

APPENDICES



INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS*

**Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966
entry into force 23 March 1976, in accordance with Article 49**

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

* Source: www.ohchr.org

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;
(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
 - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

- (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
- (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
- (iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*),

public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.
2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.
2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.
3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.
4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.
2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.
2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.
2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:
 - (a) Twelve members shall constitute a quorum;
 - (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

- (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
 - (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
 3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
 4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.
 5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
 - (a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;
 - (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
 - (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;
 - (d) The Committee shall hold closed meetings when examining communications under this article;
 - (e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

- (f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
 - (g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;
 - (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:
 - (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
 - (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.
2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

- 1.
- (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;
 - (b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.
2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.
3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.
5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.
7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:
 - (a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;
 - (b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;
 - (c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;
 - (d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.
8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.
9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.
10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event

that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes. 3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

1. Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:
 - (a) Signatures, ratifications and accessions under article 48;
 - (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS*

**Adopted and opened for signature, ratification and accession by General
Assembly resolution 2200A (XXI) of 16 December 1966
entry into force 23 March 1976, in accordance with Article 9**

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

Have agreed as follows:

Article 1

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

Article 3

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

Article 4

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.
2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

* Source: www.ohchr.org

Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.
2. The Committee shall not consider any communication from an individual unless it has ascertained that:
 - (a) The same matter is not being examined under another procedure of international investigation or settlement;
 - (b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.
3. The Committee shall hold closed meetings when examining communications under the present Protocol.
4. The Committee shall forward its views to the State Party concerned and to the individual.

Article 6

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

Article 7

Pending the achievement of the objectives of resolution 1514(XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

Article 8

1. The present Protocol is open for signature by any State which has signed the Covenant.
2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 9

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into

force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 10

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 11

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 12

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.
2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

Article 13

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph I, of the Covenant of the following particulars:

- (a) Signatures, ratifications and accessions under article 8;
- (b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;
- (c) Denunciations under article 12.

Article 14

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT*

**Adopted and opened for signature, ratification and accession by General
Assembly resolution 39/46 of 10 December 1984
entry into force 26 June 1987, in accordance with article 27 (1)**

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

* Source: www.ohchr.org

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

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.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
 - (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
 - (b) When the alleged offender is a national of that State;
 - (c) When the victim is a national of that State if that State considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.
4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.
3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party shall keep under systematic 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 in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

PART II

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.
3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.
6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.
7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

- (a) Six members shall constitute a quorum;
 - (b) Decisions of the Committee shall be made by a majority vote of the members present.
3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.
 4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
 5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.
2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.
3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.
4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

Article 20

1. If the Committee receives reliable information which 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 co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.
3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.
4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, 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 made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure;
 - (a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;
 - (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
 - (c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;
 - (d) The Committee shall hold closed meetings when examining communications under this article;
 - (e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;
 - (f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
 - (g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;
 - (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

- (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.
2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.
3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.
5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:
 - (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
 - (b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.
6. The Committee shall hold closed meetings when examining communications under this article.
7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary General, unless the State Party has made a new declaration.

Article 23

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph 1 (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

PART III

Article 25

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary General of the United Nations.

Article 27

1. This Convention shall enter into force 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.
2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.
2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering an d voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.
2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.
3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a reservation.
3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of- the notification by the Secretary-General .
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.
3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions under articles 25 and 26;
- (b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;
- (c) Denunciations under article 31.

Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

**UNITED
NATIONS**

CCPR



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE

RULES OF PROCEDURE OF THE HUMAN RIGHTS COMMITTEE *

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CCPR/C/3/Rev.8
page 2

Note: The rules of procedure of the Human Rights Committee have been edited and renumbered consecutively. The following rules have been renumbered:

<i>New rule number</i>	<i>Old rule number</i>
70	69A
71	70
72	70A
73	71
74	72
75	73
76	74
77	75
78	76
79	77A
80	77B
81	77C
82	77D
83	77E
84	78
85	79
86	80
87	81
88	82
89	83
90	84
91	85
92	86
93	87
94	88
95	89
96	90
97	91
98	92
99	93
100	94
101	95
102	96
103	97
104	98

RULES OF PROCEDURE OF THE HUMAN RIGHTS COMMITTEE*

PART I. GENERAL RULES

I. SESSIONS

Rule 1

The Human Rights Committee (hereinafter referred to as “the Committee”) shall hold sessions as may be required for the satisfactory performance of its functions in accordance with the International Covenant on Civil and Political Rights (hereinafter referred to as “the Covenant”).

Rule 2

1. The Committee shall normally hold three regular sessions each year.
2. Regular sessions of the Committee shall be convened at dates decided by the Committee in consultation with the Secretary-General of the United Nations (hereinafter referred to as “the Secretary-General”), taking into account the calendar of conferences as approved by the General Assembly.

Rule 3

1. Special sessions of the Committee shall be convened by decision of the Committee. When the Committee is not in session, the Chairperson may convene special sessions in consultation with the other officers of the Committee. The Chairperson of the Committee shall also convene special sessions:
 - (a) At the request of a majority of the members of the Committee;
 - (b) At the request of a State party to the Covenant.
2. Special sessions shall be convened as soon as possible at a date fixed by the Chairperson in consultation with the Secretary-General and with the other officers of the Committee, taking into account the calendar of conferences as approved by the General Assembly.

* Provisional rules of procedure were initially adopted by the Committee at its first and second sessions and subsequently amended at its third, seventh and thirty-sixth sessions. At its 918th meeting, on 26 July 1989, the Committee decided to make its rules of procedure definitive, eliminating the term “provisional” from the title. The rules of procedure were subsequently amended at the forty-seventh, forty-ninth, fiftieth and fifty-ninth sessions. The current version of the rules was adopted at the Committee’s 1924th meeting during its seventy-first session.

CCPR/C/3/Rev.8
page 4

Rule 4

The Secretary-General shall notify the members of the Committee of the date and place of the first meeting of each session. Such notification shall be sent, in the case of a regular session, at least six weeks in advance and, in the case of a special session, at least 18 days in advance.

Rule 5

Sessions of the Committee shall normally be held at United Nations Headquarters or at the United Nations Office at Geneva. Another place for a session may be designated by the Committee in consultation with the Secretary-General.

II. AGENDA

Rule 6

The provisional agenda for each regular session shall be prepared by the Secretary-General in consultation with the Chairperson of the Committee, in conformity with the relevant provisions of the Covenant and of the Optional Protocol to the International Covenant on Civil and Political Rights (hereinafter referred to as “the Protocol”), and shall include:

- (a) Any item the inclusion of which has been ordered by the Committee at a previous session;
- (b) Any item proposed by the Chairperson of the Committee;
- (c) Any item proposed by a State party to the Covenant;
- (d) Any item proposed by a member of the Committee;
- (e) Any item proposed by the Secretary-General relating to functions of the Secretary-General under the Covenant, the Protocol or these rules.

Rule 7

The provisional agenda for a special session of the Committee shall consist only of those items which are proposed for consideration at that special session.

Rule 8

The first item on the provisional agenda for any session shall be the adoption of the agenda, except for the election of officers when required under rule 17 of these rules.

Rule 9

During a session, the Committee may revise the agenda and may, as appropriate, defer or delete items; only urgent and important items may be added to the agenda.

Rule 10

The provisional agenda and the basic documents relating to each item appearing thereon shall be transmitted to the members of the Committee by the Secretary-General, who shall endeavour to have the documents transmitted to the members at least six weeks prior to the opening of the session.

III. MEMBERS OF THE COMMITTEE

Rule 11

The members of the Committee shall be the 18 persons elected in accordance with articles 28 to 34 of the Covenant.

Rule 12

The term of office of the members of the Committee elected at the first election shall begin on 1 January 1977. The term of office of members of the Committee elected at subsequent elections shall begin on the day after the date of expiry of the term of office of the members of the Committee whom they replace.

Rule 13

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out the functions of member for any reason other than absence of a temporary character, the Chairperson of the Committee shall notify the Secretary-General, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairperson shall immediately notify the Secretary-General, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect. The resignation of a member of the Committee shall be notified by that member in writing directly to the Chairperson or to the Secretary-General and action shall be taken to declare the seat of that member vacant only after such notification has been received.

Rule 14

A vacancy declared in accordance with rule 13 of these rules shall be dealt with in accordance with article 34 of the Covenant.

Rule 15

Any member of the Committee elected to fill a vacancy declared in accordance with article 33 of the Covenant shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

CCPR/C/3/Rev.8
page 6

Rule 16

Before assuming duties as a member, each member of the Committee shall give the following solemn undertaking in open Committee:

“I solemnly undertake to discharge my duties as a member of the Human Rights Committee impartially and conscientiously.”

IV. OFFICERS

Rule 17

The Committee shall elect from among its members a Chairperson, three Vice-Chairpersons and a Rapporteur.

Rule 18

The officers of the Committee shall be elected for a term of two years. They shall be eligible for re-election. None of them, however, may hold office after ceasing to be a member of the Committee.

Rule 19

The Chairperson shall perform the functions conferred upon the Chairperson by the Covenant, the rules of procedure and the decisions of the Committee. In the exercise of those functions, the Chairperson shall remain under the authority of the Committee.

Rule 20

If during a session the Chairperson is unable to be present at a meeting or any part thereof, the Chairperson shall designate one of the Vice-Chairpersons to act as Chairperson.

Rule 21

A Vice-Chairperson acting as Chairperson shall have the same rights and duties as the Chairperson.

Rule 22

If any of the officers of the Committee ceases to serve or declares to be unable to continue serving as a member of the Committee or for any reason is no longer able to act as an officer, a new officer shall be elected for the unexpired term of the predecessor.

V. SECRETARIAT

Rule 23

1. The secretariat of the Committee and of such subsidiary bodies as may be established by the Committee (hereinafter referred to as “the secretariat”) shall be provided by the Secretary-General.

2. The Secretary-General shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the Covenant.

Rule 24

The Secretary-General or a representative of the Secretary-General shall attend all meetings of the Committee. Subject to rule 38 of these rules, the Secretary-General or the representative may make oral or written statements at meetings of the Committee or its subsidiary bodies.

Rule 25

The Secretary-General shall be responsible for all the necessary arrangements for meetings of the Committee and its subsidiary bodies.

Rule 26

The Secretary-General shall be responsible for informing the members of the Committee without delay of any questions which may be brought before it for consideration.

Rule 27

Before any proposal which involves expenditure is approved by the Committee or by any of its subsidiary bodies, the Secretary-General shall prepare and circulate to the members of the Committee or subsidiary body, as early as possible, an estimate of the cost involved in the proposal. It shall be the duty of the Chairperson to draw the attention of members to this estimate and to invite discussion on it when the proposal is considered by the Committee or subsidiary body.

VI. LANGUAGES

Rule 28

Arabic, Chinese, English, French, Russian and Spanish shall be the official languages, and Arabic, English, French, Russian and Spanish the working languages of the Committee.

CCPR/C/3/Rev.8
page 8

Rule 29

Interpretation shall be provided by the Secretariat of the United Nations. Speeches made in any of the working languages shall be interpreted into the other working languages. Speeches made in an official language shall be interpreted into the working languages.

Rule 30

Any speaker addressing the Committee and using a language other than one of the official languages shall normally provide for interpretation into one of the working languages. Interpretation into the other working languages may be based on the interpretation given in the first working language.

Rule 31

Summary records of the meetings of the Committee shall be drawn up in the working languages.

Rule 32

All formal decisions of the Committee shall be made available in the official languages. All other official documents of the Committee shall be issued in the working languages and any of them may, if the Committee so decides, be issued in all the official languages.

VII. PUBLIC AND PRIVATE MEETINGS

Rule 33

The meetings of the Committee and its subsidiary bodies shall be held in public unless the Committee decides otherwise or it appears from the relevant provisions of the Covenant or the Protocol that the meeting should be held in private. The adoption of concluding observations under article 40 shall take place in closed meetings.

Rule 34

At the close of each private meeting the Committee or its subsidiary body may issue a communiqué through the Secretary-General.

VIII. RECORDS

Rule 35

Summary records of the public and private meetings of the Committee and its subsidiary bodies shall be prepared by the Secretariat. They shall be distributed in provisional form as soon as possible to the members of the Committee and to any others participating in the meeting. All such participants may, within three working days after receipt of the provisional record of the meeting, submit corrections to the Secretariat. Any disagreement concerning such corrections shall be settled by the Chairperson of the Committee or the chairperson of the subsidiary body to

which the record relates or, in the case of continued disagreement, by decision of the Committee or of the subsidiary body.

Rule 36

1. The summary records of public meetings of the Committee in their final form shall be documents of general distribution unless, in exceptional circumstances, the Committee decides otherwise.

2. The summary records of private meetings shall be distributed to the members of the Committee and to other participants in the meetings. They may be made available to others upon decision of the Committee at such time and under such circumstances as the Committee may decide.

IX. CONDUCT OF BUSINESS

Rule 37

Twelve members of the Committee shall constitute a quorum.

Rule 38

The Chairperson shall declare the opening and closing of each meeting of the Committee, direct the discussion, ensure observance of these rules, accord the right to speak, put questions to the vote and announce decisions. The Chairperson, subject to these rules, shall have control over the proceedings of the Committee and over the maintenance of order at its meetings. The Chairperson may, in the course of the discussion of an item, propose to the Committee the limitation of the time to be allowed to speakers, the limitation of the number of times each speaker may speak on any question and the closure of the list of speakers. The Chairperson shall rule on points of order and shall have the power to propose adjournment or closure of the debate or adjournment or suspension of a meeting. Debate shall be confined to the question before the Committee, and the Chairperson may call a speaker to order if that speaker's remarks are not relevant to the subject under discussion.

Rule 39

During the discussion of any matter, a member may at any time raise a point of order, and the point of order shall immediately be decided by the Chairperson in accordance with the rules of procedure. Any appeal against the ruling of the Chairperson shall immediately be put to the vote, and the ruling of the Chairperson shall stand unless overruled by a majority of the members present. A member may not, in raising a point of order, speak on the substance of the matter under discussion.

Rule 40

During the discussion of any matter, a member may move the adjournment of the debate on the item under discussion. In addition to the proposer of the motion, one member may speak

CCPR/C/3/Rev.8
page 10

in favour of and one against the motion, after which the motion shall immediately be put to the vote.

Rule 41

The Committee may limit the time allowed to each speaker on any question. When debate is limited and a speaker exceeds his allotted time, the Chairperson shall call that speaker to order without delay.

Rule 42

When the debate on an item is concluded because there are no other speakers, the Chairperson shall declare the debate closed. Such closure shall have the same effect as closure by the consent of the Committee.

Rule 43

A member may at any time move the closure of the debate on the item under discussion, regardless of whether any other member or representative has signified a wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall immediately be put to the vote.

Rule 44

During the discussion of any matter, a member may move the suspension or the adjournment of the meeting. No discussion on such motions shall be permitted, and they shall immediately be put to the vote.

Rule 45

Subject to rule 39 of these rules, the following motions shall have precedence, in the following order, over all other proposals or motions before the meeting:

- (a) To suspend the meeting;
- (b) To adjourn the meeting;
- (c) To adjourn the debate on the item under discussion;
- (d) For the closure of the debate on the item under discussion.

Rule 46

Unless otherwise decided by the Committee, proposals and substantive amendments or motions submitted by members shall be introduced in writing and handed to the secretariat, and their consideration shall, if so requested by any member, be deferred until the next meeting on the following day.

Rule 47

Subject to rule 45 of these rules, any motion by a member calling for a decision on the competence of the Committee to adopt a proposal submitted to it shall be put to the vote immediately before a vote is taken on the proposal in question.

Rule 48

A motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that the motion has not been amended. A motion which has thus been withdrawn may be reintroduced by another member.

Rule 49

When a proposal has been adopted or rejected, it may not be reconsidered at the same session unless the Committee so decides. Permission to speak on a motion to reconsider shall be accorded only to two speakers in favour of the motion and two speakers opposing the motion, after which it shall immediately be put to the vote.

X. VOTING

Rule 50

Each member of the Committee shall have one vote.

Rule 51*

Except as otherwise provided in the Covenant or elsewhere in these rules, decisions of the Committee shall be made by a majority of the members present.

* The Committee decided, at its first session, that in a footnote to rule 51 of the provisional rules of procedure attention should be drawn to the following:

1. The members of the Committee generally expressed the view that its method of work normally should allow for attempts to reach decisions by consensus before voting, provided that the Covenant and the rules of procedure were observed and that such attempts did not unduly delay the work of the Committee.
2. Bearing in mind paragraph 1 above, the Chairperson at any meeting may, and at the request of any member shall, put the proposal to a vote.

CCPR/C/3/Rev.8
page 12

Rule 52

Subject to rule 58 of these rules, the Committee shall normally vote by show of hands, except that any member may request a roll-call, which shall then be taken in the alphabetical order of the names of the members of the Committee, beginning with the member whose name is drawn by lot by the Chairperson.

Rule 53

The vote of each member participating in a roll-call shall be inserted in the record.

Rule 54

After the voting has commenced, it shall not be interrupted unless a member raises a point of order in connection with the actual conduct of the voting. Brief statements by members consisting solely of explanations of their votes may be permitted by the Chairperson before the voting has commenced or after the voting has been completed.

Rule 55

Parts of a proposal shall be voted on separately if a member requests that the proposal be divided. Those parts of the proposal which have been approved shall then be put to the vote as a whole; if all the operative parts of a proposal have been rejected, the proposal shall be considered to have been rejected as a whole.

Rule 56

1. When an amendment to a proposal is moved, the amendment shall be voted on first. When two or more amendments to a proposal are moved, the Committee shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on until all the amendments have been put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon.

2. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

Rule 57

1. If two or more proposals relate to the same question, the Committee shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

2. The Committee may, after each vote on a proposal, decide whether to vote on the next proposal.

3. Any motions requiring that no decision be taken on the substance of such proposals shall, however, be considered as previous questions and shall be put to the vote before them.

Rule 58

Elections shall be held by secret ballot, unless the Committee decides otherwise in the case of an election to fill a place for which there is only one candidate.

Rule 59

1. When only one person or member is to be elected and no candidate obtains the required majority in the first ballot, a second ballot shall be taken, which shall be restricted to the two candidates who obtained the greatest number of votes.

2. If the second ballot is inconclusive and a majority vote of members present is required, a third ballot shall be taken in which votes may be cast for any eligible candidate. If the third ballot is inconclusive, the next ballot shall be restricted to the two candidates who obtained the greatest number of votes in the third ballot and so on, with unrestricted and restricted ballots alternating, until a person or member is elected.

3. If the second ballot is inconclusive and a two-thirds majority is required, the balloting shall be continued until one candidate secures the necessary two-thirds majority. In the next three ballots, votes may be cast for any eligible candidate. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the two candidates who obtained the greatest number of votes in the third unrestricted ballot, and the following three ballots shall be unrestricted, and so on until a person or member is elected.

Rule 60

When two or more elective places are to be filled at one time under the same conditions, those candidates obtaining the required majority in the first ballot shall be elected. If the number of candidates obtaining such majority is less than the number of persons or members to be elected, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot, whose number shall not be more than twice the number of places remaining to be filled; however, after the third inconclusive ballot, votes may be cast for any eligible candidate. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the candidates who obtained the greatest number of votes in the third of the unrestricted ballots, whose number shall not be more than twice the number of places remaining to be filled; the following three ballots shall be unrestricted, and so on until all the places have been filled.

Rule 61

If a vote is equally divided on a matter other than an election, the proposal shall be regarded as rejected.

XI. SUBSIDIARY BODIES

Rule 62

1. The Committee may, taking into account the provisions of the Covenant and the Protocol, set up such subcommittees and other ad hoc subsidiary bodies as it deems necessary for the performance of its functions, and define their composition and powers.

2. Subject to the provisions of the Covenant and the Protocol and unless the Committee decides otherwise, each subsidiary body shall elect its own officers and may adopt its own rules of procedure. Failing such rules, the present rules of procedure shall apply *mutatis mutandis*.

XII. ANNUAL REPORT OF THE COMMITTEE

Rule 63

As prescribed in article 45 of the Covenant, the Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities, including a summary of its activities under the Protocol as prescribed in article 6 thereof.

XIII. DISTRIBUTION OF REPORTS AND OTHER OFFICIAL DOCUMENTS OF THE COMMITTEE

Rule 64

1. Without prejudice to the provisions of rule 36 of these rules of procedure and subject to paragraphs 2 and 3 of the present rule, reports, formal decisions and all other official documents of the Committee and its subsidiary bodies shall be documents of general distribution unless the Committee decides otherwise.

2. All reports, formal decisions and other official documents of the Committee and its subsidiary bodies relating to articles 41 and 42 of the Covenant and to the Protocol shall be distributed by the secretariat to all members of the Committee, to the States parties concerned and, as may be decided by the Committee, to members of its subsidiary bodies and to others concerned.

3. Reports and additional information submitted by States parties pursuant to article 40 of the Covenant shall be documents of general distribution. The same applies to other information provided by a State party unless the State party concerned requests otherwise.

XIV. AMENDMENTS

Rule 65

These rules of procedure may be amended by a decision of the Committee, without prejudice to the relevant provisions of the Covenant and the Protocol.

PART II. RULES RELATING TO THE FUNCTIONS OF THE COMMITTEE

XV. REPORTS FROM STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Rule 66

1. The States parties to the Covenant shall submit reports on the measures they have adopted which give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the Covenant.

2. Requests for submission of a report under article 40, paragraph 1 (b), of the Covenant may be made in accordance with the periodicity decided by the Committee or at any other time the Committee may deem appropriate. In the case of an exceptional situation when the Committee is not in session, a request may be made through the Chairperson, acting in consultation with the members of the Committee.

3. Whenever the Committee requests States parties to submit reports under article 40, paragraph 1 (b), of the Covenant, it shall determine the dates by which such reports shall be submitted.

4. The Committee may, through the Secretary-General, inform the States parties of its wishes regarding the form and content of the reports to be submitted under article 40 of the Covenant.

Rule 67

1. The Secretary-General may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports of States members of those agencies as may fall within their field of competence.

2. The Committee may invite the specialized agencies to which the Secretary-General has transmitted parts of the reports to submit comments on those parts within such time limits as it may specify.

Rule 68

1. The Committee shall, through the Secretary-General, notify the States parties as early as possible of the opening date, duration and place of the session at which their respective reports will be examined. Representatives of the States parties may be present at the meetings of the Committee when their reports are examined. The Committee may also inform a State party from which it decides to seek further information that it may authorize its representative to be present at a specified meeting. Such a representative should be able to answer questions which may be put to that representative by the Committee and make statements on reports already submitted by the State party concerned, and may also submit additional information from that State party.

CCPR/C/3/Rev.8
page 16

2. If a State party has submitted a report under article 40, paragraph 1, of the Covenant, but fails to send any representative, in accordance with rule 68, paragraph 1, of these rules to the session at which it has been notified that its report will be examined, the Committee may, at its discretion, take one of the following courses:

(a) Notify the State party through the Secretary-General that at a specified session it intends to examine the report in accordance with rule 68, paragraph 2, and thereafter act in accordance with rule 71, paragraph 3, of these rules; or

(b) Proceed at the session originally specified to examine the report and thereafter make and submit to the State party its provisional concluding observations and determine the date on which the report shall be examined under rule 68 or the date on which a new periodic report shall be submitted under rule 66 of these rules.

3. Where the Committee acts under this rule, it shall so state in the annual report submitted under article 45 of the Covenant provided that, where it acts under paragraph 2 (b) above, the report shall not include the text of the provisional concluding observations.

Rule 69

1. At each session the Secretary-General shall notify the Committee of all cases of non-submission of reports or additional information requested under rules 66 and 71 of these rules. In such cases the Committee may transmit to the State party concerned, through the Secretary-General, a reminder concerning the submission of the report or additional information.

2. If, after the reminder referred to in paragraph 1 of this rule, the State party does not submit the report or additional information required under rules 66 and 71 of these rules, the Committee shall so state in the annual report which it submits to the General Assembly of the United Nations through the Economic and Social Council.

Rule 70

1. In cases where the Committee has been notified under rule 69, paragraph 1, of the failure of a State to submit under rule 66, paragraph 3, of these rules, any report under article 40, paragraph 1 (a) or (b), of the Covenant and has sent reminders to the State party, the Committee may, at its discretion, notify the State party through the Secretary-General that it intends, on a date or at a session specified in the notification, to examine in a private session the measures taken by the State party to give effect to the rights recognized in the Covenant and to proceed by adopting provisional concluding observations which will be submitted to the State party.

2. Where the Committee acts under paragraph 1 of this rule, it shall transmit to the State party, well in advance of the date or session specified, information in its possession which it considers appropriate as to the matters to be examined.

3. Taking into account any comments that may have been provided by the State party in response to the Committee's provisional concluding observations, the Committee may proceed to the adoption of final concluding observations, which shall be communicated to the State party, in accordance with rule 71, paragraph 3, of these rules, and made public.

4. Where the Committee acts under this rule, it shall proceed in accordance with rule 68, paragraph 3, and may set a date when it proceeds to act under rule 68, paragraph 1, of these rules.

Rule 71

1. When considering a report submitted by a State party under article 40 of the Covenant, the Committee shall first satisfy itself that the report provides all the information required under rule 66 of these rules.

2. If a report of a State party under article 40 of the Covenant, in the opinion of the Committee, does not contain sufficient information, the Committee may request that State to furnish the additional information which is required, indicating by what date the said information should be submitted.

3. On the basis of its examination of any report or information supplied by a State party, the Committee may make appropriate concluding observations which shall be communicated to the State party, together with notification of the date by which the next report under article 40 of the Covenant shall be submitted.

4. No member of the Committee shall participate in the examination of State party reports or the discussion and adoption of concluding observations if they involve the State party in respect of which he or she was elected to the Committee.

5. The Committee may request the State party to give priority to such aspects of its concluding observations as it may specify.

Rule 72

Where the Committee has specified, under rule 71, paragraph 5, of these rules, that priority should be given to certain aspects of its concluding observations on a State party's report, it shall establish a procedure for considering replies by the State party on those aspects and deciding what consequent action, including the date set for the next periodic report, may be appropriate.

Rule 73

The Committee shall communicate, through the Secretary-General, to States parties the general comments it has adopted under article 40, paragraph 4, of the Covenant.

CCPR/C/3/Rev.8
page 18

**XVI. PROCEDURE FOR THE CONSIDERATION OF
COMMUNICATIONS RECEIVED UNDER
ARTICLE 41 OF THE COVENANT**

Rule 74

1. A communication under article 41 of the Covenant may be referred to the Committee by either State party concerned by notice given in accordance with paragraph 1 (b) of that article.

2. The notice referred to in paragraph 1 of this rule shall contain or be accompanied by information regarding:

(a) Steps taken to seek adjustment of the matter in accordance with article 41, paragraphs 1 (a) and (b), of the Covenant, including the text of the initial communication and of any subsequent written explanations or statements by the States parties concerned which are pertinent to the matter;

(b) Steps taken to exhaust domestic remedies;

(c) Any other procedure of international investigation or settlement resorted to by the States parties concerned.

Rule 75

The Secretary-General shall maintain a permanent register of all communications received by the Committee under article 41 of the Covenant.

Rule 76

The Secretary-General shall inform the members of the Committee without delay of any notice given under rule 74 of these rules and shall transmit to them as soon as possible copies of the notice and relevant information.

Rule 77

1. The Committee shall examine communications under article 41 of the Covenant at closed meetings.

2. The Committee may, after consultation with the States parties concerned, issue communiqués, through the Secretary-General, for the use of the information media and the general public regarding the activities of the Committee at its closed meetings.

Rule 78

A communication shall not be considered by the Committee unless:

- (a) Both States parties concerned have made declarations under article 41, paragraph 1, of the Covenant that are applicable to the communication;
- (b) The time limit prescribed in article 41, paragraph 1 (b), of the Covenant has expired;
- (c) The Committee has ascertained that all available domestic remedies have been invoked and exhausted in the matter in conformity with the generally recognized principles of international law, or that the application of the remedies is unreasonably prolonged.

Rule 79

Subject to the provisions of rule 78 of these rules, the Committee shall proceed to make its good offices available to the States parties concerned with a view to a friendly resolution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the Covenant.

Rule 80

The Committee may, through the Secretary-General, request the States parties concerned, or either of them, to submit additional information or observations orally or in writing. The Committee shall indicate a time limit for the submission of such written information or observations.

Rule 81

1. The States parties concerned shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.
2. The Committee shall, through the Secretary-General, notify the States parties concerned as early as possible of the opening date, duration and place of the session at which the matter will be examined.
3. The procedure for making oral and/or written submissions shall be decided by the Committee, after consultation with the States parties concerned.

Rule 82

1. Within 12 months after the date on which the Committee received the notice referred to in rule 74 of these rules, the Committee shall adopt a report in accordance with article 41, paragraph 1 (h), of the Covenant.

CCPR/C/3/Rev.8
page 20

2. The provisions of paragraph 1 of rule 81 of these rules shall not apply to the deliberations of the Committee concerning the adoption of the report.
3. The Committee's report shall be communicated, through the Secretary-General, to the States parties concerned.

Rule 83

If a matter referred to the Committee in accordance with article 41 of the Covenant is not resolved to the satisfaction of the States parties concerned, the Committee may, with their prior consent, proceed to apply the procedure prescribed in article 42 of the Covenant.

XVII. PROCEDURE FOR THE CONSIDERATION OF COMMUNICATIONS RECEIVED UNDER THE OPTIONAL PROTOCOL

A. Transmission of communications to the Committee

Rule 84

1. The Secretary-General shall bring to the attention of the Committee, in accordance with the present rules, communications which are or appear to be submitted for consideration by the Committee under article 1 of the Optional Protocol.
2. The Secretary-General, when necessary, may request clarification from the author of a communication as to whether the author wishes to have the communication submitted to the Committee for consideration under the Optional Protocol. In case there is still doubt as to the wish of the author, the Committee shall be seized of the communication.
3. No communication shall be received by the Committee or included in a list under rule 85 if it concerns a State which is not a party to the Optional Protocol.

Rule 85

1. The Secretary-General shall prepare lists of the communications submitted to the Committee in accordance with rule 84 above, with a brief summary of their contents, and shall circulate such lists to the members of the Committee at regular intervals. The Secretary-General shall also maintain a permanent register of all such communications.
2. The full text of any communication brought to the attention of the Committee shall be made available to any member of the Committee upon request by that member.

Rule 86

1. The Secretary-General may request clarification from the author of a communication concerning the applicability of the Optional Protocol to his communication, in particular regarding:

- (a) The name, address, age and occupation of the author and the verification of the author's identity;
- (b) The name of the State party against which the communication is directed;
- (c) The object of the communication;
- (d) The provision or provisions of the Covenant alleged to have been violated;
- (e) The facts of the claim;
- (f) Steps taken by the author to exhaust domestic remedies;
- (g) The extent to which the same matter is being examined under another procedure of international investigation or settlement.

2. When requesting clarification or information, the Secretary-General shall indicate an appropriate time limit to the author of the communication with a view to avoiding undue delays in the procedure under the Optional Protocol.

3. The Committee may approve a questionnaire for the purpose of requesting the above-mentioned information from the author of the communication.

4. The request for clarification referred to in paragraph 1 of the present rule shall not preclude the inclusion of the communication in the list provided for in rule 85, paragraph 1, of these rules.

Rule 87

For each registered communication the Secretary-General shall as soon as possible prepare and circulate to the members of the Committee a summary of the relevant information obtained.

B. General provisions regarding the consideration of communications by the Committee or its subsidiary bodies

Rule 88

Meetings of the Committee or its subsidiary bodies during which communications under the Optional Protocol will be examined shall be closed. Meetings during which the Committee may consider general issues such as procedures for the application of the Optional Protocol may be public if the Committee so decides.

CCPR/C/3/Rev.8
page 22

Rule 89

The Committee may issue communiqués, through the Secretary-General, for the use of the information media and the general public regarding the activities of the Committee at its closed meetings.

Rule 90

1. A member shall not take part in the examination of a communication by the Committee:

(a) If the State party in respect of which he or she was elected to the Committee is a party to the case;

(b) If the member has any personal interest in the case; or

(c) If the member has participated in any capacity in the making of any decision on the case covered by the communication.

2. Any question which may arise under paragraph 1 above shall be decided by the Committee.

Rule 91

If, for any reason, a member considers that he or she should not take part or continue to take part in the examination of a communication, the member shall inform the Chairperson of his or her withdrawal.

Rule 92

The Committee may, prior to forwarding its Views on the communication to the State party concerned, inform that State of its Views as to whether interim measures may be desirable to avoid irreparable damage to the victim of the alleged violation. In doing so, the Committee shall inform the State party concerned that such expression of its Views on interim measures does not imply a determination on the merits of the communication.

C. Procedure to determine admissibility

Rule 93

1. The Committee shall decide as soon as possible and in accordance with the following rules whether the communication is admissible or is inadmissible under the Optional Protocol.

2. A working group established under rule 95, paragraph 1, of these rules may also declare a communication admissible when it is composed of five members and all the members so decide.

3. A working group established under rule 95, paragraph 1, of these rules of procedure may decide to declare a communication inadmissible, when it is composed of at least five members and all the members so agree. The decision will be transmitted to the Committee plenary, which may confirm it without formal discussion. If any Committee member requests a plenary discussion, the plenary will examine the communication and take a decision.

Rule 94

1. Communications shall be dealt with in the order in which they are received by the secretariat, unless the Committee or a working group established under rule 95, paragraph 1, of these rules decides otherwise.

2. Two or more communications may be dealt with jointly if deemed appropriate by the Committee or a working group established under rule 95, paragraph 1, of these rules.

Rule 95

1. The Committee may establish one or more working groups to make recommendations to the Committee regarding the fulfilment of the conditions of admissibility laid down in articles 1, 2, 3 and 5, paragraph 2, of the Optional Protocol.

2. The rules of procedure of the Committee shall apply as far as possible to the meetings of the working group.

3. The Committee may designate special rapporteurs from among its members to assist in the handling of communications.

Rule 96

With a view to reaching a decision on the admissibility of a communication, the Committee, or a working group established under rule 95, paragraph 1, of these rules shall ascertain:

(a) That the communication is not anonymous and that it emanates from an individual, or individuals, subject to the jurisdiction of a State party to the Optional Protocol;

(b) That the individual claims, in a manner sufficiently substantiated, to be a victim of a violation by that State party of any of the rights set forth in the Covenant. Normally, the communication should be submitted by the individual personally or by that individual's representative; a communication submitted on behalf of an alleged victim may, however, be accepted when it appears that the individual in question is unable to submit the communication personally;

(c) That the communication does not constitute an abuse of the right of submission;

CCPR/C/3/Rev.8
page 24

- (d) That the communication is not incompatible with the provisions of the Covenant;
- (e) That the same matter is not being examined under another procedure of international investigation or settlement;
- (f) That the individual has exhausted all available domestic remedies.

Rule 97

1. As soon as possible after the communication has been received, the Committee, a working group established under rule 95, paragraph 1, of these rules or a special rapporteur designated under rule 95, paragraph 3, shall request the State party concerned to submit a written reply to the communication.

2. Within six months the State party concerned shall submit to the Committee written explanations or statements that shall relate both to the communication's admissibility and its merits as well as to any remedy that may have been provided in the matter, unless the Committee, working group or special rapporteur has decided, because of the exceptional nature of the case, to request a written reply that relates only to the question of admissibility. A State party that has been requested to submit a written reply that relates only to the question of admissibility is not precluded thereby from submitting, within six months of the request, a written reply that shall relate both to the communication's admissibility and its merits.

3. A State party that has received a request for a written reply under paragraph 1 both on admissibility and on the merits of the communication may apply in writing, within two months, for the communication to be rejected as inadmissible, setting out the grounds for such inadmissibility. Submission of such an application shall not extend the period of six months given to the State party to submit its written reply to the communication, unless the Committee, a working group established under rule 95, paragraph 1, of these rules or a special rapporteur designated under rule 95, paragraph 3, decides to extend the time for submission of the reply, because of the special circumstances of the case, until the Committee has ruled on the question of admissibility.

4. The Committee, a working group established under rule 95, paragraph 1, of these rules or a special rapporteur designated under rule 95, paragraph 3, may request the State party or the author of the communication to submit, within specified time limits, additional written information or observations relevant to the question of admissibility of the communication or its merits.

5. A request addressed to a State party under paragraph 1 of this rule shall include a statement of the fact that such a request does not imply that any decision has been reached on the question of admissibility.

6. Within fixed time limits, each party may be afforded an opportunity to comment on submissions made by the other party pursuant to this rule.

Rule 98

1. Where the Committee decides that a communication is inadmissible under the Optional Protocol it shall as soon as possible communicate its decision, through the Secretary-General, to the author of the communication and, where the communication has been transmitted to a State party concerned, to that State party.

2. If the Committee has declared a communication inadmissible under article 5, paragraph 2, of the Optional Protocol, this decision may be reviewed at a later date by the Committee upon a written request by or on behalf of the individual concerned containing information to the effect that the reasons for inadmissibility referred to in article 5, paragraph 2, no longer apply.

D. Procedure for the consideration of communications on the merits

Rule 99

1. In those cases in which the issue of admissibility is decided before receiving the State party's reply on the merits, if the Committee or a working group established under rule 95, paragraph 1, of these rules decides that the communication is admissible, that decision and all other relevant information shall be submitted, through the Secretary-General, to the State party concerned. The author of the communication shall also be informed, through the Secretary-General, of the decision.

2. Within six months, the State party concerned shall submit to the Committee written explanations or statements clarifying the matter under consideration and the remedy, if any, that may have been taken by that State party.

3. Any explanations or statements submitted by a State party pursuant to this rule shall be communicated, through the Secretary-General, to the author of the communication, who may submit any additional written information or observations within fixed time limits.

4. Upon consideration of the merits, the Committee may review a decision that a communication is admissible in the light of any explanations or statements submitted by the State party pursuant to this rule.

Rule 100

1. In those cases in which the parties have submitted information relating both to the questions of admissibility and the merits, or in which a decision on admissibility has already been taken and the parties have submitted information on the merits, the Committee shall consider the communication in the light of all written information made available to it by the individual and the State party concerned and shall formulate its Views thereon. Prior thereto, the Committee may refer the communication to a working group established under rule 95, paragraph 1, of these rules or to a special rapporteur designated under rule 95, paragraph 3, to make recommendations to the Committee.

CCPR/C/3/Rev.8
page 26

2. The Committee shall not decide on the merits of the communication without having considered the applicability of all the admissibility grounds referred to in the Optional Protocol.

3. The Views of the Committee shall be communicated to the individual and to the State party concerned.

Rule 101

1. The Committee shall designate a Special Rapporteur for follow-up on Views adopted under article 5, paragraph 4, of the Optional Protocol, for the purpose of ascertaining the measures taken by States parties to give effect to the Committee's Views.

2. The Special Rapporteur may make such contacts and take such action as appropriate for the due performance of the follow-up mandate. The Special Rapporteur shall make such recommendations for further action by the Committee as may be necessary.

3. The Special Rapporteur shall regularly report to the Committee on follow-up activities.

4. The Committee shall include information on follow-up activities in its annual report.

E. Rules concerning confidentiality

Rule 102

1. Communications under the Optional Protocol shall be examined by the Committee and a working group established pursuant to rule 95, paragraph 1, of these rules in closed session. Oral deliberations and summary records shall remain confidential.

2. All working documents issued for the Committee, the Working Group established pursuant to rule 95, paragraph 1, or the Special Rapporteur designated pursuant to rule 95, paragraph 3, by the secretariat, including summaries of communications prepared prior to registration, the list of summaries of communications and all drafts prepared for the Committee, its Working Group established pursuant to rule 95, paragraph 1, or the Special Rapporteur designated pursuant to rule 95, paragraph 3, shall remain confidential, unless the Committee decides otherwise.

3. Paragraph 1 above shall not affect the right of the author of a communication or the State party concerned to make public any submissions or information bearing on the proceedings. However, the Committee, the Working Group established pursuant to rule 95, paragraph 1, or the Special Rapporteur designated pursuant to rule 95, paragraph 3, may, as deemed appropriate, request the author of a communication or the State party concerned to keep confidential the whole or part of any such submissions or information.

4. When a decision has been taken on the confidentiality pursuant to paragraph 3 above, the Committee, the Working Group established pursuant to rule 95, paragraph 1, or the

Special Rapporteur designated pursuant to rule 95, paragraph 3, may decide that all or part of the submissions and other information, such as the identity of the author, may remain confidential after the Committee's decision on inadmissibility, the merits or discontinuance has been adopted.

5. Subject to paragraph 4 above, the Committee's decisions on inadmissibility, the merits and discontinuance shall be made public. The decisions of the Committee or the Special Rapporteur designated pursuant to rule 95, paragraph 3, under rule 92 of these rules shall be made public. No advance copies of any decision by the Committee shall be issued.

6. The secretariat is responsible for the distribution of the Committee's final decisions. It shall not be responsible for the reproduction and the distribution of submissions concerning communications.

Rule 103

Information furnished by the parties within the framework of follow-up to the Committee's Views is not subject to confidentiality, unless the Committee decides otherwise. Decisions of the Committee relating to follow-up activities are equally not subject to confidentiality, unless the Committee decides otherwise.

F. Individual opinions

Rule 104

Any member of the Committee who has participated in a decision may request that his or her individual opinion be appended to the Committee's Views or decision.

UNITED
NATIONS

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

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COMMITTEE AGAINST TORTURE

RULES OF PROCEDURE*

CONTENTS

	<u>Page</u>
PART ONE. GENERAL RULES	8
I. SESSIONS	8
<u>Rule</u>	
1. Meetings of the Committee	8
2. Regular sessions	8
3. Special sessions	8
4. Place of sessions	9
5. Notification of opening date of sessions	9
II. AGENDA	9
<u>Rule</u>	
6. Provisional agenda for regular session	9
7. Provisional agenda for special sessions	9
8. Adoption of the agenda	10
9. Revision of the agenda	10
10. Transmission of the provisional agenda and basic documents	10

* Source: www.ohchr.org. The Rules of Procedure of the Treaty Bodies are periodically updated. Please see the website of the OHCHR for the latest document.

CAT/C/3/Rev.4
page 2

CONTENTS (continued)

	<u>Page</u>
III. MEMBERS OF THE COMMITTEE	10
<u>Rule</u>	
11. Members	10
12. Beginning of term of office	10
13. Filling of casual vacancies	11
14. Solemn declaration	11
IV. OFFICERS	11
<u>Rule</u>	
15. Elections	11
16. Term of office	12
17. Position of Chairman in relation to the Committee	12
18. Acting Chairman	12
19. Powers and duties of the Acting Chairman	12
20. Replacement of officers	13
V. SECRETARIAT	13
<u>Rule</u>	
21. Duties of the Secretary-General	13
22. Statements	13
23. Servicing of meetings	13
24. Keeping the members informed	13
25. Financial implications of proposals	14
VI. LANGUAGES	14
<u>Rule</u>	
26. Official and working languages	14
27. Interpretation from a working language	14
28. Interpretation from other languages	14
29. Languages of records	14
30. Languages of formal decisions and official documents	15

CONTENTS (continued)

	<u>Page</u>
VII. PUBLIC AND PRIVATE MEETINGS	15
<u>Rule</u>	
31. Public and private meetings	15
32. Issue of communiqués concerning private meetings	15
VIII. RECORDS	15
<u>Rule</u>	
33. Correction of summary records	15
34. Distribution of summary records	16
IX. DISTRIBUTION OF REPORTS AND OTHER OFFICIAL DOCUMENTS OF THE COMMITTEE	16
<u>Rule</u>	
35. Distribution of official documents	16
X. CONDUCT OF BUSINESS	16
<u>Rule</u>	
36. Quorum	16
37. Powers of the Chairman	17
38. Points of order	17
39. Time limit on statements	17
40. List of speakers	17
41. Suspension or adjournment of meetings	18
42. Adjournment of debate	18
43. Closure of debate	18
44. Order of motions	18
45. Submission of proposals	19
46. Decisions on competence	19
47. Withdrawal of motions	19
48. Reconsideration of proposals	19

CAT/C/3/Rev.4
page 4

CONTENTS (continued)

	<u>Page</u>
XI. VOTING	19
<u>Rule</u>	
49. Voting rights	19
50. Adoption of decisions	20
51. Equally divided votes	20
52. Method of voting	20
53. Roll-call votes	20
54. Conduct during voting and explanation of votes	21
55. Division of proposals	21
56. Order of voting on amendments	21
57. Order of voting on proposals	21
XII. ELECTIONS	22
<u>Rule</u>	
58. Method of elections	22
59. Conduct of elections when only one elective place is to be filled	22
60. Conduct of elections when two or more elective places are to be filled	22
XIII. SUBSIDIARY BODIES	23
<u>Rule</u>	
61. Establishment of subsidiary bodies	23
XIV. INFORMATION AND DOCUMENTATION	23
<u>Rule</u>	
62. Submission of information, documentation and written statements	23
XV. ANNUAL REPORT OF THE COMMITTEE	23
<u>Rule</u>	
63. Annual report	23

CONTENTS (continued)

	<u>Page</u>
PART TWO. RULES RELATING TO THE FUNCTIONS OF THE COMMITTEE	24
XVI. REPORTS FROM STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION	24
<u>Rules</u>	
64. Submission of reports	24
65. Non-submission of reports	24
66. Attendance by States parties at examination of reports	25
67. Request for additional reports	25
68. Conclusions and recommendations by the Committee	25
XVII. PROCEEDINGS UNDER ARTICLE 20 OF THE CONVENTION	26
<u>Rule</u>	
69. Transmission of information to the Committee	26
70. Register of information submitted	26
71. Summary of the information	26
72. Confidentiality of documents and proceedings	27
73. Meetings	27
74. Issue of communiqués concerning closed meetings	27
75. Preliminary consideration of information by the Committee	27
76. Examination of the information	28
77. Documentation from United Nations bodies and specialized agencies	28
78. Establishment of an inquiry	28
79. Cooperation of the State party concerned	29
80. Visiting mission	29
81. Hearings in connection with the inquiry	29
82. Assistance during the inquiry	30
83. Transmission of findings, comments or suggestions	30
84. Summary account of the results of the proceedings	30

CAT/C/3/Rev.4
page 6

CONTENTS (continued)

		<u>Page</u>
XVIII.	PROCEDURE FOR THE CONSIDERATION OF COMMUNICATIONS RECEIVED UNDER ARTICLE 21 OF THE CONVENTION	31
	<u>Rule</u>	
	85. Declarations by States parties	31
	86. Notification by the States parties concerned	31
	87. Register of communications	32
	88. Information to the members of the Committee	32
	89. Meetings	32
	90. Issue of communiqués concerning closed meetings	32
	91. Requirements for the consideration of communications	32
	92. Good offices	33
	93. Request for information	33
	94. Attendance by the States parties concerned	33
	95. Report of the Committee	33
XIX.	PROCEDURE FOR THE CONSIDERATION OF COMMUNICATIONS RECEIVED UNDER ARTICLE 22 OF THE CONVENTION	34
	A. General provisions	34
	<u>Rule</u>	
	96. Declarations by States parties	34
	97. Transmission of complaints	34
	98. Registration of complaints; Rapporteur for new complaints and interim measures	34
	99. Request for clarification or additional information	35
	100. Summary of the information	36
	101. Meetings and hearings	36
	102. Issue of communiqués concerning closed meetings	36
	103. Obligatory non-participation of a member in the examination of a complaint	36
	104. Optional non-participation of a member in the examination of a complaint	37

CONTENTS (continued)

	<u>Page</u>
B. Procedure for determining admissibility of complaints	37
<u>Rule</u>	
105. Method of dealing with complaints	37
106. Establishment of a working group and designation of special rapporteurs for specific complaints	37
107. Conditions for admissibility of complaints	38
108. Interim measures	38
109. Additional information, clarifications and observations	39
110. Inadmissible complaints	40
C. Consideration of the merits	41
<u>Rule</u>	
111. Method of dealing with admissible complaints; oral hearings	41
112. Findings of the Committee; decisions on the merits	41
113. Individual opinions	42
114. Follow-up procedure	42
115. Summaries in the Committee's annual report and inclusion of texts of final decisions	43

CAT/C/3/Rev.4
page 8

PART ONE. GENERAL RULES

I. SESSIONS

Meetings of the Committee

Rule 1

The Committee against Torture (hereinafter referred to as “the Committee”) shall hold meetings as may be required for the satisfactory performance of its functions in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”).

Regular sessions

Rule 2

1. The Committee shall normally hold two regular sessions each year.
2. Regular sessions of the Committee shall be convened at dates decided by the Committee in consultation with the Secretary-General of the United Nations (hereinafter referred to as “the Secretary-General”), taking into account the calendar of conferences as approved by the General Assembly.

Special sessions

Rule 3

1. Special sessions of the Committee shall be convened by decision of the Committee. When the Committee is not in session, the Chairman may convene special sessions of the Committee in consultation with the other officers of the Committee. The Chairman of the Committee shall also convene special sessions:
 - (a) At the request of a majority of the members of the Committee;
 - (b) At the request of a State party to the Convention.
2. Special sessions shall be convened as soon as possible at a date fixed by the Chairman in consultation with the Secretary-General and with the other officers of the Committee, taking into account the calendar of conferences as approved by the General Assembly.

Place of sessions

Rule 4

Sessions of the Committee shall normally be held at the United Nations Office at Geneva. Another place for a session may be designated by the Committee in consultation with the Secretary-General, taking into account the relevant rules of the United Nations.

Notification of opening date of sessions

Rule 5

The Secretary-General shall notify the members of the Committee of the date and place of the first meeting of each session. Such notifications shall be sent, in the case of regular sessions, at least six weeks in advance, and in the case of a special session, at least three weeks in advance, of the first meeting.

II. AGENDA

Provisional agenda for regular sessions

Rule 6

The provisional agenda of each regular session shall be prepared by the Secretary-General in consultation with the Chairman of the Committee, in conformity with the relevant provisions of the Convention, and shall include:

- (a) Any item decided upon by the Committee at a previous session;
- (b) Any item proposed by the Chairman of the Committee;
- (c) Any item proposed by a State party to the Convention;
- (d) Any item proposed by a member of the Committee;
- (e) Any item proposed by the Secretary-General relating to his functions under the Convention or these Rules.

Provisional agenda for special sessions

Rule 7

The provisional agenda for a special session of the Committee shall consist only of those items which are proposed for consideration at that special session.

CAT/C/3/Rev.4
page 10

Adoption of the agenda

Rule 8

The first item on the provisional agenda of any session shall be the adoption of the agenda, except for the election of the officers when required under rule 15.

Revision of the agenda

Rule 9

During a session, the Committee may revise the agenda and may, as appropriate, defer or delete items; only urgent and important items may be added to the agenda.

Transmission of the provisional agenda and basic documents

Rule 10

The provisional agenda and basic documents relating to each item appearing thereon shall be transmitted to the members of the Committee by the Secretary-General as early as possible. The provisional agenda of a special session shall be transmitted to the members of the Committee by the Secretary-General simultaneously with the notification of the meeting under rule 5.

III. MEMBERS OF THE COMMITTEE

Members

Rule 11

Members of the Committee shall be the 10 experts elected in accordance with article 17 of the Convention.

Beginning of term of office

Rule 12

1. The term of office of the members of the Committee elected at the first election shall begin on 1 January 1988. The term of office of members elected at subsequent elections shall begin on the day after the date of expiry of the term of office of the members whom they replace.
2. The Chairperson, members of the Bureau and rapporteurs may continue performing the duties assigned to them until one day before the first meeting of the Committee, composed of its new members, at which it elects its officers.

Filling of casual vacancies

Rule 13

1. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the Secretary-General shall immediately declare the seat of that member to be vacant and shall request the State party whose expert has ceased to function as a member of the Committee to appoint another expert from among its nationals within two months, if possible, to serve for the remainder of his predecessor's term.
2. The name and the curriculum vitae of the expert so appointed shall be transmitted by the Secretary-General to the States parties for their approval. The approval shall be considered given unless half or more of the States parties respond negatively within six weeks after having been informed by the Secretary-General of the proposed appointment to fill the vacancy.
3. Except in the case of a vacancy arising from a member's death or disability, the Secretary-General shall act in accordance with the provisions of paragraphs 1 and 2 of the present rule only after receiving, from the member concerned, written notification of his decision to cease to function as a member of the Committee.

Solemn declaration

Rule 14

Before assuming his duties after his first election, each member of the Committee shall make the following solemn declaration in open Committee:

"I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee against Torture honourably, faithfully, impartially and conscientiously."

IV. OFFICERS

Elections

Rule 15

The Committee shall elect from among its members a Chairman, three Vice-Chairmen and a Rapporteur.

CAT/C/3/Rev.4
page 12

Term of office

Rule 16

Subject to the provisions of rule 12 regarding the Chairperson, members of the Bureau and Rapporteurs, the officers of the Committee shall be elected for a term of two years. They shall be eligible for re-election. None of them, however, may hold office if he or she ceases to be a member of the Committee.

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.

Acting Chairman

Rule 18

1. If during a session the Chairman is unable to be present at a meeting or any part thereof, he shall designate one of the Vice-Chairmen to act in his place.
2. In the event of the absence or temporary disability of the Chairman, one of the Vice-Chairmen shall serve as Chairman, in the order of precedence determined by their seniority as members of the Committee; where they have the same seniority, the order of seniority in age shall be followed.
3. If the Chairman ceases to be a member of the Committee in the period between sessions or is in any of the situations referred to in rule 20, the Acting Chairman shall exercise this function until the beginning of the next ordinary or special session.

Powers and duties of the Acting Chairman

Rule 19

A Vice-Chairman acting as Chairman shall have the same powers and duties as the Chairman.

Replacement of officers

Rule 20

If any of the officers of the Committee ceases to serve or declares his inability to continue serving as a member of the Committee or for any reason is no longer able to act as an officer, a new officer shall be elected for the unexpired term of his predecessor.

V. SECRETARIAT

Duties of the Secretary-General

Rule 21

1. Subject to the fulfilment of the financial obligations undertaken by States parties in accordance with article 18, paragraph 5, of the Convention, the secretariat of the Committee and of such subsidiary bodies as may be established by the Committee (hereinafter referred to as “the secretariat”) shall be provided by the Secretary-General.

2. Subject to the fulfilment of the requirements referred to in paragraph 1 of the present rule, the Secretary-General shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the Convention.

Statements

Rule 22

The Secretary-General or his representative shall attend all meetings of the Committee. Subject to rule 37 of these rules, he or his representative may make oral or written statements at meetings of the Committee or its subsidiary bodies.

Servicing of meetings

Rule 23

The Secretary-General shall be responsible for all the necessary arrangements for meetings of the Committee and its subsidiary bodies.

Keeping the members informed

Rule 24

The Secretary-General shall be responsible for keeping the members of the Committee informed of any questions which may be brought before it for consideration.

CAT/C/3/Rev.4
page 14

Financial implications of proposals

Rule 25

Before any proposal which involves expenditures is approved by the Committee or by any of its subsidiary bodies, the Secretary-General shall prepare and circulate to its members, as early as possible, an estimate of the cost involved in the proposal. It shall be the duty of the Chairman to draw the attention of members to this estimate and to invite discussions on it when the proposal is considered by the Committee or by a subsidiary body.

VI. LANGUAGES

Official and working languages

Rule 26

English, French, Russian and Spanish shall be the official and the working languages of the Committee.

Interpretation from a working language

Rule 27

Speeches made in any of the working languages shall be interpreted into the other working languages.

Interpretation from other languages

Rule 28

Any speaker addressing the Committee and using a language other than one of the working languages shall normally provide for interpretation into one of the working languages. Interpretation into the other working languages by interpreters of the Secretariat may be based on the interpretation given in the first working language.

Languages of records

Rule 29

Summary records of meetings of the Committee shall be drawn up in the official languages.

Languages of formal decisions and official documents

Rule 30

All formal decisions and official documents of the Committee shall be issued in the official languages.

VII. PUBLIC AND PRIVATE MEETINGS

Public and private meetings

Rule 31

The meetings of the Committee and its subsidiary bodies shall be held in public, unless the Committee decides otherwise or it appears from the relevant provisions of the Convention that the meeting should be held in private.

Issue of communiqués concerning private meetings

Rule 32

At the close of each private meeting, the Committee or its subsidiary body may issue a communiqué, through the Secretary-General, for the use of the information media and the general public regarding the activities of the Committee at its closed meetings.

VIII. RECORDS

Correction of summary records

Rule 33

Summary records of the public and private meetings of the Committee and its subsidiary bodies shall be prepared by the Secretariat. They shall be distributed as soon as possible to the members of the Committee and to any others participating in the meetings. All such participants may, within three working days of the receipt of the records of the meetings, submit corrections to the Secretariat in the languages in which the records have been issued. Corrections to the records of the meetings shall be consolidated in a single corrigendum to be issued after the end of the session concerned. Any disagreement concerning such corrections shall be decided by the Chairman of the Committee or the Chairman of the subsidiary body to which the record relates or, in case of continued disagreement, by decision of the Committee or of the subsidiary body.

CAT/C/3/Rev.4
page 16

Distribution of summary records

Rule 34

1. The summary records of public meetings shall be documents for general distribution.
2. The summary records of private meetings shall be distributed to the members of the Committee and to other participants in the meetings. They may be made available to others upon decision of the Committee at such time and under such conditions as the Committee may decide.

IX. DISTRIBUTION OF REPORTS AND OTHER OFFICIAL DOCUMENTS OF THE COMMITTEE

Distribution of official documents

Rule 35

1. Without prejudice to the provisions of rule 34 of these rules of procedure and subject to paragraphs 2 and 3 of the present rule, reports, formal decisions and all other official documents of the Committee and its subsidiary bodies shall be documents for general distribution, unless the Committee decides otherwise.
2. Reports, formal decisions and other official documents of the Committee and its subsidiary bodies relating to articles 20, 21 and 22 of the Convention shall be distributed by the secretariat to all members of the Committee, to the States parties concerned and, as may be decided by the Committee, to members of its subsidiary bodies and to others concerned.
3. Reports and additional information submitted by States parties under article 19 of the Convention shall be documents for general distribution, unless the State party concerned requests otherwise.

X. CONDUCT OF BUSINESS

Quorum

Rule 36

Six members of the Committee shall constitute a quorum.

Powers of the Chairman

Rule 37

The Chairman shall declare the opening and closing of each meeting of the Committee, direct the discussion, ensure observance of these rules, accord the right to speak, put questions to the vote and announce decisions. The Chairman, subject to these rules, shall have control over the proceedings of the Committee and over the maintenance of order at its meetings. The Chairman may, in the course of the discussion of an item, propose to the Committee the limitation of the time to be allowed to speakers, the limitation of the number of times each speaker may speak on any question and the closure of the list of speakers. He shall rule on points of order. He shall also have the power to propose adjournment or closure of the debate or adjournment or suspension of a meeting. Debate shall be confined to the question before the Committee, and the Chairman may call a speaker to order if his remarks are not relevant to the subject under discussion.

Points of order

Rule 38

During the discussion of any matter, a member may, at any time, raise a point of order, and such point of order shall immediately be decided upon by the Chairman in accordance with the rules of procedure. Any appeal against the ruling of the Chairman shall immediately be put to the vote, and the ruling of the Chairman shall stand unless overruled by a majority of the members present. A member raising a point of order may not speak on the substance of the matter under discussion.

Time limit on statements

Rule 39

The Committee may limit the time allowed to each speaker on any question. When debate is limited and a speaker exceeds his allotted time, the Chairman shall call him to order without delay.

List of speakers

Rule 40

During the course of a debate, the Chairman may announce the list of speakers and, with the consent of the Committee, declare the list closed. The Chairman may, however, accord the

CAT/C/3/Rev.4
page 18

right of reply to any member or representative if a speech delivered after he has declared the list closed makes this desirable. When the debate on an item is concluded because there are no other speakers, the Chairman shall declare the debate closed. Such closure shall have the same effect as closure by the consent of the Committee.

Suspension or adjournment of meetings

Rule 41

During the discussion of any matter, a member may move the suspension or the adjournment of the meeting. No discussion on such motions shall be permitted, and they shall immediately be put to the vote.

Adjournment of debate

Rule 42

During the discussion of any matter, a member may move the adjournment of the debate on the item under discussion. In addition to the proposer of the motion, one member may speak in favour of and one against the motion, after which the motion shall immediately be put to the vote.

Closure of debate

Rule 43

A member may, at any time, move the closure of the debate on the item under discussion, whether or not any other member has signified his wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall immediately be put to the vote.

Order of motions

Rule 44

Subject to rule 38, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

- (a) To suspend the meeting;
- (b) To adjourn the meeting;

- (c) To adjourn the debate on the item under discussion;
- (d) For the closure of the debate on the item under discussion.

Submission of proposals

Rule 45

Unless otherwise decided by the Committee, proposals and substantive amendments or motions submitted by members shall be introduced in writing and handed to the secretariat, and their consideration shall, if so requested by any member, be deferred until the next meeting on a following day.

Decisions on competence

Rule 46

Subject to rule 44, any motion by a member calling for a decision on the competence of the Committee to adopt a proposal submitted to it shall be put to the vote immediately before a vote is taken on the proposal in question.

Withdrawal of motions

Rule 47

A motion may be withdrawn by the member who proposed it at any time before voting on it has commenced, provided that the motion has not been amended. A motion which has thus been withdrawn may be reintroduced by any member.

Reconsideration of proposals

Rule 48

When a proposal has been adopted or rejected, it may not be reconsidered at the same session unless the Committee so decides. Permission to speak on a motion to reconsider shall be accorded only to two speakers in favour of the motion and to two speakers opposing the motion, after which it shall be immediately put to the vote.

XI. VOTING

Voting rights

Rule 49

Each member of the Committee shall have one vote.

CAT/C/3/Rev.4
page 20

Adoption of decisions

Rule 50^a

Decisions of the Committee shall be made by a majority vote of the members present.

Equally divided votes

Rule 51

If a vote is equally divided on matters other than elections, the proposal shall be regarded as rejected.

Method of voting

Rule 52

Subject to rule 58 of these rules, the Committee shall normally vote by show of hands, except that any member may request a roll-call, which shall then be taken in the alphabetical order of the names of the members of the Committee, beginning with the member whose name is drawn by lot by the Chairman.

Roll-call votes

Rule 53

The vote of each member participating in any roll-call shall be inserted in the record.

^a The Committee decided, at its first session, that in a footnote to rule 50 of the rules of procedure attention should be drawn to the following:

1. The members of the Committee generally expressed the view that its method of work normally should allow for attempts to reach decisions by consensus before voting, provided that the Convention and the rules of procedure were observed and that such attempts did not unduly delay the work of the Committee.
2. Bearing in mind paragraph 1 above, the Chairman at any meeting may, and at the request of any member shall, put the proposal to a vote.

Conduct during voting and explanation of votes

Rule 54

After the voting has commenced, there shall be no interruption of the voting except on a point of order by a member in connection with the actual conduct of the voting. Brief statements by members consisting solely of explanations of their votes may be permitted by the Chairman before the voting has commenced or after the voting has been completed.

Division of proposals

Rule 55

Parts of a proposal shall be voted on separately if a member requests that the proposal be divided. Those parts of the proposal which have been approved shall then be put to the vote as a whole; if all the operative parts of a proposal have been rejected, the proposal shall be considered to have been rejected as a whole.

Order of voting on amendments

Rule 56

1. When an amendment to a proposal is moved, the amendment shall be voted on first. When two or more amendments to a proposal are moved the Committee shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on, until all amendments have been put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon.
2. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

Order of voting on proposals

Rule 57

1. If two or more proposals relate to the same question, the Committee shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.
2. The Committee may, after each vote on a proposal, decide whether to vote on the next proposal.
3. Any motions requiring that no decision be taken on the substance of such proposals shall, however, be considered as previous questions and shall be put to the vote before them.

CAT/C/3/Rev.4
page 22

XII. ELECTIONS

Method of elections

Rule 58

Elections shall be held by secret ballot, unless the Committee decides otherwise in the case of elections to fill a place for which there is only one candidate.

Conduct of elections when only one elective place is to be filled

Rule 59

1. When only one person or member is to be elected and no candidate obtains in the first ballot the majority required, a second ballot shall be taken, which shall be restricted to the two candidates who obtained the greatest number of votes.
2. If the second ballot is inconclusive and a majority vote of members present is required, a third ballot shall be taken in which votes may be cast for any eligible candidate. If the third ballot is inconclusive, the next ballot shall be restricted to the two candidates who obtained the greatest number of votes in the third ballot and so on, with unrestricted and restricted ballots alternating, until a person or member is elected.
3. If the second ballot is inconclusive and a two-thirds majority is required, the balloting shall be continued until one candidate secures the necessary two-thirds majority. In the next three ballots, votes may be cast for any eligible candidate. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the two candidates who obtained the greatest number of votes in the third such unrestricted ballot, and the following three ballots shall be unrestricted, and so on until a person or member is elected.

Conduct of elections when two or more elective places are to be filled

Rule 60

When two or more elective places are to be filled at one time under the same conditions, those candidates obtaining in the first ballot the majority required shall be elected. If the number of candidates obtaining such majority is less than the number of persons or members to be elected, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot, to a number not more than twice the places remaining to be filled; provided that, after the third inconclusive ballot, votes may be cast for any eligible candidates. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the candidates who obtained the greatest number of votes in the third of the unrestricted ballots, to a number not more than twice the places remaining to be filled, and the following three ballots thereafter shall be unrestricted, and so on until all the places have been filled.

XIII. SUBSIDIARY BODIES

Establishment of subsidiary bodies

Rule 61

1. The Committee may, in accordance with the provisions of the Convention and subject to the provisions of rule 25, set up ad hoc subsidiary bodies as it deems necessary and define their composition and mandates.
2. Each subsidiary body shall elect its own officers and adopt its own rules of procedure. Failing such rules, the present rules of procedure shall apply *mutatis mutandis*.
3. The Committee may also appoint one or more of its members as Rapporteurs to perform such duties as mandated by the Committee.

XIV. INFORMATION AND DOCUMENTATION

Submission of information, documentation and written statements

Rule 62

1. The Committee may invite specialized agencies, United Nations bodies concerned, regional intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council to submit to it information, documentation and written statements, as appropriate, relevant to the Committee's activities under the Convention.
2. The Committee shall determine the form and the manner in which such information, documentation and written statements may be made available to members of the Committee.

XV. ANNUAL REPORT OF THE COMMITTEE

Annual report

Rule 63

The Committee shall submit an annual report on its activities under the Convention to the States parties and to the General Assembly of the United Nations.

CAT/C/3/Rev.4
page 24

**PART TWO. RULES RELATING TO THE FUNCTIONS
OF THE COMMITTEE**

**XVI. REPORTS FROM STATES PARTIES UNDER ARTICLE 19
OF THE CONVENTION**

Submission of reports

Rule 64

1. The States parties shall submit to the Committee, through the Secretary-General, reports on the measures they have taken to give effect to their undertakings under the Convention, within one year after the entry into force of the Convention for the State party concerned. Thereafter the States parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.
2. In appropriate cases the Committee may consider the information contained in a recent report as covering information that should have been included in overdue reports.
3. The Committee may, through the Secretary-General, inform the States parties of its wishes regarding the form and contents as well as the methodology for consideration of the reports to be submitted under article 19 of the Convention, and issue guidelines to that effect.

Non-submission of reports

Rule 65

1. At each session, the Secretary-General shall notify the Committee of all cases of non-submission of reports under rules 64 and 67 of these rules. In such cases the Committee may transmit to the State party concerned, through the Secretary-General, a reminder concerning the submission of such report or reports.
2. If, after the reminder referred to in paragraph 1 of this rule, the State party does not submit the report required under rules 64 and 67 of these rules, the Committee shall so state in the annual report which it submits to the States parties and to the General Assembly of the United Nations.
3. In appropriate cases the Committee may notify the defaulting State party through the Secretary-General that it intends, on a date specified in the notification, to examine the measures taken by the State party to protect or give effect to the rights recognized in the Convention, and make such general comments as it deems appropriate in the circumstances.

Attendance by States parties at examination of reports

Rule 66

1. The Committee shall, through the Secretary-General, notify the States parties, as early as possible, of the opening date, duration and place of the session at which their respective reports will be examined. Representatives of the States parties shall be invited to attend the meetings of the Committee when their reports are examined. The Committee may also inform a State party from which it decides to seek further information that it may authorize its representative to be present at a specified meeting. Such a representative should be able to answer questions which may be put to him/her by the Committee and make statements on reports already submitted by his/her State, and may also submit additional information from his/her State.

2. If a State party has submitted a report under article 19, paragraph (1), of the Convention but fails to send a representative, in accordance with paragraph 1 of this rule, to the session at which it has been notified that its report will be examined, the Committee may, at its discretion, take one of the followings courses:

(a) Notify the State party through the Secretary-General that, at a specified session, it intends to examine the report in accordance with rule 66, paragraph (2), and thereafter act in accordance with rule 68; or

(b) Proceed at the session originally specified to examine the report and thereafter make and submit to the State party its provisional concluding observations. The Committee will determine the date on which the report shall be examined under rule 66, or the date on which a new periodic report shall be submitted under rule 67.

Request for additional reports

Rule 67

1. When considering a report submitted by a State party under article 19 of the Convention, the Committee shall first determine whether the report provides all the information required under rule 64 of these rules.

2. If a report of a State party to the Convention, in the opinion of the Committee, does not contain sufficient information, the Committee may request that State to furnish an additional report, indicating by what date the said report should be submitted.

Conclusions and recommendations by the Committee

Rule 68

1. After its consideration of each report, the Committee, in accordance with article 19, paragraph 3, of the Convention, may make such general comments, conclusions or recommendations on the report as it may consider appropriate and shall forward these, through the Secretary-General, to the State party concerned, which in reply may submit to the Committee

CAT/C/3/Rev.4
page 26

any comment that it considers appropriate. The Committee may, in particular, indicate whether, on the basis of its examination of the reports and information supplied by the State party, it appears that some of the obligations of that State under the Convention have not been discharged and may, as appropriate, appoint one or more rapporteurs to follow up with its compliance of the Committee's conclusions and recommendations.

2. The Committee may, where necessary, indicate a time limit within which observations from States parties are to be received.

3. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 1 of this rule, together with any observations thereon received from the State party concerned, in its annual report made in accordance with article 24 of the Convention. If so requested by the State party concerned, the Committee may also include a copy of the report submitted under article 19, paragraph 1, of the Convention.

XVII. PROCEEDINGS UNDER ARTICLE 20 OF THE CONVENTION

Transmission of information to the Committee

Rule 69

1. The Secretary-General shall bring to the attention of the Committee, in accordance with the present rules, information which is, or appears to be, submitted for the Committee's consideration under article 20, paragraph 1, of the Convention.

2. No information shall be received by the Committee if it concerns a State party which, 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 has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

Register of information submitted

Rule 70

The Secretary-General shall maintain a permanent register of information brought to the attention of the Committee in accordance with rule 69 above and shall make the information available to any member of the Committee upon request.

Summary of the information

Rule 71

The Secretary-General, when necessary, shall prepare and circulate to the members of the Committee a brief summary of the information submitted in accordance with rule 69 above.

Confidentiality of documents and proceedings

Rule 72

All documents and proceedings of the Committee relating to its functions under article 20 of the Convention shall be confidential, until such time when the Committee decides, in accordance with the provisions of article 20, paragraph 5, of the Convention, to make them public.

Meetings

Rule 73

1. Meetings of the Committee concerning its proceedings under article 20 of the Convention shall be closed.
2. Meetings during which the Committee considers general issues, such as procedures for the application of article 20 of the Convention, shall be public, unless the Committee decides otherwise.

Issue of communiqués concerning closed meetings

Rule 74

The Committee may decide to issue communiqués, through the Secretary-General, for the use of the information media and the general public regarding its activities under article 20 of the Convention.

Preliminary consideration of information by the Committee

Rule 75

1. The Committee, when necessary, may ascertain, through the Secretary-General, the reliability of the information and/or of the sources of the information brought to its attention under article 20 of the Convention or obtain additional relevant information substantiating the facts of the situation.
2. The Committee shall determine whether it appears to it that the information received contains well-founded indications that torture, as defined in article 1 of the Convention, is being systematically practised in the territory of the State party concerned.

CAT/C/3/Rev.4
page 28

Examination of the information

Rule 76

1. If it appears to the Committee that the information received is reliable and contains well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite the State party concerned, through the Secretary-General, to cooperate in its examination of the information and, to this end, to submit observations with regard to that information.
2. The Committee shall indicate a time limit for the submission of observations by the State party concerned, with a view to avoiding undue delay in its proceedings.
3. In examining the information received, the Committee shall take into account any observations which may have been submitted by the State party concerned, as well as any other relevant information available to it.
4. The Committee may decide, if it deems it appropriate, to obtain from the representatives of the State party concerned, governmental and non-governmental organizations, as well as individuals, additional information or answers to questions relating to the information under examination.
5. The Committee shall decide, on its initiative and on the basis of its rules of procedure, the form and manner in which such additional information may be obtained.

Documentation from United Nations bodies and specialized agencies

Rule 77

The Committee may at any time obtain, through the Secretary-General, any relevant documentation from United Nations bodies or specialized agencies that may assist it in the examination of the information received under article 20 of the Convention.

Establishment of an inquiry

Rule 78

1. The Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to it within a time limit which may be set by the Committee.
2. When the Committee decides to make an inquiry in accordance with paragraph 1 of this rule, it shall establish the modalities of the inquiry as it deems it appropriate.

3. The members designated by the Committee for the confidential inquiry shall determine their own methods of work in conformity with the provisions of the Convention and the rules of procedure of the Committee.
4. While the confidential inquiry is in progress, the Committee may defer the consideration of any report the State party may have submitted during this period in accordance with article 19, paragraph 1, of the Convention.

Cooperation of the State party concerned

Rule 79

The Committee shall invite the State party concerned, through the Secretary-General, to cooperate with it in the conduct of the inquiry. To this end, the Committee may request the State party concerned:

- (a) To designate an accredited representative to meet with the members designated by the Committee;
- (b) To provide its designated members with any information that they, or the State party, may consider useful for ascertaining the facts relating to the inquiry;
- (c) To indicate any other form of cooperation that the State may wish to extend to the Committee and to its designated members with a view to facilitating the conduct of the inquiry.

Visiting mission

Rule 80

If the Committee deems it necessary to include in its inquiry a visit of one or more of its members to the territory of the State party concerned, it shall request, through the Secretary-General, the agreement of that State party and shall inform the State party of its wishes regarding the timing of the mission and the facilities required to allow the designated members of the Committee to carry out their task.

Hearings in connection with the inquiry

Rule 81

1. The designated members may decide to conduct hearings in connection with the inquiry as they deem it appropriate.
2. The designated members shall establish, in cooperation with the State party concerned, the conditions and guarantees required for conducting such hearings. They shall request the State party to ensure that no obstacles are placed in the way of witnesses and other individuals wishing to meet with the designated members of the Committee and that no retaliatory measure is taken against those individuals or their families.

CAT/C/3/Rev.4
page 30

3. Every person appearing before the designated members for the purpose of giving testimony shall be requested to take an oath or make a solemn declaration concerning the veracity of his/her testimony and the respect for confidentiality of the proceedings.

Assistance during the inquiry

Rule 82

1. In addition to the staff and facilities to be provided by the Secretary-General in connection with the inquiry and/or the visiting mission to the territory of the State party concerned, the designated members may invite, through the Secretary-General, persons with special competence in the medical field or in the treatment of prisoners as well as interpreters to provide assistance at all stages of the inquiry.

2. If the persons providing assistance during the inquiry are not bound by an oath of office to the United Nations, they shall be required to declare solemnly that they will perform their duties honestly, faithfully and impartially, and that they will respect the confidentiality of the proceedings.

3. The persons referred to in paragraphs 1 and 2 of the present rule shall be entitled to the same facilities, privileges and immunities provided for in respect of the members of the Committee, under article 23 of the Convention.

Transmission of findings, comments or suggestions

Rule 83

1. After examining the findings of its designated members submitted to it in accordance with rule 78, paragraph 1, the Committee shall transmit, through the Secretary-General, these findings to the State party concerned, together with any comments or suggestions that it deems appropriate.

2. The State party concerned shall be invited to inform the Committee within a reasonable delay of the action it takes with regard to the Committee's findings and in response to the Committee's comments or suggestions.

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, 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.

XVIII. PROCEDURE FOR THE CONSIDERATION OF COMMUNICATIONS RECEIVED UNDER ARTICLE 21 OF THE CONVENTION

Declarations by States parties

Rule 85

1. The Secretary-General shall transmit to the other States parties copies of the declarations deposited with him by States parties recognizing the competence of the Committee, in accordance with article 21 of the Convention.
2. The withdrawal of a declaration made under article 21 of the Convention shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under that article; no further communication by any State party shall be received under that article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State party has made a new declaration.

Notification by the States parties concerned

Rule 86

1. A communication under article 21 of the Convention may be referred to the Committee by either State party concerned by notice given in accordance with paragraph 1 (b) of that article.
2. The notice referred to in paragraph 1 of this rule shall contain or be accompanied by information regarding:
 - (a) Steps taken to seek adjustment of the matter in accordance with article 21, paragraphs 1 (a) and (b), of the Convention, including the text of the initial communication and of any subsequent written explanations or statements by the States parties concerned which are pertinent to the matter;
 - (b) Steps taken to exhaust domestic remedies;
 - (c) Any other procedure of international investigation or settlement resorted to by the States parties concerned.

CAT/C/3/Rev.4
page 32

Register of communications

Rule 87

The Secretary-General shall maintain a permanent register of all communications received by the Committee under article 21 of the Convention.

Information to the members of the Committee

Rule 88

The Secretary-General shall inform the members of the Committee without delay of any notice given under rule 86 of these rules and shall transmit to them as soon as possible copies of the notice and relevant information.

Meetings

Rule 89

The Committee shall examine communications under article 21 of the Convention at closed meetings.

Issue of communiqués concerning closed meetings

Rule 90

The Committee may, after consultation with the States parties concerned, issue communiqués, through the Secretary-General, for the use of the information media and the general public regarding the activities of the Committee under article 21 of the Convention.

Requirements for the consideration of communications

Rule 91

A communication shall not be considered by the Committee unless:

- (a) Both States parties concerned have made declarations under article 21, paragraph 1, of the Convention;
- (b) The time limit prescribed in article 21, paragraph 1 (b), of the Convention has expired;
- (c) The Committee has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law, or that the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of the Convention.

Good offices

Rule 92

1. Subject to the provisions of rule 91 of these rules, the Committee shall proceed to make its good offices available to the States parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in the Convention.
2. For the purpose indicated in paragraph 1 of this rule, the Committee may, when appropriate, set up an ad hoc conciliation commission.

Request for information

Rule 93

The Committee may, through the Secretary-General, request the States parties concerned or either of them to submit additional information or observations orally or in writing. The Committee shall indicate a time limit for the submission of such written information or observations.

Attendance by the States parties concerned

Rule 94

1. The States parties concerned shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.
2. The Committee shall, through the Secretary-General, notify the States parties concerned as early as possible of the opening date, duration and place of the session at which the matter will be examined.
3. The procedure for making oral and/or written submissions shall be decided by the Committee, after consultation with the States parties concerned.

Report of the Committee

Rule 95

1. Within 12 months after the date on which the Committee received the notice referred to in rule 86 of these rules, the Committee shall adopt a report in accordance with article 21, paragraph 1 (h), of the Convention.
2. The provisions of paragraph 1 of rule 94 of these rules shall not apply to the deliberations of the Committee concerning the adoption of the report.

CAT/C/3/Rev.4
page 34

3. The Committee's report shall be communicated, through the Secretary-General, to the States parties concerned.

XIX. PROCEDURE FOR THE CONSIDERATION OF COMMUNICATIONS RECEIVED UNDER ARTICLE 22 OF THE CONVENTION

A. General provisions

Declarations by States parties

Rule 96

1. The Secretary-General shall transmit to the other States parties copies of the declarations deposited with him by States parties recognizing the competence of the Committee, in accordance with article 22 of the Convention.
2. The withdrawal of a declaration made under article 22 of the Convention shall not prejudice the consideration of any matter which is the subject of a complaint already transmitted under that article; no further complaint by or on behalf of an individual shall be received under that article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State party has made a new declaration.

Transmission of complaints

Rule 97

1. The Secretary-General shall bring to the attention of the Committee, in accordance with the present rules, complaints which are or appear to be submitted for consideration by the Committee under paragraph 1 of article 22 of the Convention.
2. The Secretary-General, when necessary, may request clarification from the complainant of a complaint as to his/her wish to have his/her complaint submitted to the Committee for consideration under article 22 of the Convention. In case there is still doubt as to the wish of the complainant, the Committee shall be seized of the complaint.

Registration of complaints; Rapporteur for new complaints and interim measures

Rule 98

1. Complaints may be registered by the Secretary-General or by decision of the Committee or by the Rapporteur on new complaints and interim measures.
2. No complaint shall be registered by the Secretary-General if:
 - (a) It concerns a State which has not made the declaration provided for in article 22, paragraph 1, of the Convention; or

(b) It is anonymous; or

(c) It is not submitted in writing by the alleged victim or by close relatives of the alleged victim on his/her behalf or by a representative with appropriate written authorization.

3. The Secretary-General shall prepare lists of the complaints brought to the attention of the Committee in accordance with rule 97 above with a brief summary of their contents, and shall circulate such lists to the members of the Committee at regular intervals. The Secretary-General shall also maintain a permanent register of all such complaints.

4. An original case file shall be kept for each summarized complaint. The full text of any complaint brought to the attention of the Committee shall be made available to any member of the Committee upon his/her request.

Request for clarification or additional information

Rule 99

1. The Secretary-General or the Rapporteur on new complaints and interim measures may request clarification from the complainant concerning the applicability of article 22 of the Convention to his complaint, in particular regarding:

(a) The name, address, age and occupation of the complainant and the verification of his/her identity;

(b) The name of the State party against which the complaint is directed;

(c) The object of the complaint;

(d) The provision or provisions of the Convention alleged to have been violated;

(e) The facts of the claim;

(f) Steps taken by the complainant to exhaust domestic remedies;

(g) Whether the same matter is being examined under another procedure of international investigation or settlement.

2. When requesting clarification or information, the Secretary-General shall indicate an appropriate time limit to the complainant of the complaint with a view to avoiding undue delays in the procedure under article 22 of the Convention. Such time limit may be extended in appropriate circumstances.

CAT/C/3/Rev.4
page 36

3. The Committee may approve a questionnaire for the purpose of requesting the above-mentioned information from the complainant.
4. The request for clarification referred to in paragraph 1 (c)-(g) of the present rule shall not preclude the inclusion of the complaint in the list provided for in rule 98, paragraph 3.
5. The Secretary-General shall instruct the complainant on the procedure that will be followed and inform him/her that the text of the complaint shall be transmitted confidentially to the State party concerned in accordance with article 22, paragraph 3, of the Convention.

Summary of the information

Rule 100

For each registered complaint the Secretary-General shall prepare and circulate to the members of the Committee a summary of the relevant information obtained.

Meetings and hearings

Rule 101

1. Meetings of the Committee or its subsidiary bodies during which complaints under article 22 of the Convention will be examined shall be closed.
2. Meetings during which the Committee may consider general issues, such as procedures for the application of article 22 of the Convention, may be public if the Committee so decides.

Issue of communiqués concerning closed meetings

Rule 102

The Committee may issue communiqués, through the Secretary-General, for the use of the information media and the general public regarding the activities of the Committee under article 22 of the Convention.

Obligatory non-participation of a member in the examination of a complaint

Rule 103

1. A member shall not take part in the examination of a complaint by the Committee or its subsidiary body:
 - (a) If he/she has any personal interest in the case; or

- (b) If he/she has participated in any capacity, other than as a member of the Committee, in the making of any decision; or
 - (c) If he/she is a national of the State party concerned or is employed by that country.
2. Any question which may arise under paragraph 1 above shall be decided by the Committee without the participation of the member concerned.

Optional non-participation of a member in the examination of a complaint

Rule 104

If, for any reason, a member considers that he/she should not take part or continue to take part in the examination of a complaint, he/she shall inform the Chairman of his/her withdrawal.

B. Procedure for determining admissibility of complaints

Method of dealing with complaints

Rule 105

1. In accordance with the following rules, the Committee shall decide by simple majority as soon as practicable whether or not a complaint is admissible under article 22 of the Convention.
2. The Working Group established under rule 106, paragraph 1, may also declare a complaint admissible by majority vote or inadmissible by unanimity.
3. The Committee, the working group established under rule 106, paragraph 1, or the rapporteur(s) designated under rule 106, paragraph 3, shall, unless they decide otherwise, deal with complaints in the order in which they are received by the secretariat.
4. The Committee may, if it deems it appropriate, decide to consider two or more communications jointly.
5. The Committee may, if it deems appropriate, decide to sever consideration of complaints of multiple complainants. Severed complaints may receive a separate registry number.

Establishment of a working group and designation of special rapporteurs for specific complaints

Rule 106

1. The Committee may, in accordance with rule 61, set up a working group to meet shortly before its sessions, or at any other convenient time to be decided by the Committee, in consultation with the Secretary-General, for the purpose of taking decisions on admissibility or inadmissibility and making recommendations to the Committee regarding the merits of complaints, and assisting the Committee in any manner which the Committee may decide.

CAT/C/3/Rev.4
page 38

2. The Working Group shall comprise no less than three and no more than five members of the Committee. The Working Group shall elect its own officers, develop its own working methods, and apply as far as possible the rules of procedure of the Committee to its meetings. The members of the Working Group shall be elected by the Committee every other session.
3. The Working Group may designate rapporteurs from among its members to deal with specific complaints.

Conditions for admissibility of complaints

Rule 107

With a view to reaching a decision on the admissibility of a complaint, the Committee, its Working Group or a rapporteur designated under rules 98 or 106, paragraph 3, shall ascertain:

- (a) That the individual claims to be a victim of a violation by the State party concerned of the provisions of the Convention. The complaint should be submitted by the individual himself/herself or by his/her relatives or designated representatives, or by others on behalf of an alleged victim when it appears that the victim is unable personally to submit the complaint, and, when appropriate authorization is submitted to the Committee;
- (b) That the complaint is not an abuse of the Committee's process or manifestly unfounded;
- (c) That the complaint is not incompatible with the provisions of the Convention;
- (d) That the same matter has not been and is not being examined under another procedure of international investigation or settlement;
- (e) That the individual has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;
- (f) That the time elapsed since the exhaustion of domestic remedies is not so unreasonably prolonged as to render consideration of the claims unduly difficult by the Committee or the State party.

Interim measures

Rule 108

1. At any time after the receipt of a complaint, the Committee, a working group, or the Rapporteur(s) for new complaints and interim measures may transmit to the State party concerned, for its urgent consideration, a request that it take such interim measures as the Committee considers necessary to avoid irreparable damage to the victim or victims of alleged violations.

2. Where the Committee, the Working Group, or Rapporteur(s) request(s) interim measures under this rule, the request shall not imply a determination of the admissibility or the merits of the complaint. The State party shall be so informed upon transmittal.
3. Where a request for interim measures is made by the Working Group or Rapporteur(s) under the present rule, the Working Group or Rapporteur(s) should inform the Committee members of the nature of the request and the complaint to which the request relates at the next regular session of the Committee.
4. The Secretary-General shall maintain a list of such requests for interim measures.
5. The Rapporteur for new complaints and interim measures shall also monitor compliance with the Committee's requests for interim measures.
6. The State party may inform the Committee that the reasons for the interim measures have lapsed or present arguments why the request for interim measures should be lifted.
7. The Rapporteur, the Committee or the Working Group may withdraw the request for interim measures.

Additional information, clarifications and observations

Rule 109

1. As soon as possible after the complaint has been registered, it should be transmitted to the State party, requesting it to submit a written reply within six months.
2. The State party concerned shall include in its written reply explanations or statements that shall relate both to the admissibility and the merits of the complaint as well as to any remedy that may have been provided in the matter, unless the Committee, Working Group or Rapporteur in new complaints and interim measures has decided, because of the exceptional nature of the case, to request a written reply that relates only to the question of admissibility.
3. A State party that has received a request for a written reply under paragraph 1 both on admissibility and on the merits of the complaint may apply in writing, within two months, for the complaint to be rejected as inadmissible, setting out the grounds for such inadmissibility. The Committee or the Rapporteur on new complaints and interim measures may or may not agree to consider admissibility separately from the merits.
4. Following a separate decision on admissibility, the Committee shall fix the deadline for submissions on a case-by-case basis.

CAT/C/3/Rev.4
page 40

5. The Committee or the Working Group established under rule 106 or rapporteur(s) designated under rule 106, paragraph 3, may request, through the Secretary-General, the State party concerned or the complainant to submit additional written information, clarifications or observations relevant to the question of admissibility or merits.
6. The Committee or the Working Group or rapporteur(s) designated under rule 106, paragraph 3, shall indicate a time limit for the submission of additional information or clarification with a view to avoiding undue delay.
7. If the time limit provided is not respected by the State party concerned or the complainant, the Committee or the Working Group may decide to consider the admissibility and/or merits of the complaint in the light of available information.
8. A complaint may not be declared admissible unless the State party concerned has received its text and has been given an opportunity to furnish information or observations as provided in paragraph 1 of this rule.
9. If the State party concerned disputes the contention of the complainant that all available domestic remedies have been exhausted, the State party is required to give details of the effective remedies available to the alleged victim in the particular circumstances of the case and in accordance with the provisions of article 22, paragraph 5 (b), of the Convention.
10. Within such time limit as indicated by the Committee or the Working Group or rapporteur(s) designated under rule 106, paragraph 3, the State party or the complainant may be afforded an opportunity to comment on any submission received from the other party pursuant to a request made under the present rule. Non-receipt of such comments within the established time limit should not generally delay the consideration of the admissibility of the complaint.

Inadmissible complaints

Rule 110

1. Where the Committee or the Working Group decides that a complaint is inadmissible under article 22 of the Convention, or its consideration is suspended or discontinued, the Committee shall as soon as possible transmit its decision, through the Secretary-General, to the complainant and to the State party concerned.
2. If the Committee or the Working Group has declared a complaint inadmissible under article 22, paragraph 5, of the Convention, this decision may be reviewed at a later date by the Committee upon a request from a member of the Committee or a written request by or on behalf of the individual concerned. Such written request shall contain evidence to the effect that the reasons for inadmissibility referred to in article 22, paragraph 5, of the Convention no longer apply.

C. Consideration of the merits

Method of dealing with admissible complaints; oral hearings

Rule 111

1. When the Committee or the Working Group has decided that a complaint is admissible under article 22 of the Convention, before receiving the State party's reply on the merits, the Committee shall transmit to the State party, through the Secretary-General, the text of its decision together with any submission received from the author of the communication not already transmitted to the State party under rule 109, paragraph 1. The Committee shall also inform the complainant, through the Secretary-General, of its decision.
2. Within the period established by the Committee, the State party concerned shall submit to the Committee written explanations or statements clarifying the case under consideration and the measures, if any, that may have been taken by it. The Committee may indicate, if it deems it necessary, the type of information it wishes to receive from the State party concerned.
3. Any explanations or statements submitted by a State party pursuant to this rule shall be transmitted, through the Secretary-General, to the complainant who may submit any additional written information or observations within such time limit as the Committee shall decide.
4. The Committee may invite the complainant or his/her representative and representatives of the State party concerned to be present at specified closed meetings of the Committee in order to provide further clarifications or to answer questions on the merits of the complaint. Whenever one party is so invited, the other party shall be informed and invited to attend and make appropriate submissions. The non-appearance of a party will not prejudice the consideration of the case.
5. The Committee may revoke its decision that a complaint is admissible in the light of any explanations or statements thereafter submitted by the State party pursuant to this rule. However, before the Committee considers revoking that decision, the explanations or statements concerned must be transmitted to the complainant so that he/she may submit additional information or observations within a time limit set by the Committee.

Findings of the Committee; decisions on the merits

Rule 112

1. In those cases in which the parties have submitted information relating both to the questions of admissibility and the merits, or in which a decision on admissibility has already been taken and the parties have submitted information on the merits, the Committee shall

CAT/C/3/Rev.4
page 42

consider the complaint in the light of all information made available to it by or on behalf of the complainant and by the State party concerned and shall formulate its findings thereon. Prior thereto, the Committee may refer the communication to the Working Group or to a case rapporteur designated under rule 106, paragraph 3, to make recommendations to the Committee.

2. The Committee, the Working Group, or the rapporteur may at any time in the course of the examination obtain any document from United Nations bodies, specialized agencies, or other sources that may assist in the consideration of the complaint.
3. The Committee shall not decide on the merits of a complaint without having considered the applicability of all the admissibility grounds referred to in article 22 of the Convention. The findings of the Committee shall be forwarded, through the Secretary-General, to the complainant and to the State party concerned.
4. The Committee's findings on the merits shall be known as "decisions".
5. The State party concerned shall generally be invited to inform the Committee within a specific time period of the action it has taken in conformity with the Committee's decisions.

Individual opinions

Rule 113

Any member of the Committee who has participated in a decision may request that his/her individual opinion be appended to the Committee's decisions.

Follow-up procedure

Rule 114

1. The Committee may designate one or more rapporteur(s) for follow-up on decisions adopted under article 22 of the Convention, for the purpose of ascertaining the measures taken by States parties to give effect to the Committee's findings.
2. The Rapporteur(s) may make such contacts and take such action as appropriate for the due performance of the follow-up mandate and report accordingly to the Committee. The Rapporteur(s) may make such recommendations for further action by the Committee as may be necessary for follow-up.
3. The Rapporteur(s) shall regularly report to the Committee on follow-up activities.
4. The Rapporteur(s), in discharge of the follow-up mandate, may, with the approval of the Committee, engage in necessary visits to the State party concerned.

Summaries in the Committee's annual report and inclusion of texts of final decisions

Rule 115

1. The Committee may decide to include in its annual report a summary of the complaints examined and, where the Committee considers appropriate, a summary of the explanations and statements of the States parties concerned and of the Committee's evaluation thereof.
2. The Committee shall include in its annual report the text of its final decisions, including its views under article 22, paragraph 7, of the Convention, as well as the text of any decision declaring a complaint inadmissible under article 22 of the Convention.
3. The Committee shall include information on follow-up activities in its annual report.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN^{*}

**Adopted and opened for signature, ratification and accession by General
Assembly resolution 34/180 of 18 December 1979
entry into force 3 September 1981, in accordance with article 27(1)**

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

* Source: www.ohchr.org

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
 - (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
 - (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
 - (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
 - (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
 - (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
 - (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
 - (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
 - (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
 - (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.
 3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;

- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.
2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
 - (a) To participate in the elaboration and implementation of development planning at all levels;
 - (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
 - (c) To benefit directly from social security programmes;
 - (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
 - (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
 - (f) To participate in all community activities;
 - (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
 - (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
 - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
 - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to

submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.
6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.
7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.
9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:
 - (a) Within one year after the entry into force for the State concerned;
 - (b) Thereafter at least every four years and further whenever the Committee so requests.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.
2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.
2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.
3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN^{*}

**Adopted by General Assembly resolution A/54/4 on
6 October 1999 and opened for signature on 10 December 1999,
Human Rights Day
entry into force 22 December 2000**

The States Parties to the present Protocol,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Also noting that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Recalling that the International Covenants on Human Rights Resolution 2200 A (XXI), annex. and other international human rights instruments prohibit discrimination on the basis of sex,

Also recalling the Convention on the Elimination of All Forms of Discrimination against Women ("the Convention"), in which the States Parties thereto condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women,

Reaffirming their determination to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms,

Have agreed as follows:

Article 1

A State Party to the present Protocol ("State Party") recognizes the competence of the Committee on the Elimination of Discrimination against Women ("the Committee") to receive and consider communications submitted in accordance with article 2.

Article 2

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

* Source: www.ohchr.org

Article 3

Communications shall be in writing and shall not be anonymous. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.

Article 4

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.
2. The Committee shall declare a communication inadmissible where:
 - (a) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
 - (b) It is incompatible with the provisions of the Convention;
 - (c) It is manifestly ill-founded or not sufficiently substantiated;
 - (d) It is an abuse of the right to submit a communication;
 - (e) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

Article 5

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.
2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 6

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, and provided that the individual or individuals consent to the disclosure of their identity to that State Party, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.
2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.

Article 7

1. The Committee shall consider communications received under the present Protocol in the light of all information made available to it by or on behalf of individuals or groups of individuals and by the State Party concerned, provided that this information is transmitted to the parties concerned.
2. The Committee shall hold closed meetings when examining communications under the present Protocol.
3. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

4. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.
5. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under article 18 of the Convention.

Article 8

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.
3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.
4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.
5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

Article 9

1. The Committee may invite the State Party concerned to include in its report under article 18 of the Convention details of any measures taken in response to an inquiry conducted under article 8 of the present Protocol.
2. The Committee may, if necessary, after the end of the period of six months referred to in article 8.4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 10

1. Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 8 and 9.
2. Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.

Article 11

A State Party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.

Article 12

The Committee shall include in its annual report under article 21 of the Convention a summary of its activities under the present Protocol.

Article 13

Each State Party undertakes to make widely known and to give publicity to the Convention and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State Party.

Article 14

The Committee shall develop its own rules of procedure to be followed when exercising the functions conferred on it by the present Protocol.

Article 15

1. The present Protocol shall be open for signature by any State that has signed, ratified or acceded to the Convention.
2. The present Protocol shall be subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 16

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 17

No reservations to the present Protocol shall be permitted.

Article 18

1. Any State Party may propose an amendment to the present Protocol and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify her or him whether they favour a conference of States Parties for the purpose of considering and voting on the proposal. In the event that at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 19

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.
2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 or any inquiry initiated under article 8 before the effective date of denunciation.

Article 20

The Secretary-General of the United Nations shall inform all States of:

- (a) Signatures, ratifications and accessions under the present Protocol;
- (b) The date of entry into force of the present Protocol and of any amendment under article 18;
- (c) Any denunciation under article 19.

Article 21

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 25 of the Convention.

Note: The following document is Annex I of the Report of the Committee on the Elimination of Discrimination against Women (A/56/38)

ANNEX I

RULES OF PROCEDURE OF THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN*

Contents

Rule

Part One

General rules

I. Sessions

1. Sessions
2. Regular sessions
3. Special sessions
4. Pre-sessional working group
5. Place of sessions
6. Notification of opening date of sessions

II. Agenda

7. Provisional agenda
8. Transmission of the provisional agenda
9. Adoption of the agenda
10. Revision of the agenda

III. Members of the Committee

11. Members of the Committee
12. Term of office
13. Casual vacancies
14. Filling casual vacancies
15. Solemn declaration

* Source: website of the United Nation's Division for the Advancement of Women (DAW): www.un.org/womenwatch/daw/ The Rules of Procedure of the Treaty Bodies are periodically updated. Please consult DAW's website of the for the latest document.

- IV. Officers
 - 16. Election of officers of the Committee
 - 17. Term of office
 - 18. Functions of the Chairperson
 - 19. Absence of the Chairperson at meetings of the Committee
 - 20. Replacement of officers
- V. Secretariat
 - 21. Duties of the Secretary-General
 - 22. Statements
 - 23. Financial implications
- VI. Languages
 - 24. Official languages
 - 25. Interpretation
 - 26. Language of documents
- VII. Records
 - 27. Records
- VIII. Conduct of business
 - 28. Public and private meetings
 - 29. Quorum
 - 30. Powers of the Chairperson
- IX. Voting
 - 31. Adoption of decisions
 - 32. Voting rights
 - 33. Equally divided votes
 - 34. Method of voting
 - 35. Conduct during voting and explanation of vote
 - 36. Division of proposals
 - 37. Order of voting on amendments
 - 38. Order of voting on proposals
 - 39. Method of election
 - 40. Conduct of elections for filling one elective place
- X. Subsidiary bodies
 - 41. Subsidiary bodies
- XI. Annual report of the Committee
 - 42. Annual report of the Committee
- XII. Distribution of reports and other official documents
 - 43. Distribution of reports and other official documents
- XIII. Participation of specialized agencies and bodies of the United Nations and of intergovernmental and non-governmental organizations
 - 44. Participation of specialized agencies and bodies of the United Nations and of intergovernmental and non-governmental organizations
 - 45. Specialized agencies
 - 46. Intergovernmental organizations and United Nations bodies
 - 47. Non-governmental organizations

Part Two

Rules relating to the functions of the Committee

- XIV. Reports of States parties under article 18 of the Convention
 - 48. Submission of reports under article 18 of the Convention
 - 49. Failure to submit or late submission of reports
 - 50. Request for additional information
 - 51. Examination of reports
 - 52. Suggestions and general recommendations
 - 53. Concluding comments
 - 54. Working methods for examining reports

- XV. General discussion
 - 55. General discussion

Part Three

Rules of procedure for the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

- XVI. Procedures for the consideration of communications received under the Optional Protocol
 - 56. Transmission of communications to the Committee
 - 57. List and register of communications
 - 58. Request for clarification or additional information
 - 59. Summary of information
 - 60. Inability of a member to take part in the examination of a communication
 - 61. Withdrawal of a member
 - 62. Establishment of working groups and designation of rapporteurs
 - 63. Interim measures
 - 64. Method of dealing with communications
 - 65. Order of communications
 - 66. Separate consideration of admissibility and merits
 - 67. Conditions of admissibility of communications
 - 68. Authors of communications
 - 69. Procedures with regard to communications received
 - 70. Inadmissible communications
 - 71. Additional procedures whereby admissibility may be considered separately from the merits
 - 72. Views of the Committee on admissible communications
 - 73. Follow-up to the views of the Committee
 - 74. Confidentiality of communications
 - 75. Communiqués

- XVII. Proceedings under the inquiry procedure of the Optional Protocol
 - 76. Applicability
 - 77. Transmission of information to the Committee
 - 78. Register of information
 - 79. Summary of information
 - 80. Confidentiality
 - 81. Meetings related to proceedings under article 8
 - 82. Preliminary consideration of information by the Committee
 - 83. Examination of information

84. Establishment of an inquiry
85. Cooperation of the State party concerned
86. Visits
87. Hearings
88. Assistance during an inquiry
89. Transmission of findings, comments or suggestions
90. Follow-up action by the State party
91. Obligations under article 11 of the Optional Protocol

Part Four

Interpretative rules

- XVIII. Interpretation and amendments
 92. Headings
 93. Amendments
 94. Suspension

PART ONE

General rules

I. Sessions

Rule 1 **Sessions**

The Committee on the Elimination of Discrimination against Women (hereinafter referred to as “the Committee”) shall hold such sessions as may be required for the effective performance of its functions in accordance with the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter referred to as “the Convention”).

Rule 2 **Regular sessions**

1. The Committee shall hold such regular sessions each year as shall be authorized by the States parties to the Convention.
2. Regular sessions of the Committee shall be convened on dates decided upon by the Committee in consultation with the Secretary-General of the United Nations (hereinafter referred to as “the Secretary-General”), taking into account the calendar of conferences and meetings approved by the General Assembly.

Rule 3 **Special sessions**

1. Special sessions of the Committee shall be convened by decision of the Committee or at the request of a State party to the Convention. The Chairperson of the Committee may also convene special sessions:
 - (a) At the request of a majority of members of the Committee;
 - (b) At the request of a State party to the Convention.
2. Special sessions shall be convened as soon as possible at a date fixed by the Chairperson in consultation with the Secretary-General and with the Committee.

Rule 4 **Pre-sessional working group**

1. A pre-sessional working group, which shall consist of no more than five members of the Committee designated by the Chairperson in consultation with the Committee at a regular session, and reflecting equitable geographical representation, shall normally be convened prior to each regular session.
2. The pre-sessional working group shall formulate a list of issues and questions on substantive issues arising from reports submitted by States parties in accordance with article 18 of the Convention and submit that list of issues and questions to the States parties concerned.

Rule 5 **Place of sessions**

Sessions of the Committee shall normally be held at the Headquarters or the other offices of the United Nations. Another venue for a session may be proposed by the Committee in consultation with the Secretary-General.

Rule 6

Notification of opening date of sessions

The Secretary-General shall notify members of the Committee of the date, duration and place of the first meeting of each session. Such notification shall be sent, in the case of a regular session, at least six weeks in advance.

II. Agenda

Rule 7

Provisional agenda

The provisional agenda for each regular or special session shall be prepared by the Secretary-General in consultation with the Chairperson of the Committee, in conformity with the relevant provisions of the Convention, and shall include:

- (a) Any item decided upon by the Committee at a previous session;
- (b) Any item proposed by the Chairperson of the Committee;
- (c) Any item proposed by a member of the Committee;
- (d) Any item proposed by a State party to the Convention;
- (e) Any item proposed by the Secretary-General relating to her or his functions under the Convention or the present rules of procedure.

Rule 8

Transmission of the provisional agenda

The provisional agenda and the basic documents relating to each item thereof, the report of the pre-sessional working group, the reports of States parties submitted under article 18 of the Convention and the responses by States parties to issues raised by the pre-sessional working group shall be prepared in all of the official languages of the United Nations by the Secretary-General, who shall endeavour to have the documents transmitted to members of the Committee at least six weeks prior to the opening of the session.

Rule 9

Adoption of the agenda

The first item on the provisional agenda for any session shall be the adoption of the agenda.

Rule 10

Revision of the agenda

During a session, the Committee may amend the agenda and may, as appropriate, delete or defer items by the decision of a majority of the members present and voting. Additional items of an urgent nature may be included in the agenda by a majority of the members.

III. Members of the Committee

Rule 11

Members of the Committee

Members of the Committee may not be represented by alternates.

Rule 12
Term of office

The term of office of members begins:

- (a) On the 1st day of January of the year after their election by the meeting of States parties and shall end on the 31st day of December four years later;
- (b) On the date of the approval by the Committee, if appointed to fill a casual vacancy, and shall end on the date of expiration of the term of office of the member or members being replaced.

Rule 13
Casual vacancies

1. A casual vacancy may occur through death, the inability of a Committee member to perform her or his function as a member of the Committee or the resignation of a member of the Committee. The Chairperson shall immediately notify the Secretary-General who shall inform the State party of the member so that action may be taken in accordance with article 17, paragraph 7, of the Convention.
2. Notification of the resignation of a member of the Committee shall be in writing to the Chairperson or to the Secretary-General, and action shall be taken in accordance with article 17, paragraph 7, of the Convention only after such notification has been received.
3. A member who is unable to attend meetings of the Committee shall inform the Secretary-General as early as possible and, if this inability is likely to be extended, the member should resign.
4. When a member of the Committee is consistently unable to carry out her or his functions for any cause other than absence of a temporary nature, the Chairperson shall draw the above rule to her or his attention.
5. Where a member of the Committee has rule 13, paragraph 4, drawn to her or his attention and does not resign in accordance with that rule, the Chairperson shall notify the Secretary-General who shall then inform the State party of the member to enable action to be taken in accordance with article 17, paragraph 7, of the Convention.

Rule 14
Filling casual vacancies

1. When a casual vacancy within article 17, paragraph 7, of the Convention occurs in the Committee, the Secretary-General shall immediately request the State party that had nominated that member to appoint, within a period of two months, another expert from among its nationals to serve for the remainder of the predecessor's term.
2. The name and curriculum vitae of the expert so appointed shall be transmitted by the Secretary-General to the Committee for approval. Upon approval of the expert by the Committee, the Secretary-General shall notify the States parties of the name of the member of the Committee filling the casual vacancy.

Rule 15
Solemn declaration

Upon assuming their duties, members of the Committee shall make the following solemn declaration in open Committee:

"I solemnly declare that I shall perform my duties and exercise powers as a member of the Committee on the Elimination of Discrimination against Women honourably, faithfully, impartially and conscientiously."

IV. Officers

Rule 16 Election of officers of the Committee

The Committee shall elect from among its members a Chairperson, three Vice-Chairpersons and a Rapporteur with due regard to equitable geographical representation.

Rule 17 Term of office

The officers of the Committee shall be elected for a term of two years and be eligible for re-election provided that the principle of rotation is upheld. None of them, however, may hold office if she or he ceases to be a member of the Committee.

Rule 18 Functions of the Chairperson

1. The Chairperson shall perform the functions conferred upon her or him by these rules of procedure and the decisions of the Committee.
2. In the exercise of those functions the Chairperson shall remain under the authority of the Committee.
3. The Chairperson shall represent the Committee at United Nations meetings in which the Committee is officially invited to participate. If the Chairperson is unable to represent the Committee at such a meeting, she or he may designate another officer of the Committee or, if no officer is available, another member of the Committee, to attend on her or his behalf.

Rule 19 Absence of the Chairperson at meetings of the Committee

1. If the Chairperson is unable to be present at a meeting or any part thereof, she or he shall designate one of the Vice-Chairpersons to act in her or his place.
2. In the absence of such a designation, the Vice-Chairperson to preside shall be chosen according to the names of the Vice-Chairpersons as they appear in English alphabetical order.
3. A Vice-Chairperson acting as a Chairperson shall have the same powers and duties as the Chairperson.

Rule 20 Replacement of officers

If any of the officers of the Committee ceases to serve or declares her or his inability to continue serving as a member of the Committee or for any reason is no longer able to act as an officer, a new officer from the same region shall be elected for the unexpired term of her or his predecessor.

V. Secretariat

Rule 21 Duties of the Secretary-General

1. At the request or by decision of the Committee and approval by the General Assembly:
 - (a) The secretariat of the Committee and of such subsidiary bodies established by the Committee ("the Secretariat") shall be provided by the Secretary-General;

- (b) The Secretary-General shall provide the Committee with the necessary staff and facilities for the effective performance of its functions under the Convention;
 - (c) The Secretary-General shall be responsible for all necessary arrangements for meetings of the Committee and its subsidiary bodies.
2. The Secretary-General shall be responsible for informing the members of the Committee without delay of any questions that may be brought before it for consideration or of any other developments that may be of relevance to the Committee.

Rule 22
Statements

The Secretary-General or her or his representative shall be present at all meetings of the Committee and may make oral or written statements at such meetings or at meetings of its subsidiary bodies.

Rule 23
Financial implications

Before any proposal that involves expenditure is approved by the Committee or by any of its subsidiary bodies, the Secretary-General shall prepare and circulate to the members of the Committee or subsidiary body as early as possible, an estimate of the cost involved in the proposal. It shall be the duty of the Chairperson to draw the attention of members to this estimate and to invite discussion on it when the proposal is considered by the Committee or subsidiary body.

VI. Languages

Rule 24
Official languages

Arabic, Chinese, English, French, Russian and Spanish shall be the official languages of the Committee.

Rule 25
Interpretation

- 1. Statements made in an official language shall be interpreted into the other official languages.
- 2. Any speaker addressing the Committee in a language other than one of the official languages shall normally provide for interpretation into one of the official languages. Interpretation into the other official languages by interpreters of the Secretariat shall be based upon the interpretation given in the first official language.

Rule 26
Language of documents

- 1. All official documents of the Committee shall be issued in the official languages of the United Nations.
- 2. All formal decisions of the Committee shall be made available in the official languages of the United Nations.

VII. Records

Rule 27

Records

1. The Secretary-General shall provide the Committee with summary records of its proceedings, which shall be made available to the members.
2. Summary records are subject to correction, to be submitted to the Secretariat by participants in the meetings in the language in which the summary record is issued. Corrections to the records of the meetings shall be consolidated in a single corrigendum to be issued after the conclusion of the relevant session.
3. The summary records of public meetings shall be documents for general distribution unless in exceptional circumstances the Committee decides otherwise.
4. Sound recordings of meetings of the Committee shall be made and kept in accordance with the usual practice of the United Nations.

VIII. Conduct of business

Rule 28

Public and private meetings

1. The meetings of the Committee and its subsidiary bodies shall be held in public unless the Committee decides otherwise.
2. Meetings at which concluding comments on reports of States parties are discussed, as well as meetings of the pre-sessional working group and other working groups, shall be closed unless the Committee decides otherwise.
3. No person or body shall, without the permission of the Committee, film or otherwise record the proceedings of the Committee. The Committee shall, if necessary, and before giving such permission, seek the consent of any State party reporting to the Committee under article 18 of the Convention to the filming or other recording of the proceedings in which it is engaged.

Rule 29

Quorum

Twelve members of the Committee shall constitute a quorum.

Rule 30

Powers of the Chairperson

1. The Chairperson shall declare the opening and closing of each meeting of the Committee, direct the discussion, ensure observance of the present rules, accord the right to speak, put questions to the vote and announce decisions.
2. The Chairperson, subject to the present rules, shall have control over the proceedings of the Committee and over the maintenance of order at its meetings.
3. The Chairperson may, in the course of the discussion of an item, including the examination of reports submitted under article 18 of the Convention, propose to the Committee the limitation of the time to be allowed to speakers, the limitation of the number of times each speaker may speak on any question and the closure of the list of speakers.
4. The Chairperson shall rule on points of order. She or he shall also have the power to pro-

pose adjournment or closure of the debate or adjournment or suspension of a meeting. Debate shall be confined to the question before the Committee, and the Chairperson may call a speaker to order if her or his remarks are not relevant to the subject under discussion.

5. During the course of the debate, the Chairperson may announce the list of speakers and, with the consent of the Committee, declare the list closed.

IX. Voting

Rule 31

Adoption of decisions

1. The Committee shall endeavour to reach its decisions by consensus.
2. If and when all efforts to reach consensus have been exhausted, decisions of the Committee shall be taken by a simple majority of the members present and voting.

Rule 32

Voting rights

1. Each member of the Committee shall have one vote.
2. For the purpose of these rules, "members present and voting" means members casting an affirmative or negative vote. Members who abstain from voting are considered as not voting.

Rule 33

Equally divided votes

If a vote is equally divided on a matter other than an election, the proposal shall be regarded as having been rejected.

Rule 34

Method of voting

1. Subject to rule 39 of the present rules, the Committee shall normally vote by show of hands, except that any member may request a roll-call, which shall then be taken in the English alphabetical order of the names of the members of the Committee, beginning with the member whose name is drawn by lot by the Chairperson.
2. The vote of each member participating in a roll-call shall be inserted in the record.

Rule 35

Conduct during voting and explanation of vote

After voting has commenced, it shall not be interrupted unless a member raises a point of order in connection with the actual conduct of the voting. Brief statements by members consisting solely of explanations of vote may be permitted by the Chairperson before the voting has commenced or after the voting has been completed.

Rule 36

Division of proposals

Parts of a proposal shall be voted on separately if a member requests that the proposal be divided. Those parts of the proposal that have been approved shall then be put to the vote as a whole; if all operative parts of a proposal have been rejected, the proposal shall be considered to have been rejected as a whole.

Rule 37

Order of voting on amendments

1. When an amendment to a proposal is moved, the amendment shall be voted on first. When two or more amendments to a proposal are moved, the Committee shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on until all amendments have been put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon.
2. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of the proposal.

Rule 38

Order of voting on proposals

1. If two or more proposals relate to the same question, the Committee shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.
2. The Committee may, after each vote on a proposal, decide whether to vote on the next proposal.
3. Any motions requiring that no decision be taken on the substance of such proposals shall, however, be considered as previous questions and shall be put to the vote before those proposals.

Rule 39

Method of election

An election shall be held by secret ballot, unless the Committee decides otherwise in the case of an election to fill a place for which there is only one candidate.

Rule 40

Conduct of elections for filling one elective place

1. When only one elective place is to be filled and no candidate obtains in the first ballot the majority required, a second ballot shall be taken, which shall be restricted to the two candidates who obtained the largest number of votes.
2. If in the second ballot the votes are equally divided, and a majority is required, the Chairperson shall decide between the candidates by drawing lots. If a two-thirds majority is required, the balloting shall be continued until one candidate secures two thirds of the votes cast provided that, after the third inconclusive ballot, votes may be cast for any eligible member.
3. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the two candidates who obtained the greatest number of votes in the third of the unrestricted ballots, and the following three ballots thereafter shall be unrestricted, and so on until a member is elected.

X. Subsidiary bodies

Rule 41

Subsidiary bodies

1. The Committee may set up ad hoc subsidiary bodies and will define their composition and mandates.

2. Each subsidiary body shall elect its own officers and will, *mutatis mutandis*, apply the present rules of procedure.

XI. Annual report of the Committee

Rule 42

Annual report of the Committee

1. As provided in article 21, paragraph 1, of the Convention, the Committee shall submit to the General Assembly, through the Economic and Social Council, an annual report on its activities which shall contain, *inter alia*, the concluding comments of the Committee relating to the report of each State party, and information relating to its mandate under the Optional Protocol to the Convention.
2. The Committee shall also include in its report suggestions and general recommendations, together with any comments received from States parties.

XII. Distribution of reports and other official documents

Rule 43

Distribution of reports and other official documents

1. Reports, formal decisions, pre-sessional documents and all other official documents of the Committee and its subsidiary bodies shall be documents for general distribution unless the Committee decides otherwise.
2. Reports and additional information submitted by States parties under article 18 of the Convention shall be documents for general distribution.

XIII. Participation of specialized agencies and bodies of the United Nations and of intergovernmental and non-governmental organizations

Rule 44

Participation of specialized agencies and bodies of the United Nations and of intergovernmental and non-governmental organizations

The Secretary-General shall notify each specialized agency and United Nations body as early as possible of the opening date, duration, place and agenda of each session of the Committee and of the pre-sessional working group.

Rule 45

Specialized agencies

1. In accordance with article 22 of the Convention, the Committee may invite specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities. Any such reports shall be issued as pre-sessional documents.
2. Specialized agencies shall be entitled to be represented at meetings of the Committee or of the pre-sessional working group when the implementation of such provisions of the Convention as fall within the scope of their activities is being considered. The Committee may permit representatives of the specialized agencies to make oral or written statements to the Committee or to the pre-sessional working group, and to provide information appropriate and relevant to the Committee's activities under the Convention.

Rule 46

Intergovernmental organizations and United Nations bodies

Representatives of intergovernmental organizations and United Nations bodies may be invited by the Committee to make oral or written statements and provide information or documentation in areas relevant to the Committee's activities under the Convention, to meetings of the Committee or to its pre-session working group.

Rule 47

Non-governmental organizations

Representatives of non-governmental organizations may be invited by the Committee to make oral or written statements and to provide information or documentation relevant to the Committee's activities under the Convention to meetings of the Committee or to its pre-session working group.

PART TWO

Rules relating to the functions of the Committee

XIV. Reports of States parties under article 18 of the Convention

Rule 48

Submission of reports under article 18 of the Convention

1. The Committee shall examine the progress made in the implementation of the Convention through the consideration of reports of States parties submitted to the Secretary-General on legislative, judicial, administrative and other measures.
2. In order to assist States parties in their reporting tasks, the Committee shall issue general guidelines for the preparation of initial reports and of periodic reports, taking into account the consolidated guidelines, common to all the human rights treaty bodies, for the first part of initial and periodic reports of States parties.
3. Taking into account the consolidated guidelines relating to the reports required under United Nations human rights treaties, the Committee may formulate general guidelines as to the form and content of the initial and periodic reports of States parties required under article 18 of the Convention and shall, through the Secretary-General, inform the States parties of the Committee's wishes regarding the form and content of such reports.
4. A State party reporting at a session of the Committee may provide additional information prior to the consideration of the report by the Committee, provided that such information reaches the Secretary-General no later than four months prior to the opening date of the session at which the report of the State party is to be considered.
5. The Committee may request a State party to submit a report on an exceptional basis. Such reports shall be limited to those areas on which the State party has been requested to focus its attention. Except when the Committee requests otherwise, such reports shall not be submitted in substitution for an initial or periodic report. The Committee shall determine the session at which an exceptional report shall be considered.

Rule 49

Failure to submit or late submission of reports

1. At each session of the Committee, the Secretary-General shall notify the Committee of all cases of non-submission of reports and additional information under rules 48 and 50 of the present rules. In such cases, the Committee may transmit to the State party concerned, through the Secretary-General, a reminder concerning the submission of the report or the additional information.
2. If, after the reminder referred to in paragraph 1 of the present rule, the State party does not submit the report or the additional information sought, the Committee may include a reference to this effect in its annual report to the General Assembly.
3. The Committee may allow States parties to submit a combined report comprising no more than two overdue reports.

Rule 50

Request for additional information

1. When considering reports submitted by a State party under article 18 of the Convention, the Committee, and in particular its pre-sessional working group, shall first satisfy itself that, in accordance with the Committee's guidelines, the report provides sufficient information.
2. If, in the opinion of the Committee, or of the pre-sessional working group, a report of a State party does not contain sufficient information, it may request the State concerned to furnish such additional information as required, indicating the time limit within which the information should be submitted.
3. The questions or comments forwarded by the pre-sessional working group to the State party whose report is under consideration and the response of the State party thereto shall, in accordance with the present rule, be circulated to members of the Committee prior to the session at which the report is to be examined.

Rule 51

Examination of reports

1. At each session, the Committee, based on the list of reports awaiting consideration, shall decide which reports of States parties it will consider at its subsequent session, bearing in mind the duration of the subsequent session and the criteria of date of submission and geographical balance.
2. The Committee, through the Secretary-General, shall notify the States parties as early as possible of the opening date, duration and place of the session at which their respective reports will be examined. The States parties shall be requested to confirm in writing, within a specified time, their willingness to have their reports examined.
3. The Committee at each session shall also establish and circulate to the States parties concerned a reserve list of reports for consideration at its subsequent session in the event that a State party invited in accordance with the present rule is unable to present its report. In such case, the State party chosen from the reserve list shall be invited by the Committee, through the Secretary-General, to present its report without delay.
4. Representatives of the States parties shall be invited to attend the meetings of the Committee at which their reports are to be examined.
5. If a State party fails to respond to an invitation to have a representative attend the meeting of the Committee at which its report is being examined, consideration of the report shall

be rescheduled for another session. If, at such a subsequent session, the State party, after due notification, fails to have a representative present, the Committee may proceed with the examination of the report in the absence of the representative of the State party.

Rule 52

Suggestions and general recommendations

1. In accordance with article 21, paragraph 1, of the Convention, and on the basis of its examination of reports and information received from States parties, the Committee may make general recommendations addressed to States parties.
2. The Committee may make suggestions addressed to bodies other than States parties arising out of its consideration of reports of States parties.

Rule 53

Concluding comments

1. The Committee may, after consideration of the report of a State party, make concluding comments on the report with a view to assisting the State party in implementing its obligations under the Convention. The Committee may include guidance on the issues on which the next periodic report of the State party should be focused.
2. The Committee shall adopt the concluding comments before the closure of the session at which the report of the State party was considered.

Rule 54

Working methods for examining reports

The Committee shall establish working groups to consider and suggest ways and means of expediting its work and of implementing its obligations under article 21 of the Convention.

XV. General discussion

Rule 55

General discussion

In order to enhance understanding of the content and implications of the articles of the Convention or to assist in the elaboration of general recommendations, the Committee may devote one or more meetings of its regular sessions to a general discussion of specific articles of or themes relating to the Convention.

PART THREE

Rules of procedure for the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

XVI. Procedures for the consideration of communications received under the Optional Protocol

Rule 56

Transmission of communications to the Committee

1. The Secretary-General shall bring to the attention of the Committee, in accordance with the present rules, communications that are, or appear to be, submitted for consideration by the Committee under article 2 of the Optional Protocol.
2. The Secretary-General may request clarification from the author or authors of a communication as to whether she, he or they wish to have the communication submitted to the Committee for consideration under the Optional Protocol. Where there is doubt as to the wish of the author or authors, the Secretary-General will bring the communication to the attention of the Committee.
3. No communication shall be received by the Committee if it:
 - (a) Concerns a State that is not a party to the Protocol;
 - (b) Is not in writing;
 - (c) Is anonymous.

Rule 57

List and register of communications

1. The Secretary-General shall maintain a permanent register of all communications submitted for consideration by the Committee under article 2 of the Optional Protocol.
2. The Secretary-General shall prepare lists of the communications submitted to the Committee, together with a brief summary of their contents.

Rule 58

Request for clarification or additional information

1. The Secretary-General may request clarification from the author of a communication, including:
 - (a) The name, address, date of birth and occupation of the victim and verification of the victim's identity;
 - (b) The name of the State party against which the communication is directed;
 - (c) The objective of the communication;
 - (d) The facts of the claim;
 - (e) Steps taken by the author and/or victim to exhaust domestic remedies;
 - (f) The extent to which the same matter is being or has been examined under another procedure of international investigation or settlement;
 - (g) The provision or provisions of the Convention alleged to have been violated.

2. When requesting clarification or information, the Secretary-General shall indicate to the author or authors of the communication a time limit within which such information is to be submitted.
3. The Committee may approve a questionnaire to facilitate requests for clarification or information from the victim and/or author of a communication.
4. A request for clarification or information shall not preclude the inclusion of the communication in the list provided for in rule 57 above.
5. The Secretary-General shall inform the author of a communication of the procedure that will be followed and in particular that, provided that the individual or individuals consent to the disclosure of her identity to the State party concerned, the communication will be brought confidentially to the attention of that State party.

Rule 59

Summary of information

1. A summary of the relevant information obtained with respect to each registered communication shall be prepared and circulated to the members of the Committee by the Secretary-General at the next regular session of the Committee.
2. The full text of any communication brought to the attention of the Committee shall be made available to any member of the Committee upon that member's request.

Rule 60

Inability of a member to take part in the examination of a communication

1. A member of the Committee may not take part in the examination of a communication if:
 - (a) The member has a personal interest in the case;
 - (b) The member has participated in the making of any decision on the case covered by the communication in any capacity other than under the procedures applicable to this Optional Protocol;
 - (c) The member is a national of the State party concerned.
2. Any question that may arise under paragraph 1 above shall be decided by the Committee without the participation of the member concerned.

Rule 61

Withdrawal of a member

If, for any reason, a member considers that she or he should not take part or continue to take part in the examination of a communication, the member shall inform the Chairperson of her or his withdrawal.

Rule 62

Establishment of working groups and designation of rapporteurs

1. The Committee may establish one or more working groups, each comprising no more than five of its members, and may designate one or more rapporteurs to make recommendations to the Committee and to assist it in any manner in which the Committee may decide.
2. In the present part of the rules, reference to a working group or rapporteur is a reference to a working group or rapporteur established under the present rules.
3. The rules of procedure of the Committee shall apply as far as possible to the meetings of its working groups.

Rule 63

Interim measures

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State party concerned, for its urgent consideration, a request that it take such interim measures as the Committee considers necessary to avoid irreparable damage to the victim or victims of the alleged violation.
2. A working group or rapporteur may also request the State party concerned to take such interim measures as the working group or rapporteur considers necessary to avoid irreparable damage to the victim or victims of the alleged violation.
3. When a request for interim measures is made by a working group or rapporteur under the present rule, the working group or rapporteur shall forthwith thereafter inform the Committee members of the nature of the request and the communication to which the request relates.
4. Where the Committee, a working group or a rapporteur requests interim measures under this rule, the request shall state that it does not imply a determination of the merits of the communication.

Rule 64

Method of dealing with communications

1. The Committee shall, by a simple majority and in accordance with the following rules, decide whether the communication is admissible or inadmissible under the Optional Protocol.
2. A working group may also declare that a communication is admissible under the Optional Protocol, provided that it is composed of five members and all of the members so decide.

Rule 65

Order of communications

1. Communications shall be dealt with in the order in which they are received by the Secretariat, unless the Committee or a working group decides otherwise.
2. The Committee may decide to consider two or more communications jointly.

Rule 66

Separate consideration of admissibility and merits

The Committee may decide to consider the question of admissibility of a communication and the merits of a communication separately.

Rule 67

Conditions of admissibility of communications

With a view to reaching a decision on the admissibility of a communication, the Committee, or a working group, shall apply the criteria set forth in articles 2, 3 and 4 of the Optional Protocol.

Rule 68

Authors of communications

1. Communications may be submitted by individuals or groups of individuals who claim to be victims of violations of the rights set forth in the Convention, or by their designated representatives, or by others on behalf of an alleged victim where the alleged victim consents.

2. In cases where the author can justify such action, communications may be submitted on behalf of an alleged victim without her consent.
3. Where an author seeks to submit a communication in accordance with paragraph 2 of the present rule, she or he shall provide written reasons justifying such action.

Rule 69

Procedures with regard to communications received

1. As soon as possible after the communication has been received, and provided that the individual or group of individuals consent to the disclosure of their identity to the State party concerned, the Committee, working group or rapporteur shall bring the communication confidentially to the attention of the State party and shall request that State party to submit a written reply to the communication.
2. Any request made in accordance with paragraph 1 of the present rule shall include a statement indicating that such a request does not imply that any decision has been reached on the question of admissibility of the communication.
3. Within six months after receipt of the Committee's request under the present rule, the State party shall submit to the Committee a written explanation or statement that relates to the admissibility of the communication and its merits, as well as to any remedy that may have been provided in the matter.
4. The Committee, working group or rapporteur may request a written explanation or statement that relates only to the admissibility of a communication but, in such cases, the State party may nonetheless submit a written explanation or statement that relates to both the admissibility and the merits of a communication, provided that such written explanation or statement is submitted within six months of the Committee's request.
5. A State party that has received a request for a written reply in accordance with paragraph 1 of the present rule may submit a request in writing that the communication be rejected as inadmissible, setting out the grounds for such inadmissibility, provided that such a request is submitted to the Committee within two months of the request made under paragraph 1.
6. If the State party concerned disputes the contention of the author or authors, in accordance with article 4, paragraph 1, of the Optional Protocol, that all available domestic remedies have been exhausted, the State party shall give details of the remedies available to the alleged victim or victims in the particular circumstances of the case.
7. Submission by the State party of a request in accordance with paragraph 5 of the present rule shall not affect the period of six months given to the State party to submit its written explanation or statement unless the Committee, working group or rapporteur decides to extend the time for submission for such a period as the Committee considers appropriate.
8. The Committee, working group or rapporteur may request the State party or the author of the communication to submit, within fixed time limits, additional written explanations or statements relevant to the issues of the admissibility or merits of a communication.
9. The Committee, working group or rapporteur shall transmit to each party the submissions made by the other party pursuant to the present rule and shall afford each party an opportunity to comment on those submissions within fixed time limits.

Rule 70

Inadmissible communications

1. Where the Committee decides that a communication is inadmissible, it shall, as soon as possible, communicate its decision and the reasons for that decision through the Secretary-General to the author of the communication and to the State party concerned.

2. A decision of the Committee declaring a communication inadmissible may be reviewed by the Committee upon receipt of a written request submitted by or on behalf of the author or authors of the communication, containing information indicating that the reasons for inadmissibility no longer apply.
3. Any member of the Committee who has participated in the decision regarding admissibility may request that a summary of her or his individual opinion be appended to the Committee's decision declaring a communication inadmissible.

Rule 71

Additional procedures whereby admissibility may be considered separately from the merits

1. Where the issue of admissibility is decided by the Committee or a working group before the State party's written explanations or statements on the merits of the communication are received, that decision and all other relevant information shall be submitted through the Secretary-General to the State party concerned. The author of the communication shall, through the Secretary-General, be informed of the decision.
2. The Committee may revoke its decision that a communication is admissible in the light of any explanation or statements submitted by the State party.

Rule 72

Views of the Committee on admissible communications

1. Where the parties have submitted information relating both to the admissibility and to the merits of a communication, or where a decision on admissibility has already been taken and the parties have submitted information on the merits of that communication, the Committee shall consider and shall formulate its views on the communication in the light of all written information made available to it by the author or authors of the communication and the State party concerned, provided that this information has been transmitted to the other party concerned.
2. The Committee or the working group set up by it to consider a communication may, at any time in the course of the examination, obtain through the Secretary-General any documentation from organizations in the United Nations system or other bodies that may assist in the disposal of the communication, provided that the Committee shall afford each party an opportunity to comment on such documentation or information within fixed time limits.
3. The Committee may refer any communication to a working group to make recommendations to the Committee on the merits of the communication.
4. The Committee shall not decide on the merits of the communication without having considered the applicability of all of the admissibility grounds referred to in articles 2, 3 and 4 of the Optional Protocol.
5. The Secretary-General shall transmit the views of the Committee, determined by a simple majority, together with any recommendations, to the author or authors of the communication and to the State party concerned.
6. Any member of the Committee who has participated in the decision may request that a summary of her or his individual opinion be appended to the Committee's views.

Rule 73

Follow-up to the views of the Committee

1. Within six months of the Committee's issuing its views on a communication, the State party concerned shall submit to the Committee a written response, including any information on any action taken in the light of the views and recommendations of the Committee.

2. After the six-month period referred to in paragraph 1 of the present rule, the Committee may invite the State party concerned to submit further information about any measures the State party has taken in response to its views or recommendations.
3. The Committee may request the State party to include information on any action taken in response to its views or recommendations in its subsequent reports under article 18 of the Convention.
4. The Committee shall designate for follow-up on views adopted under article 7 of the Optional Protocol a rapporteur or working group to ascertain the measures taken by States parties to give effect to the Committee's views and recommendations.
5. The rapporteur or working group may make such contacts and take such action as may be appropriate for the due performance of their assigned functions and shall make such recommendations for further action by the Committee as may be necessary.
6. The rapporteur or working group shall report to the Committee on follow-up activities on a regular basis.
7. The Committee shall include information on any follow-up activities in its annual report under article 21 of the Convention.

Rule 74
Confidentiality of communications

1. Communications submitted under the Optional Protocol shall be examined by the Committee, working group or rapporteur in closed meetings.
2. All working documents prepared by the Secretariat for the Committee, working group or rapporteur, including summaries of communications prepared prior to registration and the list of summaries of communications, shall be confidential unless the Committee decides otherwise.
3. The Committee, working group or rapporteur shall not make public any communication, submissions or information relating to a communication prior to the date on which its views are issued.
4. The author or authors of a communication or the individuals who are alleged to be the victim or victims of a violation of the rights set forth in the Convention may request that the names and identifying details of the alleged victim or victims (or any of them) not be published.
5. If the Committee, working group or rapporteur so decides, the name or names and identifying details of the author or authors of a communication or the individuals who are alleged to be the victim or victims of a violation of rights set forth in the Convention shall not be made public by the Committee, the author or the State party concerned.
6. The Committee, working group or rapporteur may request the author of a communication or the State party concerned to keep confidential the whole or part of any submission or information relating to the proceedings.
7. Subject to paragraphs 5 and 6 of the present rule, nothing in this rule shall affect the right of the author or authors or the State party concerned to make public any submission or information bearing on the proceedings.
8. Subject to paragraphs 5 and 6 of the present rule, the Committee's decisions on admissibility, merits and discontinuance shall be made public.
9. The Secretariat shall be responsible for the distribution of the Committee's final decisions to the author or authors and the State party concerned.

10. The Committee shall include in its annual report under article 21 of the Convention a summary of the communications examined and, where appropriate, a summary of the explanations and statements of the States parties concerned, and of its own suggestions and recommendations.
11. Unless the Committee decides otherwise, information furnished by the parties in follow-up to the Committee's views and recommendations under paragraphs 4 and 5 of article 7 of the Optional Protocol shall not be confidential. Unless the Committee decides otherwise, decisions of the Committee with regard to follow-up activities shall not be confidential.

Rule 75
Communiqués

The Committee may issue communiqués regarding its activities under articles 1 to 7 of the Optional Protocol, through the Secretary-General, for the use of the information media and the general public.

XVII. Proceedings under the inquiry procedure of the Optional Protocol

Rule 76
Applicability

Rules 77 to 90 of the present rules shall not be applied to a State party that, in accordance with article 10, paragraph 1, of the Optional Protocol, declared at the time of ratification or accession to the Optional Protocol that it does not recognize the competence of the Committee as provided for in article 8 thereof, unless that State party has subsequently withdrawn its declaration in accordance with article 10, paragraph 2, of the Optional Protocol.

Rule 77
Transmission of information to the Committee

In accordance with the present rules, 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 8, paragraph 1, of the Optional Protocol.

Rule 78
Register of information

The Secretary-General shall maintain a permanent register of information brought to the attention of the Committee in accordance with rule 77 of the present rules and shall make the information available to any member of the Committee upon request.

Rule 79
Summary of information

The Secretary-General, when necessary, shall prepare and circulate to members of the Committee a brief summary of the information submitted in accordance with rule 77 of the present rules.

Rule 80
Confidentiality

1. Except in compliance with the obligations of the Committee under article 12 of the Optional Protocol, all documents and proceedings of the Committee relating to the conduct of the inquiry under article 8 of the Optional Protocol shall be confidential.

2. Before including a summary of the activities undertaken under articles 8 or 9 of the Optional Protocol in the annual report prepared in accordance with article 21 of the Convention and article 12 of the Optional Protocol, the Committee may consult with the State party concerned with respect to the summary.

Rule 81

Meetings related to proceedings under article 8

Meetings of the Committee during which inquiries under article 8 of the Optional Protocol are considered shall be closed.

Rule 82

Preliminary consideration of information by the Committee

1. The Committee may, through the Secretary-General, ascertain the reliability of the information and/or the sources of the information brought to its attention under article 8 of the Optional Protocol and may obtain additional relevant information substantiating the facts of the situation.
2. The Committee shall determine whether the information received contains reliable information indicating grave or systematic violations of rights set forth in the Convention by the State party concerned.
3. The Committee may request a working group to assist it in carrying out its duties under the present rule.

Rule 83

Examination of information

1. If the Committee is satisfied that the information received is reliable and indicates grave or systematic violations of rights set forth in the Convention by the State party concerned, the Committee shall invite the State party, through the Secretary-General, to submit observations with regard to that information within fixed time limits.
2. The Committee shall take into account any observations that may have been submitted by the State party concerned, as well as any other relevant information.
3. The Committee may decide to obtain additional information from the following:
 - (a) Representatives of the State party concerned;
 - (b) Governmental organizations;
 - (c) Non-governmental organizations;
 - (d) Individuals.
4. The Committee shall decide the form and manner in which such additional information will be obtained.
5. The Committee may, through the Secretary-General, request any relevant documentation from the United Nations system.

Rule 84

Establishment of an inquiry

1. Taking into account any observations that may have been submitted by the State party concerned, as well as other reliable information, the Committee may designate one or more of its members to conduct an inquiry and to make a report within a fixed time limit.

2. An inquiry shall be conducted confidentially and in accordance with any modalities determined by the Committee.
3. Taking into account the Convention, the Optional Protocol and the present rules of procedure, the members designated by the Committee to conduct the inquiry shall determine their own methods of work.
4. During the period of the inquiry, the Committee may defer the consideration of any report that the State party concerned may have submitted pursuant to article 18 of the Convention.

Rule 85
Cooperation of the State party concerned

1. The Committee shall seek the cooperation of the State party concerned at all stages of an inquiry.
2. The Committee may request the State party concerned to nominate a representative to meet with the member or members designated by the Committee.
3. The Committee may request the State party concerned to provide the member or members designated by the Committee with any information that they or the State party may consider relates to the inquiry.

Rule 86
Visits

1. Where the Committee deems it warranted, the inquiry may include a visit to the territory of the State party concerned.
2. Where the Committee decides, as a part of its inquiry, that there should be a visit to the State party concerned, it shall, through the Secretary-General, request the consent of the State party to such a visit.
3. The Committee shall inform the State party concerned of its wishes regarding the timing of the visit and the facilities required to allow those members designated by the Committee to conduct the inquiry to carry out their task.

Rule 87
Hearings

1. With the consent of the State party concerned, visits may include hearings to enable the designated members of the Committee to determine facts or issues relevant to the inquiry.
2. The conditions and guarantees concerning any hearings held in accordance with paragraph 1 of the present rule shall be established by the designated members of the Committee visiting the State party in connection with an inquiry, and the State party concerned.
3. Any person appearing before the designated members of the Committee for the purpose of giving testimony shall make a solemn declaration as to the veracity of her or his testimony and the confidentiality of the procedure.
4. The Committee shall inform the State party that it shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill-treatment or intimidation as a consequence of participating in any hearings in connection with an inquiry or with meeting the designated members of the Committee conducting the inquiry.

Rule 88

Assistance during an inquiry

1. In addition to the staff and facilities that shall be provided by the Secretary-General in connection with an inquiry, including during a visit to the State party concerned, the designated members of the Committee may, through the Secretary-General, invite interpreters and/or such persons with special competence in the fields covered by the Convention as are deemed necessary by the Committee to provide assistance at all stages of the inquiry.
2. Where such interpreters or other persons of special competence are not bound by the oath of allegiance to the United Nations, they shall be required to declare solemnly that they will perform their duties honestly, faithfully and impartially, and that they will respect the confidentiality of the proceedings.

Rule 89

Transmission of findings, comments or suggestions

1. After examining the findings of the designated members submitted in accordance within rule 84 of the present rules, the Committee shall transmit the findings, through the Secretary-General, to the State party concerned, together with any comments and recommendations.
2. The State party concerned shall submit its observations on the findings, comments and recommendations to the Committee, through the Secretary-General, within six months of their receipt.

Rule 90

Follow-up action by the State party

1. The Committee may, through the Secretary-General, invite a State party that has been the subject of an inquiry to include, in its report under article 18 of the Convention, details of any measures taken in response to the Committee's findings, comments and recommendations.
2. The Committee may, after the end of the period of six months referred to in paragraph 2 of rule 89 above, invite the State party concerned, through the Secretary-General, to inform it of any measures taken in response to an inquiry.

Rule 91

Obligations under article 11 of the Optional Protocol

1. The Committee shall bring to the attention of the States parties concerned their obligation under article 11 of the Optional Protocol to take appropriate steps to ensure that individuals under their jurisdiction are not subjected to ill-treatment or intimidation as a consequence of communicating with the Committee under the Optional Protocol.
2. Where the Committee receives reliable information that a State party has breached its obligations under article 11, it may invite the State party concerned to submit written explanations or statements clarifying the matter and describing any action it is taking to ensure that its obligations under article 11 are fulfilled.

PART FOUR

Interpretative rules

XVIII. Interpretation and amendments

Rule 92 **Headings**

For the purpose of the interpretation of the present rules, the headings, which were inserted for reference purposes only, shall be disregarded.

Rule 93 **Amendments**

The present rules may be amended by a decision of the Committee taken by a two-thirds majority of the members present and voting, and at least twenty-four (24) hours after the proposal for the amendment has been circulated, provided that the amendment is not inconsistent with the provisions of the Convention.

Rule 94 **Suspension**

Any of the present rules may be suspended by a decision of the Committee taken by a two-thirds majority of the members present and voting, provided such suspension is not inconsistent with the provisions of the Convention and is restricted to the circumstances of the particular situation requiring the suspension.

UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS*

**Adopted by the First United Nations Congress on the Prevention of
Crime and the Treatment of Offenders, held at Geneva in 1955,
and approved by the Economic and Social Council by its resolutions 663 C
(XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977**

Preliminary Observations

1. The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.
2. In view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.
3. On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole. It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.
4.
 - (1) Part I of the rules covers the general management of institutions, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to "security measures" or corrective measures ordered by the judge.
 - (2) Part II contains rules applicable only to the special categories dealt with in each section. Nevertheless, the rules under section A, applicable to prisoners under sentence, shall be equally applicable to categories of prisoners dealt with in sections B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.
5.
 - (1) The rules do not seek to regulate the management of institutions set aside for young persons such as Borstal institutions or correctional schools, but in general part I would be equally applicable in such institutions.

* Source: www.ohchr.org

- (2) The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.

PART I

RULES OF GENERAL APPLICATION

Basic principle

6.
 - (1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
 - (2) On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

Register

7.
 - (1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:
 - (a) Information concerning his identity;
 - (b) The reasons for his commitment and the authority therefor;
 - (c) The day and hour of his admission and release.
 - (2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.

Separation of categories

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,
 - (a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;
 - (b) Untried prisoners shall be kept separate from convicted prisoners;
 - (c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;
 - (d) Young prisoners shall be kept separate from adults.

Accommodation

9.
 - (1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.

- (2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.
10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.
11. In all places where prisoners are required to live or work,
 - (a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;
 - (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.
12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.
13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.
14. All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

Personal hygiene

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.
16. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.

Clothing and bedding

17.
 - (1) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.
 - (2) All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.
 - (3) In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.
18. If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.
19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

Food

20.

- (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.
- (2) Drinking water shall be available to every prisoner whenever he needs it.

Exercise and sport

21.

- (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.
- (2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.

Medical services

22.

- (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.
- (2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.
- (3) The services of a qualified dental officer shall be available to every prisoner.

23.

- (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.
 - (2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.
24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

25.

- (1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.
- (2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

26.

- (1) The medical officer shall regularly inspect and advise the director upon:
 - (a) The quantity, quality, preparation and service of food;
 - (b) The hygiene and cleanliness of the institution and the prisoners;
 - (c) The sanitation, heating, lighting and ventilation of the institution;
 - (d) The suitability and cleanliness of the prisoners' clothing and bedding;
 - (e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.
- (2) The director shall take into consideration the reports and advice that the medical officer submits according to rules 25 (2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.

Discipline and punishment

27. Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.

28.

- (1) No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.
- (2) This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment.

29. The following shall always be determined by the law or by the regulation of the competent administrative authority:

- (a) Conduct constituting a disciplinary offence;
- (b) The types and duration of punishment which may be inflicted;
- (c) The authority competent to impose such punishment.

30.

- (1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.
- (2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.

- (3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.
31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.
32.
 - (1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.
 - (2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.
 - (3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

Instruments of restraint

33. Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:
 - (a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
 - (b) On medical grounds by direction of the medical officer;
 - (c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.
34. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.

Information to and complaints by prisoners

35.
 - (1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.
 - (2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.
36.
 - (1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.
 - (2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.

- (3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.
- (4) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

Contact with the outside world

37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.
38.
 - (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.
 - (2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.
39. Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration.

Books

40. Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

Religion

41.
 - (1) If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.
 - (2) A qualified representative appointed or approved under paragraph (1) shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times.
 - (3) Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.
42. So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.

Retention of prisoners' property

43.
 - (1) All money, valuables, clothing and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain shall on his admission to the insti-

tution be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition.

- (2) On the release of the prisoner all such articles and money shall be returned to him except in so far as he has been authorized to spend money or send any such property out of the institution, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him.
- (3) Any money or effects received for a prisoner from outside shall be treated in the same way.
- (4) If a prisoner brings in any drugs or medicine, the medical officer shall decide what use shall be made of them.

Notification of death, illness, transfer, etc.

44.

- (1) Upon the death or serious illness of, or serious injury to a prisoner, or his removal to an institution for the treatment of mental affections, the director shall at once inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person previously designated by the prisoner.
- (2) A prisoner shall be informed at once of the death or serious illness of any near relative. In case of the critical illness of a near relative, the prisoner should be authorized, whenever circumstances allow, to go to his bedside either under escort or alone.
- (3) Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.

Removal of prisoners

45.

- (1) When the prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.
- (2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.
- (3) The transport of prisoners shall be carried out at the expense of the administration and equal conditions shall obtain for all of them.

Institutional personnel

46.

- (1) The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.
- (2) The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.
- (3) To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and

retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

47.

- (1) The personnel shall possess an adequate standard of education and intelligence.
- (2) Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.
- (3) After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.

48. All members of the personnel shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect.

49.

- (1) So far as possible, the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.
- (2) The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.

50.

- (1) The director of an institution should be adequately qualified for his task by character, administrative ability, suitable training and experience.
- (2) He shall devote his entire time to his official duties and shall not be appointed on a part-time basis.
- (3) He shall reside on the premises of the institution or in its immediate vicinity.
- (4) When two or more institutions are under the authority of one director, he shall visit each of them at frequent intervals. A responsible resident official shall be in charge of each of these institutions.

51.

- (1) The director, his deputy, and the majority of the other personnel of the institution shall be able to speak the language of the greatest number of prisoners, or a language understood by the greatest number of them.
- (2) Whenever necessary, the services of an interpreter shall be used.

52.

- (1) In institutions which are large enough to require the services of one or more full-time medical officers, at least one of them shall reside on the premises of the institution or in its immediate vicinity.
- (2) In other institutions the medical officer shall visit daily and shall reside near enough to be able to attend without delay in cases of urgency.

53.

- (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

- (2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.
 - (3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.
- 54.
- (1) Officers of the institutions shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.
 - (2) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.
 - (3) Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.

Inspection

55. There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.

PART II

RULES APPLICABLE TO SPECIAL CATEGORIES

A. Prisoners under sentence

Guiding principles

56. The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim, in accordance with the declaration made under Preliminary Observation 1 of the present text.
57. Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.
58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

59. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.
- 60.
- (1) The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.
- (2) Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.
61. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.
62. The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.
- 63.
- (1) The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups; it is therefore desirable that such groups should be distributed in separate institutions suitable for the treatment of each group.
- (2) These institutions need not provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open institutions, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners.
- (3) It is desirable that the number of prisoners in closed institutions should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such institutions should not exceed five hundred. In open institutions the population should be as small as possible.
- (4) On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided.
64. The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation.

Treatment

65. The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead

law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

66.

- (1) To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.
- (2) For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on all the matters referred to in the foregoing paragraph. Such reports shall always include a report by a medical officer, wherever possible qualified in psychiatry, on the physical and mental condition of the prisoner.
- (3) The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.

Classification and individualization

67. The purposes of classification shall be:

- (a) To separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence;
 - (b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.
68. So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners.
69. As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions.

Privileges

70. Systems of privileges appropriate for the different classes of prisoners and the different methods of treatment shall be established at every institution, in order to encourage good conduct, develop a sense of responsibility and secure the interest and co-operation of the prisoners in their treatment.

Work

71.

- (1) Prison labour must not be of an afflictive nature.
- (2) All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.
- (3) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.

- (4) So far as possible the work provided shall be such as will maintain or increase the prisoners, ability to earn an honest living after release.
- (5) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.
- (6) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.

72.

- (1) The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.
- (2) The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.

73.

- (1) Preferably institutional industries and farms should be operated directly by the administration and not by private contractors.
- (2) Where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel. Unless the work is for other departments of the government the full normal wages for such work shall be paid to the administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.

74.

- (1) The precautions laid down to protect the safety and health of free workmen shall be equally observed in institutions.
- (2) Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workmen.

75.

- (1) The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workmen.
- (2) The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of the prisoners.

76.

- (1) There shall be a system of equitable remuneration of the work of prisoners.
- (2) Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.
- (3) The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release.

Education and recreation

77.

- (1) Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The educa-

tion of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.

- (2) So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.
78. Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.

Social relations and after-care

79. Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both.
80. From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.
81.
 - (1) Services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall ensure, so far as is possible and necessary, that released prisoners be provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.
 - (2) The approved representatives of such agencies shall have all necessary access to the institution and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his sentence.
 - (3) It is desirable that the activities of such agencies shall be centralized or co-ordinated as far as possible in order to secure the best use of their efforts.

B. Insane and mentally abnormal prisoners

82.
 - (1) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.
 - (2) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.
 - (3) During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer.
 - (4) The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.
83. It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric after-care.

C. Prisoners under arrest or awaiting trial

84.
 - (1) Persons arrested or imprisoned by reason of a criminal charge against them, who are

detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as "untried prisoners" hereinafter in these rules.

- (2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.
- (3) Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit by a special regime which is described in the following rules in its essential requirements only.

85.

- (1) Untried prisoners shall be kept separate from convicted prisoners.
- (2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

87. Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.

88.

- (1) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.
- (2) If he wears prison dress, it shall be different from that supplied to convicted prisoners.

89. An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.

90. An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

91. An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

92. An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

D. Civil prisoners

94. In countries where the law permits imprisonment for debt, or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any

greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

E. Persons arrested or detained without charge

95. Without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights, persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under part I and part II, section C. Relevant provisions of part II, section A, shall likewise be applicable where their application may be conducive to the benefit of this special group of persons in custody, provided that no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

Whereas the work of law enforcement officials¹ is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,

Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

Whereas law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,

Whereas the Standard Minimum Rules for the Treatment of Prisoners provide for the circumstances in which prison officials may use force in the course of their duties,

Whereas article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty,

Whereas the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials,

Whereas the Seventh Congress, in its resolution 14, *inter alia*, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights,

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, *inter alia*, welcomed this recommendation made by the Council,

Whereas it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and conduct,

The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.

General provisions

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.
2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow

* Source: www.ohchr.org

for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.

3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.
4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.
5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:
 - (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
 - (b) Minimize damage and injury, and respect and preserve human life;
 - (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
 - (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.
6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.
7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.
8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Special provisions

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.
10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.
11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:
 - (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;

- (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
- (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
- (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
- (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Policing unlawful assemblies

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

Policing persons in custody or detention

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

Qualifications, training and counselling

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the

understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

Reporting and review procedures

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

26. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

^{1/} In accordance with the commentary to article 1 of the Code of Conduct for Law Enforcement Officials, the term "law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

IN THE EUROPEAN COURT OF HUMAN RIGHTS

Application No. 25424/05

Ramzy Applicant

v.

The Netherlands Respondent

WRITTEN COMMENTS

BY

**AMNESTY INTERNATIONAL LTD., THE ASSOCIATION FOR THE
PREVENTION OF TORTURE, HUMAN RIGHTS WATCH,
INTERIGHTS, THE INTERNATIONAL COMMISSION OF JURISTS,
OPEN SOCIETY JUSTICE INITIATIVE AND REDRESS**

**PURSUANT TO ARTICLE 36 § 2 OF THE EUROPEAN CONVENTION
ON HUMAN RIGHTS AND RULE 44 § 2 OF THE RULES OF THE
EUROPEAN COURT OF HUMAN RIGHTS**

22 November 2005

I. INTRODUCTION

1. These written comments are respectfully submitted on behalf of Amnesty International Ltd, the Association for the Prevention of Torture, Human Rights Watch, INTERIGHTS, the International Commission of Jurists, Open Society Justice Initiative and REDRESS (“the Interveners”) pursuant to leave granted by the President of the Chamber in accordance with Rule 44 § 2 of the Rules of Court.¹
2. Brief details of each of the Interveners are set out in Annex 1 to this letter. Together they have extensive experience of working against the use of torture and other forms of ill-treatment around the world. They have contributed to the elaboration of international legal standards, and intervened in human rights litigation in national and international fora, including before this Court, on the prohibition of torture and ill-treatment. Together the intervenors possess an extensive body of knowledge and experience of relevant international legal standards and jurisprudence and their application in practice.

II. OVERVIEW

3. This case concerns the deportation to Algeria of a person suspected of involvement in an Islamic extremist group in the Netherlands. He complains that his removal to Algeria by the Dutch authorities will expose him to a “real risk” of torture or ill-treatment in violation of Article 3 of the European Convention on Human Rights (the “Convention”). This case, and the interventions of various governments, raise issues of fundamental importance concerning the effectiveness of the protection against torture and other ill-treatment, including in the context of the fight against terrorism. At a time when torture and ill-treatment – and transfer to states renowned for such practices – are arising with increasing frequency, and the absolute nature of the torture prohibition itself is increasingly subject to question, the Court’s determination in this case is of potentially profound import beyond the case and indeed the region.
4. These comments address the following specific matters: (i) the absolute nature of the prohibition of torture and other forms of ill-treatment under international law; (ii) the prohibition of transfer to States where there is a substantial risk of torture or ill-treatment (“*non-refoulement*”)² as an essential aspect of that prohibition; (iii) the absolute nature of the *non-refoulement* prohibition under Article 3, and the approach of other international courts and human rights bodies; (iv) the nature of the risk required to trigger this prohibition; (v) factors relevant to its assessment; and (vi) the standard and burden of proof on the applicant to establish such risk.
5. While these comments take as their starting point the jurisprudence of this Court, the focus is on international and comparative standards, including those enshrined in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“UNCAT”), the International Covenant on Civil and Political Rights (“ICCPR”), as well as applicable rules of customary international law, all of which have emphasised the absolute, non-derogable and preemptory nature of the prohibition of tor-

¹ Letter dated 11 October 2005 from Vincent Berger, Section Registrar to Helen Duffy, Legal Director, INTERIGHTS. The World Organization Against Torture (OMCT) and the Medical Foundation for the Care of the Victims of Torture provided input into and support with this brief.

² “Other ill-treatment” refers to inhuman or degrading treatment or punishment under Article 3 of the Convention and to similar or equivalent formulations under other international instruments. “*Non-refoulement*” is used to refer to the specific legal principles concerning the prohibition of transfer from a Contracting State to another State where there is a risk of such ill-treatment, developed under human rights law in relation to Article 3 of the Convention and similar provisions. Although the term was originally borrowed from refugee law, as noted below its scope and significance in that context is distinct. The term “transfer” is used to refer to all forms of removal, expulsion or deportation.

ture and ill-treatment and, through jurisprudence, developed standards to give it meaningful effect. This Court has a long history of invoking other human rights instruments to assist in the proper interpretation of the Convention itself, including most significantly for present purposes, the UNCAT.³ Conversely, the lead that this Court has taken in the development of human rights standards in respect of *non-refoulement*, notably through the *Chahal v. the United Kingdom* (1996) case, has been followed extensively by other international courts and bodies, and now reflects an accepted international standard.⁴

III. THE ‘ABSOLUTE’ PROHIBITION OF TORTURE AND ILL-TREATMENT

6. The prohibition of torture and other forms of ill-treatment is universally recognised and is enshrined in all of the major international and regional human rights instruments.⁵ All international instruments that contain the prohibition of torture and ill-treatment recognise its absolute, non-derogable character.⁶ This non-derogability has consistently been reiterated by human rights courts, monitoring bodies and international criminal tribunals, including this Court, the UN Human Rights Committee (“HRC”), the UN Committee against Torture (“CAT”), the Inter-American Commission and Court, and the International Criminal Tribunal for the Former Yugoslavia (“ICTY”).⁷
7. The prohibition of torture and other forms of ill-treatment does not therefore yield to the threat posed by terrorism. This Court, the HRC, the CAT, the Special Rapporteur on Torture, the UN Security Council and General Assembly, and the Committee of Ministers of the Council of Europe, among others, have all recognised the undoubted difficulties States face in countering terrorism, yet made clear that all anti-terrorism measures must be implemented in accordance with international human rights and humanitarian law, including the prohibition of torture and other ill-treatment.⁸ A recent United Nations World Summit Outcome Document (adopted with the consensus of all States) in para. 85 reiterated the point.

³ *Aydin v. Turkey* (1997); *Soering v. the United Kingdom* (1989); *Selmouni v. France* (1999); and *Mahmut Kaya v. Turkey* (2000). For full reference to these and other authorities cited in the brief see Annex 2 Table of Authorities.

⁴ See e.g. CAT Communication *T.P.S. v. Canada* (2000); Inter-American Commission on Human Rights, *Report on the Situation of Human Rights of Asylum Seekers Within the Canadian Refugee Determination System* (2000); UN Special Rapporteur on Torture, *Reports to General Assembly* (2005, §§ 38-39; 2004, § 28; and 2002, § 32).

⁵ Universal Declaration of Human Rights (Article 5); ICCPR (Article 7); American Convention on Human Rights (Article 5); African Charter on Human and Peoples’ Rights (Article 5); Arab Charter on Human Rights (Article 13); UNCAT and European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The prohibition against torture is also reflected throughout international humanitarian law, in e.g. the Regulations annexed to the Hague Convention IV of 1907, the Geneva Conventions of 1949 and their two Additional Protocols of 1977.

⁶ The prohibition of torture and ill-treatment is specifically excluded from derogation provisions: see Article 4(2) of the ICCPR; Articles 2(2) and 15 of the UNCAT; Article 27(2) of the American Convention on Human Rights; Article 4(c) Arab Charter of Human Rights; Article 5 of the Inter-American Convention to Prevent and Punish Torture; Articles 3 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁷ See HRC General Comment No. 29 (2001); CAT’s Concluding observations on the Reports of: the Russian Federation (2001, § 90), Egypt (2002, § 40), and Spain (2002, § 59); Inter-American cases, e.g. *Castillo-Petrucci et al. v. Peru* (1999, § 197); *Cantoral Benavides v. Peru* (2000, § 96); *Maritza Urrutia v. Guatemala*, (2003, § 89); this Court’s cases, e.g. *Tomasi v. France*, (1992); *Aksoy v. Turkey*, (1996); and *Chahal v. the United Kingdom*, (1996); ICTY cases, e.g. *Prosecutor v. Furundzija* (1998).

⁸ This Court, see e.g. *Klass and Others v. Germany* (1978); *Leander v. Sweden* (1987) and *Rotaru v. Romania* (2000); HRC, General Comment No. 29 (2001, § 7), and Concluding observations on Egypt’s Report, (2002, § 4); CAT Concluding observations on Israel’s Report (1997, §§ 2-3 and 24); Report to the General Assembly (2004, § 17) and *Statement in connection with the events of 11 September 2001* (2001, § 17); General Assembly Resolutions 57/27(2002), 57/219 (2002) and 59/191 (2004); Security Council Resolution 1456 (2003, Annex, § 6); Council of Europe Guidelines on Human Rights and the Fight Against Terrorism (2002); Special Rapporteur on Torture, *Statement to the Third Committee of the GA* (2001). Other bodies pronouncing on the issue include, for example, Human Rights Chamber for Bosnia and Herzegovina (see e.g. *Boudellaa and others v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, 2003, §§ 264 to 267).

8. The absolute nature of the prohibition of torture under treaty law is reinforced by its higher, *jus cogens* status under customary international law. *Jus cogens* status connotes the fundamental, peremptory character of the obligation, which is, in the words of the International Court of Justice, “intransgressible.”⁹ There is ample international authority recognising the prohibition of torture as having *jus cogens* status.¹⁰ The prohibition of torture also imposes obligations *erga omnes*, and every State has a legal interest in the performance of such obligations which are owed to the international community as a whole.¹¹
9. The principal consequence of its higher rank as a *jus cogens* norm is that the principle or rule cannot be derogated from by States through any laws or agreements not endowed with the same normative force.¹² Thus, no treaty can be made nor law enacted that conflicts with a *jus cogens* norm, and no practice or act committed in contravention of a *jus cogens* norm may be “legitimated by means of consent, acquiescence or recognition”; any norm conflicting with such a provision is therefore void.¹³ It follows that no interpretation of treaty obligations that is inconsistent with the absolute prohibition of torture is valid in international law.
10. The fact that the prohibition of torture is *jus cogens* and gives rise to obligations *erga omnes* also has important consequences under basic principles of State responsibility, which provide for the interest and in certain circumstances the obligation of all States to prevent torture and other forms of ill-treatment, to bring it to an end, and not to endorse, adopt or recognise acts that breach the prohibition.¹⁴ Any interpretation of the Convention must be consistent with these obligations under broader international law.

IV. THE PRINCIPLE OF *NON-REFOULEMENT*

11. The expulsion (or ‘*refoulement*’) of an individual where there is a real risk of torture or other ill-treatment is prohibited under both international conventional and customary law. A number of States, human rights experts and legal commentators have specifically noted the customary nature of *non-refoulement*¹⁵ and asserted that the prohibition against *non-refoulement* under customary international law shares its *jus cogens* and *erga omnes* character. As the prohibition of all forms of ill-treatment (torture, inhuman or degrading treatment or punishment) is absolute, peremptory and non-derogable, the principle of *non-refoulement* applies without distinction.¹⁶ Indicative of the expansive approach to the

⁹ Advisory Opinion of the ICJ on the *Legal Consequences of the Constructions of a Wall in the Occupied Palestinian Territory*, (2004, § 157). See also Article 5,3 Vienna Convention on the Law of Treaties (1969) which introduces and defines the concept of “peremptory norm.”

¹⁰ See e.g. the first report of the Special Rapporteur on Torture to the UNHCR (1997, § 3); ICTY judgments *Prosecutor v. Delalic and others* (1998), *Prosecutor v. Kunarac* (2001, § 466), and *Prosecutor v. Furundzija* (1998); and comments of this Court in *Al-Adsani v. the United Kingdom* (2001).

¹¹ See ICJ Reports: *Barcelona Traction, Light and Power Company, Limited, Second Phase* (1970, § 33); *Case Concerning East Timor* (1995, § 29); *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (1996, § 31). See also Articles 40-41 of the International Law Commission’s Draft Articles on State Responsibility (“ILC Draft Articles”) and the commentary to the Draft Articles. See ICTY case *Prosecutor v. Furundzija*, (1998, § 151); Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights*, (2000, § 155); and HRC General Comment 31(2004, § 2).

¹² See Article 53 of the Vienna Convention on the Law of Treaties 1969; also ICTY *Furundzija* (1998, §§ 153-54).

¹³ Jennings and Watts, *Oppenheim’s International Law* (Vol. 1, Ninth ed.) 8 (1996). See also Article 53, Vienna Convention.

¹⁴ See ILC Draft Articles (40 and 41 on *jus cogens*; and Articles 42 and 48 on *erga omnes*); see also Advisory Opinion of the ICJ on the *Legal Consequences of the Constructions of a Wall in the Occupied Palestinian Territory*, (2004, § 159). In respect of the *erga omnes* character of the obligations arising under the ICCPR thereof, see Comment 31 (2004, § 2).

¹⁵ See E. Lauterpacht and D. Bethlehem (2001, §§ 196-216).

¹⁶ See e.g. HRC General Comment No. 20 (1992, § 9).

- protection, both CAT and HRC are of the opinion that *non-refoulement* prohibits return to countries where the individual would not be directly at risk but from where he or she is in danger of being expelled to another country or territory where there would be such a risk.¹⁷
12. The prohibition of *refoulement* is explicit in conventions dedicated specifically to torture and ill-treatment. Article 3 of UNCAT prohibits States from deporting an individual to a State “where there are substantial grounds for believing that he would be in danger of being subjected to torture.” Article 13(4) of the Inter-American Convention to Prevent and Punish Torture provides, more broadly, that deportation is prohibited on the basis that the individual “will be subjected to torture or to cruel, inhuman or degrading treatment, or that he will be tried by special or ad hoc courts in the requesting State.”
 13. The principle of *non-refoulement* is also explicitly included in a number of other international instruments focusing on human rights, including the EU Charter of Fundamental Rights and Inter-American Convention on Human Rights (“I-ACHR”).¹⁸ In addition, it is reflected in other international instruments addressing international cooperation, including extradition treaties, and specific forms of terrorism.¹⁹ Although somewhat different in its scope and characteristics, the principle is also reflected in refugee law.²⁰
 14. This principle is also implicit in the prohibition of torture and other ill-treatment in general human rights conventions, as made clear by consistent authoritative interpretations of these provisions. In *Soering* and in subsequent cases, this Court identified *non-refoulement* as an ‘inherent obligation’ under Article 3 of the Convention in cases where there is a “real risk of exposure to inhuman or degrading treatment or punishment.” Other bodies have followed suit, with the HRC, in its general comments and individual communications, interpreting Article 7 of the ICCPR as implicitly prohibiting *refoulement*.²¹ The African Commission on Human Rights and the Inter-American Commission on Human Rights have also recognised that deportation can, in certain circumstances, constitute such ill-treatment.²²
 15. The jurisprudence therefore makes clear that the prohibition on *refoulement*, whether explicit or implicit, is an inherent and indivisible part of the prohibition on torture or other ill-treatment. It constitutes an essential way of giving effect to the Article 3 prohibition, which not only imposes on states the duty not to torture themselves, but also requires them to “prevent such acts by not bringing persons under the control of other States if there are

¹⁷ CAT General Comment No. 1(1996, § 2); *Avedes Hamayak Korban v. Sweden* (1997); and HRC General Comment 31(2004).

¹⁸ Article 19 EU Charter of Fundamental Rights; Article 22(8) I-ACHR; Article 3(1) Declaration on Territorial Asylum, Article 8 Declaration on the Protection of All Persons from Enforced Disappearances, Principle 5 Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, and Council of Europe Guidelines.

¹⁹ Article 9 International Convention against the Taking of Hostages, Article 3 European Convention on Extradition, Article 5 European Convention on the Suppression of Terrorism, and Article 4(5) Inter-American Convention on Extradition contain a general clause on *non-refoulement*. See also Article 3 Model Treaty on Extraditions.

²⁰ The principle of *non-refoulement* applicable to torture and other ill-treatment under human rights law is complementary to the broader rule of *non-refoulement* applicable where there is a well founded fear of ‘persecution’ under refugee law, which excludes those who pose a danger to the security of the host State. However, there are no exceptions to *non-refoulement*, whether of a refugee or any other person, when freedom from torture and other ill-treatment is at stake. See Articles 32 and 33 of the Convention Relating to the Status of Refugees, 1951, *Chahal* case (1996, § 80), the New Zealand case of *Zaoui v. Attorney General* (2005); and Lauterpacht and Bethlehem (2001, §§ 244 and 250).

²¹ See HRC General Comments No. 20 (1990, at § 9), and No. 31 (2004, §12). For individual communications, see e.g. *Chitat Ng v. Canada*, (1994, § 14.1); *Cox v. Canada* (1994); *G.T. v. Australia* (1997).

²² See African Commission on Human Rights, *Modise v. Botswana*, and I-A Comm. HR *Report on Terrorism and Human Rights* (2004).

substantial grounds for believing that they would be in danger of being subjected to torture.”²³ This is consistent with the approach to fundamental rights adopted by this Court, and increasingly by other bodies, regarding the positive duties incumbent on the state.²⁴ Any other interpretation, enabling states to circumvent their obligations on the basis that they themselves did not carry out the ill-treatment would, as this Court noted when it first considered the matter, ‘plainly be contrary to the spirit and intention of [Article 3].’²⁵

The Absolute Nature of the Prohibition on *Refoulement*

16. The foregoing demonstrates that the prohibition on *refoulement* is inherent in the prohibition of torture and other forms of ill-treatment. UN resolutions, declarations, international conventions, interpretative statements by treaty monitoring bodies, statements of the UN Special Rapporteur on Torture and judgments of international tribunals, including this Court, as described herein, have consistently supported this interpretation. It follows from its nature as inherent to it, that the *non-refoulement* prohibition enjoys the same status and essential characteristics as the prohibition on torture and ill-treatment itself, and that it may not be subject to any limitations or exceptions.
17. The jurisprudence of international bodies has, moreover, explicitly given voice to the absolute nature of the principle of *non-refoulement*. In its case law, this Court has firmly established and re-affirmed the absolute nature of the prohibition of *non-refoulement* under Article 3 of the Convention.²⁶ In paragraph 80 of the *Chahal* case, this Court made clear that the obligations of the State under Article 3 are “equally absolute in expulsion cases” once the ‘real risk’ of torture or ill-treatment is shown. The CAT has followed suit in confirming the absolute nature of the prohibition of *refoulement* under Article 3 in the context of particular cases.²⁷ Likewise, other regional bodies have also interpreted the prohibition on torture and ill-treatment as including an absolute prohibition of *refoulement*.²⁸

Application of the non-refoulement principle to all persons

18. It is a fundamental principle that *non-refoulement*, like the protection from torture or ill-treatment itself, applies to *all persons* without distinction. No characteristics or conduct, criminal activity or terrorist offence, alleged or proven, can affect the right not to be subject to torture and ill-treatment, including through *refoulement*. In the recent case of *N. v. Finland* (2005), this Court reiterated earlier findings that “[a]s the prohibition provided by Article 3 against torture, inhuman or degrading treatment or punishment is of absolute character, *the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration* (emphasis added).” The same principle is reiterated in other decisions of this Court and of other bodies.²⁹

²³ Report of the Special Rapporteur to the Third Committee of the GA (2001, § 28).

²⁴ See Special Rapporteur on Torture Report (1986, § 6) and Report (2004, § 27); HRC General Comments No. 7 (1982) and No. 20 (1992); Articles 40-42 and 48 of the ILC Draft Articles; ICTY *Furundzija* judgment (1998, § 148).

²⁵ *Soering v. UK* (1989, § 88).

²⁶ *Soering v. UK* (1989, § 88); *Ahmed v. Austria* (1996 § 41); *Chahal v. UK* (1996).

²⁷ See *CAT Tapia Paez v. Sweden*, (1997, at § 9.8) and *Pauline Muzonzo Paku Kisoki v. Sweden* (1996).

²⁸ See *Modise* case and *Report on Terrorism and Human Rights*.

²⁹ See *inter alia Ahmed v. Austria* (1996); and *CAT Tapia Paez v. Sweden* (1997, § 14.5); *M. B. B. v. Sweden* (1998, § 6.4).

Application of the non-refoulement principle in the face of terrorism or national security threat

19. The jurisprudence of other regional and international bodies, like that of this Court, rejects definitively the notion that threats to national security, or the challenge posed by international or domestic terrorism, affect the absolute nature of the prohibition on *non-refoulement*. In *Chahal*, this Court was emphatic that no derogation is permissible from the prohibition of torture and other forms of ill-treatment and the obligations arising from it (such as *non-refoulement*) in the context of terrorism. This line of reasoning has been followed in many other cases of this Court and other bodies including the recent case of *Agiza v. Sweden* in which CAT stated that “the Convention’s protections are absolute, even in the context of national security concerns.”³⁰
20. Thus no exceptional circumstances, however grave or compelling, can justify the introduction of a “balancing test” when fundamental norms such as the prohibition on *non-refoulement* in case of torture or ill-treatment are at stake. This is evident from the concluding observations of both HRC and CAT on State reports under the ICCPR and UNCAT, respectively.³¹ On the relatively few occasions when states have introduced a degree of balancing in domestic systems, they have been heavily criticised in concluding observations of CAT,³² or the HRC.³³ This practice follows, and underscores, this Court’s own position in the *Chahal* case where it refused the United Kingdom’s request to perform a balancing test that would weigh the risk presented by permitting the individual to remain in the State against the risk to the individual of deportation.

Non-Refoulement as Jus Cogens

21. It follows also from the fact that the prohibition of *refoulement* is inherent in the prohibition of torture and other forms of ill-treatment, and necessary to give effect to it, that it enjoys the same customary law, and *jus cogens* status as the general prohibition. States and human rights legal experts have also specifically asserted that the prohibition against *non-refoulement* constitutes customary international law, and enjoys *jus cogens* status.³⁴ As noted, one consequence of *jus cogens* status is that no treaty obligation, or interpretation thereof, inconsistent with the absolute prohibition of *refoulement*, has validity under international law.
22. Certain consequences also flow from the *jus cogens* nature of the prohibition of torture itself (irrespective of the status of the *non-refoulement* principle), and the *erga omnes* obligations related thereto. The principle of *non-refoulement* is integral - and necessary to give effect - to the prohibition of torture. To deport an individual in circumstances where

³⁰ See CAT *Agiza v. Sweden* (2005, § 13.8); *Amei v. Switzerland* (1997, § 9.8); *M.B.B. v. Sweden*, §6.4; *Arana v. France*, (2000, § 11.5).

³¹ E.g. CAT’s Concluding Observations on Germany (2004), commending the reaffirmation of the absolute ban on exposure to torture, including through *refoulement*, even where there is a security risk.

³² See CAT’s Concluding Observations on Sweden’s Report (2002, §14); and on Canada’s Report (2005, § 4(a)).

³³ See also HRC Concluding Observations on Canada’s Report (1999, §13) condemning the Canadian *Suresh* case, which upheld a degree of balancing under Article 3, based on national law, and *Mansour Ahani v. Canada*, (2002, § 10.10) where HRC also clearly rejected Canada’s balancing test in the context of deportation proceedings.

³⁴ See Lauterpacht and Bethlehem (2001, § 195); Bruin and Wouters (2003, § 4.6); Allain (2002); Report of Special Rapporteur on Torture to the GA (2004); IACHR Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System (2000, § 154). There has also been considerable support among Latin American States for the broader prohibition of *non-refoulement* in refugee law as “imperative in regard to refugees and in the present state of international law [thus it] should be acknowledged and observed as a rule of *jus cogens*” (Cartagena Declaration of Refugees of 1984, Section III, § 5).

there is a real risk of torture is manifestly at odds with the positive obligations not to aid, assist or recognise such acts and the duty to act to ensure that they cease.³⁵

V. THE OPERATION OF THE RULE

The General Test

23. When considering the obligations of States under Article 3 in transfer cases, this Court seeks to establish whether “*substantial grounds are shown for believing that the person concerned, if expelled, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the receiving country.*”³⁶ This test is very similar to those established by other bodies. Article 3 (1) of the UNCAT requires that the person not be transferred to a country where there are “*substantial grounds for believing that he would be in danger of being subjected to torture.*” The HRC has similarly affirmed that the obligation arises “*where there are substantial grounds for believing that there is a real risk of irreparable harm.*”³⁷ The Inter-American Commission for Human Rights has likewise referred to “*substantial grounds of a real risk of inhuman treatment.*”³⁸
24. The legal questions relevant to the Court’s determination in transfer cases, assuming that the potential ill-treatment falls within the ambit of Article 3, are: first, the nature and degree of the risk that triggers the *non-refoulement* prohibition; second, the relevant considerations that constitute ‘substantial grounds’ for believing that the person faces such a risk; third, the standard by which the existence of these ‘substantial grounds’ is to be evaluated and proved. The comments below address these questions in turn.
25. A guiding principle in the analysis of each of these questions, apparent from the work of this Court and other bodies, is the need to ensure the effective operation of the *non-refoulement* rule. This implies interpreting the rule consistently with the human rights objective of the Convention; the positive obligations on States to prevent serious violations and the responsibility of the Court to guard against it; the absolute nature of the prohibition of torture and ill-treatment and the grave consequences of such a breach transpiring; and the practical reality in which the *non-refoulement* principle operates. As this Court has noted: “The object and purpose of the Convention as an instrument for the protection of individual human beings require that *its provisions be interpreted and applied so as to make its safeguards practical and effective.*”³⁹

Nature and Degree of the Risk

26. This Court, like the CAT, has required that the risk be “real”, “foreseeable”, and “personal”.⁴⁰ There is no precise definition in the Convention case law of what constitutes a “real” risk, although the Court has established that “mere possibility of ill-treatment is not enough”,⁴¹ just as certainty that the ill-treatment will occur is not required.⁴² For more pre-

³⁵ ILC Draft Articles, Article 16.

³⁶ *N v. Finland* (2005).

³⁷ HRC General Comment 31 (2004).

³⁸ *Report on Terrorism and Human Rights* (2002), *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, (2000, § 154).

³⁹ *Soering v. the United Kingdom*, (1989, § 87), emphasis added.

⁴⁰ CAT General Comment 1 (1997); *Soering v. the United Kingdom* (1989, § 86); *Shamayev and 12 others v. Russia* (2005).

⁴¹ See *Vilvarajah*, (1991, § 111).

⁴² *Soering*, (1989, § 94).

cision as to the standard, reference can usefully be made to the jurisprudence of other international and regional bodies which also apply the ‘real and foreseeable’ test. Notably, the CAT has held that the risk “must be assessed on grounds that go beyond mere theory or suspicion”, but this does not mean that the risk has to be “highly probable”.⁴³

27. The risk must also be “personal”. However, as noted in the following section, personal risk may be deduced from various factors, notably the treatment of similarly situated persons.

Factors Relevant to the Assessment of Risk

28. This Court and other international human rights courts and bodies have repeatedly emphasised that the level of scrutiny to be given to a claim for *non-refoulement* must be “rigorous” in view of the absolute nature of the right this principle protects.⁴⁴ In doing so, the State must take into account “all the relevant considerations” for the substantiation of the risk.⁴⁵ This includes both the human rights situation in the country of return and the personal background and the circumstances of the individual.

General Situation in the Country of Return

29. The human rights situation in the state of return is a weighty factor in virtually all cases.⁴⁶ While this Court, like CAT,⁴⁷ has held that the situation in the state is not sufficient *per se* to prove risk, regard must be had to the extent of human rights repression in the State in assessing the extent to which personal circumstances must also be demonstrated.⁴⁸ Where the situation is particularly grave and ill-treatment widespread or generalised, the general risk of torture or ill-treatment may be high enough that little is required to demonstrate the personal risk to an individual returning to that State. The significant weight of this factor is underlined in Article 3(2) of UNCAT: “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.”

Personal Background or Circumstances

30. The critical assessment in *non-refoulement* cases usually turns on whether the applicant has demonstrated “specific circumstances” which make him or her personally vulnerable to torture or ill-treatment. These specific circumstances may be indicated by previous ill-treatment or evidence of current persecution (e.g. that the person is being pursued by the authorities), but neither is necessary to substantiate that the individual is ‘personally’ at risk.⁴⁹ A person may be found at risk by virtue of a characteristic that makes him or her particularly vulnerable to torture or other ill-treatment. The requisite ‘personal’ risk does

⁴³ See e.g. *CAT X.Y.Z. v. Sweden* (1998); *A.L.N. v. Switzerland* (1998); *K.N. v. Switzerland*; and *A.R. v. The Netherlands* (2003).

⁴⁴ *Chahal v. the United Kingdom*, 91996, § 79); *Jabari v. Turkey* (2000, § 39).

⁴⁵ UNCAT Article 33 (2).

⁴⁶ As held by CAT, the absence of a pattern of human rights violations “does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.” See e.g. *Seid Mortesa Aemei v. Switzerland* (1997).

⁴⁷ CAT has explained that although a pattern of systematic abuses in the State concerned is highly relevant, it “does not as such constitute sufficient ground” for a situation to fall under Article 3 because the risk must be ‘personal’.

⁴⁸ *Vilvarajah* (1991, § 108).

⁴⁹ See eg. *Shamayev and 12 otehrs v. Russia* (2005, § 352); *Said v. the Netherlands* (2005, § 48-49).

not necessarily require information specifically about that person therefore, as opposed to information about the fate of persons in similar situations.

Perceived Association with a Vulnerable Group as a Strong Indication of the Existence of Risk

31. It is clearly established in the jurisprudence of the CAT that, in assessing the “specific circumstances” that render the individual personally at risk, particular attention will be paid to any evidence that the applicant belongs, or is *perceived* to belong,⁵⁰ to an identifiable group which has been targeted for torture or ill-treatment. It has held that regard must be had to the applicant’s political or social affiliations or activities, whether inside *or outside* the State of return, which may lead that State to identify the applicant with the targeted group.⁵¹
32. Organisational affiliation is a particularly important factor in cases where the individual belongs to a group which the State in question has designated as a “terrorist” or “separatist” group that threatens the security of the State, and which for this reason is targeted for particularly harsh forms of repression. In such cases, the CAT has found that the applicant’s claim comes within the purview of Article 3 even in the absence of other factors such as evidence that the applicant was ill-treated in the past,⁵² and even when the general human rights situation in the country may have improved.⁵³
33. In this connection, it is also unnecessary for the individual to show that he or she is, or ever was, personally sought by the authorities of the State of return. Instead, the CAT’s determination has focused on the assessment of a) how the State in question treats members of these groups, and b) whether sufficient evidence was provided that the State would believe the particular individual to be associated with the targeted group. Thus in cases involving suspected members of ETA, *Sendero Luminoso*, PKK, KAWA, the People’s Mujahadeen Organization and the Zapatista Movement, the CAT has found violations of Article 3 on account of a pattern of human rights violations against members of these organisations, where it was sufficiently established that the States concerned were likely to identify the individuals with the relevant organisations.⁵⁴
34. In respect of proving this link between the individual and the targeted group, the CAT has found that the nature and profile of the individual’s activities in his country of origin *or abroad*⁵⁵ is relevant. In this respect, human rights bodies have indicated that a particularly important factor to be considered is the extent of publicity surrounding the individual’s case, which may have had the effect of drawing the negative attention of the State party to the individual. The importance of this factor has been recognized both by this Court and the CAT.⁵⁶

⁵⁰ It is not necessary that the individual *actually* is a member of the targeted group, if believed so to be and targeted for that reason. See CAT *A. v. The Netherlands* (1998).

⁵¹ See CAT General Comment 1 (1997), § 8 (e)).

⁵² *Gorki Ernesto Tapia Paez v. Sweden* (1997).

⁵³ See *Josu Arkauz Arana v. France* (2000), finding that gross, flagrant or mass violations were unnecessary in such circumstances.

⁵⁴ See *inter alia* CAT, *Cecilia Chipana v. Venezuela* (1998); *Ahmed Hussein Mustafa Kamil Agiza v. Sweden* (2005); *Kaveh Yaragh Tala v. Sweden* (1998); *Seid Mortesa Aemei v. Switzerland* (1996).

⁵⁵ See e.g. *Seid Mortesa Aemei v. Switzerland* (1997); *M.K.O. v. The Netherlands* (2001).

⁵⁶ *N v. Finland* (2005, § 165); *Venkadajalasarma v. the Netherlands* (2004); *Said v. the Netherlands* (2005, § 54); *Thampibillai v. the Netherlands* (2004, § 63). See also CAT *Sadiq Shek Elmi v. Australia* (1999, § 6.8).

Standard and Burden of Proving the Risk

35. While the Court has not explicitly addressed the issue of standard and burden of proof in transfer cases, it has held that in view of the fundamental character of the prohibition under Article 3, the examination of risk “must necessarily be a thorough one”.⁵⁷ It has also imposed on States a positive obligation to conduct a ‘meaningful assessment’ of any claim of a risk of torture and other ill-treatment.⁵⁸ This approach is supported by CAT,⁵⁹ and reflects a general recognition by this and other tribunals that, because of the specific nature of torture and other ill-treatment, the burden of proof cannot rest alone with the person alleging it, particularly in the view of the fact that the person and the State do not always have equal access to the evidence.⁶⁰ Rather, in order to give meaningful effect to the Convention rights under Article 3 in transfer cases, the difficulties in obtaining evidence of a risk of torture or ill-treatment in another State - exacerbated by the inherently clandestine nature of such activity and the individual’s remoteness from the State concerned - should be reflected in setting a reasonable and appropriate standard and burden of proof and ensuring flexibility in its implementation.
36. The particular difficulties facing an individual seeking to substantiate an alleged risk of ill-treatment have been recognized by international tribunals, including this Court. These are reflected, for example, in the approach to the extent of the evidence which the individual has to adduce. The major difficulties individuals face in accessing materials in the context of transfer is reflected in the Court’s acknowledgment that substantiation only “to the greatest extent practically possible” can reasonably be required.⁶¹ Moreover, CAT’s views have consistently emphasised that, given what is at stake for the individual, lingering doubts as to credibility or proof should be resolved in the individual’s favour: “even though there may be some remaining doubt as to the veracity of the facts adduced by the author of a communication, [the Committee] *must ensure that his security is not endangered*.”⁶² In order to do this, it is not necessary that all the facts invoked by the author should be proved.”⁶³
37. An onus undoubtedly rests on individuals to raise, and to seek to substantiate, their claims. It is sufficient however for the individual to substantiate an ‘arguable’ or ‘*prima facie*’ case of the risk of torture or other ill-treatment for the *refoulement* prohibition to be triggered. It is then for the State to dispel the fear that torture or ill-treatment would ensue if the person is transferred. This approach is supported by a number of international tribunals addressing questions of proof in transfer cases. For example, the CAT suggests that it is sufficient for the individual to present an ‘*arguable case*’ or to make a ‘*plausible allegation*’; then it is for the State to prove the lack of danger in case of return.⁶⁴ Similarly,

⁵⁷ *Said v. the Netherlands* (2005, § 49), *N. v Finland* (2005); *Jabari v. Turkey* (2000, § 39).

⁵⁸ See *Jabari v. Turkey* (2000).

⁵⁹ E.g. CAT General Comment 1 (1997, § 9(b)).

⁶⁰ See e.g. HRC, *Albert Womah Mukong v. Cameroon* (1994); I-ACHR, *Velasquez Rodriguez v. Honduras* (1988, § 134 *et seq.*).

⁶¹ E.g. *Said v. the Netherlands* (2005, § 49); *Bahaddar v. the Netherlands*, (1998, § 45).

⁶² Emphasis added.

⁶³ *Seid Mortesa Aemei v. Switzerland* (1997).

⁶⁴ CAT General Comment 1 (1997, § 5): “*The burden of proving a danger of torture is upon the person alleging such danger to present an ‘arguable case’.* This means that there must be a factual basis for the author’s position sufficient to require a response from the State party.” In *Agiza v. Sweden* (2005, § 13.7) the burden was found to be on the State to conduct an “*effective, independent and impartial review*” once a ‘*plausible allegation*’ is made. Similarly, in *A.S. v. Sweden* (2000, § 8.6) it was held that if sufficient facts are adduced by the author, the burden shifts to the State “*to make sufficient efforts to determine whether there are substantial grounds for believing that the author would be in danger of being subjected to torture.*”

the HRC has held that the burden is on the individual to establish a ‘*prima facie*’ case of real risk, and then the State must refute the claim with ‘substantive grounds’.⁶⁵ Most recently, the UN Sub-Commission for the Promotion of Human Rights considered that once a general risk situation is established, there is a ‘presumption’ the person would face a real risk.⁶⁶

38. Requiring the sending State to rebut an arguable case is consistent not only with the frequent reality attending individuals’ access to evidence, but also with the duties on the State to make a meaningful assessment and satisfy itself that any transfer would not expose the individual to a risk of the type of ill-treatment that the State has positive obligation to protect against.

An Existing Risk Cannot be Displaced by “Diplomatic Assurances”

39. States may seek to rely on “diplomatic assurances” or “memoranda of understanding” as a mechanism to transfer individuals to countries where they are at risk of torture and other ill-treatment. In practice, the very fact that the sending State seeks such assurances amounts to an admission that the person would be at risk of torture or ill-treatment in the receiving State if returned. As acknowledged by this Court in *Chahal*, and by CAT in *Agiza*, assurances do not suffice to offset an existing risk of torture.⁶⁷ This view is shared by a growing number of international human rights bodies and experts, including the UN Special Rapporteur on Torture,⁶⁸ the Committee for Prevention of Torture,⁶⁹ the UN Sub-Commission,⁷⁰ the Council of Europe Commissioner on Human Rights,⁷¹ and the UN Independent Expert on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism.⁷² Most recently, the UN General Assembly, by consensus of all States, has affirmed “that diplomatic assurances, where used, do not release States from their obligations, under international human rights, humanitarian and refugee law, in particular the principle of *non-refoulement*.”⁷³ Reliance on such assurances as sufficient to displace the risk of torture creates a dangerous loophole in the *non-refoulement* obligation, and ultimately erodes the prohibition of torture and other ill-treatment.
40. Moreover, assurances cannot legitimately be relied upon as a factor in the assessment of relevant risk. This is underscored by widespread and growing concerns about assurances as not only lacking legal effect but also as being, in practice, simply unreliable, with post-return monitoring mechanisms incapable of ensuring otherwise.⁷⁴ While effective system-wide monitoring is vital for the long-term prevention and eradication of torture and other ill-treatment, individual monitoring cannot ameliorate the risk to a particular detainee.

⁶⁵ See HRC, *Jonny Rubin Byahuranga v Denmark*, (2004, §§ 11.2-3).

⁶⁶ UN Sub-Commission for the Promotion and Protection of Human Rights, Resolution 2005/12 on Transfer of Persons, (2005, § 4); see similarly, European Commission for Human Rights in the *Cruz Varas* case (1991).

⁶⁷ *Chahal v. the UK* (1996, § 105); *Agiza v. Sweden* (2005, § 13.4).

⁶⁸ See Report of Special Rapporteur on Torture to the General Assembly, (2004, § 40).

⁶⁹ See CPT 15th General Report, (2004-2005, §§ 39-40).

⁷⁰ See above note 70, at § 4.

⁷¹ Report by Council of Europe Commissioner for Human Rights (2005, §§ 12-3).

⁷² Report of the UN Independent Expert (2005, §§ 19-20).

⁷³ See UN Declaration (2005, § 8).

⁷⁴ Courts in Canada (*Mahjoub*), the Netherlands (*Kaplan*), and the United Kingdom (*Zakaev*) have blocked transfers because of the risk of torture despite the presence of diplomatic assurances. There is credible evidence that persons sent from Sweden to Egypt (*Agiza & Al-Zari*) and from the United States to Syria (*Arar*) have been subject to torture and ill-treatment despite assurances: for more information on practice, see Human Rights Watch, ‘Still at Risk’ (2005); Human Rights Watch, ‘Empty Promises’ (2004).

41. The critical question to be ascertained by the Court, by reference to all circumstances and the practical reality on the ground, remains whether there is a risk of torture or ill-treatment in accordance with the standards and principles set down above. If so, transfer is unlawful. No ‘compensating measures’ can affect the peremptory *jus cogens* nature of the prohibition against torture, and the obligations to prevent its occurrence, which are plainly unaffected by bilateral agreements.

VI. CONCLUSION

42. The principle of *non-refoulement*, firmly established in international law and practice, is absolute. No exceptional circumstances concerning the individual potentially affected or the national security of the State in question can justify qualifying or compromising this principle. Given the inherent link between the two, and the positive nature of the obligation to protect against torture and ill-treatment, no legal distinction can be drawn under the Convention between the act of torture or ill-treatment and the act of transfer in face of a real risk thereof. Any unravelling of the *refoulement* prohibition would necessarily mean an unravelling of the absolute prohibition on torture itself, one of the most fundamental and incontrovertible of international norms.
43. International practice suggests that the determination of transfer cases should take account of the absolute nature of the *refoulement* prohibition under Article 3, and what is required to make the Convention’s protection effective. The risk must be real, foreseeable and personal. Great weight should attach to the person’s affiliation with a vulnerable group in determining risk. Evidentiary requirements in respect of such risk must be tailored to the reality of the circumstances of the case, including the capacity of the individual to access relevant facts and prove the risk of torture and ill-treatment, the gravity of the potential violation at stake and the positive obligations of states to prevent it. Once a *prima facie* or arguable case of risk of torture or other ill-treatment is established, it is for the State to satisfy the Court that there is in fact no real risk that the individual will be subject to torture or other ill-treatment.

Communication to:

Place and date: Budapest, 12 February 2004

Committee on the Elimination of Discrimination against Women
c/o Division for the Advancement of Women
Department of Economic and Social Affairs
United Nations Secretariat
2 United Nations Plaza
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New York, NY 10017
United States of America
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submitted for consideration under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

I. Information concerning the victim/petitioner

Family name: S.
First name: A.
Date and place of birth: 5 September 1973, Fehérgyarmat, Hungary
Nationality: Hungarian
Sex: Female
Marital status/children: partner and 3 children
Ethnic background: Roma
Present address: Kossuth street 5, Tisztaberek, Hungary

II. Information concerning the authors of the communication

European Roma Rights Center (ERRC), P.O. Box 906/93, 1386 Budapest 62, Hungary. The European Roma Rights Center is an international public interest law organisation that defends the legal rights of Roma across Europe. The ERRC has consultative status with the Economic and Social Council of the United Nations as well as the Council of Europe.

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Legal Defence Bureau for National and Ethnic Minorities (NEKI), P.O. Box 453/269, 1537 Budapest 114, Hungary. NEKI provides legal help in cases of discrimination based on the victim's ethnic or national origin.

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This communication is being submitted jointly by the ERRC and NEKI as the appointed representatives of the victim.

III. Information on the state party concerned

- III.1. This communication is directed against Hungary as a State party to the Optional Protocol of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (“the Optional Protocol”).
- III.2. We note that the incident giving rise to this communication occurred on 2 January 2001, just over two months before Hungary acceded to the Optional Protocol on 22 March 2001. However, we respectfully submit that: a) Hungary ratified the Convention itself on 3 September 1981 and that it is legally bound by its provisions from that date on, b) the Optional Protocol is anyway a jurisdictional mechanism which results in the recognition by the state concerned of yet another way in which the Committee can seize competence and consider its compliance with the standards enshrined in the Convention¹, and c) most importantly, the effects of the violations at issue in the instant case are of an ongoing (continuing) character.
- III.3. In particular, the Petitioner asserts that as a result of being sterilised on 2 January 2001 without her informed and full consent she can no longer give birth to any further children and that this amounts to a clear cut case of a continuing violation in accordance with Article 4(2)(e) of the Optional Protocol. Namely, the aim of a sterilisation is to end the patient’s ability to reproduce and from a legal as well as a medical perspective it is intended to be and in most cases is irreversible. (These issues are covered in greater detail in paragraphs VI.2 and VI.25 of this communication).
- III.4. In a well known Strasbourg case², for example, a German national obtained a residence and work permit for Switzerland in 1961, married a Swiss national in 1965, lost his job in 1968, was served a deportation order in 1970, which was executed in 1972, and ultimately found himself separated from his wife. Although the facts of the case occurred prior to the European Convention entering into force with respect to Switzerland in 1974, the Commission considered that it should not declare that it lacked jurisdiction *ratione temporis* to examine the application since, subsequent to the date of entry into force, the applicant found himself in a continuing situation of not being able to enter Switzerland to visit his wife who resided there³.
- III.5. The UN Human Rights Committee, has likewise repeatedly held that it can consider an alleged violation occurring prior to the date of the entry into force of the Optional Protocol to the International Covenant on Civil and Political Rights if it continues or has effects which themselves constitute violations after that date⁴. For example, in a

¹ In terms of the Optional Protocol to the Covenant on Civil and Political Rights, for example, Professor Manfred Nowak has stressed that this is a jurisdictional document with retroactive effect. In particular, state parties are obligated to respect the Covenant as of the very moment of ratification and regardless of whether or not they are also state parties to the Optional Protocol. The ratification of the Optional Protocol hence results merely in the opportunity for the victims to file individual communications with the Human Rights Committee. Such communications will be inadmissible *ratione temporis* only if they relate to events that have occurred prior to the date of entry into force of the Covenant itself. (See Nowak, Manfred, CCPR – Commentary, Kehl, 1993, 679-680.)

² Application No.7031/75, D.R.6 p.126.

³ As regards Strasbourg jurisprudence, for example, declarations made by state parties under former Article 25 of the European Convention on Human Rights, recognising the competence of the Commission to receive individual petitions, have consistently been ruled to have retroactive effect as of the moment of ratification of the Convention itself. Or in other words, the Commission deemed itself competent *ratione temporis* to examine incidents that have occurred between the date of ratification of the Convention by a given state and the date on which the state concerned has made its declaration in accordance with Article 25 of the Convention. (This approach was expressly confirmed in numerous cases. See e.g. Application No. 9587/81, D&R 29, pp. 238-239; Application No. 9559/81, D&R 33, pp.209-210, and Application No. 13057/87, D&R 60, pp. 247-248.)

⁴ See, for example, HRC Communication No.1/1976, Communication No.24/1977, Communication No.196/1985, Communication No.310/1988, Communication No.457/1991.

case concerning Australia⁵, in which a lawyer who had been unwilling to pay his annual practising fee had continued to practise, was fined by the Supreme Court and struck off the list of practising lawyers, the Human Rights Committee held that although these events had been concluded before the Optional Protocol entered into force for Australia, the effects of the Supreme Court decision were still continuing and the case was found admissible.

- III.6. In view of the above, even though the incident here at issue predates Hungary's accession to the Optional Protocol, we submit that the Committee's competence remains absolute and undiminished – both in terms of declaring this communication admissible and with regard to ruling on the merits of the instant case.
- III.7. **Should the Committee deem further clarification necessary, we respectfully request that, as the authors of this communication, we be allowed an additional opportunity to address this question in greater detail.**

IV. Facts of the case

- IV.1. A.S. (“the Petitioner”) is a Hungarian citizen of Romani origin who was subjected to a coerced sterilisation without her full and informed consent at a Hungarian public hospital.
- IV.2. On 30 May 2000, the Petitioner was confirmed to be pregnant by a medical examination⁶. From that day until her expected date of hospital confinement, 20 December 2000, she attended all prescribed appointments with the district nurse, her gynaecologist, and hospital doctors. On 20 December 2000 she went to the hospital in Fehegyarmat. During an examination, the embryo was found to be 36-37 weeks old and she was told to return home and informed to come back to the hospital when birth pains start.
- IV.3. On 2 January 2001, the Petitioner felt pains and she lost her amniotic fluid, which was accompanied by heavy bleeding. She was taken to Fehegyarmat hospital by ambulance, a journey of one hour. She was admitted to the hospital, undressed, examined, and prepared for an operation. During the examination the attending physician, Dr Andras Kanyo, diagnosed that her embryo had died in her womb, her womb had contracted, and her placenta had broken off. Dr Kanyo informed the Petitioner that a caesarean section needed to be immediately performed to remove the dead embryo⁷. While on the operating table she was asked to sign a statement of consent to a caesarean section. This consent statement had an additional hand-written note at the bottom of the form that read:

Having knowledge of the death of the embryo inside my womb I firmly request “my sterilisation”. I do not intend to give birth again, neither do I wish to become pregnant.

The hand-written sections of this statement were completed by Dr Kanyo in barely readable script⁸. The doctor used the Latin equivalent of the word sterilisation on the form, a word unknown to the victim, rather than the common usage Hungarian language word for sterilisation “lekotes”, or the Hungarian legal term “muvi meddove

⁵ HRC Communication No.491/1992.

⁶ See Exhibit 3, Decision of the Fehegyarmat Town Court

⁷ See Exhibit 3, Decision of the Fehegyarmat Town Court

⁸ Consent form at Exhibit 1.

tetel”. The plaintiff signed both the consent to a caesarean section and under the handwritten sentence consent to the sterilisation. The form itself was also signed twice by Dr Kanyo and by Mrs Laszlo Fejes, midwife. Finally, the Petitioner also signed consent statements for a blood transfusion, and for anaesthesia.

- IV.4. She did not receive information about the nature of sterilisation, its risks and consequences, or about other forms of contraception, at any time prior to the operation being carried out. This was later confirmed by the Court of Second Instance which found that **“the information given to the plaintiff concerning her sterilisation was not detailed. According to the witness statement of Dr Kanyo, the plaintiff was not informed of the exact method of the operation, of the risks of its performance, and of the possible alternative procedures and methods.”**⁹ Her partner, Mr Lakatos, was also not informed about the sterilisation operation or other forms of contraception. He was not present at the hospital at the time of the operations.
- IV.5. The hospital records show that the Petitioner had lost a substantial amount of blood and was in a state of shock. The hospital records state that “She felt dizzy upon arrival, heavy uterinal bleeding, shock suffered during delivery and giving birth, due to the heavy blood loss we need to make a transfusion”¹⁰. She was operated on by Dr Andras Kanyo, assisted by Dr Anna Koperdak. The anaesthetist was Dr Maria Kriczki. The caesarean section was performed, the dead foetus and placenta were removed, and the Petitioner was sterilised by tying both fallopian tubes¹¹.
- IV.6. The hospital’s records show that only 17 minutes passed from the ambulance arriving at the hospital until the completion of both operations¹².
- IV.7. Before leaving the hospital, the Petitioner sought out Dr Kanyo and asked him for information on her state of health and when she could try to have another baby. It was only then that she learnt the meaning of the word sterilisation, and that she could not become pregnant again.
- IV.8. The sterilisation had a profound impact on the life of the petitioner. Since then both she and her partner have received medical treatment for depression. They both have strict religious beliefs that prohibit contraception of any kind, including sterilisation. Their religion is a local Hungarian branch of the Catholic Church. In Catholic teaching, sterilisation is a mutilation of the body which leads to the deprivation of a natural function and must be rejected¹³. They are both Roma and live in accordance with traditional Romani ethnic customs. In a study by the Hungarian Academy of Science about Roma women’s attitude to childbirth¹⁴, the researcher, Maria Nemenyi, stated that:

“Having children is a central element in the value system of Roma families. The fact that there are more children in Roma families than in those of the majority population is mainly not due to a coincidence, to the lack of family planning ... on the contrary, it is closely related to the very traditions which different Roma communities strive to maintain. I am convinced that the low level of acceptance of birth control methods among the Roma is not only due to the expensive nature of contraception, the high prices which some of these families cannot afford, but rather due to the absolute value of having children in these communities. Sterilisation would violate such a deeply

⁹ See Exhibit 5, Decision of the Szabolcs-Szatmar-Bereg Court

¹⁰ Statement before the Court by the Petitioner’s Attorney, Exhibit 9

¹¹ See Exhibit 3, Decision of the Fehergyarmat Town Court

¹² See Exhibit 7, hospital records

¹³ Taken from Dr J. Poole, “The Cross of Unknowing”, 1989.

¹⁴ Maria Nemenyi: Roma Mothers in Health Care, <http://mek.oszk.hu/01100/01156>

rooted ... [belief] ... , which [many] women living in [traditional] Roma communities could not identify with and could not undertake without damaging their sexual identity and their role as a mother and a wife.”

V. Steps taken to exhaust domestic remedies

- V.1. On 15 October 2001, one of the authors of this communication, Dr Bea Bodrogi, a staff lawyer at NEKI, filed a civil claim against the Szatmar-Bereg State hospital on behalf of the Petitioner¹⁵. The lawsuit, *inter alia*, requested that the Town Court of Fehegyarmat find the hospital in violation of the plaintiff’s civil rights and that the hospital had acted negligently in its professional duty of care with regard to the sterilisation carried out in the absence of the Petitioner’s full and informed consent. The claim sought pecuniary and non-pecuniary damages. The Town Court of Fehegyarmat in its decision on 22 November 2002¹⁶, held that the hospital doctors did not commit any professional failure even though it found that the legal conditions for the Petitioner’s sterilisation operation were not fully met. Namely, the Court itself held that “the negligence of the doctors can be detected in the fact that the plaintiff’s partner was not informed about the operation and that the birth certificates of the plaintiff’s live children were not obtained”¹⁷. In addition, we note that the medical witnesses relied on by the Court were in fact the same doctors who carried out the sterilisation operation on the Petitioner. Finally, the first instance court confirmed that in Hungary, sterilisation is recommended for any mother who has three children¹⁸.
- V.2. Dr Bodrogi filed an appeal against this decision, on behalf of the Petitioner, on 5 December 2002¹⁹. The appeal argued that the Court of first instance had not properly considered whether the conditions required by law for performing a sterilisation had been attained, and that the Court had neglected to consider the plaintiff’s evidence and argumentation, contained in her written as well as her oral pleadings. Instead, the Court relied totally on the defendant doctors’ testimonies. The appeal reiterated the plaintiff’s claim for damages with respect to the sterilisation (i.e. the pain and suffering caused by the illegal operation) and for the consequences of the sterilisation (i.e. that the Petitioner can no longer give birth to further children).
- V.3. The second instance court, the Szabolcs-Szatmar County Court, passed judgement on the appeal on 12 May 2003²⁰. It found the hospital doctors negligent for not providing the Petitioner with full and detailed information about the sterilisation and held that “**in the present case the information given to the plaintiff concerning her sterilisation was not detailed**”. According to the “**witness statement of Dr. Andras Kanyo, the plaintiff was not informed of the exact method of the operation, of the risks of its performance, and of the possible alternative procedures and methods**”. Thus she “**was not informed of the possible complications and risks of inflammation, purulent inflammation, opening of the wounds, and she was not informed of further options for contraception as an alternative procedure either**”²¹. The Court further

¹⁵ Claim at Exhibit 2

¹⁶ Fehegyarmat Town Court Decision 2.P.20.326/2001/22, Exhibit 3

¹⁷ *idem*

¹⁸ Hungarian Act on Healthcare, Article 187, para. 2

¹⁹ Appeal at Exhibit 4

²⁰ Szabolcs-Szatmar-Bereg County Court decision No 4.Pf.22074/2002/7, Exhibit 5

²¹ *idem*

stated that “the defendant acted negligently in failing to provide the plaintiff with detailed information” and that “although the information provided to the plaintiff did include the risks involved in the omission of the operation, she was not informed in detail about the operation and the alternative procedures (further options for birth control), or she was not, or was not appropriately, informed about the possibilities of a further pregnancy following performance of the planned operation”²². The Court then stressed that since the sterilisation was not a life-saving operation its performance should have been subject to informed consent. Finally, it held that “pursuant to Article 15 paragraph 3 of the Act on Healthcare, if the information given to the patient is not detailed, the prevalence of the legal conditions of performing an operation cannot be established”²³.

- V.4. Ultimately, notwithstanding the above, the Court turned down the plaintiff’s appeal and ruled that there was no evidence that the Petitioner’s loss of her reproductive capacity had amounted to a lasting handicap. In the view of the Court (contrary to established medical opinion, as mentioned in VI.2. of this communication), “the performed sterilisation was not a lasting and irreversible operation ... [and] ... therefore the plaintiff did not lose her reproductive capacity ... [or suffer] ... a lasting handicap”²⁴. The Court therefore clearly looked at the Petitioner’s moral damages relating to the consequences of the operation only while the issue of her obvious emotional distress as a result of being subjected to a serious surgical procedure, in the absence of her full and informed consent, remained absolutely unaddressed. The Judgement of the Court of Second Instance specifically states that no appeal against the decision is permitted.
- V.5. The Petitioner respectfully submits that she has therefore exhausted all effective domestic remedies and turns to the Committee to obtain just satisfaction and compensation.

VI. Violations of the Convention

- VI.1. As the facts of this case disclose, in the coerced sterilisation of the Petitioner without her full and informed consent by medical staff at a Hungarian public hospital, there have been violations of a number of rights guaranteed by the Convention on the Elimination of Discrimination against Women (“the Convention”), in particular, Article 10.h, Article 12, and Article 16.1.e.
- VI.2. Before turning to the provisions in the Convention, the Petitioner would like to respectfully emphasise a few important points about sterilisation. The aim of sterilisation is to end the patient’s ability to reproduce. Standard medical practice maintains that sterilisation is **never** a life saving intervention that needs to be performed on an emergency basis and without the patient’s full and informed consent²⁵. An important feature of the operation from the legal and ethical standpoint is that it is generally intended to be irreversible²⁶; although it may be possible to repair the sterilisation operation, the reversal

²² *idem*

²³ *idem*

²⁴ *idem*

²⁵ Statements by Dr Wendy Johnson, Doctors for Global Health, Dr Douglas Laube, Vice President, American College of Obstetricians and Gynecologists, and Dr Joanna Cain, Chair, Committee for the Ethical Aspects of Human Reproduction and Women’s health, International Federation of Gynecology and Obstetrics.

²⁶ Taken from Law and Medical Ethics by J.K. Mason, Professor of Forensic Medicine at Edinburgh University and R.A. McCall Smith, Professor of Medical Law at Edinburgh University, page 89, published by Butterworths.

operation is a complex one with a low chance of success²⁷. The World Health Organisation in its “Medical Eligibility Criteria for Contraceptive Use” states that sterilisation procedures are irreversible and permanent²⁸.

VI.3. International and regional human rights organisations have repeatedly stressed that the practice of forced (non-consensual) sterilisation constitutes a serious violation of numerous human rights standards. For example, the Human Rights Committee has specifically noted that coerced sterilisation would be a practice that violates Article 7 of the International Covenant on Civil and Political Rights, covering torture or cruel, inhuman or degrading treatment and free consent to medical and scientific experimentation²⁹. Coercion presents itself in various forms. The most direct form is to physically force a person to undergo sterilisation. A different form of coercion is pressure from and/or negligence by medical personnel as well as medical paternalism. In the instant case, the Petitioner was required to give her consent to the sterilisation while she was on the operating table, in a state of shock, without having had the chance to exercise her right to make an informed choice that would have led to informed consent or refusal.

Violation of Article 10.h: no information on contraceptive measures and family planning was given to the Petitioner

VI.4. Article 10.h. of the Convention provides that “States parties shall take all appropriate measures ... in particular to ensure access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning”.

VI.5. The Committee on the Elimination of Discrimination against Women, in its General Recommendation 21 on equality in marriage and family relations, reported on coerced sterilisation practices and stated that “in order to make an informed decision about safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services, as provided in Article 10.h. of the Convention³⁰”.

VI.6. The Hungarian Act on Healthcare Article 187 allows sterilisation for family planning purposes or for health reasons, on the basis of a written request by the woman or man concerned, as well as on the basis of an appropriate medical opinion. There should be a three-month period of grace between a woman submitting a request to be sterilised and the operation being carried out³¹. The Act further states that the doctor performing the operation must inform the person requesting the intervention and her/his spouse or partner about their further options of birth control, and about the nature, possible risks

²⁷ In Robert Blank’s book “Fertility Control: new techniques, new policy issues” 1991, pp31-33, he states that the reversal operation is a complicated one, with a success rate of only 40-75%, and a significantly increased risk of ectopic pregnancy.

²⁸ WHO Medical Eligibility Criteria for Contraceptive Use, Second edition, at http://who.int/reproductive-health/publications/RHR_00_2_medical_eligibility_criteria_second_edition/rhr_00_2_ster.html

²⁹ Human Rights Committee, *General Comment 28: Equality of Rights Between Men and Women (Art. 3)* (68th Sess., 2000), in *Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies*, 11, U.N. Doc. HRI/GEN/1/Rev.5 (2001).

³⁰ CEDAW General Recommendation 21, para 22.

³¹ There are two exceptions to the three months between request and performance of the operation, when a gynaecological operation is planned before the specified time, and when a pregnancy could endanger the mother’s life or that there was a high probability of giving birth to an unhealthy child.

and consequences of the intervention prior to its performance, “in a way that is comprehensible to him/her, with due regard to his or her age, education, knowledge, state of mind and his/her expressed wish on the matter³²”.

- VI.7. The Hungarian law-makers, in drafting the Act on Healthcare with its three month grace period, realised that sterilisation is not an operation of a life saving character (as the Second Instance Court agreed in the Petitioner’s case³³) and that sufficient time needs to be given to the person requesting the sterilisation, in order to consider the implications arising out of the information given to her/him.
- VI.8. However, the practice of medical paternalism, which dictates the doctor-patient relationship, is still used by many doctors in Hungary. The doctrine of this practice is that doctors know more about the patient’s needs and interests than the patient does. For this reason, doctors often withhold information that could disrupt the “patient’s emotional stability”.

In her study, Maria Neményi from the Hungarian Academy of Science, points out the following:

“ ... The prerequisite of accepting advice, information, instruction or orders from a doctor is that the patient should understand the directions addressed to him or her. Medical staff should use the appropriate language and manner or showing the proper example (e.g. how to treat a baby), adapting themselves to the recipient is a strategy that most of the patients agree to. We know the conception that in the hierarchy of the health system the higher ranked medical person does not pass on his privileged knowledge and involves less the patient into the components of his decision. The Roma women questioned in the study concur with this statement ... The conversations with the Roma questioned during the study convinced us that their everyday experience is that medical staff judge the Romani people on the basis of general prejudices rather than the person’s actual manner or problem. We are of the opinion that these distortions of prejudice could affect the medical treatment as well.”³⁴

- VI.9. This notion violates the patient’s right to information and freedom of action to choose a course of treatment. In the UK case of *Re T*³⁵, a case regarding an adult who refused medical treatment, the judge stated that “an adult patient who suffers from no mental incapacity has an absolute right to choose whether to consent to medical treatment, to refuse it, or to choose one rather than another of the treatments being offered... This right of choice is not limited to decisions which others might regard as sensible. It exists notwithstanding that the reasons for making the choice are rational, irrational, unknown or even non-existent”.
- VI.10. As the facts of this case show, the Petitioner received no specific information about the sterilisation operation, the effects that the operation would have on her ability to reproduce, or advice on family planning and birth control, in the months or years before the operation was carried out (or immediately before the operation). She signed the consent to be sterilised while on the operating table, having just heard of the death of her unborn baby, having lost a considerable amount of blood and in severe pain, not understanding

³² Hungarian Act on Healthcare 154/1997, Article 13.8.

³³ See Exhibit 5, Decision of the Szabolcs-Szatmar-Bereg Court

³⁴ The findings of the research done by Neményi are supported by the following cases taken by NEKI. (János H-White Booklet 2002, p. 50-53, Margit B.-White Booklet 2002, p. 54-55, the case of Eva D and Miklos K – pending case – White Booklet 2003.)

³⁵ *Re T*, (1992) 9 BMLR 46/ UK

the word used for sterilisation, and about to undergo an emergency operation to remove the dead foetus and placenta. The Petitioner had not been given information about the nature of the operation and its risks and consequences in a way that was comprehensible to her, before she was asked to sign the consent form. This is confirmed by the Court of Second Instance that held that **“the defendant also acted negligently in failing to provide the plaintiff with detailed information. Although the information provided to the plaintiff did include the risks involved in the omission of the operation, she was not informed in detail about the operation and the alternative procedures (further options of birth control), or she was not, or was not appropriately, informed about the possibilities of a further pregnancy following performance of the planned operation”**³⁶. The Petitioner therefore asserts that she was not given specific information on contraceptive measures and family planning before signing the consent to sterilisation, which is a clear violation of Article 10.h. of the Convention.

Violation of Article 12: the lack of informed consent was a violation of the right to appropriate health care services

VI.11. Article 12 of the Convention provides that “1. States parties shall take all appropriate measures ... in the field of health care in order to ensure access to health care services, including those related to family planning. 2. Notwithstanding the provisions of paragraph 1 of this article, States parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period ...”

VI.12. The Committee on the Elimination of Discrimination against Women in its General Recommendation 24 on Women and Health, explained that “Women have the right to be fully informed, by properly trained personnel, of their options in agreeing to treatment or research, including likely benefits and potential adverse effects of proposed procedures and available information.³⁷” The Recommendation further states that “Acceptable [health care] services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her needs and perspectives. States parties should not permit forms of coercion, such as non-consensual sterilisation.³⁸”

VI.13. International standards covering informed consent are also set out in other important documents. The World Health Organisation’s Declaration on Patients’ Rights requires informed consent as a prerequisite for any medical intervention and provides that the patient has a right to refuse or halt medical interventions. The Declaration states that “patients have the right to be fully informed about their health status, including the medical facts about their condition; about the proposed medical procedures, together with the potential risks and benefits of each procedure; about alternatives to the proposed procedures, including the effect of non-treatment, and about the diagnosis, prognosis and progress of treatment.³⁹” It further states that “Information must be communicated to the patient in a way appropriate to the latter’s capacity for understanding, minimising the use of unfamiliar technical terminology. If the patient does not speak the common language, some form of interpreting should be available”⁴⁰.

³⁶ See Exhibit 5, Decision of the Szabolcs-Szatmar-Bereg County Court.

³⁷ CEDAW General Recommendation 24, para 20.

³⁸ CEDAW General Recommendation 24, para 22.

³⁹ WHO Declaration on Patients’ Rights, Article 2.2

⁴⁰ WHO Declaration on Patients’ Rights, Article 2.4

- VI.14. The European Convention on Human Rights and Biomedicine (ECHR) provides that “An intervention in the health field may only be carried out after the person has given free and informed consent to it. This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks”⁴¹. This convention was signed by Hungary on 7 May 1999 and entered into force on 1 May 2002. The Explanatory Report to the Convention states that “In order for their consent to be valid the persons in question must have been informed about the relevant facts regarding the intervention being contemplated. This information must include the purpose, nature and consequences of the intervention and the risks involved. Information on the risks involved in the intervention or in alternative courses of action must cover not only the risks inherent in the type of intervention contemplated, but also any risks related to the individual characteristics of each patient, such as age or the existence of other pathologies.”⁴² The Explanatory Report further states that “Moreover, this information must be sufficiently clear and suitably worded for the person who is to undergo the intervention. The person must be put in a position, through the use of terms he or she can understand, to weigh up the necessity or usefulness of the aim and methods of the intervention against its risks and the discomfort or pain it will cause.”⁴³
- VI.15. International law and international medical guidelines are based on the principles of informed choice and informed consent. **Informed choice** is a fundamental principle of quality health care services and is recognised as a human right by the international community.⁴⁴ Moreover, it constitutes the basis of all sterilisation programmes.⁴⁵ The notion of informed choice in health care consists of an individual’s well-considered, voluntary decision based on method or treatment options, information and understanding, not limited by coercion, stress, or pressure. Factors that should be taken into consideration under the concept of informed choice include personal circumstances, beliefs, and preferences; and social, cultural and health factors. **Informed consent** is a patient’s agreement to receive medical treatment or to take part in a study after having made an informed choice. Written informed consent is universally required to authorise surgery, including sterilisation – although the signed informed consent form does not guarantee informed choice. The patient’s consent is considered to be free and informed when it is given on the basis of objective information from the responsible health care professionals. The patient shall be informed of the nature and potential consequences of the planned intervention and of its alternatives. Informed consent cannot be obtained by means of special inducement, force, fraud, deceit, duress, bias, or other forms of coercion or misrepresentation. Therefore, informed consent is based on the ability to reach an informed choice, hence informed choice precedes informed consent⁴⁶.
- VI.16. The Hungarian Act on Healthcare, states that “the performance of any health care procedure shall be subject to the patient’s consent granted on the basis of appropriate information, free from deceit, threats and pressure”⁴⁷.
- VI.17. The Hungarian Court of Second Instance, held that “**the defendant also acted negligently in failing to provide the plaintiff with detailed information. Although the**

⁴¹ ECHR, Article 5

⁴² ECHR Explanatory Report, para. 35

⁴³ ECHR Explanatory Report, para. 36

⁴⁴ 1994 International Conference on Population and Development (ICPD) in Cairo.

⁴⁵ Engenderhealth, *Contraceptive Sterilization: Global Issues and Trends*, A V S C Intl; March 2002, p. 7.

⁴⁶ Engenderhealth, *Contraceptive Sterilization: Global Issues and Trends*, A V S C Intl; March 2002

⁴⁷ Hungarian Act on Healthcare 154/1997, Article 15.3.

information provided to the plaintiff did include the risks involved in the omission of the operation, she was not informed in detail about the operation and the alternative procedures (further options of birth control), or she was not, or was not appropriately, informed about the possibilities of a further pregnancy following performance of the planned operation”⁴⁸. The Court’s findings are substantiated by the fact that it is impossible in the 17 minutes from arriving at the hospital in the ambulance, through the medical examination, preparations for operating (including administering anaesthetic) and the completion of two operations, that the Petitioner received full information on the sterilisation operation, what it entailed, the consequences and risks as well as full information on alternative contraceptive measures. She was at the time in a state of shock from losing her unborn baby, severe pain and had lost a substantial amount of blood. She was lying on the operating table. She did not understand what the word “sterilisation” meant. This was not explained to her carefully and fully by the doctor. Instead the doctor merely told her to sign a barely-readable hand-written form of consent to the operation, that included the Latin rather than Hungarian word for sterilisation. That the doctor failed to give the Petitioner full information on the intervention in a form that was understandable to her is clearly in violation of provisions in the European Convention on Human Rights and Biomedicine and the WHO Declaration on Patients’ Rights. The UK Department of Health in its “Reference Guide to Consent for Examination or Treatment” states that “The validity of consent does not depend on the form in which it is given. Written consent merely serves as evidence of consent: if the elements of voluntariness, appropriate information and capacity have not been satisfied, a signature on a form will not make the consent valid”⁴⁹. This publication also states that “Acquiescence where the person does not know what the intervention entails is not “consent””⁵⁰.

VI.18. The Petitioner would never have agreed to the sterilisation had she been fully informed about the operation, its risks, and other forms of contraception. She has strict Catholic religious beliefs that prohibit contraception of any kind, including sterilisation. The Hungarian Academy of Science study on Roma women’s attitude to childbirth stated that “Sterilisation would violate such a deeply rooted ... [belief] ..., which [many] women living in [traditional] Roma communities could not identify with and could not undertake without damaging their sexual identity and their role as a mother and a wife”⁵¹. These customs place an absolute value on the right to reproduce. The sterilisation operation had a profound and fundamental impact on the life of the Petitioner. Since then both she and her partner have received medical treatment for depression. She therefore asserts that there is a clear causal link between the failure of the doctors to fully inform her about the sterilisation operation and the injuries that sterilisation caused to her, both physical and emotional. *“We wanted a big family. I wanted to give birth again. But I simply can not...how to say...It bothers me that I can not even if I wanted and I even can not try... I would try even if it risked my life...”* - from the interview made with the Petitioner by NEKI on 13 February 2003⁵².

VI.19. Taking into account CEDAW’s standard for informed consent, as set out in paragraphs 20 and 22 of General Recommendation 24, the standards set out in the European Convention on Human Rights and Biomedicine and in the WHO Declaration on

⁴⁸ See Exhibit 5, Decision of the Szabolcs-Szatmar-Bereg County Court.

⁴⁹ UK Dept of Health “Reference guide to consent for examination or treatment”, para. 11, <http://doh.gov.uk/consent>.

⁵⁰ *Idem* para.1.

⁵¹ Maria Neményi: Roma Mothers in Health Care, <http://mek.oszk.hu/01100/01156>

⁵² See Exhibit 6, interview with Petitioner

Patients' Rights (described above), and the Hungarian Healthcare Act, the facts of this case show that the Petitioner was unable to make an informed choice before signing the consent form. The elements of voluntariness, appropriate information and the Petitioner's capacity at the time of the intervention; all necessary for free and fully informed consent, were not satisfied. A signature on a consent form does not make the consent valid when the criteria for free and fully informed consent are not met. As the Human Rights Committee commented, the practice of non-consensual sterilisation constitutes torture or cruel, inhuman or degrading treatment⁵³. A grave violation of human rights. The Petitioner asserts that the standard of health care service that she received from the hospital, in which she was not fully informed of the options to treatment before giving her consent to the sterilisation operation, was in violation of Article 12 of the Convention.

Violation of Article 16.1.e: the State limited the Petitioner's ability to reproduce

VI.20. Article 16.1.e. of the Convention provides that "States parties shall take all appropriate measures...in all matters relating to marriage and family relations and in particular shall ensure....(e) the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."

VI.21. The Committee on the Elimination of Discrimination against Women in its Recommendation 21 on Equality in marriage and family relations, said "Some reports disclose coercive practices which have serious consequences for women, such as forced pregnancies, abortions or sterilisation. Decisions to have children or not, while preferably made in consultation with spouse or partner, must not nevertheless be limited by spouse, parent, partner or Government.⁵⁴" The Committee also noted in its General Recommendation 19 on violence against women, that "Compulsory sterilisation or abortion adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children.⁵⁵" It also made a specific recommendation that "States parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, ...⁵⁶"

VI.22. International case law is also clear on this issue. The European Court of Human Rights, in the case *Y.F. v. Turkey*⁵⁷ in which a woman was forcibly subjected to a gynaecological examination against her will, held that a person's body concerns the most intimate aspect of one's private life. Thus, a compulsory, forced or coerced medical intervention, even if it is of minor importance, constitutes an interference with a person's right to private life under Article 8 of the European Convention on Human Rights.

VI.23. In *Planned Parenthood of Southeastern Pennsylvania v. Casey*⁵⁸, a case brought against provisions in the Pennsylvania State Abortion Control Act, the U.S. Supreme Court explained that the right of individual privacy prevents governmental interference into certain of an individual's most critical decisions about family, including whether to

⁵³ Human Rights Committee, *General Comment 28: Equality of Rights Between Men and Women (Art. 3)* (68th Sess., 2000), in *Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies*, 11, U.N. Doc. HRI/GEN/1/Rev.5 (2001).

⁵⁴ CEDAW General Recommendation 21, para 22.

⁵⁵ CEDAW General Recommendation 19, para 22.

⁵⁶ CEDAW General Recommendation 19, para 24.

⁵⁷ *Y.F. v. Turkey*, European Court of Human Rights application no. 00024209/94

⁵⁸ *Planned parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992)

marry or divorce, and whether to conceive and bear a child, which the Court held were the “most intimate and personal choices a person may make in a lifetime”.

VI.24. A case concerning forced sterilisation was taken in 1999 to the Inter-American Commission⁵⁹. Maria Mamerita Mestanza Chavez was sterilised against her will, and subsequently died. There was a friendly settlement on 14 October 2002. Peru recognised its international responsibility and agreed to indemnify the victim’s family and to work for the improvement of policies concerning reproductive health and family planning in the country. The indemnification was fixed in US\$10,000 for moral damages to be paid to each of the victim’s 7 children and her husband, besides compensation for health care, education and housing. The government of Peru also assumed the commitment to conduct an extensive investigation to ascertain the responsible parties for Ms. Mestanza’s death. Finally, it also agreed to modify national legislation and policies that fail to recognise women as autonomous decision makers.

VI.25. The facts of this case show that the Petitioner was denied access to information, education and the means to exercise her right to decide on the number and spacing of children. The means to reproduction were taken away from her by Hungarian State actors, the doctors at the public hospital. Sterilisation is regarded in law and medical practice as an irreversible operation. Although an operation can be performed to reverse the operation, the chances of success are very low. The World Health Organisation in its Medical Eligibility Criteria for Contraceptive Use states that “Considering the irreversibility or permanence of sterilisation procedures, special care must be taken to assure a voluntary informed choice of the method by the client. All women should be counselled about the permanence of sterilisation and the availability of alternative, long-term, highly effective methods”⁶⁰. In *Re F*⁶¹ the U.K. House of Lords Judge Lord Brandon, in commenting on sterilisation, said that “first, the operation will in most cases be irreversible; second, by reason of the general irreversibility of the operation, the almost certain result of it will be to deprive the woman concerned of what is widely, as I think rightly, regarded as one of the fundamental rights of a woman, namely, to bear children.....” The eminent Hungarian medical expert, Laszlo Lampe, in his handbook on gynaecological surgery for medical practitioners⁶² said that “Sterilisation has to be considered as an irreversible operation, and this has to be communicated to the patient”. The Petitioner asserts that agents of the Hungarian State, public medical doctors, in sterilising her without her fully informed consent, have limited her choice to decide freely and responsibly on the number and spacing of future children, in violation of Article 16.1.e. of the Convention.

VII. Other international procedures

VII.1. This matter has not been and is not currently being examined under any other procedure of international investigation or settlement.

⁵⁹ Inter-American Commission case No. 12,191.

⁶⁰ WHO Medical Eligibility Criteria for Contraceptive Use, Second edition, at http://who.int/reproductive-health/publications/RHR_00_2_medical_eligibility_criteria_second_edition/rhr_00_2_ster.html

⁶¹ *Re F*, (1990) 2 AC 1

⁶² See Exhibit 8, extract from Handbook on Gynaecological Surgery by Laszlo Lampe

Objective of the Communication

VIII.1. The objective of this Communication is to find the Hungarian Government in breach of Articles 10.h, 12, and 16.1.e of the Convention and for the Petitioner to obtain just compensation.

List of documents attached

- Exhibit 1 Consent form
- Exhibit 2 Civil claim, 15 October 2001
- Exhibit 3 Fehergyarmat Town Court Decision, 22 November 2002
- Exhibit 4 Appeal, 5 December 2002
- Exhibit 5 Szabolcs-Szatmar-Bereg County Court Decision, 12 May 2003
- Exhibit 6 Interview of A.S., 13 February 2003
- Exhibit 7 Hospital records
- Exhibit 8 Extract from Handbook on Gynaecological Surgery by Laszlo Lampe
- Exhibit 9 Statement before the Court by the Petitioner's Attorney

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