

The SR urged all states to review their legislation with a view to ensuring that they can exercise criminal jurisdiction over any person in their hands suspected of torture or, indeed, of any crime falling within the notions of war crimes or crimes against humanity. The SR further recommended that states should refrain from granting or acquiescing in impunity for human rights violations at the national level, since such impunity is, itself, a violation of international law.

General Comment on article 3 of the Convention by the Committee Against Torture

Article 22 of the Convention against Torture establishes a complaint procedure through which the Committee may, if the government concerned has made a declaration, "receive and consider communications from or on behalf of individuals ... who claim to be victims of a violation ...". In May 1996, the Committee decided to establish a working group to examine questions relating to articles 3 and 22 of the CAT. This decision was taken in response to the fact that most of the individual communications received under article 22 concerned cases of persons under an order of expulsion, return or extradition who alleged that they would be in danger of being subjected to torture were they expelled, returned or extradited. The Committee felt that some guidance should be given to states parties and to those submitting communications so as to enable them to correctly apply the provisions of article 3 in the context of the procedure set out in article 22. On 21 November 1997, the Committee adopted a general comment on this issue (A/53/44, Chapter V and Annex IX).

The General Comment established: article 3 is confined in its application to cases where there are substantial grounds for believing that the person concerned would be in danger of being subjected to torture as defined in article 1 of the Convention; 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 person may subsequently be expelled, returned or extradited; and the criterion 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. Concerning admissibility, the Committee stated that it is the responsibility of the author of the communication to establish a *prima facie* case.

In terms of merits, the Committee decided: the burden is upon the author to present an arguable case and there must be a factual basis for the author's position sufficient to require a response from the state party; the risk of torture must be assessed on grounds that go beyond mere theory or suspicion but the risk does not have to meet the test of being highly probable; and the author must establish the danger of being tortured, that the grounds for so believing are substantial, and that such danger is personal and present.

Pertinent information to substantiate the claim was seen to include, but not be limited to: evidence of a consistent pattern of gross, flagrant or mass violations of human rights in the state concerned; past or recently past instance(s) of torture or maltreatment against the person by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity; medical or other independent evidence to support a claim of torture or maltreatment in the past; whether or not the torture had after-effects; an indication of whether or not the situation had changed, including the internal situation in respect of human rights; whether or not the author engaged in political or other activity within or outside the country which would increase the risk of being placed in danger of torture were expulsion, return or extradition to the country in question carried out; evidence as to the credibility of the author; and whether or not there are there factual inconsistencies in the claim of the author and, if so, their relevance.

The Committee noted that it is not an appellate, a quasi-judicial or an administrative body, but rather a monitoring body with declaratory powers only. On that basis, it was decided: considerable weight will be given to findings of fact that are made by organs of the state party concerned; and the Committee is not bound by such findings and instead has the power of free assessment of the facts based upon the full set of circumstances in every case.

Optional Protocol to the Convention against Torture

At its 1992 session, the Commission adopted resolution 1992/43 by which it established an open-ended working group to elaborate a draft optional protocol to the Convention against Torture. The Commission agreed to use a draft text proposed by Costa Rica (E/CN.4/1991/66) as a basis for discussions. When completed and adopted the optional protocol will allow the Committee against Torture to travel to any country at any time to visit detention centres, meet with police officials and prison staff, interview detainees and generally observe how the Convention is being implemented. The intention is to prevent torture rather than to react once it has taken place.

The open-ended working group elaborating the draft optional protocol has reported to the Commission each year since 1993. Annex I of the report to the 1998 session (E/CN.4/1998/42; E/CN.4/1998/42/Corr.1) contains the text of the articles adopted, to date, for the optional protocol. In general terms these articles relate to: the establishment of a Sub-Committee of the Committee against Torture and its mandate; cooperation between the Sub-Committee and the government concerned; the guiding principles under which the Sub-Committee's work will be taken; the composition of and election process for the Subcommittee; stipulations regarding the scheduling of missions by the Sub-Committee; modalities for conducting missions — membership and composition; establishment of a roster of experts to assist the Sub-Committee; financial resources and the establishment of a