

General Assembly
Official Records
Fifty-third session
Supplement No. 44 (A/53/44)

Report of the Committee against Torture



United Nations • New York, 1998

Note

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

Contents

<i>Chapter</i>		<i>Paragraphs</i>	<i>Page</i>
I.	Organizational and other matters	1-21	1
A.	States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	1-2	1
B.	Opening and duration of the sessions of the Committee against Torture	3-4	1
C.	Membership and attendance	5-8	1
D.	Solemn declaration by the newly elected members of the Committee	9-10	1
E.	Election of officers	11	1
F.	Agendas	12-13	2
G.	Question of a draft optional protocol to the Convention	14-15	2
H.	Cooperation between the Committee, the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, the Special Rapporteur of the Commission on Human Rights on questions relating to torture and the United Nations High Commissioner for Human Rights	16-18	2
I.	Request for an extension of the sessions of the Committee	19-21	3
II.	Effective implementation of international instruments on human rights, including reporting obligations under those instruments	22-27	3
III.	Submission of reports by States parties under article 19 of the Convention	28-35	4
	Action taken by the Committee to ensure the submission of reports	28-35	4
IV.	Consideration of reports submitted by States parties under article 19 of the Convention	36-257	7
A.	Cyprus	42-51	8
B.	Argentina	52-69	8
C.	Portugal	70-79	10
D.	Switzerland	80-100	11
E.	Cuba	101-118	12
F.	Spain	119-136	14
G.	France	137-148	15
H.	Norway	149-156	16
I.	Guatemala	157-166	17
J.	New Zealand	167-178	19

K.	Germany	179–196	19
L.	Peru	197–205	21
M.	Panama	206–219	22
N.	Kuwait	220–231	23
O.	Israel	232–242	23
P.	Sri Lanka	243–257	24
V.	General comment of the Committee	258	26
VI.	Activities of the Committee under article 20 of the Convention	259–264	26
VII.	Consideration of communications under article 22 of the Convention	265–286	27
VIII.	Amendments to the rules of procedure of the Committee	287	29
IX.	Adoption of the annual report of the Committee	288–290	29
Annexes			
I.	States that have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as at 22 May 1998		30
II.	States parties that have declared, at the time of ratification or accession, that they do not recognize the competence of the Committee provided for by article 20 of the Convention, as at 22 May 1998		34
III.	States parties that have made the declarations provided for in articles 21 and 22 of the Convention, as at 22 May 1998		35
IV.	Membership of the Committee against Torture in 1998		37
V.	Joint Declaration for the United Nations Day in Support of Victims of Torture		38
VI.	Guidelines regarding the form and content of periodic reports to be submitted by States parties under article 19, paragraph 1 of the Convention		39
VII.	Status of submission of reports by States parties under article 19 of the Convention, as at 22 May 1998		41
VIII.	Country rapporteurs and alternate rapporteurs for the reports of States parties considered by the Committee at its nineteenth and twentieth sessions		50
IX.	General comment on the implementation of article 3 of the Convention in the context of article 22		52
X.	Views and decisions of the Committee under article 22 of the Convention		54
A.	Views		54
1.	Communication No. 28/1995: E. A. v. Switzerland		54
2.	Communication No. 57/1996: P. Q. L. v. Canada		60
3.	Communication No. 59/1996: Encarnación Blanco Abad v. Spain		66
4.	Communication No. 61/1996: X., Y. and Z. v. Sweden		75
5.	Communication No. 65/1997: I. A. O. v. Sweden		82
6.	Communication No. 83/1997: G. R. B. v. Sweden		92

7.	Communication No. 89/1997: Ali Falakaflaki v. Sweden	99
8.	Communication No. 90/1997: A. I. N. v. Switzerland	106
9.	Communication No. 94/1997: K. N. v. Switzerland	111
B.	Decisions	116
1.	Communication No. 42/1996: R. K. v. Canada	116
2.	Communication No. 45/1996: D. v. France	120
3.	Communication No. 47/1996: V. V. v. Canada	123
4.	Communication No. 48/1996: H. W. A. v. Switzerland	128
5.	Communication No. 52/1996: R. v. France	130
6.	Communication No. 58/1996: J. M. U. M. v. Sweden	133
7.	Communication No. 64/1997: L. M. V. R. G. and M. A. B. C. v. Sweden	135
XI.	Amended rules of procedure	137
XII.	List of documents for general distribution issued for the Committee during the reporting period	138

Annex IX

General comment on the implementation of article 3 of the Convention in the context of article 22

In view of the requirements of article 22, paragraph 4, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that the Committee against Torture “shall consider communications received under article 22 in the light of all information made available to it by or on behalf of the individual and by the State Party concerned”,

In view of the need arising as a consequence of the application of rule 111, paragraph 3, of the rules of procedure of the Committee (CAT/C/3/Rev.2), and

In view of the need for guidelines for the implementation of article 3 under the procedure foreseen in article 22 of the Convention,

The Committee against Torture, at its nineteenth session, 317th meeting, held on 21 November 1997, adopted the following General Comment for the guidance of States parties and authors of communications:

1. Article 3 is confined in its application to cases where there are substantial grounds for believing that the author would be in danger of being subjected to torture as defined in article 1 of the Convention.
2. The Committee is of the view that the phrase “another State” in article 3 refers to the State to which the individual concerned is being expelled, returned or extradited, as well as to any State to which the author may subsequently be expelled, returned or extradited.
3. Pursuant to article 1, the criterion, mentioned in article 3, paragraph 2, of “a consistent pattern or gross, flagrant or mass violations of human rights” refers only to violations by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Admissibility

4. The Committee is of the opinion that it is the responsibility of the author to establish a prima facie case for the purpose of admissibility of his or her communication under article 22 of the Convention by fulfilling each of the requirements of rule 107 of the rules of procedure of the Committee.

Merits

5. With respect to the application of article 3 of the Convention to the merits of a case, the burden is upon the author to present an arguable case. This means that there must be a factual basis for the author’s position sufficient to require a response from the State party.
6. Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable.
7. The author must establish that he/she would be in danger of being tortured and that the grounds for so believing are substantial in the way described, and that such danger is personal and present. All pertinent information may be introduced by either party to bear on this matter.

8. The following information, while not exhaustive, would be pertinent:
- (a) Is the State concerned one in which there is evidence of a consistent pattern of gross, flagrant or mass violations of human rights (see art. 3, para. 2)?
 - (b) Has the author been tortured or maltreated by or at the instigation of or with the consent of acquiescence of a public official or other person acting in an official capacity in the past? If so, was this the recent past?
 - (c) Is there medical or other independent evidence to support a claim by the author that he/she has been tortured or maltreated in the past? Has the torture had after-effects?
 - (d) Has the situation referred to in (a) above changed? Has the internal situation in respect of human rights altered?
 - (e) Has the author engaged in political or other activity within or outside the State concerned which would appear to make him/her particularly vulnerable to the risk of being placed in danger of torture were he/she to be expelled, returned or extradited to the State in question?
 - (f) Is there any evidence as to the credibility of the author?
 - (g) Are there factual inconsistencies in the claim of the author? If so, are they relevant?
9. Bearing in mind that the Committee against Torture is not an appellate, a quasi-judicial or an administrative body, but rather a monitoring body created by the States parties themselves with declaratory powers only, it follows that:
- (a) Considerable weight will be given, in exercising the Committee's jurisdiction pursuant to article 3 of the Convention, to findings of fact that are made by organs of the State party concerned; but
 - (b) The Committee is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.