



OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS



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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1. As at 9 May 1997, the closing date of the eighteenth session of the Committee against Torture, there were 102 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment, including the following six States which became parties to the Convention during the reporting period: Azerbaijan, El Salvador, Honduras, Iceland, Kenya and Malawi. The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and opened for signature and ratification in New York on 4 February 1985. It entered into force on 26 June 1987 in accordance with the provisions of its article 27. The States that have signed, ratified or acceded to the Convention, and those that have made declarations under articles 21 and 22 of the Convention, are listed in annex I.

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

B. Opening and duration of the sessions of the Committee against Torture

3. The Committee against Torture held two sessions since the adoption of its report for 1996. The seventeenth and eighteenth sessions of the Committee were held at the United Nations Office at Geneva from 11 to 22 November 1996 and from 29 April to 9 May 1997.

4. At its seventeenth session the Committee held 19 meetings (262nd to 280th meeting) and at its eighteenth session it held 18 meetings (281st to 298th meeting). An account of the deliberations of the Committee at those sessions is contained in the relevant summary records (CAT/C/SR.262-298/Add.1).

C. Membership and attendance

5. The membership of the Committee remained the same as during 1996. The list of members, with their terms of office, appears in annex II.

6. All the members attended the seventeenth and the eighteenth sessions of the Committee.

D. Officers

7. The following members of the Committee acted as officers during the reporting period:

Chairman: Mr. Alexis Dipanda Mouelle

Vice-Chairmen: Mr. Alejandro Gonzalez Poblete

Mr. Bent Sorensen

Mr. Alexander Yakovlev

Rapporteur: Mrs. Julia Iliopoulos-Strangas

E. Agendas

8. At its 262nd meeting, on 11 November 1996, the Committee adopted the following items listed in the provisional agenda submitted by the Secretary-General in accordance with rule 6 of the rules of procedure (CAT/C/36), as the agenda of its seventeenth session:

1. Adoption of the agenda.
2. Organizational and other matters.
3. Submission of reports by States parties under article 19 of the Convention.
4. Consideration of reports submitted by States parties under article 19 of the Convention.
5. Consideration of information received under article 20 of the Convention.
6. Consideration of communications under article 22 of the Convention.
7. Amendments to the rules of procedure of the Committee.
9. During the session, the Committee decided that it was no longer necessary to consider item 7 of its agenda.
10. At its 281st meeting, on 29 April 1997, the Committee adopted the following items listed in the provisional agenda submitted by the Secretary-General in accordance with rule 6 of the rules of procedure (CAT/C/40) as the agenda of its eighteenth session:
 1. Adoption of the agenda.
 2. Organizational and other matters.
 3. Submission of reports by States parties under article 19 of the Convention.
 4. Consideration of reports submitted by States parties under article 19 of the Convention.
 5. Consideration of information received under article 20 of the Convention.
 6. Consideration of communications under article 22 of the Convention.
 7. Future meetings of the Committee.
 8. Action by the General Assembly at its fifty-first session:
 - (a) Annual report submitted by the Committee under article 24 of the Convention;
 - (b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights.
 9. Annual report of the Committee on its activities.

F. Question of a draft optional protocol to the Convention

11. At the 276th meeting, on 20 November 1996, Mr. Sorensen, who had been designated by the

Committee as its observer in the inter-sessional open-ended working group of the Commission on Human Rights elaborating the protocol, informed the Committee on the progress made by the working group at its fifth session, held at the United Nations Office at Geneva from 14 to 25 October 1996.

II. ACTION BY THE GENERAL ASSEMBLY AT ITS FIFTY-FIRST SESSION

A. Annual report submitted by the Committee under article 24 of the Convention

12. At its 290th and 298th meetings, held on 2 and 9 May 1997, the Committee considered its agenda item on action by the General Assembly at its fifty-first session.

13. The Committee took note of General Assembly resolution 51/86 of 12 December 1996 and Commission on Human Rights resolution 1997/38 of 11 April 1997. The Committee welcomed, in particular, the request of the Commission on Human Rights to the General Assembly to proclaim 26 June 1998 a United Nations international day in support of the victims of torture within the framework of the preparation of the fiftieth anniversary of the Universal Declaration of Human Rights.

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

14. At its seventeenth session, the Committee had before it the report of the seventh meeting of persons chairing the human rights treaty bodies (A/51/482, annex). At the 280th meeting, held on 22 November 1997, the Chairman of the Committee, who had participated in that meeting, drew the attention of the Committee members to the conclusions and recommendations contained in the report.

15. At its eighteenth session, the Committee had before it General Assembly resolution 51/87 of 12 December 1996 and Commission on Human Rights decision 1997/105 of 3 April 1997.

16. The Committee took note of the report and the resolutions.

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

Action taken by the Committee to ensure the submission of reports

17. At its 262nd and 281st meetings, held on 11 November 1996 and 28 April 1997, the Committee considered the status of submission of reports under article 19 of the Convention. The Committee had before it the following documents:

- (a) Notes by the Secretary-General concerning initial reports of States parties which were due from 1988 to 1996 (CAT/C/5, 7, 9, 12, 16/Rev.1, 21/Rev.1, 24, 28/Rev.1, 32/Rev.2 and 37);
- (b) Notes by the Secretary-General concerning second periodic reports which were due from 1992 to 1996 (CAT/C/17, 20/Rev.1, 25, 29, 33 and 38);
- (c) Notes by the Secretary-General concerning third periodic reports which were due in 1996 and 1997 (CAT/C/34 and 39).

18. The Committee was informed that, in addition to the 13 reports that were scheduled for consideration by the Committee at its seventeenth and eighteenth sessions (see paras. 23 and 26), the Secretary-General had received the initial report of Cuba (CAT/C/32/Add.2), the second periodic reports of Cyprus (CAT/C/33/Add.1), France (CAT/C/17/Add.18), Germany (CAT/C/29/Add.2), Guatemala (CAT/C/29/Add.3), New Zealand (CAT/C/29/Add.4), Peru (CAT/C/20/Add.6) and Portugal (CAT/C/25/Add.10) and the third periodic reports of Argentina (CAT/C/34/Add.5), Norway (CAT/C/34/Add.8), Spain (CAT/C/34/Add.7) and Switzerland (CAT/C/34/Add.6).

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

20. In addition, the Committee, at its seventeenth and eighteenth sessions, was informed about the reminders that had been sent by the Secretary-General to States parties whose reports were overdue and letters that the Chairman of the Committee, at its request, had addressed to the Minister for Foreign Affairs of those States parties whose reports were more than three years overdue. The situation with regard to overdue reports as at 9 May 1997 was as follows:

<u>State party</u>	<u>Date on which the report was due</u>	<u>Number of reminders</u>
<u>Initial reports</u>		
Uganda	25 June 1988	14
Togo	17 December 1988	14
Guyana	17 June 1989	11
Brazil	27 October 1990	9
Guinea	8 November 1990	10
Somalia	22 February 1991	7
Venezuela	27 August 1992	6
Yugoslavia	9 October 1992	6
Estonia	19 November 1992	6
Yemen	4 December 1992	6
Bosnia and Herzegovina	5 March 1993	5
Benin	10 April 1993	5

Latvia	13 May 1993	5
Seychelles	3 June 1993	5
Cape Verde	3 July 1993	5
Cambodia	13 November 1993	4
Burundi	19 March 1994	3
Slovakia	27 May 1994	3
Slovenia	14 August 1994	3
Antigua and Barbuda	17 August 1994	3
Costa Rica	10 December 1994	2
Sri Lanka	1 February 1995	2
Ethiopia	12 April 1995	2
Albania	9 June 1995	2
United States of America	19 November 1995	1
The former Yugoslav Republic of Macedonia	11 December 1995	1
Chad	8 July 1996	-
Uzbekistan	27 October 1996	-
Cote d'Ivoire	16 January 1997	-
Lithuania	1 March 1997	-
Kuwait	6 April 1997	-
Democratic Republic of the Congo	16 April 1997	-
<u>Second periodic reports</u>		
Afghanistan	25 June 1992	7
Belize	25 June 1992	7
Bulgaria	25 June 1992	7
Cameroon	25 June 1992	7
Philippines	25 June 1992	7
Uganda	25 June 1992	6
Austria	27 August 1992	7
Luxembourg	28 October 1992	7
Togo	17 December 1992	6
Guyana	17 June 1993	5
Turkey	31 August 1993	5
Tunisia	22 October 1993	4
Australia	6 September 1994	3
Brazil	27 October 1994	3
Guinea	8 November 1994	3
Somalia	22 February 1995	1
Malta	12 October 1995	1
Liechtenstein	1 December 1995	1
Romania	16 January 1996	-

Nepal	12 June 1996	-
Venezuela	27 August 1996	-
Croatia	7 October 1996	-
Yugoslavia	9 October 1996	-
Israel	1 November 1996	-
Estonia	19 November 1996	-
Yemen	4 December 1996	-
Jordan	12 December 1996	-
Monaco	4 January 1997	-
Bosnia and Herzegovina	5 March 1997	-
Benin	10 April 1997	-

Third periodic reports

Afghanistan	25 June 1996
Belarus	25 June 1996
Belize	25 June 1996
Bulgaria	25 June 1996
Cameroon	25 June 1996
Egypt	25 June 1996
France	25 June 1996
Hungary	25 June 1996
Norway	25 June 1996
Philippines	25 June 1996
Russian Federation	25 June 1996
Senegal	25 June 1996
Uganda	25 June 1996
Uruguay	25 June 1996
Canada	23 July 1996
Austria	27 August 1996
Panama	27 September 1996
Luxembourg	28 October 1996
Togo	17 December 1996
Colombia	6 January 1997
Ecuador	28 April 1997

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

of the Convention. In this connection, the Committee decided to continue its practice of making available lists of States parties whose reports are overdue during the press conferences that the Committee usually hold at the end of each session.

22. The Committee again requested the Secretary-General to continue sending reminders automatically to those States parties whose initial reports were more than 12 months overdue and subsequent reminders every six months. The status of submission of reports by States parties under article 19 of the Convention as at 9 May 1997, the closing date of the eighteenth session of the Committee, is given in annex III.

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

23. At its seventeenth and eighteenth sessions, the Committee considered reports submitted by 13 States parties, under article 19, paragraph 1, of the Convention. At its seventeenth session, the Committee devoted 13 of the 19 meetings held to the consideration of reports (see CAT/C/SR.264-268 and 272-279). The following reports, listed in the order in which they were received by the Secretary-General, were before the Committee at its seventeenth session:

Russian Federation (second periodic report) CAT/C/17/Add.15

Republic of Korea (initial report) CAT/C/32/Add.1

Algeria (second periodic report) CAT/C/25/Add.8

Uruguay (second periodic report) CAT/C/17/Add.16

Poland (second periodic report) CAT/C/25/Add.9

Georgia (initial report) CAT/C/28/Add.1

24. The Committee was informed by the media during the session that the Supreme Court of Israel had declared lawful the use of physical pressure by the Israeli security services in interrogating specific suspects of terrorist acts with a view to obtaining from them information which would prevent the perpetration of criminal acts in the future. The Committee took the view that, if the information was correct, the decision taken by the Supreme Court of Israel was incompatible with the provisions of the Convention.

25. In a letter that the Chairman of the Committee addressed on the Committee's behalf to the Permanent Representative of Israel to the United Nations Office at Geneva on 22 November 1996, it was recalled that article 2, paragraph 2, of the Convention provides that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. Reference was also made to article 19, paragraph 1, of the Convention, which stipulates that the States parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request. Accordingly, the Committee invited the Government of Israel to submit as a matter of urgency a special report on the question of the decision taken by the Supreme Court and its implication for the implementation of the Convention in Israel. The Committee indicated 31 January 1997 as the time limit for the submission of the report. The Government of Israel submitted the special report on 6 December 1996 and revised it on

17 February 1997.

26. At its eighteenth session, the Committee devoted 15 of the 18 meetings held to the consideration of reports submitted by States parties (see CAT/C/SR.283-297/Add.1). The following reports, listed in the order in which they were received by the Secretary-General, were before the Committee at its eighteenth session:

Ukraine (third periodic report) CAT/C/34/Add.1
Mexico (third periodic report) CAT/C/34/Add.2
Denmark (third periodic report) CAT/C/34/Add.3
Paraguay (second periodic report) CAT/C/29/Add.1
Sweden (third periodic report) CAT/C/34/Add.4
Namibia (initial report) CAT/C/28/Add.2
Israel (special report) CAT/C/33/Add.2/Rev.1

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

28. In accordance with the decision taken by the Committee at its fourth session,¹ country rapporteurs and alternate rapporteurs were designated by the Chairman, in consultation with the members of the Committee and the secretariat, for each of the reports submitted by States parties and considered by the Committee at its seventeenth and eighteenth sessions. The list of those reports and the names of the country rapporteurs and their alternates for each of them appear in annex IV.

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

- (a) Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and reservations and declarations under the Convention (CAT/C/2/Rev.4);
- (b) General guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19 of the Convention (CAT/C/4/Rev.2);
- (c) General guidelines regarding the form and content of periodic reports to be submitted by States parties under article 19 of the Convention (CAT/C/14).

30. In accordance with the decision taken by the Committee at its eleventh session,² the following sections, arranged on a country-by-country basis according to the sequence followed by the Committee in its consideration of the reports, contain references to the reports submitted by the States parties and to the summary records of the meetings of the Committee at which the reports were considered, as well as the text of conclusions and recommendations adopted by the Committee with respect to the reports of States parties considered at its seventeenth and eighteenth sessions.

A. Russian Federation

31. The Committee considered the second periodic report of the Russian Federation (CAT/C/17/Add.15) at its 264th, 265th and 268th meetings, held on 12 and 14 November 1996 (see CAT/C/SR.264, 265 and 268), and adopted the following conclusions and recommendations.

1. Introduction

32. The second periodic report of the Russian Federation was not submitted on time, a fact that may be attributed to the transition that the country is undergoing. The report conforms, on the whole, to the guidelines adopted by the Committee for the submission of State reports.

33. The Committee expresses its appreciation to the representatives of the Russian Federation for their presentation of the report and especially for the effort made to answer almost all of the many questions raised by the Rapporteur, the Co-Rapporteur and the members of the Committee.

2. Positive aspects

34. The Constitution of the Russian Federation safeguards human rights in a comprehensive way, including the right to personal safety and bodily integrity.

35. The Constitution prohibits torture and every form of degrading treatment of the individual.

36. The introduction of a new criminal code is welcomed, particularly in view of the criminalization of a series of acts the commission of which by law enforcement agents would constitute torture.

37. The setting up of the Presidential Commission on Human Rights and the establishment of an ombudsman for human rights are, without doubt, steps in the right direction. The positive aspects of the creation of those offices will be further enhanced if their powers to monitor the application of the Convention and deal with abuses are comprehensively defined.

38. The withdrawal of the reservation to article 20 and the declarations of acceptance of the procedures under articles 21 and 22 of the Convention are welcomed.

39. The allocation of additional resources for the improvement of prison conditions, as referred to by the delegation, is a step forward.

40. The will to reform State institutions, albeit with difficulty, in order to bring them into conformity with the provisions of the Constitution and fundamental human rights norms is duly noted.

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

41. The Committee acknowledges the existence of the following difficulties:

(a) The break with the past left an institutional vacuum that is proving difficult to fill. The State

apparatus, as experience teaches, is resistant to change;

(b) The reorientation of State institutions and machinery is a difficult process. However, awareness of the obstacles to this process should lead those in authority to redouble the efforts to overcome them;

(c) The absence of properly trained personnel in sufficient numbers to make possible a swift change to the legal framework and the manner of running the State which is envisaged by the Constitution;

(d) The vastness of the country and diffusion of authority between central and regional authorities places additional difficulties in the way of establishing the new order;

(e) The lack of adequate resources to address the problems that are being encountered in the change from the old to the new legal order; the allocation of the necessary resources for the reform of legal practices should be seen as a priority.

4. Subjects of concern

42. The Committee is concerned about the following:

(a) The failure to create a specific crime of torture in the domestic law, as required by article 4 of the Convention;

(b) Presidential Decrees Nos. 1815 of 2 November 1993, 1226 of 14 June 1994 and 1025 of 10 July 1996, which allow the detention of suspects incommunicado for up to 9 days in one case and 30 days in the other cases, leave the door open to the abuse of the rights of detainees;

(c) Widespread allegations of torture and ill-treatment of suspects and persons in custody with a view to securing confessions, general allegations of ill-treatment of detainees and the absence of effective machinery to address such complaints promptly;

(d) The fact that, according to the materials presented to the Committee, young soldiers in the Russian army were brutalized by older soldiers without the authorities taking appropriate remedial measures;

(e) The failure to establish effective machinery for the prompt examination of prisoners' complaints about ill-treatment and conditions in prisons;

(f) The slow rate of harmonizing domestic legislation with the Constitution and with norms concerning human rights. The disharmony leaves a gap between the legal order respecting human rights established under the Constitution and the application of the law;

(g) Overcrowding in prisons, made all the worse by the poor and insanitary conditions prevailing in them;

(h) Lack of proper training of police and prison personnel and the personnel of agencies engaged in law enforcement with regard to the rights of suspects and prisoners and their duties under the law;

- (i) Lack of appropriate measures to give comprehensive effect to the provisions of article 3 of the Convention and to ensure its applicability in all relevant circumstances, including in relation to extradition;
- (j) Absence of extraterritorial jurisdiction makes difficult or impossible the implementation of article 5, paragraph 1 (b), of the Convention;
- (k) Reported widespread abuses of human rights in the conflict in Chechnya, including acts of torture, and the apparent failure to check such abuses and address them speedily and effectively.

5. Recommendations

43. The Committee recommends that the State party:

- (a) Make torture as defined in the Convention a distinct crime, with sufficiently severe punishment to reflect the gravity of the offence;
- (b) Expedite the process of training the personnel, including the medical personnel, of all agencies involved in law enforcement and the detention of prisoners as to their powers and duties under the law;
- (c) Adopt programmes to inform detainees and the public of their rights and the means available under the law to protect them;
- (d) Establish effective machinery to monitor the conditions under which investigations of crimes are conducted, the conditions under which persons are held in custody and conditions in prisons;
- (e) Establish an appropriate process for the prompt investigation of complaints of suspects, detainees and prisoners and the prosecution of the offenders;
- (f) Radically improve conditions in prisons, including space, facilities, food and sanitation;
- (g) Abolish acts, rules and regulations allowing remand in custody for longer than 48 hours without judicial authorization, and those limiting access to legal assistance. Unimpeded access to counsel should be safeguarded at all times;
- (h) Establish an independent committee to investigate allegations of torture and inhuman and degrading treatment committed by the military forces of the Russian Federation and Chechen separatists, with a view to bringing to justice those against whom there is evidence tending to establish their involvement or complicity in such acts.

B. Republic of Korea

44. The Committee considered the initial report of the Republic of Korea (CAT/C/32/Add.1) at its 266th and 267th meetings, held on 13 November 1996 (see CAT/C/SR.266 and 267), and adopted the following conclusions and recommendations.

1. Introduction

45. The Committee welcomes the detailed and timely report of the Republic of Korea, which on the whole conforms to the Committee's guidelines. The Committee also thanks the State party for its responses to the concerns expressed by the Committee.

2. Positive aspects

46. The Committee welcomes the positive changes since 1993 towards improving and enhancing human rights and achieving the minimal international standards, as demonstrated, inter alia, by the State party's ratification of a series of international treaties concerning human rights and by its willingness to build a society characterized by respect for human dignity and to move towards the democratization of society.

47. The Committee notes that some relevant laws, regulations and institutions have already been amended in the spirit of human rights enhancement.

48. It is encouraging that the civilian Government granted amnesty to and restored the rights of a large number of citizens and thus contributed to the more liberal political climate.

49. The Committee notes with satisfaction the efforts of the Republic of Korea to expand the scope of legal aid available to the economically underprivileged.

50. The Committee is also encouraged that, at least in a few cases, public officials who have tortured prisoners have been convicted and that, in some cases, courts have ruled that confessions obtained under duress during interrogations are inadmissible as evidence.

51. The Committee also appreciates the frankness of the report, which shows the Republic of Korea's consciousness of the problems that remain to be solved and its awareness of the need for further improvements to be made with regard to inadequate and unacceptable practices and institutions.

52. The Committee notes with satisfaction that the Republic of Korea has concluded mutual judicial assistance treaties on criminal matters with Australia and Canada and has signed such treaties with France and the United States.

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

53. The Committee is aware of the security problems and the tense situation on the Korean peninsula.

54. The Committee has tried to take this fact into consideration in formulating its conclusions and recommendations. However, it must be emphasized that no exceptional circumstances can ever provide a justification for failure to comply with the terms of the Convention.

4. Subjects of concern

55. The Committee is concerned that the Republic of Korea has not incorporated a specific definition of

the crime of torture in its penal legislation in terms consistent with the definition contained in article 1 of the Convention.

56. The Committee notes with deep concern that continued reports from non-governmental organizations show that many political suspects still go through the "torture procedure" during interrogation, in an attempt to extract confessions from them. The sleep deprivation practised on suspects, which may in some cases constitute torture and which seems to be routinely used to extract confessions, is unacceptable.

57. The Committee is also concerned that the legal system facilitates long periods of interrogation of suspects before they are charged.

58. The Committee is equally concerned at the State party's continued failure promptly and impartially to investigate and prosecute those responsible for acts of torture and ill-treatment. It is unacceptable that only formal complaints of the victims of torture are investigated.

59. While taking into account that the implementation of the National Security Law is the result of security problems on the Korean peninsula, the Committee emphasizes that the Republic of Korea must ensure that the provisions of the National Security Law are not implemented arbitrarily. The vagueness of its provisions gives rise to a great danger of arbitrariness.

60. The report of the Republic of Korea mentions a single specific case concerning the obtainment of redress for a crime of torture. The Committee expresses its concern that the existing procedures for obtaining redress or compensation are not effective.

61. It is a matter of concern that suspects may be detained for up to 10 days without a remand order or any form of approval by the courts.

5. Recommendations

62. The Republic of Korea should enact a law defining the crime of torture in terms consistent with article 1 of the Convention.

63. The national laws should be further reviewed in the light of the Convention and other standards for the protection of human rights in general.

64. Education of police investigators, public prosecutors, other law enforcement personnel and medical personnel regarding the prohibition against torture should be fully included in their training, in accordance with article 10 of the Convention, with special emphasis on the definition of torture as contained in article 1 of the Convention and on the criminal liability of those who commit acts of torture.

65. An independent governmental body should take over the inspection of detention centres and places of imprisonment. Public prosecutors, who are also part of law enforcement personnel, which may itself be subject to investigation of the crime of torture, should not be the main inspection figures.

66. The Committee recommends that the allegations of ill-treatment which have been brought to its attention be duly investigated and that the results of such investigations be transmitted to the Committee.

67. The 30- or 50-day maximum period of detention in police premises for interrogation purposes before the suspect is charged is too long and should be shortened.

68. The Committee recommends that counsel be permitted to be present during interrogation, especially since such presence would be in furtherance of the implementation of article 15 of the Convention.

69. The Committee hopes that the Republic of Korea will review its reservation and make the declarations concerning articles 21 and 22 of the Convention.

C. Algeria

70. The Committee considered the second periodic report of Algeria (CAT/C/25/Add.8) at its 272nd and 273rd meetings, held on 18 November 1996 (see CAT/C/SR.272 and 273), and adopted the following conclusions and recommendations.

1. Introduction

71. The Committee welcomes the presentation of the second periodic report of Algeria and thanks the Algerian delegation for its oral introduction to that report.

72. The Committee also thanks the delegation for its willingness to engage in dialogue with the Committee and for the valuable information it provided on the situation in Algeria.

2. Positive aspects

73. The Committee notes with satisfaction Algeria's commitment to institutionalize the rule of law and promote the protection of human rights as evidenced, inter alia, by its ratification of the Convention (without reservation and with declarations under articles 21 and 22), the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights.

74. The Committee also notes with satisfaction the adoption of new legislation: provisions making torture a crime and making searches subject to the consent of the householder and to a court warrant, limits on the duration of pre-trial detention, and the introduction of court supervision as an alternative to pre-trial detention.

75. It welcomes the establishment in March 1995 of the Office of Ombudsman and the closure of the administrative detention centres.

76. The Committee thanks the State party for its contribution to the United Nations Voluntary Fund for Victims of Torture. The Committee has learned with great satisfaction of the proposed amendment to the Constitution and the plans for setting up a council of State, creating a national human rights observatory and scheduling legislative and municipal elections over the period from March to June 1997.

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

77. The Committee is quite well aware that, in the current period of transition to democracy and in the light of the prevailing violence and its many forms, there are impediments to the effective implementation of all the provisions of the Convention.

4. Subjects of concern

78. The Committee is concerned that:

- (a) Torture is not more fully defined, in conformity with article 1 of the Convention;
- (b) Detention in custody can be extended to 12 days;
- (c) Decree 92/44 of 9 February 1992 allows the Minister of the Interior or his nominee to order administrative placement in custody centres with no judicial supervision.

79. While welcoming the fact that the death penalty has not been enforced since 1993, the Committee is still concerned at reports from human rights organizations concerning extrajudicial executions, disappearances and a rising incidence of torture since 1991, after torture had virtually ceased between 1989 and 1991.

5. Recommendations

80. While it is aware of the difficulties posed by the existence of terrorist groups, the Committee reminds the State party that torture is not warranted in any exceptional circumstances. In that light, it recommends that:

- (a) To avoid any ambiguity, the State party should arrange for the full text of the Convention to be published in the Official Gazette;
- (b) The definition of torture should be revised to bring it into closer conformity with article 1 of the Convention;
- (c) Consideration should be given to making the judiciary more independent and ensuring the effective exercise of its internationally recognized powers;
- (d) Steps should be taken to ensure that only a judicial authority can take decisions restricting individual liberty;
- (e) In accordance with its obligations under various conventions, particularly article 12 of the Convention, the State party should ensure that an objective inquiry is made promptly whenever there are reasonable grounds to believe that an act of torture has been committed in territory under its jurisdiction and that the results of such inquiries are published;

(f) The Committee should be given information on all the individual cases raised during the presentation of the second report on the basis of allegations by human rights organizations.

D. Uruguay

81. The Committee considered the second periodic report of Uruguay (CAT/C/17/Add.16) at its 274th and 275th meetings, held on 19 November 1996 (see CAT/C/SR.274 and 275), and adopted the following conclusions and recommendations.

1. Introduction

82. The members of the Committee welcome the presentation of the second periodic report by the delegation of Uruguay and note that Uruguay was one of the first countries to ratify the Convention, that it has not made any reservations and that it has recognized the optional procedures set forth in articles 20, 21 and 22 of the Convention.

83. Uruguay is also a party to the Inter-American Convention to Prevent and Punish Torture.

84. The Committee welcomes the fact that the Uruguayan delegation included representatives of the executive and the judiciary and that the report was prepared with the participation of official institutions such as the Supreme Court of Justice, the Ministry of Education and Culture and the Ministry of the Interior, as well as non-governmental organizations such as Service Peace and Justice and the Institute for Legal and Social Studies of Uruguay, which enjoy well-deserved prestige in the area of the protection and promotion of human rights. In the Committee's view, such cooperation clearly shows that the eradication of the practice of torture has been elevated to the level of national policy that must be pursued by the authorities and society as a whole.

2. Positive aspects

85. The report describes a series of measures that attest to the authorities' concern to achieve the maximum harmonization of legislation and administrative procedures with the requirements of the Convention.

86. Among those measures are the bills on crimes against humanity, on the establishment of courts of enforcement and supervision and on the parliamentary commission set up to examine issues relating to prisons.

87. The Committee also appreciates the establishment of the Honorary National Commission for the Amendment of the Code of Penal Procedure, through Act No. 15,844 of 1990, and of the Honorary Commission on the improvement of the prison system, through Act No. 16,707 of July 1995.

88. The establishment of a working group on the national prison system, made up of representatives of the non-governmental organizations listed in paragraph 23 of the second periodic report, which is developing a programme of systematic visits to penal institutions, is in the Committee's view worthy of being held up as an example. Some of the proposals formulated by the working group from a multi-

disciplinary point of view, which are described in the report, have been welcomed by the Government and are an indication of the working group's serious commitment; for this reason it should be given further support by the Government and institutionalized.

89. With regard to medical ethics, mention should be made of the establishment of a Committee on Medical Ethics and Academic Conduct within the Faculty of Medicine of the Universidad de la República through Decree No. 258/92, which for the first time in domestic law regulates the ethical standards applicable to medical conduct, and of the Uruguayan Medical Association's adoption by a direct vote of its own Code of Medical Ethics.

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

90. The Committee notes:

- (a) The slowness of the legislative process for considering and adopting the bills mentioned earlier;
- (b) The fact that the technical cooperation agreement signed in 1992 between the United Nations Centre for Human Rights and the Ministry of Foreign Affairs of Uruguay has been suspended. The three projects on awareness-raising and training in the application of international human rights instruments, adopted under the agreement in 1992, for prison officers, judicial personnel and doctors were positive initiatives and it is regrettable that they have been ended.

4. Subjects of concern

91. The Committee regrets the State party's delay in giving effect to the recommendations made during the consideration of Uruguay's initial report. The Committee is particularly concerned at the following:

- (a) The continuing gaps in Uruguayan legislation which are impeding full implementation of the provisions of the Convention;
- (b) The lack of a provision introducing a definition of the crime of torture into domestic law in terms compatible with article 1, paragraph 1, of the Convention;
- (c) The persistence in Uruguayan law of provisions concerning obedience to a superior, which are incompatible with article 2, paragraph 3, of the Convention.

5. Recommendations

92. The Committee welcomes the series of legal and administrative measures described in the report, which attest to the State party's determination to fulfil the obligations it assumed on promptly ratifying the Convention. It regrets, however, the considerable delay in implementing them.

93. The Committee reminds the State party that it must introduce the legal reforms needed to bring its internal legislation into conformity with the provisions of the Convention, in particular as regards the definition of torture as a specific offence and the elimination of obedience to a superior as justification

for exculpation from the crime of torture.

94. It also urges the State party to improve the measures taken to prevent the torture of persons deprived of their liberty and to strengthen protection in prisons.

E. Poland

95. The Committee considered the second periodic report of Poland (CAT/C/25/Add.9) at its 276th, 277th and 279th meetings, held on 20 and 21 November 1996 (see CAT/C/SR.276, 277 and 279), and adopted the following conclusions and recommendations.

1. Introduction

96. The Committee thanks Poland for its report and for having once again begun a fruitful and constructive dialogue with the Committee. Notwithstanding the delay in Poland's submission of its second periodic report, the latter is in keeping with the requirements of the Convention and the general guidelines established by the Committee concerning the form and contents of reports.

2. Positive aspects

97. Poland is one of the first Eastern European countries to have initiated at an early date radical changes and reforms in all areas - economic, political, social and legislative. It has ratified the European Convention on Human Rights, the Convention against Torture and other international human rights instruments. The Committee notes with satisfaction the progress made in combating the different forms of torture.

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

98. The Committee notes that most of the reforms mentioned in the oral and written reports are still at the drafting stage.

4. Principal subjects of concern

99. The Committee is concerned about certain shortcomings in the legislation in force intended to combat torture. Domestic legislation does not contain any definition of torture, as required in articles 1 and 4 of the Convention. Moreover, there is no way for the Committee to determine whether, under existing legislation, obedience to a legitimate hierarchical authority may be invoked in justification of an act of torture.

100. The Committee is also concerned that Polish legislation permits periods of pre-trial detention which may prove excessive.

101. The Committee deplores the existence in Polish legislation of provisions authorizing the use of physical force, particularly against minors.

102. Lastly, the Committee deplores the fact that a supplementary report was not brought to the attention of its members until the meeting at which the periodic report was submitted, even though it contains interesting information.

5. Recommendations

103. The Committee repeats to the Government of Poland the recommendation it made in November 1993, at the conclusion of the consideration of Poland's initial report, namely, that a definition of torture which fully covers all the elements in the definition contained in article 1 of the Convention should be incorporated into domestic law.

104. The Committee also recommends that the Government continue its efforts to introduce other legislative reforms and to secure the adoption and promulgation of the numerous draft texts referred to by the delegation.

105. In this connection, the Committee recommends reforms of the legal system which will offer the possibility of formal, effective and concrete judicial verification of the constitutionality of police custody and pre-trial detention with a view to implementing the provisions of the Convention.

106. The Committee also recommends that the Government intensify its programme of training for all personnel responsible for the implementation of legislation, including doctors.

107. The Committee recommends that objective inquiries be initiated, and pursued with due dispatch, into the activities of the security forces in order to determine the veracity of allegations of acts of torture and, where the findings are positive, to bring the offenders before the courts.

108. The Committee recommends that the period of pre-trial detention be shortened and that the possibility of extending it for two years should be abolished.

109. The Committee recommends that statements obtained directly or indirectly under torture should not be admissible as evidence in the courts. It recommends that the abolition as soon as possible of legal provisions permitting the use of physical force, for whatever reason, should be envisaged.

110. Finally, the Committee considers that the likelihood of commission of acts of torture or of other cruel, inhuman or degrading treatment would be limited if suspects had easy access to a lawyer, doctor or family member during the 48 hours of police custody.

F. Georgia

111. The Committee considered the initial report of Georgia (CAT/C/28/Add.1) at its 278th and 279th meetings, held on 21 November 1996 (see CAT/C/SR.278 and 279), and adopted the following conclusions and recommendations.

1. Introduction

112. The initial report of Georgia, dated 4 June 1996, was due on 24 November 1995, but the situation of insecurity in Georgia since 1992 may explain the late submission of the report.

113. The initial report generally follows the Committee's guidelines satisfactorily, except in one respect: it was not accompanied by a core report, as the Committee's reporting guidelines require.

114. The Committee thanks the delegation of Georgia for its introductory remarks and for its constructive dialogue with the Committee.

2. Positive aspects

115. Georgia is one of the States parties that have not expressed a reservation on article 20 of the Convention.

116. The Committee notes with satisfaction the policy of the Government aimed at instituting structural reforms to reflect the provisions of the Convention. This policy is reflected in the new Constitution; in the draft presidential decree on urgent measures for the halting of torture and other cruel, inhuman or degrading treatment; and in the creation of the Committee for Human Rights and Relations Between the Peoples, as well as of a constitutional court, a public defender and an ombudsman.

117. The Committee also considers important the willingness of the representatives of Georgia to acknowledge that, despite the reforms referred to above, torture and ill-treatment occur in places of detention and elsewhere. Acknowledgement is a step, but only the first step, towards resolving the problem.

118. The Committee further considers important the openness of the Government, as reflected in its cooperative activities with recognized international human rights bodies.

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

119. The Committee acknowledges the following:

- (a) The political and economic conditions of the country have proved impediments to reform;
- (b) The bureaucracy lacks the will to embrace the constitutional and legal reforms robustly;
- (c) The independence of the judiciary is not as obvious as it should be;
- (d) There is a clear disjunction between the legal rules of protection and their implementation;
- (e) The international human rights instruments, including the Convention against Torture, are not available in the Georgian language.

4. Subjects of concern

120. The Committee is concerned about the following:

- (a) The volume of complaints of torture, particularly related to the extraction of confessions;
- (b) The failure to investigate claims of torture promptly and to prosecute alleged offenders;
- (c) The current failure to make proper provision for compensation, restitution and rehabilitation of victims of torture;
- (d) The grossly inadequate conditions in places of detention, including prisons;
- (e) The alarming number of deaths in prison;
- (f) Internal exile, which may amount to a breach of article 16 of the Convention;
- (g) The unwillingness of many law enforcement officers to respect, in the exercise of their duties, the rights of persons under investigation and prisoners;
- (h) The existing procedures for the investigation of complaints of torture and ill-treatment, which are not demonstrably impartial;
- (i) The absence of proper guidelines for the taking of statements from persons under arrest and of firm criteria for their evidential evaluation.

5. Recommendations

121. The Committee recommends to the State party that:

- (a) A core document, providing general information on the State party, such as the land and the people, be prepared and forwarded to the Committee;
- (b) The Presidential Decree on urgent measures for the halting of torture and other cruel, inhuman or degrading treatment be implemented as soon as possible;
- (c) The definition of torture contained in article 1 of the Convention be specifically incorporated in the Georgian Code of Criminal Law;
- (d) Incommunicado detention be abolished;
- (e) Rigorous educational programmes for the police, prison officers, doctors, prosecutors and judges be implemented to ensure that each group understands its constitutional role and its obligations under the Convention;
- (f) Resources be made available to improve prison conditions as a matter of urgency, including the provision of appropriate medical facilities;

- (g) A monitoring body with comprehensively defined authority be established to keep under constant review the conditions in which investigations are conducted and persons are held in custody;
- (h) The powers of the Committee for Human Rights and Relations Between the Peoples or another such body, as appropriate, be strengthened to ensure the prompt examination of complaints of torture and other cruel, inhuman or degrading treatment of detainees and prisoners and the prosecution without fail of those responsible for such acts;
- (i) The prison service be removed from the control of the Ministry of the Interior and transferred to the Ministry of Justice or an independent ministry of corrections;
- (j) Information be provided to the Committee regarding all the individual cases referred to during the dialogue and other such cases referred to it by non-governmental organizations.

G. Ukraine

122. The Committee considered the third periodic report of Ukraine (CAT/C/34/Add.1) at its 283rd, 284th and 287th meetings, on 29 April and 1 May 1997 (CAT/C/SR.283, 284/Add.1 and 287), and formulated the following conclusions and recommendations.

1. Introduction

123. The Government of Ukraine submitted its third periodic report in due time, in accordance with article 19, paragraph 1, of the Convention.

124. The Committee expresses its satisfaction with the report, which, in the main, conforms to the general guidelines concerning the presentation and content of such reports.

125. The Committee heard comments on and clarifications of the report by the representatives of Ukraine.

126. Following its consideration and discussion of the report, the Committee noted the following.

2. Positive aspects

127. A positive aspect of Ukraine's compliance with the Convention is the adoption, on 28 June 1996, of its Constitution, article 28 of which prohibits torture.

128. The Committee notes with satisfaction that Ukraine joined the Council of Europe on 9 November 1995 and that it has signed the European Convention on Human Rights and 11 protocols to that Convention. The Committee supports the intention of Ukraine to ratify that Convention.

129. The Committee welcomes the incorporation by Ukraine, in its legislation on the activities of law enforcement bodies, of provisions (such as article 5 of the Act on the Militia and article 5 of the Act on the Security Service) ensuring respect by law enforcement personnel for human rights and freedoms and

on the obligation to comply with them.

130. The Committee expresses the hope that the Government will make efforts to bring its legislation and the practices of law enforcement bodies into line with the task of protecting the rights and freedoms of citizens proclaimed by the Convention.

3. Principal subjects of concern

131. The Committee is concerned about the large number of reports by non-governmental organizations of cases of torture and violence committed by officials during preliminary investigations, causing suffering, bodily injury and, in a number of cases, death.

132. The State party lacks a sufficiently effective system of independent bodies capable of successfully investigating complaints and allegations of the use of torture, preventing and putting an end to torture and ensuring that the perpetrators of such acts are held fully responsible for them.

133. The legislation in force fails to provide any effective judicial control of the lawfulness of arrests.

134. Although article 28 of Ukraine's Constitution prohibits the use of torture, its criminal legislation fails to define torture as a distinct and dangerous crime. In the circumstances, this provision of the Constitution is merely declaratory. Provisions on criminal responsibility for the imposition of inhuman and degrading punishment are also lacking.

135. The Committee is seriously concerned about the scale on which the death penalty is applied as being contrary to the European Convention on Human Rights and the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Committee is also concerned about the large number of provisions in the Criminal Code that envisage the imposition of the death penalty, including an attempt on the life of a militiaman. This situation is contrary to the obligation assumed by Ukraine to introduce a moratorium on the imposition of the death penalty.

136. The Committee considers that the systematic mistreatment and beating of recruits in the armed forces constitutes a flagrant violation of the Convention.

137. The conditions prevailing in premises used for holding persons in custody and in prisons may be described as inhuman and degrading, causing suffering and the impairment of health.

138. A major obstacle in efforts to prevent torture is the difficulty experienced by accused persons in gaining access to a lawyer of their choice in cases where the lawyer's participation in the proceedings depends on his presentation of an authorization to act as defence counsel; this problem can be solved only by the Ministry of Justice which issues such authorizations.

139. The Committee expresses regret that Ukraine has not as yet joined those countries which have recognized the provisions of article 20 of the Convention.

140. The Committee notes that the report contains insufficient information and, in particular, gives no

statistical data on the number of persons serving custodial sentences or arrested as a preventive measure, on the number of complaints made regarding the use of torture or on the number of persons prosecuted for that offence. There is also insufficient information about conditions of detention. No details are provided with regard to compensation for persons subjected to torture or their rehabilitation.

141. The Committee is particularly concerned that article 29 of the Constitution of Ukraine has been suspended for five years, especially since the provisions of that article are of great importance in ensuring the observance of the law and preventing the use of torture. The Committee notes the lack of an independent body for monitoring compliance with the Convention in all its aspects.

4. Recommendations

142. The main issue in connection with the fulfilment by Ukraine of the requirements of the Convention concerns the drafting and adoption of directly enforceable regulatory instruments, as only by this means can the provisions of the Convention, and the relevant provision of the Constitution of Ukraine, be applied.

143. Priority should be given to the adoption of a new criminal code, defining torture as a punishable offence, and a new code of criminal procedure, guaranteeing the right of an accused person to counsel at all stages of criminal proceedings, as well as to effective and practical supervision by the courts of preliminary confinement to preclude any use of torture at the stage of detention or arrest or at subsequent stages of criminal proceedings.

144. Another major task is to extend supervision by the judicial and civil authorities over the work of the law enforcement agencies and to establish a system of independent institutions for rapid and effective follow-up of complaints regarding the use of torture and other degrading treatment or punishment.

145. It is highly desirable that the widest possible publicity should be given to the main provisions of the Convention through the press and other media and that practical training in the rules and standards of the Convention should be made available for investigators and the staff of penal institutions.

146. The Committee recommends that interrogation of any person detained or arrested without the participation of defence counsel or when the person is being held incommunicado should be prohibited by law.

147. The Committee considers the 18-month maximum period during which an accused person may be held in custody to be excessive and recommends that it should be reduced.

148. The Committee encourages the Government of Ukraine to consider withdrawing its reservation to article 20 of the Convention and to make the declarations under articles 21 and 22, as well as ratify Protocol No. 6 to the European Convention on Human Rights.

149. The Committee considers that a radical reform of correctional institutions, such as colonies and prisons, and places of pre-trial detention is essential to ensure full compliance with the provisions of the Convention. Solitary confinement and especially conditions of imprisonment give rise to particular

concern.

150. The Committee recommends that the moratorium on the application of the death penalty be given permanent effect.

151. It is particularly important, in the Committee's view, to organize special training for the personnel of correctional institutions, especially doctors, in the principles and standards of the Convention.

152. The Committee believes that there is a need to establish by law a procedure for providing redress for injury caused to victims of torture, including compensation for moral injury, and to define the arrangements, amount and conditions for such compensation.

H. Mexico

153. The Committee considered the third periodic report of Mexico (CAT/C/34/Add.2) at its 285th, 286th and 289th meetings, on 30 April and 2 May 1997 (CAT/C/SR.285, 286/Add.1 and 289), and formulated the following conclusions and recommendations.

1. Introduction

154. Mexico submitted the initial and periodic reports called for under article 19 of the Convention on time.

155. The Committee appreciates the timeliness with which the State party has fulfilled this obligation, thereby helping the Committee to carry out its functions under the Convention.

156. The third periodic report (CAT/C/34/Add.2), which was considered by the Committee at its eighteenth session, complies with the guidelines on the form and content of periodic reports which the Committee adopted in 1991.

157. Several months before the third periodic report was submitted, Mexico also submitted the supplement to the second periodic report which the Committee had requested during its consideration of that report in November 1992. However, the Committee did not consider the additional report, both because of the time of submission and because the information it contained was included in the most recent report.

2. Positive aspects

158. The Committee appreciates the State party's efforts to improve the legal status of torture victims and, in particular, the new legislative provisions on restitution, compensation and rehabilitation for victims of human rights violations, promulgated in January 1994, and the granting of compulsory effect to the recommendations of the National Human Rights Commission, which require the authorities to compensate torture victims for the harm they have suffered.

159. The Committee recognizes the importance of projects and activities for human rights education and

training, which focus on a wide range of public activities in which human rights violations may occur. The report shows that considerable efforts have been made to strengthen respect for human rights by public servants and society in general.

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

160. The fragility of the culture of respect for guarantees of the rights of individuals and insufficient awareness on the part of the various authorities of the importance of punishing torture harshly and in accordance with the law, as recognized in the report with a frankness which the Committee appreciates, are subjective factors which probably make it more difficult fully to guarantee the fulfilment of the obligations imposed on the State party by the Convention.

161. The restriction on the powers of the National Human Rights Commission, whose recommendations the law specifically states to be "non-binding" and of a non-compulsory nature for the authorities or public services to which they are addressed, and the fact that the Commission is not empowered to institute legal proceedings in order to conduct investigations of the complaints it makes, are limitations which prevents it from fully serving the basic purpose of protecting and promoting human rights for which it was created. The Committee considers that broadening its mandate in the sense indicated would contribute to better compliance with the Convention by the State party.

4. Subjects of concern

162. The Committee has received abundant reliable information stating that, despite the legal and administrative measures the Government has taken to eradicate torture during the four-year period covered by the report, torture continues to be systematically practised in Mexico, particularly by the federal and local judicial police and, recently, by members of the armed forces on the pretext of combating subversives. The Committee notes with concern the wide gap between the extensive legal and administrative framework established in order to put an end to torture and cruel, inhuman and degrading treatment and the actual situation as revealed in the information received.

163. In the Committee's opinion, the ineffectiveness of efforts to put an end to the practice of torture is the result, *inter alia*, of the continuing impunity of torturers and the fact that the authorities responsible for the administration of justice continue to admit confessions and statements made under torture as evidence during trials, despite legal provisions explicitly declaring them inadmissible.

164. Even the State party's report includes statistics which clearly demonstrate the impunity of torturers; by contrast with the large number of complaints of torture received by the National Human Rights Commission, which the report also mentions, only two convictions based on the Federal Act to Prevent and Punish Torture and five for homicide resulting from torture were handed down between June 1990 and May 1996.

165. In practice, the failure by the authority responsible for criminal investigation to investigate reports of torture promptly and impartially, as stipulated in articles 12 and 13 of the Convention, results in the denial of the right of victims to take legal action to claim compensation for the violation of their rights.

5. Recommendations

166. In order to discourage the practice of torture, the Committee considers it necessary to implement effective procedures for monitoring compliance with the duties and prohibitions of public officials and bodies responsible for the administration of justice and law enforcement, particularly the Office of the Attorney-General and its subsidiary departments and the judiciary, in order to ensure the full implementation of the many existing judicial remedies for the elimination of torture and the criminal and administrative punishment of the persons responsible.

167. The Committee also considers the following measures to be necessary:

- (a) The public human rights commissions should be given the necessary jurisdiction to prosecute cases of serious human rights violations, including complaints of torture;
- (b) Training and dissemination programmes intended particularly for law enforcement officials and health professionals should be strengthened and should include issues relating to the prohibition of torture;
- (c) Procedures to inform detainees of their rights should be developed. Detainees should be immediately and directly informed of their rights by public officials at the time of arrest and those rights should be posted in all detention centres, prosecutors' offices and courthouses. This information should include a clear, simple statement of the provisions of the relevant legislation, particularly articles 16, 19 and 20 of the Constitution and the relevant provisions of the Federal Act to Prevent and Punish Torture.

168. The Committee recommends that the State party should consider making the declarations under articles 21 and 22 of the Convention.

169. The Committee hopes that written answers to the unanswered questions asked by its members during the consideration of the report will be provided as soon as possible.

170. The Committee suggests that the State party should include relevant information on the Federal District and the States in its next periodic report. In particular, the Committee would like to receive information on the following:

- (a) Statistics on complaints of human rights violations in general and, in particular, complaints of torture brought before the public human rights commissions, and on the recommendations of those commissions on torture;
- (b) Preliminary investigations of complaints of torture, cases where criminal action has been taken and trials which have resulted in final sentences, whether acquittals or convictions, and, in the latter case, the penalties imposed;
- (c) Cases in which the administrative responsibility of public officials accused of torture has been established and the penalties imposed.

I. Denmark

171. The Committee considered the third periodic report of Denmark (CAT/C/34/Add.3) at its 287th and 288th meetings, on 1 May 1997 (CAT/C/SR.287 and 288), and formulated the following conclusions and recommendations.

1. Introduction

172. The Committee thanks the Government of Denmark for its frank cooperation, demonstrated among other things by its third periodic report, which was submitted on time. Not only was the report prepared in accordance with the general guidelines regarding the form and content of periodic reports to be submitted by States parties under article 19 of the Convention, but it also contained abundant information which facilitated a constructive dialogue.

173. The Committee also thanks the Danish delegation for its frank replies to the questions raised by members of the Committee.

2. Positive aspects

174. The Committee notes with satisfaction the commitment of the Government of Denmark to the reforms of the judicial system in Greenland.

175. The Committee also considers the State party's efforts to ensure that the composition of the police corps reflects the diversity of the population to be another very positive aspect.

176. The Committee views as very important the fact that the subject of "human rights" appears in the basic training of the police.

177. The Committee can only welcome the fact that the Government grants subsidies to independent, private organizations involved with the rehabilitation of torture victims.

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

178. The Committee notes the difficulties of Denmark in incorporating the provisions of the Convention into Danish law, given its commitment to the "dualist" system.

4. Subjects of concern

179. The Committee is concerned that there may still be some doubts as to the legal status of the Convention in domestic law, particularly with regard to the possibility of invoking the Convention before the Danish courts and the competence of the courts to apply its provisions ex officio.

180. The Committee is also concerned that Denmark has still not introduced the offence of torture into its penal system, including a definition of torture in conformity with article 1 of the Convention.

181. The Committee is concerned about the institution of solitary confinement, particularly as a preventive measure during pre-trial detention, but also as a disciplinary measure, for example, in cases of repeated refusal to work.

182. The Committee expresses its concern about the methods used by the Danish police both in their treatment of detainees and during public demonstrations, for example, the use of dogs for crowd control.

183. The Committee is further concerned about the real degree of independence of the mechanisms used to deal with detainees' complaints.

5. Recommendations

184. The Committee recommends that the State party consider incorporating the provisions of the Convention into domestic law, as it has already done for the European Convention on Human Rights.

185. The Committee reiterates the recommendation it made during consideration of the first and second periodic reports of Denmark that it should incorporate into its domestic law provisions on the crime of torture, in conformity with article 1 of the Convention.

186. Except in exceptional circumstances, inter alia, when the safety of persons or property is involved, the Committee recommends that the use of solitary confinement be abolished, particularly during pre-trial detention, or at least that it should be strictly and specifically regulated by law (maximum duration, etc.) and that judicial supervision should be introduced.

187. The Committee recommends that the State party reconsider the methods used by police in their treatment of detainees or during crowd control.

188. The Committee recommends that the State party ensure that complaints of ill-treatment lodged by detainees are handled by independent bodies.

J. Paraguay

189. The Committee considered the second periodic report of Paraguay (CAT/C/29/Add.1) at its 289th, 290th and 292nd meetings on 2 and 5 May 1997 (CAT/C/SR.289, 290 and 292), and formulated the following conclusions and recommendations.

1. Introduction

190. Paraguay ratified the Convention against Torture in 1990. It has not made the declarations under articles 21 and 22 of the Convention. It is also a party to the Inter-American Convention to Prevent and Punish Torture.

191. Paraguay's initial report, submitted on 13 January 1993, was considered by the Committee at its eleventh session, in November 1993. Its second periodic report, which was submitted on 10 July 1996, complies with the guidelines on the form and content of periodic reports which the Committee adopted

in 1991.

2. Positive aspects

192. Paraguay has not adopted any "clean slate" or amnesty act.

193. Article 5 of the Paraguayan Constitution gives constitutional rank to the prohibition of torture and cruel, inhuman or degrading treatment or punishment and stipulates that there is no statutory limitation on judicial proceedings intended to punish those offences.

194. Under article 137 of the Constitution, international treaties, conventions and agreements, including the Convention against Torture and the Inter-American Convention to Prevent and Punish Torture, once approved and ratified, form part of Paraguayan domestic law and rank higher than the laws and immediately below the Constitution.

195. The guarantees applicable to arrest and detention, which are set forth in article 12 of the Constitution, provide a legal framework that can and should help to prevent torture.

196. The constitutional provisions governing states of emergency are consistent with the non-derogability provision contained in article 2, paragraph 2, of the Convention against Torture.

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

197. Nearly five years after the promulgation of the Constitution of Paraguay, there has been no implementation of the decision to establish an ombudsman, whose mandate, duties and functions provide an opportunity for effective action to promote and protect human rights and prevent torture and other cruel, inhuman and degrading treatment through systematic inspection of the places where those offences are reportedly practised. The Constitution also authorizes the ombudsman to protect torture victims, investigate reports and complaints of torture and publicly condemn or report its occurrence.

198. There has been insufficient activity on the part of the Public Prosecutor's Department, as may be inferred from the report considered by the Committee, which states that between 1991 and the date of completion of the report, criminal proceedings had been instituted in respect of physical ill-treatment by public officials in only 15 cases.

4. Subjects of concern

199. There is no definition of torture in existing legislation and the definition contained in the draft Penal Code at the current stage of its consideration by Parliament does not meet the obligation imposed on the State party by article 4 of the Convention in relation to article 1 thereof. The definition contained in the original form of the draft was inadequate and the current one is even more so.

200. The Committee has been informed by reliable sources that although the infliction of torture and ill-treatment is no longer, as in the past, an official State policy, it is still practised by public officials, particularly in police stations and primary detention centres, in order to obtain confessions or

information which are accepted by judges as grounds for instituting proceedings against the victims. The Committee is also concerned about information received from the same sources concerning the frequent physical ill-treatment of soldiers during their compulsory military service.

201. Another subject of concern to the Committee is information from the above-mentioned sources that paramilitary groups in the service of major landholders have been evicting people from land they have occupied for many years and that this activity appears to be tolerated by the State.

202. The existence of a legal arrest warrant does not, under any circumstances, justify torture. However, the fact that many arrests are made without a previously issued warrant from the competent authority and in cases other than those involving persons caught in flagrante delicto facilitates the practice of torture and cruel, inhuman or degrading treatment as a result of the clandestine circumstances in which it takes place and because the victims may remain at the disposal of their captors for longer than the 24-hour period within which detainees must, according to article 12, paragraph 5, of the Constitution, be brought before the competent judge.

203. With regard to the right of torture victims to redress and fair and adequate compensation, including the means for as full rehabilitation as possible, as provided for in article 14 of the Convention, the Committee is concerned that the report submitted by the State party makes no mention of the existence of programmes for the compensation and physical and mental rehabilitation of victims, thus leading it to believe that there are no such programmes. As to the right to fair and adequate compensation, the Committee is concerned that the State party has only subsidiary responsibility for the actions of its officials, as stated in article 106 of the Constitution, which makes victims responsible for laying claim to the assets of their torturers in order to exercise that right; the State may be required to assume responsibility only if such assets are non-existent, insufficient or cannot be found.

204. The Committee is also concerned that domestic law includes insufficient provisions prohibiting the expulsion, refoulement or extradition of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture, as stipulated in article 3 of the Convention. Article 43 of the Constitution extends such protection only to those granted political asylum.

205. Lastly, the Committee is concerned that domestic law contains no provisions on the universal prosecution of torture or on judicial cooperation for that purpose.

5. Recommendations

206. The provisions on torture should be separated from the new Penal Code, currently under somewhat lengthy consideration in Parliament, and all matters related to torture and other cruel, inhuman or degrading treatment or punishment should be included in a special act containing the provisions necessary to give effect to the provisions of the Convention. In particular:

(a) Torture should be defined in terms consistent with article 1 of the Convention and, since Paraguay is also a party to the Inter-American Convention to Prevent and Punish Torture, the definition should include a specific statement that: "Torture shall also be understood to be the use of methods upon a

person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish", as established by article 2 of that Convention,³ which the Committee has taken into consideration in accordance with article 1, paragraph 2, of the United Nations Convention against Torture;

(b) The practice of torture should in itself be punishable by law, independently of any effects on or consequences for the victim and without prejudice to any increase in penalties, in view of the seriousness of such effects or consequences;

(c) Provisions to facilitate the prosecution of the use of torture at the international level should be included in accordance with the Convention and the provisions of article 143 of the Constitution, which includes recognition of international law and the international protection of human rights among the guiding principles of Paraguay's international relations.

207. The provisions establishing the post of ombudsman should be implemented promptly, and the act regulating his functions and setting forth the principles embodied in chapter IV, section I, of the Constitution should be promulgated promptly.

208. Rules and instructions on the matters referred to in article 11 of the Convention should be issued, and systematic procedures for the supervision and monitoring of compliance therewith should be established and maintained in order to eliminate the practice of torture and other cruel, inhuman or degrading treatment or punishment.

209. Physical conditions in prisons should be improved and the conditions of prisoners in detention should be made compatible with human dignity.

210. Systematic programmes of education and information regarding the prohibition of torture should be developed and fully included in the training of the officials referred to in article 10 of the Convention.

211. The declarations under articles 21 and 22 of the Convention should be made.

212. The Committee hopes that it will soon receive the official information on the enforcement of penalties against public officials who have engaged in the practice of torture and other cruel, inhuman and degrading treatment which the representatives of the State offered to provide during the Committee's consideration of the report of Paraguay.

213. Lastly, the Committee recommends that the third periodic report of Paraguay be submitted by the 10 April 1999 deadline.

K. Sweden

214. The Committee considered the third periodic report of Sweden (CAT/C/34/Add.4) at its 291st, 292nd and 294th meetings, on 5 and 6 May 1997 (CAT/C/SR.291, 292 and 294/Add.1), and formulated the following conclusions and recommendations.

1. Introduction

215. The third periodic report of Sweden was submitted on 9 August 1996, in accordance with the reporting schedule under the Convention. It conformed fully to the requirements laid down in the reporting guidelines. In addition, the Swedish representatives drew the Committee's attention to relevant developments since the completion of the report. The Committee and the Swedish representatives engaged in a frank and open discussion of the report.

2. Positive aspects

216. The Committee takes note with satisfaction of the revised law relating to refugees, as well as the way in which the Swedish Government now offers protection to many displaced persons who would not technically be identified as refugees under the 1951 Convention relating to the Status of Refugees.⁴

217. The Committee is also pleased to acknowledge the way in which Sweden provides material and political support for the rehabilitation of the victims of torture, both within the country and internationally.

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

218. Because Sweden adopts a dualistic theory of incorporation of international treaty norms into its domestic law, the provisions of the Convention against Torture require enabling legislation before they become part of Swedish domestic law. The continued failure of Sweden to do this renders the full implementation of the Convention's terms more difficult.

4. Subjects of concern

219. The Committee is concerned about the continued failure of the Swedish Government to incorporate into its domestic law the definition of torture, in accordance with article 1 of the Convention.

220. It is also concerned about the use of "restrictions", some leading to solitary confinement for a prolonged period of time, for persons held in pre-trial detention centres and prisons.

221. The Committee is concerned about information it received on isolated cases of ill-treatment by the police.

222. The Committee expressed concern with regard to certain methods used by Swedish police in dealing with detainees or with public demonstrations, such as, in the latter case, using dogs for crowd control.

5. Recommendations

223. The Committee recommends that the State party proceed to incorporate the provisions of the Convention against Torture into Swedish law, as it has already done with regard to the European Convention on Human Rights.

224. The Committee specifically renews its recommendation, made during its consideration of the previous reports of the State party, that Sweden incorporate into its domestic legislation the definition of torture as contained in article 1 of the Convention.

225. While the Committee welcomes the information that the question of "restrictions", including solitary confinement, during pre-trial detention is under review by the Swedish authorities, it recommends that the institution of solitary confinement be abolished, particularly during the period of pre-trial detention, other than in exceptional cases, *inter alia*, when the security or the well-being of persons or property are in danger, and the measure is applied, in accordance with the law and under judicial control.

226. The Committee recommends that the State party reconsider the methods used by the police with regard to crowd control.

L. Namibia

227. The Committee considered the initial report of Namibia (CAT/C/28/Add.2) at its 293rd and 294th meetings, on 6 May 1997 (CAT/C/SR.293 and 294/Add.1), and adopted the following conclusions and recommendations.

1. Introduction

228. The Committee thanks the State party for submitting the initial report and for its responses to the questions and concerns expressed by the Committee.

2. Positive aspects

229. The Committee welcomes the goodwill shown by Namibia in its accession to the Convention against Torture and other instruments of international human rights and humanitarian law.

230. The Committee welcomes the Government's growing awareness of the importance of human rights, as demonstrated by the fact that the Government now permits non-governmental organizations and diplomatic officers regular access to prisons and prisoners and that local non-governmental organizations operate freely, dealing openly with a variety of human rights issues.

231. The Committee expresses its satisfaction with the explicit proclamation in the Namibian Constitution that no person shall be subjected to torture or cruel, inhuman or degrading treatment or punishment and that testimony obtained under torture is not admissible as evidence in a Namibian court of law.

232. The Committee welcomes the improvement in Namibia's asylum and refugee policy according to which asylum seekers from other African countries are permitted to enter the country and are granted refugee status.

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

233. The Committee is aware that Namibia, which only became an independent State in 1990, is confronted with the legacy of the pre-independence period which hinders desirable efforts to fully harmonize the Namibian legal order with the requirements of international humanitarian law instruments.

234. The Committee has tried to take this fact into consideration in formulating its conclusions and recommendations. However, it must be emphasized that no exceptional circumstances can ever provide a justification for failure to comply with certain terms of the Convention against Torture.

4. Subjects of concern

235. The Committee is concerned that Namibia has not integrated, as required by articles 2 (1) and 4 (1) of the Convention, the specific definition of the crime of torture into its penal legislation in terms legally consistent with the definition contained in article 1 of the Convention. In the absence of a strict legal definition of torture and other offences and of a precise description of appropriate and corresponding punishment for torture and other offences, it is impossible for the Namibian courts to adhere to the principle of legality (nullum crimen, nulla poena sine lege previa) and to article 4 of the Convention.

236. The Committee is also concerned about the alleged cases of torture referred to specifically during the discussion of the State party's report.

237. The Committee deeply regrets that in many cases, because of the lack of judicial personnel, pre-trial detention extends for up to one year.

238. The Committee is concerned that although torture and physical assaults by the Namibian police have been reduced considerably since independence, treatment which falls under the category of torture or cruel, inhuman or degrading treatment or punishment still occurs in certain areas of the country.

239. The Committee is also concerned at the State party's failure in many cases to promptly and impartially investigate and prosecute those responsible for past and present acts of torture or cruel, inhuman or degrading treatment. Namibia also fails to institute consistently disciplinary proceedings against public officials responsible for acts of torture or ill-treatment.

240. The Committee expresses concern that there are no legal instruments to deal specifically with compensating victims of torture or other ill-treatment. The existing procedures for obtaining redress, compensation and rehabilitation seem to be inadequate and in many cases ineffective. Moreover, they limit the right to redress and compensation to the victim of torture, failing to give, in accordance with article 14 (1) of the Convention, the same standing to the deceased victim's dependants.

5. Recommendations

241. Namibia should enact a law defining the crime of torture in terms of article 1 of the Convention and should legally integrate this definition into the Namibian substantive and procedural criminal law system, taking especially into account: (a) the need to define torture as a specific offence committed by

or at the instigation of or with the consent of a public official (delictum proprium) with the special intent to extract a confession or other information, to arbitrarily punish, to intimidate, to coerce or to discriminate; (b) the need to legislate for complicity in torture and attempts to commit torture as equally punishable; (c) the need to exclude the legal applicability of all justification in cases of torture; (d) the need to exclude procedurally all evidence obtained by torture in criminal and all other proceedings except in proceedings against the perpetrator of torture himself; and (e) the need to legislate for and enforce prompt and impartial investigation into any substantiated allegations of torture.

242. Namibia should enact laws, particularly prohibiting torture, as required under the Convention against Torture and other human rights agreements binding on Namibia, in fields that are not yet regulated. Existing national laws should be further reviewed in the light of the Convention and protection of human rights in general.

243. Education of members of the Police Department, the National Defence Force, the Prisons Service, other law enforcement personnel and medical officers regarding the prohibition of torture and other cruel, inhuman and degrading treatment should be fully included in their training, in accordance with article 10 of the Convention, with special emphasis on the definition of torture as contained in article 1 of the Convention and also emphasizing the criminal liability of those who commit acts of torture.

244. Independent governmental bodies consisting of persons of high moral standing should be appointed to take over the inspection of detention centres and places of imprisonment. The Government should also establish an independent authority to deal with complaints against members of the Police Department.

245. The Government should introduce measures to reduce the accumulation of criminal cases resulting in long and illegal pre-trial detention, which violates the right of defendants to be tried within a reasonable time.

246. The Government should provide the Office of the Ombudsman with the personnel and financial means to exercise its functions in the field of protection of human rights, as foreseen by the Namibian Constitution.

247. The Committee recommends that the specific allegations of ill-treatment which have been brought to its attention be investigated and that the results of such investigations be transmitted to the Committee. The Committee also recommends that the cases of disappearance of former members of the South West Africa People's Organization (SWAPO) be, according to article 12 of the Convention, promptly and impartially investigated. In all situations where reasonable grounds exist to believe that those disappearances amounted either to torture or to other forms of cruel, inhuman or degrading treatment, the dependants of the deceased victims should, according to article 14 of the Convention, be afforded fair and adequate compensation. The perpetrators of those acts should be brought to justice.

248. Traditional leaders in community courts in Namibia should either be effectively made to comply with the legal limits of their power to order pre-trial detainment of suspects or they should be stripped of their power to order such pre-trial detention.

249. The Namibian authorities should institute proper procedures in order to comply with article 3 of the Convention, i.e. to enable refugees to apply for residence in cases where substantial grounds exist for believing that they would be in danger of being subjected to torture if expelled, returned or extradited to another country.

250. The Committee recommends the prompt abolition of corporal punishment insofar as it is legally still possible under the Prisons Act of 1959 and the Criminal Procedure Act of 1977.

251. The Committee recommends that victims of torture in Namibia be given standing to institute, apart from civil action for damages, criminal procedures against the perpetrators of torture.

252. In view of the normal separation of disciplinary proceedings from criminal procedure, the Committee considers the legal dependence in Namibia of disciplinary proceedings against the perpetrator of torture upon the outcome of criminal proceedings as unnecessary.

M. Israel

253. The Committee considered the special report of Israel (CAT/C/33/Add.2/Rev.1) at its 295th, 296th and 297th meetings, on 7 and 9 May 1997 (CAT/C/SR.295, 296 and 297/Add.1), and adopted the following conclusions and recommendations.

1. Introduction

254. The special report of Israel was submitted on 18 February 1997, pursuant to the request contained in the letter to the Permanent Representative of Israel to the United Nations Office at Geneva, dated 22 November 1996 (see para. 25 above). It responded to a number of concerns of the Committee contained in its conclusions on the first periodic report of Israel and the Committee's reaction to certain decisions of the Supreme Court of Israel. The Committee thanks the Israeli delegation for its informative opening statement and its frank and open responses to the Committee's questions.

2. Conclusions

255. The information provided by Israel in its special report and in the opening statement of its representatives was essentially a reiteration of its position described in the initial report, namely, that interrogation, including the use of "moderate physical pressure" where it is thought that interrogatees have information of imminent attacks against the State which may involve deaths of innocent citizens, is lawful if conducted in accordance with the "Landau rules", which permit "moderate physical pressure" to be used in strictly defined interrogation circumstances.

256. It is Israel's position that interrogations pursuant to the "Landau rules" do not breach prohibitions against cruel, inhuman or degrading treatment as contained in article 16 of the Convention against Torture and do not amount to torture as defined in article 1 of the Convention.

257. However, the methods of interrogation, which were described by non-governmental organizations

on the basis of accounts given to them by interrogatees and appear to be applied systematically, were neither confirmed nor denied by Israel. The Committee must therefore assume them to be accurate. Those methods include: (1) restraining in very painful conditions, (2) hooding under special conditions, (3) sounding of loud music for prolonged periods, (4) sleep deprivation for prolonged periods, (5) threats, including death threats, (6) violent shaking, and (7) using cold air to chill, and are, in the Committee's view, breaches of article 16 and also constitute torture as defined in article 1 of the Convention. This conclusion is particularly evident where such methods of interrogation are used in combination, which appears to be the standard case.

258. The Committee acknowledges the terrible dilemma that Israel confronts in dealing with terrorist threats to its security, but as a State party to the Convention Israel is precluded from raising before this Committee exceptional circumstances as justification for acts prohibited by article 1 of the Convention. This is plainly expressed in article 2 of the Convention.

259. The Committee is also concerned that the effect of the Hamdan decision by the Israeli Supreme Court dissolving the interim injunction was to allow some of the interrogation practices referred to above to continue and to legitimize them for domestic purposes.

3. Recommendations

260. The Committee recommends that:

- (a) Interrogations applying the methods referred to above and any other methods that are in conflict with the provisions of articles 1 and 16 of the Convention cease immediately;
- (b) The provisions of the Convention be incorporated by legislation into Israeli law, particularly the definition of torture contained in article 1 of the Convention, as is currently under consideration by the expert committee of the Ministerial Committee for Legislation;
- (c) Israel consider making the declarations provided for under articles 21 and 22 and withdrawing its reservation to article 20 of the Convention;
- (d) Interrogation procedures pursuant to the "Landau rules" in any event be published in full;
- (e) Israel include information on the measures taken in response to these conclusions and recommendations in its second periodic report, which was due on 1 November 1996. That report should be submitted as soon as possible and in any event no later than 1 September 1997, in order to allow the Committee to consider it at its next session.

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

261. In accordance with article 20, paragraph 1, of the Convention, 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 cooperate in the examination of the information and, to this end, to submit observations with regard to the information.

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

263. 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 party has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

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

Sessions Number of closed meetings

Fourth 4
Fifth 4
Sixth 3
Seventh 2
Eighth 3
Ninth 3
Tenth 8
Eleventh 4
Twelfth 4
Thirteenth 3
Fourteenth 6
Fifteenth 4
Sixteenth 4
Seventeenth 4
Eighteenth 5

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

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

VI. CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 22

OF THE CONVENTION

267. Under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, individuals who claim that any of their rights enumerated in the Convention have been violated by a State party and who have exhausted all available domestic remedies may submit communications to the Committee against Torture for consideration. Thirty-nine out of 102 States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee to receive and consider communications under article 22 of the Convention. Those States are: Algeria, Argentina, Australia, Austria, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Greece, Hungary, Iceland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, Russian Federation, Senegal, Slovakia, Slovenia, Spain, Sweden, Switzerland, Togo, Tunisia, Turkey, Uruguay, Venezuela and Yugoslavia. No communication may be considered by the Committee if it concerns a State party to the Convention that has not recognized the competence of the Committee to do so.

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

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

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

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

communication but identifying the State party concerned.

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

273. During the period covered by the present report (seventeenth and eighteenth sessions) the Committee had 39 communications before it for consideration (Nos. 11/1993, 12/1993, 19/1994, 20/1994, 27/1995-29/1995, 33/1995, 34/1995, 37/1995, 38/1995, 39/1996, 40/1996, 42/1996-62/1996 and 63/1997-67/1997).

274. At its seventeenth session, the Committee decided to discontinue the consideration of communications Nos. 11/1993, 12/1993, 44/1996, 51/1996 and 53/1996.

275. Also at its seventeenth session, the Committee adopted its Views in respect of communication No. 43/1996 (Tala v. Sweden). The Committee decided that Mr. Tala's forced return to Iran would violate the State party's obligation under article 3 of the Convention not to return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In reaching its decision, the Committee took into account Mr. Tala's affiliation with the People's Mujahedin Organization and his history of detention and torture, as well as the serious human rights situation in Iran. The text of the Views is reproduced in annex V.

276. At its eighteenth session, the Committee decided to discontinue the consideration of communication No. 56/1996.

277. Also at its eighteenth session, the Committee adopted its Views in respect of communications Nos. 27/1995 (X v. Switzerland), 34/1995 (Aemei v. Switzerland), 38/1995 (X v. Switzerland), 39/1996 (Tapia Paez v. Sweden) and 40/1996 (Mohamed v. Greece). The text of the Views of the Committee for each of the communications is reproduced in annex V.

278. With respect to communication No. 27/1995, the Committee took note of the inconsistencies in the author's story and considered that the information available did not show that substantial grounds existed for believing that the author would be personally at risk of being subject to torture if he were to be returned to Sudan. Accordingly, the Committee decided that the facts did not reveal a violation of article 3 of the Convention.

279. In its Views on communication No. 34/1995 (Aemei v. Switzerland), the Committee decided that the return of Mr. Aemei and his family to Iran would violate the State party's obligation under article 3 of the Convention. The Committee based its Views in particular on the political activities undertaken by Mr. Aemei after he left Iran, which led to clashes between him and representatives of Iran in Switzerland.

280. The Committee found that the facts of communication No. 38/1995 did not reveal that the author's return to Sudan would constitute a violation of article 3 of the Convention. The Committee took into account the fact that the author had not been in prolonged detention before, had never been ill-treated or

tortured and did not belong to a political, professional or social group targeted by the Sudanese authorities for repression or torture.

281. With respect to communication No. 39/1996 (Tapia Paez v. Sweden), the Committee was of the view that Mr. Tapia Paez' return to Peru would constitute a violation of article 3 of the Convention. Mr. Tapia Paez came from a politically active family and his mother and sisters had been allowed to stay in Sweden. However, since he had been active for Sendero Luminoso, the State party invoked article 2 F of the 1951 Convention relating to the Status of Refugees⁴ in refusing him asylum. The Committee considered that the test of article 3 of the Convention was absolute and that the nature of the activities in which the person concerned engaged could not be a material consideration when making a decision under article 3.

282. With respect to communication No. 40/1996 (Mohamed v. Greece), the Committee stressed that it could not determine whether or not the claimant was entitled to asylum under the national laws of a country, or whether he was entitled to the protection of the 1951 Refugee Convention. Since Mr. Mohamed was not in danger of being returned to Ethiopia, the Committee found that there was no violation of article 3 of the Convention.

283. At its eighteenth session, the Committee also decided that communication No. 46/1996 (Le Gayic v. France) was inadmissible because domestic remedies had not been exhausted, pursuant to article 22, paragraph 5 (b), of the Convention. The text of the decision is reproduced in annex V.

VII. FUTURE MEETINGS OF THE COMMITTEE

284. In accordance with rule 2 of its rules of procedure, the Committee shall normally hold two regular sessions each year. Regular sessions of the Committee shall be convened at dates decided by the Committee in consultation with the Secretary-General, taking into account the calendar of conferences as approved by the General Assembly.

285. As the calendar of meetings held within the framework of the United Nations is submitted by the Secretary-General on a biennial basis for the approval of the Committee on Conferences and the General Assembly, the Committee took decisions on the schedule of its meetings to be held in 1998 and 1999.

286. At its 289th meetings on 2 May 1997, the Committee decided to hold its regular sessions for the next biennium at the United Nations Office at Geneva on the following dates:

Twentieth session 4-15 May 1998

Twenty-first session 9-20 November 1998

Twenty-second session 26 April-7 May 1999

Twenty-third session 8-19 November 1999

287. In addition, the Committee recalled that in May 1995, it had addressed a request for an additional session to the General Assembly⁵ and regretted that its request had been ignored.

288. The Committee reiterated its concern at the lack of time available during its two annual regular meetings to cope with the great complexity of its work and the intensive pace of its operations resulting from the increase in the number of States parties to the Convention, the new cycle of periodic reports submitted by States parties, the increasing amount of information received under the inquiry procedure and the growing number of communications submitted under the individual communications procedure.

289. The Committee once again stressed that, in accordance with rule 1 of its rules of procedure, it shall hold meetings as might be required for the satisfactory performance of its functions and that in accordance with article 18, paragraph 3, of the Convention, the Secretary-General shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the Convention. The Committee also recalled that the General Assembly itself, in numerous resolutions on the effective implementation of international instruments on human rights, the most recent of which was resolution 51/87 of 12 December 1996, reiterated its request that the Secretary-General provide adequate resources in respect of each treaty body.

290. Keeping in mind the budgetary constraints of the United Nations, the Committee decided to request the General Assembly to authorize the Secretary-General to extend its spring sessions by one additional week, beginning in 1998, instead of scheduling an additional regular session of one week's duration each year, as it had initially requested. In addition, at its 298th meeting, on 9 May 1997, the Committee decided to request its Chairman to address a letter on this issue to the Secretary-General. The Committee agreed, in particular, that the Secretary-General should be requested to extend its twentieth session in May 1998 by one week, as an interim measure before action is taken by the General Assembly on the request for an extension of the Committee's spring sessions on a regular basis.

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

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

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

293. Accordingly, at its 298th meeting, held on 9 May 1997, the Committee considered the draft report on its activities at the seventeenth and eighteenth sessions (CAT/C/XVIII/CRP.1 and Add.1-8). The report, as amended in the course of the discussion, was adopted by the Committee unanimously. An account of the activities of the Committee at its nineteenth session (10 to 21 November 1997) will be included in the annual report of the Committee for 1998.

Notes

¹ Official Records of the General Assembly, Forty-fifth Session, Supplement No. 44 (A/45/44), paras.

14-16.

² Ibid., Forty-ninth Session, Supplement No. 44 (A/49/44), paras. 12 and 13.

³ See Organization of American States, Basic Documents pertaining to Human Rights in the Inter-American System, Washington, D.C., 1996.

⁴ United Nations, Treaty Series, vol. 189, No. 2545.

⁵ See Official Records of the General Assembly, Fiftieth Session, Supplement No. 44 (A/50/44), paras. 207-209.

ANNEX I

States that have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as at 9 May 1997

<u>State</u>	<u>Date of signature</u>	<u>Date of receipt of the instrument of ratification or accession</u>
Afghanistan	4 February 1985	1 April 1987
Albania		11 May 1994a
Algeriab	26 November 1985	12 September 1989
Antigua and Barbuda		19 July 1993a
Argentinab	4 February 1985	24 September 1986
Armenia		13 September 1993a
Australiab	10 December 1985	8 August 1989
Austriab	14 March 1985	29 July 1987
Azerbaijan		16 August 1996a
Belarus	19 December 1985	13 March 1987
Belgium	4 February 1985	
Belize		17 March 1986a
Benin		12 March 1992a
Bolivia	4 February 1985	
Bosnia and Herzegovina		6 March 1992c
Brazil	23 September 1985	28 September 1989
Bulgariab	10 June 1986	16 December 1986
Burundi		18 February 1993a
Cambodia		15 October 1992a
Cameroon		19 December 1986a
Canadab	23 August 1985	24 June 1987
Cape Verde		4 June 1992a

Chad		9 June 1995a
Chile	23 September 1987	30 September 1988
China	12 December 1986	4 October 1988
Colombia	10 April 1985	8 December 1987
Costa Rica	4 February 1985	11 November 1993
Côte d'Ivoire		18 December 1995a
Croatiab		8 October 1991c
Cuba	27 January 1986	17 May 1995
Cyprusb	9 October 1985	18 July 1991
Czech Republic		1 January 1993c
Democratic Republic of the Congo		18 March 1996a
Denmarkb	4 February 1985	27 May 1987
Dominican Republic	4 February 1985	
Ecuadorb	4 February 1985	30 March 1988
Egypt		25 June 1986a
El Salvador		17 June 1996a
Estonia		21 October 1991a
Ethiopia		14 March 1994a
Finlandb	4 February 1985	30 August 1989
Franceb	4 February 1985	18 February 1986
Gabon	21 January 1986	
Gambia	23 October 1985	
Georgia		26 October 1994a
Germany	13 October 1986	1 October 1990
Greeceb	4 February 1985	6 October 1988
Guatemala		5 January 1990a
Guinea	30 May 1986	10 October 1989
Guyana	25 January 1988	19 May 1988
Honduras		5 December 1996a
Hungaryb	28 November 1986	15 April 1987
Icelandb	4 February 1985	23 October 1996
Indonesia	23 October 1985	
Ireland	28 September 1992	
Israel	22 October 1986	3 October 1991
Italyb	4 February 1985	12 January 1989
Jordan		13 November 1991a
Kenya		21 February 1997a
Kuwait		8 March 1996a
Latvia		14 April 1992a
Libyan Arab Jamahiriya		16 May 1989a
Liechtensteinb	27 June 1985	2 November 1990
Lithuania		1 February 1996a

Luxembourg ^b	22 February 1985	29 September 1987
Malawi		11 June 1996a
Maltab		13 September 1990a
Mauritius		9 December 1992a
Mexico	18 March 1985	23 January 1986
Monacob		6 December 1991a
Morocco	8 January 1986	21 June 1993
Namibia		28 November 1994a
Nepal		14 May 1991a
Netherlands ^b	4 February 1985	21 December 1988
New Zealand ^b	14 January 1986	10 December 1989
Nicaragua	15 April 1985	
Nigeria	28 July 1988	
Norway ^b	4 February 1985	9 July 1986
Panama	22 February 1985	24 August 1987
Paraguay	23 October 1989	12 March 1990
Peru	29 May 1985	7 July 1988
Philippines		18 June 1986a
Poland ^b	13 January 1986	26 July 1989
Portugal ^b	4 February 1985	9 February 1989
Republic of Korea		9 January 1995a
Republic of Moldova		28 November 1995a
Romania		18 December 1990a
Russian Federation ^b	10 December 1985	3 March 1987
Senegal	4 February 1985	21 August 1986
Seychelles		5 May 1992a
Sierra Leone	18 March 1985	
Slovakia		29 May 1993a
Sloveniab		16 July 1993a
Somalia		24 January 1990a
South Africa	29 January 1993	
Spain ^b	4 February 1985	21 October 1987
Sri Lanka		3 January 1994a
Sudan	4 June 1986	
Sweden ^b	4 February 1985	8 January 1986
Switzerland ^b	4 February 1985	2 December 1986
Tajikistan		11 January 1995a
The former Yugoslav Republic of Macedonia		12 December 1994c
Togob	25 March 1987	18 November 1987
Tunisiab	26 August 1987	23 September 1988
Turkey ^b	25 January 1988	2 August 1988
Uganda		3 November 1986a

Ukraine	27 February 1986	24 February 1987
United Kingdom of Great Britain and Northern Ireland ^d	15 March 1985	8 December 1988
United States of America ^d	18 April 1988	21 October 1994
Uruguay ^b	4 February 1985	24 October 1986
Uzbekistan		28 September 1995 ^a
Venezuela ^b	15 February 1985	29 July 1991
Yemen		5 November 1991 ^a
Yugoslavia ^b	18 April 1989	10 September 1991

^a Accession.

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

^c Succession.

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

ANNEX II

Membership of the Committee against Torture in 1997

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

ANNEX III

Status of submission of reports by States parties under article 19 of the Convention as at 9 May 1997

A. Initial reports

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

Initial reports due in 1989 (10)

Chile	30 October 1988	29 October 1989	21 September 1989 and 5 November 1990	CAT/C/7/Add.2 & 9
China	3 November 1988	2 November 1989	1 December 1989	CAT/C/7/Add.5 & 14
Colombia	7 January 1988	6 January 1989	24 April 1989 and 28 August 1990	CAT/C/7/Add.1 & 10
Czech and Slovak Federal Republic	6 August 1988	5 August 1989	21 November 1989 and 14 May 1991	CAT/C/7/Add.4 & 12
Ecuador	29 April 1988	28 April 1989	27 June 1990 and 28 February and 26 September 1991	CAT/C/7/Add.7, 11 & 13
Greece	5 November 1988	4 November 1989	8 August 1990	CAT/C/7/Add.8
Guyana	18 June 1988	17 June 1989		
Peru	6 August 1988	5 August 1989	9 November 1992 and 22 February 1994	CAT/C/7/Add.15 & 16
Tunisia	23 October 1988	22 October 1989	25 October 1989	CAT/C/7/Add.3
Turkey	1 September 1988	31 August 1989	24 April 1990	CAT/C/7/Add.6
<u>Initial reports due in 1990 (11)</u>				
Algeria	12 October 1989	11 October 1990	13 February 1991	CAT/C/9/Add.5
Australia	7 September 1989	6 September 1990	27 August 1991 and 11 June 1992	CAT/C/9/Add.8 & 11
Brazil	28 October 1989	27 October 1990		
Finland	29 September 1989	28 September 1990	28 September 1990	CAT/C/9/Add.4
Guinea	9 November 1989	8 November 1990		
Italy	11 February 1989	10 February 1990	30 December 1991	CAT/C/9/Add.9
Libyan Arab Jamahiriya	15 June 1989	14 June 1990	14 May 1991 and 27 August 1992	CAT/C/9/Add.7 & 12/Rev.1
Netherlands	20 January 1989	19 January 1990	14 March and 11 and 13 September 1990	CAT/C/9/Add.1-3
Poland	25 August 1989	24 August 1990	22 March 1993	CAT/C/9/Add.13
Portugal	11 March 1989	10 March 1990	7 May 1993	CAT/C/9/Add.15
United Kingdom of Great Britain and Northern Ireland	7 January 1989	6 January 1990 30 April 1992	22 March 1991 and	CAT/C/9/Add.6, 10 & 14
<u>Initial reports due in 1991 (7)</u>				
Germany	31 October 1990	30 October 1991	9 March 1992	CAT/C/12/Add.1
Guatemala	4 February 1990	3 February 1991	2 November 1994 and 31 July 1995	CAT/C/12/Add.5 & 6
Liechtenstein	2 December 1990	1 December 1991	5 August 1994	CAT/C/12/Add.4
Malta	13 October 1990	12 October 1991	3 January 1996	CAT/C/12/Add.7

New Zealand	9 January 1990	8 January 1991	29 July 1992	CAT/C/12/Add.2
Paraguay	11 April 1990	10 April 1991	13 January 1993	CAT/C/12/Add.3
Somalia	23 February 1990	22 February 1991		
<u>Initial reports due in 1992 (10)</u>				
Croatia	8 October 1991	7 October 1992	4 January 1996	CAT/C/16/Add.6
Cyprus	17 August 1991	16 August 1992	23 June 1993	CAT/C/16/Add.2
Estonia	20 November 1991	19 November 1992		
Israel	2 November 1991	1 November 1992	25 January 1994	CAT/C/16/Add.4
Jordan	13 December 1991	12 December 1992	23 November 1994	CAT/C/16/Add.5
Nepal	13 June 1991	12 June 1992	6 October 1993	CAT/C/16/Add.3
Romania	17 January 1991	16 January 1992	14 February 1992	CAT/C/16/Add.1
Venezuela	28 August 1991	27 August 1992		
Yemen	5 December 1991	4 December 1992		
Yugoslavia	10 October 1991	9 October 1992		
<u>Initial reports due in 1993 (8)</u>				
Benin	11 April 1992	10 April 1993		
Bosnia and Herzegovina	6 March 1992	5 March 1993		
Cambodia	14 November 1992	13 November 1993		
Cape Verde	4 July 1992	3 July 1993		
Czech Republic	1 January 1993	31 December 1993	18 April 1994	CAT/C/21/Add.2
Latvia	14 May 1992	13 May 1993		
Monaco	5 January 1992	4 January 1993	14 March 1994	CAT/C/21/Add.1
Seychelles	4 June 1992	3 June 1993		
<u>Initial reports due in 1994 (8)</u>				
Antigua and Barbuda	18 August 1993	17 August 1994		
Armenia	13 October 1993	12 October 1994	20 April and 21 December 1995	CAT/C/24/Add.4 & Rev.1
Burundi	20 March 1993	19 March 1994		
Costa Rica	11 December 1993	10 December 1994		
Mauritius	8 January 1993	7 January 1994	10 May 1994 and 1 March 1995	CAT/C/24/Add.1 & 3
Morocco	21 July 1993	20 July 1994	29 July 1994	CAT/C/24/Add.2
Slovakia	28 May 1993	27 May 1994		
Slovenia	15 August 1993	14 August 1994		
<u>Initial reports due in 1995 (7)</u>				
Albania	10 June 1994	9 June 1995		
Ethiopia	13 April 1994	12 April 1995		
Georgia	25 November 1994	24 November 1995	4 June 1996	CAT/C/28/Add.1
Namibia	28 December 1994	27 December 1995	23 August 1996	CAT/C/28/Add.2

Sri Lanka	2 February 1994	1 February 1995		
The Former Yugoslav Republic of Macedonia	12 December 1994	11 December 1995		
United States of America	20 November 1994	19 November 1995		
<u>Initial reports due in 1996 (5)</u>				
Chad	9 July 1995	8 July 1996		
Cuba	16 June 1995	15 June 1996	15 November 1996	CAT/C/32/Add.2
Republic of Korea	8 February 1995	7 February 1996	10 February 1996	CAT/C/32/Add.1
Republic of Moldova	28 December 1995	27 December 1996		
Uzbekistan	28 October 1995	27 October 1996		
<u>Initial reports due in 1997 (8)</u>				
Azerbaijan	15 September 1996	14 September 1997		
Cote d'Ivoire	17 January 1996	16 January 1997		
Democratic Republic of the Congo	17 April 1996	16 April 1997		
El Salvador	17 July 1996	16 July 1997		
Iceland	22 November 1996	21 November 1997		
Kuwait	7 April 1996	6 April 1997		
Lithuania	2 March 1996	1 March 1997		
Malawi	11 July 1996	10 July 1997		

B. Second periodic reports^a

Second periodic reports

<u>State party</u>	<u>date due</u>	<u>Date of submission</u>	<u>Symbol</u>
<u>Second periodic reports due in 1992 (26)</u>			
Afghanistan	25 June 1992		
Argentina	25 June 1992	29 June 1992	CAT/C/17/Add.2
Austria	27 August 1992		
Belarus	25 June 1992	15 September 1992	CAT/C/17/Add.6
Belize	25 June 1992		
Bulgaria	25 June 1992		
Cameroon	25 June 1992		
Canada	23 July 1992	11 September 1992	CAT/C/17/Add.5
Denmark	25 June 1992	22 February 1995	CAT/C/17/Add.13
Egypt	25 June 1992	13 April 1993	CAT/C/17/Add.11
France	25 June 1992	19 December 1996	CAT/C/17/Add.18

Hungary	25 June 1992	23 September 1992	CAT/C/17/Add.8
Luxembourg	28 October 1992		
Mexico	25 June 1992	21 July 1992 and 28 May 1996	CAT/C/17/Add.3 & Add.17
Norway	25 June 1992	25 June 1992	CAT/C/17/Add.1
Panama	22 September 1992	21 September 1992	CAT/C/17/Add.7
Philippines	25 June 1992		
Russian Federation	25 June 1992	17 January 1996	CAT/C/17/Add.15
Senegal	25 June 1992	27 March 1995	CAT/C/17/Add.14
Spain	19 November 1992	19 November 1992	CAT/C/17/Add.10
Sweden	25 June 1992	30 September 1992	CAT/C/17/Add.9
Switzerland	25 June 1992	28 September 1993	CAT/C/17/Add.12
Togo	17 December 1992		
Uganda	25 June 1992	<u>Second periodic reports</u>	
<u>State party</u>	<u>date due</u>	<u>Date of submission</u>	<u>Symbol</u>
Ukraine	25 June 1992	31 August 1992	CAT/C/17/Add.4
Uruguay	25 June 1992	25 March 1996	CAT/C/17/Add.16
<u>Second periodic reports due</u>			
<u>in 1993 (9)</u>			
Chile	29 October 1993	16 February 1994	CAT/C/20/Add.3
China	2 November 1993	2 December 1995	CAT/C/20/Add.5
Colombia	6 January 1993	4 August 1995	CAT/C/20/Add.4
Ecuador	28 April 1993	21 April 1993	CAT/C/20/Add.1
Greece	4 November 1993	6 December 1993	CAT/C/20/Add.2
Guyana	17 June 1993		
Peru	5 August 1993	20 January 1997	CAT/C/20/Add.6
Tunisia	22 October 1993		
Turkey	31 August 1993		
<u>Second periodic reports due</u>			
<u>in 1994 (11)</u>			
Algeria	11 October 1994	23 February 1996	CAT/C/25/Add.8
Australia	6 September 1994		
Brazil	27 October 1994		
Finland	28 September 1994	11 September 1995	CAT/C/25/Add.7
Guinea	8 November 1994		
Italy	10 February 1994	20 July 1994	CAT/C/25/Add.4
Libyan Arab Jamahiriya	14 June 1994	30 June 1994	CAT/C/25/Add.3
Netherlands	19 January 1994	14 April and 16 June 1994 and 27 March 1995	CAT/C/25/Add.1, 2 & 5
Poland	24 August 1994		
Portugal	10 March 1994	7 November 1996	CAT/C/25/Add.10
United Kingdom of Great Britain and Northern Ireland	6 January 1994	25 March 1995	CAT/C/25/Add.6

Second periodic reports due
in 1995 (7)

Germany	30 October 1995	17 December 1996	CAT/C/29/Add.2
Guatemala	3 February 1995	13 February 1997	CAT/C/29/Add.3
Liechtenstein	1 December 1995		
Malta	12 October 1995		
New Zealand	8 January 1995	25 February 1997	CAT/C/29/Add.4
Paraguay	10 April 1995	10 July 1996	CAT/C/29/Add.1
Somalia	22 February 1995		

Second periodic reports due
in 1996 (10)

Croatia	7 October 1996		
Cyprus	16 August 1996	12 September 1996	CAT/C/33/Add.1
Estonia	19 November 1996		
Israel	1 November 1996	6 December 1996 and 7 February 1997 (special report)	CAT/C/33/Add.2/Rev.1
Jordan	12 December 1996		
Nepal	12 June 1996		
Romania	16 January 1996		
Venezuela	27 August 1996		
Yemen	4 December 1996		
Yugoslavia	9 October 1996		

Second periodic reports due
in 1997 (8)

Benin	10 April 1997		
Bosnia and Herzegovina	5 March 1997		
Cambodia	13 November 1997		
Cape Verde	3 July 1997		
Czech Republic	31 December 1997		
Latvia	13 May 1997		
Monaco	4 January 1997		
Seychelles	3 June 1997		

C. Third periodic reports

Third periodic reports

<u>State party</u>	<u>date due</u>	<u>Date of submission</u>
<u>Third periodic reports due in 1996</u>		
(26)		
Afghanistan	25 June 1996	
Argentina	25 June 1996	26 September 1996
Austria	27 August 1996	

Belarus	25 June 1996	
Belize	25 June 1996	
Bulgaria	25 June 1996	
Cameroon	25 June 1996	
Canada	23 July 1996	
Denmark	25 June 1996	5 July 1996
Egypt	25 June 1996	
France	25 June 1996	
Hungary	25 June 1996	
Luxembourg	28 October 1996	
Mexico	25 June 1996	25 June 1996
Norway	25 June 1996	6 February 1997
Panama	22 September 1996	
Philippines	25 June 1996	
Russian Federation	25 June 1996	
Senegal	25 June 1996	
Spain	19 November 1996	18 November 1996
Sweden	25 June 1996	23 August 1996
Switzerland	25 June 1996	7 November 1996
Togo	17 December 1996	
Uganda	25 June 1996	
Ukraine	25 June 1996	19 June 1996
Uruguay	25 June 1996	

Third periodic reports due in 1997 (9)

Chile	29 October 1997
China	2 November 1997
Colombia	6 January 1997
Ecuador	28 April 1997
Greece	4 November 1997
Guyana	17 June 1997
Peru	5 August 1997
Tunisia	22 October 1997
Turkey	31 August 1997

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

Country rapporteurs and alternate rapporteurs for the
reports of States parties considered by the Committee at its seventeenth and eighteenth sessions

A. Seventeenth session

<u>Report</u>	<u>Rapporteur</u>	<u>Alternate</u>
Algeria: second periodic report (CAT/C/25/Add.8)	Mr. Guibril Camara	Ms. Julia Iliopoulos-Strangas

Georgia: initial report (CAT/C/28/Add.1)	Mr. Peter Thomas Burns	Mr. Georghios M. Piki
Poland: second periodic report (CAT/C/25/Add.9)	Mr. Alexis Dipanda Mouelle	Mr. Alexander M. Yakovlev
Republic of Korea: initial report (CAT/C/32/Add.1)	Mr. Bostjan M. Zupancic	Mr. Mukunda Regmi
Russian Federation: second periodic report (CAT/C/17/Add.15)	Mr. Georghios M. Piki	Mr. Peter Thomas Burns
Uruguay: second periodic report (CAT/C/17/Add.16)	Mr. Alejandro Gonzalez Poblete	Mr. Bert Sorensen

B. Eighteenth session

Denmark: third periodic report (CAT/C/34/Add.3)	Ms. Julia Iliopoulos-Strangas	Mr. Mukunda Regmi
Israel: special report (CAT/C/33/Add.2/Rev.1)	Mr. Peter Thomas Burns	Mr. Bert Sorensen
Mexico: third periodic report (CAT/C/34/Add.2)	Mr. Alejandro Gonzalez Poblete	Mr. Bert Sorensen
Namibia: initial report (CAT/C/28/Add.2)	Mr. Bostjan M. Zupancic	Mr. Guibril Camara
Paraguay: second periodic report (CAT/C/29/Add.1)	Mr. Alejandro Gonzalez Poblete	Mr. Peter Thomas Burns
Sweden: third periodic report (CAT/C/34/Add.4)	Mr. Bert Sorensen	Mr. Peter Thomas Burns
Ukraine: third periodic report (CAT/C/34/Add.1)	Mr. Alexander M. Yakovlev	Mr. Georghios M. Piki

ANNEX V

Views and decisions of the Committee under article 22 of the Convention

A. Seventeenth session

1. Communication No. 43/1996

Submitted by: Mr. Kaveh Yaragh Tala [represented by counsel]

Alleged victim: The author

State party: Sweden

Date of communication: 7 March 1996 (initial submission)

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

Meeting on 15 November 1996,

Having concluded its consideration of communication No. 43/1996, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following:

Views under article 22, paragraph 7, of the Convention

1. The author of the communication is Mr. Kaveh Yaragh Tala, an Iranian citizen born on 18 August 1969, currently residing in Sweden. He claims that his return to Iran would constitute a violation of article 3 of the Convention against Torture by Sweden. He is represented by counsel.

Facts as presented by the author

2.1 The author states that he became politically aware in the summer of 1985, and through a friend of the family started to become involved with the People's Mujahedin Organization of Iran (PMOI). He took part in activities such as painting slogans and distributing leaflets late at night. From September 1986 on, he also acted as a contact between the friend and two army officers. At the end of 1986, he began listening to PMOI broadcasts in order to write down messages to certain codes and to hand them to a contact person.

2.2 In February 1987, the author was forced to do his military service. He was assigned to the maintenance section of the Revolutionary Guards headquarters. After some time he began to deliver information, such as transport routes for ammunition and armaments and location of ammunition and underground storage, to the PMOI. The author also stole and delivered to the PMOI some 20 blank passes with which vehicles could move around freely without being checked at checkpoints.

2.3 In March 1989, the author was stopped when leaving the quarters and found with two blank passes on him. He was arrested, beaten and kicked and was brought to the underground prison No. 59 of the security service of the Revolutionary Guards. There he stayed for three and a half months, during which period he was interrogated about 25 times. During each interrogation he was maltreated and tortured. During the last interrogation, he was told to lie down on his stomach and then felt a hot metal object against his thighs before he passed out. When his wounds became infected, he was brought to Khatam-al-anbia hospital, where he stayed under guard for four weeks.

2.4 After being released from hospital, he was moved to prison No. 66 of the Revolutionary Guards. There he managed to get a message out to his parents, and on 11 August 1989 he was released awaiting

trial. Apparently, his father had bribed the man in charge into accepting the registration papers of the family house as bail; the author adds that normally political prisoners are not released on bail. The author had to report at the prison every third day.

2.5 After about a week, he received a message from his contact in the PMOI which he interpreted as a warning. He went into hiding in Shiraz and later in Boosher. After about six months, he contacted his brother-in-law through a friend and learned that he was wanted by the Revolutionary Guards and that they had searched the family house and arrested his parents for questioning. Apparently, the Revolutionary Guards also found some secret material that the author had hidden and arrested his contact man. The author then decided to leave the country, contacted a smuggler, and, at the end of June 1990, left from Bandar Abbas by boat to Dubai and from there by plane to Stockholm, via Amsterdam and Copenhagen.

3.1 The author arrived in Sweden on 7 July 1990 and requested asylum. He was briefly interrogated by the police. On 3 September 1990, the author was again interrogated by the police, at which occasion he told them about his activities for the PMOI, but not about the torture and maltreatment and the circumstances of his release. On 26 November 1990, the Immigration Board decided to refuse the author's application for asylum and ordered his expulsion from Sweden because of the contradictions in his statements.

3.2 During the appeal, the author applied to the Government for a change of counsel because of unsatisfactory cooperation. This was granted on 19 March 1991. According to the author, the new counsel was the first one who really listened to him. In his plea, he gives the true story of the author, including the torture, and he presented a doctor's certificate. Nevertheless, the Aliens Appeal Board rejected the author's appeal on 3 July 1992. The Board acknowledged that the author had now given a full and consistent description of his political activities, detention and torture, but it considered that he lacked credibility, since he changed his story regarding his route to Sweden, the passport used and his arrest and military service.

3.3 The author's new application to the Immigration Board, explaining how the contradictions had resulted from misunderstandings with his first counsel and submitting a new medical certificate, was rejected on 1 October 1992, since the Board considered that he had not invoked any new circumstances.

3.4 On 10 August 1995, the author submitted a new application to the Aliens Appeal Board. New evidence was presented, such as a certificate from Mujahedin Sweden that the author had been a Mujahedin activist and medical evidence from the Centre for Torture and Trauma Survivors in Stockholm testifying that the scars and marks on the author's body are in conformity with his allegations of torture and that the author suffers from post-traumatic stress disorder. The Aliens Appeal Board rejected the application on 25 August 1995, reasoning that the author had to a large extent invoked circumstances that had already been considered. The Board pointed out inconsistencies in the author's explanations as to how the injuries from torture had been caused. According to the Board, the author's scars and marks did not show that the author had been tortured in prison. With this decision, counsel argues, all domestic remedies have been exhausted.

The complaint

4.1 The author's counsel argues that, given the absolute prohibition to expel a person to a country where he risks being subjected to torture and given that, if the author's story is true, he will without doubt be subjected to torture upon his return, he should only be returned to Iran if it is beyond reasonable doubt that the author's claim is false. In this context, counsel explains that the Swedish authorities expect an applicant to give the full story of his claim the day he arrives in Sweden. Counsel states that this demand is not justified for persons who flee persecution, who for years have been living in a climate of distrust. Asylum seekers, counsel states, behave initially in an irrational and inadequate way, do not trust anybody and are only ready to tell their true and complete story after having been in the country for some time. Counsel therefore considers absurd the Government's opinion that since the person has had his chance at the beginning, whatever he invokes later on is not trustworthy, and argues that in some cases new statements have to be accepted as trustworthy in spite of the fact that the story was incoherent, inconsistent and contradictory in the beginning.

4.2 In the instant case, counsel acknowledges that inconsistencies in the author's story exist. Nevertheless, she points out that in his very first interview with the police he already gave the core of his story, namely, that he was afraid of being arrested by the Revolutionary Guards because he had cooperated with persons suspected to be opponents. Since his first counsel did not gain the author's confidence, the inconsistencies continued. Only later did the author understand that he should tell the complete story, and he was able to do so once he found counsel in whom he could trust.

4.3 Counsel recalls that the medical findings confirm the author's story that he had been tortured, but that the Appeal Board, although not denying the existence of the scars, concluded that they were not caused by torture in prison. Counsel points out that the author's injuries are not of the kind that one could receive in an accident, and is at a loss to understand how the Appeal Board thinks they have been inflicted. Counsel acknowledges that, without a credible eyewitness or a video recording of the torture, it is impossible to establish with full certainty that scars and marks on a person's body are indeed a result of torture, but argues that the judgement thereof should be entrusted to medical experts, not to persons who have no qualifications to judge medical findings.

4.4 The author claims that there is a real risk that he would be subjected to torture or that his security would be endangered if he were to be returned to his country. He recalls that he had been working for the Mujahedin, the opposition group most hated and feared in Iran. According to reports the mere possession of a Mujahedin leaflet is sufficient reason for arrest and persecution. From 1987 to 1989 he had been leaking classified information to the Mujahedin. Although the authorities suspected this, they did not have enough proof at the time they detained him. However, by the time he left the country, the Revolutionary Guards had searched his home and found all the proof they wanted. If the author is forcibly returned to Iran without passport, he will be arrested to establish his identity and to check his record. Then his political background will be revealed and his life will be in danger.

4.5 In this context, the author claims that a consistent pattern of gross and massive violations of human rights exists in Iran, which according to article 3, paragraph 2, of the Convention should be taken into account by a State party when deciding on expulsion. The author refers to reports by the Special

Representative of the Commission on Human Rights, which attest to a continuing violation of all basic human rights.

State party's submission and counsel's comments

5.1 By submission of 30 May 1996, the State party informs the Committee that, following its request under rule 108, paragraph 9, the Swedish Immigration Board has decided to stay the expulsion order against the author.

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

5.3 As to the facts of the instant case, the State party explains that the author arrived in Sweden on 7 July 1990 and applied for asylum when interrogated by the police. He had no passport and his identity was unclear. He stated that he had not been politically active but that he had carried out propaganda for the royalists when fulfilling his military service. He also said that he had travelled from Iran through Turkey to Sweden. The day after his arrival, a letter was found at the airport addressed to the author at a Swiss address, containing a false Spanish passport with the author's photograph in it. When questioned, the author stated that it could have been the passport used for him by the person who helped him to get to Stockholm. The person and he were allegedly separated at the airport in Copenhagen. No further explanations were given by the author about the Swiss address.

5.4 Since then, the State party submits, the grounds invoked by the author for political asylum have changed considerably. The State party submits that his statements at different points in time have been inconsistent and contradictory. Furthermore, it was not until his appeal that he made any statements regarding having been tortured. The State party emphasizes that all interrogations took place with an interpreter in the author's mother tongue.

6. The State party argues that the communication is inadmissible for being incompatible with the provisions of the Convention. It also contends that an argument can be made that domestic remedies have only been exhausted once the expulsion order has been carried out.

7.1 As to the merits of the communication, the State party refers to the Committee's jurisprudence in the

case of Mutombo v. Switzerland¹ and the criteria established by the Committee, first, that a person must personally be at risk of being subjected to torture, and, second, that such torture must be a necessary and foreseeable consequence of the return of the person to his or her country.

7.2 The State party refers to its own legislation which reflects the same principle as that of article 3 of the Convention. The State party's authorities thus apply the same test as the Committee in deciding on the return of a person to his or her country. The State party recalls that the mere possibility that a person would be subjected to torture in his or her country of origin does not suffice to prohibit his or her return as being incompatible with article 3 of the Convention.

7.3 The State party is aware that Iran is reported to be a major violator of human rights and that there is no indication of improvement. It leaves it for the Committee to determine whether the situation in Iran amounts to a consistent pattern of gross, flagrant or mass violations of human rights.

7.4 As regards its assessment of whether or not the author would be personally at risk of being subjected to torture when returned to Iran, the State party relies on the evaluation of the facts and evidence made by its Immigration Board and the Appeal Board. The Swedish Immigration Board, in its decision of 26 November 1990, found that the elements provided by the author were inconsistent and therefore not trustworthy. The Aliens Appeal Board, on 3 July 1992, also found that the circumstances invoked by the author at the appeal were not trustworthy. It noted that the author had changed his story several times and that he now for the first time alleged that he had been tortured.

7.5 On 11 August 1995, the author filed an additional new application with the Aliens Appeal Board. In support he invoked a certificate from the Mujahedin's Sympathizers Association, a copy of an alleged notice obliging him to report and an examination report by the Centre for Torture and Trauma Survivors. At the hearing, the author stated that he ceased to cooperate with the Mujahedin's Sympathizers Association because it had collaborators in its organization. The Appeal Board, after having made an overall assessment of the author's statements, found that he was not trustworthy in his claim for a right to asylum.

7.6 As regards the medical evidence, the Board noted that the author had given contradictory statements as to how the injuries were caused, whether by a hot metal object or by a gas burner, whether by a key or a knife. The Board concluded that "against the background that Yaragh Tala on several occasions has given very detailed and exhaustive statements regarding the torture he claims to have been exposed to, the contradictory statements may, in the Board's opinion, indicate that the injuries have been caused in another way than he has stated. Although the injuries per se are documented, they do not in the Board's opinion, show that Yaragh Tala has been tortured when in detention".

7.7 The State party submits that on the basis of the above-mentioned decisions, it has concluded that the author is of no interest to the military or police authorities in Iran and that the facts he has invoked do not substantiate his assertion that he has been exposed to torture and that he risks torture upon his return to Iran.

7.8 The State party concludes that, in the circumstances of the present case, the author's return to Iran

would not have the foreseeable and necessary consequence of exposing him to a real risk of torture. An enforcement of the expulsion order against the author would therefore not constitute a violation of article 3 of the Convention.

8.1 In her comments on the State party's submission, counsel for the author takes issue with the State party's suggestion that domestic remedies are not exhausted until the author has actually been deported. She states that it would then be too late to seek any effective remedy. She further argues that the elements provided by the author make his communication compatible with the provisions of the Convention.

8.2 Counsel points out that the Aliens Appeal Board apparently had some hesitations as to the author's political background and requested the Swedish embassy in Teheran to verify the facts as presented by the author, including the sketches he had made of the Revolutionary Guards' headquarters. In its reply, the embassy refused to judge the personal trustworthiness of the author but confirmed that it might well be possible to bribe oneself out of prison even in political cases. Counsel argues that where the Appeal Board had real doubts about the author's expulsion, he should have benefited from those doubts, especially since at the appeal he had presented a credible, consistent, detailed and thorough description of his asylum claim. It is argued that the authorities have used the untrue statements given by the author in the beginning to completely disqualify him for asylum in Sweden regardless of what he later presented and contrary to UNHCR's Handbook, article 199, which states that untrue statements by themselves are not a reason for refusal of refugee status and that it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case.²

8.3 Counsel further refers to article 198 of the Handbook, which indicates that persons who have been persecuted may be afraid to give a full account to the authorities. Counsel acknowledges that the author's case depends completely on his credibility. He gave untrue statements and his statements were also contradictory and inconsistent. She states that only the human and psychological factor might explain his conduct. "A man fleeing from a cruel and relentless regime against which he has been fighting and which had subjected him to cruel torture cannot be expected to behave in a rational way once he has managed to escape from his tormentors. It will take time for him to collect himself enough to understand that he is spoiling his right for protection and that he must come up with his complete and true story."

8.4 Counsel contends that in spite of the initial doubts regarding the author's trustworthiness, he thereafter provided a credible, consistent, thorough and detailed description. Considering his history of torture and persecution, counsel argues that his initial failure is explainable and excusable.

8.5 Counsel concludes that the return of the author to Iran would have the foreseeable and necessary consequence of exposing him to a real risk of being detained and tortured.

Issues and proceedings before the Committee

9. Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same

matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee is further of the opinion that all domestic remedies available to the author have been exhausted. The Committee finds that no further obstacles to the admissibility of the communication exist and proceeds with the consideration of the merits of the communication.

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

10.2 The Committee has noted the State party's assertion that its authorities apply practically the same test as prescribed by article 3 of the Convention when determining whether or not a person can be deported. The Committee, however, notes that the text of the decisions taken by the Immigration Board (26 November 1990) and the Aliens Appeal Board (3 July 1992 and 25 August 1995) in the author's case does not show that the test as required by article 3 of the Convention (and as reflected in chapter 8, section 1, of the 1989 Aliens Act) was in fact applied to the author's case.

10.3 In the present case, the Committee considers that the author's political affiliation with the People's Mujahedin Organization and activities, his history of detention and torture should be taken into account when determining whether he would be in danger of being subjected to torture upon his return. The State party has pointed to contradictions and inconsistencies in the author's story, but the Committee considers that complete accuracy is seldom to be expected by victims of torture and that the inconsistencies that exist in the author's presentation of the facts do not raise doubts about the general veracity of his claims, especially since it has been demonstrated that the author suffers from post-traumatic stress disorder. Further, the Committee has noted from the medical evidence that the scars on the author's thighs could only have been caused by a burn and that this burn could only have been inflicted intentionally by a person other than the author himself.

10.4 The Committee is aware of the serious human rights situation in Iran, as reported, *inter alia*, to the Commission on Human Rights by the Commission's Special Representative on the situation of human rights in Iran. The Committee notes the concern expressed by the Commission, in particular in respect of the high number of executions, instances of torture and cruel, inhuman or degrading treatment or punishment.

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

11. In the light of the above, the Committee is of the view that, in the prevailing circumstances, the State party has an obligation to refrain from forcibly returning Mr. Kaveh Yaragh Tala to Iran or to any other country where he runs a real risk of being expelled or returned to Iran.

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

B. Eighteenth session

1. Communication No. 27/1995

Submitted by: X (represented by counsel)

Alleged victim: The author

State party: Switzerland

Date of communication: 18 April 1995

Date of decision of admissibility: 22 November 1995

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

Meeting on 28 April 1997,

Having concluded its consideration of communication No. 27/1995, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is a Sudanese citizen. He claims that his expulsion from Switzerland would make him a victim of a violation by that State party of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

The facts as submitted by the author

2.1 The author states that he has been a member of the Sudanese Youth Union since 1978 and of the Sudanese Unity Students since 1983. Reportedly, he participated in activities for those organizations, such as handing out leaflets, putting up posters and writing essays. Beginning in 1983 he studied political science in Beirut, where he claims to have continued his political activities. In 1987 he returned

to Sudan where he and his brother, who was a member of the Communist party, published several articles against the politics of the Islamic Front of Salvation.

2.2 During the coup d'état in Sudan in 1989, the author was on honeymoon in Egypt. It is said that his brother advised him not to return to Sudan because the Islamic Front of Salvation was aware of his articles and had questioned his brother about the author's whereabouts. The author then decided not to return and took up postgraduate studies in Beirut. Through the Sudanese cultural attaché in Damascus, his family in Sudan sent him money for his livelihood.

2.3 It is further stated that in December 1991, in a Sudanese club in Beirut, the author met members of a Sudanese militia, whose political views are said to be similar to those of the Sudanese Government. Reportedly, the author had a political discussion with the leader of the group, Mr. Sedki Ali Nagdi, which turned into a violent clash. The author claims that the leader of the militia threatened to kill him and warned him against returning to Sudan. Some days after this incident his apartment was allegedly ransacked by members of the Hezbollah, which is said to have had contacts with the Sudanese militia.

2.4 After this incident, the author's wife returned to Sudan and the author moved to another district of Beirut. The author first reduced and then ended all political activities in January 1992. In November 1992, he learned that his brother had been arrested by the Sudanese authorities in order to perform his military service; it is said that he has since disappeared. The author's wife and parents have not been harassed by the Sudanese authorities.

2.5 The author states that in November 1993 he was informed that the newly established Sudanese embassy in Lebanon was planning to take certain dissidents back to Sudan by force. He claims that, while he was visiting a friend, members of the Hezbollah came to look for him. He hid in the bathroom and they left. The author claims that they came to kidnap him.

2.6 The author arrived in Switzerland on 5 May 1994 via the Italian border. The same day he filed a request to be recognized as a refugee. On 20 September 1994, the Bundesamt für Flüchtlinge (Federal Refugee Office) rejected his request. His appeal was rejected by the Asylrekurskommission (Commission of Appeal in Refugee Matters) on 25 November 1994.

The complaint

3. The author argues that if forced to return to Sudan he would face an investigation in which torture is commonly used. Also, deportation to Lebanon is said to cause danger to the author's life and limb because he would be kidnapped and taken back to Sudan.

Committee's decision under rule 108

4. During its fourteenth session, the Committee decided to transmit the communication to the State party for observations on admissibility and on the merits, and to request the State party not to expel the author to Sudan or Lebanon while the communication was under examination by the Committee.

State party's submission on admissibility

5.1 By its submission of 27 June 1995, the State party informs the Committee that it has deferred the author's expulsion, as requested by the Committee. The State party notes, however, that the Committee has asked for interim measures in the majority of all cases transmitted to it, and expresses its concern that the authors are using the Committee as a further appeal instance, allowing a suspension of the expulsion for at least six months.

5.2 The State party acknowledges that the author has exhausted all domestic remedies available to him.

5.3 However, the State party argues that the communication is inadmissible because it lacks the minimum substantiation that would render the communication compatible with article 22 of the Convention. The State party points out that the author has substantially modified his version of the facts in his communication to the Committee compared to his presentation to the national authorities. Also, in the course of the domestic procedures, the author's versions of the facts varied.

5.4 With regard to the incident in December 1991 (see para. 2.3), the State party points out that at the hearing before the cantonal authorities, the author reported the incident as a clash between two groups, the representatives of the Islamic Front and a group of students; at the hearing before the federal authorities, the author said that the conflict was only between Mr. Sedki Ali Nagdi and himself, and that the students kept out of it, while the members of the Islamic Front were waiting outside. Moreover, at the cantonal hearing the author said that Mr. Sedki Ali Nagdi had threatened to take him back to Sudan, whereas the author denied this at the federal hearing. The State party notes that the author maintains the second version in his communication to the Committee, without indicating that this contradicts the earlier statement made before the cantonal authorities. The State party emphasizes that the author confirmed in writing that his declarations before the cantonal authorities had been truthful, including his statement that the leader of the militia threatened to take him back to Sudan by force. In this connection, the State party indicates that the minutes of the hearing were read back to the author in Arabic.

5.5 Further, the State party notes that, before the cantonal authorities, the author said that after the incident he did not return to his apartment for a week or ten days, whereas before the federal authorities he said he had gone back to his apartment after two or three days. In his communication to the Committee, the author speaks of "some days", thereby avoiding his contradictory accounts. Also, in his communication as well as before the federal authorities, the author says that the "Hizbullah" made a plan in November 1993 to take certain persons back to Sudan by force, whereas before the cantonal authorities he maintained that this happened in October 1993.

5.6 As regards the alleged disappearance of the author's brother, the State party notes that the author informed the cantonal authorities that his brother had disappeared in January 1992, but that he learned of his disappearance only in November 1992. Later, he said that his brother disappeared in November 1992, but that he learned of it only later. When asked by the federal authorities which version was true, he merely answered that his brother disappeared during 1992 but he did not know exactly when.

5.7 On the basis of the above, the State party contends that important contradictions in the author's own account of the facts affect the credibility of his claims. The State party suggests that, if the Committee

had been aware of the inconsistencies, it would not have issued a request for suspension of the author's expulsion. The State party invites the Committee, on the basis of the above, to examine whether the communication is admissible under article 22, paragraph 2, of the Convention, or alternatively, whether the communication contains the minimum substantiation necessary to render it compatible with article 22.

Author's comments

6.1 By letter of 15 November 1995, a new counsel for the author informs the Committee that there has been a change of representative and that, for this reason, she is not in a position to make her comments on the State party's submission on time.

6.2 By letter of 21 November 1995, the author attempts to clarify some of the points raised by the State party. He states that after the incident in the Sudanese club where he was threatened, he was so upset that he does not remember exactly what happened and how many days he was absent from his home. He confirms that he is on the black list at the airport of Khartoum and that in Lebanon he is being threatened by Islamic activists supported by the Sudanese embassy. He states that he does not know the exact date of his brother's arrest, since he learned about it through friends who themselves were not very precise.

6.3 The Committee also received a letter, dated 19 November 1995, from the Sudanese National Democratic Alliance, certifying that the author was a member of their organization and generally supporting his claims.

The Committee's decision on admissibility

7. During its fifteenth session, the Committee considered the admissibility of the communication. The Committee noted that the State party admitted that all domestic remedies had been exhausted, but it challenged the admissibility of the communication on the basis that it lacked the minimum substantiation that would render it compatible with article 22. The Committee, however, considered that the author had sufficiently substantiated, for purposes of admissibility, that his return to Sudan or Lebanon might raise an issue under article 3 of the Convention. The Committee found that the question of whether or not the author's expulsion would constitute a violation of article 3 should be examined on the merits.

8. Accordingly, on 22 November 1995, the Committee declared the communication admissible.

State party's observations on the merits

9.1 By submission of 15 July 1996, the State party recalls that under article 3 of the Convention, it has to be determined whether an individual is personally at risk of being subjected to torture in the country to which he is to be returned. The State party emphasizes that, in line with the Committee's jurisprudence, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights is not a sufficient reason to conclude that a person would risk being subjected to torture upon his return to that country.

9.2 The State party recalls that the facts on which the author of the communication bases his claim are essentially: that, during a meeting in a Sudanese club in December 1991 in Beirut, the leader of a Sudanese militia threatened to kill him and warned him against ever returning to Sudan; that some days later his house was ransacked; that in November 1993, the author was informed that the new embassy of Sudan in Lebanon envisaged returning forcibly to Sudan opponents of the regime; and that in November 1993, the Hezbollah attempted to kidnap him.

9.3 The State party refers to its observations on the admissibility of the communication and reiterates that the author's account lacks credibility. It recalls that the author has presented two radically different versions of the dispute in the Sudanese club: before the cantonal authorities, he affirmed that the dispute was between representatives of the Sudanese Islamic Front and a group of students, in the course of which Nagdi would have told him that he intended to kidnap him in order to bring him back to Sudan. According to this version the ransacking of his apartment by the Hezbollah was a consequence of the threats made by Nagdi.

9.4 At the hearing before the federal authorities, the author stated that the dispute was between him and Nagdi and that the group of students was not involved. Nagdi did not threaten to kidnap him, but to kill him, and warned the author against returning to Sudan. When it was pointed out to the author at the hearing that this version differed from the version given at the first hearing, the author failed to explain the discrepancies, but declared that Nagdi had never said that he intended to kidnap him in order to bring him back to Sudan. He then explained that he supposed that the ransacking of his apartment was the work of the Hezbollah because they wanted to kidnap him.

9.5 The State party explains that in the light of these two versions, its authorities considered that the incident could not be seen as credibly established on which a determination of refugee status could be based. The State party recalls that Swiss legislation requires that an asylum seeker demonstrate that it is highly probable that he is subjected or rightfully fears being subjected to serious prejudices because of his race, religion, nationality, social affiliations or political opinions. Article 12(a)(3) of the Asylum Law states that declarations not sufficiently substantiated on essential points, contradictory, or not corresponding with reality are not to be considered as probable. Since the author's declaration contradicted itself with regard to the parties involved in the dispute, the nature of the threats made by Nagdi, and the purpose of the visit of the Hezbollah to his apartment, the authorities did not consider his account probable.

9.6 The State party notes that the author has tried to harmonize the contradictions in his account to the Committee, but argues that the two versions are irreconcilable.

9.7 The State party emphasizes that the author signed and confirmed the minutes of the hearing before the federal authorities, which were read back to him; according to the minutes, Nagdi never threatened to kidnap him.

9.8 The State party points to other contradictions in the author's story which are said to impair his credibility. The State party mentions the author's return to his apartment (several days, ten days, two or three days after the incident), the arrest and disappearance of his brother (November 1992, January

1992, April 1992, in the course of 1992), the date of the second kidnapping attempt.

9.9 The State party admits that it is sometimes difficult for an asylum seeker to present all the exact facts supporting his claim, but it argues that in the instant case, the author's declarations are too incoherent to give them any credit in supporting his claim. In this context, the State party observes that there is no supportive evidence and that the documents the author has joined with his communication do not coincide with the author's version of the facts.

9.10 The State party acknowledges that the situation of human rights in Sudan is a matter of concern, especially in the South. However, the State party argues that, in the Committee's own interpretation, the existence in a State of a consistent pattern of gross, flagrant or mass violations of human rights is not a sufficient reason to conclude that a person would risk being subjected to torture upon his return to that country, in the absence of any real, concrete and personal risk of torture.

9.11 The State party concludes that the return of the author to Sudan would not constitute a violation of article 3 of the Convention.

Author's comments

10.1 Counsel for the author forwards to the Committee some newspaper clippings on torture in Sudan, as well as letters from the Sudanese Victims of Torture Group, the Sudan Human Rights Organization and the Sudanese National Democratic Alliance, in which support is expressed for the author as well as concern for his life were he forced to return to Sudan. She also forwards a copy of a letter of the Sudanese Youth Union, requesting the Swiss Government to protect the author and expressing fear that he will be subjected to torture in Sudan and made to disappear.

10.2 The author himself forwards a statement by the Sudanese Youth Union, dated 22 February 1996 and signed by 18 persons, affirming that on 22 December 1991 they participated in a meeting with a delegation of the Sudanese Government in the Sudanese Club in Beirut and that they heard Mr. Nagdi threatening to kidnap the author and to kill him. They also affirm having seen the traces of the ransacking of his apartment on 25 December 1991. They further state that the author left West Beirut in November 1993, after he learned that Hezbollah members were looking for him. They add that they later learned that the Sudanese embassy uses extremist Lebanese groups to arrest Sudanese nationals in Lebanon.

10.3 A letter from a friend, dated 24 December 1996, transmitted by the author to the Committee, states that the author's family is being harassed by the authorities, as are all families of opposition members. No details are given.

Issues and proceedings before the Committee

11.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

11.2 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial

grounds for believing that the author would be in danger of being subjected to torture upon return to Sudan. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

11.3 The author bases his claim on incidents which occurred in Lebanon. He has never been subject to detention or ill-treatment in Sudan and there is no indication that his wife, who returned to Sudan after December 1991, has been harassed by the Sudanese authorities. Further, the author stayed in Lebanon for almost two years after threats were made against him by the leader of a Sudanese militia, during which period he was not further harassed. The author has claimed that his brother was arrested in Sudan in 1992 and has since disappeared, but there is no indication that his arrest had anything to do with the author, and the information provided remains vague. The author left Lebanon in November 1993, allegedly after having heard that the newly opened Sudanese embassy planned to take dissidents back to Sudan by force. In this context he claims that the Hezbollah came to a friend's apartment in order to kidnap him.

11.4 The Committee notes the inconsistencies in the author's story as pointed out by the State party, as well as the general failure by the author to provide detailed reasons for his departure from Lebanon in 1993. The Committee considers that the information before it does not show that substantial grounds exist for believing that the author will be personally at risk of being subjected to torture if he is returned to Sudan.

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

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

2. Communication No. 34/1995

Submitted by: Seid Mortesa Aemei (represented by counsel)

Alleged victims: The author and his family

State party: Switzerland

Date of communication: 26 October 1995

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

Meeting on 9 May 1997,

Having completed consideration of communication No. 34/1995 submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following:

Views under article 22, paragraph 7, of the Convention

1. The author of the communication is Seid Mortesa Aemei, an Iranian citizen, born on 1 February 1957, currently residing in Switzerland, where he seeks asylum. He claims that his return to Iran after dismissal of his refugee claim would constitute a violation of article 3 of the Convention by Switzerland. He submits the communication also on behalf of his wife. He is represented by counsel.

The facts as submitted

2.1 The author became a People's Mujahedin activist in Iran in 1979. On 20 June 1981, after he had participated in a demonstration by the Mujahedin, he was arrested and kept in detention for 25 days. Thereafter, he had to abandon his university studies. In 1982, he threw a Molotov cocktail into the house of a senior officer of the Revolutionary Committee.

2.2 On 4 April 1983, the author was again arrested and his house was searched. He claims that he was ill-treated during the interrogations and, in particular: that he was caned after having his feet and head submerged in ice; that the next day the police officers extinguished cigarettes on his body while he was dressed only in underclothes; that he still bears the scars from those burns; and that his wife was only allowed to visit him after six months. Subsequently, he was convicted for his political activities and for stealing the licence plate of a car, and was sentenced to two years' imprisonment.

2.3 Seven months after his release, the author's brother-in-law fled the country, and the author was detained for three hours and questioned about the whereabouts of his brother-in-law. The author then moved to Teheran but returned to his home town after three years. In February or March 1989, he was recognized by a client of his father's firm as the person who had thrown the Molotov cocktail seven years earlier. In panic, he fled to Teheran. He claims that his parents were visited regularly by the police and questioned about his whereabouts. After a year, he decided to leave the country, also because his son, who was born on 23 January 1984, had reached school age and he was afraid that his son's enrolment in school would lead to the police discovering his whereabouts. With a false passport he fled

the country, together with his wife and their two children, and applied for asylum in Switzerland on 2 May 1990.

2.4 On 27 August 1992, his application was refused by the Federal Office for Refugees, which considered his story not credible and full of inconsistencies. It also considered that the author's wife was not aware of any political activities on the part of her husband. The Appeal Commission rejected his appeal on 26 January 1993, considering that the author's claim and story were illogical, revealed no practical experience in illegal political activities and were full of contradictions.

2.5 On 26 April 1993, the author, represented by the Beratungsstelle für Asylsuchende der Region Basel, filed a request for reconsideration, based on his activities in Switzerland for the Armenian and Persian Aid Organization (APHO), which, according to the author, is considered an illegal organization in Iran. The author referred in this connection to three attempts to murder the leader of APHO in Zurich and claimed that those attempts prove that APHO members are being persecuted by Iran. The author stated that he had distributed leaflets and helped run various APHO stands, notably at a demonstration in Bern. In support of his statements, he presented an APHO membership card, stand permits issued in his name and photos showing his activities. He also said that incidents involving representatives of the Government of Iran had occurred in May 1991 (when a friend of the brother of the President of the Iranian Council of Ministers threatened APHO members with a pistol) and in June 1992 (when the Iranian consul visited the APHO stand and attempted to identify the participants). The author stated that he had reported the incident to the police the same day, in his capacity as the person in charge of the stand. In his request for review, he alleged that his activity within APHO would render him liable to treatment contrary to article 3 of the Convention if he returned to Iran.

2.6 By a decision of 5 May 1993, the Federal Office for Refugees refused to consider his request for review. The Appeal Commission, by a decision of 10 August 1994, also declared his application to be ill-founded. The author states that he has since been contacted by the police for the purpose of the preparation of his departure from Switzerland.

Substance of the complaint

3. The author is afraid that he will be questioned about his political activities when he returns to Iran. He adds that torture during interrogations is common in Iran. Furthermore, he is afraid that he will be charged with the Molotov cocktail attack of 1982 and that he will consequently be sentenced to a long term of imprisonment or even death. He adds that the mere act of requesting asylum in another country is considered an offence in Iran.

Procedural questions

4.1 On 22 November 1995, the Committee transmitted the communication to the State party for its observations.

4.2 In its observations of 22 January 1996, the State party contests the admissibility of the communication, stating that since the author had not, in the course of the ordinary asylum procedure

before the national bodies, mentioned his fear that his political activities in Switzerland would render him liable to torture if he returned to Iran, he had not exhausted domestic remedies. The State party explains that this point should have been made during the procedure to establish the right of asylum. Since the point was not mentioned until the request for review, the authorities were not able to consider it, as the author's activities within APHO did not constitute a new development in the light of the criteria established by the jurisprudence of the Federal Court.

4.3 In its observations, the State party nevertheless submits that "that is a subjective ground under article 8 (a) of the Asylum Act, which in this connection provides that 'asylum shall not be granted to a foreigner when ... only his conduct following his departure would justify his being considered a refugee within the meaning of article 3'. According to case law and doctrine, the concept of 'subjective grounds occurring after flight from the country' covers situations in which the threat of persecution could not have been the cause of the departure of the asylum seeker but results from his subsequent conduct. Although such grounds are not relevant to the granting of asylum under the exclusion clause of the above-mentioned article 8 (a), an applicant who invokes subjective grounds may nevertheless remain in Switzerland, by virtue of the non-return principle, if the conditions of article 45 of the Asylum Act are met. The allegation of 'subjective grounds', like the grounds which prompted the applicant to leave his country, must nevertheless satisfy the requirements of asylum procedure, among which are those relating to the obligation to cooperate. In accordance with article 12 (b) of the Asylum Act, the applicant is required to cooperate in the verification of the facts; to this end, he has in particular to explain, at his hearing, his grounds for asylum and the reasons which prompted him to request asylum."

4.4 The State party also contests Mrs. Aemei's status as author of the communication.

4.5 In a letter of 1 March 1996, the author's counsel refutes the State party's argument contesting Mrs. Aemei's status as author of the communication on the grounds that she has not claimed any ground for asylum peculiar to herself. Counsel further states that if Mrs. Aemei were to be sent back to Iran, she would be liable to the same risks as her husband, or even greater risks, and that the State party itself has acknowledged that the applicant's subsequent conduct in Switzerland does not constitute a ground for asylum under Swiss legislation. He also maintains that the applicant had no reason to mention his political activities in Switzerland during the asylum procedures and had always been questioned about his past and about facts which could have supported his application for asylum.

4.6 Counsel points out that in any case the non-return obligation is an absolute obligation. Although the argument of the author's political activities in Switzerland was submitted late and hence, for procedural reasons, could not be taken into account in relation to the asylum decision, counsel is of the opinion that the rejection of the asylum application does not mean that the person can now be sent back to his country. He points out that Swiss legislation offers alternatives such as the possibility of a residence permit for humanitarian reasons (Asylum Act, art. 17, para. 2) or temporary admission (Asylum Act, art. 18, para. 1). Counsel also draws attention to the fact that physical integrity must not be endangered for procedural reasons. The risk that an asylum seeker will misuse the procedure should not be overestimated, especially as few asylum seekers can point to events as serious as those referred to by the authors in the case at hand.

4.7 After considering the observations of the parties, the Committee decided, at its sixteenth session, to suspend consideration of the communication pending the result of the author's requests for reconsideration in the light of his political activities in Switzerland. The Committee also requested information from the State party on domestic remedies and asked the applicant to provide additional information concerning his asylum applications in Switzerland on the basis of his political activities in Switzerland. The Committee asked the State party not to expel the author and his family while their communication is under consideration.

Further observations by counsel

5.1 In a letter of 5 August 1996, counsel explains that the author did not mention his activities within APHO in the course of the ordinary procedure for obtaining refugee status, which led to the decision of the Swiss Appeal Commission of 26 January 1993, because he was not aware that those activities would be a determining factor. The situation changed after the decision, when he learned that he would have to return to Iran. At that point, he realized that because of his political activities in Iran before 1990 and, in particular, because of his political activities in Switzerland since 1990, he and his wife ran a very great risk of being subjected to acts contrary to article 3 of the Convention if they returned to Iran. Counsel repeats that since 1990 the author has been active in APHO, which is considered an illegal and dissident organization in Iran and whose activities in Switzerland are monitored by the Iranian secret police. The author distributed leaflets attacking the regime in Iran, and in May 1991 he was seen and threatened by the brother of the President of the Iranian Council of Ministers. In June 1992, the Iranian consul visited the APHO stand in Bern and attempted to identify the people participating in APHO activities. Counsel concludes that the author's identity is very probably known to the Iranian authorities.

5.2 Counsel adds that on 13 May 1996 the author filed an application for temporary authorization because of his son's medical problems.

State party's observations on the admissibility and validity of the communication

6.1 In its observations of 7 August 1996, the State party informs the Committee that it no longer contests the admissibility of the communication.

6.2 The State party summarizes the "facts alleged by the author" and the domestic procedures under way. As regards the points raised by the Swiss authorities, it observes that, "under article 12 (a) of the Asylum Act, an asylum seeker must prove - or at least make out a good case - that he is a refugee within the meaning of article 3 of the Asylum Act, i.e. that he would be likely to suffer serious harm or that he has good reason to fear that he would suffer such harm, in particular because of his political opinions", and concludes that "from that standpoint, articles 3 and 12 (a) of the Asylum Act, as interpreted by the Appeal Commission, establish criteria similar to those of article 3 of the Convention, namely, the existence of serious, concrete and personal danger of persecution (art. 3, para. 1; cf. B. Mutombo v. Switzerland, ...), in the determination of which all relevant considerations must be taken into account (art. 3, para. 2), including, in particular, the likelihood that the author's statements are true (Asylum Act, art. 12 (a)) and, where appropriate, the existence of a consistent pattern of gross, flagrant or mass

violations of human rights (art. 3, para. 2)".

6.3 The State party also declares that "in the present case, the Appeal Commission confirmed the decision to reject asylum on the basis of the author's statements. It considered that the grounds invoked did not make it possible to conclude that refugee status was highly probable in the author's case. The Appeal Commission took the following points into account in making its decision:

The author's statements about his political activity were not sufficiently substantiated, since his knowledge of the political programme of the organization in which he claims to have been active was very sketchy in essential respects;

The circumstances in which the author claims to have resumed working with the organization are at variance with what is known about the practice of movements hostile to an established political regime. The author's explanations regarding his alleged conviction following his political activity were also considered to be at variance with the facts;

Finally, the author's wife was unable to corroborate his statements at the hearing before the Federal Office for Refugees."

The State party concludes that Swiss legislation essentially uses the same conditions for prohibiting return as those laid down in article 3 of the Convention.

6.4 The State party refers to the text of article 3 of the Convention and the Committee's practice of considering whether there are specific grounds for believing that the individual would be in personal danger of being subjected to acts of torture in the country to which he would be returned. The existence of a consistent pattern of gross, flagrant or mass violations of human rights does not in itself constitute a sufficient ground for concluding that a person would be in danger of being subjected to torture on his return to that country.

6.5 The State party observes that "in the present case, the author's statements concerning his political activity with the People's Mujahedin did not appear to be sufficiently substantiated in the opinion of the competent Swiss authorities". It maintains that, "in view of the inconsistency of the author's statements, they were not sufficiently plausible to cause the Swiss authorities to consider that refugee status was highly probable in the case of the author of the communication. The allegation of a risk of inhuman treatment if the author were to return to Iran, which is based principally, if not exclusively, on the consequences of his political activity cannot seriously be taken into account when it has never been established that he engaged in the political activities in question, or even that he was a member of a party that opposed the existing political regime". The State party further submits "that the author of the present communication has produced no document with evidentiary value, either in the course of the domestic proceedings or before the Committee against Torture, relating to his political activities for the Mujahedin, or any medical certificate attesting to his having been subjected to treatment prohibited by

the Convention". In the opinion of the State party, "at this stage already, the author's communication appears to be manifestly ill-founded as regards the existence of a personal, serious and concrete danger of treatment contrary to article 3 of the Convention, to which the author claims he would be exposed if he were sent back to his country".

6.6 The Swiss authorities further consider that some of the author's statements do not correspond to the facts and, because they show a lack of familiarity with established practice with regard to illegal political activities, describe them as "totally unrealistic". In particular, the author's statement that he was sentenced to only two years' imprisonment because of the judge's respect for his origins contradicts information gathered by the Swiss authorities in the course of asylum proceedings concerning Mujahedin.

6.7 Finally, the State party notes that the author's wife did not corroborate his statements about his political activities. The State party therefore concludes that the author's fear appears to be manifestly ill-founded.

6.8 With regard to the author's activities in Switzerland, the State party is not able to confirm the author's allegation that his identity is very probably known to the Iranian authorities because of the events that occurred in May 1991 and June 1992. In particular, the Bern police are not aware of the participation of the brother of President Rafsanjani in the May 1991 incident. As regards the Iranian consul's visit to the APHO stand, the Swiss Government has stated that, "a member of the city of Bern police force recalls that there was a skirmish between Iranians in June 1992, but does not know whether it involved members of the Iranian consulate and APHO activists, because the incident was already over by the time the police arrived, when only APHO members were present. In the light of this information, the Swiss Government considers it at least doubtful whether the events in question occurred so they cannot automatically be considered to constitute a decisive ground in respect of article 3 of the Convention."

6.9 As to the author's allegation that the filing of an application for asylum is in itself a relevant ground within the meaning of article 3, paragraph 1, of the Convention, the State party observes that the author adduces no evidence in support of this argument. The State party further notes that "such an argument cannot be sufficient in respect of article 3, paragraph 1, of the Convention since the prohibition laid down in this provision is dependent on the proven existence of substantial grounds for persecution". The State party maintains that it has no information to substantiate the specific danger of persecution as a result of filing an application for asylum in Switzerland.

6.10 The State party considers that the author's statements do not enable the conclusion to be drawn that there are substantial and proven grounds for believing that he would be in danger of being tortured if he returned to Iran. Finally, it observes that "the European Commission of Human Rights has deemed that the general situation in Iran was not characterized by mass violations of human rights [application No. 21649/93, DR, 75/282]" and that, "the author himself does not claim that there is a consistent pattern of human rights violations in Iran".

Counsel's comments on the State party's observations

7.1 In a letter of 30 October 1996, counsel reiterates the points made in his initial communication. As regards the State party's argument that the author's statements about his political activity within the People's Mujahedin did not appear to be sufficiently substantiated, counsel submits that it is normal for a sympathizer not to be as well informed about an organization as one of its members. He explains that the author was motivated by hostility towards the regime rather than the Mujahedin's political ideas. Counsel notes that the author is not in a position to produce documents in support of his allegations concerning the events that took place in Iran, and states that after his release the author was no longer active within the Mujahedin.

7.2 Counsel acknowledges that the security measures taken by the author's group in Iran were not sufficient, but rejects the conclusion that the author's statements are unrealistic. He also maintains that merely distributing leaflets can lead to life imprisonment and explains that the fact that the author was only sentenced to two years' imprisonment in April 1983 was due, *inter alia*, to the author's origin as a descendant of Muhammad. Concerning the alleged contradictions, counsel affirms that the author's statements are not contradictory on essential points and that the discrepancies with the information provided by his wife are not relevant. Mrs. Aemei has lived in great fear for years, which would explain the fact that she wanted to know as little as possible about her husband's political activities. In any case, she first heard about them in April 1983.

7.3 Counsel is of the opinion that the author's statements about his political activities are true, which is also proved by the fact that the Swiss Government admits in its observations that there was an APHO stand in June 1992 and that a skirmish between Iranians did indeed take place. He further submits that the Swiss authorities' refusal to consider the author's request for reconsideration, based on his activities in APHO, is a serious procedural error and contrary to the author's right to have his fear of being tortured considered by the competent authorities.

7.4 Counsel reiterates the fact, already mentioned by the author in his appeal of 24 September 1992, that the mere act of requesting asylum can constitute a relevant ground within the meaning of article 3, paragraph 1, of the Convention against Torture, and refers in this connection to documentation of the Schweizerisches Flüchtlingswerk.

Decision concerning admissibility and examination of the merits

8. The Committee notes with appreciation the information given by the State party that the author and his family will not be expelled while the communication is under consideration by the Committee (rules of procedure, art. 108, para. 9).

9.1 Before considering any claim contained in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a) of the Convention, that the same matter has not been, and is not being examined under another international investigation or settlement procedure. The Committee notes that the State party has not raised any objection to the admissibility of the communication (para. 6.1). The Committee therefore finds that no obstacle to the admissibility of the communication exists, and it proceeds with the examination of the merits of the communication.

9.2 The Committee reiterates that it is by no means its responsibility to determine whether the author's rights as recognized by the Convention have been violated by Iran, the country to which he risks being expelled, regardless of whether or not this State is a party to the Convention. The question before the Committee is whether expulsion, return or extradition to the latter country would violate Switzerland's obligation, under article 3 of the Convention, not to expel or return an individual to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

9.3 In accordance with article 3, paragraph 1, of the Convention, the Committee has to determine whether there are substantial grounds for believing that Mr. Aemei and the members of his family would be in danger of being subjected to torture if they returned to Iran. In order to do this, the Committee must, in accordance with article 3, paragraph 2, take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. In other words, the existence of a consistent pattern of violations of human rights within the meaning of article 3, paragraph 2, lends force to the Committee's belief that substantial grounds exist within the meaning of paragraph 1.

9.4 However, the Committee has to determine whether the person concerned would be personally at risk of being subjected to torture in the country to which he would be expelled. Consequently, the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a particular country does not in itself constitute a sufficient ground for concluding that a particular person would be in danger of being subjected to torture after returning to his country; additional grounds must exist in order to conclude that the person concerned is personally at risk. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person cannot be considered to be at risk of being subjected to torture in his specific circumstances.

9.5 In the present case, therefore, the Committee has to determine whether the expulsion of Mr. Aemei (and his family) to Iran would have the foreseeable consequence of exposing him to a real and personal risk of being arrested and tortured. It observes that the "substantial grounds" for believing that return or expulsion would expose the applicant to the risk of being subjected to torture may be based not only on acts committed in the country of origin, in other words, before his flight from the country, but also on activities undertaken by him in the receiving country: in fact, the wording of article 3 does not distinguish between the commission of acts, which might later expose the applicant to the risk of torture, in the country of origin or in the receiving country. In other words, even if the activities of which the author is accused in Iran were insufficient for article 3 to apply, his subsequent activities in the receiving country could prove sufficient for application of that article.

9.6 The Committee certainly does not take lightly concern on the part of the State party that article 3 of the Convention might be improperly invoked by asylum seekers. However, the Committee is of the opinion that, even though there may be some remaining doubt as to the veracity of the facts adduced by the author of a communication, it must ensure that his security is not endangered.³ In order to do this, it is not necessary that all the facts invoked by the author should be proved; it is sufficient that the Committee should consider them to be sufficiently substantiated and reliable.

9.7 In the case of the author of the present communication, the Committee considers that his membership in the People's Mujahedin Organization, his participation in the activities of that organization and his record of detention in 1981 and 1983 must be taken into consideration in order to determine whether he would be in danger of being subjected to torture if he returned to his country. The State party has pointed to inconsistencies and contradictions in the author's statements, which in its opinion cast doubt on the veracity of his allegations. The Committee considers that although there may indeed be some doubt about the nature of the author's political activities in his country of origin, there can be no doubt about the nature of the activities he engaged in in Switzerland for APHO, which is considered an illegal organization in Iran. The State party confirms those activities by the author and does not deny that skirmishes occurred between APHO representatives and other Iranian nationals in Bern in June 1992. The State party does not say whether it investigated those skirmishes, but the material submitted to the Committee gives the impression that no such investigation took place. In the circumstances, the Committee must take seriously the author's statement that individuals close to the Iranian authorities threatened APHO members and the author himself on two occasions, in May 1991 and June 1992. The State party simply noted that Mr. Aemei's activities within APHO did not constitute a new development vis-à-vis the criteria established by the case law of the Federal Tribunal and that, consequently, the competent authorities could not take up the matter of the author's application for reconsideration.

9.8 The Committee is not convinced by the State party's explanations insofar as they refer to Mr. Aemei's activities in Switzerland. It would recall that the protection accorded by article 3 of the Convention is absolute. Whenever there are substantial grounds for believing that a particular person would be in danger of being subjected to torture if he was expelled to another State, the State party is required not to return that person to that State. The nature of the activities in which the person engaged is not a relevant consideration in the taking of a decision in accordance with article 3 of the Convention (see below: 4. Communication No. 39/1996, para. 14.5). In the present case, the refusal of the competent Swiss authorities to take up the author's request for review, based on reasoning of a procedural nature, does not appear justified in the light of article 3 of the Convention.

9.9 Lastly, the Committee is aware of the serious human rights situation in Iran, as reported inter alia to the Commission on Human Rights by the Commission's Special Representative on the situation of human rights in Iran. The Committee notes, in particular, the concern expressed by the Commission, especially about the large number of cases of cruel, inhuman or degrading treatment or punishment.

9.10 In the light of the preceding paragraphs, the Committee considers that substantial grounds exist for believing that the author and his family would be in danger of being subjected to torture if they were sent back to Iran.

10. Taking account of the above, the Committee is of the view that, in the present circumstances, the State party has an obligation to refrain from forcibly returning the author and his family to Iran or to any other country where they would run a real risk of being expelled or returned to Iran.

11. The Committee's finding of a violation of article 3 of the Convention in no way affects the decision (s) of the competent national authorities concerning the granting or refusal of asylum. The finding of a

violation of article 3 has a declaratory character. Consequently, the State party is not required to modify its decision(s) concerning the granting of asylum; on the other hand, it does have a responsibility to find solutions that will enable it to take all necessary measures to comply with the provisions of article 3 of the Convention. Those solutions may be of a legal nature (e.g., a decision to admit the applicant temporarily), but also of a political nature (e.g., action to find a third State willing to admit the applicant to its territory and undertaking in its turn not to return or expel him).

[Text adopted in French (original version) and translated into English, Spanish and Russian.] 3.
Communication No. 38/1995

Submitted by: X (represented by counsel)

Alleged victim: The author

State party: Switzerland

Date of communication: 16 November 1995

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

Meeting on 9 May 1997,

Having concluded its consideration of communication No. 38/1995, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is a Sudanese citizen, born on 6 January 1951, at present residing in Switzerland. He claims that his deportation from Switzerland would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

Facts as presented by the author

2.1 The author states that he was working at the Arabsat Company in Sudan from 1983 to 1987 as a manager of administration and public relations. He was one of the four partners of the company. He was responsible for the distribution of Ad Dastour, a weekly political magazine and Al Hadaf, a newspaper. Both were partly owned by the Al Ba'ath al Arabi Istiraki Party, a political left-wing group which stood very close to the Iraqi Ba'ath Party.

2.2 The author states that in May 1987 he changed jobs and started working for the Ad Dastour Company as a director of administration and public relations. There appear to be some contradictions between the author's communication to the Committee and his statements at the Office Fédéral des Réfugiés (ODR). During the ODR interview, the author stated that he worked at both companies during 1985-1987. He organized trips for journalists and had responsibility for visas and supplies of petrol.

2.3 After the coup d'état in 1989, the Sudanese Government prohibited the activities of the Arabsat Company and of Ad Dastour because of their connections with the Ba'ath Party, which was banned by the Government. They also arrested the manager of Ad Dastour. The author stated during the interview with the ODR that the managers of the Arabsat Company were not arrested or questioned. After those events, the author realized that the security service was watching his house. During the interview with the ODR, the author stated that there were men in the neighbourhood who did not belong there and that he concluded that they were from the security service, and that they were carrying out investigations. The author submits that he was never involved in political activities.

2.4 The author went to Kuwait and London to try to find work abroad but returned to Sudan in 1991. Then, he started working with Anniline, a printing company. The company was first closed and then taken over in March 1992 by the Government, according to the author because it had printed Ba'ath Party leaflets from 1985 to 1989. In March 1992, the author was arrested and held for questioning until the next day; his car was confiscated. He had to report to the police every day for the next month and a half but was never questioned. But in the ODR interview, the author stated that he was questioned every day from 9 a.m. until 3 p.m. for one month.

2.5 The author then tried to find a job in Sudan with the civil service or State-owned companies but did not succeed, allegedly because on each occasion the Security Police refused to give permission. He states that he did not try to find work in the private sector. He decided to work as a farmer but was allegedly disadvantaged in the distribution of material by members of the Government.

2.6 The author was again questioned in May 1994 about his connections with the Ba'ath Party. In September he was informed by his wife and by friends that the police were looking for him. He decided to leave Sudan. The author states that he had bribed the chief of the Security Forces, through a friend of the author's brother, and in February 1995, he left Khartoum by plane with a legal passport and with a visa for Switzerland.

2.7 The author arrived in Switzerland on 7 February 1995. He filed a request to be recognized as a refugee on 13 February 1995. On 24 May 1995, the Office Fédéral des Réfugiés (ODR) rejected his request because of inconsistencies and the unlikelihood of some of the facts and because of not fulfilling the requirements of "persecution". His appeal was rejected for the same reasons by the Commission Suisse de recours en matière d'asile on 10 October 1995.

The complaint

3. The author argues that if forced to return to Sudan he would face an investigation in which torture is commonly used. His wife states in a letter to the author, dated 1 November 1995, that the Security Police

officers regularly come to the house to ask for him. The author states that it is therefore clear that the Sudanese Government considers him to be an informer for the Ba'ath Party and that it is known worldwide that collaborators of the opposition press in Sudan are under permanent danger of reprisals.

Procedure before the Committee

4.1 On 14 February 1996, the Committee, acting through its Rapporteur for New Communications, requested the State party not to expel or deport the author to Sudan while his communication was under consideration by the Committee. In its request, the Committee took into account that the secretariat of the Office of the United Nations High Commissioner for Refugees had requested the Swiss Government not to return the author to Sudan since it was considered credible that he would be subject to persecution.

4.2 On 26 February 1996, the State party informed the Committee that it had suspended the deportation of the author and that the author had introduced both an application for review and an application for re-examination. At its sixteenth session, the Committee therefore decided to suspend the examination of the communication.

4.3 On 29 March 1996, the Appeal Commission rejected the author's application for review because he had failed to pay the required fee. On 25 April 1996, the ODR rejected the author's application for a re-examination of his case. The author did not appeal the decision, since he considered that an appeal would be ineffective.

Observations by the State party

5.1 By its submission of 19 June 1996, the State party does not raise any objections to the admissibility of the communication.

5.2 The State party recalls that the author has had three occasions to explain his grounds for asylum in oral hearings, on 17 February 1995 at the Registration Centre, on 20 March 1995 at the cantonal hearing and on 18 May 1995 before the ODR.

5.3 The State party recalls that, according to Swiss legislation, a refugee claimant has to demonstrate that it is probable that he would suffer serious prejudices because of his race, religion, nationality, membership of a social group or political opinions. In interpreting these requirements, the authorities apply the test as laid down in article 3 of the Convention against Torture. Article 12LA of the Asylum Law states that declarations which are not sufficiently substantiated on essential points, are contradictory, or do not correspond with reality are not to be considered as probable.

5.4 In the instant case, the State party argues that the author's statements show numerous contradictions and incoherences on essential points.

5.5 The State party notes that the author bases his claim under article 3 of the Convention on his professional activities from 1985 to 1992, during which period he worked for companies which were affiliated with the Ba'ath Party. The State party points out, however, that at the three hearings, the author made contradictory statements concerning his professional activities. The State party recalls that the

minutes of the hearing were read back to the author in Arabic and that he confirmed them by signature. The State party points out that the author has affirmed that he worked as a farmer as of March 1992, whereas he also states that as of March 1992 he had to present himself every day, for the whole day, to the Security Police during a month and a half.

5.6 Moreover, the State party points out that the author stated at the first hearing that he had to report to the Security Police during one month, whereas later he stated that it was for the period of a month and a half. The author also has stated, on the one hand, that he was interrogated every day and on the other, that he was never interrogated. In view of the contradictions concerning the date of the obligation to report to the Security Police, the length of time and the purpose of the reporting, the State party argues that the author has not made probable his claim that he had to present himself to the Security Police for a month and a half as of March 1992.

5.7 The State party points out that the author has made contradictory statements concerning the years when he was working for the Arabsat, Ad Dastour and Anniline companies and that the certificates he provided are also contradictory. The State party further points out that, in his communication to the Committee, the author affirms that he worked for Ad Dastour until May 1990 and, at the same time, that the Government closed the company in March 1990, which seems to be contradictory as well.

5.8 The State party also points out contradictions with regard to the author's claim that the Security Police were watching his house and were carrying out investigations about him in March 1990, and with regard to his claim that they were looking for him in 1994. For instance, with regard to 1990, he states at one point that he knew they were watching him because he saw unknown men in the neighbourhood and at another point, that they were asking for him in the shops. With regard to 1994, the author gave different accounts as to how he learned that the police had come to his house, once saying that his wife told him, another time that friends had told him.

5.9 The State party contends that, in the light of all these contradictions and inconsistencies, the author's account of the facts is not credible.

5.10 The State party notes that the author has claimed that the contradictions are due to a faulty interpretation at the hearings. In this context, the State party recalls that whenever the author misunderstood a question, the question was repeated, and that moreover, the minutes of the hearings were read out and translated sentence by sentence and that the author confirmed them with his signature as being true to his statements. The author never raised the issue of the quality of the interpretation during the hearings. Even though the author invoked the quality of the interpretation before the Appeal Commission to explain the contradictions, he did not claim that the mistakes in interpretation amounted to a denial of the right to a fair hearing, nor did he indicate which statements had been wrongly interpreted. The State party recalls, moreover, that the author has not been able to clarify the inconsistencies before the Appeal Commission either.

5.11 As regards the author's departure from Sudan in 1991 and again in 1995, the State party submits that, according to the information available, a Sudanese citizen has to comply with certain formalities before he can leave the country. The State party submits that a passport is only issued upon presentation

of a certificat d'origine, which in turn is only issued upon presentation of a certificate of good character by the local authorities. The author is in possession of a passport issued on 6 January 1992, containing two exit visas, one of which the author used to reach Switzerland. According to the State party, this clearly indicates that the author is not being sought by the Sudanese authorities, especially because the airport security control is known for its thoroughness. Moreover, exit visas are issued by the Department of Immigration and Nationality of the Ministry of Internal Affairs, which in practice operates under directions of the Security Service of the State.

5.12 The State party refers to article 3 of the Convention and recalls that it has to be determined whether an individual is personally at risk of being subjected to torture in the country to which he is to be returned. The State party emphasizes that, in line with the Committee's jurisprudence, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights is not a sufficient reason to conclude that a person would risk being subjected to torture upon his return to that country, but that additional grounds must exist to show that the person would personally be in danger.

5.13 The State party admits that it is sometimes difficult for an asylum seeker to present all the exact facts supporting his claim, but with reference to its observations above, the State party argues that in the instant case the author's statements are incoherent and contradictory in relation to essential points on which his claim is based. The State party thus contends that the author has not demonstrated that he risks being subjected to torture upon his return to Sudan.

5.14 If, however, the Committee were to consider that the contradictions and inconsistencies in the author's statements are not serious enough and do not raise doubts about the general veracity of his claims, the State party argues that the facts presented by the author do not justify the conclusion that article 3 of the Convention would be violated by his return to Sudan. In this connection, the State party recalls that article 3 is only applicable in case of risk of torture. The State party notes that the author has not submitted that he was tortured during his interrogations by the Security Police. According to the State party, there is no basis for believing that he risks being tortured if he were to be arrested in the future.

5.15 The State party refers to the Committee's jurisprudence and notes that, when finding that the return of a person would violate article 3, the Committee has taken into account ethnic origin, political affiliation, political activities, prior detention, allegations of torture, judicial proceedings, and internal exile. None of these elements have been invoked by the author of the instant communication. The State party argues therefore that no risk exists that the author will be subjected to torture.

Author's comments

6. Counsel submits a medical certificate, dated 15 June 1996, showing that the author has been under treatment since February 1996 for psychical and physical problems and that the treatment will have to be continued for some weeks.

State party's further comments

7. With regard to the medical certificate, the State party recalls that the author has never claimed to have been ill-treated by the Sudanese authorities. Before the national authorities, the author has never claimed that he is undergoing medical treatment. Furthermore, the State party notes that the certificate is short and does not give any details, and argues that the Committee should not take it into account when examining the communication.

8. In a letter of 13 March 1997, counsel for the author states that she has nothing to add to her prior submissions.

Issues and proceedings before the Committee

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

10.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

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

10.3 In reaching its decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

10.4 The Committee notes that the author does not claim that he has been tortured by the police or security forces in Sudan, and that no medical evidence exists that he suffers from the consequences of torture, either physically or mentally. The Committee therefore concludes that the inconsistencies in the author's story cannot be explained by the effects of a post-traumatic stress disorder, as in the case of many torture victims.

10.5 The Committee further considers that, even if it were to ignore those inconsistencies, the facts as presented show that the author has not participated in political activities, nor worked as a journalist, nor was a member of the Ba'ath Party. The Committee further notes that the author has been kept in detention only once, for 24 hours, in March 1992. On the basis of the information before it, the Committee finds that the author does not belong to a political, professional or social group targeted by the authorities for repression and torture.

10.6 The Committee is aware of the serious human rights situation in Sudan but, on the basis of the above, considers that the author has not substantiated his claim that he will be personally at risk of being subjected to torture if he is returned to Sudan.

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

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

4. Communication No. 39/1996

Submitted by: Gorki Ernesto Tapia Paez (represented by counsel)

Alleged victim: The author

State party: Sweden

Date of communication: 19 January 1996

Date of decision of admissibility: 8 May 1996

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

Meeting on 28 April 1997,

Having concluded its consideration of communication No. 39/1996, submitted to the Committee against Torture by Mr. Ernesto Tapia Paez under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is Mr. Gorki Ernesto Tapia Paez, a Peruvian citizen, born on 5 October 1965, at present residing in Sweden, where he is seeking recognition as a refugee. He claims

that his forced return to Peru would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

The facts as submitted by the author

2.1 The author states that since 1989 he has been a member of Shining Path, an organization of the Communist Party of Peru. On 2 April 1989, he was arrested during a razzia at the university where he was studying. He was taken to the police station for identification and released after 24 hours. On 1 November 1989, the author participated in a demonstration at which he handed out leaflets and handmade bombs. The police arrested about 40 persons, among them the leader of the author's cell. According to the author, this person was forced to reveal the names of the other cell members. The same day, the author's house was allegedly searched by the police and the author decided to go into hiding until 24 June 1990, when he left Peru with a valid passport issued on 5 April 1990.

2.2 The author states that he is a cousin of José Abel Malpartida Paez, a member of Shining Path, who was arrested and allegedly killed by the police in 1989, and of Ernesto Castillo Paez, who disappeared on 21 October 1990. The author's mother and the father of the missing Ernesto Castillo Paez obtained assistance from a Peruvian lawyer to investigate his whereabouts. The lawyer subsequently received a letter bomb, which seriously injured him, upon which he fled the country and was granted asylum in Sweden. Several members of the author's family have fled Peru; some of them were granted asylum in Sweden or the Netherlands. His brother's application was refused in Sweden, while his mother and two sisters have been granted asylum as de facto refugees. The author's brother has filed an application with the European Commission of Human Rights, which was declared admissible on 18 April 1996. On 6 December 1996, the Commission adopted its report in which it found that the applicant's expulsion to Peru would not violate article 3 of the Convention.

2.3 The author arrived in Sweden on 26 June 1990 and applied for political asylum on 6 August 1990. On 30 March 1993, the Swedish Board of Immigration rejected his application for political asylum, considering that the author had participated in serious non-political criminality. On 16 December 1994, the Aliens Appeal Board found that the author had undoubtedly been politically active but that he could not be regarded as a refugee according to chapter 3, paragraph 2, of the Aliens Law. The Appeal Board considered that, although the author could be seen as a de facto refugee, his armed political activities fell within the framework of article 1 F. of the 1951 Convention relating to the Status of Refugees,⁴ and therefore particular reasons existed not to grant him asylum. The Appeal Board forwarded the case to the Swedish Government for decision. On 12 October 1995, the Government confirmed the earlier decision not to grant the author asylum.

The complaint

3.1 The author claims that his return to Peru would constitute a violation by Sweden of article 3 of the Convention; the author states that the police usually torture people in cases concerning "terrorism and treason". The author asks the Committee to request Sweden not to expel him while his communication is under consideration by the Committee.

3.2 In support of the author's claim, reference is made to an enclosed letter, dated 18 August 1994, from the Office of the United Nations High Commissioner for Refugees' regional office concerning the author's mother. The letter states that the mother's "subjective fear of persecution can be supported by objective elements". Reference is also made to a letter by Human Rights Watch of 26 October 1995, concerning another Peruvian refugee claimant, which states that "returnees from Sweden are now considered to be de facto Shining Path guerrillas". Finally, reference is made to an enclosed copy of a July 1995 report by Human Rights Watch attesting to the practice of torture in Peru.

3.3 It is stated that the same matter has not been submitted for examination under any other procedure of international investigation or settlement.

State party's observations

4. On 15 February 1996, the Committee, through its Special Rapporteur, transmitted the communication to the State party for comments and requested it not to expel the author while his communication was under consideration by the Committee.

5.1 By its submission of 12 April 1996, the State party challenges the admissibility of the communication but also addresses the merits of the case. It requests the Committee, should it not find the communication inadmissible, to examine the communication on its merits as soon as possible. It informs the Committee that its national Immigration Board has stayed the enforcement of the expulsion order against the author until 25 May 1996.

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

5.3 As regards the facts of the author's story, the State party emphasizes that he was able to leave his country with a valid passport, issued after the police allegedly were looking for him. The author has never claimed to have bribed officials into giving him a passport, indicating, according to the State party, that the author was not being sought by the police when he legally left the country in June 1990. Further, the State party emphasizes that according to the author's own statements, he was never arrested, detained, prosecuted or sentenced for his activities for Shining Path. The only time he was arrested, in

April 1989, he was released after 24 hours without having been tortured.

5.4 The State party explains that the Government, when deciding that the author should not be granted asylum in Sweden, also took into account whether the enforcement of the expulsion order would violate chapter 8, section 1, of the Aliens Act. The Government, after having carefully examined all elements of the author's case, concluded that it would not.

5.5 The State party argues that the communication is inadmissible as incompatible with the provisions of the Convention, for lacking the necessary substantiation.

6.1 As to the merits of the communication, the State party refers to the Committee's jurisprudence in the case of Mutombo v. Switzerland,¹ and the criteria established by the Committee, first, that a person must personally be at risk of being subjected to torture and, second, that such torture must be a necessary and foreseeable consequence of the return of the person to his or her country.

6.2 As regards the general situation of human rights in Peru, the State party, aware of the information collected by international human rights organizations, submits that political violence in the country has decreased. The State party further submits that a number of refugee claimants, allegedly members of Shining Path, have been deported to Peru from Sweden and that no substantiated reports of torture or ill-treatment of those persons upon their return to Peru exist. In this connection, the State party points out that its embassy in Lima has been in contact with some of the deportees and that no incidents have been reported. The State party argues that the author will not be in a worse situation than that of those who were deported earlier. The State party notes that no consistent pattern of gross, flagrant or mass violations of human rights exists in Peru.

6.3 The State party further recalls the terrorist character of Shining Path and contends that crimes committed in the name of that organization should not constitute a reason for granting asylum. The State party refers in this context to article 1 F. of the 1951 Convention relating to the Status of Refugees.

6.4 The State party refers to its own legislation, which reflects the same principle as that of article 3 of the Convention. The State party's authorities thus apply the same test as the Committee in deciding on the return of a person to his or her country. The State party recalls that the mere possibility of a person being subjected to torture in his or her country of origin does not suffice to prohibit his or her return as being incompatible with article 3 of the Convention.

6.5 The State party explains its reasons for concluding that there are no substantial grounds for believing that the author would personally be at risk of being subjected to torture upon his return to Peru. It recalls that the author has been arrested only once, in April 1989 and was released after 24 hours, and that there are no indications that he was subjected to torture. Further, the author was able to obtain a valid passport and to use it to leave Peru. It appears that he is not wanted by the police for terrorist or other acts. There is no indication that his activities for Shining Path are known to the authorities. Moreover, the State party argues that even someone wanted by the police for criminal acts does not necessarily risk being subjected to torture. According to the State party's sources, such a person will be arrested at the airport upon arrival, transported to a detention centre and placed under the supervision of a public prosecutor.

The State party submits that the risk of torture in a detention centre is very limited. Finally, the State party explains that the author is free to leave Sweden at any time to a country of his choice.

6.6 With reference to the arguments summarized above, the State party argues that no sufficient evidence exists to demonstrate that the risk of the author being tortured is a foreseeable and necessary consequence of his return.

Counsel's comments

7.1 In her comments on the State party's submission, counsel challenges the State party's interpretation of article 1 F. of the 1951 Convention relating to the Status of Refugees and argues that the author's membership of Shining Path does not suffice to exclude him from the protection of that Convention.

7.2 As regards the general situation of human rights in Peru, counsel refers to the United States Department of State Country Report on Human Rights Practices for 1995, which states that torture and brutal treatment of detainees are common and that Government security forces still routinely torture suspected subversives at military and police detention centres.

7.3 As regards the author's valid passport, counsel states that this was indeed obtained through bribes, without further specifying her contention. She claims that it is possible to obtain a passport and leave the country despite serious problems with the authorities.

7.4 As regards the State party's statement that it is not aware of any case in which reliable information exists that a person was tortured upon being returned from Sweden to Peru, counsel refers to the case of Napoleon Aponte Inga, who, upon his return, was arrested at the airport and accused of having been a terrorist ambassador in Europe. He was brought to trial, acquitted after four months and then released. According to counsel, during his detention he was subjected to torture.

7.5 Counsel concludes that the State party underestimates the risk of the author being subjected to torture upon his return. She refers to reports indicating that torture is widely practised in Peru and states that the author belongs to a well-known family, one of his cousins having been killed by security forces and another cousin having disappeared.

The Committee's admissibility decision

8. At its sixteenth session, the Committee considered the admissibility of the communication and found that no obstacles to the admissibility of the communication existed.

9. The Committee noted that both the State party and author's counsel forwarded observations on the merits of the communication and that the State party had requested the Committee, if it were to find the communication admissible, to proceed to the examination of the merits of the communication. Nevertheless, the Committee considered that the information before it was not sufficient to enable it to adopt its Views.

10.1 In particular, the Committee wished to receive from author's counsel more precise and detailed

information and substantiation of the claim that the author's house was searched by the police on 1 November 1989, in particular whether there were witnesses to this search and how the author found out about it. The Committee also wished to be informed whether the police returned to the house to look for the author on further occasions and when and under what circumstances the author went into hiding.

10.2 With regard to the author's passport, counsel was requested to elaborate on how the author obtained his passport on 1 April 1990 and by whom the passport was issued. The Committee further appreciated receiving information as to the precise date on which the author left his country and his means of transportation. Counsel was requested to explain whether the author took any precautions and, if so, what ones, so as to not be stopped at the border, since he was travelling under his own name. Finally, the Committee wished to know what indications the author had that the police were looking for him at the present time and why he believed that if he were returned he would be in danger of being subjected to torture.

10.3 The Committee also wished to receive from the State party more detailed information regarding its statement that it was not aware of returnees from Sweden being tortured or ill-treated upon return. The Committee would appreciate it if the State party would clarify why the author's mother and his sisters were allowed to stay in Sweden but not the author. In particular, the Committee would like to know whether the distinction between the author and his mother and sisters was based solely on the exception under article 1 F. of the 1951 Convention relating to the Status of Refugees, or whether additional grounds existed to give the mother and sisters protection, but not the author.

11. Accordingly, on 8 May 1996, the Committee decided that the communication was admissible.

State party's observations on the merits

12.1 By its submission of 12 September 1996, the State party explains that its conclusion that no consistent pattern of gross, flagrant or mass violations of human rights exists in Peru is based on recent information received from the embassy in Lima. The embassy referred, *inter alia*, to the 1995 report of the local Peruvian human rights organization, La Coordinadora, which supports the State party's conclusion that it is mostly poor people, peasants and young criminals who are exposed to torture during police interrogations.

12.2 The State party reiterates that there are no substantial grounds for believing that the author personally would be at risk of being subjected to torture upon his return to Peru, and states that this conclusion is based on information from its embassy in Lima with regard to the treatment of returned Peruvians, who have unsuccessfully requested asylum abroad by referring to activities they carried out for the benefit of Sendero Luminoso. The embassy has obtained this information through interviews and contacts with well-informed persons and human rights organizations in Peru. The State party does not reveal its sources for reasons of protection.

12.3 The State party acknowledges that the author's mother and sisters have been given de facto refugee status because they belong to a family the members of which have been involved with Sendero Luminoso. The State party adds that the author's mother and sisters had been given the benefit of the

doubt. The author, however, has himself been active for Sendero Luminoso, an organization to which article 1 F. of the 1951 Convention relating to the Status of Refugees applies. In this context, the State party explains that it was not the membership of Sendero Luminoso that was decisive but the author's own statements according to which he had handed out home-made bombs in November 1989, which were actually used against the police. According to the State party, there was no reason why the author should be allowed to stay in the country and there were no obstacles to the enforcement of the expulsion order.

12.4 The State party reiterates that there is no indication that the authorities attempted to prevent the author from leaving Peru, which supports the State party's view that he is of no interest to the Peruvian police. The State party submits that it has requested its embassy in Lima to investigate the matter and that the embassy, on 14 August 1996, reported that the author has not been and is not wanted by the police for terrorist or similar acts in Peru.^b

12.5 The State party further questions the author's trustworthiness, since he has not been able to mention his cell leader's name or the name of the friend who informed him that he was wanted by the police.

12.6 The State party maintains that the author has not substantiated his assertion that an enforcement of the expulsion order to Peru would violate article 3 of the Convention. In this context, the State party observes that it is a general principle that the burden of proof lies with the person submitting a claim.

Counsel's observations

13.1 By its submission of 16 September 1996, counsel explains that on 1 November 1990, when the author's home was searched, his mother and his brother were present. At 7 p.m., the door was banged on by two men in civilian clothes who asked for the author. When they were told that he was not at home, they searched his room and took books and other documents with them. During the search, a car without registration plates was parked outside the house, occupied by two armed men. When the men left, they told the author's mother to tell him to present himself the following day at DIRCOTE, the anti-terrorist police force, as they wanted to question him about his university friends. They added that if he did not appear, things would be worse for him. After the police left, the author's brother went to see the author's friends and asked them to tell him not to return home. Counsel adds that the police did not come again to the house to look for the author.

13.2 As regards the author's passport, counsel states that it was issued by the Dirección de Migraciones in Lima and that the author's friend did all the work for him. Counsel explains that, at the time, everybody could obtain a legal passport without a problem. One could also use tramitadores, who would apply for passports in the name of others for a fixed fee. Counsel refers to a letter from Amnesty International, Swedish section, of 10 May 1995, addressed to the Swedish Government, which stated that the fact that a Peruvian asylum seeker has left the country legally with a passport should not be considered very important when considering his case.

13.3 The author left the country on 24 June 1990 by plane (Aeroflot). Friends bribed a person at the airport, and for protection the author was accompanied by a member of parliament (of the Unión de

Izquierda Revolucionaria) and former member of the Comisión de Justicia y Derechos Humanos in Peru.

13.4 Counsel maintains that the author would be in danger if returned to Peru. She bases this on the fact that two of his cousins have been victims of severe persecutions. In this context, counsel recalls that one of the author's cousins disappeared and another was killed. Since he belongs to a politically active family, the author has every reason to fear for his security if he were to return to Peru.

13.5 Counsel adds that the author's fears have grown because of newspaper articles in Peru about the case of his brother which is before the European Commission of Human Rights, in which it is mentioned that his brother is a member of Sendero Luminoso.

13.6 In a further submission of 24 October 1996, counsel refers to a publication by Human Rights Watch/Helsinki of September 1996, entitled "Swedish asylum policy in a global human rights perspective". In the publication, criticism is expressed about Swedish policy towards Peruvian asylum seekers. According to Human Rights Watch, reforms in Peru have been minimal, travel documents can be easily obtained by bribing officials and faceless courts continue to prosecute civilians.

13.7 According to counsel, the Human Rights Watch/Helsinki reports show how badly informed the Swedish authorities are about the situation in Peru. She refers to three cases of refoulement which suggest, according to counsel, that the primary aim of the Swedish policy is to limit immigration.

13.8 As regards the State party's claim that the author would not be in danger of being tortured upon his return to Peru, counsel notes that the State party bases itself on unrevealed sources. Counsel argues that the State party's mere reference to a non-provided report does not suffice as proof and requests a copy of the written report by the embassy, with the name of the sources deleted if necessary.

13.9 Counsel also refers to information provided by the Swedish embassy in Lima in the case of the author's mother, which proved to be wrong on the facts. This, she claims, means that information provided by the Swedish embassy must be treated with caution. Counsel also refers to the case of Napoleon Aponte Inga (who was tortured upon his return to Peru), of which the Swedish embassy seems to be unaware, although he was finally granted de facto asylum in Sweden.

13.10 Counsel submits that, while the situation in Peru may have improved as regards disappearances and judicial killings, the use of torture is still widespread and systematic. She refers to a report of Human Rights Watch/Americas of August 1996, which indicates that torture is generally practised in cases involving terrorism and thus contradicts the State party's argument that it is mainly poor people, peasants and young criminals who suffer torture.

13.11 Counsel contests the State party's argument that the author is untrustworthy because he cannot name the leader of his cell. She refers to her submission of 7 November 1990 to the Immigration Board in which she disclosed the name of the cell leader.

13.12 Finally, the author refers to the importance attached by the Office of the United Nations High Commissioner for Refugees to the experience of relatives. In this context, she recalls that two of the author's cousins were killed for political reasons and another cousin was granted political asylum in the

Netherlands. Counsel also submits that although the author has been active for Sendero Luminoso, he himself never committed any crime against peace, a war crime or a crime against humanity, and therefore he should not be excluded from protection under article 1 F. of the 1951 Convention relating to the Status of Refugees.

Issues and proceedings before the Committee

14.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

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

14.3 The Committee notes that the facts on which the author's asylum claim are based are not in dispute. The author is a member of Sendero Luminoso and on 1 November 1989 participated in a demonstration where he handed out leaflets and distributed handmade bombs. Subsequently, the police searched his house and the author went into hiding and left the country to seek asylum in Sweden. It is, further, beyond dispute that the author comes from a politically active family, that one of his cousins disappeared and another was killed for political reasons, and that his mother and sisters have been granted de facto refugee status by Sweden.

14.4 It appears from the State party's submission and from the decisions by the immigration authorities in the instant case, that the refusal to grant the author asylum in Sweden is based on the exception clause of article 1 F. of the 1951 Convention relating to the Status of Refugees. This is illustrated by the fact that the author's mother and sisters were granted de facto asylum in Sweden, since it was feared that they may be subjected to persecution because they belong to a family which is connected to Sendero Luminoso. No ground has been invoked by the State party for its distinction between the author, on the one hand, and his mother and sisters, on the other, other than the author's activities for Sendero Luminoso.

14.5 The Committee considers that the test of article 3 of the Convention is absolute. Whenever substantial grounds exist for believing that an individual would be in danger of being subjected to torture upon expulsion to another State, the State party is under obligation not to return the person concerned to

that State. The nature of the activities in which the person concerned engaged cannot be a material consideration when making a determination under article 3 of the Convention.

14.6 In the circumstances of the instant case, as set out in paragraph 14.3 above, the Committee considers that the grounds invoked by the State party to justify its decision to return the author to Peru do not meet the requirements of article 3 of the Convention.

15. In the light of the above, the Committee is of the view that, in the prevailing circumstances, the State party has an obligation to refrain from forcibly returning Mr. Gorki Ernesto Tapia Paez to Peru.

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

5. Communication No. 40/1996

Submitted by: Jamal Omer Mohamed

Alleged victim: The author

State party: Greece

Date of communication: 8 February 1996 (initial submission)

Date of decision of admissibility: 14 November 1996

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

Meeting on 28 April 1997,

Having concluded its consideration of communication No. 40/1996, submitted to the Committee against Torture by Mr. Jamal Omer Mohamed under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is Mr. Mohamed Jamal Omer, an Ethiopian citizen from Dire Dawa, born in 1970, currently residing in Greece. He claims to be a victim of a violation by Greece of article 3 of the Convention against Torture.

The facts as submitted by the author

2.1 The author states that he was arrested by "kebele" (local administrative) Regular reference is made to

"the kebele" without any explanation. It would appear that "kebele" stands for "local representative". officers in Ethiopia in 1988 after having begun to give lessons in the local mosque in November of that year. He was accused of "anti-revolutionary" activities and held in detention for an unspecified period of time.

2.2 At the beginning of 1989, he was nominated by his peers from school to participate in a political course of one month in Addis Ababa. The nomination was approved by the local administrative officers. After having completed the course, the author was informed that he was to be sent to a remote area in the country for the purpose of recruiting farmers as soldiers for the Government forces. The area in question was populated by a majority of people of Oromo ethnic origin and was said to be a centre for activities of the Oromo Liberation Front (OLF).

2.3 The author, as well as other participants in the political course who had been selected for the mission which was aimed at breaking OLF influence in the area, considered the task impossible and protested. However, they were sent to the region under threat of execution. Fighting broke out on their arrival and the local inhabitants threw stones at them. Local OLF activists threatened them with death and urged them to leave the area within 48 hours. The author decided to leave the area without further delay and returned to his home town. He was reported missing by representatives of the Government. In Dire Dawa he was arrested, on an unspecified date, by the local administrative officers, and held in detention for an unspecified period of time, accused of being an OLF collaborator. He states that he was subjected to torture during the detention.

2.4 In support of these claims, the author refers to an enclosed document issued by the Medical Rehabilitation Centre for Torture Victims in Athens on 20 November 1994. According to the report, the author was examined by a neurologist and an orthopedist, as well as interviewed by a psychologist, during six sessions in October 1994. The report states that he had been subjected to various forms of torture and subsequently suffered from severe headaches, as well as from pains in the right knee and right foot. Reference is also made to a translation of a report from a hospital in Athens, dated 1 February 1995, concerning an electroencephalogram.

2.5 As a consequence of the ill-treatment, the author was taken ill. He had a high temperature and vomited repeatedly. He was therefore transferred to a hospital in Dire Dawa. While he was hospitalized there was an exchange of fire in the town between Government soldiers and OLF activists and the power was cut off. He managed to escape from the hospital during the confusion that followed. In this context, he contends that "a security guard shot my father dead". As Government representatives intensified the search for him, he decided that he had to flee the country.

2.6 The author contends that he crossed the border to Somalia in December 1989 and was held in detention there from 1 January 1990 for five months, accused of illegal entry. Following his release in Somalia, he states that he was told by "the United Nations office to register with the police". However, the police would not let him register as a refugee "because of the political situation and [his] being a member of the Aderic Tribe". The author contends that, with the help of a friend in Somalia who provided him with a passport and air fare, he managed to leave Somalia for Turkey, on an unspecified date. He states that he was informed by the police in Turkey that Africans were not allowed to register as

refugees and that, for practical purposes, he was forced by the Turkish police to cross the border to Greece, on an unspecified date.

2.7 Upon his arrival in Greece, the author was informed by the Office of the United Nations High Commissioner for Refugees (UNHCR) that, before registering with UNHCR as a refugee, he must first register with the Greek police. When he attempted to register with the police, he was told that he had first to obtain from the International Catholic Migration Commission (ICMC) a document certifying his country of origin. However, since 1991 the ICMC had ceased to issue such documents. Without this document, the Greek Ministry of Public Order, in a decision dated 27 October 1992, refused to register him, as did the Greek Council for Refugees and UNHCR. The author claims that he was requested, when entering Greece, to indicate a third country to which he would not raise any objections to being deported and that he then mentioned Canada. His request for asylum in Greece was later rejected "because, after a two-year illegal stay in Greece, his application is made to facilitate his transfer to Canada".

The complaint

3.1 The author claims that his return to Ethiopia would constitute a violation by Greece of article 3 of the Convention against Torture. The author fears that, although he is not currently under an expulsion order, he is at risk of being deported at any time in view of the fact that he has no asylum, residence or work permit.

3.2 In support of his argument that he fears torture upon return to Ethiopia, the author refers to an Amnesty International report of April 1995 regarding the human rights situation in Ethiopia and, in particular, to the case of a certain Hussein, from Dire Dawa, who was accused of being an OLF collaborator in 1993, held in detention and allegedly subjected to torture. He also refers to the case of a Mr. Temteme Addisalem Mengistu, who returned to Ethiopia from Greece after obtaining assurances from the Greek Council for Refugees that his safety was guaranteed, and who was immediately arrested upon arrival, in October 1994.

State party's observations

4. On 28 February 1996, the Committee, through its Special Rapporteur, transmitted the communication to the State party for comments on admissibility.

5.1 By its submission of 19 April 1996, the State party challenges the admissibility of the complaint. It notes that, in its view, there are no grounds for a complaint under article 3 of the Convention against Torture, given that the author has not been expelled from Greece, nor has an order for his expulsion been issued. It further points out that it is of the view that the author has not substantiated that he is in any danger of being tortured should he return to Ethiopia.

5.2 As regards domestic procedures, the State party acknowledges that the author's application for asylum was dismissed on 27 October 1992 as "manifestly abusive" by the Minister of Public Order, on the basis that his claim could not be founded on the 1951 Convention relating to the Status of Refugees,⁴

and that no appeal from this decision was available. On humanitarian grounds, the Minister did not order the expulsion of the author but instead laid down a period of one month within which the author was to leave Greece for a country of his choice.

5.3 The State party notes that on 3 January 1991 the author entered Greece secretly from Turkey, assisted by an illegal migrant traffic network, and did not apply for asylum at that time. Three months later, he registered with the migration programme with a view to emigrating to Canada. A year and a half later, on 3 September 1992, the author applied for asylum in Greece on the pretext that he opposed his country's regime. However, in this application he made no mention of the change in Government in his home country, despite the fact that the change had occurred since his departure from Ethiopia.

Comments by the author

6.1 In his comments on the State party's submission, the author concedes that he has not been deported but states that, as a victim of torture and a political refugee, he has a right to asylum. He expresses the fear that he could be deported at any time.

6.2 The author explains, reiterating the claims made earlier (see para. 2.7 above), that he was not able to apply immediately for asylum because of "bureaucratic circumstances". He further explains that upon entry to Greece, he had no plans to emigrate to Canada. However, following his request for asylum in Greece, he was told that he could not stay in Greece and would be deported unless he transferred to a third country of his choice. Thus he was obliged to name a third country and named Canada. He denies registering for the migration programme to Canada after three months in Greece.

6.3 The author reiterates that he escaped from his own country and was then deported from Turkey, being left at the Greek border. He did not attempt to enter Greece in secret or seek the assistance of an "illegal migrant traffic network". With regard to the situation in his home country, he submits that he would be in grave danger if returned to Ethiopia, citing an Amnesty International report of April 1995 on the human rights violations of the transitional Government there.

The Committee's admissibility decision

7.1 At its seventeenth session, the Committee considered the admissibility of the communication. It ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter had not been and was not being examined under another procedure of international investigation or settlement. The Committee was further of the opinion that all domestic remedies available to the author had been exhausted, as required by article 22, paragraph 5 (b). The Committee found that no other obstacles to the admissibility of the communication existed.

7.2 In order to facilitate its examination of the merits of the communication, the Committee requested the author to provide more precise and detailed information to substantiate his fear that he personally would be in danger of being subjected to torture should he return to Ethiopia at that time. Further, the Committee requested the State party to provide information on the possible consequences for the author of non-compliance with the request of the Minister of Public Order that he leave the country.

8. Accordingly, on 14 November 1996, the Committee decided that the communication was admissible.

Author's observations

9.1 By his submission of 28 January 1997, the author reiterates that he was in prison from 5 November to 6 December 1988 and again from 28 June 1989 onwards. The second time he was accused of collaborating with the OLF. He states that this accusation still stands, since the OLF is also in opposition to the current Government. He adds that the OLF accuses him of being a Government spy.

9.2 For the above reasons, he states that he would be in serious danger if he were to return to Ethiopia. He refers to an Amnesty International report of July 1996 which shows that the human rights situation in Ethiopia is still unacceptable.

State party's observations

10.1 By its submission of 8 March 1997, the State party reiterates that the author has not been expelled from the country, and clarifies that he remains in Greece for humanitarian reasons. The State party thus argues that article 3 of the Convention has not been violated.

10.2 The State party acknowledges that, at the time, no appeal was available to an asylum seeker whose request was rejected as abusive, but states that the non-availability of an appeal as such does not constitute a violation of the Convention. The State party adds that the law has since been amended.

10.3 The State party further points out that an individual always has the possibility of lodging an appeal with the Council of State concerning the legality of any administrative decision.

Issues and proceedings before the Committee

11.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

11.2 Under article 3 of the Convention, the Committee is required to decide whether an expulsion, return or extradition of an individual would breach the obligation of a State party not to expose that individual to the danger of being subjected to torture. The Committee cannot determine whether or not the claimant is entitled to asylum under the national laws of a country, or can invoke the protection of the 1951 Convention relating to the Status of Refugees.

11.3 In the instant case, the Committee notes that the State party has not ordered the author's expulsion, return or extradition to Ethiopia and has stated that the author remains in Greece for humanitarian reasons. It also appears from the State party's submission that, were the authorities to order his deportation at a later stage, the author would have an appeal possibility against such decision. The Committee is therefore of the opinion that the facts before it do not show any violation of the Convention by Greece.

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

[Done in English, French, Russian and Spanish, the English text being the original version.] 6.
Communication No. 46/1996

Submitted by: Cyril Le Gayic et al. (represented by counsel)

Alleged victim: The authors

State party: France

Date of communication: 5 February 1996

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

Meeting on 9 May 1997,

Adopts the following decision:

Decision on admissibility

1. The communication is presented by counsel on behalf of Mr. Cyril Le Gayic and 12 other individuals, French citizens, residing in Papeete, Tahiti. They claim to be victims of violations by France of articles 16, 10, 11, 12 and 13 of the Convention against Torture.

The facts as presented by the authors

2.1 Following the resumption of nuclear tests in the Pacific by France, riots took place in Tahiti on 6 September 1995. The union A TIA I MUA, which had called for a strike that day, was held responsible for the riots by the authorities. On 9 September 1995, the members of the Executive of the union were meeting at the organization's office in Papeete. Around 1 p.m., when the participants were preparing for a press conference to be held at 3 p.m., mobile guards in battledress invaded the premises. They ordered the unionists to line up against the wall, legs apart and hands behind their heads. The unionists complied without resistance, but were bludgeoned by the police nevertheless. Then they were handcuffed two by two, led out of the building, thrown in a van and transported to the police station in the Avenue Bruat.

2.2 Once there, they were handcuffed individually and ordered to kneel in the parking lot, with the sun full in their faces. Those who had difficulty in kneeling were beaten with bludgeons or kicked. About 45 minutes later they were brought to the barracks and detained. They were not given any food or drink and were prevented from sleeping. They remained handcuffed and supervised, even when going to the toilet. No medical assistance was given. Some of them were released in the night of 9 September, without

being charged. Others were charged and some of them were placed in preventive detention.

2.3 Mr. Cyril Le Gayic, born on 27 September 1953, General Secretary of the Confédération des syndicats indépendants de Polynésie, joined the meeting of unionists at 12.55 p.m. The author attaches a medical certificate from a doctor whom he went to see after his release.

2.4 Mr. Jean-Michel Garrigues, born on 29 September 1961, states that he was threatened by one of the mobile guards with a firearm and hit with a bludgeon against the left temple and that his shirt was torn and his head smacked against the wall with such force that one of his teeth fell out. He was constantly beaten although he was following orders given by the policemen. He was also given electric shocks with a sort of electric prod, and the marks of the handcuffs, put on tightly, took 10 days to heal. He submits that, after being on the parking lot for about 15 minutes, he started to vomit. Brought to the barracks, he was interrogated by a police officer in the afternoon. He spent the night in the barracks, where the guards prevented him from sleeping. He was not given anything to eat or drink. The next morning, a guard came to spray the detainees with insecticide. Asking to go to the toilet, Garrigues was shown one full of excrement, the door was left open and the guard stayed with him. He was not allowed to wash his hands afterwards. In the beginning of the afternoon he was brought to the Palais de Justice, where the ill-treatment ended.

2.5 Mr. Tu Yan, born on 1 December 1955, states that when, following orders, he lined up facing the wall, he was beaten with a bludgeon on his back and right leg and later also on the right arm. During the ride in the van, he was smothered by the weight of nine bodies on top of him. When brought to the barracks, he says that he did not suffer further ill-treatment, but he was refused anything to drink. He was released at 8 p.m. that same evening.

2.6 Mr. Bruno Sandras, born on 4 August 1961, states that he was threatened with a pistol against his temple and that he was flat on the floor of the van with others on top of him.

2.7 Mr. Eugène Sommers, born on 25 August 1958, states that he was thrown into the van head first and others were thrown on top of him. When he tried to lift his head because he could not breathe, a guard stepped on his head, telling him to keep his head down.

2.8 Mr. Jacques Yeun, born on 12 July 1949, states that, after the mobile guards entered the premises, he was bludgeoned and thrown on the ground like an animal. He states that, while in the barracks during the night, he was harassed by the guards, who continued to beat the detainees.

2.9 Mr. Albert Tematahotoa, born on 16 May 1961, affirms that he was beaten and ill-treated and states that he was released at 9.30 p.m., without having had anything to drink or eat.

2.10 Mr. Ralph Taaviri, born on 14 October 1954, states that he was threatened with a gun and was hit in the back with the butt of a rifle, which caused him to fall. His hands were bound with electric cable so tightly that he lost the feeling in his fingers. In the barracks, the detainees did not get anything to drink, nor were they allowed to go to the bathroom until a Polynesian guard came on duty, who gave them one bottle of water for all of them and allowed them to relieve themselves. He states that late in the evening

he was taken for interrogation. He was chained by the arm to a guard and by one leg to another guard because it was dark and it was allegedly necessary for security. During the night, guards continued to harass him, so that he could not sleep. In the morning, when he had difficulty sitting down as ordered because of cramp, he was kicked over onto his back on the floor.

2.11 Mr. Lionel Lagarde, born on 5 October 1934, confirms the story as told in general terms above, and states that he was brought before the judge on Sunday at 4 p.m.

2.12 Mr. Irvine Paro, born on 24 March 1945, states that he was at the police station on Saturday morning, 9 September, in connection with the riots on the preceding Wednesday, thereby escaping the maltreatment to which his colleagues were subjected. Later, he was detained with his colleagues in the barracks and suffered the same ill-treatment and humiliations.

2.13 Mr. Ronald Terorotua, born on 27 March 1955, states that he was in the hall of the building when the mobile guards entered. He was threatened with a gun, told to lie down and hit with a bludgeon. Later, he was hit in the back with an electric prod while walking towards the van. He was pushed on top of his colleagues in the van. Later, he was interrogated from 1.30 to 6 p.m., with a two-hour pause; all this time he was not given anything to drink. A doctor came only to take his blood pressure and to see whether or not he was a heart patient.

2.14 Mr. Bruno Tetaria, born on 3 February 1960, states that, when the mobile guards arrived he was told to lie down with his hands behind his head, face down. Having done this, he was hit with a bludgeon and told to get up. Thrown in the van, he was again hit in the back, and when he lifted his head, a guard stepped on his neck. At the police station he was told to kneel and was hit in the back because he had difficulty getting into that position. In the barracks it was very cold and he was shivering; nevertheless he was not given a blanket.

2.15 Mr. Hirohiti Tefaarere, the General Secretary of A TI'A I MUA, born on 19 June 1954, states that, when the police arrived at the union premises, he told his colleagues to remain calm and not to resist. When he was standing with his hands up, two guards threw him to the floor, after which he was handcuffed and insulted. Another guard came and walked over his back. He was then taken home to be searched and was again maltreated in front of his family.

The complaint

3.1 The authors state that they were subjected to ill-treatment in terms of article 16 of the Convention against Torture. Further, they claim that France has not satisfied its obligations under articles 10, 11, 12 and 13 of the Convention.

3.2 As regards the exhaustion of domestic remedies, the authors state that their counsel filed a complaint with the Dean of Magistrates in Papeete for cruel and inhuman treatment, for Ralph Taaviri on 20 October, for Cyril Le Gayic, Jean-Michel Garrigues, Tu Yan, Irvine Paro, Bruno Sandras, Eugène Sommers, Jacques Yeun, Albert Tematahotoa, Ronald Terorotua, Bruno Tetaria, Hiro Tefaarere on 23 October, and for Lionel Lagarde on 24 November 1995 respectively,

without result.

3.3 It is stated that the same matter has not been submitted to any other procedure of international investigation or settlement.

State party's observations on the admissibility of the communication

4.1 By its submission of 17 September 1996, the State party argues that the communication is inadmissible because of non-exhaustion of domestic remedies.

4.2 The State party submits that acts of violence against persons are criminal offences under article 309 of the Penal Code, and under article 186 if the violence is committed by a public officer.

4.3 The State party explains that according to article 85 of the Code of Criminal Procedure, anyone who considers himself injured by a crime may file a complaint as a civil party before the competent magistrate. Articles 86, 87, 177, 178 and 179 lay down the procedure to follow. When a complaint is received, the magistrate informs the public prosecutor. The prosecutor can request the magistrate to hear the complaining party, if the complaint does not contain enough information to base the indictments on. If the magistrate considers that the facts disclose no criminal offence or cannot lead to a prosecution, or that the complaint is inadmissible, he produces a reasoned decision, which can be appealed by the interested parties, to the Court (Chambre d'accusation). A decision by the magistrate to dismiss a complaint is also appealable. The State party submits that the procedure is effective and must be exhausted before a complaint can be submitted to the Committee against Torture.

4.4 In fact, the authors made use of the procedure and lodged complaints with the Dean of Magistrates in Papeete. Subsequently, the public prosecutor, on 10 October, 29 November and 15 December 1995 and 28 March 1996, requested the opening of legal proceedings on an unspecified number of counts of violence committed by public agents, invoking articles 309, 186 and 198 of the former Criminal Code. The four requests were given to the Dean of Magistrates under one file number, 5070.

4.5 The investigating magistrate ordered medical examinations of the claimants. The medical examiner filed his reports on 3 January and 22 May 1996. According to the reports, three unionists, Messrs. Taaviri, Tetaria and Tematahotoa, showed after-effects of injuries. Upon request of the authors' counsel, a psychiatric examination of 10 of the claimants was ordered on 10 June 1996, to evaluate the psychological consequences of the treatment they claim to have been subjected to.

4.6 On 19 October 1995, the investigating magistrate ordered a commission of inquiry to interview the officers in charge of apprehending the A TI'A I MUA members on 9 September. It appears from the commission's report that the police officers interviewed contest the violent acts alleged by the complainants, although they recognize that their intervention was firm because of the tense situation.

4.7 On 7 March 1996, pictures of the police officers who had participated in the intervention were given to the complainants for identification purposes. According to the State party, the complainants had difficulty in formally identifying the perpetrators of the violence of which they complain.

4.8 The State party submits that several of the complainants were summoned to a further hearing on 9 September 1996 and that the investigations are continuing without delay. The State party thus argues that the authors cannot invoke the exceptions to the rule of exhaustion of domestic remedies laid down in article 22, paragraph 5 (b), of the Convention, since their application is not unduly prolonged nor can it be said that it is unlikely to bring effective relief.

Counsel's comments on the State party's submission

5.1 In his reply to the State party's submission, counsel argues that the requirement of exhaustion of domestic remedies applies at the moment when the Committee actually examines the admissibility of the communication, not at the time of submission. According to counsel, it is thus not certain that domestic remedies will not be exhausted when the Committee considers the communication.

5.2 Counsel further points out that cruel, inhuman or degrading treatment is not a criminal offence under French law, for which reason the authors had to base themselves on articles 309 and 63 of the (former) Penal Code.

5.3 Moreover, counsel recalls that the rule of exhaustion of domestic remedies does not apply when the remedies are not likely to be effective. In this context, counsel submits that, on 2 October 1996, the complainants requested the investigating magistrate, under article 81 of the Code of Criminal Procedure, to proceed to a reconstruction of the events, including the conditions in which they were arrested, transported in a van and detained. On 18 October 1996, the magistrate rejected their request. The complainants have appealed this decision to the Court of Appeal of Papeete.

5.4 According to counsel, the refusal deprives the complainants of an effective and useful remedy. Counsel argues that the reasons on which the magistrate based his decision (the harmful media effects) ("le retentissement médiatique néfaste"), are totally unacceptable and show that he recognizes that the reconstruction would reveal a disturbing reality. It is stated that the magistrate also objected to the costs such a reconstruction would entail.

5.5 Counsel argues that with this decision, the magistrate has violated his international obligations under articles 10, 11, 12 and 13 of the Convention against Torture. Counsel therefore contends that the procedure can no longer be seen as likely to bring effective relief and that the communication should thus be declared admissible.

6.1 In a further submission, counsel states that the Court of Appeal of Papeete has confirmed the decision by the investigating magistrate of 18 October 1996 rejecting the complainants' request for a reconstruction. Counsel states that the complainants have requested a judicial review (cassation) of this decision and submits that all domestic remedies will thus have been exhausted when the Committee takes up the communication. Counsel adds that it is clear that the procedure initiated under article 85 of the Code of Criminal Procedure will not give effective relief. According to counsel, this is also shown by the fact that there has been as yet no arraignment (mise en examen) of the accused although the complainants have recognized their aggressors from the pictures furnished by the investigating magistrate.

6.2 Counsel alleges that the reconstruction in situ was refused because it would reveal a violation of article 16 of the Convention.

Issues and proceedings before the Committee

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

7.2 Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication unless it has ascertained that all available domestic remedies have been exhausted. The Committee notes that the ill-treatment inflicted on the complainants is currently the subject of a judicial review in Papeete. The Committee finds that the information before it does not suggest that the recourse procedure is being unreasonably delayed or that it is unlikely to bring the complainants effective relief. It observes, therefore, that the conditions laid down in article 22, paragraph 5 (b), of the Convention have not been met.

8. The Committee therefore decides:

- (a) That the communication is inadmissible;
- (b) That this decision may be reconsidered under rule 109 of the rules of procedure if the Committee receives a written request by or on behalf of the individuals concerned containing documentary evidence to the effect that the reasons for inadmissibility no longer apply;
- (c) That this decision shall be communicated to counsel for the complainants and to the State party.

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

Notes

¹ See Official Records of the General Assembly, Forty-ninth session, Supplement No. 44 (A/49/44), annex V, sect. B, Communication No. 13/1993.

² See Office of the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Geneva, September 1979.

³ See Views on Communication No. 13/1993 (Mutombo v. Switzerland). (Official Records of the General Assembly, Forty-ninth Session Supplement No. 44 (A/49/44), annex V, sect. B, Communication No. 13/1993, para. 9.2.)

⁴ United Nations, Treaty Series, vol. 189, No. 2545.

ANNEX VI

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

A. Seventeenth session

Symbol Title

CAT/C/17/Add.16 Second periodic report of Uruguay
CAT/C/17/Add.17 Additional information of Mexico
CAT/C/25/Add.8 Second periodic report of Algeria
CAT/C/25/Add.9 Second periodic report of Poland
CAT/C/28/Add.1 Initial report of Georgia
CAT/C/32/Add.1 Initial report of the Republic of Korea
CAT/C/36 Provisional agenda and annotations
CAT/C/SR.262-280 Summary records of the seventeenth session of the Committee

B. Eighteenth session

Symbol Title

CAT/C/3/Rev.2 Revised rules of procedures of the Committee
CAT/C/28/Add.2 Initial report of Namibia
CAT/C/29/Add.1 Second periodic report of Paraguay
CAT/C/33/Add.2/Rev.1 Special report of Israel
CAT/C/34/Add.1 Third periodic report of Ukraine
CAT/C/34/Add.2 Third periodic report of Mexico
CAT/C/34/Add.3 Third periodic report of Denmark
CAT/C/34/Add.4 Third periodic report of Sweden
CAT/C/37 Note by the Secretary-General listing initial reports due in 1997

CAT/C/38 Note by the Secretary-General listing second periodic reports due in 1997

CAT/C/39 Note by the Secretary-General listing third periodic reports due in 1997

CAT/C/40 Provisional agenda and annotations

CAT/C/SR.281-298/Add.1 Summary records of the eighteenth session of the Committee



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