

Seeking Remedies for Torture Victims

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on the HRC and
the CAT Committee

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A HANDBOOK ON THE INDIVIDUAL COMPLAINTS PROCEDURES OF THE UN TREATY BODIES

Preface by Manfred Nowak



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The World Organisation Against Torture (OMCT) coordinates the activities of the SOS-Torture Network, which is the world's largest coalition of non-governmental organisations fighting against torture and ill-treatment, arbitrary detention, extrajudicial executions, forced disappearances, and other serious human rights violations. OMCT's growing global network currently includes 282 local, national and regional organisations in 92 countries spanning all regions of the world. An important aspect of OMCT's mandate is to respond to the advocacy and capacity-building needs of its network members, including the need to develop effective international litigation strategies to assist victims of torture and ill-treatment in obtaining legal remedies where none are available domestically, and to support them in their struggle to end impunity in states where torture and ill-treatment remain endemic or tolerated practices. In furtherance of these objectives, OMCT has published a *Handbook Series* of four volumes, each one providing a guide to the practice, procedure, and jurisprudence of the regional and international mechanisms that are competent to examine individual complaints concerning the violation of the absolute prohibition of torture and ill-treatment. This *Handbook* on seeking remedies for torture victims through the individual complaints procedure of the UN treaty bodies is the fourth volume of the series.

**SEEKING REMEDIES FOR TORTURE VICTIMS:
A HANDBOOK ON THE INDIVIDUAL COMPLAINTS PROCEDURES
OF THE UN TREATY BODIES**

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Note to Readers

This *Handbook* is meant to support NGOs, advocates, lawyers and indeed, the victims of torture themselves, in developing effective litigation strategies before the UN Treaty Bodies in respect of violations of the prohibition of torture and ill-treatment. As such, OMCT has striven for comprehensive coverage of the relevant areas of substance and procedure but also for clarity and accessibility. We are continuously looking for ways to improve our materials and enhance their impact. Please help us do this by submitting your comments on this book to: handbook@omct.org.

Readers are also encouraged to visit our website (www.omct.org), featuring a Companion Webpage devoted to the *OMCT Handbook Series* which contains further reference materials of interest to litigants.

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Boris Wijkström
Series Editor
November 2006

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13. Written submissions to the UK House of Lords by Third Party Interveners in the case of *A. and Others v. Secretary of State for the Home Department* and *A and Others (FC) and another v. Secretary of State for the Home Department* [2004] EWCA Civ 1123; [2005] 1 WLR 414
14. *Information Sheet* on the Committee on the Rights of the Child
15. *Information Sheet* on the Working Group on Enforced or Involuntary Disappearances

PREFACE

Each act of torture and ill-treatment, inflicted by one human being upon another, permanently scars all those touched by it and destroys our sense of common humanity. The practice of torture is so fundamentally at odds with the notion of civilized life that its legal prohibition is absolute: there exist no circumstances whatsoever which justify its use. It is one of those few norms under international law that has attained the status of *jus cogens*, sharing this position with only a handful of other inviolable rules including the prohibition of genocide and slavery.

Despite the absolute nature of the prohibition, it is a sad fact that torture and other forms of cruel, inhuman or degrading treatment continue to occur in various places around the world. Sometimes ill-treatment occurs openly, but most often it is deliberately hidden from public scrutiny, and perpetrators are readily able to control and eliminate the evidence of their misdeeds. Indeed, one of the purposes of torture and ill-treatment is to terrorise victims into silence so that the crime never emerges into the open. This implies that all those who struggle to end practices of torture, to ensure the right to a remedy for victims and to ensure that perpetrators are punished often face especially difficult challenges. Notwithstanding these obstacles, the fight against torture and ill-treatment is fuelled and strengthened by the courage of those who speak out against it. These voices are critical to the struggle against torture and other forms of ill-treatment because they remove acts of torture from the darkness and bring them into the light, exposing them for what they are and seeking to hold those who perpetrate them accountable.

I therefore welcome the publication of this *Handbook* written by eminent experts on the work of the United Nations treaty bodies. Its laudable aim is to assist individual victims of torture and their representatives in holding torturers accountable, by facilitating access to processes available under international human rights law. It focuses on the relevant procedures and jurisprudence of three of the central United Nations human rights treaty bodies: the Human Rights Committee, the Committee Against Torture, and the Committee on the Elimination of Discrimination against Women.

The individual complaints mechanisms of these treaty bodies empower an individual to obtain from an international body redress and justice against a State that has violated international human rights norms. These bodies thus serve a critically important function in situations where domestic legal systems

fail to hold perpetrators to account for their actions. This *Handbook* therefore represents a crucial contribution to the struggle against torture and ill-treatment worldwide, by providing practical information to victims and advocates that will enhance and increase the utilisation of vital United Nations mechanisms.

Manfred Nowak
United Nations Special Rapporteur on Torture
November 2006

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INTRODUCTION

The purpose of this *Handbook* is to give guidance on how to seek redress in respect of violations of the prohibition of torture and ill-treatment from the United Nations human rights treaty bodies. Torture and other cruel, inhuman or degrading treatment or punishment is absolutely prohibited in international law, and is not tolerated in any circumstances whatsoever.¹ The UN treaties offer a significant avenue of global recognition and protection regarding this fundamental human right. Parts I to V of this *Handbook* focus on the procedures and jurisprudence of the three bodies established under three core UN human rights treaties, namely the Human Rights Committee, the Committee against Torture and the Committee on the Elimination of Discrimination against Women.

Torture and other cruel, inhuman or degrading treatment or punishment is prohibited under Article 7 of the International Covenant on Civil and Political Rights 1966 (ICCPR). Article 7 is supplemented by Article 10, which recognises a right of humane treatment for persons in all forms of detention, a particularly vulnerable group of people. The rights in the ICCPR are supervised and monitored at the international level by the Human Rights Committee (HRC).

Torture and other cruel, inhuman or degrading treatment is also addressed, and prohibited, by an issue-specific treaty, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT), which is monitored and supervised at the international level by the Committee against Torture (CAT Committee).

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is primarily concerned with achieving equality between men and women through the elimination of discriminatory policies and practices. As such, it does not contain a substantive prohibition against torture or ill-treatment. Nevertheless, the CEDAW Convention may offer an alternative avenue for redress in specific contexts where discrimination constitutes a central aspect of the underlying violation.

In Part I, the ICCPR and the CAT, as well as the HRC and the CAT Committee, are introduced. In Part II, the procedures of these two respective treaty bodies are described. Part 2.1 will focus on the individual complaints

¹ See Section 1.1.

procedures under the ICCPR and CAT. Under these procedures, an individual may submit complaints to the respective treaty bodies, who may ultimately find that the rights of that individual have been violated by a State and that he/she is entitled to a remedy in respect of that violation from that State. Part 2.1 goes through issues such as the admissibility criteria for complaints, which must be satisfied before the substance of a complaint can be considered, practical guidance on how to submit a complaint, and the process by which the respective treaty body examines a complaint.

Part 2.2 addresses the issue of interim measures. In certain situations, a person may not be able to wait for a treaty body to make a decision on whether he or she has suffered from a human rights violation; there may be a situation of urgency where interim protection must be guaranteed to ensure that irreparable harm is not done to a person while he/she awaits the final decision of the relevant committee. The process by which interim measures are requested, and the situations in which they are granted, are addressed in Part 2.2.

Part 2.3 focuses on other procedures available in the UN, such as reporting procedures, the inquiry procedure available under CAT, the new procedures available under the Optional Protocol to CAT, the mandate of the Special Rapporteur on Torture, and the Working Group on Arbitrary Detention. Part 2.4 focuses on the follow-up procedures of the HRC and the CAT Committee.

Part III focuses on the jurisprudence, that is the law developed from cases and other sources, of the HRC under the ICCPR on the issue of torture, and cruel, inhuman or degrading treatment and punishment. Part IV performs the same function with regard to the jurisprudence of the CAT Committee.

Part V discusses the CEDAW Convention and the procedures for filing individual complaints under its Optional Protocol. Existing patterns of discrimination against women affect women's ability to enjoy their rights, not least their right to be free from torture and other forms of ill-treatment. Moreover, discriminatory laws and policies may affect women's abilities to seek redress before national courts for such violations. As explained in this part of the *Handbook*, individual complaints arising in both of these contexts are admissible before the CEDAW Committee.

There are three *Textboxes*, two *Tables* and twelve *Appendices* in this *Handbook*. *Textbox i* contains a flowchart showing the various stages of consideration of a complaint filed before the Human Rights Committee. *Textbox ii* contains a model complaint of torture and cruel, inhuman or degrading treatment under Articles 7 and 10 of the ICCPR. The purpose of this model complaint is to

demonstrate how a complaint should be structured, the types of arguments that should be raised and the types of evidence that should be submitted, in order to maximise one's chance of success. *Textbox iii* contains information on the mandate and working methods of the Special Rapporteur on Violence against Women. The two *Tables* contain lists of countries that have ratified the Optional Protocols to the ICCPR and CEDAW and made declarations under Article 22 of the CAT (authorising individual complaints) and the relevant dates of such ratifications. These tables are usefully referred to in determining whether a country is subject to a particular complaints procedure and the dates after which jurisdiction arises.

The Appendices contain crucial reference materials for readers, namely the relevant treaties and other international documents. Appendices 1 and 2 contain copies of the ICCPR and the Optional Protocol to the ICCPR; Appendix 3 contains a copy of the CAT; Appendices 4 and 5 contain the Rules of Procedure of the Human Rights Committee and the Committee against Torture. The CEDAW Convention and its Optional Protocol are included in Appendices 6 and 7. Given their relevance to the jurisprudence of the Human Rights Committee and the Committee against Torture, Appendices 9 and 10 contain copies of the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, respectively. Appendices 11 and 12 contain sample pleadings which may constitute useful reference materials in *non-refoulement* cases or for applicants proceeding before the CEDAW Committee, respectively. Throughout the text, references are made to the appendices wherever they are particularly relevant to the issue being discussed.

We must notify readers of some of the terminology used in this *Handbook*: The International Covenant on Civil and Political Rights will be referred to as “the ICCPR”; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment will be referred to as “the CAT” or “the Convention against Torture”; the Convention on the Elimination of All Forms of Discrimination Against Women will be referred to as “the CEDAW Convention”. The Human Rights Committee, the Committee against Torture, and the Committee on the Elimination of Discrimination against Women will be referred to as “the HRC”, “the CAT Committee” and the “the CEDAW Committee” respectively, or generically, especially when they are discussed in tandem, as a “Committee”, “treaty body”, or a “treaty monitoring body”. A country is referred to as a “State”, and a State which is a party to a treaty is referred to as a “State party” to that treaty. An individual complaint is referred

to as either a “complaint” or a “communication”. The person who submits such a complaint, or in whose name a complaint is submitted, is referred to as either an “author” or a “complainant”.²

We do not use the official UN document number in order to cite cases decided under the respective treaties, nor do we use such numbers for General Comments.³ Such citation would be unwieldy given the large number of cases cited, and the large number of times that particular General Comments are cited. Cases under the Optional Protocol to the ICCPR will use the following format: *Quinteros v. Uruguay* (107/81). The first name is the name of the author or complainant, and the second name is the State against whom the complaint is made. The first number refers to the order in which the case was registered – this case was the 107th registered case for the HRC. The second number refers to the year in which the case was submitted (i.e. not the year in which it was decided). CAT cases follow a similar format, except that they are labelled clearly as CAT cases to distinguish them from HRC cases (e.g. *Tala v. Sweden* (CAT 43/96)). The vast majority of General Comments referred to in Parts I - IV are those of the HRC, and they are referred to as “General Comment xx”, with the number referring to the order of its adoption by the HRC. For example, “General Comment 20” denotes the twentieth such comment issued by the HRC. There is only one General Comment by the CAT Committee, and it is clearly noted as “General Comment 1 (CAT)” in relevant parts of the *Handbook*. The CEDAW Committee has issued 25 General Recommendations; they are referred to as “General Recommendation xx”, with the number at the end indicating the order in which the recommendation was adopted.⁴

2 An author or complainant can authorise another to act on his/her behalf. See Section 2.1.2(b).

3 General Comments are explained in Section 1.5.3.

4 The CEDAW Committee has issued only a handful of decisions and the full citation (e.g. “Communication No. 2/2003, *A.T. v. Hungary*, views adopted on 26 January 2005, 31st Session”) is used when referring to their cases.