

**Committee against Torture**  
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**Draft Guidelines on the Form and Content of Initial Reports submitted by States parties  
to the Convention against Torture**

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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 recommends that they follow general guidelines as to the form and content of reports. The present Guidelines replace the earlier version adopted by the Committee at its 82<sup>nd</sup> meeting in April 1991 [and should be considered complementary to any guidelines that might be produced jointly by the treaty bodies for an expanded core document.]

**PART I. GENERAL INFORMATION**

**A. INTRODUCTION**

3. In the introductory part, cross reference to the [expanded] core document should be made regarding information of a general nature that may be contained therein, 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 preparation of the report should be included in this section. The Committee recommends that States parties draft the report after broad-based consultations with the main actors of civil society. It therefore welcomes information, for instance, on consultations with NGOs and national institutions for the protection and promotion of human rights that might have taken place.

## **B. GENERAL LEGAL FRAMEWORK UNDER WHICH TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ARE PROHIBITED**

5. In this section the Committee envisages receiving specific information related to the implementation of the Convention. The following issues, in particular, should be addressed:

- 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;
- Status of the Convention in the domestic legal order, i.e. with respect to the Constitution and the ordinary legislation;
- Whether the provisions of the Convention can be invoked before and 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/mandate over matters dealt with in the Convention, such as the Constitutional Court, the ordinary and military courts, the public prosecutors, disciplinary bodies, administrative authorities in

charge of police and prison administration, national institutions for the protection and promotion of human rights, etc;

- Overview of the practical implementation of the Convention at the central, regional and local levels of the State party and indication of any factors and difficulties affecting the fulfillment of the obligations of the reporting state. For situations of armed conflict, internal or international, 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 welcomed. [*Antiterrorist measures*]

## **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;
- Factors and difficulties affecting their practical implementation and efforts of the reporting party to address them;
- 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, reasons for such violations and 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 definition is in full conformity with the definition of the Convention;
- In the absence of a definition of torture in domestic law, the report should include information on criminal provisions concerning assault (abuse of authority, lesions, etc.) and other violent acts committed by public officials. The State party should also indicate whether, in its opinion, such provisions cover adequately all aspects contained in article 1.

**Article 2, paragraph 1**

8. This provision introduces the obligation of the State parties to take measures to prevent acts of torture. The report should contain information, in particular, on legal provisions and administrative instructions with regard to:

- The duration of police custody before the arrested person is brought before a judge;
- Rules concerning the registration of a person from the time of apprehension/arrest to the time where he/she is brought before a judge;
- Circumstances in which incommunicado detention might be allowed, if any, including the authorities competent to order it, its maximum duration and existing safeguards to ensure that a person held incommunicado is not subjected to torture or cruel, inhuman or degrading treatment or punishment;
- Rules concerning the right of an arrested person to contact a lawyer and whether the lawyer is entitled to be present during interrogation by the police and the public prosecutor;
- Rules concerning the right of an arrested person to examination by a medical doctor after the arrest and before and after interrogation;

- Rules concerning the right of an arrested person to contact his/her relatives;
- Information on emergency or anti-terrorist legislation which could restrict the guarantees of the detained person, in particular the rights mentioned above;

9. The Committee would welcome an assessment by the reporting State of the effectiveness of the measures taken to prevent torture.

**Article 2, paragraph 2**

10. According to this provision, no exceptional circumstances whatsoever may be invoked as a justification of torture. The report should contain information on:

- Legal and administrative measures to guarantee that no derogation to the right not to be tortured is made during a state of war, a threat of war, internal political instability or any other public emergency;
- Anti-terrorist legislation that might have been adopted by the State party and measures taken to ensure that such legislation does not impact negatively on the effective implementation of the Convention;
- Rules regarding the registration of persons deprived of liberty and their access to lawyers, family members and non-governmental organizations in the framework of the anti-terrorist legislation.

**Article 2, paragraph 3**

11. This provision excludes superior orders as a justification of torture. The report should indicate:

- Existing legislation and jurisprudence with regard to the prohibition of invoking superior orders, including orders from military authorities, as a justification of torture;

- Circumstances in which a subordinate can lawfully oppose an order to commit acts of torture and recourse procedures available to him/her;
- The position of public authorities on the concept of due obedience as criminal law defense.

### **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 any anti-terrorism measures that the State may have adopted had any impact on the effective implementation of this prohibition;
- Which authority determines the extradition, expulsion or refoulement of a person;
- Whether a decision on the subject can be appealed against. If so, to what authority such appeal can be lodged, what are the procedures applicable and whether such appeal has a suspensive effect;
- How domestic law and practice designed to combat terrorism, if any, comply with the requirement of article 3;
- Decisions taken on cases relevant to article 3 and the criteria used in those decisions;
- The kind of training received by officers dealing with the expulsion, return or extradition of foreigners, the information on which they base their decisions and the source of such information.

### **Article 4**

13. The purpose of the reporting obligation under this article is to provide a detailed account of the degree of criminalization of acts of torture and the related crimes of attempting to commit, complicity and participation in torture in the State party. It is implicit in the reporting obligations imposed by this article that each State shall enact a crime of torture in terms 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 and therefore should be separately defined as a crime. The report should contain information on:

- Civil and military criminal provisions regarding these offenses and the penalties related to them;
- Whether statute of limitations apply to such offenses;
- 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, in case of conviction and, in case of acquittal, the reasons for the decision taken;
- Examples of judgments relevant to the implementation of article 4;
- Existing legislation on disciplinary measures to be taken against law enforcement personnel responsible for acts 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 contemplated 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, b) extradition was denied;
- Difficulties that the State might have encountered in giving effect to the provisions of article 5.

#### **Article 6**

15. Article 6 deals with the exercise of jurisdiction by the State Party, particularly the issues concerning the investigation of a person 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 diplomatic assistance; the obligation of the reporting State to notify other States that might also have jurisdiction that such person is in custody, the circumstances of the detention and whether it intends to exercise jurisdiction;
- The authorities in charge of applying 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 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 each other 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 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 medical and law enforcement personnel, inter alia, 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 different functions enumerated in article 10 of the Convention, including information on the training of medical personnel dealing with detainees or asylum seekers to detect physical and psychological marks of torture;
- 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 in detention or imprisonment;
- 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;
- Mechanisms of inspection of prisons and other places of detention;
- Mechanisms of review of the conduct of law enforcement personnel in charge of the interrogation and custody of persons held in detention and imprisonment.

### **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 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;
- Procedures applicable;
- Whether the alleged perpetrator is suspended from his/her functions while the investigation is being conducted;

### **Article 13**

22. By virtue of this article and related article 16, State parties must guarantee the right of any individual who alleges having been submitted 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, both at the criminal and administrative levels;
- 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 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.

**Article 14**

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

- The procedures in place for obtaining compensation for victims of torture and their families;
- 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 where compensation was ordered by the competent authorities and indications as to whether such decisions were implemented;
- The rehabilitation programmes that exist in the country for victims of torture.

**Article 15**

24. Under this provision the State must ensure that statements made as a result of torture will not be invoked 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 element of proof;
- Examples of cases in which such provisions were applied.

**Article 16**

25. This article imposes upon States, inter alia, the obligation to prevent 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 of whether acts of... *Are defined or otherwise dealt with in domestic law*
- Measures which may have been taken by the State party to prevent such acts; *information on preventive measures which may have been taken by the SP to prevent public officials from committing such acts*
- Living conditions in police detention centers and prisons, including those for women and minors. *Are they 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.