United Nations

Report of the Committee against Torture

General Assembly

Official Records · Fifty-first Session
Supplement No. 44 (A/51/44)

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NOTE

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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Convention

1. As at 10 May 1996, the closing date of the sixteenth session of the Committee against Torture, there were 96 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. During the present reporting period, the following eight States became parties to the Convention: Chad, Côte d'Ivoire, Cuba, Kuwait, Lithuania, Republic of Moldova, Uzbekistan and Zaire. The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and opened for signature and ratification in New York on 4 February 1985. It entered into force on 26 June 1987 in accordance with the provisions of its article 27. A list of States that have signed, ratified or acceded to the Convention together with an indication of those that have made declarations under articles 21 and 22 of the Convention is contained in annex I to the present report.

2. The text of the declarations, reservations or objections made by States parties with respect to the Convention are reproduced in document CAT/C/2/Rev.4.

B. Opening and duration of the sessions

3. The Committee against Torture has held two sessions since the adoption of its last annual report. The fifteenth and sixteenth sessions of the Committee were held at the United Nations Office at Geneva from 13 to 24 November 1995 and from 30 April to 10 May 1996.

4. At its fifteenth session, the Committee held 18 meetings (227th to 244th meeting) and at its sixteenth session the Committee held 17 meetings (245th to 261st meeting). An account of the deliberations of the Committee at its fifteenth and sixteenth sessions is contained in the relevant summary records (CAT/C/SR.227-261).

C. Membership and attendance

5. In accordance with article 17 of the Convention, the Fifth Meeting of the States Parties to the Convention was convened by the Secretary-General at the United Nations Office at Geneva on 29 November 1995. The following five members of the Committee were elected for a term of four years beginning on 1 January 1996: Mr. Peter Thomas Burns, Mr. Guibril Camara, Mr. Alejandro González-Poblete, Mr. Georghios M. Pikis and Mr. Bostjan M. Zupančič. The list of the members, together with an indication of the duration of their term of office, appears in annex II to the present report.

6. All the members attended the fifteenth session of the Committee except Mr. Hugo Lorenzo. Mr. Alexander M. Yakovlev attended the second week of the session only. The sixteenth session of the Committee was attended by all the members. With regard to the absence of Mr. Lorenzo, at both the fourteenth and fifteenth sessions, the Committee took note of the reply of the Secretary-General of the United Nations, dated 23 May 1995, to a letter addressed to him by the Committee, through its Chairman, on 24 April 1995, 1/ by which the Secretary-General confirmed that Mr. Lorenzo was not authorized to

serve as member of the Committee as long as he remained a staff member of the United Nations.

D. Solemn declaration by the newly elected members of the Committee

7. At the 245th meeting, on 30 April 1996, the five members of the Committee who had been elected at the Fifth Meeting of the States parties to the Convention made the solemn declaration upon assuming their duties, in accordance with rule 14 of the rules of procedure.

E. Election of officers

8. At the 245th meeting, on 30 April 1996, the Committee elected the following officers for a term of two years in accordance with article 18, paragraph 1, of the Convention and rules 15 and 16 of the rules of procedure:

Chairman: Mr. Alexis Dipanda Mouelle

Vice-Chairmen: Mr. Bent Sorensen
Mr. Alexander M. Yakovlev
Mr. Alejandro González-Poblete

Rapporteur: Ms. Julia Iliopoulos-Strangas

F. Agendas

9. At its 227th meeting, on 13 November 1995, the Committee adopted the following items listed in the provisional agenda submitted by the Secretary-General in accordance with rule 6 of the rules of procedure (CAT/C/31), as the agenda of its fifteenth session:

1. Adoption of the agenda.

2. Organizational and other matters.

3. Submission of reports by States parties under article 19 of the Convention.

4. Consideration of reports submitted by States parties under article 19 of the Convention.

5. Consideration of information received under article 20 of the Convention.

6. Consideration of communications under article 22 of the Convention.

7. Amendments to the rules of procedure of the Committee.

10. At its 245th meeting, on 30 April 1996, the Committee adopted, with amendments, the following items listed in the provisional agenda submitted by the Secretary-General in accordance with rule 6 of the rules of procedure (CAT/C/35) as the agenda of its sixteenth session:

1. Opening of the session by the representative of the Secretary-General.

2. Solemn declaration by the newly elected members of the Committee.

3. Election of the officers of the Committee.

4. Adoption of the agenda.

5. Organizational and other matters.

6. Submission of reports by States parties under article 19 of the Convention.

7. Consideration of reports submitted by States parties under article 19 of the Convention.

8. Consideration of information received under article 20 of the Convention.

9. Consideration of communications under article 22 of the Convention.

10. Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights.

11. Amendments to the rules of procedure of the Committee.

12. Annual report of the Committee on its activities.

G. Question of a draft optional protocol to the Convention

Fifteenth session

11. At the 227th meeting, on 13 November 1995, Mr. Bent Sorensen, who had been designated by the Committee as its observer in the inter-sessional open-ended working group of the Commission on Human Rights elaborating the protocol, informed the Committee of the progress made by the working group at its fourth session, held at the United Nations Office at Geneva from 30 October to 10 November 1995.

Sixteenth session

12. At its 260th meeting, on 9 May 1996, the Committee agreed that Mr. Sorensen would continue to act as its observer in the working group and took note of Commission on Human Rights resolution 1996/33 on torture and other cruel, inhuman or degrading treatment or punishment as well as resolution 1996/37 on the question of a draft optional protocol to the Convention.

II. EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS

Fifteenth session

13. At the 240th meeting, on 22 November 1995, the Chairman of the Committee, who had participated in the sixth meeting of persons chairing the human rights treaty bodies, held at the United Nations Office at Geneva from 18 to 22 September 1995, provided information on the conclusions and recommendations of that meeting.

Sixteenth session

14. The Committee had before it the report of the sixth meeting of persons chairing the human rights treaty bodies (A/50/505, annex), General Assembly resolution 50/170 of 22 December 1995, Commission on Human Rights resolution 1996/22, the report of the Fourth World Conference on Women (A/CONF.177/20) as well as an informal note by the Secretariat on the implications for the Committee's methods of work of the Beijing Declaration and Platform for Action and of the recommendations concerning gender issues adopted by the persons chairing human rights treaty bodies at their sixth meeting.

15. At its 261st meeting, on 10 May 1996, the Committee took note of the above-mentioned documents and resolutions.

16. In addition, in accordance with the relevant decisions adopted by the Committee at its sixth session, at the 260th meeting, on 9 May 1996, Mr. Sorensen reported on the activities of the Committee on the Rights of the Child.

17. The Committee agreed that Mr. Burns, Ms. Julia Iliopoulos-Strangas and Mr. Sorensen would continue to follow, respectively, the activities of the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child. The Committee also designated Mr. Camara and Mr. Pikis to follow, respectively, the activities of the Human Rights Committee and the Committee on the Elimination of Racial Discrimination.

III. SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Action taken by the Committee to ensure the submission of reports

18. The Committee, at its 230th, 240th, 241st, 244th, 245th and 260th meetings, held on 15, 22 and 24 November 1995, and 30 April and 9 May 1996, considered the status of submission of reports under article 19 of the Convention. The Committee had before it the following documents:

(a) Notes by the Secretary-General concerning initial reports of States parties that were due from 1988 to 1996 (CAT/C/5, 7, 9, 12, 16/Rev.1, 21/Rev.1, 24, 28/Rev.1 and 32/Rev.2);

(b) Notes by the Secretary-General concerning second periodic reports that were due from 1992 to 1996 (CAT/C/17, 20/Rev.1, 25, 29 and 33);

(c) A note by the Secretary-General concerning third periodic reports that were due in 1996 (CAT/C/34).

19. The Committee was informed that, in addition to the 10 reports that were scheduled for consideration by the Committee at its fifteenth and sixteenth sessions (see paras. 26 and 28 below), the Secretary-General had received the initial report of the Republic of Korea (CAT/C/32/Add.1) and the second periodic reports of Algeria (CAT/C/25/Add.8), Poland (CAT/C/25/Add.9), the Russian Federation (CAT/C/17/Add.15) and Uruguay (CAT/C/17/Add.16). He had also received additional information requested by the Committee from Italy (fifteenth session), the Netherlands (fourteenth session) and the United Kingdom of Great Britain and Northern Ireland (fifteenth session) during the Committee's consideration of their respective reports.

20. The Committee was also informed that the revised version of the initial report of Belize requested for 10 March 1994 by the Committee at its eleventh session, had not yet been received in spite of two reminders sent by the Secretary-General in June 1994 and 1995 and a letter that the Chairman of the Committee addressed to the Minister for Foreign Affairs and Economic Development of Belize on 20 November 1995.

21. In addition, the Committee at its fifteenth and sixteenth sessions was informed about the reminders that had been sent by the Secretary-General to States parties whose reports were overdue and letters that the Chairman of the Committee, at its request, had addressed to the Minister for Foreign Affairs of those States parties whose reports were more than three years overdue. The situation with regard to overdue reports as at 10 May 1996 was as follows:

State party	Date on which the report was due	Number of reminders
	Initial reports	
Uganda	25 June 1988	12
Togo	17 December 1988	12
Guyana	17 June 1989	9
Brazil	27 October 1990	7
Guinea	8 November 1990	8
Somalia	22 February 1991	6
Venezuela	27 August 1992	6
Yugoslavia	9 October 1992	4
Estonia	19 November 1992	4
Yemen	4 December 1992	5
Bosnia and Herzegovina	5 March 1993	4
Benin	10 April 1993	4
Latvia	13 May 1993	3
Cape Verde	3 July 1993	3
Seychelles	3 June 1993	3
Cambodia	13 November 1993	2
Burundi	19 March 1994	2
Slovakia	27 May 1994	2
Slovenia	14 August 1994	1
Antigua and Barbuda	17 August 1994	1
Costa Rica	10 December 1994	1
Sri Lanka	1 February 1995	1
Ethiopia	12 April 1995	1
Albania	9 June 1995	-
United States of America	19 November 1995	-
Georgia	24 November 1995	-
The former Yugoslav Republic of Macedonia	11 December 1995	-
Namibia	27 December 1995	-
	Second periodic reports	
Afghanistan	25 June 1992	5
Belize	25 June 1992	5
Bulgaria	25 June 1992	5
Cameroon	25 June 1992	5
France	25 June 1992	5
Philippines	25 June 1992	5
Uganda	25 June 1992	5
Austria	27 August 1992	5
Luxembourg	28 October 1992	5
Togo	17 December 1992	5
Guyana	17 June 1993	3
Peru	5 August 1993	1
Turkey	31 August 1993	3
Tunisia	22 October 1993	2
Portugal	10 March 1994	2
Poland	24 August 1994	1
Australia	6 September 1994	1
Brazil	27 October 1994	1
Guinea	8 November 1994	1
New Zealand	8 January 1995	1

State party	Date on which the report was due	Number of reminders
Guatemala	3 February 1995	-
Somalia	22 February 1995	-
Paraguay	10 April 1995	-
Malta	12 October 1995	-
Germany	30 October 1995	-
Liechtenstein	1 December 1995	-
Romania	16 January 1996	-

22. The Committee expressed concern at the number of States parties that had not complied with their reporting obligations. With regard, in particular, to States parties whose reports were more than four years overdue, the Committee deplored that, in spite of several reminders sent by the Secretary-General and letters or other messages of its Chairman to their respective Ministers for Foreign Affairs, those States parties continued not to comply with the obligations they had freely assumed under the Convention. The Committee stressed that it had the duty to monitor the Convention and that the non-compliance of a State party with its reporting obligations constituted an infringement of the provisions of the Convention and prevented the Committee from assessing whether the Convention was effectively implemented at the national level.

23. In this connection, the Committee, on 9 May 1996, decided that the list of States parties whose reports are overdue be issued separately and widely publicized in connection with the press conference that the Committee usually held at the end of each session.

24. The Committee again requested the Secretary-General to continue sending reminders automatically to those States parties whose initial reports were more than 12 months overdue and subsequent reminders every 6 months.

25. The status of submission of reports by States parties under article 19 of the Convention as at 10 May 1996, the closing date of the sixteenth session of the Committee, appears in annex III to the present report.

IV. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

26. At its fifteenth and sixteenth sessions, the Committee considered reports submitted by 10 States parties under article 19, paragraph 1, of the Convention. At its fifteenth session, the Committee devoted 10 of the 18 meetings held to the consideration of reports (see CAT/C/SR.228, 229 and Add.2, 232, 233 and Add.1 and 3, 234, 235, 237/Add.1, 238, 239 and 242/Add.1). The following reports, listed in the order in which they had been received by the Secretary-General, were before the Committee at its fifteenth session:

Denmark (second periodic report)	CAT/C/17/Add.13
United Kingdom of Great Britain and Northern Ireland (second periodic report)	CAT/C/25/Add.6
Senegal (second periodic report)	CAT/C/17/Add.2
Armenia (initial report)	CAT/C/24/Add.4
Guatemala (initial report)	CAT/C/12/Add.5
Colombia (second periodic report)	CAT/C/20/Add.4

27. The Committee agreed, at the request of the Governments concerned, to postpone the consideration of the initial report of Armenia and the second periodic report of Senegal. Subsequently, the Government of Armenia submitted a revised version of its report.

28. At its sixteenth session, the Committee devoted 12 of the 17 meetings held to the consideration of reports submitted by States parties (see CAT/C/SR.245-251, 252/Add.1, 253-255 and 256). The following reports, listed in the order in which they had been received by the Secretary-General, were before the Committee at its sixteenth session:

Senegal (second periodic report)	CAT/C/17/Add.14
Armenia (initial report)	CAT/C/24/Add.4/Rev.1
Finland (second periodic report)	CAT/C/25/Add.7
China (second periodic report)	CAT/C/20/Add.5
Malta (initial report)	CAT/C/12/Add.7
Croatia (initial report)	CAT/C/16/Add.6

29. In accordance with rule 66 of the rules of procedure of the Committee, representatives of all the reporting States were invited to attend the meetings of the Committee when their reports were examined. All of the States parties whose reports were considered by the Committee sent representatives to participate in the examination of their respective reports.

30. In accordance with the decision taken by the Committee at its fourth session, 2/ country rapporteurs and alternate rapporteurs were designated by the Chairman, in consultation with the members of the Committee and the Secretariat, for each of the reports submitted by States parties and considered by the

Committee at its fifteenth and sixteen sessions. The list of the above-mentioned reports and the names of the country rapporteurs and their alternates for each of them appear in annex IV to the present report.

31. In connection with its consideration of reports, the Committee also had before it the following documents:

(a) Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and reservations and declarations under the Convention (CAT/C/2/Rev.4);

(b) General guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19 of the Convention (CAT/C/4/Rev.2);

(c) General guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 19 of the Convention (CAT/C/14).

32. In accordance with the decision taken by the Committee at its eleventh session, 3/ the following sections, arranged on a country-by-country basis according to the sequence followed by the Committee in its consideration of the reports, contain references to the reports submitted by the States parties and to the summary records of the meetings of the Committee at which the reports were considered, as well as the text of conclusions and recommendations adopted by the Committee with respect to the States parties' reports considered at its fifteenth and sixteenth sessions.

A. Denmark

33. The Committee considered the second periodic report of Denmark (CAT/C/17/Add.13) at its 228th and 229th meetings, on 14 and 16 November 1995 (CAT/C/SR.228, 229 and 233/Add.1), and has adopted the following conclusions and recommendations:

1. Introduction

34. The Committee thanks the Government of Denmark for its report. It also listened with interest to the oral information and clarifications provided by the Danish representatives. The Committee wishes to thank the delegation for its replies and for the open-minded spirit and cooperation in which the dialogue was conducted.

2. Positive aspects

35. The Committee appreciates the determination of Denmark to guarantee respect for and protection of human rights, being one of the first States to accede without reservations to most of the international and regional instruments for the protection of such rights. Thus Denmark is a forefront State in the development of human rights standards.

36. The Committee notes with satisfaction that Denmark is playing a special role in the full rehabilitation of torture victims, and provides resources for that purpose through the Rehabilitation Centre for Torture Victims.

37. The Committee is also pleased to note the unique commitment of the authorities in Denmark in the field of education and information for the prevention of torture.

3. Subjects of concern

38. The Committee is nevertheless concerned about the allegations received from some non-governmental organizations concerning one case of apparent torture, and some cases of ill-treatment, and the alleged use of leglocks by police forces, as well as solitary confinement applied in some places of detention.

4. Recommendations

39. The Committee recommends that the State party give high priority consideration to the incorporation of the provisions of the Convention into its domestic law.

40. The Committee also recommends the enactment of a law in Denmark specifically on the crime of torture in conformity with article 1 of the Convention, so that all the elements of the definition of that offence contained in the said article are fully covered.

41. Furthermore, it is the view of the Committee that Denmark should take strong measures to bring to an end ill-treatment, which was reported in some police stations, to ensure that allegations in this regard are speedily and properly investigated, and that those who may be found guilty of acts of ill-treatment are prosecuted.

B. Guatemala

42. The Committee considered the initial report of Guatemala (CAT/C/12/Add.5 and 6) at its 232nd and 233rd meetings, on 16 November 1995 (CAT/C/SR.232 and 233/Add.1 and 3), and has adopted the following conclusions and recommendations:

1. Introduction

43. The Committee thanks the Government of Guatemala for its report. It also listened with great interest to the informative oral statement made by its representatives. The Committee wishes to thank them for their replies and for the spirit of openness and cooperation in which the dialogue took place.

2. Positive aspects

44. The Committee welcomes the honesty and frankness of the report acknowledging that torture occurs in Guatemala.

45. The Committee considers that the present peace process and the Government of Guatemala’s cooperation with the United Nations are signs of progress.

46. The Committee welcomes the legal changes that have been made by the State party, including the definition of torture and penalties associated with that crime which are incorporated into the penal law. The Committee is also pleased

to note that the Government of Guatemala has amended the Code of Criminal Procedure to deal with human rights breaches, and that it has abolished the military commissioners.

47. The Committee also welcomes the creation of various organs to reinforce human rights, including the Procurator for Human Rights, the Presidential Coordinating Committee for Government Human Rights Policy and national human rights committees.

48. The Committee is pleased to note Guatemala's commitment to human rights education.

49. The Committee is pleased to learn that Guatemala has begun the process of making the declaration under article 22 of the Convention and that its representatives do not see any obstacle to such a declaration.

3. Factors and difficulties impeding the application of the Convention

50. The Committee acknowledges that Guatemala is in a difficult situation since the civil democratic Government is obstructed in its action by a deeply entrenched army and police culture.

51. The Committee also takes note of the wide disparity in the distribution of the economic wealth in the country creating conditions that may tend towards confrontation between the law enforcement organs and those parts of the population which are at the lowest end of the economic and social scale. In this respect, the Committee wishes to underline that the individual recourse procedure provided for under article 22 of the Convention would constitute a useful preventive measure once it has been accepted by the Government.

52. The Committee considers that the right of the citizens to carry fire-arms, which is enshrined in the Constitution, may be regarded as a potential obstacle to a full implementation of the Convention.

4. Subjects of concern

53. The Committee notes with deep concern that torture and other cruel, inhuman or degrading treatment or punishment appear to be endemic in Guatemala, and to include many children among its victims.

54. The Committee is equally concerned at the State's continued failure promptly and impartially to investigate and prosecute those responsible for an act of torture and ill-treatment.

55. The de facto impunity for perpetrators of torture resulting from the above-mentioned facts and the weakness shown by the judicial, administrative and police authorities in enforcing the law is likewise a matter of deep concern to the Committee.

56. The Committee is also concerned at the fact that paramilitary groups and private defence patrols still exist and operate in Guatemala.

5. Recommendations

57. The Committee recommends that the Government of Guatemala take the following measures:

(a) Strengthening, in a more significant manner, the activities of the Procuracy of Human Rights;

(b) Organizing intensive programmes of technical training for the police, prosecutors and judges;

(c) Providing means and material resources that are necessary for public law enforcement officials to fulfil their mandates;

(d) Adopting measures providing for an effective coordination between the police and the prosecutors;

(e) Protecting witnesses, judges and prosecutors from threats and intimidations;

(f) Imposing severe sanctions for those public officials who do not comply with their duty of applying the law;

(g) Completely abolishing the so-called Voluntary Committees of Civic Defence;

(h) Changing the legal provisions concerning the military jurisdiction, in order to limit the jurisdiction of military judges exclusively to military crimes;

(i) Reducing the authorization to carry fire-arms to the minimum strictly indispensable.

C. United Kingdom of Great Britain and Northern Ireland

58. The Committee considered the second periodic report of the Government of the United Kingdom of Great Britain and Northern Ireland and on the United Kingdom and its dependent Territories (CAT/C/25/Add.6) at its 234th and 235th meetings, on 17 November 1995 (CAT/C/SR.234 and 235), and has adopted the following conclusions and recommendations:

1. Introduction

59. The Committee thanks the Government of the United Kingdom for its comprehensive report, well-supported by annexed material. The Committee also wishes to acknowledge the breadth of the United Kingdom representatives and the way in which they encouraged a full and open dialogue between themselves and the Committee.

2. Positive aspects

60. The Committee is pleased to acknowledge the following positive aspects:

(a) An in-country right of appeal for all refused asylum-seekers;

(b) The use of tape recording for all interrogations by the police in England and Wales, many interrogations in Scotland, and for non-terrorist-related interrogations in Northern Ireland;

(c) The introduction of Codes of Practice applied to the interrogations of detainees in relation to terrorist activities in Northern Ireland;

(d) The appointment of an Independent Commissioner for Holding (Detention) Centres for Northern Ireland;

(e) The appointment of an Independent Accusor of Military Complaints procedures in Northern Ireland;

(f) The renewal of the prison infrastructure throughout the United Kingdom;

(g) The noticeable reduction of the level of violence of detainees in detention centres of Northern Ireland;

(h) The creation of an Independent Complaints Council to deal with complaints against the police in Hong Kong;

(i) The emphasis placed on education and training of police, prison and immigration officers;

(j) The appointment of a Prisons Ombudsman in 1994;

(k) The present practice of permitting detainees in Northern Ireland, in respect of terrorist-related offences, to consult in private counsel which is considered by the Committee as a shift in the right direction;

(l) The Committee notes that new Prison Rules have been drafted for Montserrat and that they will likely be enacted within a few months;

(m) The new suicide-prevention processes in the prison system;

(n) The Committee notes with pleasure that no case of torture appears to have come to light in the dependent Territories.

3. Factors and difficulties impeding the application of the Convention

61. In Northern Ireland the maintenance of the emergency legislation and of separate detention or holding centres will inevitably continue to create conditions leading to breach of the Convention. This is particularly so because at present the practice of permitting legal counsel to consult with their clients at their interrogations is not yet permitted.

62. The Committee regrets that invocation of the Convention by individuals is not possible since the United Kingdom has not declared in favour of article 22 of the Convention. This appears unusual given that the United Kingdom has acceded to the jurisdiction of the European Commission of Human Rights.

63. In Hong Kong the warehousing of Vietnamese boat people in large detention centres may bring the Government into conflict with article 16 of the Convention.

4. Subjects of concern

64. The Committee is concerned about the following:

(a) The practice of vigorous interrogation of detainees under the emergency powers, which may sometimes breach the Convention;

(b) The method adopted in forcibly returning persons under deportation orders;

(c) The rate of suicide in prisons and places of detention;

(d) The renewal of emergency powers relating to Northern Ireland;

(e) The practice of the refoulement of asylum-seekers in circumstances that may breach article 3 of the Convention;

(f) The practice of the army in Northern Ireland of dispersing, with plastic bullets, what have been described by non-governmental organizations as peaceful demonstrations;

(g) The failure of the United Kingdom to declare in favour of article 22 both for itself and its overseas dependencies;

(h) The failure to provide for counsel to be present during interrogation in Northern Ireland for terrorist-related offences;

(i) The standards of detention of the Vietnamese boat people in Hong Kong;

(j) The allegations of discrimination in the treatment of Black citizens in the United Kingdom by police and immigration authorities.

5. Recommendations

65. The Committee recommends that the Government of the United Kingdom take the following measures:

(a) Abolishing detention centres in Northern Ireland and the repealing the emergency legislation;

(b) Reviewing of practices related to deportation or refoulement where such practices may conflict with the State party's obligations under article 3 of the Convention;

(c) Re-educating and retraining police officers, particularly investigating police officers, in Northern Ireland as a further step in the peace process;

(d) Training immigration officers on how to manage violent prisoners with a minimum at risk of harm to all those involved;

(e) Extending the taping of interrogations to all cases and not merely those that do not involve terrorist-related activities and in any event to permit lawyers to be present at interrogations in all cases;

(f) Declaring in favour of article 22 of the Convention and specifically on behalf of Hong Kong and the other United Kingdom dependent Territories;

(g) Given the need for prisons, continuing the present policy of rebuilding in accordance with the most modern standards;

(h) Reviewing the policies favouring private policing with a view to properly regulating that activity;

(i) Reconsidering corporal punishment with a view to determining if it should be abolished in those dependencies that still retain it.

D. Colombia

66. The Committee considered the periodic report of Colombia (CAT/C/20/Add.4) at its 238th and 239th meetings, on 21 and 23 November 1995 (see CAT/C/SR.238, 239 and 242/Add.1), and adopted the following conclusions and recommendations:

1. Introduction

67. The Committee thanks the State party for submitting its periodic report, which in general conforms to the Committee's guidelines. Furthermore, it recognizes the frankness and sincerity of the good oral report provided by the government representatives, at the same time acknowledging the difficulties impeding the reduction of the practice of torture. The replies to the concerns expressed by the Committee were also frank and made in a constructive spirit.

2. Positive aspects

68. The Committee notes that the new Constitution of Colombia contains various provisions that are very satisfactory from the standpoint of human rights and mechanisms for their protection, namely, the prohibition of torture, the regulations of habeas corpus, the functions of the Attorney-General and the Ombudsman, and the precedence of international human rights treaties over national legislation.

69. The Committee notes the increase in the penalty for the offence of torture provided for in article 279 of the Penal Code.

70. The Committee draws particular attention to the establishment of the Office of the Attorney-General for the Defence of Human Rights.

3. Factors and difficulties impeding implementation of the Convention

71. The Committee is aware that the general climate of violence caused by guerrilla warfare, drug trafficking and groups of armed civilians restrict effective enforcement of the Convention in Colombia.

72. The Committee considers that the almost total lack of penalties for persons responsible for torture constitutes an obstacle to the implementation of the Convention.

73. The Committee appreciates that the copious emergency legislation and the inadequate functioning of the judiciary also make it difficult to implement the Convention.

4. Subjects of concern

74. The Committee observes with great concern the persistence of a large number of violent deaths and cases of torture and ill-treatment attributed to members of the army and the police, in a manner that would appear to indicate a systematic practice in some regions of the country.

75. The Committee emphasizes with regret that the State party has not yet brought its domestic legislation into line with the requirements of the Convention, as was suggested by the Committee when it received the initial report of Colombia, particularly with regard to the obligations under articles 2, concerning due obedience, 3, 4, 5, 8, 11 and 15 of the Convention.

76. The Committee notes with concern that the light penalties for the offence of torture in the Code of Military Justice do not seem to be acceptable, nor does the extension of military jurisdiction to deal with ordinary crime by means of the inadmissible expansion of the concept of active service and the enactment of provisions which seriously limit the effectiveness of means for protecting rights, such as habeas corpus.

77. The Committee considers that the Government has made virtually constant use of a tool such as the state of internal disturbance which, given its seriousness and pursuant to the Constitution, should be exceptional. Moreover, provisions continue to be adopted that the highest courts of the State have already found to be in violation of constitutional rights.

78. The Committee also views with concern the powers of the regional courts, in particular the non-identification of witnesses, judges and prosecutors. The detention of civilians in military units is also a source of concern.

5. Recommendations

79. The Committee recommends that the practice of torture should be ended forthwith and to this end suggests that the State party should act with great firmness to restore the State's monopoly over the use of force, disbanding all armed civilian or paramilitary groups, and ensure that swift and impartial investigations into allegations of torture are conducted immediately and that informers and witnesses are protected.

80. The Committee believes that the situation of impunity must be terminated by adopting the necessary legislative and administrative amendments to ensure that military courts judge only violations of military regulations, punishing torture by means of penalties commensurate with its seriousness and dispelling any doubt as to the responsibility of anyone who obeys an illegal order.

81. The Committee also suggests bringing domestic legislation into line with the obligations of the Convention with regard to the non-return or expulsion of anyone who fears being subjected to torture, the extraterritorial and universal application of the law, extradition and the express invalidity of evidence obtained under torture.

82. The Committee considers that the State party should keep under systematic review the rules, methods and practices referred to in article 11 of the Convention, conduct human rights education and training programmes for military, police, medical and civilian guard personnel, and establish appropriate systems of compensation and rehabilitation for the victims.

83. The Committee would be pleased if the State party were to make the declaration under article 22 of the Convention and offers such assistance and cooperation as the State party may require.

E. Armenia

84. The Committee considered the initial report of Armenia (CAT/C/24/Add.4/Rev.1) at its 245th and 246th meetings, on 30 April 1996 (CAT/C/SR.245 and 246), and has adopted the following conclusions and recommendations:

1. Introduction

85. The Committee welcomes the report of Armenia together with its core document (HRI/CORE/1/Add.51) and the valuable oral introduction given by the delegation of the State party.

2. Positive aspects

86. The Committee welcomes the integration of the prohibition against torture in the newly adopted Constitution.

87. Similarly, it welcomes the creation of the Centre for Human Rights and Democracy in Erevan and the new agreement between Armenia and the International Committee of the Red Cross, which gives the latter the right to visit Armenian prisoners.

88. The Committee is encouraged by the information given to it about the developments in the reform of the Armenian legal system: it seems that high priority is given to human rights.

3. Factors and difficulties impeding the application of the provisions of the Convention

89. The Committee is aware of the very difficult economic situation existing in Armenia and of the difficulties involved in its transition from one system of governance to another one that is based on democracy. The Committee also acknowledges the particular consequences of Armenia's unstable border situation.

90. The Committee has taken these matters into consideration in formulating its conclusions and recommendations. However, the Committee emphasizes that the difficult situation of the State party can never provide a justification for failure to comply with its obligations under the Convention.

4. Subjects of concern

91. The Committee is concerned at the fact that Armenia has not considered it appropriate to introduce a specific definition of the crime of torture in its penal legislation.

92. It is not clear whether the provisions of article 2 of the Convention are adequately reflected in the domestic law of Armenia.

93. The Committee is concerned at the fact that it is not clear whether the laws, regulations and practices in Armenia effectively prohibit that a person be sent back to a country where he or she would be in danger of being subjected to torture.

94. The Committee has doubts about the effectiveness of the provisions for the safeguard of persons in police custody.

95. Finally, the Committee is concerned about the number of allegations it has received with regard to ill-treatment perpetrated by public authorities during arrest and police custody.

5. Recommendations

96. The Committee recommends that a definition of torture in conformity with the definition appearing in article 1 of the Convention be inserted into Armenian domestic legislation as a separate type of crime.

97. The Committee emphasizes that orders received from a superior implying the perpetration of an act of torture are illegal and should be sanctioned under criminal law. In addition, they cannot be considered by the person receiving such orders as justification for having committed torture. This should be clearly incorporated into the domestic law.

98. The Committee recommends that legal and practical measures be taken by the Armenian authorities to guarantee that a person be not expelled, returned (refoulé) or extradited to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

99. The Committee understands that the Government of Armenia is presently developing the jurisdiction of the Constitutional Court; the Committee recommends that the Government consider the possibility of establishing an effective and reliable judicial review of the constitutional rights of those who are illegally detained.

100. The Committee further recommends that Armenian authorities give high priority to the training of personnel enumerated in article 10 of the Convention.

101. The Committee recommends that the allegations of ill-treatment that were brought to its attention be duly investigated and that the result of such investigations be transmitted to the Committee.

F. Senegal

102. The Committee considered the second periodic report of Senegal (CAT/C/17/Add.14) at its 247th and 248th meetings, on 1 May 1996 (CAT/C/SR.247 and 248), and has adopted the following conclusions and recommendations:

1. Introduction

103. The Committee welcomes the submission by Senegal of its second periodic report and its core document (HRI/CORE/1/Add.51) and thanks the delegation for its oral introduction and for its frank collaboration, as demonstrated by its constructive dialogue with the Committee.

2. Positive aspects

104. The Committee notes with great satisfaction Senegal's firm commitment to the defence of human rights, demonstrated, inter alia, by its ratification of a series of international treaties concerning the protection of human rights, and the modernization of legislation on the subject which is now in progress. In addition, the State party's frank collaboration with the Committee shows its willingness to fulfil the obligations it assumed when ratifying the Convention.

105. The Committee notes as a positive aspect that the status accorded by the Senegalese Constitution to international treaties ratified by Senegal is higher than that of domestic law.

106. The Committee also regards as very positive recent developments in the field of human rights in Senegal as set forth in the joint communiqué by a delegation of the Government and non-governmental organizations of 13 March 1996, announcing the establishment of a periodic dialogue and the establishment of a human rights unit.

107. The Committee also welcomes the fact that the Senegalese delegation, on behalf of the authorities of the State party, has undertaken to ensure that measures are taken to provide for the training of personnel performing the functions listed in article 10 of the Convention, particularly medical personnel, and to complete the procedure regarding the declaration provided for under article 22 of the Convention.

3. Factors and difficulties impeding the application of the provisions of the Convention

108. At the normative level, the Committee notes the absence of regulations to ensure the effective implementation of the Convention.

109. The Committee notes that the conflict in Casamance sometimes impedes effective implementation of the Convention.

4. Subjects of concern

110. The Committee is disturbed by the numerous cases of torture that have been brought to its attention by non-governmental organizations of established

credibility, and are also referred to in the State party's report, notably in paragraphs 12, 37 and 103.

111. While taking into account the particular problem of Casamance, which is threatening the integrity and security of the State, the Committee recalls that a democracy must, whatever the circumstances, ensure that only legitimate means are used to protect the security of the State, peace and stability.

112. The Committee is concerned that, in its report, the State party invokes a discrepancy between international and internal law to justify granting impunity for acts of torture on the basis of the amnesty laws.

113. The Committee is doubtful whether the provisions in force in Senegal can effectively ensure full respect for the fundamental rights of persons in police custody.

5. Recommendations

114. The Committee recommends that the State party should, during its current legislative reform, consider introducing explicitly in national legislation the following provisions:

(a) The definition of torture set forth in article 1 of the Convention and the classification of torture as a general offence, in accordance with article 4 of the Convention, which would, inter alia, permit the State party to exercise universal jurisdiction as provided in articles 5 et seq. of the Convention;

(b) A blanket prohibition of any act of torture, with the stipulation that no exceptional circumstance may be invoked to justify torture, in accordance with article 2, paragraph 2, of the Convention;

(c) An express provision stipulating that an order from a superior officer or from a public authority may not be invoked to justify torture, in accordance with article 2, paragraph 3, of the Convention;

(d) Provisions explicitly prohibiting evidence from being obtained by torture and prohibiting any statement shown to have been extracted in this way from being used as evidence in any proceedings, in accordance with article 15 of the Convention.

115. The Committee recommends that all of the crimes referred to in article 4, paragraph 1, of the Convention should automatically be made the subject of a rigorous and prompt investigation by the competent judicial authorities and by the Government Attorney.

116. The Committee recommends that any person accused of an offence under criminal law should be subject to an objective investigation and, in the event that his responsibility is established, handed over to the competent authority as soon as possible.

117. The Committee recommends that article 79 of the Senegalese Constitution, establishing the precedence of international treaty law ratified by Senegal over internal law be implemented unreservedly. The Committee considers the amnesty laws in force in Senegal to be inadequate to ensure proper implementation of certain provisions of the Convention.

118. The Committee hopes that the allegations made by the non-governmental organizations will be investigated and the results transmitted to the Committee.

119. Finally, the Committee would welcome a contribution, however symbolic, from the Senegalese Government to the United Nations Voluntary Fund for Victims of Torture.

G. Finland

120. The Committee considered the second periodic report of Finland (CAT/C/25/Add.7) at its 249th and 250th meetings, on 2 May 1996 (CAT/C/SR.249 and 250), and has adopted the following conclusions and recommendations:

1. Introduction

121. The Committee welcomes the detailed report of the Government of Finland outlining the new measures and developments relating to the implementation of the Convention that have taken place in the State party since its submission of the initial report in October 1990. The report under consideration was prepared in accordance with the guidelines established by the Committee and provided the additional information that had been requested by the Committee. The Committee also welcomes the core document (HRI/CORE/1/Add.59) submitted by the Government providing a country profile of Finland.

2. Positive aspects

122. The Committee did not receive any information on allegations of torture in Finland.

123. The Committee takes note with satisfaction of the important steps taken by the State party to develop further the legislative measures relating to the implementation of the Convention. Among these measures, the Committee notes with particular satisfaction the amendment to the Constitution to incorporate the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

124. The Committee also considers important that the amendment introduces at the highest legislative level the "normality principle", according to which the conditions in places of detention must be similar as far as possible to those existing in the community at large.

125. The incorporation in the Preliminary Investigation Act of detailed provisions concerning the correct procedure for interrogation is also a matter of satisfaction.

126. The Committee further considers as an important event the establishment of the Rehabilitation Centre for Torture Victims.

127. The Committee takes note with satisfaction of the intention of the Finnish Government to abolish the system of administrative detention.

3. Subjects of concern

128. In the criminal law of Finland there is no provision containing a specific definition of torture.

129. Under Finnish law there are no provisions specifically prohibiting the use of statements obtained under torture in judicial proceedings. The Committee considers that such a provision could constitute a strong preventive measure against acts of torture.

130. Although the abolition of preventive detention for dangerous recidivists has been applied in practice, there is no information on initiatives taken by the Finnish authorities to modify the relevant provisions in the Dangerous Recidivists Act.

131. The Committee is concerned about the absence of sufficient legal protection of the rights of persons who are denied asylum through the use of a list of safe countries in which those persons could be sent back, in the Immigration Act of Finland.

4. Recommendations

132. The Committee recommends that the State party incorporate into its legislation the definition of torture as a specific crime committed by a public official or other person in an official capacity in accordance with article 1 of the Convention, considering as insufficient the definition of assault provided in the Criminal Code of Finland.

133. The completion of the procedure for the abolition of preventive detention is also recommended.

134. The establishment of an independent agency to investigate offences allegedly committed by the police, a question that is now under consideration in Finland, is likewise considered advisable by the Committee.

135. The Committee supports the idea of the reinforcement of the Immigration Ombudsman's Office and the establishment of an office of a special human rights ombudsman in the State party.

136. The Committee recommends that a legal protection be provided to those persons who requested asylum and who are sent back to a country included in the list of safe countries, by decision of the competent authority. Decisions on expulsion, return (refoulement) or extradition should take into account the provisions of article 3 of the Convention.

137. The Committee recommends that a special provision be incorporated into the State party's criminal procedure, concerning the exclusion from judicial proceedings of evidence which has been established to have been obtained, directly or indirectly, as a result of torture, as provided for by article 15 of the Convention.

H. China

138. The Committee considered the second periodic report of China (CAT/C/20/Add.5) at its 251st, 252nd and 254th meetings, on 3 and 6 May 1996

(CAT/C/SR.251, 252/Add.1 and 254), and has adopted the following conclusions and recommendations:

1. Introduction

139. The Committee welcomes the report of the Government of China as well as its core document (HRI/CORE/1/Add.21). The second periodic report of China dated 2 December 1995 was due on 2 November 1993. Since China had presented a supplementary report dated 8 October 1992, the timing of this report is quite satisfactory to the Committee.

140. The second periodic report of China follows the Committee's guidelines and meets them satisfactorily.

141. The Committee also thanks the representative of the State party for his most enlightening verbal introduction to the report and for the way in which he and the other members of the Chinese delegation responded so constructively to the questions asked.

2. Positive aspects

142. The reforms contained in the amendments to the Criminal Procedure Law, to take effect in 1997, are an important step towards developing the rule of law in China and towards that country being able to meet its obligations pursuant to the Convention.

143. There are instances reported of police officials being prosecuted and convicted for acts of torture in China, including Tibet.

144. The various steps taken by the Ministry of Public Security pursuant to its notice of January 1992, so as to educate personnel on the prohibition of torture, are noted with satisfaction.

145. The provision of effective administrative and criminal compensation to victims of abuse is a most welcome development.

146. The Committee notes with pleasure the affirmation of the representative of China that "heads of cells and trusties" in prisons, as alleged by some non-governmental organizations, do not exist in China.

3. Factors and difficulties impeding the application of the provisions of the Convention

147. The Committee acknowledges the sheer size of the task confronting China in policing and administrating a huge land mass with 1.2 billion people at a time of economic and social reconstruction.

4. Subjects of concern

148. The Committee is concerned that according to information supplied by non-governmental organizations torture may be practised on a widespread basis in China.

149. The Committee is concerned also about the following:

(a) The failure to incorporate the crime of torture into the domestic legal system, in terms consistent with the definition contained in article 1 of the Convention;

(b) The claims drawn to the attention of the Committee by non-governmental organizations that torture occurs in China in police stations and prisons in circumstances that very often do not result in investigation and proper resolution by the authorities;

(c) The claims made by some non-governmental organizations that the Procuratorate has yet to establish its authority over the police, security and prison services when dealing with allegations of torture and cruel, inhuman or degrading treatment or punishment;

(d) The fact that some methods of capital punishment may be in breach of article 16 of the Convention;

(e) The claims made by non-governmental organizations that the special environment that exists in Tibet continues to create conditions that result in alleged maltreatment and even death of persons held in policy custody and prisons;

(f) The failure to provide access to legal counsel to persons at the earliest time of their contact with the authorities. Allegations are made by some non-governmental organizations that incommunicado detention is still prevalent in China;

(g) The important number of deaths reported to the Committee, apparently arising out of police custody.

5. Recommendations

150. The Committee recommends to the State party the following:

(a) China should enact a law defining the crime of torture in terms consistent with article 1 of the Convention;

(b) A comprehensive system should be established to review, investigate and effectively deal with complaints of maltreatment, by those in custody of every sort. If the Procuratorate is the body that carries out the investigations, it should be given the necessary jurisdiction to carry out its functions, even over the objections of the organ that it is investigating;

(c) The methods of execution of prisoners sentenced to death should be brought into conformity with article 16 of the Convention;

(d) Conditions in prisons should be brought into conformity with article 16 of the Convention;

(e) Access to legal counsel should be granted to all those detained, arrested or imprisoned as a matter of right and at the earliest stage of the process. Access to the family and to a medical doctor should also be accommodated;

(f) China should consider cooperating in the rehabilitation of torture victims by supporting the establishment of a Rehabilitation Centre for Torture Victims in Beijing or some other large cities of the country;

(g) China should continue with its most welcome reforms to its criminal penal law, and continue to train its law enforcement personnel, procurators, judges and medical doctors to become professionals of the highest standing;

(h) China is invited to consider withdrawing its reservations to article 20 and declaring in favour of articles 21 and 22 of the Convention;

(i) An independent judiciary, as defined in international instruments, is so important for ensuring the objectives of the Convention against Torture, that the Committee recommends that appropriate measures be taken to ensure the autonomy/independence of the judiciary in China.

I. Croatia

151. The Committee considered the initial report of Croatia (CAT/C/16/Add.6) at its 253rd and 254th meetings, on 6 May 1996 (CAT/C/SR.253 and 254), and has adopted the following conclusions and recommendations:

1. Introduction

152. The Committee welcomes the report of the Government of Croatia as well as its core document (HRI/CORE/1/Add.32). The initial report of Croatia dated 4 January 1996 was due on 7 October 1992, but the events of insecurity in Croatia from 1991 explain why this report is late.

153. The initial report of Croatia and the core document follow the Committee's guidelines and meet them satisfactorily.

154. The Committee also thanks the representatives of the State party for their introductory remarks.

2. Positive aspects

155. The constitutional and other legal safeguards against torture and other cruel, inhuman or degrading treatment or punishment are particularly well-developed.

156. The commitment of Croatia to human rights is reflected in the State party's adherence to various international human rights treaties. It is particularly noteworthy that Croatia has not expressed reservation to article 20 and has declared in favour of articles 21 and 22 of the Convention.

157. The fact that the Government of Croatia has undertaken investigation and prosecution in cases of alleged torture and maltreatment arising out of the events of 1995 and its aftermath is noted with satisfaction.

158. The support of Croatia for the rehabilitation of the victims of the violence that took place there between 1991 and the end of 1995 is another matter of satisfaction to the Committee.

3. Factors and difficulties impeding the application of the provisions of the Convention

159. The Committee takes note of the following:

(a) The situation of insecurity and loss of civil oversight over parts of Croatia between 1991 and the end of 1995;

(b) The social and economic consequences of the events referred to in paragraph 1 of the initial report, together with the costs of reconstruction and reintegration of large portions of the population into the wider society;

(c) The refocusing of social attitudes onto human rights rather than onto State rights, in a country where for 45 years the opposite was the norm.

4. Subjects of concern

160. The Committee is concerned about the information on serious breaches of the Convention received from reliable non-governmental organizations, indicating that in the wave of the events of 1995 and its aftermath, serious acts of torture were perpetrated by Croatian officials, particularly upon the Serb minority.

161. The Committee also notes that there is no defined crime of torture in the domestic law of Croatia.

5. Recommendations

162. The Committee recommends to the State party the following:

(a) That Croatia enact a crime of torture in terms consistent with article 1 of the Convention;

(b) That Croatia ensure that all allegations of torture or cruel, inhuman or degrading treatment or punishment arising out of the events of 1995 and its aftermath, be rigorously investigated by an impartial, independent commission and the results be reported back to the Committee;

(c) That in the second periodic report a detailed account of the way in which Croatia complies with the provisions of article 3 of the Convention be included;

(d) That a vigorous programme of education of police, as well as prison, medical, prosecution and judicial personnel be undertaken to ensure that they understand their obligations pursuant to the relationship between the domestic law of Croatia and the international human rights regime to which Croatia has adhered;

(e) The Committee urges Croatia to continue to cooperate with the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 to ensure that alleged war criminals within its jurisdiction are brought to justice pursuant to the Dayton peace accord;

(f) Individual claims of violations of the constitutional rights of defendants in pre-trial detention should be justiciable by an effective judicial authority;

(g) That Croatia's police and judicial authorities pay special attention to the implementation of the existing legal guarantees against torture of a constitutional and procedural nature.

J. Malta

163. The Committee considered the initial report of Malta (CAT/C/12/Add.7) at its 255th and 256th meetings, on 7 May 1996 (CAT/C/SR.255 and 256), and has adopted the following conclusions and recommendations:

1. Introduction

164. The Committee welcomes the submission of the initial report of Malta and thanks the Maltese delegation for the oral introduction, which gave rise to a frank and highly constructive dialogue with the Committee.

2. Positive aspects

165. The Committee notes with satisfaction Malta's firm commitment to the protection and promotion of human rights, as attested by its ratification of a number of relevant international treaties and by its recognition of the competence of the Committee to consider communications from States and individuals, in conformity with the provisions of articles 21 and 22 of the Convention.

166. The Committee expresses its satisfaction that the crime of torture has been incorporated in national legislation, in conformity with article 1 of the Convention.

167. The Committee notes with satisfaction Malta's adoption of a new interrogation code which contains provisions designed to ensure the prevention of torture and ill-treatment.

168. The Committee regards the abolition of the death penalty in Malta as a very positive development.

3. Factors and difficulties impeding the application of the provisions of the Convention

169. The Committee understands that Malta's unusual geographic and demographic situation poses certain obstacles to the full application of article 3 of the Convention.

4. Subjects of concern

170. The Committee is concerned that the available judicial remedies in the matter of return (refoulement) and expulsion are less than satisfactory.

171. The Committee is concerned at the absence from national legislation of the right of persons deprived of their liberty to immediate access to a lawyer.

5. Recommendations

172. The Committee recommends that the State party should introduce into its national legislation provisions permitting the full application of article 3 of the Convention.

173. The Committee would welcome a contribution by Malta, however symbolic, to the United Nations Voluntary Fund for Victims of Torture.

V. ACTIVITIES OF THE COMMITTEE UNDER ARTICLE 20 OF THE CONVENTION

A. General information

174. In accordance with article 20, paragraph 1, of the Convention, if the Committee receives reliable information that appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and, to that end, to submit observations with regard to the information concerned.

175. In accordance with rule 69 of the Committee's rules of procedure, the Secretary-General shall bring to the attention of the Committee information that is, or appears to be, submitted for the Committee's consideration under article 20, paragraph 1, of the Convention.

176. No information shall be received by the Committee if it concerns a State party that, in accordance with article 28, paragraph 1, of the Convention, declared at the time of ratification of or accession to the Convention that it did not recognize the competence of the Committee provided for in article 20, unless that State party has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

177. The Committee's work under article 20 of the Convention thus commenced at its fourth session and continued at its fifth to sixteenth session. During those sessions the Committee devoted the following number of closed meetings to its activities under that article:

Sessions	Number of closed meetings
Fourth	4
Fifth	4
Sixth	3
Seventh	2
Eighth	3
Ninth	3
Tenth	8
Eleventh	4
Twelfth	4
Thirteenth	3
Fourteenth	6
Fifteenth	4
Sixteenth	4

178. In accordance with the provisions of article 20 of the Convention and rules 72 and 73 of the rules of procedure, all documents and proceedings of the Committee relating to its functions under article 20 are confidential and all the meetings concerning its proceedings under that article are closed.

179. However, in accordance with article 20, paragraph 5, of the Convention, the Committee may after consultations with the State party concerned decide to include a summary account of the results of the proceedings in its annual report to the States parties and to the General Assembly.

B. Summary account of the results of the proceedings concerning the inquiry on Egypt

1. Introduction

180. Egypt acceded to the Convention on 25 June 1986. The Convention entered into force on 26 June 1987, on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession. That date is also the date of entry into force of the Convention for Egypt.

181. The Committee began its confidential procedure under article 20, paragraphs 1 to 4, of the Convention with regard to Egypt in November 1991 and concluded it in November 1994. Further consultations with the State party, in accordance with article 20, paragraph 5, of the Convention, took place by way of correspondence from April to May 1996. On 20 November 1995, the Committee decided to include a summary account of the results of the proceedings relating to the inquiry on Egypt in its present annual report. The text was adopted by consensus on 7 May 1996. 4/

2. Developments of the procedure

182. At its seventh session, held from 11 to 21 November 1991, the Committee considered information on Egypt submitted by Amnesty International pursuant to article 20 of the Convention. Pursuant to rule 75, paragraph 1, of its rules of procedure, the Committee decided to invite Amnesty International to submit additional relevant information substantiating the facts of the situation, including statistics.

183. At its eighth session (27 April-8 May 1992), the Committee had before it the additional information requested from Amnesty International, information submitted by other non-governmental organizations, the reports of the Special Rapporteur of the Commission on Human Rights on questions relating to torture 5/ and preliminary observations made by the Government of Egypt on the initial information submitted directly to it by Amnesty International.

184. On 5 May 1992, in accordance with its mandate under article 20 of the Convention and rule 76 of its rules of procedure, the Committee invited the Government of Egypt to cooperate with the Committee in its examination of information on allegations of the systematic practice of torture in Egypt and requested the Government to submit its observations on the information by 31 August 1992. The Committee also decided to request further information from non-governmental sources.

185. The replies from the Egyptian authorities to the information transmitted to them in May were received in October and November 1992 and, therefore, could not be considered by the Committee at its ninth session, held from 9 to 20 November 1992. The Committee decided however to continue consideration of the information on Egypt at its tenth session in April 1993 when the replies received from the Government of Egypt would be available in all working languages. Additionally, the Committee decided to establish an informal working group composed of Messrs. Hassib Ben Ammar, Alexis Dipanda Mouelle and Bent Sorensen in order to analyse the information received and to submit proposals for further action to the Committee at its April session. Further observations were submitted by the Government of Egypt in April 1993.

186. Having taken note of the report and recommendations of its working group, the Committee, at its tenth session (19-30 April 1993), decided to undertake a confidential inquiry in accordance with article 20, paragraph 2, of the Convention and rule 78 of its rules of procedure, and designated Messrs. Dipanda Mouelle and Sorensen for that purpose. Mr. Ben Ammar had informed the Committee that he was unable to participate in the inquiry. The decision was transmitted to the Government of Egypt on 27 April 1993.

187. Messrs. Dipanda Mouelle and Sorensen submitted a progress report to the Committee at its eleventh session (8-19 November 1993). In preparing the report, they took into account information furnished by the Government of Egypt in reply to a list of issues they had submitted to the Egyptian authorities, at the latter's request, at the end of August 1993; information received from three non-governmental organizations during the period May-October 1993; as well as the views of an Egyptian human rights expert designated by the Government, who had met with Messrs. Dipanda Mouelle and Sorensen in the beginning of November 1993.

188. By its decision of 18 November 1993, the Committee requested the Government of Egypt to agree to a visit to Egypt of the Committee members making the inquiry, to take place not later than 15 March 1994. The Committee also informed the Government of Egypt that the purpose of the visit was not to accuse the State party, which was making a sincere effort to comply with its obligations under the Convention, but to ascertain in close cooperation with the Government whether or not torture was systematically practised, particularly by members of the security forces. The Government was invited to respond to the request for a visit by 31 December 1993.

189. On 15 December 1993, the Government was provided, at its request, with a copy of the progress report and conclusions and recommendations prepared by the two Committee members making the inquiry.

190. In its response, dated 31 December 1993, the Government stated that it was entirely ready to engage the Committee in requisite consultations and a dialogue, with a view to agreeing on a framework within which the visit could take place.

191. Without prejudice to any further decision of the Committee, Messrs. Dipanda Mouelle and Sorensen found it appropriate to draw the attention of the Government of Egypt to the general principles earlier established by the Committee that guide the missions of members of the Committee designated to undertake an inquiry in accordance with article 20 of the Convention. They also made a number of proposals concerning the visit to Egypt, which could constitute the main elements of its framework. Those proposals and the general principles were transmitted to the Government on 28 January 1994.

192. Messrs. Dipanda Mouelle and Sorensen submitted a second progress report (covering the period November 1993-March 1994) to the Committee at its twelfth session, held from 18 to 28 April 1994. The Committee endorsed their proposals concerning the framework of the visit to Egypt and discussed the matter with the accredited representative of the Government of Egypt at a closed meeting on 28 April 1994. The Committee once again requested the Government of Egypt to agree to a visit to take place not later than 17 September 1994.

193. The Committee invited the Government to reply to its request by 17 June 1994 and stated that should no reply or a negative reply have been

received by that date, the Committee would continue with the procedure provided for under article 20 of the Convention.

194. On 15 June 1994, the accredited representative of the Government reiterated Egypt's determination to comply with its obligations under the Convention and to continue its dialogue with the Committee. His Government was ready to send appropriate representatives to Geneva to discuss with the two designated Committee members all matters related to this subject.

195. In response to the request of the Government of Egypt, Messrs. Dipanda Mouelle and Sorensen met an Egyptian delegation on 3 November 1994 in Geneva. The delegation was composed of the Permanent Representative of Egypt to the United Nations Office at Geneva and four high-ranking officials from the Egyptian Ministries of Justice and the Interior. In drafting their conclusions, the two Committee members took into account the views of the Egyptian delegation. They submitted their final report to the Committee at its thirteenth session, held from 7 to 18 November 1994.

196. On 14 November 1994, the Committee endorsed the conclusions submitted to it, decided to transmit the final report and conclusions to the Government of Egypt, and invited the latter to inform the Committee by 31 January 1995 of the measures it intended to take concerning the Committee's conclusions.

197. The reply of the Government of Egypt, together with its observations on the inquiry report, were transmitted to the Committee on 31 January 1995, and considered by it at the fourteenth session (24 April-5 May 1995).

198. Having completed all the proceedings relating to the inquiry, the Committee on 4 May 1995 invited the Government to communicate its views on the question of whether a summary account of the results of the inquiry should be included in its annual report to the States parties and the General Assembly.

199. In its reply of 26 June 1995, the Government of Egypt reiterated the view already expressed in a note dated 21 April 1995 that there was no justification for publication and cited a number of specific principles on which it based its opposition. Furthermore, the Government stated that the overall repercussions of a publication could prove highly prejudicial not only to Egypt's relations with the Committee but also to the principles and purposes of the Convention. In a further communication dated 3 May 1996 the Permanent Mission of Egypt to the United Nations Office at Geneva stated the following:

> "The Permanent Mission reaffirms what was stated in the above-mentioned letter and would like to draw the attention of the distinguished members of the Committee against Torture to the sad and barbaric terrorist incident which took place last month in Cairo taking the life of and injuring many tourists as well as nationals. The Permanent Mission wishes that the Committee against Torture would reconsider its position regarding paragraph 5 of article 20 of the Convention against Torture in order not to give a wrong indication to the terrorist groups and their supporters as explained in paragraph 6 of the said letter."

Paragraph 6 of the letter referred to by the Permanent Mission of Egypt reads as follows:

> "6. If a summary account of the results of the confidential proceedings concerning Egypt were published in the Committee's annual report, this might be interpreted as signifying support for terrorist groups and would

encourage the latter to proceed with their terrorist schemes and to defend their criminal members who engage in acts of terrorism by resorting to false accusations of torture. In other words, it might ultimately be interpreted as signifying that the Committee is indirectly encouraging terrorist groups not only in Egypt but worldwide. This is definitely not one of the objectives specified in the Committee's mandate."

200. However, in view of the number and seriousness of the allegations of torture received by the Committee and considering that the Government of Egypt did not avail itself of the opportunity it had been offered to clarify the situation by accepting a visit of the Committee members making the inquiry, the Committee is convinced that the publication of a summary account of the results of the proceedings concerning the inquiry is necessary in order to encourage full respect for the provisions of the Convention in Egypt.

3. Conclusions of the Committee

201. The Committee notes that since November 1991, information on allegations of torture in Egypt has been provided mainly by: (a) reports of the Special Rapporteur of the Commission on Human Rights on questions relating to torture; (b) Amnesty International; (c) the Egyptian Organization for Human Rights; and (d) the World Organization against Torture. Other non-governmental sources have occasionally provided information during the inquiry.

202. The Committee is aware of the fact that most of the allegations received by it have been made in a particular context: a wave of violence has developed in Egypt over the last few years as a result of terrorist acts perpetrated by extremist groups against tourists, foreign residents, Egyptian Christians, policemen, high-ranking officials of the army and members of the Government and the parliament. Those acts have entailed the adoption by the authorities of repressive measures such as the renewal of the state of emergency in the country until April 1997, mass arrests and severe penalties, often the death penalty, for those found guilty of terrorism.

203. The Government of Egypt states that it remains committed to applying the articles of the Convention in spite of the terrorist crimes that the country has witnessed - the aim of which is to overthrow the democratic system - and that it promotes the principle of constitutional legitimacy and the rule of law in order to counter those crimes.

204. Non-governmental organizations active in the field of human rights, while explicitly condemning terrorist acts committed in Egypt by extremist groups, report that in this climate of confrontation torture by police forces, especially State Security Intelligence, has been regularly practised. Torture seems to be used not only to obtain information and extort confessions, but also as a form of retaliation to destroy the personality of the person arrested in order to intimidate and to frighten the family or the group to which the person arrested belongs.

205. The Government of Egypt had the opportunity to make observations on those allegations both in writing and in meetings between its representatives and the members of the Committee making the inquiry. The latter were provided by the Government with statistics concerning cases in which custodial sentences had been handed down against offenders or in which compensation had been awarded to the victims. The Government states that violations of the laws prohibiting torture constitute exceptional individual cases, which the two branches of

judicial authority (the Department of Public Prosecutions and the Judiciary) are investigating with a view to handing down legal judgements. In this connection, the Committee has been provided with detailed information regarding the Egyptian legal system and on court judgements imposing penalties, awarding compensation or ordering a search of places of detention.

206. From the observations submitted by the Government it appears that, generally, Egypt has a legal and judicial infrastructure that should enable the State party to combat the phenomenon of torture in an effective way. However, it also appears that judicial remedies are often a slow process leading to the impunity of the perpetrators of torture. In addition, the Committee was unable to find in the replies and comments submitted by the Government, information that would have dissipated one of its most serious concerns, namely the role of State Security Intelligence with regard to the practice of torture in Egypt.

207. The Committee takes note of the fact that most of the allegations of torture received from non-governmental organizations are directed against members of State Security Intelligence and are consistent in describing the methods applied by them; it also takes note of the fact that the Government of Egypt categorically denies any involvement of State Security Intelligence in acts of torture or ill-treatment or even in the detention and interrogation of arrested persons and, as indicated by the Government, notes with concern that no investigation has ever been made and no legal action been brought against members of State Security Intelligence since the entry into force of the Convention for Egypt in June 1987.

208. Furthermore, the Committee is seriously concerned by the fact that the information received from non-governmental sources consistently describes State Security Intelligence premises and military camps of the Central Security Forces as places where torture allegedly occurs. The same sources report that since these places are not included in one of the categories of places of detention specified in the Organization of Prisons Act, they are not subject to inspections and investigations concerning allegations of torture.

209. The Government points out that the task of State Security Intelligence is one of collecting information and carrying out investigations. The Government states, in this connection, that State Security premises are administrative buildings and that Central Security camps are military installations and, that, therefore these places are not among those where people may be detained. However, the Government also indicates that if a report or a complaint is received regarding any form of violation of a citizen’s rights, or the ill-treatment of a citizen, the Department of Public Prosecutions may take all the legal measures required to investigate the complaint including by inspecting those places and that security personnel committing a criminal act are accountable to the courts.

210. According to the Government, most of the allegations concerning torture in Egypt relate to individuals who have been accused or convicted of acts of terrorism. Those persons, or individuals or non-governmental organizations speaking on their behalf, have made allegations concerning their subjection to torture in order to prevent their conviction.

211. The Committee is mindful of the fact that it is the responsibility of the Government of Egypt to combat terrorism in order to maintain law and order and it deplores and condemns unequivocally any act of violence and terrorism perpetrated by groups trying to destabilize the Egyptian institutions. The Committee wishes to point out, however, that under article 2, paragraph 2, of

the Convention, no exceptional circumstances whatsoever, whether 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.

212. The Government of Egypt, which has undertaken to respect all the provisions of the Convention, including those of article 2, paragraph 2, should take measures to ensure that those provisions are implemented strictly by all State authorities. In this connection, the Government should make particular efforts to prevent its security forces from acting as a State within a State, for they seem to escape control by superior authorities.

213. In its observations, the Government, while affirming its commitment to the provisions of article 2, paragraph 2, of the Convention, totally rejects the use by the Committee of individual allegations, the credibility of which has not been established, to accuse a State party rashly of systematic practice of torture in its territory, particularly in the absence of an objective interpretation of that concept.

214. In this regard, the Committee wishes to recall its views, expressed in November 1993, on what the main factors are that indicate that torture is systematically practised in a State party. Those views are the following:

> "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 territory 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." 6/

215. In the case of Egypt, the Committee finds that there is a clear contradiction between the allegations made by non-governmental sources and the information provided by the Government with regard to the role of the Egyptian security forces and the methods they use. This contradiction confirms the Committee's conviction that a visiting mission to Egypt would have been extremely useful to complete the inquiry. Unfortunately, the Government of Egypt did not avail itself of the opportunity it had been offered to clarify the situation by accepting the visit.

216. The Government of Egypt states that at no stage of its dialogue with the Committee did it protest against the request for a visiting mission to Egypt. However, it continuously affirmed the need to discuss the framework through which the visit could take place, in the light of a clear understanding of the articles of the Convention, as one of the important factors in its decision-making on the subject.

217. The Committee wishes to recall, in this connection, that proposals concerning the visit to Egypt, as referred to in paragraphs 185 and 186 above, were transmitted to the Government of Egypt on 28 January 1994 and brought to the attention of its accredited representative on 28 April 1994. No replies to those proposals were received.

218. In the absence of a visit to Egypt, the Committee therefore could neither support the Government's position nor call into question the allegations of torture, and it had to draw its conclusions on the basis of the information available to it.

219. The Committee considers that the information received with regard to allegations of the systematic practice of torture in Egypt appears to be well founded. Its conclusion is based on the existence of a great number of allegations, which came from different sources. These allegations largely coincide and describe in the same way the methods of torture, the places where torture is practised and the authorities who practice it. In addition, the information comes from sources that have proved to be reliable in connection with other activities of the Committee.

220. On the basis of this information, the Committee is forced to conclude that torture is systematically practised by the security forces in Egypt, in particular by State Security Intelligence, since in spite of the denials of the Government, the allegations of torture submitted by reliable non-governmental organizations consistently indicate that reported cases of torture are seen to be habitual, widespread and deliberate in at least a considerable part of the country.

221. The Committee recommends that Egypt reinforce its legal and judicial infrastructure in order to combat the phenomenon of torture in an effective way. In this connection, the Committee wishes to emphasize that it had recommended to the Government of Egypt, in November 1994, that it should set up an independent investigation machinery, including in its composition judges, lawyers and medical doctors, that should efficiently examine all the allegations of torture, in order to bring them expeditiously before the courts. This independent group should also monitor the safeguards against torture guaranteed to persons deprived of their liberty under Egyptian law, in particular by having access to all the places where allegations of torture have been reported, by alerting immediately the authorities concerned whenever those safeguards are not fully respected, and by making proposals to the authorities concerned to ensure that those safeguards are respected in all places where persons are detained.

222. In addition, the Egyptian authorities should undertake expeditiously a thorough investigation into the conduct of the police forces in order to establish the truth or otherwise of the many allegations of acts of torture, bring the persons responsible for those acts before the courts and issue and transmit to the police specific and clear instructions designed to prohibit any act of torture in the future.

VI. CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 22 OF THE CONVENTION

223. Under article 22 of the Convention, individuals who claim that any of their rights enumerated in the Convention have been violated by a State party and who have exhausted all available domestic remedies may submit communications to the Committee for consideration. Thirty-six out of 88 States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee to receive and consider communications under article 22 of the Convention. Those States are: Algeria, Argentina, Australia, Austria, Bulgaria, Canada, Croatia, Cyprus, Denmark, Ecuador, Finland, France, Greece, Hungary, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Togo, Tunisia, Turkey, Uruguay, Venezuela and Federal Republic of Yugoslavia (Serbia and Montenegro). No communication may be considered by the Committee if it concerns a State party to the Convention that has not recognized the competence of the Committee to do so.

224. Consideration of communications under article 22 of the Convention takes place in closed meetings (art. 22, para. 6). All documents pertaining to the work of the Committee under article 22 (submissions from the parties and other working documents of the Committee) are confidential.

225. In carrying out its work under article 22 of the Convention, the Committee may be assisted by a working group of not more than five of its members or by a special rapporteur designated from among its members. The working group or the special rapporteur submits recommendations to the Committee regarding the fulfilment of the conditions of admissibility of communications or assists it in any manner which the Committee may decide (rule 106 of the rules of procedure of the Committee). Special rapporteurs may take procedural decisions (under rule 108) during inter-sessional periods, thereby expediting the processing of communications by the Committee.

226. A communication may not be declared admissible unless the State party has received the text of the communication and has been given an opportunity to furnish information or observations concerning the question of admissibility, including information relating to the exhaustion of domestic remedies (rule 108, para. 3). Within six months after the transmittal to the State party of a decision of the Committee declaring a communication admissible, the State party shall submit to the Committee written explanations or statements clarifying the matter under consideration and the remedy, if any, which has been taken by it (rule 110, para. 2). In cases that require expeditious consideration, the Committee invites the States parties concerned, if they have no objections to the admissibility of the communications, to furnish immediately their observations on the merits of the case.

227. The Committee concludes examination of an admissible communication by formulating its views thereon in the light of all information made available to it by the complainant and the State party. The views of the Committee are communicated to the parties (art. 22, para. 7, of the Convention and rule 111, para. 3, of the rules of procedure of the Committee) and are made available to the general public. Generally, the text of the Committee's decisions declaring communications inadmissible under article 22 of the Convention are also made public without disclosing the identity of the author of the communication, but identifying the State party concerned.

228. Pursuant to rule 112 of its rules of procedure, the Committee shall include in its annual report a summary of the communications examined. The Committee may also include in its annual report the text of its views under article 22, paragraph 7, of the Convention and the text of any decision declaring a communication inadmissible.

229. During the period covered by the present report (fifteenth and sixteenth sessions) the Committee had 26 communications before it for consideration (Nos. 11/1993, 12/1993, 16/1994, 19/1994, 20/1994, 21/1995, 23/1995, 25/1995, 26/1995, 27/1995, 28/1995, 29/1995, 30/1995, 31/1995, 32/1995, 33/1995, 34/1995, 35/1995, 36/1995, 37/1995, 38/1995, 39/1996, 40/1996, 41/1996, 42/1996 and 43/1996).

230. At its fifteenth session, the Committee decided to discontinue consideration of communications Nos. 16/1994 and 20/1994.

231. Also at its fifteenth session, the Committee declared communications Nos. 30/1995 (P. M. P. K. v. Sweden), 32/1995 (N. D. v. France) and 35/1995 (K. K. H. v. Canada) inadmissible for non-exhaustion of domestic remedies, pursuant to article 22, paragraph 5 (b), of the Convention. Communication No. 26/1995 (X v. Canada) was declared inadmissible under article 22, paragraph 5 (a), of the Convention, because the same matter was under consideration by the Inter-American Commission on Human Rights. The text of these decisions is reproduced in annex V to the present report.

232. The Committee further declared inadmissible communications Nos. 23/1995 (X v. Spain) and 31/1995 (X and Y v. the Netherlands) because of failure to present a minimum substantiation of their claim under article 3 of the Convention. The Committee considered that the communications related to matters of political asylum, but that no evidence had been adduced that the authors could be personally at risk of being subjected to torture if returned to their country of origin. The text of the decisions is reproduced in annex V to the present report.

233. At its sixteenth session, the Committee declared admissible communications Nos. 28/1995 and 39/1996. The two communications are therefore to be considered on their merits.

234. Also at its sixteenth session, the Committee adopted its views concerning three communications. With regard to communication No. 21/1995 (Alan v. Switzerland), the Committee found that, in the specific case of the complainant, a Kurd who had been imprisoned and tortured in the past and who had fled his country because the police were looking for him, his expulsion to Turkey would constitute a violation by Switzerland of its obligation under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. The text of the views is reproduced in annex V to the present report.

235. With regard to communication No. 36/1995 (X v. the Netherlands), the Committee found that the expulsion of the author by the Netherlands to Zaire would not, in the specific circumstances of the case, constitute a violation of article 3 of the Convention as referred to above. The text of the views is reproduced in annex V to the present report.

236. Concerning communication No. 41/1995 (Kisoki v. Sweden), the author was an activist of a political party opposed to the Government of Zaire who had escaped

from prison after a year of detention during which she had been tortured. The Committee found that her expulsion to Zaire would constitute a violation of article 3 of the Convention. The text of the views is reproduced in annex V to the present report.

237. During its sixteenth session, the Committee also suspended consideration of communications Nos. 34/1995 and 38/1995.

VII. AMENDMENTS TO THE RULES OF PROCEDURE OF THE COMMITTEE

Fifteenth session

238. On 15 November 1995, the Committee adopted amendments to rules 17 and 84 of its rules of procedure (see CAT/C/3/Rev.1) which concerned: (a) action to be taken by the Chairman, between sessions, to promote compliance with the Convention on the Committee's behalf (new para. 2 of rule 17); and (b) the procedure to be followed by the Committee with regard to a decision of making public the results of the proceedings relating to an inquiry under article 20 of the Convention (amended para. 2 and new para. 3 of rule 84). The text of the amended rules appears in annex VI to the present report.

Sixteenth session

239. The Committee resumed discussion on further amendments to its rules of procedure on 1 May 1996. It decided to postpone consideration of this item to its seventeenth session, in November 1996.

VIII. ADOPTION OF THE ANNUAL REPORT OF THE COMMITTEE ON ITS ACTIVITIES

240. In accordance with article 24 of the Convention, the Committee shall submit an annual report on its activities to the States parties and to the General Assembly.

241. Since the Committee will hold its second regular session of each calendar year in late November, which coincides with the regular sessions of the General Assembly, the Committee decided to adopt its annual report at the end of its spring session for appropriate transmission to the General Assembly during the same calendar year.

242. Accordingly, at its 261st meeting on 10 May 1996, the Committee considered the draft report on its activities at the fifteenth and sixteenth sessions (CAT/C/XVI/CRP.1 and Add.1-10). The report, as amended in the course of the discussion, was adopted by the Committee unanimously. An account of the activities of the Committee at its seventeenth session (11-22 November 1996) will be included in the annual report of the Committee for 1997.

Notes

1/ See Official Records of the General Assembly, Fiftieth Session, Supplement No. 44 (A/50/44), paras. 7 and 8.

2/ Ibid., Forty-fifth Session, Supplement No. 44 (A/45/44), paras. 14-16.

3/ Ibid., Forty-ninth Session, Supplement No. 44 (A/49/44), paras. 12 and 13.

4/ Mr. Pikis, a new member of the Committee, did not participate in the adoption of the text. He takes the view that as he was not a member of the Committee during the inquiry and consequently did not take part in the deliberations leading to the decision of 20 November 1995 or the decision itself, it would not be right for him to take part in the formulation or adoption of the text of the summary account of the results of the proceedings relating to the inquiry.

5/ E/CN.4/1990/17, E/CN.4/1991/17 and E/CN.4/1992/17.

6/ Official Records of the General Assembly, Forty-eighth Session, Supplement No. 44 (A/48/44/Add.1), para. 39.

ANNEX I

List of States that have signed, ratified or acceded to the Convention as at 10 May 1996

State	Date of signature	Date of receipt of the instrument of ratification or accession
Afghanistan	4 February 1985	1 April 1987
Albania		11 May 1994 a/
Algeria b/	26 November 1985	12 September 1989
Antigua and Barbuda		19 July 1993 a/
Argentina b/	4 February 1985	24 September 1986
Armenia		13 September 1993 a/
Australia b/	10 December 1985	8 August 1989
Austria b/	14 March 1985	29 July 1987
Belarus	19 December 1985	13 March 1987
Belgium	4 February 1985	
Belize		17 March 1986 a/
Benin		12 March 1992 a/
Bolivia	4 February 1985	
Bosnia and Herzegovina		6 March 1992 c/
Brazil	23 September 1985	28 September 1989
Bulgaria b/	10 June 1986	16 December 1986
Burundi		18 February 1993 a/
Cambodia		15 October 1992 a/
Cameroon		19 December 1986 a/
Canada b/	23 August 1985	24 June 1987

State	Date of signature	Date of receipt of the instrument of ratification or accession
Cape Verde		4 June 1992 a/
Chad		9 June 1995 a/
Chile	23 September 1987	30 September 1988
China	12 December 1986	4 October 1988
Colombia	10 April 1985	8 December 1987
Costa Rica	4 February 1985	11 November 1993
Côte d'Ivoire		18 December 1995 a/
Croatia b/		8 October 1991 c/
Cuba	27 January 1986	17 May 1995
Cyprus b/	9 October 1985	18 July 1991
Czech Republic		1 January 1993 c/
Denmark b/	4 February 1985	27 May 1987
Dominican Republic	4 February 1985	
Ecuador b/	4 February 1985	30 March 1988
Egypt		25 June 1986 a/
Estonia		21 October 1991 a/
Ethiopia		14 March 1994 a/
Finland b/	4 February 1985	30 August 1989
France b/	4 February 1985	18 February 1986
Gabon	21 January 1986	
Gambia	23 October 1985	
Georgia		26 October 1994 a/
Germany	13 October 1986	1 October 1990
Greece b/	4 February 1985	6 October 1988

State	Date of signature	Date of receipt of the instrument of ratification or accession
Guatemala		5 January 1990 a/
Guinea	30 May 1986	10 October 1989
Guyana	25 January 1988	19 May 1988
Hungary b/	28 November 1986	15 April 1987
Iceland	4 February 1985	
Indonesia	23 October 1985	
Ireland	28 September 1992	
Israel	22 October 1986	3 October 1991
Italy b/	4 February 1985	12 January 1989
Jordan		13 November 1991 a/
Kuwait		8 March 1996 a/
Latvia		14 April 1992 a/
Libyan Arab Jamahiriya		16 May 1989 a/
Liechtenstein b/	27 June 1985	2 November 1990
Lithuania		1 February 1996 a/
Luxembourg b/	22 February 1985	29 September 1987
Malta b/		13 September 1990 a/
Mauritius		9 December 1992 a/
Mexico	18 March 1985	23 January 1986
Monaco b/		6 December 1991 a/
Morocco	8 January 1986	21 June 1993
Namibia		28 November 1994 a/
Nepal		14 May 1991 a/
Netherlands b/	4 February 1985	21 December 1988

State	Date of signature	Date of receipt of the instrument of ratification or accession
New Zealand b/	14 January 1986	10 December 1989
Nicaragua	15 April 1985	
Nigeria	28 July 1988	
Norway b/	4 February 1985	9 July 1986
Panama	22 February 1985	24 August 1987
Paraguay	23 October 1989	12 March 1990
Peru	29 May 1985	7 July 1988
Philippines		18 June 1986 a/
Poland b/	13 January 1986	26 July 1989
Portugal b/	4 February 1985	9 February 1989
Republic of Korea		9 January 1995 a/
Republic of Moldova		28 November 1995 a/
Romania		18 December 1990 a/
Russian Federation b/	10 December 1985	3 March 1987
Senegal	4 February 1985	21 August 1986
Seychelles		5 May 1992 a/
Sierra Leone	18 March 1985	
Slovakia		29 May 1993 a/
Slovenia b/		16 July 1993 a/
Somalia		24 January 1990 a/
South Africa	29 January 1993	
Spain b/	4 February 1985	21 October 1987
Sri Lanka		3 January 1994 a/
Sudan	4 June 1986	

State	Date of signature	Date of receipt of the instrument of ratification or accession
Sweden b/	4 February 1985	8 January 1986
Switzerland b/	4 February 1985	2 December 1986
Tajikistan		11 January 1995 a/
The former Yugoslav Republic of Macedonia		12 December 1994 c/
Togo b/	25 March 1987	18 November 1987
Tunisia b/	26 August 1987	23 September 1988
Turkey b/	25 January 1988	2 August 1988
Uganda		3 November 1986 a/
Ukraine	27 February 1986	24 February 1987
United Kingdom of Great Britain and Northern Ireland d/	15 March 1985	8 December 1988
United States of America d/	18 April 1988	21 October 1994
Uruguay b/	4 February 1985	24 October 1986
Uzbekistan		28 September 1995 a/
Venezuela b/	15 February 1985	29 July 1991
Yemen		5 November 1991 a/
Yugoslavia b/	18 April 1989	10 September 1991
Zaire		18 March 1996 a/

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a/ Accession.

b/ Made the declaration under articles 21 and 22 of the Convention.

c/ Succession.

d/ Made the declaration under article 21 of the Convention.

ANNEX II

Membership of the Committee in 1996

Name of member	Country of nationality	Term expires on 31 December
Mr. Peter Thomas BURNS	Canada	1999
Mr. Guibril CAMARA	Senegal	1999
Mr. Alexis DIPANDA MOUELLE	Cameroon	1997
Mr. Alejandro GONZÁLEZ-POBLETE	Chile	1999
Ms. Julia ILIOPOULOS-STRANGAS	Greece	1997
Mr. Georghios M. PIKIS	Cyprus	1999
Mr. Mukunda REGMI	Nepal	1997
Mr. Bent SORENSEN	Denmark	1997
Mr. Alexander M. YAKOVLEV	Russian Federation	1997
Mr. Bostjan M. ZUPAŇCIČ	Slovenia	1999

ANNEX III

Status of submission of reports by States parties under article 19 of the Convention as at 10 May 1996

A. Initial reports

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
		Initial reports due in 1988 (27)		
Afghanistan	26 June 1987	25 June 1988	21 January 1992	CAT/C/5/Add.31
Argentina	26 June 1987	25 June 1988	15 December 1988	CAT/C/5/Add.12/Rev.1
Austria	28 August 1987	27 August 1988	10 November 1988	CAT/C/5/Add.10
Belarus	26 June 1987	25 June 1988	11 January 1989	CAT/C/5/Add.14
Belize	26 June 1987	25 June 1988	18 April 1991	CAT/C/5/Add.25
Bulgaria	26 June 1987	25 June 1988	12 September 1991	CAT/C/5/Add.28
Cameroon	26 June 1987	25 June 1988	15 February 1989 and 25 April 1991	CAT/C/5/Add.16 and 26
Canada	24 July 1987	23 July 1988	16 January 1989	CAT/C/5/Add.15
Denmark	26 June 1987	25 June 1988	26 July 1988	CAT/C/5/Add.4
Egypt	26 June 1987	25 June 1988	26 July 1988 and 20 November 1990	CAT/C/5/Add.5 and 23
France	26 June 1987	25 June 1988	30 June 1988	CAT/C/5/Add.2
German Democratic Republic	9 October 1987	8 October 1988	19 December 1988	CAT/C/5/Add.13
Hungary	26 June 1987	25 June 1988	25 October 1988	CAT/C/5/Add.9
Luxembourg	29 October 1987	28 October 1988	15 October 1991	CAT/C/5/Add.29
Mexico	26 June 1987	25 June 1988	10 August 1988 and 13 February 1990	CAT/C/5/Add.7 and 22
Norway	26 June 1987	25 June 1988	21 July 1988	CAT/C/5/Add.3
Panama	23 September 1987	22 September 1988	28 January 1991	CAT/C/5/Add.24
Philippines	26 June 1987	25 June 1988	26 July 1988 and 28 April 1989	CAT/C/5/Add.6 and 18
Russian Federation	26 June 1987	25 June 1988	6 December 1988	CAT/C/5/Add.11
Senegal	26 June 1987	25 June 1988	30 October 1989	CAT/C/5/Add.19 (replacing Add.8)
Spain	20 November 1987	19 November 1988	19 March 1990	CAT/C/5/Add.21
Sweden	26 June 1987	25 June 1988	23 June 1988	CAT/C/5/Add.1
Switzerland	26 June 1987	25 June 1988	14 April 1989	CAT/C/5/Add.17
Togo	18 December 1987	17 December 1988		
Uganda	26 June 1987	25 June 1988		
Ukraine	26 June 1987	25 June 1988	17 January 1990	CAT/C/5/Add.20
Uruguay	26 June 1987	25 June 1988	6 June 1991 and 5 December 1991	CAT/C/5/Add.27 and 30
		Initial reports due in 1989 (10)		
Chile	30 October 1988	29 October 1989	21 September 1989 and 5 November 1990	CAT/C/7/Add.2 and 9
China	3 November 1988	2 November 1989	1 December 1989	CAT/C/7/Add.5 and 14
Colombia	7 January 1988	6 January 1989	24 April 1989 and 28 August 1990	CAT/C/7/Add.1 and 10
Czech and Slovak Federal Republic	6 August 1988	5 August 1989	21 November 1989 and 14 May 1991	CAT/C/7/Add.4 and 12

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Ecuador	29 April 1988	28 April 1989	27 June 1990, 28 February 1991 and 26 September 1991	CAT/C/7/Add.7, 11 and 13
Greece	5 November 1988	4 November 1989	8 August 1990	CAT/C/7/Add.8
Guyana	18 June 1988	17 June 1989		
Peru	6 August 1988	5 August 1989	9 November 1992 and 22 February 1994	CAT/C/7/Add.15 and 16
Tunisia	23 October 1988	22 October 1989	25 October 1989	CAT/C/7/Add.3
Turkey	1 September 1988	31 August 1989	24 April 1990	CAT/C/7/Add.6
		Initial reports due in 1990 (11)		
Algeria	12 October 1989	11 October 1990	13 February 1991	CAT/C/9/Add.5
Australia	7 September 1989	6 September 1990	27 August 1991 and 11 June 1992	CAT/C/9/Add.8 and 11
Brazil	28 October 1989	27 October 1990		
Finland	29 September 1989	28 September 1990	28 September 1990	CAT/C/9/Add.4
Guinea	9 November 1989	8 November 1990		
Italy	11 February 1989	10 February 1990	30 December 1991	CAT/C/9/Add.9
Libyan Arab Jamahiriya	15 June 1989	14 June 1990	14 May 1991 and 27 August 1992	CAT/C/9/Add.7 and 12/Rev.1
Netherlands	20 January 1989	19 January 1990	14 March, 11 September and 13 September 1990	CAT/C/9/Add.1-3
Poland	25 August 1989	24 August 1990	22 March 1993	CAT/C/9/Add.13
Portugal	11 March 1989	10 March 1990	7 May 1993	CAT/C/9/Add.15
United Kingdom of Great Britain and Northern Ireland	7 January 1989	6 January 1990	22 March 1991 and 30 April 1992	CAT/C/9/Add.6,10 and 14
		Initial reports due in 1991 (7)		
Germany	31 October 1990	30 October 1991	9 March 1992	CAT/C/12/Add.1
Guatemala	4 February 1990	3 February 1991	2 November 1994 and 31 July 1995	CAT/C/12/Add.5 and 6
Liechtenstein	2 December 1990	1 December 1991	5 August 1994	CAT/C/12/Add.4
Malta	13 October 1990	12 October 1991	3 January 1996	CAT/C/12/Add.7
New Zealand	9 January 1990	8 January 1991	29 July 1992	CAT/C/12/Add.2
Paraguay	11 April 1990	10 April 1991	13 January 1993	CAT/C/12/Add.3
Somalia	23 February 1990	22 February 1991		
		Initial reports due in 1992 (10)		
Croatia	8 October 1991	7 October 1992	4 January 1996	CAT/C/16/Add.6
Cyprus	17 August 1991	16 August 1992	23 June 1993	CAT/C/16/Add.2
Estonia	20 November 1991	19 November 1992		
Israel	2 November 1991	1 November 1992	25 January 1994	CAT/C/16/Add.4
Jordan	13 December 1991	12 December 1992	23 November 1994	CAT/C/16/Add.5
Nepal	13 June 1991	12 June 1992	6 October 1993	CAT/C/16/Add.3
Romania	17 January 1991	16 January 1992	14 February 1992	CAT/C/16/Add.1
Venezuela	28 August 1991	27 August 1992		
Yemen	5 December 1991	4 December 1992		
Yugoslavia	10 October 1991	9 October 1992		
State party	Date of entry into force	Initial report date due	Date of submission	Symbol
		Initial reports due in 1993 (8)		
Benin	11 April 1992	10 April 1993		
Bosnia and Herzegovina	6 March 1992	5 March 1993		
Cambodia	14 November 1992	13 November 1993		
Cape Verde	4 July 1992	3 July 1993		
Czech Republic	1 January 1993	31 December 1993	18 April 1994	CAT/C/21/Add.2
Latvia	14 May 1992	13 May 1993		
Monaco	5 January 1992	4 January 1993	14 March 1994	CAT/C/21/Add.1
Seychelles	4 June 1992	3 June 1993		

Initial reports due in 1994 (8)

Antigua and Barbuda	18 August 1993	17 August 1994		
Armenia	13 October 1993	12 October 1994	20 April 1995 and 21 December 1995	CAT/C/24/Add.4 and Rev.1
Burundi	20 March 1993	19 March 1994		
Costa Rica	11 December 1993	10 December 1994		
Mauritius	8 January 1993	7 January 1994	10 May 1994 and 1 March 1995	CAT/C/24/Add.1 and 3
Morocco	21 July 1993	20 July 1994	29 July 1994	CAT/C/24/Add.2
Slovakia	28 May 1993	27 May 1994		
Slovenia	15 August 1993	14 August 1994		

Initial reports due in 1995 (7)

Albania	10 June 1994	9 June 1995		
Ethiopia	13 April 1994	12 April 1995		
Georgia	25 November 1994	24 November 1995		
Namibia	28 December 1994	27 December 1995		
Sri Lanka	2 February 1994	1 February 1995		
The former Yugoslav Republic of Macedonia	12 December 1994	11 December 1995		
United States of America	20 November 1994	19 December 1995		

Initial reports due in 1996 (5)

Chad	9 July 1995	8 July 1996		
Cuba	16 June 1995	15 June 1996		
Republic of Korea	8 February 1995	7 February 1996	10 February 1996	CAT/C/32/Add.1
Republic of Moldova	28 December 1995	27 December 1996		
Uzbekistan	28 October 1995	27 October 1996		

B. Second periodic reports a/

State party	Second periodic reports date due	Date of submission	Symbol
Second periodic reports due in 1992 (26)			
Afghanistan	25 June 1992		
Argentina	25 June 1992	29 June 1992	CAT/C/17/Add.2
Austria	27 August 1992		
Belarus	25 June 1992	15 September 1992	CAT/C/17/Add.6
Belize	25 June 1992		
Bulgaria	25 June 1992		
Cameroon	25 June 1992		
Canada	23 July 1992	11 September 1992	CAT/C/17/Add.5
Denmark	25 June 1992	22 February 1995	CAT/C/17/Add.13
Egypt	25 June 1992	13 April 1993	CAT/C/17/Add.11
France	25 June 1992		
Hungary	25 June 1992	23 September 1992	CAT/C/17/Add.8
Luxembourg	28 October 1992		
Mexico	25 June 1992	21 July 1992	CAT/C/17/Add.3
Norway	25 June 1992	25 June 1992	CAT/C/17/Add.1
Panama	22 September 1992	21 September 1992	CAT/C/17/Add.7
Philippines	25 June 1992		
Russian Federation	25 June 1992	17 January 1996	CAT/C/17/Add.15
Senegal	25 June 1992	27 March 1995	CAT/C/17/Add.14
Spain	19 November 1992	19 November 1992	CAT/C/17/Add.10
Sweden	25 June 1992	30 September 1992	CAT/C/17/Add.9
Switzerland	25 June 1992	28 September 1993	CAT/C/17/Add.12
Togo	17 December 1992		
Uganda	25 June 1992		
Ukraine	25 June 1992	31 August 1992	CAT/C/17/Add.4
Uruguay	25 June 1992	25 March 1996	CAT/C/17/Add.16
Second periodic reports due in 1993 (9)			
Chile	29 October 1993	16 February 1994	CAT/C/20/Add.3
China	2 November 1993	2 December 1995	CAT/C/20/Add.5
Colombia	6 January 1993	4 August 1995	CAT/C/20/Add.4
Ecuador	28 April 1993	21 April 1993	CAT/C/20/Add.1
Greece	4 November 1993	6 December 1993	CAT/C/20/Add.2
Guyana	17 June 1993		
Peru	5 August 1993		
Tunisia	22 October 1993		
Turkey	31 August 1993		
Second periodic reports due in 1994 (11)			
Algeria	11 October 1994	23 February 1996	CAT/C/25/Add.8
Australia	6 September 1994		
Brazil	27 October 1994		
Finland	28 September 1994	11 September 1995	CAT/C/25/Add.7
Guinea	8 November 1994		
Italy	10 February 1994	20 July 1994	CAT/C/25/Add.4
Libyan Arab Jamahiriya	14 June 1994	30 June 1994	CAT/C/25/Add.3
Netherlands	19 January 1994	14 April and 16 June 1994 and 27 March 1995	CAT/C/25/Add.1, 2 and 5

State party	Second periodic reports date due	Date of submission	Symbol
Poland	24 August 1994	7 May 1996	CAT/C/25/Add.9
Portugal	10 March 1994		
United Kingdom of Great Britain and Northern Ireland	6 January 1994	25 March 1995	CAT/C/25/Add.6

Second periodic reports due in 1995 (7)

Germany	30 October 1995
Guatemala	3 February 1995
Liechtenstein	1 December 1995
Malta	12 October 1995
New Zealand	8 January 1995
Paraguay	10 April 1995
Somalia	22 February 1995

Second periodic reports due in 1996 (10)

Croatia	7 October 1996
Cyprus	16 August 1996
Estonia	19 November 1996
Israel	1 November 1996
Jordan	12 December 1996
Nepal	12 June 1996
Romania	16 January 1996
Venezuela	27 August 1996
Yemen	4 December 1996
Yugoslavia	9 October 1996

C. Third periodic reports

State party	Third periodic report date due	Date of submission	Symbol

Third periodic reports due in 1996 (26)

Afghanistan	25 June 1996
Argentina	25 June 1996
Austria	27 August 1996
Belarus	25 June 1996
Belize	25 June 1996
Bulgaria	25 June 1996
Cameroon	25 June 1996
Canada	23 July 1996
Denmark	25 June 1996
Egypt	25 June 1996
France	25 June 1996
Hungary	25 June 1996
Luxembourg	28 October 1996
Mexico	25 June 1996
Norway	25 June 1996
Panama	22 September 1996
Philippines	25 June 1996
Russian Federation	25 June 1996
Senegal	25 June 1996

State party	Third periodic report date due	Date of submission	Symbol
Spain	19 November 1996		
Sweden	25 June 1996		
Switzerland	25 June 1996		
Togo	17 December 1996		
Uganda	25 June 1996		
Ukraine	25 June 1996		
Uruguay	25 June 1996		

a/ By decision of the Committee at its seventh, tenth and thirteenth sessions, those States parties that had not yet submitted their initial report due in 1988, 1989 and 1990, namely Brazil, Guinea, Guyana, Togo and Uganda, have been invited to submit both the initial and the second periodic reports in one document.

ANNEX IV

Country rapporteurs and alternate rapporteurs for each of the reports of States parties considered by the Committee at its fifteenth and sixteenth sessions

Report	Rapporteur	Alternate
	A. Fifteenth session	
Colombia: second periodic report (CAT/C/20/Add.4)	Mr. Ricardo Gil Lavedra	Mr. Habib Slim
Denmark: second periodic report (CAT/C/17/Add.13)	Mr. Fawzi El Ibrashi	Mr. Mukunda Regmi
Guatemala: initial report (CAT/C/12/Add.5 and 6)	Mr. Bent Sorensen	Mr. Ricardo Gil Lavedra
United Kingdom of Great Britain and Northern Ireland: second periodic report (CAT/C/25/Add.6)	Mr. Peter Thomas Burns	Mr. Fawzi El Ibrashi
	B. Sixteenth session	
Armenia: initial report (CAT/C/24/Add.4/Rev.1)	Mr. Bent Sorensen	Mr. Alexis Dipanda Mouelle
China: second periodic report (CAT/C/20/Add.5)	Mr. Peter Thomas Burns	Mr. Alexis Dipanda Mouelle
Croatia: initial report (CAT/C/16/Add.6)	Mr. Peter Thomas Burns	Mr. Bent Sorensen
Finland: second periodic report (CAT/C/25/Add.7)	Mr. Alexander M. Yakovlev	Mr. Mukunda Regmi
Malta: initial report (CAT/C/12/Add.7)	Ms. Julia Iliopoulos-Strangas	Mr. Alexander M. Yakovlev
Senegal: second periodic report (CAT/C/17/Add.14)	Ms. Julia Iliopoulos-Strangas	Mr. Mukanda Regmi

ANNEX V

Decisions of the Committee under article 22 of the Convention

A. Fifteenth session

Communication No. 23/1995

Submitted by: Comisión Española de Ayuda al Refugiado

Alleged victim: X (Name deleted)

State party: Spain

Date of communication: 20 January 1995

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 15 November 1995,

Adopts the following:

Decision on admissibility

1. The author of the communication is the Spanish Refugee Aid Commission [Comisión Española de Ayuda al Refugiado (CEAR)] on behalf of X, an Algerian citizen born on 20 February 1958. It is alleged that he suffered a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Spain in being deported to Algeria on 24 November 1994.

The facts as submitted by the author

2.1 On 15 November 1993, X entered Spanish territory through the town of Melilla, travelling on a false French passport. He was detained by the police and stated that he wished to travel to Germany. On 16 December 1993 he was brought before a court on a charge of falsification of documents and was provisionally released.

2.2 On 11 January 1994, X applied for asylum, stating that he was a member of the outlawed Front Islamique du Salut (FIS) in Sidi Bel-Abbes, that security forces had come to his house to look for him, and that he feared being sentenced to death if detained.

2.3 On 3 October 1994, X's request for recognition as a refugee was rejected by the Minister of Justice and he was ordered to leave the country within 15 days. On 13 October 1994, X applied to the Audiencia Nacional for a review of the decision and suspension of the expulsion order. On 9 November 1994, X addressed a letter to the Minister of Justice asking, if his presence in Spain was to be found undesirable, to be sent to a third country.

2.4 On the night of 22 to 23 November 1994, X was arrested by the police at his residence and at 11 a.m. on 23 November 1994 he was put on board an aircraft

bound for Malaga and Madrid, whence he would be expelled to Algeria. CEAR states that, despite numerous attempts, it has been unable to obtain information on X's whereabouts since 23 November 1994.

2.5 CEAR states that the question has not been submitted to any other procedure of international investigation or settlement, and that X has exhausted all available remedies.

The complaint

3. CEAR claims that the Spanish authorities have violated article 3 of the Convention by sending X back to Algeria even though he was an FIS member. It is said that the Spanish authorities did not take into account the existence in Algeria of a consistent pattern of gross, flagrant or mass violations of human rights. Reference is made to news reports of continuing human rights violations in Algeria.

Submissions from the State party

4.1 In its submissions dated 30 June, 6 October and 13 October 1995, the State party rejects the allegations by CEAR as incorrect and inaccurate. It is claimed that X illegally entered Spanish territory on 14 November 1993, crossing the wire near the Beni-Enzar frontier. He had previously left Algeria and crossed Morocco. On 15 November he was arrested as he sought to take a ship from Melilla to the Iberian peninsula using a false French passport. He did not at that time state that his intention was to seek political asylum but that he wished to work in Germany. That statement, made in the presence of a lawyer and with the help of an interpreter, was made after he had been informed of his rights, at which time he announced his wish to report his detention to the Algerian consulate.

4.2 The communication omits to mention that there was an expulsion hearing in the presence of a lawyer and with the assistance of an interpreter. X was explicitly informed that he had 10 days during which to submit his claims. The State party emphasizes that X made absolutely no claims during the expulsion hearings - inexplicable behaviour in an individual fearing persecution or torture in his own country.

4.3 On 15 December, a month after his detention, X was ordered to be expelled but the order was not put into effect because legal proceedings were still pending. On 16 December the criminal court passed judgement and X was released. X made no application for asylum in Spain until 11 January 1994, eight weeks after entering Spanish territory, when the expulsion was about to be enforced. Then, for the first time, he claimed to belong to FIS. He presented a certificate bearing neither date nor place of issue; it was examined by the State party's experts, who expressed doubts as to its authenticity. X claimed, but produced no evidence, that the Algerian government authorities had "decided to arrest him" and, somewhat contradictorily, that he had been "convicted of a political crime", without explaining what crime or when or by what court he had been convicted.

4.4 Following the submission of the application for asylum, X was allowed 15 days to submit his claims and submit such documents and substantiating evidence as he saw fit. He did not do so. His application was communicated to the representative of the United Nations High Commissioner for Refugees in Spain, who made no report, oral or written, on the proceedings.

4.5 Almost eight months later, on 31 August 1994, the application for asylum was denied in view of the lack of documentation supporting X's case. On 3 October 1994, X was notified that he must leave Spanish territory within 15 days. When he failed to comply with the departure order, permission to expel him was sought from Criminal Court No. 2 in Melilla, which granted permission on 27 October 1994; the expulsion was carried out on 24 November 1994 in accordance with an order from the General Directorate of State Security endorsed by the competent court, and X was put on a plane to Algeria.

5.1 Regarding the admissibility of the communication, the State party maintains that throughout his time in Spain X adduced no "substantial grounds for believing that he would be in danger of being subjected to torture" if he was expelled.

5.2 The State party also challenges the authority of CEAR to represent X before the Committee, inasmuch as the certificate presented only covers representation of X in administrative matters in Spain and does not give CEAR blanket authority to submit a communication under article 22 of the Convention.

Observations by counsel for the author

6.1 In his observations dated 11 September and 9 November 1995, counsel for CEAR confirms his authority to act on behalf of X, who is said to have contacted CEAR on 16 December 1993 and been advised by lawyers Arias Herrera and Pellicer Rodríguez. Counsel for CEAR confirms his authorization to represent X and sends a copy of a certificate dated 14 November 1994.

6.2 On the facts, CEAR repeats that X fears persecution in his home country because he is a member of FIS.

Issues and proceedings before the Committee

7.1 Before considering any of the allegations in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention.

7.2 Although the accompanying mandate does not specifically mention application to the Committee, in this case the explanations provided by CEAR for its representation of X are accepted.

7.3 The Committee has examined the representations made by CEAR to the Spanish authorities regarding the asylum proceedings and to the Committee under article 22 of the Convention. It points out that its authority does not extend to a determination of whether or not the claimant is entitled to asylum under the national laws of a country, or can invoke the protection of the Geneva Convention relating to the Status of Refugees. Under article 3 of the Convention, the Committee must decide whether expulsion or extradition might expose an individual to the risk of being tortured.

7.4 The Committee notes that throughout a year of proceedings in Spain, X's representatives based their arguments solely on asylum and did not invoke the right protected by article 3 of the Convention. Nor did they present the Committee with serious grounds for believing that X risked being tortured if he was expelled to Algeria. It is not alleged that X was detained or tortured in Algeria before leaving for Morocco and Spain; it is not indicated precisely what he did in FIS to justify his fear of being tortured. a/ On the contrary, X said in his first statement to the Melilla authorities, with a lawyer and interpreter

present, that his intention was to seek work in Germany, and the truthfulness of that statement was not questioned during the asylum proceedings in Spain.

7.5 The Committee concludes that the communication on behalf of X has not been sufficiently justified as regards the claimed violation of article 3 of the Convention b/ but is rather a matter of political asylum, making the communication incompatible with article 22 of the Convention.

8. The Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the author and the State party.

[Done in English, French, Russian and Spanish, the Spanish text being the original version.]

Notes

a/ In the Committee's rulings on communications No. 13/1993 (Mutombo v. Switzerland) and No. 15/1994 (Khan v. Canada), both authors alleged and submitted medical evidence and other documents to demonstrate that they had been detained and tortured before fleeing their respective countries.

b/ Compare decisions in cases No. 17/1994 (X v. Switzerland) and No. 18/1994 (X v. Switzerland), which were declared inadmissible on 17 November 1994.

Communication No. 26/1995

Submitted by: X [name deleted]

Alleged victim: The author

State party concerned: Canada

Date of communication: 2 April 1995

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 20 November 1995,

Adopts the following:

Decision on admissibility a/

1. The author of the communication is a Zairian citizen, who arrived from France at Montreal airport, Canada, on 4 March 1995. An expulsion order was served on her, and on 27 March she filed a motion for a stay of execution, which was heard and rejected on 31 March 1995. She was sent back to France on 4 April 1995. Ms. X claims to be a victim of a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. Before considering any claims in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention.

3. Article 22, paragraph 5 (a), precludes the Committee from considering any communication from an individual unless it has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. As Ms. X's counsel submitted a motion relating to her expulsion to the Inter-American Commission on Human Rights on 13 September 1995, the Committee finds that the requirements of article 22, paragraph 5 (a), of the Convention have not been met.

4. The Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the author and, for information, to the State party.

[Done in English, French, Russian and Spanish, the French text being the original version.]

Notes

a/ In accordance with rule 104 of the Committee's rules of procedure, Mr. Peter Burns did not take part in the consideration of this communication.

Communication No. 30/1995

Submitted by: P. M. P. K. (name deleted)
[represented by counsel]

Alleged victim: The author

State party: Sweden

Date of communication: 14 July 1995

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 20 November 1995,

Adopts the following:

Decision on admissibility

1. The author of the communication is a Zairian citizen who entered Sweden in November 1991 to request asylum. She claims that her return to Zaire following the dismissal of her application for refugee status would violate article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She is represented by counsel.

2. On 31 January 1994, the Swedish Board of Immigration refused the author's application for asylum, noting that the political situation in Zaire had improved and considering that it was not likely that the author would be subjected to persecution or severe harassment. On 13 February 1995, the Aliens Appeal Board confirmed the decision of the Swedish Board of Immigration. The author then submitted a "new application" to the Appeal Board, arguing that the situation in Zaire had not improved, but on 16 March 1995 the Board rejected her application, considering that the circumstances invoked by the author could not be seen as new evidence.

3. On 22 August 1995, the Committee, through its Special Rapporteur, transmitted the communication to the State party for comments and requested the State party not to expel the author while her communication was under consideration by the Committee.

4. By submission of 16 October 1995, the State party challenges the admissibility of the communication. It explains that under chapter 2, section 5, of the Aliens Act, an alien who is to be refused entry or expelled can apply for a residence permit if the application is based on circumstances that have not previously been examined in the case and if the enforcement of the decision on refusal of entry or expulsion will be in conflict with humanitarian requirements. The State party emphasizes that new circumstances cannot ex officio be assessed by the immigration authorities, but only following a so-called "new application". The State party notes that the medical evidence invoked by the author in support of her communication has not previously been submitted to the Swedish immigration authorities, so that neither the Swedish Immigration Board nor the Aliens Appeal Board has had the opportunity to assess it. Considering that a "new application" may be lodged at any time and that the

relevant requirements have recently been relaxed, the State party submits that domestic remedies have not been exhausted in the present case.

5. By submission of 10 November 1995, counsel claims that a "new application" under chapter 2, section 5, of the Aliens Act would not be successful. In this connection, she points out that an application has to be based on new circumstances not previously considered and that only 5 per cent of "new applications" succeed. Since the author's request for asylum was refused on the basis that the situation in Zaire had improved, she argues that a "new application" on the basis of the new medical evidence would be rejected on the same grounds.

6. Before considering any claim in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

7. Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication, unless it has ascertained that all available domestic remedies have been exhausted; this rule does not apply if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief. In the circumstances of the instant case, the Committee considers that the Swedish domestic authorities should have an opportunity to evaluate the new evidence submitted by the author, before the Committee examines the communication. Moreover, on the basis of the information available, the Committee cannot conclude that the available remedy of a "new application" would be a priori ineffective.

8. The Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the State party, to the author and to her counsel.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Communication No. 31/1995

Submitted by: Mr. X and Mrs. Y (names deleted)
[represented by counsel]

Alleged victims: The authors

State party: The Netherlands

Date of communication: 19 September 1995

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 20 November 1995,

Adopts the following:

Decision on admissibility

1. The authors of the communication are Mr. X and Mrs. Y, Georgian citizens, currently residing in the Netherlands. They claim to be victims of a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Netherlands. They are represented by counsel.

Facts as submitted

2.1 The authors married in 1991 and a child was born in 1992. In January 1993, X began a homosexual relationship and became a member of an organization to promote rights for homosexuals and bisexuals. Y states that she was not aware of her husband's activities.

2.2 In July 1994, after X had spoken in a meeting of this organization, his house was ransacked by four armed militia men, wearing military uniforms. They mishandled X and threatened his wife and son. The authors reported the incident to the police, but state that the police refused to write in the report the real reason for the attack. The police opened an inquiry, but in the end the case was filed for lack of evidence.

2.3 The authors state that in September 1994, their child was kidnapped from his day nursery, allegedly by four men in military uniforms. In the evening X and Y received a telephone call, informing them that their son would be killed unless they left the country. Subsequently, the authors arranged for airplane tickets to Germany, their son was returned to them and they left the country. Two days after their arrival in Germany, the authors and their son entered the Netherlands and requested recognition as refugees.

2.4 On 3 November 1994, their request was rejected by the Secretary of Justice and they were ordered to leave the country. On 2 February 1995, the authors' appeal against the refusal to grant them a residence permit was declared inadmissible. On 18 July 1995, the court in The Hague rejected the authors' request for an order to stay their expulsion. Since no appeal possibility is said to exist against the court's decision, the authors claim that they have exhausted all available domestic remedies.

2.5 It appears from the enclosures that the authors were no longer in possession of their passports when they entered the Netherlands. The documents further show that the Netherlands authorities were of the opinion that the authors' story lacked credibility, inter alia, because X did not mention in the first hearing his activities in support for sexual liberty and his wife had no knowledge about his bisexuality; further, it was noted that the authors had never reported the abduction of their son to the local authorities, so that it cannot be said that the authorities failed to give them protection; nor did the authorities find any indication that the alleged intimidation of the authors' family was linked with X's activities. In this respect it is noted that the assault in July 1994 was reported in the police report as a robbery and that there is no indication that the alleged abduction of the authors' son was related to X's activities or that State authorities were involved. Furthermore, the authors were able to leave Georgia with a valid passport, justifying the conclusion that the authors had not negatively attracted the attention of the Georgian authorities. In arriving at his decision the Netherlands Secretary of Justice also based himself on information from the Ministry of Foreign Affairs that there was no active prosecution policy in Georgia against homosexuals.

The complaint

3. The authors claim that they fear for their life if they are to return to Georgia. In this context, they state that X's boyfriend was found killed and that X's parents were assaulted by militia men at their home in October 1994, allegedly because they were looking for X, that his father was abducted and found injured on 15 February 1995 and died on 16 February 1995. They further refer to a report by the Internationale Gesellschaft für Menschenrechte in which it is stated that killings are a common measure of repression in Georgia.

Issues and proceedings before the Committee

4.1 Before considering any claims contained in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention.

4.2 The Committee notes that the facts as submitted by the authors relate to a claim of asylum but that no evidence has been adduced that the authors could be personally at risk of being subjected to torture if returned to Georgia. The Committee considers that no substantiation of a claim under article 3 of the Convention has been presented and that the communication is therefore inadmissible under article 22, paragraph 2, of the Convention.

5. The Committee against Torture decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the authors and, for information, to the State party.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Communication No. 32/1995

Submitted by: N. D. (name deleted)
[represented by counsel]

Alleged victim: The author

State party: France

Date of communication: 24 April 1995

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 20 November 1995,

Adopts the following:

Decision on admissibility

1. The author of the communication is a Zairian citizen, currently residing in France. She claims that her return to Zaire following the dismissal of her application for refugee status would violate article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She is represented by AFIDRA.

2. On 12 September 1993, the author filed a request to be recognized as a refugee in France, which was rejected by the Office français de protection des réfugiés et apatrides (French Office for the Protection of Refugees and Stateless People) on 16 February 1994. Her appeal was rejected by the Commission des recours des réfugiés (Commission of Appeal in Refugee Matters) on 20 June 1994. A new application was rejected on 22 September 1994 by the Office français de protection des réfugiés et apatrides and on 8 March 1995 by the Commission des recours des réfugiés. It appears that the dismissal of the application by the Commission des recours des réfugiés is at present subject of an appeal in cassation before the Conseil d'Etat, which has not yet rendered its judgement.

3. An expulsion order (arrêté de reconduite en frontière) issued against the author is at present on appeal before the Conseil d'Etat, which has not yet decided on the case. A second expulsion order against the author was quashed by the Tribunal administratif of Paris.

4. Before considering any claim in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

5. Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication, unless it has ascertained that all available domestic remedies have been exhausted; this rule does not apply if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief. In the instant case, the expulsion order against the author is subject of an appeal before the Conseil d'Etat. The author has not invoked any circumstances to show that this remedy would be unlikely to bring effective relief. Moreover, it

appears from the information submitted by the author that a subsequent expulsion order against her was quashed by the Tribunal administratif. In the circumstances, the Committee is at present precluded from considering the author's communication.

6. The Committee therefore decides:

(a) That the communication, as submitted, is inadmissible;

(b) That this decision may be reviewed under rule 109 of the Committee's rules of procedure upon receipt of a request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply;

(c) That this decision shall be communicated to the author and, for information, to the State party.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Communication No. 35/1995

Submitted by: K. K. H. (name deleted)
[represented by counsel]

Alleged victim: The author

State party: Canada

Date of communication: 6 November 1995

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 22 November 1995,

Adopts the following:

Decision on admissibility

1. The author of the communication is a national of Ghana, who arrived in Canada in March 1992 and applied for asylum following his escape from prison where, accused of having participated in an attempt to assassinate the Ghanaian Head of State, he had spent almost four years. He claims that his return to Ghana following the rejection of his application for refugee status would be in violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

2. On 9 June 1994, the author's application for asylum was dismissed by the Immigration and Refugee Board of Canada. On review, the Federal Court of Canada dismissed his application by decision of 2 May 1995.

3. The author submits that since the decision of the Federal Court he has received evidence that he was being sought by the Ghanaian authorities. He claims that a notice appeared in the Ghanaian newspaper The Guide in September 1995 stating that he had returned to the country and that he was wanted for treason. On this basis, the author submits that, as he is wanted by the authorities, his life would be in danger in Ghana and he requests the application of article 3.

4. Before considering a complaint submitted in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention.

5. Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication unless it has ascertained that all available domestic remedies have been exhausted; this shall not be the rule if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief to the victim. In the instant case, the Committee notes that in Canada there is a risk-assessment procedure which may be invoked even following a refusal by the Federal Court to grant asylum. It does not appear from the communication that the author has informed the Canadian immigration authorities of the new evidence in support of his claim that his life would be in danger if he had to return to Ghana. The Committee considers that the Canadian authorities should have the

opportunity to examine the new evidence submitted by the author before it can consider the communication.

6. The Committee therefore decides:

(a) That the communication, as submitted, is inadmissible;

(b) That this decision shall be communicated to the author of the communication, to his counsel and, for information, to the State party.

[Done in English, French, Russian and Spanish, the French text being the original version.]

Communication No. 21/1995

Submitted by: Ismail Alan [represented by counsel]

Alleged victim: The author

State party: Switzerland

Date of communication: 31 January 1995

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 8 May 1996,

Having concluded its consideration of communication No. 21/1995, submitted to the Committee against Torture on behalf of Mr. Ismail Alan under article 22 of the Convention,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts the following:

Views under article 22, paragraph 7, of the Convention

1. The author of the communication is Ismail Alan, a Turkish citizen of Kurdish background, born on 1 January 1962, currently residing in Switzerland. He claims to be a victim of a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

The facts as submitted

2.1 Since 1978, the author has been a sympathizer of KAWA, an outlawed Kurdish Marxist-Leninist organization. In 1981, the author was arrested for the first time. He claims that he was tortured and interrogated about his organizational activities. After nine days, he was released. In June 1983, while fulfilling his military service, the author was once again arrested. He claims that he was brutally tortured during 36 days. He states that he was subjected to electric shocks.

2.2 On 30 April 1984, he was sentenced to 8 years and 4 months of imprisonment, plus 2 years and 10 days of internal exile, for being an active member of KAWA. His conviction was quashed by the Court of Cassation, on 17 October 1984, and a retrial was ordered. On 5 November 1984, the military tribunal of Elazig sentenced the author to two and a half years' imprisonment and 10 months' internal exile in Izmir, for having assisted militants of KAWA. During his internal exile in Izmir he had to present himself to the police every day. Eventually, the author found a job and bought a house in Izmir.

2.3 The author claims that he was arrested several times in 1988 and 1989 and kept in detention for short periods of time, not over six days, because of his political activities (distribution of flyers). The author claims that during these periods of detention, he was put under pressure to denounce his friends.

He also states that he was tortured, without further specifying his claim. In the circumstances, the author thought it better to leave Izmir and to return to his province Tunceli, but when he visited the region in July 1990, he found that the repression was even worse there. By chance, the author met a member of parliament, whom he told about the situation in Tunceli. Later, the parliamentarian, after having conducted his own investigations, raised the matter in parliament. According to the author, the military then started looking for him. In the beginning of September 1990, when the author was visiting his brother in Bursa, the police searched his house, confiscated two books and questioned his wife about his whereabouts. The author then decided to leave and to seek asylum in Switzerland. He left Turkey with a falsified identity card on 20 September 1990.

2.4 Counsel submits a copy of a medical report, dated 25 January 1995, which concludes that the author suffers from a post-traumatic stress disorder. Some scars on the left side of his body are compatible with tortures to which he allegedly was submitted during his imprisonment in 1983-1984.

2.5 The author states that, after his departure, his wife was put under such pressure by the police that she left the town where she was living and moved to Bursa to live with family. In July 1992, the author's brother was allegedly detained for 10 days and maltreated.

2.6 On 1 October 1990, the author requested asylum in Switzerland. On 5 November 1990, he was heard by the cantonal authorities and on 10 August 1992 by the Office Fédéral des Réfugiés. On 17 December 1992, the Office informed the author that it had contacted the Swiss embassy in Ankara in order to verify some of the author's allegations, and that it appeared from the reply that the member of parliament with whom the author had said to have had contact did not remember him, that there was no passport prohibition for the author, and that a lawyer had represented the author in a civil judicial procedure after his departure in 1990.

2.7 On 8 January 1993, author's counsel spoke with the author's wife in Istanbul. She stated that her house had been under constant surveillance by the police and that she had contacted a lawyer because she felt threatened. She then had moved to Bursa, without officially taking up residence there in order not to be disturbed. The Swiss authorities were informed of the contents of the conversation. On 5 July 1993, counsel transmitted to the Office Fédéral des Réfugiés a copy of a letter from the lawyer in Turkey, in which he stated that the embassy had misunderstood him and that he was not authorized to represent the author, but only his wife.

2.8 On 12 July 1993, the author was informed that the Office Fédéral des Réfugiés, on 1 July 1993, had rejected his request for asylum. The Office considered that the author's earlier imprisonment was too remote in time as to constitute grounds for fear of persecution. The decision was further based on contradictions concerning the author's arrests in the years prior to his departure from Turkey, as well as concerning the intensity of his political engagement.

2.9 On 7 September 1993, the author appealed the decision to the Commission suisse de recours en matière d'asile. On 8 February 1994, the Office Fédéral des Réfugiés once more approached the embassy in Istanbul for additional information. Basing itself on this information, the Office found that the author was not listed in Turkey, that the police did not have him on record, and that he could freely change his residence. It considered unlikely that the

initial information given by the Turkish lawyer to the embassy was based on a misunderstanding.

2.10 Author's counsel, by memorandum dated 25 May 1994, contested these findings, and transmitted a copy of a letter, dated 4 May 1994, from the member of parliament, which confirmed his meeting with the author in the summer of 1990. On 18 October 1994, the author informed the Office of the destruction of his native village in the province of Tunceli following political unrest, and of his brother's arrest.

2.11 On 27 October 1994, the Appeal Commission rejected the author's appeal; the author was ordered to leave Switzerland before 15 February 1995. The Commission considered that the author's imprisonment and subsequent internal exile were credible, but that the more recent political activities and arrests were not. It considered that, if the author feared difficulties in Izmir because of the local police, he could go to another part of the country.

2.12 As regards the author's argument that a return to Turkey would expose him to maltreatment and torture, the Appeal Commission found that by reference to the general situation in Turkey, the author's Kurdish background and origin, no special, individual and concrete risk had been shown to preclude the author's return. It considered that, since many Kurds lived peacefully in central and west Turkey, there was no reason why the author could not return to his country.

The complaint

3.1 Counsel argues that Turkey is among the countries where torture is systematically being practised and human rights systematically being violated. In this context, counsel refers to the Committee's report of November 1993, and to Amnesty International reports. It is stated that since the publication of the Committee's report, the situation has not improved and that several detainees have died of torture. Others have disappeared or become victim of arbitrary execution. According to counsel, many of the persons affected have in the past supported the Kurdish cause.

3.2 As regards the author's personal situation, counsel submits that the fact that the author is a Kurd, that he originates from Tunceli, a province with a strong PKK presence where repression is heavy, that he is and continues to be a sympathizer of the illegal KAWA, that he has a criminal record in Turkey for having committed political crimes, that he has already been tortured in his country, and that he has been put under pressure to become an informer, indicates that he belongs to several target groups of Turkish repression. If the author crosses the border, he would certainly be arrested because he is not in possession of a passport or a valid identity card.

3.3 It is further stated that cities in Turkey keep a registry of all Kurds who take up residence within their borders, in order to facilitate investigations into their political activities, and that razzias are regularly held in Kurdish neighbourhoods. The author thus runs a real risk of being arrested and consequently tortured.

State party's observations

4. On 10 February 1995, the Committee, through its Special Rapporteur, transmitted the communication to the State party for comments and requested the State party not to expel the author while his communication was under consideration by the Committee.

5. By submission of 3 April 1995, the State party informed the Committee that it did not challenge the admissibility of the communication.

6.1 By submission of 10 August 1995, the State party informed the Committee that it had deferred the author's expulsion, in compliance with the Committee's request.

6.2 The State party recalls that the author's request for asylum was rejected by the Office Fédéral des Réfugiés on 1 July 1993, and that his appeal was dismissed by the Commission suisse de recours en matière d'asile on 27 October 1994. The decisions were based on contradictory declarations made by the author (concerning the number of arrests, his political activities and his encounter with the member of parliament), on the fact that, contrary to his assertions, no record existed in Turkey in respect to him, that no recent acts of persecution could justify his departure from Turkey, the improbability that he would personally be threatened with torture, and the possibility for the author to settle in a part of Turkey where he would not be at risk. The State party emphasizes that its authorities have seriously examined the author's claim and that, in case of doubt, they have contacted the Swiss embassy in Ankara. The information so gathered has been transmitted to the author for comments, and he has had access to the whole file which was before the domestic authorities. His right to be heard has thus fully been complied with and the facts have been established in as detailed a fashion as possible.

6.3 The State party explains that, in the instant case, the author has contradicted himself on numerous occasions. For instance, at the first hearing, he claimed to have been arrested four or six times since 1988, and to have been held each time for three or four days. Before the cantonal authorities, he claimed to have been arrested four times and to have been held for between three to six days. Furthermore, before the Office Fédéral des Réfugiés he claimed to have been arrested 15 or 16 times.

6.4 Also, before the cantonal authorities the author claimed to have been kept in detention for four days in February 1988 because he had requested a passport. Before the Office Fédéral des Réfugiés, however, he claimed that he was detained on that occasion because of suspicions that he had renewed contact with the organization KAWA. The author's account of his political activities also shows inconsistencies, and the State party notes that he was not familiar with important dates connected to his alleged ideological affiliation.

6.5 The State party further refers to inconsistencies in the author's account of his purported encounter with the parliamentarian, and points to the contradictory declarations made by the author's lawyer in Turkey, who first affirmed having represented the author in a judicial procedure after his departure, and then later revoked this. According to the State party, it is likely that the lawyer made his second declaration as a favour to the author.

7.1 The State party notes the author's reasons for fearing detention and torture upon his return in Turkey, but submits that according to information collected by the Swiss embassy in Ankara, there is no outstanding file on the author, he is no longer sought by the police and no prohibition for a passport is in force. In these circumstances, the State party is of the opinion that it can reasonably demand of the author to establish himself in another region of Turkey. The State party submits that in general only listed individuals are being targeted by the authorities. Although no arbitrary actions by the police can be excluded, the State party is of the opinion that the risk is minimal if one avoids the more sensitive places.

7.2 The State party refers to the text of article 3 of the Convention, and argues that the author has invoked the general situation of the Kurds in Turkey to substantiate his fear of being subjected to torture, but has not demonstrated that he personally risks being subjected to treatment in violation of article 3 of the Convention.

7.3 The State party refers to its general asylum policy with regard to Kurds from Turkey and states that its authorities examine regularly and carefully the situation in the different regions of Turkey. The State party acknowledges that it is true that in some areas the situation of the Kurd population is difficult because of armed conflict between Turkish security forces and guerrilla movements. However, the State party states that these conflicts are limited to certain regions and that it is not justified on this basis to proceed to a global judgement of all asylum claims of Kurds. The State party maintains that Kurds are not threatened in all regions in Turkey and that it is sufficient to examine in each case individually whether the appellant is personally affected by the situation and whether he could establish himself in another region.

7.4 The State party emphasizes that it does not contest the author's conviction and periods of detention between 1981 and 1985. However, it argues that these events happened too long ago to justify the author's departure from Turkey in 1990. Also, the probability that the author was tortured between 1981 and 1985 does not justify the conclusion that substantial grounds exist that he will be in danger of being subjected to torture if returned to Turkey today. In this context, the State party explains that in terms of Swiss asylum practice, a causal link must be established between the acts of persecution against an appellant and his decision to flee the country. In the author's case, this link cannot be established.

8.1 Finally, the State party recalls that Turkey ratified the Convention on 2 August 1988 and has recognized the competence of the Committee under article 22 to receive and examine individual communications. Consequently, Turkey is under an obligation to take measures to prevent acts of torture in its territory. Further, the State party notes that Turkey is a member of the Council of Europe, that it has ratified the European Convention on Human Rights and Fundamental Freedoms and recognizes the right of individual petition as well as the obligatory jurisdiction of the European Court of Human Rights. Moreover, Turkey has ratified the European Convention for the Prevention of Torture and is subject to inspection by the European Committee.

8.2 The State party refers to the Committee's views in communication No. 13/1993 (Mutombo v. Switzerland) where the fact that Zaire was not a party to the Convention formed part of the Committee's deliberations leading to the conclusion that the State party was under an obligation not to expel Mr. Mutombo to Zaire. The State party draws the Committee's attention to the serious and paradoxical consequences if the Committee were to decide that the return of the author to Turkey would constitute a violation of article 3 of the Convention by Switzerland, bearing in mind that Turkey is not only a party to the Convention but also has accepted the Committee's competence to examine individual complaints.

Counsel's comments

9.1 By submission of 10 November 1995, counsel states that, on 6 December 1994, the author wrote a letter to the Prosecutor in Izmir to ask him for a copy of his record. He has received no reply, but in January 1995 the police came to see the author's former neighbours in Izmir and inquired after him. According

to counsel, this shows that the police in Turkey are still looking for the author. Counsel doubts therefore the information given by the Swiss embassy in Ankara according to which the author is not listed by the police.

9.2 Counsel acknowledges that the Swiss authorities have examined the author's file in a detailed manner, but contends that its examination lacked depth and that the evidence in favour of the author has not been properly evaluated. In this connection, counsel claims that the State party appreciates more the information acquired by its own mission in Turkey than the information provided by the author. Counsel does not deny the contradictions and inconsistencies in the author's story but submits that the Swiss authorities never took into account the effect of torture on the author's memory and ability to concentrate. Counsel adds that the hearings in themselves create considerable stress leading to mistakes and that only in rare cases refugee claimants do not contradict themselves during the procedure. Moreover, counsel questions the seriousness of the contradictions and their relevance to the heart of the author's claim.

9.3 As regards the meeting with the member of parliament, counsel recalls that the parliamentarian confirmed this meeting in a letter and that he has explained that he was caught by surprise by the phone call from the Swiss embassy, which interrupted him in his work.

9.4 Counsel rejects the State party's suggestion that the lawyer in Turkey wrote his letter as a favour to the author and points out that a copy of the authorization to represent the author's wife was enclosed. Counsel submits that the written document submitted by the author should carry more weight than a report based on a telephone conversation, during which misunderstandings may have occurred.

9.5 Counsel maintains that the author would be in danger if returned to Turkey and denies that he could seek refuge in another part of the country. In this connection, counsel submits that the situation continues to deteriorate and that the author has already had to flee Izmir, and that his wife, who resettled in Bursa, has again seen the situation deteriorate there. Counsel claims that not only listed persons run the risk of being arrested, but that large groups are being threatened with arrest, especially young people and those who originally come from Tunceli. According to counsel, it is no longer possible to avoid places at risk.

9.6 Counsel does not deny that the Swiss authorities take the situation in Turkey into due account when deciding refugee claims by Kurds, as is shown by the fact that 50 per cent of the refugee claimants from Turkey are granted asylum and that another 25 per cent are provisionally allowed to stay in Switzerland. In the instant case, however, counsel claims that the author's file was not examined with the requisite objectivity.

9.7 Counsel submits that, despite the fact that Turkey has ratified the Convention against Torture, it has never actually tried to combat torture, which is still common practice in the country. Counsel states that more and more persons disappear in detention and that hardly any action is taken against alleged torturers. Counsel doubts whether, in these circumstances, the ratification of the Convention can be used against the author's claim that he fears torture. Counsel argues that the mere fact that a country has ratified the Convention does not discharge a State party from its obligations under article 3 to determine whether substantial grounds exist for believing that a person would be in danger of being subjected to torture in that country. In

this connection, counsel argues that the factual situation in a country, and not only its international obligations, should be taken into account.

Decision on admissibility and examination of the merits

10. Before considering any claims contained in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee notes that the State party has not raised any objections to the admissibility of the communication and that it has provided the Committee with its observations concerning the merits of the communication. The Committee finds therefore that no obstacles to the admissibility of the communication exist and proceeds with the consideration of the merits of the communication.

11.1 The issue before the Committee is whether the forced return of the author to Turkey would violate the obligation of Switzerland under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

11.2 Pursuant to article 3, paragraph 1, the Committee must decide whether there are substantial grounds for believing that Mr. Alan would be in danger of being subject to torture upon return to Turkey. In reaching this conclusion, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a person would be in danger of being subjected to torture upon his return to that country; specific grounds must exist that indicate that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his specific circumstances.

11.3 In the instant case, the Committee considers that the author's ethnic background, his alleged political affiliation, his history of detention, and his internal exile should all be taken into account when determining whether he would be in danger of being subjected to torture upon his return. The State party has pointed to contradictions and inconsistencies in the author's story, but the Committee considers that complete accuracy is seldom to be expected by victims of torture and that such inconsistencies as may exist in the author's presentation of the facts are not material and do not raise doubts about the general veracity of the author's claims.

11.4 The Committee has noted the State party's argument that the author has invoked the general situation of Kurds in Turkey to substantiate his fears of torture, but that he has failed to demonstrate that he personally risks to be subject to torture. The Committee has also noted the State party's statement that, according to information collected by its embassy in Ankara, the author is no longer sought by the police and that no prohibition of a passport is in force for him. On the other hand, the author's counsel has stated that, according to

the author's wife, his house in Izmir had been under constant surveillance by the police, also after his departure, and that, in January 1995, the police questioned his former neighbours about the author. Furthermore, since the author left, his brother has been arrested on more than one occasion and his native village was demolished. As regards the State party's argument that the author could find a safe area elsewhere in Turkey, the Committee notes that the author already had to leave his native area, that Izmir did not prove secure for him either, and that, since there are indications that the police are looking for him, it is not likely that a "safe" area for him exists in Turkey. In the circumstances, the Committee finds that the author has sufficiently substantiated that he personally is at risk of being subjected to torture if returned to Turkey.

11.5 Finally, the Committee has taken note of the State party's argument that Turkey is a party to the Convention against Torture and has recognized the Committee's competence under article 22 of the Convention to receive and examine individual communications. The Committee regretfully notes, however, that practice of torture is still systematic in Turkey, as attested to in the Committee's findings in its inquiry under article 20 of the Convention. a/ The Committee observes that the main aim and purpose of the Convention is to prevent torture, not to redress torture once it has occurred, and finds that the fact that Turkey is a party to the Convention and has recognized the Committee's competence under article 22, does not, in the circumstances of the instant case, constitute a sufficient guarantee for the author's security.

11.6 The Committee concludes that the expulsion or return of the author to Turkey in the prevailing circumstances would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

12. In the light of the above, the Committee is of the view that, in the prevailing circumstances, the State party has an obligation to refrain from forcibly returning Ismail Alan to Turkey.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ Official Records of the General Assembly, Forty-eighth Session, Supplement No. 48 (A/48/44/Add.1).

Communication No. 36/1995

Submitted by: X

Alleged victim: The author

State party: The Netherlands

Date of communication: 17 November 1995

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 8 May 1996,

Having concluded its consideration of communication No. 36/1995, submitted to the Committee against Torture under article 22 of the Convention,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts the following:

Views under article 22, paragraph 7, of the Convention

1. The author of the communication is X, a Zairian citizen, at the time of submission of the communication awaiting his deportation from the Netherlands. He claims that his return to Zaire would be in violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

Facts as submitted by the author

2.1 The author states that he is a sympathizer of the political movement Union pour la Démocratie et le Progrès Social (UDPS). In 1992 he was arrested with many others during a mass demonstration and kept in detention for several days. The author states that he was beaten with a rope with wire in it. In 1993, the author was again arrested and kept in detention for a few days. After his release, he left the country.

2.2 The author's request for political asylum in the Netherlands was rejected by the State Secretary of Justice. The Secretary accepted that the author had been detained twice, but considered that nothing indicated that he was perceived as an important political opponent by the Zairian authorities. In this connection, the Secretary noted that the author had not been harassed by the authorities in the period between his first and second arrest.

2.3 The author subsequently requested a review of this decision and requested the President of the Court in The Hague to grant provisional measures to defer his expulsion until a decision on his request for review had been taken. The author's request was rejected. The President considered that the situation in Zaire was not such as to justify a general prohibition of returning persons to the country. He found that the author had failed to show that he personally was at risk of being detained and tortured upon return. In this connection, the

President considered that the author's activities in support of UDPS had only been marginal and that he was not known as a political opponent.

The complaint

3.1 The author claims that his forced return to Zaire would lead to him being killed because of his political activities. Counsel adds that he fears being detained and tortured upon return.

3.2 The author asks the Committee to request the Netherlands to take interim measures of protection and not to expel him while his communication is under consideration by the Committee.

The State party's observations on the admissibility and on the merits of the communication

4.1 In its submission, dated 22 January 1996, the State party acknowledges that X has exhausted domestic remedies, and does not raise any objections to the admissibility of the communication. In accordance with the request of the Committee. The author will not be expelled while his communication is under consideration by the Committee.

4.2 As to the merits, the State party begins by explaining the refugee determination process in the Netherlands. Asylum applications in the Netherlands are dealt with by the Immigration and Naturalization Service under the responsibility of the State Secretary for Justice. In addition to the information supplied by the individual, the Immigration and Naturalization Service, when assessing individual applications for asylum, also takes into consideration the findings of the Netherlands Ministry of Foreign Affairs concerning the asylum seeker's country of origin which are laid down in Ministry reports (ambtsberichten) as well as information supplied by the Office of the United Nations High Commissioner for Refugees and organizations such as Amnesty International.

4.3 The State party states that decisions on asylum applications can be contested before five District Courts (rechtbanken). In addition a Legal Uniformity Division (rechtseenheidskamer)has been set up which has the task of promoting legal uniformity in the judgements and which has given a normative judgment in the case of Zaire, on 3 November 1994.

4.4 The State party states that if medical factors play a role in an asylum case, or if the asylum seeker concerned claims to have been ill-treated or tortured, the INS may request the Medical Inspector of the Ministry of Justice to give an opinion. The Medical Inspector himself may examine the individual or apply for information from a medical practitioner who has treated the individual. The State party adds that the individual himself can always request a further medical examination, or independently consult a medical practitioner.

4.5 The State party submits that the current conditions in Zaire give rise to concern but are not such as to justify the adoption of a general principle that asylum seekers whose applications have been rejected should not be repatriated. In support of its statement, the State party refers to the Committee's views in communication No. 13/1993, a/ where the Committee held: "the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist that indicate that the individual

concerned would be personally at risk". The State party therefore considers it incumbent upon asylum seekers from Zaire to demonstrate that specific facts and circumstances apply in their particular case to justify that risk.

4.6 The State party states that in assessing the circumstances of the individual asylum seeker from Zaire, the guiding principle is the consideration by the Legal Uniformity Division in the above-mentioned judgement of 3 November 1994, that a Zairian national who has previously been detained and who is therefore known to the authorities is at greater risk to be apprehended upon return and to be detained again. The Court considered that asylum seekers who can demonstrate sufficiently convincingly that they belong to this group should therefore be granted a residence permit for compelling reasons of a humanitarian nature. In this context, the State party explains that detention should be understood as "registered detention", that is, a detention that has lasted for a substantial period of time. If it is found that a registered detention has occurred, the asylum seeker is granted a residence permit for compelling reasons of a humanitarian nature.

4.7 As to the author's claim, the State party states that his asylum application was examined in the light of the Geneva Convention on the Status of Refugees and article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

4.8 The State party states that the author's membership of UDPS in itself is not sufficient to assume that he has a well-founded fear of persecution. The Court has ruled that as UDPS is a recognized political opposition party in Zaire, and the author's activities for this party have been only marginal, it is not likely that the Zairian authorities have taken a negative interest in him. Furthermore, the State party asserts that on his first arrest, the author agreed that he was apprehended together with a large number of other people, clearly at random. The second arrest was likewise not an action directed against the author personally.

4.9 The State party states that when the author was first questioned by an official of the Immigration and Naturalization Service, he claimed that he had been subjected to ill-treatment and showed his scars. The scars were however not such as to prompt the official to request a detailed medical examination. Furthermore, the State party states that neither the individual nor his authorized representative requested such an examination at any time during the proceedings. Equally, the author did not decide to have himself examined by another medical practitioner in order to produce a medical certificate. Nor did the Court consider a medical examination to be necessary.

4.10 The State party endorses the position adopted by the Netherlands courts that it cannot be anticipated on the basis of the facts that X is so well-known to the Zairian authorities that he will be arrested if he returns to Zaire. Furthermore, according to the State party, the swift release after his second arrest suggests that the Zairian authorities do not regard him as the perpetrator of activities that pose a threat to the State, unlike the case of Mr. Mutombo b/ who was sentenced by a military court to a long term of imprisonment.

Counsel's comments

5.1 In her comments on the State party's submission, dated 5 March 1995, counsel states that the Dutch Alien Act allows for the possibility that a single judge in chambers decides on the question whether expulsion would contradict

article 33 of the Geneva Convention. If the judge decides that the request for political asylum is manifestly unfounded, the procedure ends with that decision. In such a case, like the author's, there is no possibility of full judicial review or appeal. Although the Legal Uniformity Division sets out rules to be observed, a decision by a single judge can lead to judicial error in individual cases. Counsel refers to several decisions, where individuals in similar circumstances as the author's, were given the right to stay in the Netherlands.

5.2 Furthermore, counsel states that the confidential sources of the Ministry of Foreign Affairs are unreliable and that in several cases of Zairian asylum seekers, in which the Ministry reported that they had not been registered while detained, these reports were unfounded.

5.3 Furthermore, the author does not agree that his name has not been registered by the Zairian secret service, and that he will not be detained by the secret service upon return. To support his position, counsel states that it is known that members and sympathizers of UDPS are at risk when sent back to Zaire. The formal opinion of the Government of the Netherlands that it is able to predict which asylum seekers were registered by the authorities while detained, has in specific cases been found to be untrue.

5.4 Finally, counsel submits a note by the author's medical doctor, who states that he found scars on the back of the author that could very well be caused by beating. Counsel emphasizes that the State party has never questioned the fact that the author was beaten during detention. It is submitted that, if the author fell into the hands of the security forces at the airport (which is likely because of the lack of a valid travel document) his scars alone would give him away as a member of the opposition.

Decision on admissibility and examination of the merits

6. Before considering any claims contained in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee notes that the State party has not raised any objections to the admissibility of the communication and that it has requested the Committee to proceed to an examination of the merits. The Committee finds therefore that no obstacles to the admissibility of the communication exist and proceeds with the consideration of the merits of the communication.

7.1 The issue before the Committee is whether the forced return of the author to Zaire would violate the obligation of the Netherlands under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

7.2 Article 3 reads:

> "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."

The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the author would be in danger of being subject to torture. In reaching this conclusion, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to indicate that the individual concerned would be personally at risk.

8. The Committee notes that the author has claimed that, during his first detention, he was beaten with a rope with wire in it. Although not explicitly corroborated by the medical note submitted by the author, the Committee is prepared to find that X was maltreated during his first detention in Zaire. The Committee also notes that the author has not claimed that he was tortured during his second detention. Finally, the Committee notes that the periods of the author's detention have been short, that the author has not claimed that he was an active political opponent and that there is no indication that the author is being sought by the authorities in his country. Therefore, the Committee considers that the author has not substantiated his claim that he will be personally at risk of being subjected to torture if he is returned to Zaire.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the facts as found by the Committee do not reveal a breach of article 3 of the Convention.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ Mutombo v. Switzerland, views adopted on 27 April 1994, paragraph 9.3 (see Official Records of the General Assembly, Forty-ninth Session, Supplement No. 44 (A/49/44), annex V, sect. B).

b/ Mutombo v. Switzerland, communication No. 13/1993, views adopted on 27 April 1994.

Communication No. 41/1996

Submitted by: Mrs. Pauline Muzonzo Paku Kisoki [represented by counsel]

Alleged victim: The author

State party: Sweden

Date of communication: 12 February 1996

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 8 May 1996,

Having concluded its consideration of communication No. 41/1996, submitted to the Committee against Torture on behalf of Mrs. Pauline Muzonzo Paku Kisoki under article 22 of the Convention,

Having taken into account all information made available to it by the author of the communication, her counsel and the State party,

Adopts the following:

Views under article 22, paragraph 7, of the Convention

1. The author of the communication is Pauline Muzonzo Paku Kisoki, a Zairian citizen currently residing in Sweden, where she is seeking refugee status. She claims that her forced return to Zaire would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She is represented by counsel. a/

The facts as submitted

2.1 The author states that on 18 October 1990, members of the government party MPR visited her restaurant in Kisanto, not far from Kinshasa, indicating that they wished to hold a party rally there the following day. The author refused this, since she was an activist of the opposition party UDPS and her husband worked as personal secretary to Mr. Bosasi Bolia, one of the leaders of the Union pour la Démocratie et le Progrès Social (UDPS).

2.2 On 20 October 1990, the author and her husband were arrested by security forces. The author was raped in her home in front of her children. She was then taken to a small detention centre on the way to Kinshasa where she was brutally beaten. The following day she was taken to Makal prison in Kinshasa. The author describes the inhuman and degrading circumstances of detention in prison. She was not allowed to receive any visits and shared a cell of 3 by 6 metres with seven other inmates. There were no proper sanitary provisions and they had to urinate on the floor. Every morning guards came into the cell and forced the women to dance, beat them and sometimes raped them. The author states that she was raped more than 10 times during her time in prison. She further submits that she was regularly beaten, sometimes with whips made of

tyres on which metal thread was stuck, she was burnt with cigarettes on the inside of her thighs and struck with batons.

2.3 The author was detained for one year without trial. On 20 October 1991, with the assistance of one of the supervisors of the prison who had been bribed by the author's sister, the author was able to escape. She then travelled to Sweden, via Belgium, on a passport of a woman who resembled her. Later, she sent the passport back to the woman.

2.4 The author arrived in Sweden on 14 November 1991 and immediately requested asylum. On 31 January 1994, the Swedish Board of Immigration refused her request, noting that the political situation in Zaire had improved and considering that it was not likely that Ms. Muzonzo would be subjected to persecution or severe harassment because of her past activities for UDPS. The Board further questioned the circumstances surrounding her release from prison and her leaving Zaire.

2.5 On 13 February 1995, The Aliens Appeal Board confirmed the decision of the Swedish Board of Immigration and concluded that in the present circumstances in Zaire, Ms. Muzonzo did not risk persecution by the authorities. The author then submitted a "new application" to the Appeal Board, referring to the report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Zaire of 23 December 1994. b/ On 16 March 1995 the Board rejected her application, considering that the circumstances invoked by the author could not be seen as new evidence.

2.6 On 12 December 1995, the author submitted yet another new application to the Swedish Aliens Appeal Board, on the basis of new forensic medical evidence, prepared by the Centre for Torture and Trauma Survivors in Stockholm. On 7 February 1996, the Aliens Appeal Board rejected the author's application, judging that the information now submitted could easily have been submitted earlier, thereby decreasing the trustworthiness of her claim.

The complaint

3.1 The author claims that the decisions taken by the Swedish authorities are founded on a false image of the situation in Zaire. She refers to the report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Zaire, b/ where it is reported that the practice of torture is common in Zaire and that female prisoners are often raped. She also refers to the background paper on Zairian refugees and asylum seekers of March 1995 of the Office of the United Nations High Commissioner for Refugees (UNHCR), where it is mentioned that the Security Police have shown a particular interest in returned asylum seekers, who are being subjected to long sessions of interrogation.

3.2 The author recalls that she has been a member of UDPS since 1987 and that her restaurant was frequently used by the local branch of the party for political meetings. Moreover, the author headed the local women's group and participated in several large UDPS demonstrations against the Mobutu regime. In the summer of 1990 she organized a women's protest at Kinshasa in which thousands of women participated. Moreover, the author states that she has continued her political activities in Sweden and that she regularly attends UDPS meetings and demonstrations. A letter of support from the UDPS Sweden is enclosed with the communication. In this context, the author also states that between 1985 and 1990 her husband was the personal secretary of Bosasi Bolia, a co-founder and leader of UDPS. At present, he is seeking asylum in the Congo.

3.3 Medical certificates prepared by the Centre for Torture and Trauma Survivors in Stockholm show scar tissue consistent with the author's claims of torture and ill-treatment, as well as signs of a distinct post traumatic stress disorder.

3.4 The author asks the Committee to request Sweden, pursuant to rule 108, paragraph 9, of the rules of procedure, not to return her to Zaire while her communication is under consideration by the Committee.

State party's observations

4. On 28 February 1996, the Committee, through its Special Rapporteur, transmitted the communication to the State party for comments and requested the State party not to expel the author while her communication was under consideration by the Committee.

5.1 By submission of 18 April 1996, the State party challenges the admissibility of the communication, but also addresses the merits of the case. It requests the Committee, should it not find the communication inadmissible, to examine the communication on its merits as soon as possible.

5.2 The State party recalls that it was one of the co-sponsors of resolution 1995/69 adopted by the Commission on Human Rights on 8 March 1995 concerning the human rights situation in Zaire c/ and that it is aware of the deplorable situation with regard to human rights in Zaire. However, the State party, while referring to the Special Rapporteur's report on Zaire, submits that there seems to have been a change for the better since the appointment of Mr. Kengo Wa Dondo as Prime Minister on 14 June 1994. Political prisoners were released and politically motivated detentions declined drastically. In this context, the State party also refers to a report prepared by the Voice of the Voiceless for Human Rights concerning problems of Zairian refugee claimants, where it was concluded that it could not be confirmed a priori that expelled Zairian asylum seekers are in danger in Zaire. It was said that each case deserved to be examined on its own merits.

5.3 As regards the domestic procedure, the State party explains that the basic provisions concerning the right of aliens to enter and to remain in Sweden are found in the 1989 Aliens Act. For the determination of refugee status there are normally two instances, the Swedish Immigration Board and the Aliens Appeals Board. In exceptional cases, an application is referred to the Government. Chapter 8, section 1, of the Act corresponds to article 3 of the Convention and states that an alien, who has been refused entry or who shall be expelled, may never be sent to a country where there is firm reason to believe that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture, nor to a country where he or she is not protected from being sent on to a country where he or she would be in such danger. Further, under chapter 2, section 5, subsection 3, of the Act, an alien, who is to be refused entry or expelled, can apply for a residence permit if the application is based on circumstances that have not previously been examined in the case and if either the alien is entitled to asylum in Sweden or if it will otherwise be in conflict with humanitarian requirements to enforce the decision on refusal of entry or expulsion.

5.4 As regards the admissibility of the communication, the State party argues that the communication is inadmissible as being incompatible with the provisions of the Convention, for lacking the necessary substantiation.

6.1 As to the merits of the communication, the State party refers to the Committee's jurisprudence in the case of Mutombo v. Switzerland, d/ and the criteria established by the Committee, first, that a person must personally be at risk of being subjected to torture, and, second, that such torture must be a necessary and foreseeable consequence of the return of the person to his or her country.

6.2 As regards the general situation of human rights in Zaire, the State party acknowledges that the situation is grave and unacceptable, despite some improvements since 1994. The State party submits, however, that in general returning asylum seekers are not faced with political persecution.

6.3 The State party refers to its own legislation and states that its principles reflect the same principle as that of article 3 of the Convention. The State party's authorities thus apply the same test as the Committee in deciding on the return of a person to his or her country. The State party recalls that the mere possibility that a person may be subjected to ill-treatment in his or her country of origin does not suffice to require that a person be given asylum in a third country or to prohibit his or her return as being incompatible with article 3 of the Convention.

6.4 In the instant case, the State party relies on the opinions of the Immigration Board and the Appeal Board, which after a careful examination of the facts of the author's case, concluded that she would not be personally at risk of being subjected to torture when returned to Zaire.

6.5 The State party further points to inconsistencies in the author's story, in relation to the rape of which she was allegedly a victim. The author, according to the medical statement of May 1995, had said that she was raped more than 10 times during the time she spent in detention, whereas in her interview with the Swedish police in February 1992 she mentioned being beaten, but not raped, and in her account of 21 January 1993 she mentions having been raped twice. According to the State party, these inconsistencies impact significantly on the veracity of the author's story. Further, the State party recalls that the medical evidence was only submitted in 1995, that is, after the procedure for the establishment of the refugee claim was terminated, thus weakening further the author's credibility.

6.6 The State party argues that the evidence presented by the author is insufficient to demonstrate that the risk of her being tortured is a foreseeable and necessary consequence of her return to Zaire. In this context, the State party submits that the present day situation in Zaire is different than that when the author was being detained for her political activities and that there is no reason to believe that the author now would be arrested by the authorities upon her return to her country.

Counsel's comments

7.1 In her comments on the State party's submission, counsel confirms that the Swedish Immigration Board, on 8 March 1996, decided to stay the author's expulsion until 25 May 1996.

7.2 She refers to the United States Department of State report on human rights practices in Zaire of 1995, where it was stated that the Government continued to tolerate and commit serious human rights abuses, especially through its security forces.

7.3 As regards the alleged inconsistencies in the author's story, counsel maintains that the author already at first instance invoked serious ill-treatment and rapes, and refers to articles in medical journals explaining the psychological blockage in torture victims preventing them from telling the full story upon arrival in a safe country. In this context, counsel points out that the author's statements about her sufferings are initially sparse and casual, and are only elaborated later, with the passage of time. Counsel emphasizes that the author's story has remained unchanged, coherent and plausible throughout. Counsel further states that the failure to present medical evidence before July 1995 was caused by the author's conviction of the righteousness of her claims and further by a lack of financial means.

7.4 As regards the State party's statement that the human rights situation in Zaire has improved and that therefore there is no danger for the author in returning to her country, counsel refers to an opinion of a UNHCR senior legal adviser, on 9 May 1995, to the effect that, although the UNHCR no longer opposed the return of rejected asylum seekers to Zaire, an exception existed for groups particularly at risk, such as active members of Zairian political opposition parties and in particular of UDPS. Counsel argues that despite certain improvements, there still does exist a consistent pattern of gross, flagrant or mass violations of human rights in Zaire.

7.5 Counsel concludes that the author has presented sufficient evidence that she was a political activist for UDPS and well known to the Zairian authorities, that she has been imprisoned, tortured and ill treated owing to her political activities, that the human rights situation in Zaire is deplorable and that especially UDPS activists are in danger of persecution. She therefore claims that the author's return to Zaire would have the foreseeable and necessary consequence of exposing her to a real risk of being detained and tortured.

Issues and proceedings before the Committee

8. Before considering any claims contained in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that all available domestic remedies have been exhausted and finds that no further obstacles to the admissibility of the communication exist. Since both the State party and the author's counsel have provided observations on the merits of the communication, the Committee proceeds immediately with the consideration of the merits of the communication.

9.1 The issue before the Committee is whether the forced return of the author to Zaire would violate the obligation of Sweden under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.2 Pursuant to article 3, paragraph 1, the Committee must decide whether there are substantial grounds for believing that Ms. Kisoki would be in danger of being subject to torture upon return to Zaire. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he

or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a person would be in danger of being subjected to torture upon his return to that country; specific grounds must exist that indicate that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

9.3 In the instant case, the Committee considers that the author's political affiliation and activities, her history of detention and torture, should be taken into account when determining whether she would be in danger of being subjected to torture upon her return. The State party has pointed to contradictions and inconsistencies in the author's story, but the Committee considers that complete accuracy is seldom to be expected by victims of torture and that such inconsistencies as may exist in the author's presentation of the facts are not material and do not raise doubts about the general veracity of the author's claims.

9.4 The Committee has noted the State party's assertion that in general returned asylum seekers do not face political persecution upon return, owing to the fact that the Government of Zaire is aware that many leave because of economic, not political reasons. Be this as it may, in the instant case the author has claimed, and the State party has not contested, that she was an active member of UDPS, chairperson of the women's group in her home town, that her husband was the personal secretary of one of UDPS leaders, that she was detained because of her political activities and that she has continued her political activities in support of UDPS in Sweden. In the circumstances, the Committee need not take into consideration the general situation of returned refugee claimants, but rather the situation of returned refugee claimants who are active members of the opposition to the Government of President Mobutu.

9.5 In this context, the Committee has noted the position of the United Nations High Commissioner for Refugees, according to whom deportees who are discovered to have sought asylum abroad undergo interrogation upon arrival at Kinshasa airport, following which those who are believed to have a political profile are at risk of detention and consequently ill-treatment. The Committee also notes that, according to the information available, members of UDPS continue to be targeted for political persecution in Zaire.

9.6 In the circumstances, the Committee considers that substantial grounds exist for believing that the author would be in danger of being subjected to torture if returned to Zaire.

9.7 The Committee concludes that the expulsion or return of the author to Zaire in the prevailing circumstances would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

10. In the light of the above, the Committee is of the view that, in the prevailing circumstances, the State party has an obligation to refrain from forcibly returning Pauline Muzonzo Paku Kisoki to Zaire.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ A previous communication on behalf of the same author, communication No. 30/1995, was declared inadmissible by the Committee on 20 November 1995, for non-exhaustion of domestic remedies.

b/ E/CN.4/1994/67.

c/ Official Records of the Economic and Social Council, 1995, Supplement No. 3 (E/1995/23 and Corr.1 and 2), chap. II.A.

d/ Communication No. 13/1993, views adopted on 27 April 1994.

ANNEX VI*

Amended rules of procedure

The text of rules 17 and 84, amended by the Committee during its fifteenth session, reads as follows:

"Position of Chairman in relation to the Committee

"Rule 17

"1. The Chairman shall perform the functions conferred upon him by the Committee and by these rules of procedure. In exercising his functions as Chairman, the Chairman shall remain under the authority of the Committee.

"2. Between sessions, at times when it is not possible or practical to convene a special session of the Committee in accordance with rule 3, the Chairman is authorized to take action to promote compliance with the Convention on the Committee's behalf if he receives information which leads him to believe that it is necessary to do so. The Chairman shall report on the action taken to the Committee at its following session at the latest.

"...

"Summary account of the results of the proceedings

"Rule 84

"1. After all the proceedings of the Committee regarding an inquiry made under article 20 of the Convention have been completed, the Committee may decide, after consultations with the State party concerned, to include a summary account of the results of the proceedings in its annual report made in accordance with article 24 of the Convention.

"2. The Committee shall invite the State party concerned, through the Secretary-General, to inform the Committee directly or through its designated representative of its observations concerning the question of a possible publication of a summary account of the results of the proceedings relating to the inquiry, and may indicate a time-limit within which the observations of the State party should be communicated to the Committee.

"3. If it decides to include a summary account of the results of the proceedings relating to an inquiry in its annual report, the Committee shall forward, through the Secretary-General, the text of the summary account to the State party concerned.

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* The Committee decided to postpone consideration of this item to its seventeenth session, in November 1996.

ANNEX VII

List of documents for general distribution issued for the Committee during the reporting period

Symbol	Title
	A. Fifteenth session
CAT/C/12/Add.6	Initial report of Guatemala
CAT/C/17/Add.13	Second periodic report of Denmark
CAT/C/17/Add.14	Second periodic report of Senegal
CAT/C/20/Add.4	Second periodic report of Colombia
CAT/C/24/Add.4	Initial report of Armenia
CAT/C/25/Add.6	Second periodic report of the United Kingdom of Great Britain and Northern Ireland
CAT/C/31	Provisional agenda and annotations
CAT/C/SR.227-244	Summary records of the fifteenth session of the Committee
	B. Sixteenth session
CAT/C/2/Rev.4	Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and declarations, reservations and objections under the Convention
CAT/C/12/Add.7	Initial report of Malta
CAT/C/16/Add.6	Initial report of Croatia
CAT/C/17/Add.15	Second periodic report of the Russian Federation
CAT/C/20/Add.5	Second periodic report of China
CAT/C/24/Add.4/Rev.1	Revised initial report of Armenia
CAT/C/25/Add.7	Second periodic report of Finland
CAT/C/28/Rev.1	Note by the Secretary-General listing initial reports due in 1995: revision
CAT/C/32 and Rev.1 and 2	Note by the Secretary-General listing initial reports due in 1996 and revisions
CAT/C/33	Note by the Secretary-General listing second periodic reports due in 1996

Symbol	Title
CAT/C/34	Note by the Secretary-General listing third periodic reports due in 1996
CAT/C/35	Provisional agenda and annotations
CAT/C/SR.245-261	Summary records of the sixteenth session of the Committee