



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

Distr.
GENERAL

CAT/C/4/Rev.3
18 July 2005

Original: ENGLISH

**GUIDELINES ON THE FORM AND CONTENT OF INITIAL REPORTS
UNDER ARTICLE 19 TO BE SUBMITTED BY STATES PARTIES TO
THE CONVENTION AGAINST TORTURE**

1. Under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment each State party undertakes to submit a report on the measures taken to give effect to its undertakings under the Convention. The initial report is due within one year after the entry into force of the Convention for that State party and thereafter every four years unless the Committee requests other reports.
2. In order to assist States parties in fulfilling their obligations under article 19, the Committee has adopted the following general guidelines as to the form and content of initial reports. The present Guidelines replace the earlier version adopted by the Committee at its 82nd meeting (sixth session) in April 1991.

PART I. GENERAL INFORMATION

A. Introduction

3. In the introductory part of the report, cross-references to the expanded core document should be made regarding information of a general nature, such as the general political structure, general legal framework within which human rights are protected, etc. It is not necessary to repeat that information in the initial report.
4. Information on the process of preparing the report should be included in this section. The Committee considers that drafting of reports would benefit from broad-based consultations. It therefore welcomes information on any such consultations within Government, with national institutions for the promotion and protection of human rights, non-governmental organizations and other organizations that might have taken place.

B. General Legal Framework under which torture and other cruel, inhuman or degrading treatment or punishment is prohibited

5. In this section the Committee envisages receiving specific information related to the implementation of the Convention to the extent that it is not covered by the core document, in particular the following:

- A brief reference to constitutional, criminal and administrative provisions regarding the prohibition of torture and other cruel, inhuman or degrading treatment or punishment;
- International treaties dealing with torture and other cruel, inhuman or degrading treatment or punishment to which the reporting State is a party;
- The status of the Convention in the domestic legal order, i.e. with respect to the Constitution and the ordinary legislation;
- How domestic laws ensure the non-derogability of the prohibition of any cruel, inhuman or degrading treatment or punishment;
- Whether the provisions of the Convention can be invoked before and are directly enforced by the courts or administrative authorities or whether they have to be transformed into internal laws or administrative regulations to be enforced by the authorities concerned. Should the latter be a requirement, the report should provide information on the legislative act incorporating the Convention into the domestic legal order;
- Judicial, administrative or other competent authorities with jurisdiction/a mandate covering matters dealt with in the Convention, such as the Constitutional Court, the Supreme Court, the ordinary and military courts, the public prosecutors, disciplinary bodies, administrative authorities in charge of police and prison administration, national institutions for the promotion and protection of human rights, etc. Provide an overview of the practical implementation of the Convention at the federal, central, regional and local levels of the State, and indicate any factors and difficulties that may affect the fulfilment of the obligations of the reporting State under the Convention. The report should include specific information related to the implementation of the Convention in such circumstances. Relevant documentation collected by the authorities or other private or public institutions is welcome.

II. INFORMATION IN RELATION TO EACH SUBSTANTIVE ARTICLE OF THE CONVENTION

6. As a general rule the report should include, in connection with each article, the following information:

- The legislative, judicial, administrative or other measures giving effect to the provisions;

- Concrete cases and situations where measures giving effect to the provisions have been enforced, including any relevant statistical data;
- Cases or situations of violation of the Convention, the reasons for such violations and the measures taken to remedy the situation. It is important for the Committee to obtain a clear picture not only of the legal situation, but also of the de facto situation.

Article 1

7. This article contains the definition of torture for the purposes of the Convention. Under this provision the report should include:

- Information on the definition of torture in domestic law, including indications as to whether such a definition is in full conformity with the definition of the Convention;
- In the absence of a definition of torture in domestic law in conformity with the Convention, information on criminal or legislative provisions that cover all cases of torture;
- Information on any international instruments or national legislation that contains or may contain provisions of wider application.

Article 2, paragraph 1

8. This provision introduces the obligation of the States parties to take effective measures to prevent acts of torture. The report should contain information on:

- Pertinent information on effective measures taken to prevent all acts of torture, inter alia with respect to: duration of police custody; incommunicado detention; rules governing the rights of arrested persons to a lawyer, a medical examination, contact with their family, etc.; emergency or anti-terrorist legislation that could restrict the guarantees of the detained person.

9. The Committee would welcome an assessment by the reporting State of the effectiveness of the measures taken to prevent torture, including measures to ensure that those responsible are brought to justice.

Article 2, paragraph 2

10. The report should contain information on effective measures to ensure that no exceptional circumstances are invoked, in particular:

- Whether legal and administrative measures exist to guarantee that the right not to be tortured is not subject to derogation during a state of war, a threat of war, internal political instability or any other public emergency.

Article 2, paragraph 3

11. The report should indicate:
- Whether legislation and jurisprudence exist with regard to the prohibition on invoking superior orders, including orders from military authorities, as a justification of torture; if these exist, information should be provided on their practical implementation;
 - Whether there are any circumstances in which a subordinate is permitted lawfully to oppose an order to commit acts of torture, the recourse procedures available to him/her and information on any such cases that may have occurred;
 - Whether the position of public authorities with respect to the concept of “due obedience” as a criminal law defence has any impact on the effective implementation of this prohibition.

Article 3

12. This article prohibits the expulsion, return or extradition of a person to a State where he/she might be tortured. The report should contain information on:

- Domestic legislation with regard to such prohibition;
- Whether legislation and practices concerning terrorism, emergency situations, national security or other grounds that the State may have adopted have had any impact on the effective implementation of this prohibition;
- Which authority determines the extradition, expulsion, removal or refoulement of a person and on the basis of what criteria;
- Whether a decision on the subject can be reviewed and, if so, before which authority, what are the applicable procedures and whether such procedures have suspensive effects;
- Decisions taken on cases relevant to article 3 and the criteria used in those decisions, the information on which the decisions are based and the source of this information;
- The kind of training provided to officials dealing with the expulsion, return or extradition of foreigners.

Article 4

13. It is implicit in the reporting obligations imposed by this article that each State shall enact legislation criminalizing torture in terms that are consistent with the definition in article 1. The Committee has consistently expressed the view that the crime of torture is qualitatively distinguishable from the various forms of homicide and assault that exist and therefore should be separately defined as a crime. The report should contain information on:

- Civil and military criminal provisions regarding these offences and the penalties related to them;
- Whether statutes of limitations apply to such offences;
- The number and the nature of the cases in which those legal provisions were applied and the outcome of such cases, in particular, the penalties imposed upon conviction and the reasons for acquittal;
- Examples of judgements relevant to the implementation of article 4;
- Existing legislation on disciplinary measures during the investigation of an alleged case of torture to be taken against law enforcement personnel responsible for acts of torture (e.g. suspension);
- Information on how established penalties take into account the grave nature of torture.

Article 5

14. Article 5 deals with the States parties' legal duty to establish jurisdiction over the crimes mentioned in article 4. The report should include information on:

- Measures taken to establish jurisdiction in the cases covered under (a), (b) and (c) of paragraph 1. Examples of cases where (b) and (c) were applied should also be included;
- Measures taken to establish jurisdiction in cases where the alleged offender is present in the territory of the reporting State and the latter does not extradite him/her to a State with jurisdiction over the offence in question. Examples of cases where (a) extradition was granted and (b) extradition was denied should be provided.

Article 6

15. Article 6 deals with the exercise of jurisdiction by the State party, particularly the issues concerning the investigation of a person who is in the territory and is alleged to have committed any offence referred to in article 4. The report should provide information on:

- The domestic legal provisions concerning, in particular, the custody of that person or other measures to ensure his/her presence; his/her right to consular assistance; the obligation of the reporting State to notify other States that might also have jurisdiction that such a person is in custody; the circumstances of the detention and whether the State party intends to exercise jurisdiction;
- The authorities in charge of the implementation of the various aspects of article 6;
- Any cases in which the above domestic provisions were applied.

Article 7

16. This article contains the obligation of the State to initiate prosecutions relating to acts of torture whenever it has jurisdiction, unless it extradites the alleged offender. The report should provide information on:

- Measures to ensure the fair treatment of the alleged offender at all stages of the proceedings, including the right to legal counsel, the right to be presumed innocent until proved guilty, the right to equality before courts, etc.;
- Measures to ensure that the standards of evidence required for prosecution and conviction apply equally in cases where the alleged offender is a foreigner who committed acts of torture abroad;
- Examples of practical implementation of the measures referred to above.

Article 8

17. By virtue of article 8 of the Convention, the States parties undertake to recognize torture as an extraditable offence for purposes of facilitating the extradition of persons suspected of having committed acts of torture and/or the related crimes of attempting to commit and complicity and participation in torture. The report should include information on:

- Whether torture and related crimes are considered by the reporting State as extraditable offences;
- Whether the reporting State makes extradition conditional on the existence of a treaty;
- Whether the reporting State considers the Convention as the legal basis for extradition in respect of the offences referred to above;
- Extradition treaties between the reporting State and other States parties to the Convention that include torture as an extraditable offence;
- Cases where the reporting State granted the extradition of persons alleged to have committed any of the offences referred to above.

Article 9

18. By virtue of this article the States parties undertake to provide mutual judicial assistance in all matters of criminal procedure regarding the offence of torture and related crimes of attempting to commit, complicity and participation in torture. Reports shall include information on:

- Legal provisions, including any treaties, concerning mutual judicial assistance that apply in the case of the above-mentioned offences;
- Cases involving the offence of torture in which mutual assistance was requested by or from the reporting State, including the result of the request.

Article 10

19. By virtue of this article and related article 16, States are obliged to train, inter alia, medical and law enforcement personnel, judicial officials and other persons involved with custody, interrogation or treatment of persons under State or official control on matters related to the prohibition of torture and cruel, inhuman or degrading treatment or punishment. The report should include information on:

- Training programmes on the above-mentioned subject for persons charged with the various functions enumerated in article 10 of the Convention;
- Information on the training of medical personnel dealing with detainees or asylum-seekers to detect physical and psychological marks of torture and training of judicial and other officers;
- The nature and frequency of the instruction and training;
- Information on any training that ensures appropriate and respectful treatment of women, juveniles, and ethnic, religious or other diverse groups, particularly regarding forms of torture that disproportionately affect these groups;
- The effectiveness of the various programmes.

Article 11

20. By virtue of this article and related article 16, States are obliged to keep under review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment with a view to preventing torture and other cruel, inhuman or degrading treatment or punishment. The report should include information on:

- Laws, regulations and instructions concerning the treatment of persons deprived of their liberty;
- Information on measures requiring prompt notification of and access to lawyers, doctors, family members and, in the case of foreign nationals, consular notification;
- The degree to which the following rules and principles are reflected in the domestic law and practice of the State: the Standard Minimum Rules for the Treatment of Prisoners; the Basic Principles for the Treatment of Prisoners; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Principles of Medical Ethics relevant to the Role of Health Personnel, particularly

Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Code of Conduct for Law Enforcement Officials;

- Any independent bodies or mechanisms established to inspect prisons and other places of detention and to monitor all forms of violence against men and women, including all forms of sexual violence against both men and women and all forms of inter-prisoner violence, including authorization for international monitoring or NGO inspections;
- Information on measures to ensure that all such places are officially recognized and that no incommunicado detention is permitted;
- Mechanisms of review of the conduct of law enforcement personnel in charge of the interrogation and custody of persons held in detention and imprisonment and results of such reviews, along with any qualification or re-qualification procedures;
- Information on any safeguards for the protection of individuals especially at risk.

Article 12

21. On the basis of this article and related article 16, the State must ensure that its competent authorities proceed to a prompt and impartial investigation when there is reason to believe that under its jurisdiction an act of torture or cruel, inhuman or degrading treatment or punishment has been committed. The report should identify:

- The authorities competent to initiate and carry out the investigation, both at the criminal and disciplinary levels;
- Applicable procedures, including whether there is access to immediate medical examinations and forensic expertise;
- Whether the alleged perpetrator is suspended from his/her functions while the investigation is being conducted and/or prohibited from further contact with the alleged victim;
- Information on the results of cases of prosecution and punishment.

Article 13

22. By virtue of this article and related article 16, States parties must guarantee the right of any individual who alleges that he/she has been subjected to torture or cruel, inhuman or degrading treatment or punishment to complain and to have his/her case promptly and impartially investigated, as well as the protection of the complainant and witnesses against ill-treatment or intimidation. The report should include information on:

- Remedies available to individuals who claim to have been victims of acts of torture or other cruel, inhuman or degrading treatment or punishment;
- Remedies available to the complainant in case the competent authorities refuse to investigate his/her case;
- Mechanisms for the protection of the complainants and the witnesses against any kind of intimidation or ill-treatment;
- Statistical data disaggregated, inter alia, by sex, age, crime and geographical location on the number of complaints of torture and cruel, inhuman or degrading treatment or punishment submitted to the domestic authorities and the results of the investigations. An indication should also be provided of the services to which the persons accused of having committed torture and/or other forms of ill-treatment belong;
- Information on the access of any complainant to independent and impartial judicial remedy, including information on any discriminatory barriers to the equal status of all persons before the law, and any rules or practices preventing harassment or retraumatization of victims;
- Information on any officers within police forces and prosecutorial or other relevant offices specifically trained to handle cases of alleged torture or cruel, inhuman and degrading treatment or violence against women and ethnic, religious or other minorities;
- Information on the effectiveness of any such measures.

Article 14

23. This article deals with the right of victims of torture to redress, fair and adequate compensation and rehabilitation. The report should contain information on:

- The procedures in place for obtaining compensation for victims of torture and their families and whether these procedures are codified or in any way formalized;
- Whether the State is legally responsible for the offender's conduct and, therefore, obliged to compensate the victim;
- Statistical data or, at least, examples of decisions by the competent authorities ordering compensation and indications as to whether such decisions were implemented, including any information about the nature of the torture, the status and identification of the victim and the amount of compensation or other redress provided;

- The rehabilitation programmes that exist in the country for victims of torture;
- Information on any measures other than compensation to restore respect for the dignity of the victim, his/her right to security and the protection of his/her health, to prevent repetitions and to assist in the victim's rehabilitation and reintegration into the community.

Article 15

24. Under this provision the State must ensure that statements made as a result of torture will not be used as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. The report should contain information on:

- Legal provisions concerning the prohibition of using a statement obtained under torture as an element of proof;
- Examples of cases in which such provisions were applied;
- Information on whether derivative evidence is admissible, if applicable in the State party's legal system.

Article 16

25. This article imposes upon States the obligation to prohibit acts of cruel, inhuman or degrading treatment or punishment. The report should contain information on:

- The extent to which acts of cruel, inhuman or degrading treatment or punishment have been outlawed by the State party; information on whether these acts are defined or otherwise dealt with in domestic law;
- Measures which may have been taken by the State party to prevent such acts;
- Living conditions in police detention centres and prisons, including those for women and minors, including whether they are kept separate from the rest of the male/adult population. Issues related to overcrowding, inter-prisoner violence, disciplinary measures against inmates, medical and sanitary conditions, most common illnesses and their treatment in prison, access to food and conditions of detention of minors should, in particular, be addressed.
