



**United Nations**

**Report of the Committee  
against Torture**

**General Assembly**  
**Official Records · Fiftieth Session**  
**Supplement No. 44 (A/50/44)**

# Report of the Committee against Torture

General Assembly  
Official Records · Fiftieth Session  
Supplement No. 44 (A/50/44)



United Nations · New York, 1995

## NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

[26 July 1995]

## CONTENTS

|  | <u>Paragraphs</u> | <u>Page</u> |
|--|-------------------|-------------|
| I. ORGANIZATIONAL AND OTHER MATTERS .....  | 1 - 20            | 1           |
| A. States parties to the Convention .....  | 1 - 2             | 1           |
| B. Opening and duration of the sessions .....  | 3 - 4             | 1           |
| C. Membership and attendance .....   | 5 - 8             | 1           |
| D. Solemn declaration by a member of the Committee ..  | 9                 | 2           |
| E. Officers .....  | 10                | 2           |
| F. Agendas .....   | 11 - 12           | 2           |
| G. Working methods of the Committee relating to its<br>functions under article 22 of the Convention .....  | 13 - 15           | 3           |
| H. Staff resources .....   | 16 - 20           | 4           |
| II. ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-NINTH<br>SESSION .....   | 21 - 25           | 5           |
| A. Annual report submitted by the Committee against<br>Torture under article 24 of the Convention .....  | 21 - 22           | 5           |
| B. Effective implementation of international<br>instruments on human rights, including reporting<br>obligations under international instruments on<br>human rights ..... | 23 - 25           | 5           |
| III. SUBMISSION OF REPORTS BY STATES PARTIES UNDER<br>ARTICLE 19 OF THE CONVENTION .....   | 26 - 43           | 6           |
| Action taken by the Committee to ensure the submission<br>of reports .....   | 26 - 43           | 6           |
| IV. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES<br>UNDER ARTICLE 19 OF THE CONVENTION .....   | 44 - 182          | 9           |
| Chile .....  | 52 - 61           | 10          |
| Peru .....   | 62 - 73           | 11          |
| Monaco .....   | 74 - 79           | 13          |
| Liechtenstein .....  | 80 - 85           | 14          |
| Czech Republic .....   | 86 - 94           | 14          |

CONTENTS (continued)

|   | <u>Paragraphs</u> | <u>Page</u> |
|---|-------------------|-------------|
| Libyan Arab Jamahiriya .....  | 95 - 104          | 16          |
| Morocco .....   | 105 - 115         | 17          |
| Netherlands .....   | 116 - 131         | 18          |
| Mauritius .....   | 132 - 145         | 20          |
| Italy .....   | 146 - 158         | 21          |
| Jordan .....  | 159 - 182         | 23          |
| V. ACTIVITIES OF THE COMMITTEE UNDER ARTICLE 20 OF THE<br>CONVENTION .....      | 183 - 188         | 26          |
| VI. CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 22 OF<br>THE CONVENTION ..... | 189 - 201         | 27          |
| VII. AMENDMENTS TO THE RULES OF PROCEDURE OF THE COMMITTEE                      | 202 - 203         | 29          |
| VIII. FUTURE MEETINGS OF THE COMMITTEE .....                                    | 204 - 209         | 30          |
| IX. ADOPTION OF THE ANNUAL REPORT OF THE COMMITTEE ON ITS<br>ACTIVITIES .....   | 210 - 212         | 31          |

Annexes

|   |  |    |
|---|--|----|
| I. List of States which have signed, ratified or acceded to the<br>Convention against Torture and Other Cruel, Inhuman or Degrading<br>Treatment or Punishment as at 5 May 1995 ..... |  | 32 |
| II. Membership of the Committee against Torture (1995) .....  |  | 36 |
| III. Status of submission of reports by States parties under article 19<br>of the Convention as at 5 May 1995 .....   |  | 37 |
| IV. Country rapporteurs and alternate rapporteurs for each of the<br>reports of States parties considered by the Committee at its<br>thirteenth and fourteenth sessions .....         |  | 42 |
| V. Decisions of the Committee against Torture under article 22 of the<br>Convention .....   |  | 43 |
| VI. Amended rules of procedure .....  |  | 75 |
| VII. List of documents for general distribution issued for the<br>Committee during the reporting period .....   |  | 77 |

## I. ORGANIZATIONAL AND OTHER MATTERS

### A. States parties to the Convention

1. As at 5 May 1995, the closing date of the fourteenth session of the Committee against Torture, there were 88 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 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. A list of States which have signed, ratified or acceded to the Convention together with an indication of those that have made declarations under articles 21 and 22 of the Convention is contained in annex I to the present report.
2. The text of the declarations, reservations or objections made by States parties with respect to the Convention are reproduced in document CAT/C/2/Rev.3.

### B. Opening and duration of the sessions

3. The Committee against Torture has held two sessions since the adoption of its last annual report. The thirteenth and fourteenth sessions of the Committee were held at the United Nations Office at Geneva from 7 to 18 November 1994 and from 24 April to 5 May 1995, respectively.
4. At its thirteenth session the Committee held 18 meetings (190th to 207th meeting) and at its fourteenth session the Committee held 19 meetings (208th to 226th meeting). An account of the deliberations of the Committee at its thirteenth and fourteenth sessions is contained in the relevant summary records (CAT/C/SR.190-226).

### C. Membership and attendance

5. In accordance with article 17, paragraph 6, of the Convention and rule 13 of the Committee's rules of procedure, Mr. Hassib Ben Ammar, by a letter dated 6 January 1995, informed the Secretary-General of his decision to cease his functions as a member of the Committee. By a note dated 31 January 1995, the Government of Tunisia informed the Secretary-General of its decision to appoint, subject to the approval of the States parties, Mr. Habib Slim to serve for the remainder of Mr. Ben Ammar's term on the Committee, which will expire on 31 December 1995.
6. Since none of the States parties to the Convention responded negatively within the six-week period after having been informed by the Secretary-General of the proposed appointment, the Secretary-General considered that they had approved the appointment of Mr. Slim as a member of the Committee, in accordance with the above-mentioned provisions. The list of the members of the Committee in 1995, together with an indication of the duration of their term of office, appears in annex II to the present report.
7. All the members attended the thirteenth session of the Committee. The fourteenth session of the Committee was attended by all the members, except Mr. Hugo Lorenzo, who was not authorized to travel by the United Nations on the

grounds of incompatibility between his present status of international civil servant and that of member of the Committee.

8. The Committee, through its Chairman, addressed a letter to the Secretary-General of the United Nations in which it stated that such a decision seriously interfered with the activities of the Committee and asked him to reconsider it immediately. Unfortunately, the Committee had not received a reply by the end of its fourteenth session.

D. Solemn declaration by a member of the Committee

9. At the 208th meeting, on 24 April 1995, the newly appointed member of the Committee, Mr. Habib Slim, made the solemn declaration upon assuming his duties, in accordance with rule 14 of the rules of procedure.

E. Officers

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

Chairman: Mr. Alexis Dipanda Mouelle

Vice-Chairmen: Mr. Peter Thomas Burns  
Mr. Fawzi El Ibrashi  
Mr. Hugo Lorenzo

Rapporteur: Mr. Bent Sørensen

F. Agendas

11. At its 190th meeting, on 7 November 1994, 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/27) as the agenda of its thirteenth 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.

12. At its 208th meeting, on 24 April 1995, 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/30) as the agenda of its fourteenth session:

1. Adoption of the agenda.
2. Solemn declaration by a member of the Committee appointed under article 17, paragraph 6, of the Convention.
3. Organizational and other matters.
4. Submission of reports by States parties under article 19 of the Convention.
5. Consideration of reports submitted by States parties under article 19 of the Convention.
6. Consideration of information received under article 20 of the Convention.
7. Consideration of communications under article 22 of the Convention.
8. Future meetings of the Committee.
9. Action by the General Assembly at its forty-ninth 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.
10. Amendments to the rules of procedure of the Committee.
11. Annual report of the Committee on its activities.

G. Working methods of the Committee relating to its functions under article 22 of the Convention

13. During its thirteenth session, the Committee considered possible ways to make its methods of work under article 22 of the Convention more effective.

14. In the light of recent communications received, in particular with regard to article 3 of the Convention, the Committee was of the view that it was necessary to appoint from among its members inter-sessional rapporteurs who would take urgent action on new communications submitted to the Committee and report on any action taken to the Committee at the beginning of its subsequent session. In this connection, the Committee, on 16 November 1994, adopted the following decision:

"The Committee against Torture,

"Noting the increasing number of new communications submitted under article 22 of the Convention,

"Noting also that, in many cases, the authors of communications make requests for interim measures of protection, in accordance with rule 108, paragraph 9, of the Committee's rules of procedure,



"Considering that the Committee's present methods of work do not give it the required flexibility to deal expeditiously with the processing of new communications, particularly in the inter-sessional period,

"Decides:

"1. That any member of the Committee may act as a special rapporteur for a new communication, with the following mandate:

"(a) To examine the communication received by the Committee and to take whatever action might be necessary pursuant to rule 108, paragraphs 1, 5 and 8, of the Committee's rules of procedure;

"(b) To issue requests under rule 108, paragraph 9, of the rules of procedure;

"2. That, at the beginning of each session, members having acted as special rapporteur shall inform the Committee concerning action taken under rule 108."

15. Pursuant to this decision, the Committee also amended rules 106 and 108 of its rules of procedure, as indicated in chapter VII, paragraph 202. The text of rules 106 and 108, as amended, appears in annex VI to the present report.

#### H. Staff resources

16. The Committee discussed this issue at its 225th meeting, on 4 May 1995.

17. The Committee was of the view that the greater complexity of its work and more 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 communication procedure - had added significantly to the workload of the Secretariat providing substantive servicing to the Committee.

18. The Committee recalled that, in accordance with article 18, paragraph 3, of the Convention, the Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.

19. The Committee underlined that recommendations concerning the provision of adequate Secretariat resources for human rights treaty bodies had already been made by the persons chairing such bodies in the "Vienna statement of the international human rights treaty bodies" of June 1993 1/ and, most recently, in the report of their fifth meeting, held at the United Nations Office at Geneva from 19 to 23 September 1994. 2/

20. The Committee therefore requests the Secretary-General to take the necessary steps to ensure a substantial increase in the staff assigned to service the Committee in order to enable it to perform effectively the functions entrusted to it under the Convention.

II. ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-NINTH SESSION

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

21. The Committee considered this agenda item at its 225th meeting, held on 4 May 1995.

22. The Committee took note of General Assembly resolution 49/177 of 23 December 1994 and Commission on Human Rights resolution 1995/37 A of 3 March 1995 on the status of the Convention. The Committee took note also of Commission on Human Rights resolution 1995 33 on the question of a draft optional protocol to the Convention.

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

Thirteenth session

23. At the 207th meeting, held on 18 November 1994, the Chairman of the Committee, who had participated in the fifth meeting of persons chairing the human rights treaty bodies, provided information on the conclusions and recommendations of that meeting.

Fourteenth session

24. The Committee had before it the report of the fifth meeting of persons chairing the human rights treaty bodies, 3/ General Assembly resolution 49/178 of 23 December 1994 and Commission on Human Rights resolution 1995/92 of 8 March 1995.

25. The Committee took note of the above-mentioned report and 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

Thirteenth session

26. The Committee, at its 190th and 206th meetings, held on 7 and 17 November 1994, 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 1994 (CAT/C/5, 7, 9, 12, 16/Rev.1, 21/Rev.1 and 24);

(b) Notes by the Secretary-General concerning second periodic reports which were due from 1992 to 1994 (CAT/C/17, 20/Rev.1 and 25).

27. The Committee was informed that, in addition to the eight reports that were scheduled for consideration by the Committee at its thirteenth session (see chap. IV, para. 44), the Secretary-General had received the second periodic report of Italy (CAT/C/25/Add.4), the second periodic report of the Netherlands (CAT/C/25/Add.1 and 2) and additional information from Greece, whose second periodic report had been considered by the Committee at its twelfth session. 4/

28. 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 a reminder sent by the Secretary-General in June 1994.

29. In accordance with rule 65 of the Committee's rules of procedure and its decisions, the Secretary-General continued sending reminders automatically to those States parties whose initial reports were more than 12 months overdue, and subsequent reminders every six months.

30. Furthermore, the Committee was informed that, before its thirteenth session, the Secretary-General had sent a tenth reminder to Togo and a ninth reminder to Uganda, whose initial reports were due in 1988; a seventh reminder to Guyana, whose initial report was due in 1989; a fifth reminder to Brazil and a sixth reminder to Guinea, whose initial reports were due in 1990; a fourth reminder to Malta and Somalia, whose initial reports were due in 1991; second reminders to Jordan, Venezuela, Yemen and Yugoslavia, whose initial reports were due in 1992; and first reminders to Benin, Bosnia and Herzegovina, Cape Verde, Latvia and Seychelles, whose initial reports were due in 1993.

31. With regard to States parties whose initial reports were more than four or five years overdue, namely Brazil, Guinea, Guyana, Togo and Uganda, the Committee deplored the fact that, in spite of several reminders sent by the Secretary-General and letters or other messages from 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. The Committee also decided to request Brazil and Guinea to submit both the initial and the second periodic

reports in one document. It had already requested Guyana, Togo and Uganda to do so, at previous sessions.

32. The Committee noted with satisfaction that following a request for technical assistance in preparing reports made by the Government of Uganda in February 1994 and the recommendations made by the Committee at its twelfth session in that regard, a government official from Uganda had participated in an international course specifically aimed at training government officials in the reporting obligation system, which was held at the International Training Centre of the International Labour Organization at Turin, Italy, in November 1994, within the framework of the fellowship programme of the Centre for Human Rights.

33. In addition, the Committee noted with satisfaction that, in response to a request for technical assistance in preparing reports made by the Government of Croatia in March 1994 and the Committee's recommendations on the subject, a government official from Croatia had also participated in the training course at Turin.

34. In accordance with the decision adopted by the Committee at its seventh session, the Chairman, at the Committee's request, discussed with the representative of Malta, whose report was more than three years overdue, the difficulties that prevented that State party from complying with its reporting obligations under the Convention.

35. With regard to second periodic reports, the Committee was informed that, before its thirteenth session, the Secretary-General had sent third reminders to Afghanistan, Austria, Belize, Bulgaria, Cameroon, Denmark, France, Luxembourg, the Philippines, the Russian Federation, Senegal and Uruguay, whose reports were due in 1992 but had not yet been received; and a second reminder to Colombia and a first reminder to Turkey, whose second periodic reports were due in 1993.

#### Fourteenth session

36. At its 210th meeting, held on 25 April 1995, the Committee again considered the status of submission of reports under article 19 of the Convention. In addition to the documents listed in paragraph 26 above, the Committee had before it two notes by the Secretary-General: one concerning initial reports to be submitted by States parties in 1995 (CAT/C/28); the other on second periodic reports to be submitted by States parties in 1995 (CAT/C/29).

37. The Committee was informed that, in addition to the five reports that were scheduled for consideration by the Committee at its fourteenth session (see chap. IV, para. 46), the Secretary-General had received the initial report of Armenia (CAT/C/24/Add.4 and the second periodic reports of Denmark (CAT/C/17/Add.13), Senegal (CAT/C/17/Add.14) and the United Kingdom of Great Britain and Northern Ireland (CAT/C/25/Add.6). He had also received additional information requested by the Committee from Germany (ninth session) Morocco and Peru (thirteenth session) and Switzerland (twelfth session) during the consideration of their respective reports. The revised version of the initial report of Belize, requested for 10 March 1994 by the Committee at its eleventh session (see para. 28 above), had not yet been received.

38. The Committee was informed also about the reminders which had been sent by the Secretary-General before its fourteenth session. It noted that, in spite of 11 reminders sent to Togo, 11 reminders to Uganda, 8 reminders to Guyana, 7 reminders to Guinea and 6 reminders to Brazil, the initial reports of those States parties had not yet been received. The Committee once again strongly

deplored the attitude of those State parties which persisted in not complying with the obligations they had freely assumed under the Convention.

39. The Committee also noted that the initial reports of Malta and Somalia, which were due in 1991, had not yet been received in spite of five reminders to each of those States parties.

40. Furthermore, the Committee was informed that second reminders had been sent by the Secretary-General to Croatia, Estonia, Venezuela, Yemen and Yugoslavia, whose initial reports were due in 1992, and to Benin, Bosnia and Herzegovina, Cape Verde, Latvia and Seychelles whose initial reports were due in 1993. A first reminder had been sent to Cambodia, whose initial report was also due in 1993.

41. With regard to second periodic reports, the Committee was informed that first reminders had been sent by the Secretary-General to China and Tunisia, whose reports were due in 1993.

42. 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.

43. The status of submission of reports by States parties under article 19 of the Convention as at 5 May 1995, the closing date of the fourteenth session of the Committee, appears in annex III to the present report.

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

44. At its thirteenth and fourteenth sessions, the Committee considered initial reports submitted by eight States parties and second periodic reports submitted by four States parties under article 19, paragraph 1, of the Convention. At its thirteenth session, the Committee devoted 12 of the 18 meetings held to the consideration of reports (see CAT/C/SR.191-198 and Add.2, 201-204 and Add.2). The following reports, listed in the order in which they were received by the Secretary-General, were before the Committee at its thirteenth session:

|   |                |
|---|----------------|
| Chile (second periodic report)                  | CAT/C/20/Add.3 |
| Peru (initial report)                           | CAT/C/7/Add.16 |
| Monaco (initial report)                         | CAT/C/21/Add.1 |
| Czech Republic (initial report)                 | CAT/C/21/Add.2 |
| Mauritius (initial report)                      | CAT/C/24/Add.1 |
| Libyan Arab Jamahiriya (second periodic report) | CAT/C/25/Add.3 |
| Morocco (initial report)                        | CAT/C/24/Add.2 |
| Liechtenstein (initial report)                  | CAT/C/12/Add.4 |

45. The Committee agreed, at the request of the Government concerned, to postpone the consideration of the initial report of Mauritius. Subsequently, the Government of Mauritius submitted a new version of the report.

46. At its fourteenth session, the Committee devoted 8 of the 19 meetings held to the consideration of reports submitted by States parties (see CAT/C/SR.210-215, 218 and 219). The following reports, listed in the order in which they were received by the Secretary-General, were before the Committee at its fourteenth session:

|                                      |                      |
|--------------------------------------|----------------------|
| Netherlands (second periodic report) | CAT/C/25/Add.1 and 2 |
| Italy (second periodic report)       | CAT/C/25/Add.4       |
| Guatemala (initial report)           | CAT/C/12/Add.5       |
| Jordan (initial report)              | CAT/C/16/Add.5       |
| Mauritius (initial report)           | CAT/C/24/Add.1 and 3 |

47. The Committee agreed, at the request of the Government concerned, to postpone the consideration of the initial report of Guatemala to its fifteenth session, in November 1995.

48. In accordance with rule 66 of the rules of procedure of the Committee, representatives of all the reporting States were invited to attend the meetings of the Committee at which 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.

49. In accordance with the decision taken by the Committee at its fourth session, 5/ 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 thirteenth and fourteenth sessions. The list of the above-

mentioned reports and the names of the country rapporteurs and their alternates for each of them appear in annex IV to the present report.

50. 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.3);

(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 contents of periodic reports to be submitted by States parties under article 19 of the Convention (CAT/C/14).

51. In accordance with the decision taken by the Committee at its eleventh session, 6/ 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 States parties' reports considered at its thirteenth and fourteenth sessions.

#### Chile

52. The Committee considered the second periodic report of Chile (CAT/C/20/Add.3) at its 191st and 192nd meetings, held on 8 November 1994 (CAT/C/SR.191 and SR.192 and Add.2), and adopted the following conclusions and recommendations.

#### A. Introduction

53. The Committee thanks the Government of Chile for the timely submission of its second periodic report and for the frank and constructive clarifications provided by the Chilean delegation in its oral report.

54. In general, the report is in conformity with the guidelines laid down by the Committee for presenting reports.

#### B. Positive aspects

55. The Committee takes due note of the political will of the Government of Chile to guarantee respect for human rights in the context of the transition from a dictatorship to a democratic regime.

56. The Committee notes with satisfaction that the Government is promoting a series of important changes, both in procedure and in the basic legislation, which will help to prevent the practice of torture.

57. It also regards as positive the implementation of programmes aimed at fully compensating those who have suffered from violations of human rights.

### C. Subjects of concern

58. The Committee notes with concern the existence of a considerable number of complaints of torture and ill treatment at the hands of various law enforcement services, especially the Carabineros and the Investigatory Police, which have not met with an effective response, with the authors of these acts being duly brought to trial.

59. The Committee also considers that some aspects of the legislation in force, such as the rules of the criminal prosecution system and the subjection of civilians to military jurisdiction, are not helpful as far as the prevention of torture is concerned.

### D. Recommendations

60. In a spirit of collaboration, the Committee suggests the adoption of the following measures:

(a) An in-depth review of procedure, especially as regards police powers of detention and the right of the detainee to free access to and communication with family members and legal advisers and a physician whom he trusts;

(b) The advisability of explicitly abolishing those rules, such as automatic obedience, which are not compatible with the Convention;

(c) Making the security forces subordinate to the civil authorities responsible for public safety and the abandonment of all vestiges of the legislation enacted by the military dictatorship;

(d) The advisability of making special provision for the offence of torture, as described in article 1 of the Convention, and making it punishable by a penalty appropriate to its seriousness;

(e) The possibility of withdrawing the existing reservation to the Convention and making declarations to the effect that the State party recognizes the competence of the Committee in the circumstances described in articles 21 and 22 of the Convention.

61. The Committee again expresses its appreciation to the Government of Chile for its readiness to engage in dialogue and in the search for solutions and is grateful for the supply of the legislation which has been enacted and that which will be enacted in the future.

### Peru

62. The Committee considered the initial report of Peru (CAT/C/7/Add.16), which should have been submitted in 1989, at its 193rd and 194th meetings, held on 9 November 1994 (CAT/C/SR.193 and 194 and Add.2), and adopted the following conclusions and recommendations.

### A. Introduction

63. The Committee appreciates the presence of a highly qualified delegation, as well as the clarifications and explanations supplied in both the written and oral reports.



## B. Positive aspects

64. The Committee notes the intention expressed by the delegation to submit all the reports required by international human rights organizations and to respond to all their requests.

65. The Committee takes due note of the intensive campaign to make the armed forces and the police more aware of the need to respect human rights.

66. The Committee is pleased to note the approval of various items of legislation, such as that permitting procurators to visit places of detention in areas where a state of emergency has been declared, that providing for greater flexibility in the procedures relating to terrorism and those which establish new bodies for protecting human rights.

## C. Subjects of concern

67. One cause for serious concern is the large number of complaints from both non-governmental organizations and international agencies or commissions indicating that torture is being used extensively in connection with the investigation of acts of terrorism and that those responsible are going unpunished.

68. The Committee points out that the legislation intended to repress acts of terrorism does not meet the requirements of international agreements concerning a fair, just and impartial trial with minimum safeguards for the rights of the accused (for example, "faceless" judges, serious limitations on the right of defence, lack of opportunity to take proceedings before a court, extension of the period of incommunicado detention, etc.).

69. The Committee is also concerned by the subjection of civilians to military jurisdiction and by the fact that, in practice, the competence of the military courts is being extended as regards cases of abuse of authority.

## D. Recommendations

70. The Committee is aware of the serious difficulties which Peru is experiencing because of the terrorist attacks, which are to be condemned, and hopes that it will succeed in overcoming them.

71. Despite the determination stated by the delegation of Peru, in the Committee's opinion, the legislative and administrative measures adopted in order to comply with the Convention have not been effective in preventing acts of torture, as required by article 2, paragraph 1 of the Convention.

72. At the same time, the requirements of articles 12 and 13 of the Convention concerning the need for a prompt and impartial investigation of all complaints of torture are not being met.

73. Nevertheless, taking into consideration the intentions expressed by the delegation and the fact that the Government has available to it the means necessary to eradicate the scourge of torture, the Committee suggests the adoption of, among others, the following measures:

(a) The procedure relating to terrorist offences should be reviewed for the purpose of establishing a prosecution system which is effective but which preserves the independence and impartiality of the courts and the right of defence, with the elimination of so-called "faceless trials" and the holding of detainees incommunicado;

(b) The military courts should be regulated to prevent them from trying civilians and to restrict their jurisdiction to military offences, by introducing the appropriate legal and constitutional changes;

(c) The Judicature Council and the Ombudsman should start operating as soon as possible;

(d) The activities of the procurators' offices should be strengthened and they should be provided with the means necessary to perform their functions;

(e) The possibility of making the declarations provided for in the Convention in the circumstances described in articles 21 and 22 should be analysed;

(f) Consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness;

(g) The efforts to educate medical and law-enforcement personnel, civil and military, should be intensified, as should the programmes for the full rehabilitation of victims.

#### Monaco

74. The Committee considered the initial report of Monaco (CAT/C/21/Add.1) at its 195th and 196th meetings, held on 10 November 1994 (see CAT/C/195 and 196 and Add.2), and adopted the following conclusions and recommendations.

##### A. Introduction

75. The Committee thanks the Government of Monaco for its report, even though it is very brief and not in conformity with the Committee's guidelines. It also listened with interest to the oral report and clarifications presented by the Monegasque delegation. The Committee wishes to thank the delegation for its replies and for the spirit of open-minded cooperation in which the dialogue was conducted.

##### B. Positive aspects

76. The Committee appreciates the determination of Monaco to guarantee respect for and the protection of human rights through its accession to a number of international and regional instruments for the promotion of such rights.

77. The Committee noted with satisfaction and sets special store by the fact that no governmental or non-governmental body has affirmed the existence of cases of torture within the meaning of article 1 of the Convention.

### C. Recommendations

78. The Committee hopes that a definition of torture as envisaged in the Convention will be incorporated in the legislation of Monaco.

79. The Committee also hopes that the next periodic report, to be submitted by Monaco together with the core document relating to general information on the State party, will be in conformity with the Committee's guidelines regarding the submission of reports.

#### Liechtenstein

80. The Committee considered the initial report of Liechtenstein (CAT/C/12/Add.4) at its 195th and 196th meetings, held on 10 November 1994 (see CAT/C/195 and 196 and Add.2), and adopted the following conclusions and recommendations.

#### A. Introduction

81. The Committee thanks the Government of Liechtenstein for its comprehensive report. It also listened with interest to the oral report and extensive clarifications presented by the delegation of Liechtenstein. The Committee wishes to thank the delegation for its replies and for the spirit of openness and cooperation in which the dialogue was conducted.

#### B. Positive aspects

82. The Committee appreciates the determination of Liechtenstein to guarantee respect for and the promotion of human rights through its accession without reservations to a number of international and regional instruments for the promotion of such rights.

83. The Committee notes with satisfaction that the policy of prevention of torture and other cruel, inhuman or degrading treatment or punishment was successful and sets special store by the fact that no governmental or non-governmental body has affirmed the existence of cases of torture within the meaning of article 1 of the Convention.

### C. Recommendations

84. The Committee hopes that the Liechtenstein authorities will continue their successful efforts to prevent the instances of torture and other cruel, inhuman or degrading treatment or punishment in the territory of the State party.

85. The Committee, while awaiting answers to some of the questions which were raised during the consideration of the report, hopes also that the authorities of Liechtenstein will expeditiously finalize the drafting of the law concerning the granting of asylum to ensure the prompt application of article 3 of the Convention.

#### Czech Republic

86. The Committee considered the initial report of the Czech Republic (CAT/C/21/Add.2) at its 197th and 198th meetings, held on 11 November 1994 (see

CAT/C/SR.197 and 198 and Add.2), and adopted the following conclusions and recommendations.

#### A. Introduction

87. The Czech Republic transmitted its report within five months of its due date, which is quite timely. The Committee notes with satisfaction that the Czech Republic has adopted most of the protections available under the Convention and has developed its own institutions to give effect to its obligations under the Convention.

88. The initial report was not accompanied by the core document providing general information on the State party, as requested in the Committee's guidelines, but apart from this, it met all the reporting requirements of the Convention.

#### B. Positive aspects

89. The Committee is pleased to recognize that the Czech Republic has adopted a definition of torture which is close to that in the Convention and has taken the steps necessary to ensure that it is a crime in that country.

90. The Committee also notes that in the Czech Republic all the necessary democratic institutions and safeguards are in place to ensure the implementation of the Convention.

91. The Committee also takes note of the expeditious and effective way in which the Czech authorities have dealt with allegations of abuse by police and prison officers, have set up a system of compensation and rehabilitation and take their educational responsibilities seriously.

92. The Czech Republic is a good example of a democratic State that has taken its commitments under the Convention seriously, and this is reflected in its institutions and practices.

#### C. Subjects of concern

93. There are no serious matters currently of concern to the Committee regarding implementation by the Czech Republic of the Convention.

#### D. Conclusions and recommendations

94. Even though the Czech Republic has not declared in favour of articles 21 and 22 and maintains its reservation on article 20 of the Convention, the Czech delegation explained that this was due to the weight of business in the legislative and executive fields and in no way reflects a lack of political will to remedy the situation. The Committee is confident that the Czech Republic will move to reform its situation in this regard and looks forward to its second periodic report.

## Libyan Arab Jamahiriya

95. The Committee considered the second periodic report of the Libyan Arab Jamahiriya (CAT/C/25/Add.3) at its 201st and 202nd meetings, held on 15 November 1994 (see CAT/C/SR.201 and 202 and Add.2), and adopted the following conclusions and recommendations.

### A. Introduction

96. The Libyan Arab Jamahiriya submitted its report in a timely manner. The contents of the report were enhanced by a valuable introduction by the Libyan delegation.

### B. Positive aspects

97. The Committee notes with satisfaction that the Libyan Arab Jamahiriya has met its reporting requirements under the Convention.

98. The Committee also notes with satisfaction that the terms of the Convention have been generally incorporated in the domestic law of the Libyan Arab Jamahiriya and, in particular, that the State party has defined a separate crime of torture.

### C. Matters of concern

99. The Committee is concerned that in the Libyan Arab Jamahiriya incommunicado detention continues to create conditions which may lead to violations of the Convention.

100. The Committee is also concerned that allegations of torture in the State party continue to be received from reliable non-governmental organizations which have provided well-founded information in connection with other monitoring activities of the Committee.

### D. Recommendations

101. The Committee recommends that the Libyan authorities guarantee the free access of a person deprived of his liberty to a lawyer, to a doctor of his choice and to his relatives at all stages of detention.

102. The Libyan Government should continue to fight against torture by:  
(i) sending clear messages and instructions to that effect to its police and providing educational programmes to them; (ii) ensuring that those who commit the offence of torture are prosecuted in accordance with the law.

103. The Committee encourages the Libyan Government to consider making the declarations provided for under articles 21 and 22 of the Convention.

104. Finally, the Committee looks forward to the next report and invites the Government of the Libyan Arab Jamahiriya to submit to it replies in writing to those questions which have remained unanswered.

## Morocco

105. The Committee considered the initial report of Morocco (CAT/C/24/Add.2) at its 203rd and 204th meetings, held on 16 November 1994 (CAT/C/SR.203 and 204 and Add.2), and adopted the following conclusions and recommendations.

### A. Introduction

106. The Committee thanks the State party for its report, which was submitted on time and in conformity with the Committee's guidelines. It also thanks the State party for its sincere cooperation in the constructive dialogue conducted with the Committee. It takes note of the information submitted in both the written and oral reports.

### B. Positive aspects

107. The Committee expresses its appreciation of the efforts made by the State party in connection with the revision of the Constitution and the laws and regulations with a view to ensuring that the country's legal system conforms to the provisions of the Convention. These efforts appear to express a real determination to establish the necessary conditions for the promotion and protection of human rights and to prevent the practice of torture and other cruel, inhuman or degrading treatment.

108. It welcomes the establishment of a ministry responsible for human rights.

### C. Subjects of concern

109. The Committee is nevertheless concerned about the allegations received from various non-governmental organizations concerning torture and ill treatment, said to be practised in various places of detention, in particular in police stations. The Committee is also concerned about certain shortcomings relating to the effectiveness of the preventive measures taken to combat torture, in particular the half-heartedness displayed in pursuing inquiries and bringing the authors of acts of torture before the courts, whose independence must be preserved. This situation creates the impression that such offences can be committed with relative impunity, an impunity prejudicial to the application of the provisions of the Convention. The fact that the Convention has not yet been published in the Official Journal is also a cause of concern.

### D. Recommendations

110. The Committee recommends that the State party provide for all forms of torture in its penal legislation so that all the elements of the definition of that offence contained in article 1 of the Convention are fully covered.

111. The Committee also recommends that, for the greater protection of persons arrested, the State party establish procedures for the systematic and effective monitoring of interrogation methods and practices, especially on all police premises, to give effect to the commitments undertaken in accordance with article 11 of the Convention.

112. The Committee further recommends that the State party continue its efforts with a view to further reforming the penal legislation, particularly as regards prison administration and the duration of police detention in cases involving breaches of internal or external State security. The State party should instigate and press forward with serious inquiries into the actions of police officials for the purpose of establishing whether or not acts of torture have been committed and, if the results of these investigations are positive, bring the authors before the courts. At the same time, it should draw up and pass on to the police clear and precise instructions prohibiting all acts of torture or ill treatment.

113. The State party should intensify the education, information and training programmes called for by article 10 of the Convention, for all the officials concerned.

114. The Committee recommends that the State party take all the necessary measures to ensure the effective application of article 14 of the Convention, so that victims of torture may be fully compensated and rehabilitated. Finally, the Committee recommends that the State party have the Convention published forthwith in the Official Journal.

115. The Committee, which appreciates Morocco's ratification of most of the human rights covenants and conventions, hopes that the Moroccan Government will withdraw the reservations entered with regard to article 20 and make the declarations provided for in articles 21 and 22 of the Convention. The Committee also hopes to obtain written replies to all the questions raised, in particular those concerning the persons reported by various non-governmental organizations as having disappeared or as having been detained.

#### Netherlands

116. The Committee considered the second periodic report of the Netherlands (CAT/C/25/Add.1, 2 and 5) at its 210th and 211th meetings, held on 25 April 1995 (CAT/C/SR.210 and 211), and adopted the following conclusions and recommendations.

##### A. Introduction

117. The Kingdom of the Netherlands submitted its three reports (European part of the Kingdom, Antilles and Aruba) partly on time.

118. The Committee thanks the three respective Governments for their comprehensive reports. The reports were not accompanied by the core document providing general information on the State party, as required in the Committee's guidelines (CAT/C/14), but apart from this, they met all the reporting requirements of the Convention.

119. The Committee listened with interest to the oral reports and clarifications of the representatives of the three parts of the Kingdom.

120. The Committee wishes to thank the delegation for its reports and for the spirit of openness and cooperation in which the dialogue was conducted.

## B. Positive aspects

121. The Committee notes with satisfaction that it has received no information about alleged perpetration of torture in any of the three parts of the Kingdom.

122. The Committee also notes that both Antilles and Aruba are preparing special laws to incorporate fully the provisions of the Convention in domestic law.

123. The Committee also notes with satisfaction that, according to the oral information given, force - physical or pharmacological - is no longer used in connection with the expulsion of asylum seekers.

## C. Subjects of concern

124. With regard to the European part of the Kingdom of the Netherlands, the Committee has questions about the way in which compensation provisions apply in practice.

125. With regard to the Netherlands Antilles and Aruba, the Committee is concerned that the new penal legislation appears not to be in force yet and thus it is not clear whether the provisions of the Convention are part of the domestic law.

126. With regard, in particular, to the Netherlands Antilles, the Committee is concerned about the severeness and the relatively high number of cases of police brutality which are described in the Government's report, as well as by information provided to the Committee by non-governmental organizations. The Committee is particularly concerned about the apparent failure of the Netherlands Antilles authorities to investigate fully and deal with such cases.

127. With regard, in particular, to Aruba, the Committee recognizes that conditions in detention places are far from being satisfactory and notes that the Government has acknowledged that it is aware of this situation.

## D. Recommendations

128. The Netherlands Antilles and Aruba should give high priority to speeding up the procedure for the adoption of the act which will incorporate the provisions of the Convention in domestic law.

129. The Netherlands Antilles should take strong measures to bring to an end the ill treatment which reportedly occurs in police stations and to ensure that such allegations are speedily and properly investigated and that those who may be found guilty of acts of ill treatment are prosecuted. In this regard, the Committee would appreciate receiving data concerning the number of investigations by the public prosecutor and the outcome of them.

130. Aruba should take steps to change the situation with regard to conditions in police and prison premises and especially to shorten the period of 10 days in police custody which is allowed under the law.

131. Finally, the Committee is pleased that the Netherlands has agreed to provide in writing additional information in response to the questions on the compensation for victims of torture which were raised by the Committee. The Committee would also appreciate receiving additional information on whether or



not the public prosecutor initiated an investigation to prosecute General Pinochet when he was on the territory of the Netherlands and therefore under its jurisdiction. If the answer is yes, the Committee would like to know on what grounds the investigation was initiated.

### Mauritius

132. The Committee considered the initial report of Mauritius (CAT/C/24/Add.1 and 3) at its 212th and 213th meetings, held on 26 April 1995 (CAT/C/SR.212 and 213), and adopted the following conclusions and recommendations.

#### A. Introduction

133. The Committee thanks the Government of Mauritius for its report, submitted within an appropriate period and prepared in accordance with the Committee's guidelines.

134. In addition, it followed with interest the oral presentation and the clarifications provided. It also wishes to thank the delegation for its replies and the open spirit of cooperation in which the dialogue was conducted.

#### B. Positive aspects

135. The Committee welcomes the efforts by the State party in regard to reviewing the Constitution, laws and regulations to ensure that the country's judicial system is in conformity with the provisions of the Convention.

136. These efforts seem to reflect a genuine will to create the requisite conditions for the promotion and protection of human rights and also to prevent the practice of torture and cruel, inhuman or degrading treatment.

137. It welcomes the existence of an ombudsman and the possibility of using the habeas corpus procedure.

#### C. Subjects of concern

138. The Committee is none the less concerned at allegations received from some non-governmental organizations about acts of torture and ill treatment which are said to be practised on police premises.

139. The Committee is also concerned about certain inadequacies in the adoption of suitable measures for the purpose of officially combating torture, particularly the timidity shown in conducting inquiries and promptly bringing the perpetrators of such acts before the courts.

140. This situation gives the impression of comparative impunity for the perpetrators of these offences, impunity that is detrimental to proper implementation of the provisions of the Convention.

#### D. Recommendations

141. The Committee recommends that the State party should make efforts to incorporate the provisions of the Convention in domestic law for the purposes of adopting and applying domestic enforcement measures.

142. The Committee also recommends that the State party, with a view to ensuring broader protection of persons under arrest, should effectively set up machinery for systematic monitoring of all police premises, to give effect to the commitments undertaken pursuant to article 11 of the Convention.

143. The Committee also recommends that the State party should pursue its efforts to undertake further legislative reforms, more particularly in regard to prison administration, periods of police custody and the right to be attended by a doctor or to be visited by a family member.

144. The Committee recommends that the State party should undertake and press on with inquiries into all actions by police officers, inquiries capable of determining whether acts of torture have taken place and, when the findings of the investigations prove positive, bring the perpetrators before the courts on the one hand, and order and transmit to the police precise and clear instructions to prevent any act of torture, on the other. It recommends that the State party should step up information training programmes for all personnel referred to in article 10 of the Convention.

145. Lastly, the Committee recommends that the State party should take all the requisite measures to ensure effective implementation of article 14 of the Convention for the purpose of full compensation and rehabilitation of the victims of torture or their dependants.

#### Italy

146. The Committee considered the second periodic report of Italy (CAT/C/25/Add.4) at its 214th and 215th meetings, held on 27 April 1995 (CAT/C/SR.214 and 215), and adopted the following conclusions and recommendations.

#### A. Introduction

147. The Committee appreciates the submission of the periodic report of Italy and expresses its thanks for a good oral presentation. It notes, however, that the report does not properly comply with the Committee's guidelines for this kind of report (CAT/C/14), especially in regard to providing data and replies requested previously. In addition, the general report was not accompanied by basic data on the State party, as required by the guidelines. The Committee was none the less able to engage in a constructive dialogue with the delegation that met many of its concerns.

#### B. Positive aspects

148. The Committee welcomes Italy's firm commitment to the protection of human rights, as reflected in the signing of many agreements, both regional and universal.

149. It also notes that a very constructive step has been taken in authorizing the publication of the report prepared by the European Committee for the Prevention of Torture further to a visit to Italy.

150. The significant increase in Italy's contribution to the United Nations Voluntary Fund for Victims of Torture is very gratifying.

151. Also encouraging are the provisions of Law No. 296, pertaining to work by prisoners, the new alternative measures to imprisonment, such as house arrest, and the rules of Law No. 492, relating to the transfer of prisoners.

152. Lastly, the State party is to be congratulated on fully abolishing the death penalty.

#### C. Factors and difficulties impeding implementation

153. Like the Human Rights Committee, this Committee notes something of a tendency to discriminatory treatment by sectors of the police force and prison warders with regard to foreigners, entailing violation of their rights. Furthermore, the existence of a large number of public officials involved in acts of corruption is not a positive contribution.

#### D. Subjects of concern

154. The Committee notes with concern the persistence of cases of ill treatment in prisons by police officers. It even notes a dangerous trend towards some racism, since the victims are either from foreign countries or belong to minorities.

155. Non-governmental organizations of proven reliability have informed the Committee of a series of serious acts of torture, and in some cases deaths, of detainees. The penalties on the members of the forces of law and order are not commensurate with the seriousness of these acts.

156. Similarly, a matter of some concern is the number of unconvicted prisoners, the overcrowding in prisons and the suspension, even temporary, of humanitarian rules on the treatment of prisoners.

#### E. Recommendations

157. The Committee suggests that the State party should:

(a) Continue to examine the possibility of including in its criminal law the concept of torture set out in the Convention;

(b) Better guarantee the right of a victim of torture to be compensated by the State and to provide some programme of rehabilitation for him;

(c) Monitor effective compliance with safeguards during preliminary custody, especially access to a doctor and legal counsel;

(d) Make sure that complaints of ill treatment and torture are promptly and effectively investigated and, where appropriate, impose an appropriate and effective penalty on the persons responsible;

(e) Establish more training programmes for law-enforcement and medical personnel.

158. The Committee also asks to be sent the legal texts that were requested, together with the remaining information asked for by members of the Committee (results of ongoing trials, statistics, judicial organization, etc.) and hopes that the next periodic report will discuss all the measures adopted.

## Jordan

### A. Introduction

159. The Committee considered the initial report of Jordan (CAT/C/16/Add.5) at its 218th and 219th meetings, held on 1 May 1995 (CAT/C/SR.218 and 219), and has adopted the following conclusions and recommendations.

160. The Committee thanks the Government of Jordan for its report, which was due in 1992, for the core document (HRI/CORE/1/Add.18/Rev.1) providing general information on the State party and for the comprehensive explanations presented by the delegation.

161. It notes that the report is not in full conformity with the guidelines established by the Committee (CAT/C/4/Rev.2). It also notes that the report does not contain sufficient information on the effective implementation of the provisions of the Convention.

162. However, the presence of a high-level delegation which provided additional information enabled the Committee to obtain a better understanding of the situation in Jordan with regard to the application of the Convention on its territory.

### B. Positive aspects

163. The Committee welcomes the positive steps undertaken by the Government of Jordan towards the application of the Convention, especially the lifting of the state of emergency and the abolition of martial law in April 1992, the release of political prisoners and the institution of the right to appeal fully against awards and decisions of the State Security Court in questions of both fact and law.

164. The Committee notes also with satisfaction the new Political Parties Act of October 1992, the new law on press and publications, the ratification by Jordan of the Convention on the Rights of the Child, the creation of a national commission for human rights and the establishment in Jordan of sections of the Arab Organization for Human Rights and Amnesty International, which illustrate the positive steps and trend towards the promotion of human rights in general and towards the implementation of the Convention against Torture, in particular.

### C. Subjects of concern

165. The Committee notes that the Jordanian Constitution does not contain specific provisions as to the relationship between international conventions and domestic laws. Accordingly, there is a need to incorporate the Convention in the legal system of Jordan to ensure its correct and prompt application.

166. The Committee is concerned that the definition of the act of torture as specified by article 1 of the Convention is not incorporated in Jordanian legislation. Current Jordanian criminal law does not cover all cases of torture and ill treatment, as provided for in the Convention.

167. The Committee is deeply concerned that a number of allegations of torture have been made since Jordan acceded to the Convention. Such allegations appear to be rarely subjected to independent and partial investigations. The Committee is further concerned that during 1993 and 1994 political detainees were sentenced to death or imprisonment in trials before the State Security Court on the basis of confessions allegedly extracted after torture.

168. The Committee regrets that the headquarters of the General Intelligence Department has been recognized as an official prison, that the armed forces officers are granted the capacity of public prosecutors, that they have the capacity of detaining suspects incommunicado, whether military persons or civilians, until the end of their interrogation for periods of up to six months, and that detainees are deprived of access to judges, lawyers or doctors.

169. The Committee expresses concern about the continuing application of the death penalty, as well as corporal punishment, which could constitute in itself a violation in terms of the Convention.

170. The Committee is also concerned that there are allegations that individuals have been expelled from Jordan to countries where there are substantial grounds for believing that they would be in danger of being subjected to torture in contravention of article 3 of the Convention.

171. The Committee notes that there does not seem to be in the State party any comprehensive programme of education for members of the police and security forces, dealing with Jordan's obligations under the Convention. Similarly, no specific educational programmes for medical personnel appears to be in place. These programmes would be useful, in particular given the fact that so many refugees from other countries are located in Jordan.

#### D. Recommendations

172. The Committee recommends that the State party review its position concerning articles 21 and 22 of the Convention.

173. The Committee expects the State party to undertake the necessary legal measures to ensure the incorporation of the Convention in national legislation and to ensure its prompt and effective application.

174. The Committee urges the State party to consider making torture a specific criminal offence. In addition, it suggests that the State party further strengthen measures to protect the rights of detainees, especially their access to judges, lawyers and doctors of their choice. It also recommends that the State party promptly investigate allegations of torture and ill treatment and ensure that appropriate penalties are applied whenever such offences are committed; prevent the commission of such acts through efforts to ensure the stricter observance of regulations relating to the treatment of detainees and offenders; and reduce the length of preventive detention, taking into account its principle of presumption of innocence and the complexity of investigation.

175. The Committee expects the Jordanian authorities to consider abolishing exceptional courts such as the State security courts and allow the ordinary judiciary to recover full criminal jurisdiction in the country.

176. The Committee expects that the detention and interrogation functions will be separated and that the supervision of any detention centre will be effectively carried out by officials rather than those who are in charge of the detention centres.

177. The Committee expects Jordan to review its policy relating to corporal punishment.

178. The authorities should follow procedures which would effectively ensure that no one is expelled to a country where there are substantial grounds for believing that he would be in danger of being subjected to torture.

179. The Committee expects also that educational programmes will be started as a matter of urgency for law enforcement and medical personnel, focusing on the obligations laid down in the Convention and on how evidence of torture may be recognized. In the case of medical personnel, such educational programmes should include methods for the rehabilitation of victims of torture.

180. The Committee stresses that further measures should be taken to ensure that the provisions of the Convention are made more widely known to the public.

181. The Committee recommends that the Jordanian authorities ensure that the report submitted by the State party and the comments of the Committee are disseminated as widely as possible in order to encourage the involvement of all sectors of society concerned in the implementation of human rights.

182. The Committee would appreciate receiving in the next report information on these matters, as well as replies to the questions raised by the Committee which have remained unanswered.

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

183. 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 concerned.

184. 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.

185. 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.

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

| <u>Sessions</u> | <u>Number of closed meetings</u> |
|-----------------|----------------------------------|
| Fourth          | 4                                |
| Fifth           | 4                                |
| Sixth           | 3                                |
| Seventh         | 2                                |
| Eighth          | 3                                |
| Ninth           | 3                                |
| Tenth           | 8                                |
| Eleventh        | 4                                |
| Twelfth         | 4                                |
| Thirteenth      | 3                                |
| Fourteenth      | 4                                |

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

188. However, in accordance with article 20, paragraph 5 of the Convention, the Committee, at its 172nd meeting, on 19 November 1993, publicly announced that, after consultations with the State party concerned in April 1993, it had decided, on 9 November 1993, to include a summary account of the results of the proceedings relating to its inquiry on Turkey in its annual report to the States parties and to the General Assembly. 7/

VI. CONSIDERATION OF COMMUNICATIONS UNDER  
ARTICLE 22 OF THE CONVENTION

189. 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-six out of 88 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, Denmark, Ecuador, Finland, France, Greece, Hungary, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Togo, Tunisia, Turkey, Uruguay, Venezuela and Federal Republic of Yugoslavia (Serbia and Montenegro). 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.

190. 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.

191. In carrying out its work under article 22 of the Convention, the Committee may be assisted by a working group of not more than five of its members, which 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). At its thirteenth session, the Committee decided to amend the rules of procedure, in order to make it possible to designate special rapporteurs from among its members to assist in the handling of communications. This allows the Committee to expedite the processing of communications by taking procedural decisions (under rule 108) during intersessional periods.

192. 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 has decided to invite the States parties concerned, if they have no objections to the admissibility of the communications, immediately to furnish their observations on the merits of the case.

193. 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 of the rules of procedure of the Committee, para. 3) 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.

194. 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.

195. During the time covered by the present report (thirteenth and fourteenth sessions) the Committee had 19 communications before it for consideration (Nos. 6/1990, 10/1993, 11/1993, 12/1993, 13/1993, 14/1994, 15/1994, 16/1994, 17/1994, 18/1994, 19/1994, 20/1994, 21/1995, 22/1995, 23/1995, 24/1995, 25/1995, 26/1995 and 27/1995).

196. At its thirteenth session, the Committee adopted its Views with regard to communication No. 15/1994 (Khan v. Canada). The Committee found that, in the specific circumstances of the author's case, the expulsion of the author to Pakistan would violate Canada's obligation under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. The text of the Views is reproduced in annex V to the present report.

197. Also at its thirteenth session, the Committee declared inadmissible communication No. 10/1993 (A.E. & C.B. v. Spain), for failure to exhaust domestic remedies, since the allegations of torture were under judicial investigation. The Committee further declared inadmissible communications Nos. 17/1994 (X v. Switzerland) and 18/1994 (Y v. Switzerland) because they lacked the minimum substantiation that would render them compatible with article 22 of the Convention. The text of these decisions is reproduced in annex V to the present report.

198. The Committee decided to suspend the consideration of communications Nos. 11/1993 and 12/1993, awaiting the outcome of a reconsideration by the State party concerned of the authors' requests to be allowed to remain in its territory, as they claim to be in danger of being subjected to torture in case of forced return to their country of origin.

199. At its fourteenth session, the Committee adopted its Views with regard to communication No. 6/1990 (Parot v. Spain). On the basis of the information provided by the parties, the Committee found that Parot's complaint that he had been tortured upon arrest had in fact been examined and rejected by the judicial authorities during the criminal trial against him. Consequently, the Committee concluded that no violation of the Convention had been shown. The text of the Views is reproduced in annex V to the present report.

200. Also at its fourteenth session, the Committee declared inadmissible communications Nos. 22/1995 (M.A. v. Canada) and 24/1995 (A.E. v. Switzerland), for failure to exhaust domestic remedies. Both cases concerned article 3 of the Convention. The Committee also declared inadmissible communication 14/1994 (B.M'B. v. Tunisia), as it found that the author had not sufficiently justified his acting on the victim's behalf. The text of the decisions is reproduced in annex V to the present report.

201. The Committee decided to suspend the consideration of communication No. 19/1994, awaiting the outcome of a review procedure pending before the relevant domestic authorities.

## VII. AMENDMENTS TO THE RULES OF PROCEDURE OF THE COMMITTEE

### Thirteenth session

202. At a private meeting, held on 17 November 1994, the Committee adopted amendments to rules 106 and 108 of its rules of procedure (see CAT/C/3/Rev.1), which concerned the designation of special rapporteurs from among its members to assist it in the handling of communications received under article 22 of the Convention. The text of the amended rules appears in annex VI to the present report.

### Fourteenth session

203. The Committee held a preliminary discussion on further amendments to its rules of procedure at a private meeting on 28 April 1995. It decided to resume consideration of this item at its fifteenth session, in November 1995.

VIII. FUTURE MEETINGS OF THE COMMITTEE

204. 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.

205. 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 1996 and 1997.

206. At its 225th meeting, on 4 May 1995, the Committee decided to hold its regular sessions for the next biennium at the United Nations Office at Geneva on the following dates:

|                     |                         |
|---------------------|-------------------------|
| Sixteenth session   | 29 April to 10 May 1996 |
| Seventeenth session | 11 to 22 November 1996  |
| Eighteenth session  | 28 April to 9 May 1997  |
| Nineteenth session  | 10 to 21 November 1997  |

207. In addition, the Committee recalled that, in accordance with rule 1 of its rules of procedure, it should hold meetings as might be required for the satisfactory performance of its functions.

208. The Committee expressed 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.

209. The Committee therefore decided to request the General Assembly to authorize the Secretary-General to schedule an additional regular session of one week's duration each year, beginning in 1996.

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

210. 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.

211. Since the Committee holds 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.

212. Accordingly, at its 225th and 226th meetings held on 4 and 5 May 1995, the Committee considered the draft report on its activities at the thirteenth and fourteenth sessions (CAT/C/XIV/CRP.1 and Add.1-10). 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 fifteenth session (13-24 November 1995) will be included in the annual report of the Committee for 1996.

Notes

- 1/ A/CONF.157/TBB/4, paras. 8 and 9.
- 2/ See A/49/537, annex, para. 45.
- 3/ A/49/537, annex.
- 4/ See Official Records of the General Assembly, Forty-ninth Session, Supplement No. 44 (A/49/44), paras. 148-158.
- 5/ Ibid., Forty-fifth Session, Supplement No. 44 (A/45/44), paras. 14-16.
- 6/ Ibid., Forty-ninth Session, Supplement No. 44 (A/49/44), paras. 12 and 13.
- 7/ Ibid., Forty-eighth Session, Supplement No. 44A (A/48/44/Add.1).

## ANNEX I

List of States which have signed, ratified or acceded to  
the Convention against Torture and Other Cruel, Inhuman  
or Degrading Treatment or Punishment as at 5 May 1995

| <u>State</u>           | <u>Date of signature</u> | <u>Date of receipt<br/>of the instrument<br/>of ratification<br/>or accession</u> |
|------------------------|--------------------------|---|
| Afghanistan            | 4 February 1985          | 1 April 1987  |
| Albania                |                          | 11 May 1994 <u>b/</u>   |
| Algeria <u>a/</u>      | 26 November 1985         | 12 September 1989   |
| Antigua and Barbuda    |                          | 19 July 1993 <u>b/</u>  |
| Argentina <u>a/</u>    | 4 February 1985          | 24 September 1986   |
| Armenia                |                          | 13 September 1993 <u>b/</u>   |
| Australia <u>a/</u>    | 10 December 1985         | 8 August 1989   |
| Austria <u>a/</u>      | 14 March 1985            | 29 July 1987  |
| Belarus                | 19 December 1985         | 13 March 1987   |
| Belgium                | 4 February 1985          |   |
| Belize                 |                          | 17 March 1986 <u>b/</u>   |
| Benin                  |                          | 12 March 1992 <u>b/</u>   |
| Bolivia                | 4 February 1985          |   |
| Bosnia and Herzegovina |                          | 6 March 1992 <u>c/</u>  |
| Brazil                 | 23 September 1985        | 28 September 1989   |
| Bulgaria <u>a/</u>     | 10 June 1986             | 16 December 1986  |
| Burundi                |                          | 18 February 1993 <u>b/</u>  |
| Cambodia               |                          | 15 October 1992 <u>b/</u>   |
| Cameroon               |                          | 19 December 1986 <u>b/</u>  |
| Canada <u>a/</u>       | 23 August 1985           | 24 June 1987  |
| Cape Verde             |                          | 4 June 1992 <u>b/</u>   |
| 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  |
| Croatia <u>a/</u>      |                          | 8 October 1991 <u>c/</u>  |
| Cuba                   | 27 January 1986          |   |
| Cyprus <u>a/</u>       | 9 October 1985           | 18 July 1991  |
| Czech Republic         |                          | 1 January 1993 <u>c/</u>  |
| Denmark <u>a/</u>      | 4 February 1985          | 27 May 1987   |
| Dominican Republic     | 4 February 1985          |   |

| <u>State</u>            | <u>Date of signature</u> | <u>Date of receipt<br/>of the instrument<br/>of ratification<br/>or accession</u> |
|-------------------------|--------------------------|---|
| Ecuador <u>a/</u>       | 4 February 1985          | 30 March 1988   |
| Egypt                   |                          | 25 June 1986 <u>b/</u>  |
| Estonia                 |                          | 21 October 1991 <u>b/</u>   |
| Ethiopia                |                          | 14 March 1994 <u>b/</u>   |
| Finland <u>a/</u>       | 4 February 1985          | 30 August 1989  |
| France <u>a/</u>        | 4 February 1985          | 18 February 1986  |
| Gabon                   | 21 January 1986          |   |
| Gambia                  | 23 October 1985          |   |
| Georgia                 |                          | 26 October 1994 <u>b/</u>   |
| Germany                 | 13 October 1986          | 1 October 1990  |
| Greece <u>a/</u>        | 4 February 1985          | 6 October 1988  |
| Guatemala               |                          | 5 January 1990 <u>b/</u>  |
| Guinea                  | 30 May 1986              | 10 October 1989   |
| Guyana                  | 25 January 1988          | 19 May 1988   |
| Hungary <u>a/</u>       | 28 November 1986         | 15 April 1987   |
| Iceland                 | 4 February 1985          |   |
| Indonesia               | 23 October 1985          |   |
| Ireland                 | 28 September 1992        |   |
| Israel                  | 22 October 1986          | 3 October 1991  |
| Italy <u>a/</u>         | 4 February 1985          | 12 January 1989   |
| Jordan                  |                          | 13 November 1991 <u>b/</u>  |
| Latvia                  |                          | 14 April 1992 <u>b/</u>   |
| Libyan Arab Jamahiriya  |                          | 16 May 1989 <u>b/</u>   |
| Liechtenstein <u>a/</u> | 27 June 1985             | 2 November 1990   |
| Luxembourg <u>a/</u>    | 22 February 1985         | 29 September 1987   |
| Malta <u>a/</u>         |                          | 13 September 1990 <u>b/</u>   |
| Mauritius               |                          | 9 December 1992 <u>b/</u>   |
| Mexico                  | 18 March 1985            | 23 January 1986   |
| Monaco <u>a/</u>        |                          | 6 December 1991 <u>b/</u>   |
| Morocco                 | 8 January 1986           | 21 June 1993  |
| Namibia                 |                          | 28 November 1994 <u>b/</u>  |
| Nepal                   |                          | 14 May 1991 <u>b/</u>   |
| Netherlands <u>a/</u>   | 4 February 1985          | 21 December 1988  |
| New Zealand <u>a/</u>   | 14 January 1986          | 10 December 1989  |
| Nicaragua               | 15 April 1985            |   |

| <u>State</u>   | <u>Date of signature</u> | <u>Date of receipt of the instrument of ratification or accession</u> |
|--|--------------------------|---|
| Nigeria  | 28 July 1988             |   |
| Norway <u>a/</u>   | 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 1986 <u>b/</u>  |
| Poland <u>a/</u>   | 13 January 1986          | 26 July 1989  |
| Portugal <u>a/</u>   | 4 February 1985          | 9 February 1989   |
| Republic of Korea  |                          | 9 January 1995 <u>b/</u>  |
| Romania  |                          | 18 December 1990 <u>b/</u>  |
| Russian Federation <u>a/</u>                                   | 10 December 1985         | 3 March 1987  |
| Senegal  | 4 February 1985          | 21 August 1986  |
| Seychelles   |                          | 5 May 1992 <u>b/</u>  |
| Sierra Leone   | 18 March 1985            |   |
| Slovakia   |                          | 29 May 1993 <u>b/</u>   |
| Slovenia <u>a/</u>   |                          | 16 July 1993 <u>b/</u>  |
| Somalia  |                          | 24 January 1990 <u>b/</u>   |
| South Africa   | 29 January 1993          |   |
| Spain <u>a/</u>  | 4 February 1985          | 21 October 1987   |
| Sri Lanka  |                          | 3 January 1994 <u>b/</u>  |
| Sudan  | 4 June 1986              |   |
| Sweden <u>a/</u>   | 4 February 1985          | 8 January 1986  |
| Switzerland <u>a/</u>  | 4 February 1985          | 2 December 1986   |
| Tajikistan   |                          | 11 January 1995 <u>b/</u>   |
| The Former Yugoslav Republic of Macedonia                      |                          | 12 December 1994 <u>c/</u>  |
| Togo <u>a/</u>   | 25 March 1987            | 18 November 1987  |
| Tunisia <u>a/</u>  | 26 August 1987           | 23 September 1988   |
| Turkey <u>a/</u>   | 25 January 1988          | 2 August 1988   |
| Uganda   |                          | 3 November 1986 <u>b/</u>   |
| Ukraine  | 27 February 1986         | 24 February 1987  |
| United Kingdom of Great Britain and Northern Ireland <u>d/</u> | 15 March 1985            | 8 December 1988   |
| United States of America <u>d/</u>                             | 18 April 1988            | 21 October 1994   |
| Uruguay <u>a/</u>  | 4 February 1985          | 24 October 1986   |
| Venezuela <u>a/</u>  | 15 February 1985         | 29 July 1991  |

| <u>State</u>         | <u>Date of signature</u> | <u>Date of receipt<br/>of the instrument<br/>of ratification<br/>or accession</u> |
|----------------------|--------------------------|---|
| Yemen                |                          | 5 November 1991 <u>b/</u>   |
| Yugoslavia <u>a/</u> | 18 April 1989            | 10 September 1991   |

---

a/ Made the declaration under articles 21 and 22 of the Convention.

b/ Accession.

c/ Succession.

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



## ANNEX II

Membership of the Committee against Torture  
(1995)

| <u>Name of member</u>          | <u>Country of nationality</u> | <u>Term expires on 31 December</u> |
|--------------------------------|-------------------------------|------------------------------------|
| Mr. Peter Thomas BURNS         | Canada                        | 1995                               |
| Mr. Alexis DIPANDA MOUELLE     | Cameroon                      | 1997                               |
| Mr. Fawzi EL IBRASHI           | Egypt                         | 1995                               |
| Mr. Ricardo GIL LAVEDRA        | Argentina                     | 1995                               |
| Mrs. Julia ILIOPOULOS-STRANGAS | Greece                        | 1997                               |
| Mr. Hugo LORENZO               | Uruguay                       | 1995                               |
| Mr. Mukunda REGMI              | Nepal                         | 1997                               |
| Mr. Habib SLIM                 | Tunisia                       | 1995                               |
| Mr. Bent SØRENSEN              | Denmark                       | 1997                               |
| Mr. Alexander M. YAKOVLEV      | Russian Federation            | 1997                               |

## ANNEX III

Status of submission of reports by States parties under article 19  
of the Convention as at 5 May 1995

A. Initial reportsInitial reports due in 1988 (27)

| <u>State party</u>            | <u>Date of entry<br/>into force</u> | <u>Initial report<br/>date due</u> | <u>Date of submission</u> | <u>Symbol</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                       | 15/2/89 & 25/4/91         | 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                       | 26/7/88 & 20/11/90        | CAT/C/5/Add.5 & 23                  |
| France                        | 26 June 1987                        | 25 June 1988                       | 30 June 1988              | CAT/C/5/Add.2                       |
| German Democratic<br>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                       | 10/8/88 & 13/2/90         | 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                       | 26/7/88 & 28/4/89         | 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<br>(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                       | 6/6/91 & 5/12/91          | CAT/C/5/Add.27 & 30                 |

Initial reports due in 1989 (10)

| <u>State party</u>                   | <u>Date of entry<br/>into force</u> | <u>Initial report<br/>date due</u> | <u>Date of submission</u>      | <u>Symbol</u>           |
|--------------------------------------|-------------------------------------|------------------------------------|--------------------------------|-------------------------|
| Chile                                | 30 October 1988                     | 29 October 1989                    | 21/9/89 & 5/11/90              | 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                     | 24/4/89 & 28/8/90              | CAT/C/7/Add.1 & 10      |
| Czech and Slovak<br>Federal Republic | 6 August 1988                       | 5 August 1989                      | 21/11/89 & 14/5/91             | CAT/C/7/Add.4 & 12      |
| Ecuador                              | 29 April 1988                       | 28 April 1989                      | 27/6/90 & 28/2/91<br>& 26/9/91 | 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                      | 9/11/92 & 22/2/94              | 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           |

Initial reports due in 1990 (11)

| <u>State party</u>   | <u>Date of entry<br/>into force</u> | <u>Initial report<br/>date due</u> | <u>Date of submission</u> | <u>Symbol</u>            |
|--|-------------------------------------|------------------------------------|---------------------------|--------------------------|
| Algeria  | 12 October 1989                     | 11 October 1990                    | 13 February 1991          | CAT/C/9/Add.5            |
| Australia  | 7 September 1989                    | 6 September 1990                   | 27/8/91 & 11/6/92         | 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<br>Jamahiriya                                  | 15 June 1989                        | 14 June 1990                       | 14/5/91 & 27/8/92         | CAT/C/9/Add.7 & 12/Rev.1 |
| Netherlands  | 20 January 1989                     | 19 January 1990                    | 14/3, 11/9 & 13/9/90      | 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<br>Great Britain and<br>Northern Ireland | 7 January 1989                      | 6 January 1990                     | 22/3/91-30/4/92           | CAT/C/9/Add.6,10 & 14    |

Initial reports due in 1991 (7)

| <u>State party</u> | <u>Date of entry<br/>into force</u> | <u>Initial report<br/>date due</u> | <u>Date of submission</u> | <u>Symbol</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           | CAT/C/12/Add.5 |
| Liechtenstein      | 2 December 1990                     | 1 December 1991                    | 5 August 1994             | CAT/C/12/Add.4 |
| Malta              | 13 October 1990                     | 12 October 1991                    |                           |                |
| 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                   |                           |                |

Initial reports due in 1992 (10)

| <u>State party</u> | <u>Date of entry<br/>into force</u> | <u>Initial report<br/>date due</u> | <u>Date of submission</u> | <u>Symbol</u>  |
|--------------------|-------------------------------------|------------------------------------|---------------------------|----------------|
| Croatia            | 8 October 1991                      | 7 October 1992                     |                           |                |
| 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                     |                           |                |

Initial reports due in 1993 (8)

| <u>State party</u>        | <u>Date of entry<br/>into force</u> | <u>Initial report<br/>date due</u> | <u>Date of submission</u> | <u>Symbol</u>  |
|---------------------------|-------------------------------------|------------------------------------|---------------------------|----------------|
| Benin                     | 11 April 1992                       | 10 April 1993                      |                           |                |
| Bosnia and<br>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                        |                           |                |

Initial reports due in 1994 (8)

| <u>State party</u>  | <u>Date of entry<br/>into force</u> | <u>Initial report<br/>date due</u> | <u>Date of submission</u> | <u>Symbol</u>      |
|---------------------|-------------------------------------|------------------------------------|---------------------------|--------------------|
| Antigua and Barbuda | 18 August 1993                      | 17 August 1994                     |                           |                    |
| Armenia             | 13 October 1993                     | 12 October 1994                    | 20 April 1995             | CAT/C/24/Add.4     |
| Burundi             | 20 March 1993                       | 19 March 1994                      |                           |                    |
| Costa Rica          | 11 December 1993                    | 10 December 1994                   |                           |                    |
| Mauritius           | 8 January 1993                      | 7 January 1994                     | 10/5/94 & 1/3/95          | 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                     |                           |                    |

Initial reports due in 1995 (6)

| <u>State party</u>          | <u>Date of entry<br/>into force</u> | <u>Initial report<br/>date due</u> | <u>Date of submission</u> | <u>Symbol</u> |
|-----------------------------|-------------------------------------|------------------------------------|---------------------------|---------------|
| Albania                     | 10 June 1994                        | 9 June 1995                        |                           |               |
| Ethiopia                    | 13 April 1994                       | 12 April 1995                      |                           |               |
| Georgia                     | 25 November 1994                    | 24 November 1995                   |                           |               |
| Namibia                     | 28 December 1994                    | 27 December 1995                   |                           |               |
| Sri Lanka                   | 2 February 1994                     | 1 February 1995                    |                           |               |
| United States<br>of America | 28 December 1994                    | 27 December 1995                   |                           |               |

B. Second periodic reports\*

Second periodic reports due in 1992 (26)

| <u>State party</u> | <u>First supplementary<br/>report<br/>date due</u> | <u>Date of submission</u> | <u>Symbol</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                                       |                           |                 |
| Hungary            | 25 June 1992                                       | 23 September 1992         | CAT/C/17/Add.8  |
| Luxembourg         | 28 October 1992                                    |                           |                 |
| Mexico             | 25 June 1992                                       | 21 July 1992              | CAT/C/17/Add.3  |
| 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                                       |                           |                 |
| 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                                       |                           |                 |
| Ukraine            | 25 June 1992                                       | 31 August 1992            | CAT/C/17/Add.4  |
| Uruguay            | 25 June 1992                                       |                           |                 |

Second periodic reports due in 1993 (9)

| <u>State party</u> | <u>Second periodic<br/>report<br/>date due</u> | <u>Date of submission</u> | <u>Symbol</u>  |
|--------------------|--|---------------------------|----------------|
| Chile              | 29 October 1993                                | 16 February 1994          | CAT/C/20/Add.3 |
| China              | 2 November 1993                                |                           |                |
| Colombia           | 6 January 1993                                 |                           |                |
| 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                                  |                           |                |
| Tunisia            | 22 October 1993                                |                           |                |
| Turkey             | 31 August 1993                                 |                           |                |

---

\* 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.

Second periodic reports due in 1994 (11)

| <u>State party</u>   | <u>Second periodic<br/>report<br/>date due</u> | <u>Date of submission</u>     | <u>Symbol</u>         |
|--|--|-------------------------------|-----------------------|
| Algeria  | 11 October 1994                                |                               |                       |
| Australia  | 6 September 1994                               |                               |                       |
| Brazil   | 27 October 1994                                |                               |                       |
| Finland  | 28 September 1994                              |                               |                       |
| 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                                | 14/4/94, 16/6/94 &<br>27/3/95 | CAT/C/25/Add.1, 2 & 5 |
| Poland   | 24 August 1994                                 |                               |                       |
| Portugal   | 10 March 1994                                  |                               |                       |
| United Kingdom of Great<br>Britain and Northern<br>Ireland | 6 January 1994                                 | 25 March 1995                 | CAT/C/25/Add.6        |

Second periodic reports due in 1995 (7)

| <u>State party</u> | <u>Second periodic<br/>report<br/>date due</u> | <u>Date of submission</u> | <u>Symbol</u> |
|--------------------|--|---------------------------|---------------|
| Germany            | 30 October 1995                                |                           |               |
| Guatemala          | 3 February 1995                                |                           |               |
| Liechtenstein      | 1 December 1995                                |                           |               |
| Malta              | 12 October 1995                                |                           |               |
| New Zealand        | 8 January 1995                                 |                           |               |
| Paraguay           | 10 April 1995                                  |                           |               |
| Somalia            | 22 February 1995                               |                           |               |

## ANNEX IV

Country rapporteurs and alternate rapporteurs for each of  
the reports of States parties considered by the Committee  
at its thirteenth and fourteenth sessions

A. Thirteenth session

| <u>Report</u>   | <u>Rapporteur</u>   | <u>Alternate</u>         |
|---|---------------------|--------------------------|
| Chile:<br>second periodic report<br>(CAT/C/20/Add.3)                  | Mr. Gil Lavedra     | Mr. Lorenzo              |
| Czech Republic:<br>initial report<br>(CAT/C/21/Add.2)                 | Mr. Burns           | Mr. Yakovlev             |
| Libyan Arab Jamahiriya:<br>second periodic report<br>(CAT/C/25/Add.3) | Mr. Sørensen        | Mr. Burns                |
| Liechtenstein:<br>initial report<br>(CAT/C/12/Add.4)                  | Mr. El Ibrashi      | Mr. Yakovlev             |
| Monaco:<br>initial report<br>(CAT/C/21/Add.1)                         | Mr. El Ibrashi      | Mrs. Iliopoulos-Strangas |
| Morocco:<br>initial report<br>(CAT/C/24/Add.2)                        | Mr. Dipanda Mouelle | Mr. Sørensen             |
| Peru:<br>initial report<br>(CAT/C/7/Add.16)                           | Mr. Gil Lavedra     | Mr. Lorenzo              |

B. Fourteenth session

| <u>Report</u>  | <u>Rapporteur</u>   | <u>Alternate</u>         |
|--|---------------------|--------------------------|
| Italy:<br>second periodic report<br>(CAT/C/25/Add.4)           | Mr. Gil Lavedra     | Mrs. Iliopoulos-Strangas |
| Jordan:<br>initial report<br>(CAT/C/16/Add.5)                  | Mr. El Ibrashi      | Mr. Burns                |
| Mauritius:<br>initial report<br>(CAT/C/24/Add.1 & 3)           | Mr. Dipanda Mouelle | Mr. Regmi                |
| Netherlands:<br>second periodic report<br>(CAT/C/25/Add.1 & 2) | Mr. Sørensen        | Mr. Yakovlev             |

Annex V

Decisions of the Committee against Torture  
under article 22 of the Convention

A. Thirteenth session

Communication No. 10/1993

Submitted by: A. E. M. and C. B. L. (parents of the alleged victims)

Alleged victims: J. E. and E. B.

State party: Spain

Date of communication: 2 February 1993

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

Meeting on 14 November 1994,

Adopts the following:

Decision on admissibility

1. The authors of the initial communication are A. E. M. and C. B. L., citizens of Spain residing in Santurce in the Basque province, writing on behalf of their son J. E. and his wife E. B., who are currently detained at the Spanish prisons of Orense and Albacete, respectively. By power of attorney of 31 December 1993, Mr. E. authorized his parents to act on his behalf and on behalf of his wife.

The facts as submitted by the authors:

2.1 The authors, who reside in the same apartment complex as did the alleged victims, claim that on 29 January 1992, at six in the morning, members of the Spanish police blew up the door of J. E.'s apartment and arrested him and his wife in their bedroom. J. E. was taken to the Guardia Civil in Bilbao and later Madrid and kept incommunicado for five days, during which he was allegedly subjected to torture and ill treatment, including beatings to the head, electrical shocks to the head, testicles and other parts of the body. His head was allegedly put into a plastic bag until he had almost been asphyxiated. His wife remained in the apartment while the police officers carried out a search, which lasted until approximately 9.30 in the morning, at which time she too was taken into custody. Upon arrival at the police station, she was allegedly hooded and left in a room for a long period of time, she was undressed by force and handcuffed. On 30 January she and her husband were driven to Madrid, where beatings and electric shocks allegedly continued during 96 hours of intermittent interrogation. As a consequence of the maltreatment her menstrual period commenced two weeks ahead of time, but she was not allowed to clean herself. Meanwhile Mr. E. was allegedly hung upside down from a lamp, until he lost consciousness, and a Guardia Civil officer forced a revolver barrel into his mouth and shot, without a bullet. Psychotropic drugs were allegedly

administered to him with his food, with the result that he started to hallucinate.

2.2 With regard to the exhaustion of domestic remedies, it is stated that the alleged victims made reference to the alleged tortures when they were brought before Judge I. M. C. It is reported that once J. E. removed his shoe in front of the judge in order to show the black points left by the instruments utilized when administering electric shocks. The authors appeal to the Committee against Torture with the specific complaint that the competent judicial authorities in Spain, in particular the judges and forensic experts, have failed to investigate the alleged violations, thus permitting the torturers to operate with impunity.

2.3 During the period of detention of the alleged victims and of 14 other persons in Bilbao, an official of the World Organization against Torture wanted to visit them, but permission was reportedly denied.

2.4 On 12 November 1993 Mr. E. was allegedly subjected to ill treatment at Orense prison. An official investigation is in progress.

State party's observations:

3.1 By submissions of 1 September, 17 December 1993, 24 January and 19 April 1994, the State party argues that the communication is inadmissible under article 22, paragraph 5 (b), of the Convention, because the authors have not exhausted domestic remedies. The State party states that the authors have seven lawyers and that they did not file any complaint with the Spanish authorities, as provided for under Spanish law. However, the State party submits that Spanish courts started ex officio investigations, even if the alleged victims did not do so. An ex officio investigation into the possible ill treatment of Mrs. E. was conducted under case No. 205/92, including through the examination of contemporary medical reports. The Juzgado de Instrucción No. 44 invited Mrs. E. to participate in this judicial investigation, but she declined. The investigation failed to reveal any misconduct on the part of the Guardia Civil and was closed in January 1993.

3.2 With regard to the alleged ill treatment of Mr. E. on 12 November 1993, the State party submits that Mr. E. filed a complaint with the Juzgado de Guardia de Leon on 27 November 1993, 15 days after the alleged events. The matter is currently under judicial investigation under No. 865/93. The State party forwards copies of the relevant documents.

3.3 As a further ground for inadmissibility, the State party refers to the authors' submission to the effect that the same complaint had been forwarded to the European Commission of Human Rights and to the European Committee for the Prevention of Torture, both in Strasbourg. Examination by these bodies would render the communication inadmissible under article 22, paragraph 5 (a), of the Convention.

3.4 The State party denies the allegations that Mr. and Mrs. E. were subjected to torture or ill treatment upon their arrest in January 1992 or subsequently during their detention. It submits copies of the reports of the medical doctors who examined them every day during the first five days of detention, as well as subsequent reports.



Author's comments:

4.1 With regard to the simultaneous submission of the same matter to two European instances of investigation or settlement, the authors claim not to know whether those bodies are currently investigating the cases of Mr. and Mrs. E.

4.2 With regard to the exhaustion of domestic remedies, the authors refer to the cases No. 205/92 concerning Mrs. E., before the Juzgado de Instrucción No. 44 of Madrid and No. 113/92 concerning Mr. E., before the Juzgado de Instrucción of Alcalá de Henares, and Nos. 482/92 and 211/94, before the Juzgado de Instrucción No. 40 of Madrid. The authors claim that the investigations are not being conducted with due diligence. With regard to the closing of the investigation in case No. 205/92, Mrs. E. is endeavouring to obtain a formal notification with a view to reopening the case.

Issues and proceedings before the Committee:

5.1 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.

5.2 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.

5.3 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 authors concede that two matters are currently under judicial investigation in Spain. Accordingly, the Committee finds that the requirements of article 2, paragraph 5 (b), of the Convention have not been met.

6. The Committee therefore decides:

(a) that the communication is inadmissible;

(b) that this decision may be reviewed under rule 109 of the Committee's rules of procedure upon receipt of a written request by or on behalf of the alleged victims containing information to the effect that the reasons for inadmissibility no longer apply;

(c) that this decision shall be communicated to the authors and to the State party.

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

Communication No. 15/1994

Submitted by: Tahir Hussain Khan [represented by counsel]

Alleged victim: The author

State party concerned: Canada

Date of communication: 4 July 1994

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 1994,

Having concluded its consideration of communication No. 15/1994, submitted to the Committee against Torture by Mr. Tahir Hussain Khan 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, dated 4 July 1994, is Mr. Tahir Hussain Khan, of Kashmiri origin, citizen of Pakistan, currently residing in Montreal, Canada. He claims to be a victim of a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Canada. He is represented by counsel.

The facts as submitted by the author:

2.1 The author, who was born on 14 August 1963 in Baltistan, Kashmir, left Pakistan on 1 July 1990, out of fear for his personal security. He arrived in Canada on 15 August 1990 and requested a residence permit on the grounds that he was a refugee. The Immigration and Refugee Board of Canada heard the author on 14 January 1992 and concluded that the author was not a refugee within the meaning of the Refugee Convention. The author's subsequent motion for leave for judicial review was refused on 17 April 1992 by a judge of the Federal Court. No further effective judicial recourse is said to exist.

2.2 The author's request to be allowed to stay in Canada for humanitarian reasons was refused by the immigration authorities on 10 May 1994. The author's removal to Pakistan was ordered to be effectuated on 17 July 1994.

3.1 The author, who is a professional cricket player, is an active member of the Baltistan Student Federation and supports the Baltistan movement to join Kashmir. The Baltistan Student Federation is associated with the Jammu and Kashmir Liberation Front. According to the author, the Baltistan area is historically part of Kashmir but currently claimed by Pakistan as part of Pakistan. He claims that Pakistan has denied the inhabitants of Baltistan their full political rights and that the area is completely militarized. The Pakistani authorities violently repress the movement for civil rights and

independence and individual activists are persecuted. In this context, the author states that a friend and co-activist was assassinated in August 1992.

3.2 The author submits that he fears persecution from Islamic fundamentalists, the Pakistan Inter-Service Intelligence (ISI) and the Government of Pakistan because of his membership in the Baltistan Student Federation (BSF). He states that he was a local leader and organizer for the BSF in Rawalpindi, and that he organized many demonstrations to publicize the goals of his organization. He claims that he was arrested on several occasions and accused of being an Indian agent. In 1987, he was arrested by the ISI at the offices of the BSF in Skurdu, together with four other BSF leaders. They were taken to the police station in Skurdu and kept in a special ISI section. The author alleges that he and those arrested with him were hung from the ceiling by their hands with rope and badly beaten. After a week of maltreatment (cold showers, sleep deprivation, being placed on ice-blocks), the author was released on bail.

3.3 On another occasion, in April 1990, the author, together with others, was arrested after leading a demonstration for the BSF in Karachi. He was taken to jail in Hyderabad, where he was beaten and subjected to electric shocks. He also alleges that he was cut on his back and that chemicals were applied to the cuts, which caused him severe pain. After two weeks, he was released on bail and told to appear before the Court on 7 July 1990.

3.4 A letter, dated 27 July 1994, from a medical doctor at the Hôpital Saint-Luc in Montreal affirms that the author has marks and scars on his body which correspond with the alleged torture.

#### The complaint:

4.1 The author claims that the Canadian authorities did not address the central facts of his case in the decision not to recognize him as a refugee and that his claim was not justly dealt with.

4.2 The author, who is now in charge of the BSF overseas, claims that he cannot return to Pakistan, because he risks persecution and attacks on his life. He claims that he will be immediately arrested at the airport, be detained and tortured. In this context, the author refers to reports by Amnesty International and Asia Watch and claims that evidence exists of systematic torture by Pakistani authorities. He attaches a supporting affidavit by a Kashmir human rights lawyer, who testifies that demonstrations organized by the Baltistan Student Federation have been repressed by Pakistani authorities and that its leaders are at risk of being arrested or killed. He also attaches a copy of a letter, dated 15 August 1994, from the Baltistan Student Federation, in which the author is advised to remain in Canada, since the circumstances under which an arrest warrant was issued against him are still prevailing.

#### Issues and proceedings before the Committee:

5. On 15 July 1994, the communication was transmitted to the State party, with a request that the author should not be expelled before the Committee would have communicated its decision under rule 108 of the rules of procedure. In reply, the State party, by submission of 2 September 1994, requested the Committee to examine the communication on the merits during its next session in November 1994. For this purpose, the State party agreed not to contest the admissibility of the communication.

### State party's observations:

6.1 In its submission, dated 3 October 1994, the State party states that a post-claim risk-assessment, conducted in September 1994, resulted in the conclusion that Mr. Khan would not face a danger to life, extreme sanction or inhumane treatment, should he be returned to Pakistan. In the light of this finding and in the light of the need to process a large number of refugee claims in Canada in a timely fashion, the State party requests the Committee to examine the merits of the communication at its thirteenth session. It confines its observations to the merits of the communication only.

6.2 The State party begins by explaining the refugee determination process in Canada, as applied to Mr. Khan, prior to amendments made in February 1993. The refugee determination process was composed of two separate oral hearings, both of which were held before independent, quasi-judicial administrative tribunals. In both these hearings, claimants had the right to be represented by counsel of their choice, and were afforded the opportunity to present evidence, cross-examine witnesses and make representations. If either member of a two-member panel which conducted the initial hearing determined that there was some possible basis for success in the claim for refugee status, the claim proceeded to a second oral hearing before the Refugee Division of the Immigration and Refugee Board. At the second oral hearing, two members of the Refugee Division examined whether the claimant met the definition of "Convention refugee". The claim would succeed, if either member of the panel was satisfied that this was the case. Leave to appeal a negative decision before the Federal Court of Appeal could be asked and was granted if the claimant could show that there was a "fairly arguable case" or a "serious question to be determined". If leave was granted and the Court rendered a negative decision, leave could be sought to challenge this decision before the Supreme Court of Canada.

6.3 The State party submits that the United Nations High Commissioner for Refugees has praised Canada's refugee protection system as being "among the very best in the world".

6.4 The State party states that outside the framework of the refugee claim process, the Immigration Act allows to determine whether circumstances exist which warrant the granting of permanent resident status to individuals for humanitarian and compassionate reasons. All failed refugee claims before February 1993 were automatically considered for this purpose. Guidelines have been developed to assist immigration officers in making this determination. The guidelines include an assessment of the risk to a person who may not be a "Convention refugee", but may none the less face maltreatment abroad.

6.5 After the amendments to the Immigration Act, which came into force on 1 February 1993, the Act provides for a post-claim risk-assessment for those individuals who are found not to be Convention refugees but face a risk of serious harm should they be returned to their country of origin. A person is allowed to stay in Canada if he, upon removal, would be subjected to an objectively identifiable risk to his life, of extreme sanctions, or of inhumane treatment. In the risk-assessment process claimants have an opportunity to make written submissions on the risks they would face if removed from Canada. A post-claim determination officer reviews also other relevant material, such as the claimant's immigration file, material from the Refugee Division hearing and country specific information. If a post-claim determination officer comes to the conclusion that removal from Canada would subject a person to the risk identified above, he is allowed to apply for permanent residency. A negative decision is subject to judicial review proceedings, with leave, before the

Federal Court Trial Division, and from there to the Federal Court of Appeal and the Supreme Court of Canada.

6.6 After two non-governmental experts had prepared a study, in April 1994, in which concerns were expressed about the post-claim risk-assessment process (in particular with regard to the low acceptance rate), the Minister of Citizenship and Immigration announced specific interim measures. Instructions were issued with regard to a broader application of the regulatory criteria. It was under these criteria and instructions that Mr. Khan's case was recently reviewed.

7.1 As to Mr. Khan's case, the State party states that he was first interviewed by immigration officials on 9 August 1990. He declared that he had entered Canada illegally from the United States, and that he had left Pakistan on 1 July 1990. On 18 September 1990, the author signed a Statutory Declaration in which he claimed political refuge. An interpreter was present at that occasion. He informed the immigration officer about his political activities and stated that he had received several threats. The author was then referred to an immigration inquiry to determine his status in Canada.

7.2 At the inquiry, the author made his claim for refugee status under the procedures set out in the Immigration Act. On that occasion, he described his political activity and alleged two instances of detention, one in November 1987 and the second in March 1990. After a hearing on 24 May 1991, the author's claim was found to have a credible basis and thus referred to the Refugee Division for a full oral hearing. At the hearing, on 29 August 1991, the author was represented by a lawyer; interpretation was provided. The State party submits that the information provided by the author at the hearing was inconsistent with that provided by him earlier. Furthermore, the oral testimony is said to have been internally inconsistent. Although numerous opportunities were given to the author to clarify these inconsistencies, the State party submits that the testimony remained self-contradictory. Consequently, in its decision, dated 14 January 1992, the Refugee Division determined that the author was not a refugee and that his oral testimony had been fabricated. The author's leave to appeal was dismissed by the Federal Court of Appeal on 22 April 1992.

7.3 The State party emphasizes that in no instance during the proceedings in determination of his refugee claim, the author or his counsel alleged ill treatment or torture during the claimed periods of detention, nor did they allude to future fear of torture.

7.4 After the author's leave to appeal had been dismissed, he was informed that he should leave Canada on or before 23 May 1992. The author failed to do so. After the author failed to report to the immigration office on 16 September 1992, as requested, a warrant for his arrest was issued. The author was arrested on 21 September 1992, and on 23 September 1992, a deportation order was issued against him. He remained in detention until the scheduled day of his removal, 8 October 1992. On that date, his scheduled removal was delayed because of his violent and aggressive behaviour, which made it inappropriate to proceed with the removal without escort officers.

7.5 On 27 October 1992, the author's presence was required at a preliminary hearing in respect of charges of assault against him, following a fight in a bar in March 1992. Under paragraph 50(1)(a) of the Immigration Act, the author could not be removed from Canada until after these charges were resolved. On 29 October 1992, the author was released from detention, awaiting the outcome of the trial against him, which was scheduled for 25 February 1993.

7.6 On 30 December 1992, counsel for the author requested the exceptional granting of resident status on humanitarian and compassionate grounds. The State party emphasizes that this request was mainly based on his community involvement in Quebec and on the unstable situation in Pakistan, and that no materials were filed demonstrating a personal risk for the author of torture or maltreatment, if he were to be returned to Pakistan. On 29 January 1993, the application was refused.

7.7 On 25 February 1994, the author was convicted of assault causing bodily harm and sentenced to one year probation and a \$90 fine. Consequently, his departure from Canada was scheduled for 17 March 1994. On 15 March 1994, the author was arrested while attempting to enter the United States illegally and contrary to the conditions imposed upon him after his release from detention. On 16 March 1994, he was ordered detained for removal purposes. According to the State party, the author threatened Immigration officers, saying that he could not be held responsible for what might happen to escort officers who would take him back to Pakistan. His removal was delayed and the author remained in detention.

7.8 On 15 April 1994, counsel for the author made another humanitarian and compassionate application. This application was refused on 10 May 1994. The State party submits that the author could have applied to the Federal Court if he felt that the review had been unfair, but he failed to do so. Instead, counsel made additional humanitarian and compassionate review submissions, without however submitting the requisite processing fee. As a result, the application was not considered. The State party states that in the materials submitted by counsel, no reference was made to the author having been previously ill treated in Pakistan.

7.9 On 15 June 1994, counsel brought an application before the Refugee Division for reconsideration of the author's refugee claim. On 18 June 1994, the application was denied. No attempt was made by counsel or the author to challenge this decision.

7.10 On 4 July 1994, the author was released from detention. The State party submits that it had been agreed that the author would get the opportunity to arrange his voluntary departure to a country other than Pakistan. It was agreed that he would leave Canada voluntarily by 15 July 1994, and that, failing that, removal to Pakistan would proceed on 17 July 1994.

7.11 After having been informed that the author had submitted a communication to the Committee against Torture, the State party arranged for a review of the author's case by a post-claim determination officer. It is submitted that the post-claim determination officer evaluated the materials filed by the author's counsel (including the materials submitted to the Committee), the author's Personal Information Form, the decision of the Refugee Division as well as other materials obtained from the Documentation Centre of the Immigration and Refugee Board (including reports from Amnesty International, Asia Watch and newspaper clippings on the situation of the Northern Territories in Pakistan). The officer also relied on research done by the staff of the Documentation Centre. On 19 September 1994, the author was informed that a negative decision had been reached. The officer concluded that the author was one of thousands of residents in Northern Pakistan who advocate a change in the status of Kashmir, that the Government of Pakistan had supported secessionist groups and that therefore no reasons existed why the Pakistani authorities would be interested in the author. Moreover, the officer doubted the credibility of the author's

story, since he commenced his refugee claim in 1990, but did not allege torture until 1994.

8.1 The State party refers to the Committee's Views in respect of communication No. 13/1993 (*Mutombo v. Switzerland*), and submits that, in determining whether article 3 of the Convention against Torture applies, the following considerations are relevant: (a) the general situation of human rights in a country must be taken into account, but the existence of a consistent pattern of gross, flagrant or mass violations of human rights is not in and of itself determinative; (b) the individual concerned must be personally at risk of being subjected to torture in the country to which he would return; and (c) "substantial grounds" in article 3(1) means that the risk of the individual being tortured if returned is a "foreseeable and necessary consequence". The State party submits that it examined each of these elements and that it came to the conclusion that no substantial grounds existed for believing that the author would be in danger of being subjected to torture.

8.2 The State party submits that, although the human rights situation in Pakistan is of concern, this does not mean that a consistent pattern of gross, flagrant or mass violations of human rights exists. As regards the northern part of Pakistan, the materials examined by immigration officials show that the political status of the Northern Territories has never been resolved. In theory, it is disputed territory and it has never been represented in the Pakistan National Assembly. In practice, it is administered as Pakistani territory. The Jammu and Kashmir Liberation Front (JKLF), to which the Baltistan Student Federation is allegedly associated, is one of the numerous militant organizations that operate in the Kashmir region of both India and Pakistan, some of whom advocate independence while others advocate accession to Pakistan. The State party submits that JKLF was founded in 1964 and that it is responsible for numerous acts of terrorism, including summary executions, kidnappings and bomb explosions.

8.3 As to the question whether the author personally faces a risk of being subjected to torture if returned to Pakistan, the State party submits that there are significant inconsistencies in the statements made by the author during the various proceedings. For instance, the dates of arrests and length of detentions given by the author at several occasions are at variance with each other, as are the reasons given for his arrest. The State party contends that these inconsistencies impact significantly on the veracity of the author's story and the credibility of his claims.

8.4 In this context, the State party refers to the finding of the Refugee Division, whose members had the benefit of conducting an oral hearing with the author, that the author's testimony was largely fabricated. The State party submits that "it is a widely acknowledged principle of international law, recognized in the practice of international tribunals (and in particular human rights treaty bodies which have authority to consider individual communications) that the findings of national tribunals on matters of fact and domestic law should not be disturbed by an international body". It states that the Committee should therefore be extremely hesitant to alter findings of fact by the Refugee Division.

8.5 As regards the medical evidence submitted by the author, the State party emphasizes that this was not produced until July 1994, although the refugee claim dates from 1990. It further states that the evidence confirms that the author has various scars, but that there is no indication that these scars are the result of torture or that they could have been caused by other events in the

author's life, such as his sports career. The State party states that the medical evidence was considered in the post-claim risk-assessment, but that the author's failure to produce medical evidence in proceedings before the Canadian tribunals deprived them of the opportunity to test this evidence. The State party argues that there was no reason why the author could not have advanced this evidence in previous proceedings of competent tribunals and submits that the issue was directly relevant to the determination made by the Refugee Division. It is argued that the generally applicable principles relating to the reception of new evidence militate strongly against the Committee accepting it now as a basis for overriding the prior findings of the Canadian tribunals.

8.6 The State party contends that the available evidence does not support the author's claim that he personally is sought after by the Pakistani authorities. The State party submits that the author's secessionist activities are pursued by thousands of others in his region with the support of Pakistan. It is moreover argued that there is no evidence that the Baltistan Student Federation, of which the author allegedly is a leader, is the target of Pakistani repression. The State party further points out that, although the author alleges that there is an outstanding warrant for his arrest, he does not identify the charge or actions on which that warrant is based. The State party moreover indicates that the author's family continues to live in Pakistan unharmed and without harassment.

8.7 In this context, the State party submits that article 3 of the Convention should not be interpreted to offer protection to persons who voluntarily place themselves at risk. "In other words, Mr. Khan should not be able to invoke article 3 on the basis that he might again participate in the activities of a militant organization and be subject to the risks associated with the violent activities such organizations use and in turn, face. [...] The important point is that currently Mr. Khan does not attract any particular attention in Pakistan and his return by Canada would not pose a risk."

8.8 In conclusion, the State party submits that the evidence presented by the author is insufficient to demonstrate that the risk of being tortured is a "foreseeable and necessary" consequence of his return to Pakistan. In this context, the State party submits that the supporting affidavit by a lawyer from Pakistan was from a member of JKLF, itself a terrorist organization with a particular interpretation of the Kashmiri situation. No sufficient evidence has been submitted which shows that the author's BSF activities render him a target of the Pakistani authorities. On the contrary, the documentation available suggests that the author's militant activities were in fact common in the north of Pakistan and supported by the Government.

Counsel's comments and State party's clarification:

9.1 In his comments, dated 26 October 1994, on the State party's submission, counsel claims that it is clear that the real circumstances of the author's case have never been fairly examined by the State party. He refers to the documentation submitted to the Committee, among which information indicating that already eight activists for Kashmir independence had been killed by Pakistani supporters and that a bomb attack had taken place against one of the JKLF leaders, and claims that there is a great deal of documentary evidence of repression against those who want independence for Kashmir. He also refers to the earlier submitted affidavit by a Kashmir human rights lawyer, at present a refugee claimant in Canada, who corroborates the author's story.



9.2 In particular, counsel submits that there is a great deal of evidence of systematic torture by the Pakistani authorities. He states that the Pakistan Human Rights Commission's annual report refers to the prevalence of death by torture and torture with impunity by the police. Other reports support this finding.

9.3 Counsel concedes that the Canadian refugee claim determination system is good on paper, but argues that even in a good system, mistakes are made. In this context, he emphasizes that the Canadian system does not allow for an appeal on the merits, but only for an appeal (with leave) on matters of law. Because of this, there is no possibility to correct errors on facts and the system has been criticized for that. Counsel refers to a report, dated December 1993, on the Immigration and Refugee Board, which shows that serious problems exist. He adds that it is known among refugee lawyers that the problems with the Board in Montreal are more serious than elsewhere, because of the incompetence of board members. He claims that it is clear from reading the decision of the Refugee Board in the author's case that the basis of his claim has not been examined. He claims also that the transcript of the hearing shows that the author and his representative were constantly interrupted in their presentation of the case, and that there was no examination of what had happened to the author in Pakistan. Instead, the members of the Board focused on contradictions in the dates of events.

9.4 Counsel submits that from early 1991 to early 1993, less than 1 per cent of refused refugees were given status in Canada under the post-claim risk-assessment process. After severe criticism, the system was amended and new regulatory criteria were established. However, counsel states that these new criteria were still applied by the same deportation officers who had refused everybody before. He claims that the recent figures (0.3 per cent acceptance rate in 1993) show that the new system is a farce. For this reason, the Government called for a further report (see above, para. 6.6). This report condemned incompetence, unwillingness to apply international human rights standards and bureaucratic opposition to treating people fairly. It stated that post-claim risk-assessments should not be made by deportation agents, but by other officials. It is stated that the recommendations of the report have not been implemented by the Government.

9.5 Counsel claims that the post-claim decision in the author's case, dated 10 May 1994, show all the shortcomings established by the report, since the grounds in favour of protecting the author were not examined.

9.6 Council claims that the alleged inconsistencies and contradictions in the author's evidence and submissions are not such that they make his testimony unreliable. He states that the author has submitted sufficient evidence to corroborate his story. As regards the State party's argument that no evidence of previous torture was submitted before July 1994, counsel points out that the author was in detention from mid-March to July 1994 and that the medical examination was conducted immediately after his release. As to the State party's claim that the author was given the opportunity to find a third country, counsel states that he is not aware of such an offer.

9.7 As regards the review conducted by the State party after July 1994, counsel argues this was not an independent review. He states that the review was done by a low-level administrative official working for the enforcement side of Immigration Canada. He further states that there is no evidence that this officer examined the situation in Azad Kashmir and the Northern Areas of Pakistan. In this context, counsel points out that he made submissions on

15 September 1994, and that the decision is dated 19 September 1994. In the decision, no reference is made to the evidence submitted. Counsel argues that the decision is based on wrong grounds: (a) it states that Pakistan supports groups which want independence: according to counsel, Pakistan is strongly opposed to the independence movement and wants Kashmir to become part of Pakistan; (b) it states that the author has no profile that is different from thousands of other people in his area: counsel submits that there is evidence (newspaper pictures, a police report, a video, an affidavit) which shows him to be a leader in the Baltistan Student Federation; (c) it states that the author never mentioned torture before 1994: according to counsel, this is untrue, since the author earlier made reference to being "so weak that my family was scared to see me", to Pakistan being governed under torture, and to having been beaten in the police station.

9.8 Counsel agrees generally with the interpretation given by the State party to the application of article 3 of the Convention. He contends, however, that it is an exaggeration to say that torture must be a necessary and foreseeable consequence. He argues that substantial grounds clearly exist to fear that the author, who is a student leader of the Kashmiri independence movement and has been its representative in Canada, will be subjected to torture. Counsel refers to a report of Amnesty International, which states that "torture, including rape, in the custody of the police, the paramilitary and the armed forces is endemic, widespread and systematic in Pakistan". He contests the State party's view that there is no consistent pattern of gross, flagrant or mass violations of human rights in Pakistan, and submits that the situation in the northern areas is particularly bad. In this context, counsel refers to testimonies given by human rights activists to the United Nations Commission on Human Rights in March 1994.

9.9 Counsel contests the State party's view that the JKLF is a terrorist organization, and claims that there is no evidence of use of violence by the JKLF in Pakistan-occupied Kashmir. He submits that the party is widely recognized to be the most popular political party in both Indian- and Pakistan-occupied Kashmir. He submits that the vast majority of Kashmiris today support independence for their country. He claims that the Pakistani authorities are repressing everyone who advocates independence.

9.10 To support the argument that the author will risk torture upon his return to Pakistan, counsel submits an arrest warrant, dated 12 September 1990, against the author, apparently related to an incident on 6 June 1990, in which the author, referred to in the accompanying police report as "President Baltistan Student Federation, Rawalpindi", led a demonstration in Rawalpindi to demand constitutional rights for Baltistan and criticized the Government. He also claims that the author's brother has fled the country and now lives in England, whereas the author's parents have left Baltistan and now live in Azad Kashmir. Counsel further refers to the medical evidence, and argues that, if the State party doubts its conclusions, it should have conducted an examination by its own experts.

9.11 Counsel concludes that there is sufficient evidence to show that the author is personally sought after by the Pakistani authorities. He argues that the author should not be sent back to a country where his life is in danger. He claims that the evidence shows that the author faces immediate detention and torture on his return.

10. In reaction to counsel's submission, the State party argues that the central issue before the Committee is not the general operation of Canada's

refugee determination system, but whether the author has established that he is personally at risk of being subject to torture in Pakistan upon his return.

Decision on admissibility and examination of the merits:

11. 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 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 finds therefore that no obstacles to the admissibility of the communication exist and proceeds with the consideration of the merits of the communication.

12.1 The Committee notes that both parties have made considerable submissions with regard to the fairness of the refugee claim determination system and the post-claim risk-assessment procedures. The Committee observes that it is not called upon to review the prevailing system in Canada in general, but only to examine whether in the present case Canada complied with its obligations under the Convention. Nor is the Committee called upon to determine whether the author's rights under the Convention have been violated by Pakistan, which is not a State party to the Convention. The issue before the Committee is whether the forced return of the author to Pakistan would violate the obligation of Canada 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.

12.2 Article 3 reads:

"1. No State party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

"2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that Mr. Khan would be in danger of being subject to torture. In reaching this conclusion, the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, 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 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 person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist that indicate 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 specific circumstances.

12.3 The Committee notes that the author of the present case has claimed that he was a local leader of the Baltistan Student Federation, that he has twice been tortured by Pakistani police and military, that he was scheduled to appear before a Court upon charges related to his political activities, and that he will face arrest and torture if he were to return to Pakistan. In support of his claim, the author presented, among other documentation, a medical report which does not contradict his allegations. The Committee notes that some of the author's claims and corroborating evidence have been submitted only after his refugee claim had been refused by the Refugee Board and deportation procedures had been initiated; the Committee, however, also notes that this behaviour is not uncommon for victims of torture. The Committee, however, considers that, even if there could be some doubts about the facts as adduced by the author, it must ensure that his security is not endangered. The Committee notes that evidence exists that torture is widely practised in Pakistan against political dissenters as well as against common detainees.

12.4 The Committee considers therefore that in the present case substantial grounds exist for believing that a political activist like the author would be in danger of being subjected to torture. It notes that the author has produced a copy of an arrest warrant against him, for organizing a demonstration and for criticizing the Government, and that moreover he has submitted a copy of a letter from the President of the Baltistan Student Federation, advising him that it would be dangerous for him to return to Pakistan. The Committee further notes that the author has adduced evidence that indicates that supporters of independence for the northern areas and Kashmir have been the targets of repression.

12.5 Moreover, the Committee considers that, in view of the fact that Pakistan is not a party to the Convention, the author would not only be in danger of being subjected to torture, in the event of his forced return to Pakistan, but would no longer have the possibility of applying to the Committee for protection.

12.6 The Committee therefore concludes that substantial grounds exist for believing that the author would be in danger of being subjected to torture and, consequently, that the expulsion or return of the author to Pakistan in the prevailing circumstances would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

13. 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 Tahir Hussain Khan to Pakistan.

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

Submitted by: X [name deleted]

Alleged victim: The author

State party: Switzerland

Date of communication: 22 August 1994

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

Meeting on 17 November 1994,

Adopts the following:

Decision on admissibility

1. The author of the communication is X, a Zairian citizen, currently residing in Switzerland. He claims to be a victim of a violation by the Swiss authorities of article 3 of the Convention against Torture. He submits the communication on his own behalf and on that of his companion.

The facts as submitted by the author:

2.1 The author, who was born in 1964, states that he has been a member of the Union pour la démocratie et le progrès social (UDPS) since 1986. Since a close relative was in charge of the UDPS in his hometown, the author was entrusted the task of distributing invitations for illegal meetings, which were usually held at the house of a family member. Because of his age, the author himself almost never attended these meetings.

2.2 In January 1988, the author attended a public gathering organized by the UDPS. When military police arrived to disperse the meeting, the author fled to his parents' house. There he learned that his relative had been arrested. The next morning, at 5.30 a.m., police arrived at the author's house and detained him. The author claims that the police took him to a room to be tortured, in order to make him disclose the names of those who attended the meetings in his relative's house. When the author refused to comply, he was accused of conspiracy against the Republic. In the evening of the fifth day of detention, the author was released, thanks to the intervention of a friend of his brother.

2.3 After having stayed with a friend for a brief period of time, his brother drove him to another town, where he stayed with another brother. About a year later, the author, through his brother, obtained a false passport and boarded an Air Zaire plane for Rome. After his arrival in Rome, the author sought help to go across the border with Switzerland.

2.4 Upon arrival in Switzerland, the author, in February 1989, requested recognition as a refugee. He was heard by the Office cantonal des demandeurs d'asile in Geneva, in May 1989. In July 1992, the Office fédéral des réfugiés rejected his request. The author's appeal was rejected by the Commission suisse de recours en matière d'asile et de renvoi in May 1994. The author and his companion were ordered to leave Switzerland before or on 30 August 1994, failing

which he would be returned to Zaire. In August 1994, his permit was extended until 30 September 1994.

2.5 The author further states that he was joined by his girlfriend in November 1991, that they are well integrated in society, and that they have found employment.

The complaint:

3.1 The author argues that he owes his life to having fled Zaire. He claims that he cannot go back to Zaire without endangering his security. He argues that, since he does not possess proper identification papers, he will be immediately arrested on arrival and, since he is known as a member of the UDPS, he will be kept in detention and probably subjected to torture. He states that in Zaire a consistent pattern of gross, flagrant or mass violations of human rights exists, and that for this reason alone the Swiss authorities should refrain from returning him. He further submits that the simple fact of applying for asylum is considered in Zaire as a subversive act.

3.2 Pending the Committee's decision on the merits of his communication, the author requests the Committee to request Switzerland, under rule 108, paragraph 9, of the Committee's rules of procedure, not to implement the expulsion order against him and his companion.

Issues and proceedings before the Committee:

4.1 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.

4.2 The Committee has examined the claims submitted by the author and observes that his account lacks the minimum substantiation that would render the communication compatible with article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

5. The Committee against Torture therefore decides:

(a) that the communication is inadmissible;

(b) that this decision shall be communicated to the author and, for information, to the State party.

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

Submitted by: Y [name deleted] [represented by counsel]

Alleged victim: The author

State party: Switzerland

Date of communication: 16 September 1994

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

Meeting on 17 November 1994,

Adopts the following:

Decision on admissibility

1. The author of the communication is Y, a Zairian citizen, currently residing in Switzerland. He claims to be a victim of a violation by the Swiss authorities of article 3 of the Convention against Torture. He is represented by counsel.

The facts as submitted by the author:

2.1 The author, who was born in 1963, lived in the north of Zaire, until 1983. His father was arrested in 1968 for political reasons and kept in detention for five years, until his death in 1973. In 1983, the author moved for professional reasons to another town, where he lived with an older cousin. After President Mobutu, on 24 April 1990, had announced the end of the one-party system, the author joined the Union pour la démocratie et le progrès social (UDPS), the opposition party. On 30 April 1990, the UDPS organized a peaceful demonstration in Kinshasa, which was violently dispersed by the police. Many more clashes between members of the opposition movement and government forces followed, and in June 1990, the author was arrested together with other demonstrators, after having participated in a demonstration against the Government.

2.2 The author submits that he was kept in detention in a prison camp. He was allegedly ill treated, beaten and threatened. After a month, the author was transferred to the military offices in town. He then managed to escape with the help of a military officer, who was of the same ethnic background as the author. After having been in hiding in a village, with friends of his cousin, he boarded an Air Zaire plane for Rome, with a false passport which had been furnished by his cousin. After arrival in Italy, he sent the passport back to his cousin, as agreed. Some Africans in Rome helped him cross the border with Switzerland, where he arrived in late August 1990.

2.3 Upon arrival in Switzerland, the author requested recognition as a refugee. In July 1992, the Office fédéral des réfugiés rejected his request, because the demonstration of June 1990, during which the author allegedly was arrested, had never been reported; this gave rise to doubts about the authenticity of the author's account. The author's appeal was rejected by the Commission suisse de recours en matière d'asile et de renvoi in May 1994. The Commission considered that the author's story had little credibility, given inter alia the fact that

he had not been able to describe in detail his place of detention and that he had not furnished any documentary evidence in support of his personal claim. The author was ordered to leave Switzerland before or on 30 August 1994, failing which he would be returned to Zaire.

2.4 In January 1994, the author was joined by his daughter, who was born in Zaire in 1987. In Switzerland, the author began a relationship with Ms. Y; a daughter was born in June 1994. Because of the birth, the expulsion was deferred to the end of September 1994.

The complaint:

3.1 The author argues that the political situation in Zaire has not improved and that President Mobutu continues to terrorize the country. His family members still in Zaire have informed him that the human rights situation in the country is bad and that there is practically no political opposition left. The author submits that he fears for his security, and points out that at least one asylum seeker, who had been returned by Belgium to Zaire in April 1990, had been arrested upon return and beaten, and subsequently disappeared. The author also states that his cousin has told him not to return to Zaire, because of the risks involved.

3.2 The author claims that his forced return to Zaire would be in violation of article 3 of the Convention. In this context, he refers to the Committee's Views in communication No. 13/1993, Mutombo v. Switzerland, where the Committee concluded that a consistent pattern of gross, flagrant or mass violations of human rights existed in Zaire. The author argues that his family background as well as his personal experience as a political opponent in Zaire, make it predictable that he will be arrested upon arrival in Zaire, and consequently be subjected to maltreatment and torture. In this context, he submits that an article recently published in Zaire attributed certain political opinions to him.

3.3 Pending the Committee's decision on the merits of his communication, the author requests the Committee to request Switzerland, under rule 108, paragraph 9, of the Committee's rules of procedure, not to implement the expulsion order against him.

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

Issues and proceedings before the Committee:

4.1 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.

4.2 The Committee has examined the claims submitted by the author and observes that his account lacks the minimum substantiation that would render the communication compatible with article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

5. The Committee against Torture therefore decides:

- (a) that the communication is inadmissible;



(b) that this decision shall be communicated to the author and his counsel and, for information, to the State party.

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

B. Fourteenth session

Communication No. 6/1990

Submitted by: Ms. Irène Ursoa Parot  
Alleged victim: Henri Unai Parot  
State party concerned: Spain  
Date of communication: 13 October 1990  
Date of decision on admissibility: 26 April 1994

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

Meeting on 2 May 1995,

Having concluded its consideration of communication No. 6/1990, submitted to the Committee against Torture on behalf of Mr. Henri Unai Parot 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 and by the State party,

Adopts the following views under article 22, paragraph 7, of the Convention. 1/

1. The author of the communication is Irène Ursoa Parot, a resident of France. She submits the communication on behalf of her brother, Henri Unai Parot, a French citizen born in Algiers. Mr. Parot is a member of the Basque separatist organization ETA, and is serving a sentence of life imprisonment in Spain. She claims that her brother is a victim of a violation by Spain of the Convention against Torture, without however specifying the provisions of the Convention alleged to have been violated.

Facts as submitted by the author:

2.1 Henri Parot was arrested in Seville on 2 April 1990 after an exchange of gunfire with the Guardia Civil which had stopped his car. The Guardia Civil claimed that his car was carrying 300 kilograms of amonal, to be used to blow up the police headquarters of Seville. The Audiencia Nacional found him guilty of participation in terrorist acts, murder and attempted murder and, on different counts, sentenced him to consecutive terms of 30 years' imprisonment.

2.2 The author, in a submission dated 13 October 1990, states that she has learned the following from her brother: he was interrogated at the headquarters of the Guardia Civil in Seville until the early morning of 3 April 1990; in the course of the interrogation he was tortured. On 3 April 1990, he was transferred to Madrid, where the interrogation continued; allegedly, a special unit of the Guardia Civil normally stationed in Basque territory participated in this interrogation, with the purpose of administering "expert" torture. The interrogation continued for five entire days, during which he was not allowed to eat or sleep.

2.3 Among the tortures allegedly inflicted on her brother, the author mentions:

- placing of plastic bags over his head, so as to provoke a sensation of suffocation. This allegedly was repeated some 20 times;
- constant beatings, not administered too hard so as not to leave visible marks;
- injection of an unknown substance by means of a syringe;
- putting him into a straightjacket, followed by suspending him by his hair.

2.4 Henri Parot's family has been able to witness the physical results of the torture on him - loss of hair, loss of weight, permanent exhaustion - and the psychological sequelae, manifested by a state of profound depression. Furthermore, he is said to suffer from periodic bouts of amnesia, in particular in respect of the first five days of his detention.

2.5 On 7 April 1990, Mr. Parot was brought before the examining magistrate of the Juzgado Central de Instrucción No. 4 of the Audiencia Nacional of Madrid. At the conclusion of his statement before the judge, he complained of torture he had suffered at the hands of the Guardia Civil. During the hearing he was assisted by a lawyer who had been retained by his family.

2.6 On 10 April 1990, Mr. Parot was transferred to the prison of Herrera de la Mancha. On 11 April, he was again brought before the Audiencia Nacional of Madrid to testify before a French magistrate to whom he also complained about the ill treatment.

2.7 As to prison conditions, it is claimed that during his detention at the Carabanchal prison in Madrid from 7 to 10 April 1990, the prison guards prevented him from sleeping by refusing to switch off the light in his cell or by continuously banging against his cell door. At the prison of Herrera de la Mancha, he was kept incommunicado most of the time. The prison doctor made him sign a statement certifying that he had not suffered any form of torture or ill treatment. For 20 days, Mr. Parot was kept in a cell close to the office of the Guardia Civil, whose occupants sought to scare him by firing shots outside his cell and by threatening to kill him or members of his family. On 17 April, when taking a shower, he was allegedly severely beaten by a group of masked men, said to be members of the Guardia Civil. On 8 June 1990, Mr. Parot was transferred to the prison of Alcalá-Meco in Madrid, so as to facilitate the hearings before the examining magistrate of the Audiencia Nacional.

2.8 By letter of 10 May 1993, Mr. Parot confirms that he wishes the Committee against Torture to examine his allegations of torture and ill treatment was presented in the communication prepared by his sister.

2.9 In a further submission, dated 20 August 1993, the author provides precise information about the complaints of torture and ill treatment made by or on behalf of Mr. Parot. This includes a complaint made by the author during the hearing before the investigating magistrate of the Juzgado Central de Instrucción No. 4 of the Audiencia Nacional in April 1990, and 25 complaints made during the trial before the Audiencia Nacional, the first on 4 December 1990 and the last complaint on 4 June 1993. She states that her brother received a visit on 28 May 1991, at the prison of Alcalá-Meco, by an

investigating magistrate of Alcalá-de-Henares, who asked him formally whether he wished to maintain his complaints; Mr. Parot replied in the affirmative.

Prior decisions taken by the Committee:

3.1 The Committee against Torture initially examined communication No. 6/1990 during its seventh session in November 1991. It considered that, since the author had conceded that an investigation into Mr. Parot's allegations had been opened by an investigating magistrate of Alcalá-de-Henares, domestic remedies had not been exhausted. On 12 November 1991, the Committee therefore declared the communication inadmissible. 2/

3.2 During its ninth session, in 1993, the Committee had before it a request from the author to reopen the consideration of the communication, because no investigation had yet been conducted by the Spanish authorities. The Committee decided to appoint one of its members as Special Rapporteur to examine the request. The Special Rapporteur approached the State party for its comments, which were placed before the Committee at its tenth session. The Committee subsequently decided to ask Mr. Parot himself whether he wished the Committee to examine his case and to request more precise information about the complaints filed with the Spanish authorities regarding his torture (see paras. 2.8 and 2.9 above). On the basis of the information received, the Committee, acting pursuant to rule 109 of its rules of procedure, decided, on 18 November 1993, to set aside its prior decision of 12 November 1991 and to reopen its consideration of the case. It further decided to request the State party to provide information relevant to the question of admissibility of the communication.

Information submitted by the State party and the author's comments thereon:

4.1 By a submission of 11 February 1994, the State party claims that the communication is inadmissible. It submits that, notwithstanding the author's statement, inquiries made of the seven tribunals of first instance in Alcalá-de-Henares give no indication of any complaint of torture lodged by Mr. Parot.

4.2 The State party denies that any ill treatment of Mr. Parot has taken place. It states that Mr. Parot received regular visits from medical doctors during his detention by the Guardia Civil in Seville and Madrid and later in prison and that no reference to ill treatment or torture is to be found in the medical reports. Similarly, the investigating magistrates before whom Mr. Parot appeared did not report any visible signs of ill treatment or torture. Although Mr. Parot mentioned at the end of the hearing before the investigating judge of the Fourth Tribunal of the Audiencia Nacional on 7 April 1990, that he had been subjected to torture, the investigating judge did not find sufficient reason to order an investigation into the allegations, taking the medical information into account and seeing that Mr. Parot did not show any signs of having been subjected to torture or ill treatment. The State party states extensive examination of all the relevant records shows that Mr. Parot subsequently did not formally request an investigation of the alleged ill treatment during the first days of his detention.

4.3 The State party claims that the information provided by the author about the complaints made by or on behalf of her brother was excessively vague. It contends that it is the policy of ETA members, their family and their lawyers to submit complaints at random to all kinds of international organizations. It submits that Mr. Parot has filed numerous complaints with the authorities in charge of the prison system (Juzgados de Vigilancia Penitenciara) about alleged

deficiencies in prison services, showing that he knows how to use the available complaint procedures, but that he has never submitted a complaint about torture or ill treatment.

4.4 The State party submits that the only complaints filed on behalf of Mr. Parot are two identical complaints filed by Mr. Parot's wife in April and May 1991 and relating to rumours that prison personnel had tried to hire a prisoner to kill ETA members in prison. Similar complaints were filed by other family members of ETA prisoners. An investigation was opened, following which the judge of Tribunal No. 7 of Alcalá-de-Henares, on 9 March 1993, ordered the suspension of the proceedings, for lack of evidence.

4.5 The State party concludes that the communication is inadmissible, because it is not based on true facts, because it is not related to the Convention against Torture, and because the domestic remedies have not been exhausted.

5.1 In her comments (dated 24 March 1994) on the State party's submission, the author submits that she has difficulty in finding precise information regarding the investigation ordered by an examining magistrate of the Tribunal of Alcalá-de-Henares and that the State party is in a better position to provide this information. She states that early in the afternoon of 28 May 1991, her brother was visited in the prison of Alcalá-de-Henares by a female examining magistrate (juez de guardia) of the Tribunal. According to the author, the magistrate refused to give her name and asked Mr. Parot whether he wished to maintain his complaints of torture. After he replied affirmatively, his complaint was written down that same afternoon and read to Mr. Parot, who then signed it, in the presence of a lawyer appointed by the magistrate. No copy of the written complaint was furnished to Mr. Parot. This is said to be in violation of Spanish law.

5.2 As to the State party's contention that the medical reports did not show that Mr. Parot had been ill treated or tortured, the author replies that the torture inflicted upon her brother was not "medieval torture", but torture not leaving obvious traces on the body. She affirms that her brother did not denounce the ill treatment to the medical doctors who came to visit him, out of fear of retaliation by the Guardia Civil.

The Committee's admissibility decision:

6.1 During its twelfth session, the Committee considered the admissibility of the communication. It ascertained that the same matter had not been and was not being examined under another procedure of international investigation. It noted that the assertion that on 7 April 1990 Mr. Parot had complained about ill treatment and torture before the investigating magistrate had not been challenged. The Committee considered that, even if these attempts to engage available domestic remedies may not have complied with procedural formalities prescribed by law, they left no doubt as to Mr. Parot's wish to have the allegations investigated. The Committee concluded that, in the circumstances, it was not barred from considering the communication.

6.2 Accordingly, the Committee decided on 26 April 1994, that the communication might raise issues under the Convention, especially with regard to the lack of investigation by the State party of Mr. Parot's allegations.

The State party's observations on the merits and author's comments:

7.1 By a communication of 29 November 1994, the State party submits that the case of Mr. Parot was brought to the attention of the Special Rapporteur on Torture of the United Nations Commission on Human Rights, who addressed a request for information to the State party. The State party indicates that, after it had provided information, the case was closed and no reference to the case was made by the Special Rapporteur in his report to the Commission on Human Rights.

7.2 The State party further contends that the communication submitted to the Committee on behalf of Mr. Parot is extremely vague. It notes that no details are provided about the alleged complaint before the judge in Alcalá-de-Henares, and it expresses its perplexity that the Committee, in those circumstances, has declared the communication admissible. In this context, it recalls that Mr. Parot is "one of the greatest criminals of the century", that he was the leader of a commando of the ETA, and that his false allegations have received disproportionate attention, to the benefit of the ETA and in discrimination of other citizens.

7.3 As to the merits of the communication, the State party indicates that Mr. Parot has shown to be very familiar with the justice system in Spain, since he has filed numerous complaints about prison conditions, all of which have been dealt with, but that he never filed a formal complaint about ill treatment or torture. The State party maintains that the members of the ETA are under instruction systematically to claim that they have been subjected to torture and ill treatment. The State party adds that the judge at the preliminary inquiry did not observe any injuries requiring investigation. The State party claims that, if the allegations would have been true, Parot's lawyer would certainly have requested the judge to have this evidence referred to the competent judge for investigation. In this context, the State party points out that Parot's lawyers never submitted any complaint of maltreatment in detention. Moreover, the State party adds that one of Parot's lawyers, on 22 June 1990, did file a complaint about Parot having been insulted and beaten during transport within Madrid. The State party argues that it is inconsistent, if the allegations were true, to file an official complaint of one incident and not to file a complaint of torture and maltreatment upon arrest.

7.4 The State party further states that Mr. Parot was examined by a medical doctor on a number of occasions during his detention. It is submitted that the first medical examination took place at a quarter past midnight on 3 April 1990, and that only two minor bruises were found, and that Mr. Parot stated that he had not been subjected to ill treatment. The second examination took place also on 3 April 1990, after his arrival in Madrid, and again on 5, 6 and 7 April 1990. The State party transmits copies of the medical reports and concludes that no signs of ill treatment were recorded.

7.5 The State party points out that, during this period, Mr. Parot never complained about torture or maltreatment in any of the statements he made. The State party points out that, while making these statements, Mr. Parot was at all times in the presence of his State-appointed lawyer. The State party encloses a declaration made by a lawyer who represented Parot during the first days of his detention, stating that he was not aware of any ill treatment or torture having been inflicted on Parot and that, on the contrary, Parot appeared to be in good health and made his statements freely.

7.6 With regard to the appearance before the investigating judge on 7 April 1990, the State party submits that the judge stated on 7 November 1994 that during the hearing Mr. Parot showed no sign of being nervous, tired or exhausted, and that no complaint was made by the lawyer who represented him. The State party further refers to the judgement by the Audiencia Nacional, dated 18 December 1990, in which the allegation of maltreatment made by Parot during the hearing on 7 April 1990 is found to be without merit. The judge considered that none of the five State-appointed lawyers, who were alternating to assist Parot during the interrogations, observed any irregularity, that the medical reports refer only to bruises caused at the time of Parot's arrest (the judge recalled that Parot was arrested after having fired 15 shots at the policemen present and that they had to use force to arrest him), that Parot himself had declared to the medical doctor who examined him that he was not ill treated which declaration had not been denied, that he only made the allegation at the hearing at the end of his statement, after a specific question from his lawyer, and, finally, that the allegations conflict with the observations of the judge at the hearing.

7.7 With regard to the claim that Mr. Parot was visited by a female examining magistrate in the prison of Alcalá-de-Henares who asked him whether he wished to maintain his complaint about ill treatment, the State party submits that a (male) investigating magistrate visited Parot in prison on 18 May 1991, for the purpose of notifying him of the order initiating criminal proceedings against him and hearing his answer to the charge, and that Parot, having waited for his lawyer to arrive, stated that his statements had been obtained through torture. The State party emphasizes that this claim cannot be seen as a formal complaint of maltreatment, and that a similar claim had already been ruled on by the Audiencia Nacional in the same preliminary investigation on 18 December 1990 (see above).

7.8 Finally, the State party points out that the written conclusions of counsel for Mr. Parot, regarding the preliminary proceedings on 20 January 1992 make no reference to ill treatment. In its judgement of 18 June 1993, the Juzgado Central de Instrucción finds that Mr. Parot does not appear to have been subjected to ill treatment.

8.1 In her comments, dated 27 January 1995, the author contests the State party's claim that she is an instrument of the ETA, and maintains that she addressed a communication to the Committee only out of concern for the well-being of her brother. She states that those persons who claim to have seen her brother during the first days of his detention and who maintain that they did not observe any sign of ill treatment are actually accomplices in the torture. She denounces as propaganda the State party's statement that ETA members are under instruction to make allegations of torture.

8.2. The author further states that any vagueness in her statements is due to the fact that she lives in France, which makes contact with her brother and his lawyers difficult.

8.3 With regard to the visit to the prison on 28 May 1991, the author states that she never denied that a male investigating magistrate visited her brother in prison on that day, but adds that on the same day another visit was made by a judge of the Juzgado No. 3 de Alcalá-de-Henares, Mrs. Isabel Fernandez, upon request by the tribunal of first instance (Juzgado de instrucción) No. 2 of Manzares, to whom Parot officially complained of torture.

8.4 She explains that research in Manzares has shown that a complaint was made on 21 and 28 April 1990 on behalf of Parot to the tribunal of first instance No. 1 of Manzares about Parot's detention incommunicado and about an incident during which Parot was beaten while on his way to the shower. On 16 May 1990, Parot made a statement in prison, confirming the complaints made on his behalf. A medical certificate stated that Parot showed bruises on the right arm and leg. Furthermore, on 11 May 1990, an investigation was opened by the tribunal of first instance No. 2 of Manzares, following detailed charges made by Parot before a judicial commission that he was tortured upon his arrest. On 10 January 1991, the two investigations were joined. On 21 May 1991, the Juzgado No. 3 of Alcalá-de-Henares received a request to hear Parot on the matter, and the magistrate interviewed Parot in prison on 28 May 1991. The author claims that in the end the investigating magistrate of tribunal No. 2 of Manzares decided to file the case, and to decide only on the complaint related to the shower incident and stating that Parot's declarations did not show any criminal liability of known persons.

8.5 The author states that her brother was never informed of the outcome of the investigation and has not received copies of the relevant documents. She contends that this has made it difficult for her to verify the facts in the case.

8.6 The author expresses surprise at the statement made by one of the State-appointed lawyers who were present during her brother's interrogations. The author contests the truthfulness of the State lawyer's statement and explains that Spanish law allows detention incommunicado for up to five days of persons suspected of terrorism, excluding assistance of a freely chosen lawyer and requiring the presence of a State-appointed lawyer during the making of statements. According to the author, the law also precludes contact in private between the detainee and the lawyer. She therefore concludes that it is questionable that Parot met with the lawyer, only to tell him that he had been well treated. In this context, she affirms that her brother denies having had a private meeting with a lawyer during his detention.

#### Consideration of the merits:

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

10.1 By its decision of 26 April 1994, the Committee held that the communication was formally admissible, as it raised the question of possible responsibility of the State party under article 13 of the Convention, which provides as follows:

"Each State party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities ..."

10.2 In the case under consideration the author of the communication states that, on 7 April 1990, on concluding his statement before Juzgado Central de Instrucción No. 4 of the Audiencia Nacional of Madrid, her brother Henri Parot complained that he had been tortured by the Guardia Civil on the days immediately following his arrest, and that this complaint was never considered by the authorities of the State party.



10.3 The State party has denied that the alleged ill treatment took place and has stated that Mr. Parot's allegations were investigated by the prison and court authorities with negative results.

10.4 The Committee notes that, in principle, article 13 of the Convention does not require the formal submission of a complaint of torture. It is sufficient for torture only to have been alleged by the victim for the state to be under an obligation promptly and impartially to examine the allegation.

10.5 It is the Committee's view that the State party considered and rejected the allegation of torture made by Mr. Parot in the above-mentioned statement of 7 April 1990. The judgement of the Audiencia Nacional of 18 December 1990 dealt expressly with the said complaint and rejected it on the basis of the five medical examinations that were carried out at the time of the alleged torture and the statements made by Parot himself to the Seville medical examiner, which statements were never denied (see paras. 7.5 and 7.6 above).

10.6 The Committee considers that where complaints of torture are made during court proceedings it is desirable that they be elucidated by means of independent proceedings. Whether or not such action is taken will depend on the internal legislation of the State party concerned and the circumstances of the specific case.

10.7 There are no grounds for Mr. Parot or the author of the communication to challenge the procedure followed in this case by the State party, since not only did Mr. Parot have the benefit of full assistance by counsel during the trial but he also made frequent exercise of his right to make other charges and complaints, which were also considered by the authorities of the State.

11. The Committee against Torture therefore concludes that the State party did not violate the rule laid down in article 13 of the Convention and it considers that, in the light of the information submitted to it, no finding of violation of any other provision of the Convention could be made.

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

#### Notes

1/ In accordance with rule 104 of the Committee's rules of procedure, Mr. Hugo Lorenzo did not take part in the consideration of this communication or in the decision concerning it.

2/ CAT/C/7/D/6/1990, decision on admissibility dated 12 November 1991.

Submitted by: B. M'B. [name deleted]  
Alleged victims: Faïsal Barakat and family  
State party: Tunisia  
Date of communication: 29 March 1994

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

Meeting on 5 May 1994,

Adopts the following:

Decision on admissibility

1. The author of the communication is B. M'B., a Tunisian national, currently residing in France with the status of political refugee. He submits the communication on behalf of the late Faïsal Barakat and his family. He claims that they are victims of violations by Tunisia of articles 2, paragraph 1, 11, 12, 13 and 14, of the Convention against Torture.

The facts as submitted by the author:

2.1 The author states that the alleged victim, Faïsal Barakat, a university student in Tunisia, was arrested in the morning of 8 October 1991 by members of the Intelligence Brigade of the Nabeul National Guard. Upon his arrest, he was reportedly beaten and towards noon he was brought to the quarters of the Brigade where his "hands and feet were bound and he was suspended between two chairs on a big stick, with his head down and the soles of his feet and his buttocks showing, in which is commonly called the 'roast chicken' position. The blows and screams continued from then until nightfall, when officers threw him out into the corridor after bringing another prisoner into the office. Faïsal Barakat was in a very bad condition and seemed to be dying. The officers nevertheless prohibited the 30 or so prisoners present, including his own brother, Jamel, from giving him assistance. One half hour later, he seemed to have died."

2.2 On 17 October 1991, the victim's father was taken to Tunis by the Chief of the Traffic Police; he was informed that his son had died in a car accident. At the Charles Nicole Hospital, he was asked to identify his son among the many corpses in the mortuary. He noted that his son's face was disfigured and difficult to recognize. He was not allowed to see the rest of the body. He was made to sign a statement in which he recognized that his son was killed in an accident; at that time, his other son Jamel was still in prison, allegedly as a hostage to prevent his father from denouncing the circumstances of Faïsal's death. At the funeral, the police carried the coffin and supervised the ceremony; the coffin remained closed.

2.3 The author submits several medical reports, based on the official autopsy report, concluding that the victim died as a result of the torture described above.

2.4 The author asks the Committee to request Tunisia to take measures to protect the physical, moral and economic security of his family, the victim's family and the witnesses and their families.

2.5 Finally, the author states that the International Secretariat of Amnesty International in London has accepted to provide evidence in support of his communication.

2.6 By letters of 12 September 1994, 8 October 1994 and 26 April 1995, the author expresses concern over the safety of witnesses who reportedly have been detained and questioned by Tunisian authorities in connection with the communication before the Committee. Moreover, members of the author's and the victim's families have been allegedly subjected to intimidation.

The State party's information:

3.1 By submissions of 9 August, 10 November 1994 and 18 April 1995, the State party denies the author's allegations and claims that the communication is inadmissible, invoking rule 107 of the Committee's rules of procedure and arguing that communications must be presented by victims or their representatives, properly designated and authorized. It is contended that Mr. B. M'B. has not been duly authorized by the family to present a claim before the Committee.

3.2 Moreover, the State party argues that it appears that the author is acting as a representative of Amnesty International, and that he therefore has no standing under article 22 of the Convention.

Admissibility considerations:

4.1 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 and its rules of procedure.

4.2 Article 22, paragraph 1, of the Convention stipulates that "a State party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State party of the provisions of the Convention" (emphasis added).

4.3 Rule 107, paragraph 1 (b), of the Committee's rules of procedure provides: "... The communication should be submitted by the individual himself or by his relatives or designated representatives or by others on behalf of an alleged victim when it appears that the victim is unable to submit the communication himself, and the author of the communication justifies his acting on the victim's behalf".

4.4 The Committee has examined the author's arguments and the State party's objections concerning the issue of standing for purposes of admissibility. The Committee finds that at this stage, the author has not submitted sufficient proof to establish his authority to act on behalf of the victim.

5. The Committee therefore decides:

- (a) That the communication is inadmissible;

(b) That the Committee may receive and consider a new communication on this matter submitted by any author, provided that his standing to act on behalf of the alleged victim is properly established;

(c) That the State party should be again requested, as expressed in the Committee's decision of 21 April 1994, to ensure that no harm is done to the author's family, the alleged victim's family or the witnesses and their families;

(d) That this decision shall be communicated to the author and to the State party.

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

Communication No. 22/1995

Submitted by: M. A. [name deleted] [represented by counsel]

Alleged victim: The author

State party: Canada

Date of communication: 14 December 1994

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

Meeting on 3 May 1995,

Adopts the following:

Decision on admissibility

1. The author of the communication is M. A., an Iranian citizen, currently in detention in Canada, who claims to be a victim of a violation by Canada of article 3 of the Convention against Torture.
2. The author arrived in Canada on 14 October 1991, and was granted refugee status on 24 May 1992. However, following indications that he was actively working for the Iranian secret service, he was declared a threat to Canadian security and no longer has a right to remain in the country.
3. The author is in the process of challenging the decision by way of a reasonableness hearing before a judge of the Federal Court. He is also challenging the relevant legislation before the Constitutional Court of Canada.
4. Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication from an individual, unless it has ascertained that the individual has exhausted all available domestic remedies; this rule does not apply if it is established that the application of domestic remedies has been or would be unreasonable prolonged or would be unlikely to bring effective relief. In the present case, the author has invoked this exception, arguing that the chances of success are almost non-existent, in view of the prior jurisprudence by the Courts and the process governing the reasonableness hearing. However, in the circumstances of the instant case, the Committee considers that the author has not shown the existence of special circumstances which should absolve him from exhausting domestic remedies. In this connection the Committee observes that, in principle, it is not within the scope of the Committee's competence to evaluate the prospects of success of domestic remedies, but only whether they are proper remedies for the determination of the author's claims.
5. The Committee against Torture therefore decides:
  - (a) That the communication is inadmissible;
  - (b) That this decision shall be communicated to the author and, for information, to the State party.

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

Communication No. 24/1995

Submitted by: A. E. [name deleted] [represented by counsel]

Alleged victim: The author

State party: Switzerland

Date of communication: 20 February 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 2 May 1995,

Adopts the following:

Decision on admissibility

1. The author of the communication is a Nigerian citizen, born in 1972, who entered Switzerland from Italy in 1994, and who has been ordered to leave the country following the dismissal of his application for refugee status. The author claims that his return to Nigeria would make him a victim of a violation of article 3 of the Convention against Torture by Switzerland.
2. 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.
3. The author's request for recognition as a refugee was refused on 20 May 1994. His appeal against this decision was dismissed on 5 October 1994. On 8 December 1994, the author requested review of the decision on the basis of new documentary evidence, but declined to pursue the remedy because he found the costs too high and doubted that he would be successful.
4. Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication from an individual, unless it has ascertained that the individual has exhausted all available domestic remedies; this rule does not apply if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief. In the circumstances of this case, the Committee finds that the State party should have an opportunity to evaluate the new evidence before the communication is submitted for examination under article 22 of the Convention. Moreover, on the basis of the information available, the Committee cannot conclude that the fee required prevented the author from exhausting the remedy or that the review would be a priori ineffective.
5. The Committee therefore decides:
  - (a) That the communication is inadmissible;
  - (b) That this decision shall be communicated to the author and, for information, to the State party.

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

ANNEX VI

Amended rules of procedure

The text of rules 106 and 108, amended by the Committee during its thirteenth session, reads as follows:

"Establishment of a working group and designation  
of special rapporteurs

Rule 106

1. The Committee may, in accordance with rule 61, set up a working group to meet shortly before its sessions, or at any other convenient time to be decided by the Committee in consultation with the Secretary-General, for the purpose of making recommendations to the Committee regarding the fulfilment of the conditions of admissibility of communications laid down in article 22 of the Convention and assisting the Committee in any manner which the Committee may decide.
2. The working group shall not comprise more than five members of the Committee. The working group shall elect its own officers, develop its own working methods and apply as far as possible the rules of procedure of the Committee to its meetings.
3. The Committee may designate special rapporteurs from among its members to assist in the handling of communications."

"Additional information, clarifications and observations

Rule 108

1. The Committee or the working group established under rule 106 or a special rapporteur designated under rule 106, paragraph 3, may request, through the Secretary-General, the State party concerned or the author of the communication to submit additional written information, clarifications of observations relevant to the question of admissibility of the communication.
2. Requests referred to in paragraph 1 of this rule which are addressed to the State party shall be accompanied by the text of the communication.
3. A communication may not be declared admissible unless the State party concerned has received the text of the communication and has been given an opportunity to furnish information or observations as provided in paragraph 1 of this rule, including information relating to the exhaustion of domestic remedies.
4. The Committee or the working group may adopt a questionnaire for requesting such additional information or clarifications.
5. The Committee or the working group or a special rapporteur designated under rule 106, paragraph 3, shall indicate a time-limit for the submission

of such additional information or clarification with a view to avoiding undue delay.

6. If the time-limit is not respected by the State party concerned or the author of a communication, the Committee or the working group may decide to consider the admissibility of the communication in the light of available information.

7. If the State party concerned disputes the contention of the author of a communication that all available domestic remedies have been exhausted, the State party is required to give details of the effective remedies available to the alleged victims in the particular circumstances of the case and in accordance with the provisions of article 22, paragraph 5 (b), of the Convention.

8. Within such time-limit as indicated by the Committee or the working group or a special rapporteur designated under rule 106, paragraph 3, the State party or the author of a communication may be afforded an opportunity to comment on any submission received from the other party pursuant to a request made under the present rule. Non-receipt of such comments within the established time-limit should, as a rule, not delay the consideration of the admissibility of the communication.

9. In the course of the consideration of the question of the admissibility of a communication, the Committee or the working group or a special rapporteur designated under rule 106, paragraph 3, may request the State party to take steps to avoid possible irreparable damage to the person or persons who claim to be victim(s) of the alleged violation. Such a request addressed to the State party does not imply that any decision has been reached on the question of the admissibility of the communication."



ANNEX VII

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

A. Thirteenth session

| <u>Symbol</u>    | <u>Title</u>   |
|------------------|--|
| CAT/C/7/Add.16   | Initial report of Peru                                     |
| CAT/C/12/Add.4   | Initial report of Liechtenstein                            |
| CAT/C/20/Add.3   | Second period report of Chile                              |
| CAT/C/21/Add.1   | Initial report of Monaco                                   |
| CAT/C/21/Add.2   | Initial report of Czech Republic                           |
| CAT/C/24/Add.1   | Initial report of Mauritius                                |
| CAT/C/24/Add.2   | Initial report of Morocco                                  |
| CAT/C/25/Add.1   | Second periodic report of the Netherlands                  |
| CAT/C/25/Add.2   | Second periodic report of the Netherlands: Antilles        |
| CAT/C/25/Add.3   | Second periodic report of the Libyan Arab Jamahiriya       |
| CAT/C/25/Add.4   | Second periodic report of Italy                            |
| CAT/C/27         | Provisional agenda and annotations                         |
| CAT/C/SR.190-207 | Summary records of the thirteenth session of the Committee |

B. Fourteenth session

|                  |   |
|------------------|---|
| CAT/C/12/Add.5   | Initial report of Guatemala   |
| CAT/C/16/Add.5   | Initial report of Jordan  |
| CAT/C/24/Add.3   | Initial report of Mauritius   |
| CAT/C/25/Add.5   | Second periodic report of the Netherlands: Aruba                          |
| CAT/C/28         | Note by the Secretary-General listing initial reports due in 1995         |
| CAT/C/29         | Note by the Secretary-General listing second periodic reports due in 1995 |
| CAT/C/30         | Provisional agenda and annotations  |
| CAT/C/SR.208-226 | Summary records of the fourteenth session of the Committee                |