

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

Introduction

In 1948, the Universal Declaration of Human Rights (a non-legally binding instrument) was adopted by the United Nations General Assembly and in article 5 the international community established that ‘no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’. In 1975, 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 following lobbying by nongovernmental organizations. During the 1980s and 1990s, progress was made in both the development of legal standards and instruments for the prohibition of torture and its enforcement. 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 (CAT)¹ was adopted by the United Nations General Assembly on 10 December 1984 and entered into force on 26 June 1987.²

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Convention in general

The CAT is a human rights treaty which deals with a particular issue exclusively: torture and other cruel, inhuman or degrading treatment or punishment.³ The Convention defines “torture” in article 1 as ‘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.’ The Convention clearly establishes that under no circumstances of any kind, whether it be orders from a superior officer or public authority, or during wartime, internal instability or other public emergency, will torture ever be justified (article 2). States parties must take all measures to prevent any acts of torture on any territory under their jurisdiction (article 2). Furthermore, a State party may not expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that an individual would be in danger of being tortured in that country (article 3). In order to ensure that no perpetrator of torture goes unpunished, the Convention establishes a scheme whereby jurisdiction is given to both a State within which torture is committed or whose nationals are perpetrators, as well as to a State whose national(s) has been a victim of torture. Such a State can ask for extradition of the alleged offender from any other country (articles 4–9). The Convention, in addition, requires States parties to ensure education of the prohibition of torture in training law enforcement and military personnel (articles 10–11), and prompt and impartial investigations of allegations of torture, with fair and adequate compensation as well as full rehabilitation for the victim (article 12–14).

The following section considers those obligations in the Convention which are directly and indirectly linked to the right to health. While reading this section, keep in mind the introduction to this folder discussing the linkages between the implementation of various human rights and the specific right to health.

Direct and indirect linkages to health

The Convention against Torture does not include specific health provisions. However, the act(s) of torture which an individual has been subjected give rise to ill-health, whether physically or mentally. These acts, in addition to violating a person’s right to not be subjected to torture, violate a person’s right to health. It is by fulfilling the obligations under the Convention not to commit or allow acts of torture or other cruel, inhuman or degrading treatment or punishment that States parties indirectly also ensure an individual’s right to health.

¹ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is herein referred to as the Convention or the CAT.

² If otherwise not referenced the information included in this fact sheet can be found either in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or on the website of the Office of the United Nations High Commissioner for Human Rights (www.ohchr.org).

³ Examples of other international and regional instruments which protect the right to not be subjected to torture include: International Covenant on Civil and Political Rights (article 7); Convention on the Rights of the Child (article 37); African Charter on Human and Peoples’ Rights (article 5); African Charter on the Rights and Welfare of the Child (article 16); and the Arab Charter on Human Rights (article 8).



The Committee against Torture

The Committee in general

The Committee against Torture was established under article 17.⁴ The Committee examines reports submitted by States parties, in accordance with article 19, on the measures that they have taken to give effect to the obligations contained in the Convention. The result of the examination is issued in the form of conclusions and recommendations in which the Committee outlines its concerns and makes recommendations to the State party in question.⁵ The Committee may also issue interpretations on specific provisions of the Convention or issues related to their implementation; these are known as general comments. So far, only one such general comment has been adopted.⁶ The Committee may receive individual communications from or on behalf of individuals claiming a violation by a State party of a provision of the Convention (article 22). In order for the mechanism to be accessible to a State party's citizens the State party must have made a declaration under the same article accepting the competence of the Committee to consider such complaints (article 22). Once the Committee has considered the communication and formulated its views thereon, a final view on the merits of the complaint is issued and transmitted to the author of the communication and the State party in question. The Committee may also entertain inter-state claims (article 21), whereby a State party may bring to the Committee's attention that another State party is not fulfilling its obligations under the Convention. This procedure has however never been employed. The Committee may, moreover, initiate inquiries if they have received reliable information containing well-founded indications that torture is being systematically practised in the territory of a State party (article 20).

How can the Committee help in ensuring the right to health?

Having considered a State party's report, the Committee may highlight in its conclusions and recommendations issues, facts and incidents which have had or may have health implications in the future for an individual or group(s) of individuals and which a State party is requested to rectify. The Committee has appointed a Rapporteur to follow-up on States parties' compliance with those requests which the Committee have included in its recommendations.⁷ The fact that an individual has the possibility

⁴ Under article 28, a State party may at the time of signature, ratification or accession declare that it does not recognize the competence of the Committee against Torture.

⁵ The conclusions and recommendations are publicly available on the United Nations human rights treaty bodies' database of the Office of the United Nations High Commissioner for Human Rights (www.unhchr.ch/tbs/doc.nsf).

⁶ General comment 1 on the implementation of article 3 of the Convention in the context of article 22, A/53/44, adopted on 21 November 1997.

⁷ Committee against Torture, rules of procedure, CAT/C/3/Rev.4, 9 August 2002, paragraph 1 of rule 68.

to submit a communication to the Committee regarding violations of the Convention may ensure that the right to health will be respected, and that fair and adequate compensation as well as full rehabilitation will be given to any victim of torture. The system of inquiries may also be used to alert the Committee of situations where torture is being systematically practised, therefore having health implications for individuals.

Other instruments or mechanisms dealing with the prohibition of torture and health

In 2002, an Optional Protocol to the Convention was adopted.⁸ The Protocol entered into force on 22 June 2006. It provides for a system of unimpeded and regular visits to places of detention by the specifically created Sub-committee on Prevention (article 2) and its accompanying experts with the aim to prevent torture and other ill-treatment (articles 13–14). The Committee on Economic, Social and Cultural Rights in its General Comment 14 on the right to the highest attainable standard of health describes how this right includes certain freedoms and specifies that one of such freedoms is the right to be free from torture.⁹ In addition, one of the Special Rapporteurs of the former United Nations Commission on Human Rights, now the Human Rights Council,¹⁰ the Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment, specifically examines questions relevant to torture and other cruel, inhuman or degrading treatment or punishment, and the Rapporteur's mandate covers all countries, irrespective of whether or not a State has ratified the Convention against Torture. The Special Rapporteur on Torture has on several occasions worked together with the Special Rapporteur on Health.¹¹

Eastern Mediterranean Region ratifications

The countries of the Eastern Mediterranean Region that have ratified the Convention are Afghanistan, Bahrain, Djibouti, Egypt, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Morocco, Qatar, Saudi Arabia, Somalia, Syrian Arab Republic and Yemen. The total number of States parties to the Convention is 141 (as of January 2006).¹²

⁸ United Nations General Assembly resolution A/RES/57/199, 18 December 2002.

⁹ General Comment 14, UN Doc. E/C.12/2000/4, 4 July 2000, para. 8.

¹⁰ The United Nations Commission on Human Rights was replaced by the United Nations Human Rights Council as per United Nations General Assembly resolution A/RES/60/251 adopted on 15 March 2006. The Commission on Human Rights ceased to exist on 16 June 2006, see press release at: www.un.org/News/Press/docs/2006/ecosoc6192.doc.htm UN Doc. A/CONF.157/23.

¹¹ See e.g. *Report of the Special Rapporteur on the question of torture*, Manfred Nowak, to the Commission on Human Rights, E/CN.4/2006/6, 23 December 2005; and *Report on the situation of detainees on Guantánamo Bay*, to the Commission on Human Rights, UN Doc. E/CN.4/2006/120, 15 February 2006.

¹² Ratifications, signatures and reservations to international human rights instruments can be found at: www.ohchr.org/english/countries/ratification/index.htm