gross contravention of medical ethics (principle 2).

It is also a contravention for health personnel to assist in the interrogation of prisoners or detainees in a manner that may adversely affect their physical or mental health; to certify their fitness for any form of treatment or punishment which may adversely affect their physical or mental health (principle 4); or to participate in the restraining of a prisoner or detainee unless such a procedure is necessary to protect the health or safety of the person concerned, other detainees or guardians, and presents no hazard to the detainee's physical or mental health (principle 5).

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the General Assembly on 10 December 1984 and entered into force on 26 June 1987.

It requires States parties, inter alia, to incorporate the crime of torture in their domestic legislation and to punish acts of torture by appropriate penalties; to undertake a prompt and impartial investigation of any alleged act of torture; to ensure that statements made as a result of torture are not invoked as evidence in proceedings (except against a person accused of torture as evidence that the statement was made); and to establish an enforceable right to fair and adequate compensation and rehabilitation for victims of torture or their dependants.

No exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may be invoked as a justification for torture. The same applies, in the case of an individual offender, to an order from a superior officer or a public authority.

States parties are prohibited from returning a person to another State where he or she would be at risk of torture (principle of non-refoulement). They must ensure, on the other hand, that an alleged perpetrator of torture present in any territory under their jurisdiction is prosecuted or extradited to another State for the purpose of prosecution.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)

The Body of Principles, adopted by General Assembly resolution 43/173 of 9 December 1988, specifies the rights of persons under arrest and detention to, inter alia, legal assistance, medical care and access to records of their detention, arrest, interrogation and medical treatment. States should prohibit any act contrary to the Principles, make such acts subject to appropriate sanctions and conduct impartial investigations of complaints (principle 7).

Principle 6 states that: “No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” According to a footnote, the term “cruel, inhuman or degrading treatment or punishment” should be interpreted “so as to extend to the widest possible protection against abuses,

whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time”.

Principle 21 states that no detained person may be subjected to violence, threats or methods of interrogation which impair his or her decision-making capacity or judgement. No detainee may be subjected, even with his or her consent, to medical experimentation that may be detrimental to his or her health (principle 22).

Non-compliance with the Principles in obtaining evidence should be taken into account when determining the admissibility of evidence against a detained person (principle 27).

Detained persons or their legal representatives have the right to lodge a complaint, especially regarding torture or other ill-treatment, with the authorities responsible for the place of the detention and, where necessary, to appropriate authorities vested with reviewing power. Such complaints should be promptly dealt with and replied to without undue delay. No complainant should suffer prejudice for lodging a complaint (principle 33).

Promptly after arrest and after each transfer to another place of detention, members of the detainee's family or other persons of his or her choice should be notified of the place where he or she is being held (principle 16). A proper medical examination should be offered to detained or imprisoned persons as promptly as possible after their admission to the place of detention or imprisonment. Thereafter medical care and treatment should be provided whenever necessary. In all cases, the care and treatment should be provided free of charge (principle 24).

Principle 29 stipulates that places of detention should be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the place of detention. Detainees should have the right “to communicate freely and in full confidentiality” with the persons concerned.

Basic Principles for the Treatment of Prisoners (1990)

The Basic Principles for the Treatment of Prisoners were adopted by General Assembly resolution 45/111 of 14 December 1990. Essentially, they require that prisoners should be treated with respect for their inher-

ent dignity as human beings. They should not suffer discrimination and their religious beliefs and cultural precepts should be respected. They should have access to cultural and educational activities aimed at full development of the human personality, to meaningful remunerated employment that will facilitate their reintegration into society and to all health services without discrimination. Efforts to abolish solitary confinement are encouraged.

Rome Statute of the International Criminal Court (1998)

The Rome Statute, which establishes an international tribunal to try perpetrators of genocide, crimes against humanity and war crimes, was adopted by a United Nations Diplomatic Conference of Plenipotentiaries on 17 July 1998.¹

According to article 7, the systematic or widespread practice of torture and “[o]ther inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health” constitute crimes against humanity. Torture is defined as “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions”.

Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) (1999)

The Manual and the Principles it contains were produced by a coalition of experts representing 40 organizations or institutions. In resolution 55/89, to which the Principles are annexed, the General Assembly strongly encouraged Governments to “reflect upon the Principles as a useful tool in efforts to combat torture” (para. 3).

The Istanbul Protocol describes in detail the steps to be taken by States, investigators and medical experts to ensure the prompt and impartial investigation and documentation of complaints and reports of torture. The investigation should be carried out by competent and impartial experts, who are independent of the suspected perpetrators and the agency they serve (principle 2). They should have access to all necessary information, budgetary resources and technical facilities. They

¹ United Nations document A/CONF.183/9.

should have the authority to issue summonses to alleged perpetrators and witnesses, and to demand the production of evidence (principle 3(a)). The findings of the investigation should be made public (principle 5(b)). The alleged victims and their legal representatives should have access to any hearing and to all information relevant to the investigation (principle 4).

Principle 3(b) states that: “Alleged victims of torture, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.”

II. Treaty monitoring bodies

Committee against Torture

Pursuant to article 17 of the Convention against Torture, the States parties elect ten experts “of high moral standing and recognized competence in the field of human rights” as members of the Committee against Torture. The Committee holds two regular sessions in April/May and November each year in Geneva.

The Committee's mandate comprises four principal activities: consideration of periodic State party reports (art. 19); undertaking of confidential inquiries in the light of well-founded indications that torture is being systematically practised in the territory of a State party (art. 20); consideration of communications from individuals who claim to be victims of a violation of the Convention (art. 22); and consideration of inter-State complaints (art. 21).² Individual and inter-State complaints may be considered only in respect of States parties who have declared that they recognize the Committee's competence to receive and consider such communications. The Committee also submits an annual report on its activities to the States parties and the United Nations General Assembly.

² Under article 21, States parties may submit communications claiming that another State party is not fulfilling its obligations under the Convention. To date no such complaint has been submitted.

Consideration of State party reports (art. 19)

States parties undertake to submit to the Committee an initial report on the measures they have taken to give effect to the Convention within one year of its entry into force, and to submit supplementary reports every four years on any new measures taken and any other reports requested by the Committee. State party representatives are invited to present the reports, to answer questions and to submit any additional information requested. Having considered the report, the Committee adopts “conclusions and recommendations” under the following headings: positive aspects; factors and difficulties impeding the application of the Convention; subjects of concern; and recommendations. The “conclusions and recommendations” are made public.

In considering State party reports, the Committee takes into account reliable information submitted by non-governmental organizations, representatives of the legal profession and individuals. NGOs may hold an informal meeting with Committee members prior to the consideration of a State party report in order to communicate their concerns about the country in question.

Confidential inquiries (art. 20)

The Committee may initiate a confidential inquiry under article 20 of the Convention when it receives reliable information indicating that torture is being systematically practised in the territory of a State party unless the State concerned has declared under article 28 that it does not recognize the Committee's competence in that regard.

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 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.³

³ *Official Records of the General Assembly; Forty-eighth Session; Supplement No. 44 (A/48/44/Add.1)*, para. 29.

When it receives information of the kind referred to in article 20, the Committee invites the State party concerned to cooperate in examining the material. If it feels that the inquiry should include a visit to the State party by one or more of the Committee's members, it seeks the State's consent. During visits, Committee members usually meet relevant government authorities, members of the judiciary and representatives of NGOs, and visit places of detention. The Committee's findings, together with any comments or suggestions that seem appropriate, are transmitted to the State party with a request for information on action taken as a consequence.

After consulting the State party, the Committee may decide to include a summary account of the results of the proceedings in its annual report to the General Assembly.

Individual complaints procedure (art. 22)

Under article 22, individuals may submit communications alleging violations of one or more provisions of the Convention by a State party that has recognized the Committee's competence to consider such communications (see annex 1, Model communication).

Admissibility

A communication is considered admissible only if it fulfils the following criteria:

- (a) It is not anonymous and emanates from an individual subject to the jurisdiction of a State party that has recognized the Committee's competence under article 22.
- (b) The individual claims to be a victim of a violation by the State party of provisions of the Convention.
- (c) The communication has been submitted by the victim, his or her relatives, persons expressly authorized by the victim, or, where the victim is unable to submit the communication, other persons who can justify acting on the victim's behalf.
- (d) The communication is not an abuse of the right to submit a communication under article 22 or incompatible with its provisions.

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- (e) The same matter has not been and is not being examined under another procedure of international investigation or settlement.⁴
- (f) The individual has exhausted all available domestic remedies.⁵

The majority of cases brought before the Committee under article 22 invoke a risk of torture on deportation (art. 3).⁶ In that connection, the Committee has adopted a number of decisions interpreting some of the admissibility criteria.⁷ It has ruled, for example, with regard to the exhaustion of domestic remedies: that applicants must challenge the legality of the administrative decisions and acts that form part of the determination process in the country concerned; that applicants must pursue the possibility of a legal challenge before the highest judicial body responsible for reviewing asylum cases; and that applicants must file a request for a ministerial waiver on humanitarian and compassionate grounds in States parties where such a statutory remedy exists and apply for judicial review should it be denied.

In some cases, the Committee has taken the view that it has no jurisdiction to review the grounds for determining whether a person is allowed to stay in a country, so long as the State party fulfils its obligations under article 3. It has declared complaints inadmissible in the

⁴ The Committee has held that the submission of a communication to, and its subsequent consideration by, regional human rights mechanisms such as the European Commission on Human Rights, the European Court of Human Rights, the Inter-American Commission on Human Rights or the Inter-American Court of Human Rights renders an application inadmissible since they are procedures of international investigation or settlement. This does not apply to extra-conventional mechanisms of the Commission on Human Rights, such as the Special Rapporteur on torture or the Special Rapporteur on violence against women.

⁵ The Committee will not consider a complaint on its merits unless the petitioner has first submitted the case to the judicial authorities of the State party concerned, using all avenues of recourse. This rule is waived only where domestic proceedings are unreasonably prolonged or unlikely to bring effective relief. Thus, the Committee has considered communications inadmissible where the author stated in a general fashion that national remedies were ineffective without first submitting a complaint to the national authorities or where a judicial investigation of torture allegations had been ordered or was ongoing and there was no indication of an obstruction of justice.

⁶ 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.

⁷ See also the Committee’s General Comment No. 1 (1996) on the implementation of article 3 of the Convention in the context of article 22 (United Nations document HRI/GEN/1/Rev.5).

light of article 3 where the original expulsion order was no longer enforceable or where the author had been issued with a certificate allowing him/her to stay in the country temporarily and was in “no immediate danger of expulsion”.

Interim measures of protection

During consideration of the admissibility or merits of a communication (rule 108(9) and rule 110(3) of the rules of procedure), the Committee may request the State party to take steps to avoid possible irreparable damage to the applicant. In cases involving a risk of deportation (art. 3), it may request the State party not to expel the author of a communication while it is still under consideration. A request for the adoption of interim measures does not prejudice the Committee's views on the admissibility or merits of the communication.

Consideration of the merits

Admissible communications are considered on their merits. Within six months of the admissibility decision, the State party concerned must submit explanations or statements clarifying the case and indicating any steps taken to remedy the situation. Such statements are transmitted to the author of the communication for comment. The Committee's final views on the case are forwarded to the author and the State party. When it finds that the Convention has been violated, the Committee requests the State party to inform it within 90 days of any measures taken to give effect to its views. The Committee's decisions declaring communications inadmissible and its views on admissible communications are published in its annual report.

Reminders are sent to States parties that fail to report within three months on measures taken to remedy a situation that the Committee has found to be a violation of the Convention.

Other treaty monitoring bodies

A number of other international human rights instruments prohibit torture and other forms of ill-treatment and have established monitoring bodies, composed of independent experts, to review their implementation by States parties. Their methods of work are similar to those of the Committee against Torture. In particular, the Human Rights Committee, the Committee on the Elimination of Discrimination

against Women and the Committee on the Elimination of Racial Discrimination may receive individual complaints in respect of States parties that have recognized their competence to receive and consider such communications. They apply similar criteria of admissibility.

Human Rights Committee

Article 7 of the 1966 International Covenant on Civil and Political Rights states that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 10 (1) states that: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

In its General Comment No. 20 (1992), the Human Rights Committee notes that it is the duty of States parties to afford everyone protection through legislative and other measures against the acts prohibited by article 7, “whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity”. This prohibition extends to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.

Committee on the Elimination of Discrimination against Women

Although the 1979 Convention on the Elimination of All Forms of Discrimination against Women contains no specific provision prohibiting violence against women, the Committee states, in its General Recommendation No.19 (1992), that gender-based violence constitutes discrimination within the meaning of article 1 of the Convention and that the right under international law not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment is one of the rights impaired or nullified by such violence.⁸

On receipt of a communication under the Optional Protocol to the Convention and before taking a final decision on its merits, the Committee has the option of requesting the States party concerned to take steps to protect the alleged victim or victims from irreparable dam-

⁸ Ibid.

age (art. 5). Such a request for interim measures does not imply a determination on the admissibility or merits of the communication.

Committee on the Rights of the Child

Article 37 of the 1989 Convention on the Rights of the Child requires States parties to ensure that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment. Article 19 contains a broader provision for the protection of children from mental and physical abuse:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Under article 34 of the Convention, States parties “undertake to protect the child from all forms of sexual exploitation and sexual abuse” and to take all appropriate national, bilateral and multilateral measures to that end.

In September 2000, the Committee devoted a day of general discussion⁹ to the issue of State violence suffered by children in the context of “law and public order” concerns and by children living in institutions managed, licensed or supervised by the State. It adopted 36 recommendations to States, the international community and NGOs concerning legislative measures, awareness-raising and training, and monitoring and complaints mechanisms. States parties, for example, were urged to review relevant legislation, including criminal legislation, “to ensure that all forms of violence against children, however light, are prohibited, including the use of torture, or cruel, inhuman or degrading treatment ... for punishing or disciplining within the child justice system, or in any other context” (recommendation 8). The Committee recommended that “urgent attention be given to ensuring the establishment and effective functioning of systems to monitor the treatment received by children deprived of a family or alleged or recognized to have infringed penal law” (recommendation 26).

⁹ In September 2001, the topic for the day of general discussion was “Violence against children within the family and in schools”.

Committee on the Elimination of Racial Discrimination

Under article 5 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, “States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law” in the enjoyment of, inter alia, the right “to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution”.

How to bring information to the attention of the Committees

Any information coming within the scope of the Convention against Torture, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child or the International Convention on the Elimination of Racial Discrimination should be sent to the following address:

**Chairperson of the Committee against Torture/
Human Rights Committee/Committee on the Rights of the Child/
Committee on the Elimination of Racial Discrimination
c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
1211 Geneva 10
Fax.: +41-22-917 9022
E-mail address: webadmin.hchr@unog.ch
Switchboard number: +41-22-917 9000 or +41-22-917 1234**

Any information coming within the scope of the Convention on the Elimination of All Forms of Discrimination against Women should be sent to the following address:

**Chairperson of the Committee on the Elimination of
Discrimination against Women
c/o Office of the High Commissioner for Human Rights
United Nations Office
New York
Fax.: +1-212-963-3463
E-mail address: daw@un.org**

The annual reports of these and other treaty monitoring bodies, as well as decisions, press releases and other relevant documents are accessible

on the OHCHR web site (www.unhchr.ch, click on Programme, Conventional Mechanisms, Committee against Torture/Human Rights Committee/Committee on the Rights of the Child/Committee on the Elimination of Racial Discrimination/Committee on the Elimination of Discrimination against Women).

III. Special Rapporteurs

The Special Rapporteur on torture

The United Nations Commission on Human Rights, in resolution 1985/33, decided to appoint a special rapporteur to examine questions relevant to torture, to seek and receive credible and reliable information on such questions and to respond effectively to the information. The Special Rapporteur submits a comprehensive report on his or her activities to the Commission each year, reviewing the occurrence and extent of the practice of torture, and making recommendations to assist Governments in stamping it out. The mandate of the Special Rapporteur covers all countries, irrespective of whether a State has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The mandate comprises three main activities: transmitting communications consisting of urgent appeals and allegation letters (alleged cases of torture) to Governments; undertaking fact-finding missions (country visits) to countries where information suggests that torture may involve more than isolated and sporadic incidents; and submitting annual reports on the Special Rapporteur's activities, mandate and methods of work to the Commission on Human Rights and the General Assembly.

Unlike the treaty monitoring bodies established under international treaties, the Special Rapporteur does not require the exhaustion of domestic remedies to act on individual cases involving a risk of torture ("urgent appeals") or on alleged acts of torture ("allegations"). Moreover, when the facts in question come within the scope of more than one mandate, the Special Rapporteur may decide to approach one or more thematic mechanisms and country rapporteurs with a view to sending joint communications or seeking joint missions.

Urgent appeals

The Special Rapporteur has developed an "urgent appeal" procedure in order to react promptly to information suggesting that an individual or

a group of individuals is at risk of torture or other forms of ill-treatment, often while in detention, at the hands of public officials or other persons acting at their instigation or with their consent or acquiescence. Owing to the time-sensitive nature of such an appeal, the Special Rapporteur transmits a facsimile directly to the Minister for Foreign Affairs of the country concerned, urging the Government in question to ensure the physical and mental integrity of the person(s) concerned but without drawing any conclusions as to the facts.

The Special Rapporteur also takes action when persons are feared to be at risk of torture or other ill-treatment in the form of corporal punishment, the use of means of restraint contrary to pertinent international legal instruments, prolonged incommunicado detention, solitary confinement, “torturous” conditions of detention, the denial of medical treatment and adequate nutrition, imminent deportation to a country where there is a risk of torture or other ill-treatment, and the threatened use or excessive use of force by law enforcement officials (see “Selected issues” below). The Special Rapporteur also transmits urgent appeals concerning the enactment of legislation that will allegedly undermine the international prohibition of torture, for example by providing for impunity for acts of torture.

Allegations

Allegations of torture received by the Special Rapporteur which do not require him or her to take immediate action are transmitted to Governments in the form of “allegation letters”. These letters contain summaries of individual cases of torture received by the Special Rapporteur and, where applicable, include general references to the phenomenon of torture. These general allegations refer to systematic patterns of torture or patterns relating to a specific group of victims or perpetrators, the use of particular methods of torture, detention conditions amounting to ill-treatment, or specific legislation that has an impact on the occurrence of torture. In this context, the Special Rapporteur may address criminal sentencing provisions (e.g. permitting corporal punishment), criminal procedure legislation (e.g. regarding periods of incommunicado detention, interrogation, etc.), legal provisions granting amnesty, and other measures providing for de facto or de jure impunity in violation of the international prohibition of torture.

The Special Rapporteur requests the Government to clarify the substance of the allegations and to forward information on the status of any investigation, the findings of any medical examination, the identity of

the persons responsible for the torture, the disciplinary and criminal sanctions imposed on them, and the nature and amount of compensation paid to the victims or their families. The Special Rapporteur also draws the Government's attention to international human rights instruments prohibiting the alleged acts such as the Universal Declaration of Human Rights, the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women and the Standard Minimum Rules for the Treatment of Prisoners.

Fact-finding missions (country visits)

Country visits enable the Special Rapporteur to obtain firsthand knowledge of the situation as regards torture and other forms of ill-treatment in a particular country with a view to identifying institutional and legislative factors that contribute to such practices and making detailed recommendations to the Government. Although missions are undertaken only at the invitation of a Government, the Special Rapporteur may decide to solicit an invitation. When contemplating such action, the Special Rapporteur takes into account, first and foremost, the number, quality and gravity of the allegations received and the potential impact that the mission may have on the overall human rights situation.

Before a fact-finding mission takes place, the Government is asked to provide the following guarantees to the Special Rapporteur and accompanying United Nations staff: freedom of movement throughout the country; freedom of inquiry, especially in terms of access to all prisons, detention centres and places of interrogation; free contact with central and local authorities of all branches of government; free contact with representatives of NGOs, other private institutions and the media; confidential and unsupervised contacts, where the Special Rapporteur's mandate so requires, with witnesses and other private individuals, including persons deprived of their liberty; and full access to all documentary material relevant to the mandate. The Government is also asked for assurances that no persons, be they officials or private individuals, who have been in contact with the Special Rapporteur in connection with the mandate will suffer threats, harassment or punishment on that account or be subjected to judicial proceedings.

During the mission, the Special Rapporteur meets with government authorities (including the head of the executive), NGOs, representatives of the legal profession, alleged victims of torture and relatives of victims. He or she visits prisons, detention centres and places of interrogation to obtain firsthand knowledge of how the criminal legal process

operates, from arrest to enforcement of the sentence. Confidential and unsupervised interviews are conducted with victims of torture, witnesses and other private persons, including those deprived of their liberty. In the mission report, the Special Rapporteur may give an account of individual allegations received. Although the monitoring of conditions of detention are not specifically mentioned in the mandate, they may well be pertinent, especially when they constitute a grave risk to the health or life of detainees (see “Selected issues” below).

In the mission report, the Special Rapporteur outlines legislation of relevance to the prohibition of torture such as provisions making torture a crime and provisions governing arrest and detention. Special attention is paid to periods of incommunicado detention, disciplinary sanctions, access to qualified legal representation and legal aid, bail provisions, witness protection, the admissibility of confessions, the status and independence of medical experts and forensic services, and access of members of civil society to places of detention. Lastly, the Special Rapporteur invites suggestions from both State representatives and NGOs regarding the mission's conclusions and recommendations.

Reports of the Special Rapporteur

The Special Rapporteur submits annual reports to the Commission on Human Rights and, since 1999, annual interim reports to the General Assembly. The report to the Commission contains summaries of all correspondence transmitted to Governments by the Special Rapporteur (“urgent appeals” and “other allegations”) and of correspondence received from Governments. The Special Rapporteur may also include general observations on specific countries. No conclusions as to individual torture allegations are drawn. The report may address specific issues¹⁰ or developments that influence or are conducive to torture in the world, offering general conclusions and recommendations. Mission reports are usually appended to the main Commission report. The interim report to the General Assembly outlines overall trends and recent

¹⁰ The following issues have been addressed: the non-derogability of the prohibition of torture (E/CN.4/2002/137); racism and torture (E/CN.4/2001/66); corporal punishment (E/CN.4/1997/7); violation of the prohibition of torture of children (E/CN.4/1996/35); gender-specific forms of torture (E/CN.4/1995/34); the interrelationship between the Special Rapporteur on torture and the Committee against Torture (E/CN.4/1988/17); the role of medical personnel in torture, responsibility for the violation of the prohibition of torture, national standards for correcting and/or preventing torture (E/CN.4/1987/13); types and methods of torture, trade in instruments of torture, torture and violations of other human rights (E/CN.4/1986/15).

factual, legal and procedural developments of relevance to the Special Rapporteur's mandate.¹¹ The Special Rapporteur presents the reports to the annual sessions of the Commission and General Assembly and they are publicly discussed by both Governments and NGOs.

The Special Rapporteur on violence against women, its causes and consequences

The mandate of the Special Rapporteur on violence against women was created by the Commission on Human Rights in 1994.¹² The first Special Rapporteur structured activities under the mandate according to the substantive breakdown of violence against women contained in the Declaration on the Elimination of Violence against Women:¹³ violence against women in the family, violence in the community, and violence perpetrated and condoned by the State. The Declaration defines violence as

any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

According to the Declaration, violence against women encompasses, but is not limited to, physical, sexual and psychological violence:

- (a) That occurs in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- (b) That occurs in the community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

¹¹ The following issues have been addressed: intimidation as a form of torture, enforced or involuntary disappearance as a form of torture, torture and discrimination against sexual minorities, torture and impunity, and prevention and transparency (A/56/156); gender-specific forms of torture, torture and children, torture and human rights defenders, reparation for victims of torture, and torture and poverty (A/55/290); incommunicado detention, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and the Rome Statute of the International Criminal Court (A/54/426).

¹² Resolution 1994/45 entitled "Question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women" adopted without a vote at the 56th meeting on 4 March 1994.

¹³ General Assembly resolution 48/104 of 20 December 1993.

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- (c) That is perpetrated or condoned by the State, including during times of armed conflict.

The working methods of the Special Rapporteur on violence against women are similar to those of the Special Rapporteur on torture (see above): transmitting urgent appeals and allegations, undertaking fact-finding missions and submitting annual reports to the Commission on Human Rights on a particular category of violence against women.

Allegations and urgent appeals

With a view to finding durable solutions to the problem of violence against women, the Special Rapporteur has established procedures for obtaining clarifications and information from Governments, in a humanitarian spirit, on allegations of specific cases of violence against women or of general situations conducive to the perpetration of such violence. Urgent appeals concerning an imminent threat, or fear of a threat, to a woman's right to life or personal security may also be sent to the Special Rapporteur.

The Special Rapporteur can only process cases of violence against women that are gender-specific, i.e. violence or threats of violence directed against women because of their gender.¹⁴ When communications are received, the Special Rapporteur first seeks to verify the allegations and then transmits the information to the Government concerned. When transmitting cases to Governments, the Special Rapporteur:

1. Refers to the applicable international human rights standards, including progressive standards of international law, which are alleged to have been violated.
2. Urges the competent national authorities to provide the Special Rapporteur with full information on the case concerned with a view to finding a solution or making a recommendation.
3. May also request the Government concerned to investigate, prosecute, impose appropriate sanctions, provide compensation or rectify a more general situation, in the light of international standards, with a view to preventing the recurrence of particular violations.

¹⁴ The definition of gender-based violence used by the Special Rapporteur is taken from the Declaration on the Elimination of Violence against Women.

Fact-finding missions (country visits)

In country visits the Special Rapporteur has focused on specific forms of violence, including military sexual slavery, trafficking and forced prostitution, rape by non-governmental individuals and domestic violence. This approach has enabled her to undertake a more detailed analysis of the application of international norms to specific forms of violence in a national context, and to make more detailed assessments of the causes and consequences and the effectiveness of certain preventive and remedial initiatives.

Reports

The Special Rapporteur is required to submit annual reports to the Commission on Human Rights. Mission reports and a report containing summaries of all correspondence transmitted to Governments by the Special Rapporteur (“urgent appeals” and “other allegations”) and of correspondence received from Governments are issued as addenda to the Commission report. The reports are presented by the Special Rapporteur during the Commission’s annual session in Geneva and are publicly discussed by both Governments and non-governmental organizations.

Each year the Special Rapporteur’s annual report surveys a prevalent form of violence against women falling into one of three categories: violence in the family, violence in the community or violence perpetrated or condoned by the State, including armed conflict. The report documents emerging legal standards on the issue, considers future directions and unresolved issues, and presents general reflections on violence against women and the theme in question, including a number of country case studies.

The Special Rapporteur has characterized impunity as the greatest cause of violence against women. Other causes of violence highlighted by the Special Rapporteur are “historically unequal power relations” between men and women, as manifested in economic discrimination and women’s subordination in the family; attitudes to women’s sexuality which encourage or demand the control of their sexuality; cultural ideologies that justify the subordination of women, including stereotyped gender roles, beliefs that legitimize certain violent practices as expressions of religion, culture or tradition, and negative stereotypes of women in the media; and doctrines of privacy that deter action to eliminate violence against women in the family. The Special Rapporteur has also considered how the interrelationship between gender and other fac-

tors such as race, ethnic identity, sexual orientation and class shapes the causes of violence against women.

With regard to violence by private (non-governmental) groups and individuals, the Special Rapporteur has noted that States may be held responsible for such violence under international law if the private acts are covered by the provisions of a treaty (such as the Convention on the Elimination of All Forms of Discrimination against Women); the State is in complicity with those who commit the abuses; or the State denies women the equal protection of the law by failing to enforce criminal law in cases of violence against women on an equal basis with cases of other violent crimes; or if the State fails to exercise due diligence to prevent violations, investigate violations that occur, impose appropriate punishment, and ensure adequate compensation for the victim.¹⁵

How to bring information to the attention of the Special Rapporteurs

Any individual, group, non-governmental organization, inter-governmental agency or Government that has knowledge of the occurrence of acts of torture or other forms of ill-treatment (**allegations**), or fears that such ill-treatment may occur or might be occurring (**urgent appeals**) can bring the information to the Special Rapporteurs' attention. The following information regarding individual cases should be transmitted (if available):

- (a) Full name of the victim;
- (b) Date (at least the month and year) on which the incident(s) of torture occurred;
- (c) Place where the person was seized (city, province, etc.) and location at which the torture was carried out (if known);
- (d) Description of the alleged perpetrators of the violation (including position held and/or State affiliation);
- (e) Description of the form of torture used and any injury suffered or statement of reasons to believe that the person is at risk of torture;

¹⁵ See also the United Nations Declaration on the Elimination of Violence Against Women, article 4 of which requires States to pursue by all appropriate means and without delay a policy of eliminating violence against women.

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- (f) Identity of the person or organization submitting the report (name and address, which will be kept confidential).

The Special Rapporteur on violence against women needs the following information, if available:

- (a) A summary of the main points of the case identifying the rights that have been or may be violated. If the State concerned has ratified human rights treaties, an indication of the provisions of the treaties believed to have been violated.
- (b) If the submission concerns a law, practice or policy that affects women in general or women in a specific group, an explanation of how other women or a specific group of women are affected. A consistent pattern in individual cases can be used to demonstrate a general failure to prevent and respond to private abuses.

If the submission concerns violations by private individuals or groups (rather than government officials), the Special Rapporteur requires any information that might indicate that the Government failed to exercise due diligence to prevent, investigate, punish and ensure compensation for the violations, such as:

- (a) Whether or not there is a law that addresses the violation;
- (b) Any defects in existing laws such as inadequate remedies or definitions of rights;
- (c) Refusal or failure by the authorities to register or investigate the case and other similar cases;
- (d) Failure by the authorities to prosecute the case and other similar cases;
- (e) Patterns of gender discrimination in the prosecution or sentencing of cases;
- (f) Statistics and other data concerning the prevalence of the type of violation described in the submission.

Any information coming within the mandates of the Special Rapporteurs should be sent to the following address:

**Special Rapporteur on torture/on violence against women
c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
1211 Geneva 10**

Fax.: +41-22-917 9006

E-mail address: webadmin.hchr@unog.ch

Switchboard number: +41-22-917 9000 or +41-22-917 1234

All the annual reports of the Special Rapporteur on torture, the Special Rapporteur on violence against women, and other thematic and country rapporteurs, as well as their mission reports, resolutions, press releases and other relevant documents are accessible on the OHCHR web site (www.unhchr.ch, click on Programme, Extra-Conventional Mechanisms, Thematic Mandates, Special Rapporteur on torture/ Special Rapporteur on violence against women).

IV. United Nations Voluntary Fund for Victims of Torture

Administration of the Fund

The physical and psychological after-effects of torture can be devastating and last for years, affecting not only the victims but also members of their families. Assistance in recovering from the trauma suffered can be obtained from organizations that specialize in assisting victims of torture. In December 1981, the General Assembly established the United Nations Voluntary Fund for Victims of Torture to receive voluntary contributions for distribution to NGOs that provide humanitarian assistance to victims of torture and members of their families. The Fund is administered by the Secretary-General on the advice of a Board of Trustees composed of a Chairman and four members with wide human rights experience, who act in their personal capacity as United Nations experts. The Board is authorized by the General Assembly to promote and solicit contributions. As a rule, it meets annually for 10 working days in May. During the session, the Board adopts recommendations on reports regarding the use of previous grants and on applications for new grants. It also meets, inter alia, with regular donors to the Fund, the Committee against Torture and the Special Rapporteur on torture. The Secretariat of the Fund and the Board are based at the Office of the High Commissioner for Human Rights in Geneva.

Type of projects and beneficiaries

The Fund partially subsidizes projects providing medical, psychological, social, economic, legal or other forms of humanitarian assistance to torture victims and members of their family. Each year, the Fund

finances projects to assist more than 60,000 victims and their family members from all over the world. Subject to the availability of funds, it also subsidizes a limited number of projects to train health professionals and others on how to provide specialized assistance to victims of torture. In May 2001, acting on the Board's recommendations, the Secretary-General approved grants totalling US\$8 million to 187 projects in 70 countries.

Grants from the Fund

A grant from the Fund covers a 12-month period. The budget for a project must reflect real local costs. The sum requested from the Fund should not represent more than one third of the total budget for the project. Grants for training or for a seminar cannot exceed a sum determined by the Board. New applications for the continuation of a project can be submitted and a new grant recommended provided that the Board receives satisfactory narrative and financial reports on the use of the previous grant.

Applications for grants are judged on their merits, which include the number of victims of torture and members of their families to be assisted by a project, the type of torture and after-effects suffered, the type of assistance needed, the professional experience of the project staff in assisting victims of torture, and case studies of victims to be assisted. Confidential information of this kind is made available only to the Board. The number of grants allocated and their amount are not predetermined or subject to equitable geographical distribution. The Board takes into consideration the increasing need to assist small projects for humanitarian assistance to victims of torture, most of which have minimum financial capacity.

The Fund's cycle

Each year, the secretariat analyses applications for project grants to determine their admissibility. The Board recommends grants for approval by the Secretary-General on the basis of new contributions registered and admissible applications received. Beneficiaries of grants must submit narrative, financial and audit reports on their use.

Project admissibility and selection criteria

Criteria for admissibility, as well as other selection criteria, are set forth in the Guidelines of the Fund, which are updated regularly. To be

admissible, applications for grants must be drafted on the Fund's application form. The Guidelines and forms are accessible in the section of the web site of the Office of the High Commissioner for Human Rights (www.unhchr.ch) entitled "Civil Society Support Initiatives" or can be requested from the secretariat of the Fund (see contact numbers below).

Contributions to the Fund

Since 1983 the Fund has been one of the main international institutions providing grants to NGOs for direct assistance to victims of torture worldwide. Donors are invited to contribute well in advance of the Fund's annual session so that their contribution can be duly registered and used during that year. The Board's practice at its annual session has been to recommend for expenditure all the money available for grants in the Fund. New voluntary contributions are therefore needed every year.

Assistance to victims of torture could be jeopardized if increasing requests to the Fund for assistance are not met on an annual basis. The Fund's support is essential for many organizations worldwide and the increase in requests is expected to continue in the years ahead. The General Assembly, the Commission on Human Rights, the Committee against Torture, the Special Rapporteur on torture, the Secretary-General, the High Commissioner for Human Rights and the Chairman of the Board therefore regularly appeal to Governments, organizations and individuals to contribute annually to the Fund.

Contributions to the Fund can be made: (a) by bank transfer to the "United Nations Geneva General Fund" either in United States dollars (c/o UBS AG, PO Box 2770, CH-1211 Geneva 2, account 240-CO-590-160.1) or in other currencies (c/o UBS AG, at the same address, account 240-CO-590-160.0, Swift address UBSWCHZH12A); or (b) by cheque to the order of "The United Nations" to be sent to The Treasurer, United Nations Office at Geneva, CH-1211 Geneva 10, Switzerland. In all cases, donors are invited to specify "Payee: account CH, United Nations Voluntary Fund for Victims of Torture".

Reporting on the activities of the Fund

The Secretary-General submits an annual report to the General Assembly indicating contributions paid or pledged and the total amount of grants approved. The report also reproduces all recommendations adopted by the Board and approved by the Secretary-General and contains a list of subsidized projects. To protect victims of torture, mem-

bers of their families and the staff of projects financed by the Fund, no other details concerning subsidized projects are provided.

Documents and contacts at the Fund's secretariat

The guidelines, application and reporting forms, and reports to the General Assembly and the Commission on Human Rights are accessible on the OHCHR web site, which is updated regularly ([http://www.unhchr.ch/Programmes/ Voluntary or Trust Funds/ United Nations Voluntary Fund for Victims of Torture](http://www.unhchr.ch/Programmes/Voluntary%20or%20Trust%20Funds/United%20Nations%20Voluntary%20Fund%20for%20Victims%20of%20Torture)).

For documentation or any further information on the Fund, please contact the secretariat of the Fund at:

**Trust Funds Unit, Support Services Branch
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
CH-1211 Geneva 10
Tel.: 0041-22 917 9315
Fax: 0041-22 917 9017
E-mail address: unvft.hchr@unog.ch**

V. Selected issues

Rape and gender-specific forms of violence

In accordance with international jurisprudence which establishes that rape constitutes a form of torture,¹⁶ both the Special Rapporteur on torture¹⁷ and the Special Rapporteur on violence against women (see above) take action on allegations of rape and sexual assault. The Special Rapporteur on torture can take action on cases of gender-based

¹⁶ In its resolution 1998/38, the Commission on Human Rights invited the Special Rapporteur on Torture “to continue to examine questions concerning torture and other cruel, inhuman or degrading treatment or punishment directed against women and conditions conducive to such torture, to make appropriate recommendations concerning the prevention and redress of gender-specific forms of torture, including through rape, and to exchange views with the Special Rapporteur on violence against women with a view to enhancing further their effectiveness and mutual cooperation” (para. 22).

¹⁷ In presenting his 1992 report to the Commission on Human Rights, the Special Rapporteur on torture stated that since it was clear that rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and the right to physical integrity of the human being, they constituted an act of torture (summary record of the twenty-first meeting, United Nations document E/CN.4/1992/SR.21, para. 35).

violence only if it has been exercised by public agents or with their consent or acquiescence.¹⁸ The Special Rapporteur on violence against women considers that cultural practices that involve “severe pain and suffering” (and may be considered “torture-like”) such as female genital mutilation, honour killings, Sati and similar cultural practices that brutalize the female body must be eliminated as quickly as possible. International standards that clearly establish the State’s duty to eradicate domestic violence have emerged since the 1980s.¹⁹ Custom, tradition and religion cannot be invoked by States parties to defend violence against women in the family or to shield from international scrutiny cultural practices that are violent towards women.²⁰

In March 2000 the Human Rights Committee adopted General Comment No. 28 on equality between men and women, paragraph 11 of which requests States parties to assist the Committee in assessing compliance with article 7 on torture and cruel, inhuman or degrading treatment by providing it with information on measures taken to eliminate genital mutilation, to prevent forced abortion and forced sterilization, and to provide women who have become pregnant as a result of rape with access to safe abortions.²¹

Incommunicado detention

Torture is most frequently practised when a person is held without access to a lawyer, his or her family and relatives or groups from civil society (incommunicado detention). In resolution 1999/32, the Commission on Human Rights reminded all States that “prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment” (para. 5). Hence, even in cases where no independent risk of torture exists for a person held in incommunicado detention, the Special Rapporteur on torture considers that action in the form of an urgent appeal may be taken where such detention is prolonged. The Special Rapporteur further believes that prolonged incommunicado detention in a secret or unknown place may amount to torture as described in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹⁸ In particular, the Special Rapporteur on torture has addressed the issues of sexual abuse and harassment, virginity testing, forced abortion and forced miscarriage (see documents E/CN.4/1995/34 and A/55/290).

¹⁹ See, in particular, the Declaration on the Elimination of Violence against Women and General Recommendation No. 19 of the Committee on the Elimination of Discrimination against Women.

²⁰ See United Nations document E/CN.4/2002/83.

²¹ United Nations document HRI/GEN/1/Rev.5.

Corporal punishment

Although “lawful sanctions” fall outside the international definition of torture, cruel, inhuman or degrading punishment, including corporal punishment, is considered to be unlawful under international law. Lawful sanctions refer only to penal practices that are widely accepted as legitimate by the international community and are compatible with basic internationally accepted standards. The Commission on Human Rights held in resolution 1998/38 that corporal punishment “can amount to cruel, inhuman or degrading punishment or even to torture”.

Intimidation/threats

In resolution 2001/62, the Commission on Human Rights condemned “all forms of torture, including through intimidation, as described in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (para. 2). According to the Special Rapporteur on torture, information on threats and intimidation is often a crucial element in assessing whether a person is at risk of physical torture and other forms of ill-treatment.

In resolution 2001/11, the Commission on Human Rights reiterated its concern at the “continued reports of intimidation and reprisals against private individuals and groups who seek to cooperate with the United Nations and representatives of its human rights bodies”, and invited the Secretary-General to submit to it a report containing a compilation and analysis of information on alleged reprisals against such individuals and groups.

Retaliation against victims, witnesses and any other person acting on behalf of torture victims

The Special Rapporteur on torture also intervenes when measures of retaliation are taken or threatened against victims of torture, their relatives, members of civil society, lawyers working on torture complaints and medical or other experts acting on behalf of torture victims.²² The

²² In particular, the Special Rapporteur on torture takes into account article 13 of the Convention against Torture and paragraph 2(b) of the Istanbul Protocol (see under “Pertinent international instruments”). Article 13 of the Convention states: “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.”

Special Rapporteurs pay particular attention to reprisals against individuals or groups for cooperating with them and request Governments to adopt appropriate and effective measures to protect the persons concerned from any form of intimidation. The Special Rapporteurs may act jointly in this regard with the Special Representative of the Secretary-General on human rights defenders.

Torture and non-State actors

According to the definition of torture contained in article 1 of the Convention against Torture, an act of “severe pain or suffering” qualifies as torture only if it 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”. Acts of torture or other forms of ill-treatment by members of law enforcement agencies, paramilitary groups, civil defence forces or other forces operating with or tolerated by the Government fall within this definition. The Special Rapporteur on torture considers that State responsibility also arises where national authorities are “unable or unwilling” to provide effective protection from ill-treatment (i.e. fail to prevent or remedy such acts), including ill-treatment by non-State actors.

Imminent expulsion of persons to a country where they are at risk of torture (refoulement)

An individual or a group of individuals at risk of “imminent” deportation to a country where there are reasonable grounds to believe that an identifiable risk of torture or other ill-treatment exists, and where no other effective national legal recourse, for example with suspensive effect on the deportation, can be relied on by the person(s) at risk of deportation, may use the following mechanisms.²³

In cases submitted to the Committee against Torture invoking a risk of deportation (allegedly in violation of article 3 of the Convention), the Committee may request the State party concerned to take interim measures, i.e. not to expel the author of the communication while the matter is under consideration. To benefit from the protection afforded under

²³ In cases where the “deporting” country is a State party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, applicants may prefer to have recourse to the European Court of Human Rights, which has inherent jurisdiction to request a State party to take effective interim measures such as a stay of deportation.

article 3 of the Convention, applicants must show that their expulsion would have the foreseeable consequence of exposing them to a “real and personal” risk of being tortured. The Committee has stressed on several occasions that this protection is absolute, and that considerations of a procedural nature or “the nature of the activities in which the person engaged [are] not a relevant consideration in the taking of a decision in accordance with article 3 of the Convention.” The Committee has expressly stated that article 3 applies “irrespective of whether the individual concerned has committed crimes and the seriousness of those crimes”.

The Special Rapporteur on torture may urge a Government to refrain from deporting persons to a country where they would be at risk of torture (or to a transit country where they would be at serious risk of further deportation to such a country) unless it obtains unequivocal guarantees that the persons concerned will not be subjected to ill-treatment and establishes a system to monitor their treatment after their return. The Special Rapporteur on torture considers that the deporting State also incurs responsibility where the authorities of the target country are “unable or unwilling” to provide effective protection from ill-treatment by non-State agents. If the urgency of the situation or other stringent factors prevent individuals from submitting their cases to the Committee against Torture, the Special Rapporteur will act on their behalf if they demonstrate that deportation is imminent and that a “serious risk of torture” exists in the target country.

Conditions of detention

Very severe prison conditions have been held to fall within the mandate of the Special Rapporteur on torture because the pain or suffering they inflict may place them close to the borderline between cruel, inhuman or degrading treatment and torture. They have sometimes been described as falling into a “grey area” between torture and other forms of cruel, inhuman and degrading treatment or punishment owing to lack of evidence of the intentional or purposive element required by the term “torture”. In assessing the severity of prison conditions, the Special Rapporteur on torture takes into consideration factors such as: the space at the disposal of detainees; the supply of water and other articles needed for personal hygiene; the provision of adequate clothing and bedding; the quantity and quality of food and drinking water; recreational facilities (including outdoor exercise); admission of visitors; provision of medical assistance; sanitation, heating, lighting and ventilation; the disciplinary regime; the complaints system; and the behaviour of prison personnel.

Denial of medical treatment

The intentional withholding of medical treatment from persons in places of detention or in other State institutions such as orphanages or from persons injured by an act attributable to public officials falls within the mandate of the Special Rapporteur on torture. On receipt of such information, the Special Rapporteur requests prompt and appropriate medical treatment for the persons concerned, invoking, in particular, rules 22, 25 and 26 of the Standard Minimum Rules for the Treatment of Prisoners. Pursuant to rule 22, detainees should have access to at least one qualified medical officer with some knowledge of psychiatry and to a qualified dental officer. Sick prisoners who require specialist treatment should be transferred to specialized institutions or civil hospitals. Rule 25 states that medical officers should daily see all sick prisoners, all who complain of illness, and any prisoner to whom their attention is specially directed, and should report to the director of the institution whenever they consider that a prisoner's physical or mental health has been or will be harmed by continued imprisonment or by any condition of imprisonment. They should regularly inspect and advise the director on the quantity and quality of food, the hygiene and cleanliness of the institution and the prisoners, and observance of the rules concerning physical education (rule 26).

Methods of restraint

Under international law, the use of methods of restraint is primarily governed by the Standard Minimum Rules for the Treatment of Prisoners. Rule 33 states that instruments of restraint such as handcuffs, chains, irons and straitjackets should never be applied as a punishment and that chains or irons should not be used as restraints. Other instruments of restraint should be used only to prevent escape during a transfer, on medical grounds or as a last resort to prevent prisoners from injuring themselves or others or from damaging property. Rule 34 states that instruments of restraint must not be applied for any longer time than is strictly necessary. The Special Rapporteur on torture may intervene in response to information to the effect that these rules have not been respected.

Annex 1

Model complaint form

for communications under:

- Optional Protocol to the International Covenant on Civil and Political Rights
- Convention Against Torture, or
- Convention on the Elimination of Racial Discrimination

Please indicate which of the above procedures you are invoking:

.....

Date:

I. Information on the author of the complaint:

Name: First name(s):

Nationality:..... Date and place of birth:

.....

Address for correspondence on this complaint:

Submitting the communication:

on the author's own behalf:

on behalf of another person:

[If the complaint is being submitted on behalf of another person:]

Please provide the following personal details of that other person:

Name: First name(s):

Nationality: Date and place of birth:

.....

Address or current whereabouts:

If you are acting with the knowledge and consent of that person, please provide that person's authorization for you to bring this complaint:

Or

If you are not so authorized, please explain the nature of your relationship with that person: and detail why you consider it appropriate to bring this complaint on his or her behalf:

II. State concerned/articles violated/domestic remedies

Name of the State that is either a party to the Optional Protocol (in the case of a complaint to the Human Rights Committee) or has made the relevant declaration (in the case of complaints to the Committee Against Torture or the Committee on the Elimination of Racial Discrimination):

Articles of the Covenant or Convention alleged to have been violated:
.....

Exhaustion of domestic remedies:

Steps taken by or on behalf of the alleged victims to obtain redress within the State concerned for the alleged violation - detail which procedures have been pursued, including recourse to the courts and other public authorities, which claims you have made, at which times, and with which outcomes:
.....

If you have not exhausted these remedies on the ground that their application would be unduly prolonged, that they would not be effective, that they are not available to you, or for any other reason, please explain your reasons in detail:
.....

III. Other international procedures

Have you submitted the same matter for examination under another procedure of international investigation or settlement (e.g. the Inter-American Commission on Human Rights, the European Court of Human Rights, or the African Commission on Human and Peoples' Rights)?

If so, detail which procedure(s) have been, or are being, pursued, which claims you have made, at which times, and with which outcomes:
.....

IV. Facts of the complaint

Detail, in chronological order, the facts and circumstances of the alleged violations. Include all matters which may be relevant to the assessment and consideration of your particular case. Please explain how you consider that the facts and circumstances described violate your rights:

.....
.....
.....

Author's signature:

[The blanks under the various sections of this model communication simply indicate where your responses are required. You should take as much space as you need to set out your responses.]

Checklist of supporting documentation (copies, not originals, to be enclosed with your complaint):

Written authorization to act (if you are bringing the complaint on behalf of another person and are not otherwise justifying the absence of specific authorization):

- Decisions of domestic courts and authorities on your claim (a copy of the relevant national legislation is also helpful):
- Complaints to and decisions by any other procedure of international investigation or settlement:
- Any documentation or other corroborating evidence you possess that substantiates your description in Part IV of the facts of your claim and/or your argument that the facts described amount to a violation of your rights:

If you do not enclose this information and it needs to be sought specifically from you, or if accompanying documentation is not provided in the working languages of the Secretariat, the consideration of your complaint may be delayed.

Annex 2

Complaint Guidelines

for communications under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women

1. Information concerning the author(s) of the communication

- Family name
- First name
- Date and place of birth
- Nationality/citizenship
- Passport/identity card number (if available)
- Sex
- Marital status/children
- Profession
- Ethnic background, religious affiliation, social group (if relevant)
- Present address
- Mailing address for confidential correspondence (if other than present address)
- Fax/telephone/e-mail
- Indicate whether you are submitting the communication as:
 - Alleged victim(s). If there is a group of individuals alleged to be victims, provide basic information about each individual.
 - On behalf of the alleged victim(s). Provide evidence showing the consent of the victim(s), or reasons that justify submitting the communication without such consent.

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

- Family name
- First name
- Date and place of birth
- Nationality/citizenship
- Passport/identity card number (if available)
- Sex
- Marital status/children
- Profession
- Ethnic background, religious affiliation, social group (if relevant)
- Present address
- Mailing address for confidential correspondence (if other than present address)
- Fax/telephone/e-mail

3. Information on the State party concerned

- Name of the State party (country)

4. Nature of the alleged violation(s)

Provide detailed information to substantiate your claim, including:

- Description of alleged violation(s) and alleged perpetrator(s)
- Date(s)
- Place(s)
- Provisions of the Convention on the Elimination of All Forms of Discrimination against Women that were allegedly violated. If the communication refers to more than one provision, describe each issue separately.

5. Steps taken to exhaust domestic remedies

Describe the action taken to exhaust domestic remedies; for example, attempts to obtain legal, administrative, legislative, policy or programme remedies, including:

- Type(s) of remedy sought
- Date(s)
- Place(s)
- Who initiated the action
- Which authority or body was addressed
- Name of court hearing the case (if any).
- If domestic remedies have not been exhausted, explain why.

Please note: Enclose copies of all relevant documentation.

6. Other international procedures

Has the same matter already been examined or is it being examined under another procedure of international investigation or settlement? If yes, explain:

- Type of procedure(s)
- Date(s)
- Place(s)
- Results (if any)

Please note: Enclose copies of all relevant documentation.

7. Date and signature

Date/place: _____

Signature of author(s) and/or victim(s): _____

8. List of documents attached (do *not* send originals, only copies)

Annex 3
SPECIAL RAPPORTEUR
OF THE COMMISSION ON HUMAN RIGHTS
ON TORTURE

**Model questionnaire to be completed by persons alleging torture
or their representatives**

Information on the torture of a person should be transmitted to the Special Rapporteur in written form and sent c/o Office of the High Commissioner for Human Rights, United Nations Office at Geneva, CH-1211 Geneva 10, Switzerland. Although it is important to provide as much detail as possible, the lack of a comprehensive account should not necessarily preclude the submission of reports. However, the Special Rapporteur can only deal with clearly identified individual cases containing the following minimum elements of information:

- a. Full name of the victim;
- b. Date on which the incident(s) of torture occurred (at least as to the month and year);
- c. Place where the person was seized (city, province, etc.) and location at which the torture was carried out (if known);
- d. Indication of the forces carrying out the torture;
- e. Description of the form of torture used and any injury suffered as a result;
- f. Identity of the person or organization submitting the report (name and address, which will be kept confidential).

Additional sheets should be attached where space does not allow for a full rendering of the information requested. Also, copies of any relevant corroborating documents such as medical or police records should be supplied where it is believed that such information may contribute to a fuller account of the incident. Only copies and not originals of such documents should be sent.

I. Identity of the person(s) subjected to torture

- A. Family name _____
- B. First and other names _____
- C. Sex: Male _____ Female _____
- D. Birth date or age _____

-
- E. Nationality _____
 - F. Occupation _____
 - G. Identity card number (if applicable) _____
 - H. Activities (trade union, political, religious, humanitarian/solidarity, press, etc.) _____
 - I. Residential and/or work address _____

II. Circumstances surrounding torture

- A. Date and place of arrest and subsequent torture _____
- B. Identity of force(s) carrying out the initial detention and/or torture (police, intelligence services, armed forces, paramilitary, prison officials, other) _____
- C. Were any persons such as a lawyer, relatives or friends permitted to see the victim during detention? If so, how long after the arrest?

- D. Describe the methods of torture used

- E. What injuries were sustained as a result of the torture?

- F. What was believed to be the purpose of the torture?

- G. Was the victim examined by a doctor at any point during or after his/her ordeal? If so, when? Was the examination performed by a prison or government doctor?

H. Was appropriate treatment received for injuries sustained as a result of the torture?

I. Was the medical examination performed in a manner which would enable the doctor to detect evidence of injuries sustained as a result of the torture? Were any medical reports or certificates issued? If so, what did the reports reveal?

J. If the victim died in custody, was an autopsy or forensic examination performed and what were the results?

III. Remedial action

Were any domestic remedies pursued by the victim or his/her family or representatives (complaints to the forces responsible, the judiciary, political organs, etc.)? If so, what was the result? _____

IV. Information concerning the author of the present report:

- A. Family name
- B. First name
- C. Relationship to victim
- D. Organization represented, if any
- E. Present full address

Annex 4
CONFIDENTIAL
VIOLENCE AGAINST WOMEN
INFORMATION FORM

INFORMER: *The name and address of the person/organization submitting the information will remain confidential. Please also mention whether we can contact you for additional information, and if so by what means.*

Name of person/organization: _____

Address: _____

Fax/tel./e-mail: _____

VICTIM(S): *Information about the victim(s) including full name, age, sex, residence, professional and/or other activities related to the alleged violation, and any other information helpful in identifying a person (such as passport or identity card number). Please mention whether the victim is willing to have the case transmitted to the Government concerned.*

Name: _____

Address: _____

Date of birth: _____

Nationality: _____

Sex: _____

Occupation: _____

Ethnic background, religious, social group (if relevant): _____

THE INCIDENT: *Including dates, place and the harm suffered or to be prevented. If your submission concerns a law or policy rather than a specific incident, summarize the law or policy and the effects of its implementation on women's human rights. Include information about the alleged perpetrators: their names (if known), any relationship they may have to the victims and/or to the Government, and an explanation of the reasons why you believe they are the perpetrators. If you submit information about violations committed by private individuals or groups (rather than government officials), include any information which might indicate that the Government failed to exercise due diligence to prevent, investigate, punish and ensure compensation for the violations. Include information about the steps taken by the victims or their families to obtain remedies, including complaints filed with the police, other officials or independent national human rights institutions. If no complaints have been filed, explain why not. Include information about steps taken by officials to investigate the alleged violation (or threatened violation) and to pre-*

vent similar acts in the future. If a complaint has been filed, include information about the action taken by the authorities, the status of the investigation at the time the communication is submitted and/or how the results of the investigation are inadequate.

Date: Time: Location/country: _____

Number of assailants: Are the assailant(s) known to the victim? _____

Name of assailant(s): _____

Does the victim have a relationship with the assailant(s)? If so what is the nature of the relationship? _____

Description of the assailant(s) (include any identifying features):

DESCRIPTION OF THE INCIDENT:

Does the victim believe she was specifically targeted because of gender? If so, why? _____

Has the incident been reported to the relevant State authorities? If so, which authorities and when? _____

Have the authorities taken any action after the incident? _____

If so, which authorities? _____

What action? _____

When? _____

Please bring to the attention of the Special Rapporteur any information that becomes available after you have submitted this form. For example, please inform the Special Rapporteur if your human rights concern has been adequately addressed, or of a final outcome has been determined in an investigation or trial, or an action which was planned or threatened has been carried out.

**PLEASE RETURN TO
THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN
OHCHR-UNOG, 1211 GENEVA 10, SWITZERLAND
(Fax: 00 41 22 917 9006, e-mail: csaunders.hchr@unog.ch)**

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