

IMPLEMENTING HUMAN RIGHTS IN CLOSED ENVIRONMENTS THROUGH THE UNITED NATIONS CONVENTION AGAINST TORTURE



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RESUMEN

Los entornos cerrados plantean un gran desafío para la implementación completa y efectiva de las normativas y convenciones de derechos humanos. Sin embargo, muchas convenciones contienen dispositivos que pueden ser utilizados para seguir desarrollando la implementación de los derechos humanos en esos entornos cerrados. La Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes de las Naciones Unidas (la Convención) disfruta de varios dichos dispositivos que desempeñan un papel importante en el cumplimiento e implementación de las obligaciones de derechos humanos. Además de la creación del Comité contra la Tortura (el Comité), la Convención también proporciona estructuras para: informes y observaciones finales de los Estados Partes conforme al artículo 19; investigaciones estatales según el artículo 20; comunicaciones interestatales bajo el artículo 22; y comunicaciones individuales conforme al artículo 22. Estos mecanismos pueden apoyar a la comunidad internacional en su labor hacia la superación de las dificultades respecto a la implementación de los derechos humanos en los entornos cerrados. Este artículo presenta una breve descripción del Comité contra la Tortura y sus métodos de supervisión y seguimiento con el propósito de identificar las contribuciones de este órgano del tratado a la implementación de derechos humanos en los entornos cerrados.

Palabras claves

Convención contra la Tortura; Comité contra la Tortura; Obligaciones de Derechos Humanos; Implementación de Derechos Humanos; Entornos Cerrados.

ABSTRACT

Closed environments pose a major challenge to the full and effective implementation of human rights norms and conventions. However, many conventions contain mechanisms that can be used to further advance implementation of human rights in those closed environments. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) has several mechanisms in place that play an important role in enforcing and implementing human rights obligations. Along with the creation of a supervisory organ, the Committee against Torture (the Committee), the Convention provides a framework for: State Party reporting and concluding observations (COBs) under art 19; state inquiries under art 20; interstate communications under art 21; and individual communications under art 22. These mechanisms can provide assistance as the international community works to overcome the challenges posed by implementing human rights in closed environments. This article provides a brief description of the Committee against Torture and its techniques of supervision and follow-up, seeking to identify this treaty body's

contributions to implementing human rights in closed environments.

Keywords

Convention against Torture; Committee against Torture; Human Rights Obligations; Human Rights Implementation; Closed Environments

1. INTRODUCTION

This article gives a brief description of the United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and its supervisory organ the United Nations Committee against Torture, its techniques of supervision and follow-up, seeking to identify the Committee's contributions to implementing human rights in closed environments. For the purposes of this article, closed environments are defined as any place where persons are or may be deprived of their liberty by means of placement in a public or private setting in which a person is not permitted to leave at will by order of any judicial, administrative or other order, or by any other lawful authority.¹

The Committee against Torture is a treaty body with 10 independent experts elected by the States Parties. Its mandate is to supervise compliance with the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted in 1984.² Currently, 153 states have ratified the Convention.³ By ratifying the Convention, countries assume a set of obligations that include the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment (CIDT). Under this Convention, States Parties assume different obligations including to:

- incorporate the definition of torture into their domestic legal system;⁴
- recognise the non-derogability of the prohibition of torture;⁵
- not extradite or return a person to a state where he or she would be in danger of torture;⁶
- extradite or prosecute those individuals alleged to have committed torture;⁷
- prohibit the use of confessions extracted through torture in any official proceedings;⁸

- provide reparation to victims;⁹ and
- provide trainings to enforcement agencies,¹⁰ among others.

Articles 19-22 of the Convention set forth techniques to supervise compliance with the treaty itself. Article 19 applies to all countries that have signed and ratified (or acceded to) the Convention, and requires all States Parties to submit an initial and then subsequent periodic reports to the Committee on any new measures taken to implement their obligations.¹¹ Pursuant to art 20, the Committee may initiate an inquiry into well-founded indications of torture by a member state.¹² In ratifying the Convention, a State Party accepts the jurisdiction of the Committee to conduct art 20 inquiries unless the State Party explicitly opts out. All States Parties except for the following recognise this procedure: Afghanistan, China, Equatorial Guinea, Israel, Kuwait, Mauritania, Pakistan, Saudi Arabia, Syria and the United Arab Emirates. The other techniques of supervision outlined in arts 21 and 22 require States Parties to specifically accept the Committee's competence under those articles. Article 21 establishes a mechanism for interstate complaints.¹³ Sixty-one States Parties have accepted this procedure,¹⁴ although it has never been used. Article 22 establishes a procedure for individual communications whereby individuals can present claims that their rights under the Convention have been violated.¹⁵ Thus far, 65 states have made declarations recognising the Committee's competence under art 22.¹⁶

Each of these mechanisms helps to ensure and supervise compliance with State Party obligations under the Convention. The following sections will examine each supervisory mechanism and how those measures can be used to help overcome the challenge of implementing human rights in closed environments. Part II will discuss state reporting procedures under art 19; Part III will discuss confidential inquiries under art 20; Part IV will discuss interstate communications under art 21; Part V will discuss individual communications under art 22; and Part VI will discuss follow-up procedures and their impact.

2. ARTICLE 19: COUNTRY REPORTS

Article 19 creates an obligation on States Parties to report to the Committee on their compliance with Convention obligations.¹⁷ This procedure is designed to assess compliance with

the Convention. As all States Parties are, upon ratification of the Convention, bound by the reporting requirements, this is the Committee's central procedure to ensure compliance with the Convention.¹⁸ Under art 19, states are required to submit both an initial report and subsequent periodic reports every four years thereafter. The Committee considers the State Party reports as well as State Party replies to subsequent written questions from the Committee, and information submitted by non-governmental organisations (NGOs) which is valuable to assist the Committee's decision-making process. The Committee evaluates the State Party's compliance with the various obligations under the Convention and formalises its findings in an official document known as the Committee's Concluding Observations (COBs).

A. Initial Reports

Under art 19, States Parties are required to submit an initial report within one year of ratification of the Convention.¹⁹ Initial reports serve as a base line document that lays out the measures taken by new States Parties to comply with their treaty obligations. States will often provide explanations of measures taken to comply with their Convention obligations.²⁰ The Committee benefits from thorough initial reports. It is important that both initial and periodic reports do not merely repeat legal provisions but instead contain disaggregated data and statistics broken down by gender, race, etc on complaints involving torture, investigations, prosecutions, convictions, sentencing, training programs, victims, detainees, and so forth, as well as relevant facts that will contribute to a meaningful dialogue on actual measures taken to implement the Convention.

To assist States Parties in the formulation of their initial and periodic reports, the Committee has adopted general reporting guidelines.²¹ The Committee also utilises the Common Core Document, which was adopted in 2006 by a meeting of chairpersons of human rights treaty bodies, in order to streamline reporting on common basic information about the state (eg constitutional provisions, data relevant for human rights), and avoid unnecessary duplication.²²

B. Periodic Reports

As mentioned above, periodic reports must be submitted every four years after the initial report.²³ Under the original reporting procedure, once a State Party has submitted its periodic report, the Committee reviews the submission and requests additional information or updates through a set of written questions known as a List of Issues (LOI). The State Party then submits replies to the LOI, and the Committee will use the periodic report and reply to the LOI, together with other materials, for the dialogue with the states.

States Parties can submit their periodic reports and respond to the LOI, or they can submit their report in accordance with a new reporting procedure introduced in 2007 by the Committee.²⁴ States may voluntarily accept this new optional reporting procedure to submit a report in response to a list of specific issues formulated by the Committee called a List of Issues Prior to Reporting (LOIPR). By responding to the Committee's LOIPR, a state fulfils its periodic reporting requirement under art 19. This optional reporting procedure does not apply to initial reports so as to reinforce to States Parties the importance of providing a full-fledged report on all measures related to the status of compliance with their obligations.

The LOIPR procedure provides numerous benefits:

- it simplifies the process, as States Parties now need only submit one report rather than two as previously required when states had to submit replies to list of issues in addition to the periodic report;
- it assists States Parties in preparing timely and more focused reports;
- it enriches the dialogue; and
- it results in more specific recommendations.

Through the Committee's advance identification of key issues of concern, including recommendations of other United Nations human rights mechanisms when appropriate, the LOIPR procedure has the broader potential of strengthening coherence and follow-up to treaty bodies' recommendations, and allows for a more focused debate and dialogue between the States Parties and the Committee.²⁵ The procedure was also designed to help the Committee avoid unnecessary costs of translating the replies to

the State Party should adopt to comply with its Convention obligations and report back on to the Committee within a year.³³

1. Identification of Positive Measures

Referring to positive developments is a way to encourage states to adopt measures with the knowledge that the international community will recognise their efforts. Positive recognition is certainly also a condition for the realisation of the paradigm of constructive dialogue. It gives balance to the Committee's expressions of concern on other matters.

Positive measures recognised in COBs can include the adoption and ratification of treaties, enacting domestic norms, creating institutions, application of internal norms by the judiciary, and other mechanisms that implement the Convention. These measures can have significant importance for individuals in closed environments. Recently, for instance, the application of the Istanbul Protocol³⁴ by Germany was recognised by the Committee, as was that country's involvement in a joint project with the International Organization for Immigration to identify potential victims of trafficking among asylum seekers.³⁵ Similarly, the adoption of the Prison Rape Elimination Act of 2003 by the United States was recognised.³⁶ The positive measures identified in the concluding observations for Sri Lanka include the ratification of the Optional Protocol on the Rights of the Child on the Sale of Children, Children's Rights and Child Prosecution.³⁷ In the case of China, the Committee identified the adoption of the 2001 Marriage Law, which prohibits domestic violence, as a positive step forward.³⁸

The Committee has also recently identified positive measures that include: the judiciary in Chile applying the Convention in domestic legal cases;³⁹ Australia's commitment to become a party to the Optional Protocol to the Convention against Torture, and its ratification of the Rome Statute of the International Criminal Court on 1 July 2002;⁴⁰ and Ghana's 2007 adoption of a new criminal code which criminalises the practice of female genital mutilation.⁴¹

2. Identification of Issues or Matters of Concern or Noncompliance

The Committee often raises issues that directly affect people in closed environments, or

indirectly play a role by referring to conditions that are relevant to the protection of human rights in those environments. Issues of direct impact may include conditions of detention; treatment of vulnerable individuals (eg persons with disabilities, refugees, indigenous populations, etc); and the lack of sufficient development of institutional mechanisms and procedures to protect individuals in accordance with the Convention.⁴²

In the case of Chile, for example, the Committee expressed concerns on the shortcomings of facilities where adolescents are held, including the failure to separate different categories of inmates and the inadequate supply of basic services.⁴³ In the concluding observations for China, the Committee identified widespread allegations of torture, systematic problems in the criminal justice system, and the use of confessions extracted under torture in prosecutions.⁴⁴ Other examples of issues identified include the overcrowding of prisons in Sri Lanka,⁴⁵ and the disproportionately high number of Indigenous Australians, specifically women and children, incarcerated in Australian prisons.⁴⁶

The Committee also often addresses general issues of concern or noncompliance that may have an impact on the overall human rights condition in a state, for example, the role of civil society; the relevance of freedom of expression; the training of public or military officials; the improper use of military tribunals; or the obligation to abrogate amnesty laws. The Committee has, for instance, expressed concern over the status of indigenous peoples in Chile,⁴⁷ as well as the lack of cooperation between the government of Ghana and NGOs concerning access to prisons.⁴⁸ Other examples identified include the use of military commissions and review boards for prosecuting Guantanamo detainees in the United States,⁴⁹ and the absence of a vibrant and protected civil society in Sri Lanka.⁵⁰

3. Follow-up Recommendations

Starting in 2003, the Committee began to identify between three and six recommendations that are 'serious, protective, and are considered able to be accomplished within one year', and included them in the COBs.⁵¹ The recommendations of the Committee can be broad such as when they refer to the environment or context in which violations take place (eg requesting the abrogation of amnesty laws or the reformation of the judicial

code).⁵² They can also address very specific issues. China, for instance, was called upon to ensure the right to access a lawyer and independent medical experts, support the exclusion of confessions extracted under torture in judicial proceedings, and end harassment of lawyers and human rights defenders.⁵³ With regard to Germany, the Committee called for strict regulation of the use of physical restraints in state prisons, psychiatric hospitals and detention centres for foreigners.⁵⁴ The Committee also required Germany to ensure adequate training for law enforcement officials on the use of physical restraints.⁵⁵ Other examples of the Committee's recommendations include those to the United States to register all detained persons, comply with non-refoulement, cease extraordinary renditions, close the detention facility at Guantanamo, and provide statistical data regarding complaints related to torture.⁵⁶

Recommendations can also address indirect issues, such as the need for cooperation with international treaty bodies or organisations, or the training of public officials. In the case of Ghana, the Committee asked it to '[strengthen] its cooperation with, and support to, non-governmental organisations that undertake monitoring activities'.⁵⁷ For Belarus, the Committee highlighted the role of the state in ensuring the functional independence of lawyers, access to legal assistance and cooperation between state bodies and lawyers' self-governing bodies, and recommended that Belarus take steps to improve conditions in prisons and create a system for inspection by impartial monitors.⁵⁸

Recommendations can identify topics and measures to be adopted relevant to the particular conditions of each State Party. In this regard, the Committee requested, for example, that Ghana strengthen efforts to combat traditions of female genital mutilation, and suggested that the state develop community-based treatments for psychiatric patients.⁵⁹

In its recommendations since 2003, the Committee always requests the State Party to submit a follow-up response.⁶⁰ Like the recommendations themselves, requests for follow-up are designed to increase state accountability and allow the Committee to focus on issues and recommendations specific to each State Party.⁶¹

The process of arriving at the COBs, as described above, is comprehensive and thorough, and opens the expertise of the

Committee to the disposal of states, as well as the international community, informing them of the status of compliance with obligations under the Convention. This process not only benefits the public at large but individuals in closed environments as well. Due to the special vulnerability of people in closed environments, this process is of particular relevance since it provides specific information and recommends specific measures related to the adoption of public policies relevant to their situation.⁶² The Committee is able to identify specific issues and adopt recommendations aimed at positively impacting and strengthening human rights in closed environments within each State Party.

3. ARTICLE 20: INQUIRY

Under art 20 the Committee may initiate an inquiry into 'well-founded indications that torture is being systematically practiced in the territory of a State Party'.⁶³ Following its first inquiry under this procedure, the Committee adopted a definition of 'systematic torture' as follows:

The Committee considers torture is practiced systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has difficulty controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice.⁶⁴

All inquiries are done in cooperation with States Parties and are confidential. However, the Committee may include a summary of the findings in its annual report after the inquiry is complete. Additionally, with the consent of the State Party subject to the inquiry, the full report and state response, if submitted, can be published.⁶⁵

The Committee applied the inquiry procedure under art 20 for the first time to

Turkey. The whole procedure lasted from 1990 to 1993. Other inquiries followed with regard to:

- Egypt from 1991 to 1996 (this was the first inquiry in which the State Party did not allow a visit of Committee members to its territory);
- Peru from 1995 to 2001;
- Sri Lanka from 1999 to 2002;
- Mexico from 1998 to 2003;
- Serbia and Montenegro from 1997 to 2004;
- Brazil from 2002 to 2008; and
- Nepal from 2006 to 2011 (like Egypt, Nepal did not authorise a visit by Committee members to its territory).⁶⁶

In accordance with art 20, the Committee's annual report includes a summary account of its proceeding's results, as well as the comments and observations submitted by Nepal.⁶⁷

The art 20 report on Brazil, which is publicly available on the Committee's website, highlights the procedure and its potential impact on enforcing human rights.⁶⁸ In late 2002, the Committee received allegations, submitted by several NGOs, of the systematic practice of torture in Brazil.⁶⁹ The Committee examined the information in private meetings. After agreeing that the allegations were well founded and reliable, the Committee submitted the information to Brazil for comment. Brazil failed to respond to the documents and the Committee initiated an art 20 inquiry in late 2003. After some delay, Brazil invited the Committee for an official visit in July of 2005, and cooperated fully with the inquiry.

Two teams, made of up Committee members (including the author of this article), members of the Secretariat and interpreters visited several Brazilian states and met with numerous officials, prosecutors, lawyers, judges, representatives of international organizations, and NGOs. During their stay in Brazil, the Committee members visited a large number of places of detention, met with alleged victims of torture, and discussed the situation of torture victims and their relatives with numerous NGOs.

In late 2006, after collecting testimonies by public officials, recording observations from site visits, and reviewing submissions from NGOs and state officials, the Committee sent

its report, which included conclusions and recommendations, to Brazil for comment.⁷⁰ The report contains a history of the inquiry, an overview of Brazil, and a detailed account of information gathered. In the conclusions and observations the Committee stated:

The Committee found, as described in the preceding paragraphs, endemic overcrowding, filthy conditions of confinement, extreme heat, light deprivation and permanent lock-ups (factors with severe health consequences for inmates), along with pervasive violence as well as lack of proper oversight, which leads to impunity. In fact, there is widespread impunity for the perpetrators of abuse. In addition, the Committee on several occasions received allegations attesting to the discriminatory nature of these conditions given that they affect vulnerable groups and in particular, persons of African descent. The Committee notes that the government of Brazil [] fully cooperated with the Committee's visit, constantly expressed its awareness and concern with the seriousness of the existing problems, as well as its political will to improve. However, tens of thousands of persons are still held in *delegacias* and elsewhere in the penitentiary system where torture and similar ill-treatment continues to be 'meted out on a widespread and systematic basis'.⁷¹

In 2008, Brazil submitted a response to the report and authorised the publication of the report and its response. Brazil disagreed with the Committee on a number of issues⁷² but it provided comprehensive responses to each conclusion and recommendation identified by the Committee's report. The major issue raised by Brazil concerned the Committee's characterization of the situation in county prison system as 'systematic' torture. For Brazil the concept of systematic torture required intention and specific purpose that it did not believe existed in the case of the Brazilian prison system. The Committee disagreed and determined that even in the absence of a specific purpose, taking into account the overall circumstances, that systematic torture was present. While Brazil rejected the Committee's characterisation as systematic it did acknowledge the seriousness of the situation and made a commitment to improve it.

Article 20 investigations allow the Committee to investigate claims of the

systematic practice of torture, and States Parties are able to receive the expertise of the Committee members on issues that may otherwise have gone unaddressed. Through visits to places of detention and discussions with civil society and high level authorities, it is possible to adopt sound recommendations informed by the knowledge provided by the Committee members' presence on site. Those recommendations provide information to state authorities and ultimately, if made public, to the population of that country and the international community at large. The underlying purpose of this procedure is to present credible information by an authoritative organ about the situation of a country. This process provides relevant findings for actors who seek change both within and outside the government to promote compliance with human rights, specifically the obligations laid down in the Convention. This information also offers opportunities for international actors to adjust their behavior towards those states that are in violation of, or in a process of improving, human rights.⁷³

Factors that limit the art 20 procedure from realising its full potential include: the failure in the past in negotiating follow-up visits with the authorities of the State Party concerned; the inability to ensure the protection of those persons who collaborated with the Committee during its inquiry; and last, but not least, the concern that some States Parties have of allowing the art 20 procedure for fear of negative publicity.⁷⁴ Despite these challenges, art 20 provides a mechanism for the Committee to approach states, even if confidentially, highlighting the seriousness of a situation. If the procedure can take place with state cooperation, it will allow members of the Committee to be directly exposed to the situation on the ground, conduct investigations into violations that may not have been exposed through other supervisory techniques of the Convention, and report to the State Party as well as the international community measures that should be adopted to comply with the Convention.⁷⁵

With the adoption of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in 2006, the Committee gained a valuable tool in conducting art 20 inquiries, as well as in the performance of other duties under the Convention. OPCAT creates

important mechanisms to prevent torture, including the development of National Preventive Mechanisms (NPMs) and unannounced visits to detention centres by the treaty body established pursuant to OPCAT, ie the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT).⁷⁶ Since the creation of OPCAT, and in compliance with the requirements laid down in the conventions, the SPT and the Committee meet jointly to exchange information and engage in a dialogue designed to achieve the goals of the Convention. The creation of OPCAT, and the combined efforts between the SPT and the Committee (including the art 20 inquiry process) are essential mechanisms to combating torture due to the situation of individuals in closed environments and vulnerable situations.

4. ARTICLE 21: INTERSTATE COMMUNICATIONS

Article 21 of the Convention provides a framework wherein the Committee can receive and consider claims made by States Parties to the Convention against other member states for failure to fulfil obligations under the Convention.⁷⁷ Despite the acceptance by 61 States Parties, the art 21 interstate communication provision has never been used.

States might be reluctant to use this complaint system because of the potential political repercussions, including creating a confrontational situation among States Parties. The process may increase political ill-will and could also be used vindictively to make counter-claims against other States Parties. One can imagine, however, circumstances when art 21 still remains a viable supervisory option, including situations that concern minorities of one state living in another state.⁷⁸

5 ARTICLE 22: INDIVIDUAL COMMUNICATIONS

Article 22 creates a mechanism wherein individuals within a State Party can submit communications relating to violations of the Convention.⁷⁹ Sixty-five states have recognised the Committee's competence under art 22.⁸⁰ As of December 2011, the Committee had heard 484 communications regarding 29 countries under art 22 (108 cases are pending). Of the 378 communications which have been concluded,

the Committee found a violation of the Convention in 67 cases and no violation in 123 cases. Additionally, 125 cases were discontinued and 63 were declared inadmissible.⁸¹

Cases brought under art 22 so far have been overwhelmingly related to issues under art 3 (no expulsion, return or extradition) because the States Parties who accepted this procedure were often developed countries in Western Europe, where individuals sought refuge.⁸² Accordingly, the issues brought to the attention of the Committee related to individuals – foreign citizens – who argued that their return to other countries, usually their own, would subject them to the risk of torture.⁸³ Since art 22 cases are often focused on alleged violations of art 3, the Committee’s main contribution to protecting human rights in closed environments continues to be achieved through its periodic reporting system under art 19. This may change in the future due to increasing acceptance by States Parties of the Committee’s competence under art 22 or if conditions were to change within states.⁸⁴

Individual petitions are an important form of supervision laid down in the Convention. While state reports are useful instruments that look at the overall situation of a State Party and formulate recommendations geared toward affecting public policy as a whole, individual petitions concern specific alleged violations of rights espoused by the Convention and identify individual victims. Individual petitions allow for targeted remedial measures, including full reparation and rehabilitation when possible, as well as investigation and punishment of those guilty of torture.⁸⁵ In this function, the Committee performs what could be described as a semijudicial function, resorting to the legal tradition to establish facts, the use of legal reasoning, the reliance on precedent, etc. The Committee’s final decisions relating to art 22 petitions are authoritative interpretations of an international treaty, and as such must be adhered to by States Parties. Additionally, to avoid irreparable damage, the Committee has the authority to request interim measures while a petition is pending without prejudging the merits. Again, so far, most if not all interim measures have related to alleged violations of art 3.⁸⁶

Early on, the Committee adopted General Comment 1, which was designed to interpret art 3 and provide guidance, both to states and

petitioners, to assist them in evaluating the presence of a potential violation.⁸⁷ General Comment 1 also explains the factors taken into account by the Committee to determine whether there has been a violation of art 3. In art 3 communications, the Committee has held that the risk of torture to an individual must be foreseeable, real and personal, although it need not be highly probable. The presence of a pattern of gross, mass, or flagrant violations of human rights in a country is not sufficient to prevent extradition under art 3. Conversely, the absence of a pattern also does not exclude the possibility of a violation of art 3, since the threat of torture must be individual and personal. The situation must be one that presents a risk of torture that goes beyond mere theory or suspicion. The Committee considers all relevant evidence in making its decision and, while it will take into account determinations by state authorities, it is not bound by such determinations when finding a violation under art 3.⁸⁸

In addition to matters involving art 3, the Committee has had the opportunity in a few communications to interpret different provisions of the Convention that claim other violations. These issues include, for example, the responsibility of a state regarding torture committed by groups that assume quasi-government authority.⁸⁹ In *Elmi v Australia*, the Committee noted that in certain exceptional circumstances, actions by groups who assumed quasi-governmental authority could fall within the scope of art 1 (torture) or art 16 (CIDT).⁹⁰ Similarly, the Committee, in *Dezmail v Yugoslavia*, explained that if a State Party fails to adequately respond to torture committed by private actors its failure could constitute a violation of art 16 by ‘acquiescence’.⁹¹

Through the art 22 petition process, the Committee has also been able to identify important issues regarding the duty of States Parties to investigate acts of torture within their territories.⁹² Since proving torture is often elusive with the development of techniques to hide evidence, it becomes essential to assess whether a government acted promptly in its investigation. The failure to promptly investigate constitutes a violation of the Convention. In *Abad v Spain*, for instance, the complainant notified Spanish authorities on 3 February 1992 that she had been held incommunicado for five days and subjected to torture and ill-treatment. Spanish

the State Party to provide, within one year, information on measures taken relating to:

- (a) ensuring or strengthening legal safeguards for persons deprived of their liberty;
- (b) conducting prompt, impartial and effective investigations; and
- (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in concluding observations, when identified for follow-up.

In addition, the State Party concerned may be requested to provide follow-up information on other issues identified by the Committee in the concluding observations, including providing remedies and redress to the victims, when deemed necessary by the Committee, and considering the specific situation in that State Party.¹¹⁵

The Committee has appointed a Rapporteur on Follow-up to Concluding Observations and Recommendations under art 19 to assess whether issues identified in concluding observations have been or are being addressed by States Parties.¹¹⁶ The Rapporteur is charged with assessing whether the information provided by the States Parties, in response to the issues identified for follow-up in the concluding observations, actually and accurately address the concerns and recommendations raised by the Committee.

When assessing and analysing the responses submitted by States Parties, the Rapporteur considers all sources of information including from other treaty bodies, other sources within the United Nations system, regional human rights mechanisms, national human rights institutions, NGOs, etc. The Rapporteur may request that States Parties provide additional information if needed. The Rapporteur also sends reminders to States Parties that have not supplied follow-up information. During every session, the Rapporteur presents a progress report on the status of the follow-up process; the report is then included in the Committee's annual report.¹¹⁷ Since May 2007, all of the Rapporteur's letters regarding follow-up to the States Parties have been made public in an effort to maximise accountability and increase transparency.¹¹⁸ Of 95 States Parties with follow-up reports due to the Committee by May 2011, 67 had been received by the Committee,¹¹⁹

while 28 states had not supplied any follow-up information.¹²⁰

In reviewing follow-up requests sent to a variety of States Parties over several years, the Committee has noted that States Parties are often requested to remedy similar abuses or violations of the Convention. The actions most frequently requested are to:

- conduct prompt, impartial, and effective investigations;
- prosecute and sanction perpetrators of torture or ill-treatment;
- ensure or strengthen legal safeguards for persons detained;
- ensure the right to complain and have cases examined;
- conduct training and awareness-raising;
- bring interrogation techniques in line with the Convention and, specifically, abolish incommunicado detention;
- ensure redress and rehabilitation;
- prevent gender-based violence and ensure the protection of women;
- monitor detention facilities and places of confinement, and facilitate
- unannounced visits by an independent body;
- improve data collection on torture; and
- improve conditions of detention, ie, overcrowding.¹²¹

Based on these issues identified in follow-up procedures, many States Parties fail to properly and vigorously investigate and monitor abuses.¹²²

Article 19 follow-up procedures provide States Parties with achievable goals and increased accountability. Additionally, the follow-up procedures provide both States Parties and the international community with information on compliance with the obligations, including the protection of people in closed environments, since the procedure relates specifically to matters that are directly relevant to the protection of individuals as explained above. If followed fully, compliance with these follow-up procedures will provide a sense of progress, protection against abuse, and a general strengthening of human rights globally. If States Parties do not comply with their obligations, the reporting procedure is a method to 'mobilize shame'. The procedure's

impact will depend on different factors including the conditions inside the country as well as the political will of the international community to resort to measures established under international law to protect human rights. This technique can appeal to both public opinion domestically within the State Party as well as internationally.¹²³

B. Follow-up for Complaints under Article 22

The Committee has established a procedure for follow-up for individual communications submitted under art 22, as well as a corresponding Rapporteur.¹²⁴ The follow-up procedure for individual communications furthers the goal of art 22 by providing support for individual victims of violations, and continuing to exert pressure and accountability on non-compliant member states. The majority of the cases under art 22 that would require follow-up involve, as mentioned above, violations of art 3. In addition to the actual concluding decision on the case, the art 22 Rapporteur plays an important role in follow-up.

The art 22 rapporteurship is newer and less developed than the art 19 Rapporteur for Follow-up to Concluding Observations and Recommendations since state reporting has been the core function of the Committee. The role of this newer Rapporteur is to:

[monitor] compliance with the Committee's decisions by sending notes verbales to States parties enquiring about measures adopted pursuant to the Committee's decisions; [recommend] to the Committee appropriate action upon the receipt of responses from States parties, as well as in situations of non-response, and upon the receipt henceforth of all letters from complainants concerning non-implementation of the Committee's decisions; [meet] with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the United Nations High Commissioner for Human Rights would be appropriate or desirable; [conduct] with the approval of the Committee follow-up visits to States parties; [and prepare] periodic reports for the Committee on the Rapporteurs' activities.¹²⁵

Since art 22 relates to specific violations and directly addresses the situation of individual victims, it has the potential of having significant impact on individuals in closed environments who can utilise this process if they believe their rights have been violated. Additionally, as noted before, individuals in closed environments can request interim measures, in addition to submitting a communication. With the continued declaration of acceptance of art 22 and the increasing knowledge of the Convention, more individuals will be likely to use the individual communications mechanism.

7. CONCLUSION

The international community has created a specialised Convention and treaty monitoring body (ie the Committee) with substantive obligations, procedures, and institutions for the purposes of combating torture and other forms of CIDT. Those institutions, norms and procedures have relevance for the treatment of individuals in closed environments, and the different supervisory techniques under the Convention open important opportunities in this regard by providing authoritative accounts of the status of compliance with the obligations laid down in the Convention. Over the years, the Committee has achieved successes in contributing to the formulation of public policy transforming countries' legal norms, including the incorporation of the definition of torture into domestic legal systems, characterising torture as a non-derogable right, excluding confessions extracted under torture for use in judicial proceedings, and contributing to better practices concerning prison conditions. The Committee has also promoted the need to properly train public officials through, for example, the utilisation of the Istanbul Protocol, and has encouraged the ratification of treaties that strengthen the prohibition of torture including OPCAT and the Rome Statute of the International Criminal Court.

Despite these important developments, it cannot be affirmed that torture has decreased in the world. The Committee continues to witness failures to fully implement the Convention's provisions and the Committee's recommendations including:

- instances of refusal to adopt a clear definition of torture and to establish proper

sanctions for torture commensurate with the gravity of the crime;

- failures to investigate alleged cases of torture;
- impunity for perpetrators of acts of torture;
- expulsion, return and extradition of persons to states where there are substantial grounds for believing that they are in danger of being subjected to torture; and
- 'rendition' of suspects to countries that continue to use torture as a means of investigation and interrogation.

Deplorable conditions of detention are still the general rule. Forced disappearances continue to deny people their basic legal safeguards, and rehabilitation, redress, or reparation is rarely provided to victims of torture or their families.

The Convention offers important opportunities to address these violations of human rights and, if fully implemented, would greatly contribute to the improvement of human rights in closed environments.

To achieve that goal, different measures should be adopted to strengthen the Committee's contributions. The follow-up procedures under the Convention need to be further developed so that failure to comply with state obligations will continue to be spotlighted, both to the State Party and the international community. Increased coordination with other treaty bodies, as well as regional organisations, could add additional weight to the Committee's action and increase its impact by building and reflecting a coherent view by authoritative, universal and regional bodies. Reaching out to the judiciary, public defenders and prosecutors, among other institutions within States Parties, could also insure, together with training, that the expertise of the Committee is given more weight in internal state decision making.

Increasing publicity of the procedures and decisions adopted by the Committee, for example through webcasting, allows for further access, knowledge and transparency regarding the Committee's activities. Expanding the meeting time of the Committee to receive information from all sources, including NGOs and individuals, would further enrich its ability to place the Committee's expertise at the disposal of States Parties.

The Committee is also faced with the need to strengthen the semijudicial nature of the art 22 procedure, including further developing its use of precedent, and its consideration of facts as determined by domestic legal systems. In this regard, the Committee's recent adoption during its 49th session of General Comment 3 on the implementation of art 14 (concerning redress and rehabilitation for victims) by States Parties is of crucial value. The aim of General Comment 3, which is published on the Committee's website, is to interpret the obligations of States Parties in accordance with art 14 of the Convention to provide proper reparation and rehabilitation to victims of torture and other ill-treatment. Additionally, the General Comment will contribute to specifying states' obligations in individual cases of torture and other forms of CIDT that have been the objects of art 22 communications to the Committee.

The increasing impact and workload of the Committee requires a larger commitment of resources than is currently available. Presently, the Committee meets twice each year for a total of eight weeks, allowing it to consider only 16 States Parties reports per year. With more than 100 petitions pending before the Committee, the backlog and delay in hearing communications will only increase as more countries declare their acceptance of art 22. It is, then, crucial for States Parties to realise the full value of the Committee and other treaty bodies, and provide the Committee and other treaty bodies with sufficient means to fulfil their functions and assist States Parties in complying with their obligations. The High Commissioner for Human Rights has presented concrete proposals for consideration by the international community to strengthen the treaty body system after an extensive participatory process.

The growth of the treaty body system, which has doubled in size in recent years, has not been matched with equivalent resources. The general lack of resources for the Committee has led to a backlog of work and a deterioration of services, including translations. Although treaty bodies are continuously working to ensure that their working methods are efficient and effective, there is further room for improvement, for example, by a better control of the time and length of the different proceedings, and considering the possibility of working groups among different committees with regard to the treatment of

communications. However, measures that lead to increased efficiency do not necessarily reduce costs: making the Committee's work more implementable at the national level requires the commitment of resources that allow engagement in training, technical cooperation for the purposes of upgrading the capacity to prepare reports, and assisting in the implementation of COBs at the national level. States Parties should play a leading role in finding permanent solutions to these resource and workload issues so as to ensure full realisation of the objectives of the Convention.

As the international community continues to debate these challenges, it is crucial to understand the value and contributions of the United Nations treaty bodies, such as the Committee, in protecting individuals in closed environments. These supervisory organs add

an important layer of legitimacy to the human rights work in comparison to the contributions made by political bodies which, needless to say, respond to political imperatives. To achieve greater legitimacy, political organs should rely even more on the decisions adopted by organs made up of independent experts working within the legal tradition. Making this statement could appear naïve, albeit well intentioned. However, we should not forget that change is possible and does take place. While the struggle against racism, dictatorships, discrimination, slavery, etc has never been easy, the aspiration to live a full and dignified life including one free from torture and other forms of CIDT is a powerful and inspirational force whose presence surprises only those who do not believe in our common humanity and shared expectations.

NOTES

1. The definition used in this article is similar to art 4 of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, open for signature 18 December 2002, UN Doc A/RES/57/199 (entered into force 22 June 2006) (OPCAT), which states: 'deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority'.
2. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, open for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) (Convention).
3. On 26 September 2012, the Lao People's Republic and Nauru became the 153rd State Party to the Convention. See a full list of countries that have ratified the Convention at United Nations Human Rights Committee, Office of the High Commissioner of Human Rights, *Committee against Torture* <www2.ohchr.org/english/bodies/cat>.
4. Convention, arts 1 and 4. The Committee has consistently called upon States Parties to criminalise torture and incorporate the definition of torture as laid out in the Convention into their domestic legislation. Some states have argued, however, that using the verbatim definition of torture as laid out in the Convention is not necessary if the elements of torture are incorporated into domestic law. However, the Committee considers that the verbatim definition of torture provides uniformity among States Parties, contributing to the legitimacy of domestic norms. See Committee against Torture, *General Comment No 2*, UN Doc CAT/C/GC/2 (24 January 2008) [9] ('In some cases, although similar language may be used, its meaning may be qualified by domestic law or by judicial interpretation and thus the Committee calls upon each State Party to ensure that all parts of its Government adhere to the definition set forth in the Convention for the purpose of defining the obligations of the State'). See also Committee against Torture, Concluding Observations of Qatar, UN Doc CAT/C/QAT/CO/2 (25 January 2013) [8]-[9] (recognising Qatar's incorporation of the definition of torture as laid out in the Convention into domestic law).
5. Convention, art 2.
6. Convention, art 3.
7. Convention, arts 6 and 7.
8. Convention, art 15.
9. Convention, art 14.
10. Convention, art 10.
11. Convention, art 19.
12. Convention, art 20.
13. Convention, art 21.
14. The following States Parties have made declarations under art 21: Algeria, Andorra, Argentina, Australia, Austria, Belgium, Bolivia, Bulgaria, Cameroon, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Georgia, Germany, Ghana, Greece, Hungary, Iceland, Ireland, Italy, Japan, Kazakhstan, Liechtenstein, Luxembourg, Malta, Monaco, Montenegro, Netherlands, New Zealand, Norway, Paraguay, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Russian Federation, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Togo, Tunisia, Turkey, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Venezuela.
15. Convention, art 22.
16. The following States Parties have made declarations under art 22: Algeria, Andorra, Argentina, Australia, Austria, Azerbaijan, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burundi, Cameroon, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Hungary, Iceland, Ireland, Italy, Kazakhstan, Liechtenstein, Luxembourg, Malta, Mexico, Monaco, Montenegro, Morocco, Netherlands, New Zealand, Norway, Paraguay, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Russian Federation, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Togo, Tunisia, Turkey, Ukraine, Uruguay and Venezuela.
17. Convention, art 19.

- status of compliance with the Committee's recommendations. All reports by States Parties and responses to the reports by the Committee are posted on the Committee website for public access.
34. Office of the United Nations High Commissioner for Human Rights, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc HR/PT/S/Rev 1 (2004) (contains internationally recognised standards, procedures, and guidelines for documenting instances and consequences of torture, investigating allegations of torture, and reporting findings for use in the judicial process). See Claudio Grossman, 'The Normative Value of the Istanbul Protocol' in Susanne Kjær and Asger Kjær, *Shedding Light on a Dark Practice: Using the Istanbul Protocol to Document Torture* (International Rehabilitation Council for Torture Victims, 2009) ('Due to the application of classical international law, the Protocol has become an enforceable legal instrument, setting forth obligations that states must incorporate into the domestic legal realm, and that international supervisory organs must apply in their decision-making. The Protocol identifies the specific obligations of the prohibition of torture and elaborates on the steps necessary to meet those obligations. In addition, the Protocol increases access to justice by stipulating safeguards intended to protect citizens against torture. A state's non-compliance with these safeguards creates a presumption of validity of a plaintiff's claim, thus shifting the burden of proof from the plaintiff to the state').
 35. Committee against Torture, *Concluding Observations of the Committee against Torture: Germany*, UN Doc CAT/C/DEU/CO/5 (12 December 2011) [4].
 36. Committee against Torture, *Concluding Observations: United States of America*, UN Doc CAT/C/USA/CO/2 (25 July 2006) [9]. See *Prison Rape Elimination Act of 2003*, Pub L No 108-79 (September 2003). While these examples may be varied they have a direct relationship with closed environments as well. Each of the affirmative steps mentioned above are related to closed environments to the extent that more general positive steps taken by States Parties are vital to the protection of the individual, especially in closed environments. These issues provide protection to individuals not only in the general sense but also within the context of closed environments, including sexual violence in prison, children's rights, and domestic violence.
 37. Committee against Torture, *Concluding Observations: Sri Lanka*, UN Doc CAT/C/LKA/CO/3-4 (8 December 2011) [3].
 38. Committee against Torture, *Concluding Observations: China*, UN Doc CAT/C/CHN/CO/4 (12 December 2008) [4].
 39. Committee against Torture, *Concluding Observations: Chile*, UN Doc CAT/C/CHL/CO/5 (23 June 2009) [4].
 40. Committee against Torture, *Concluding Observations: Australia*, UN Doc CAT/C/AUS/CO/3 (22 May 2008) [7].
 41. Committee against Torture, *Concluding Observations: Ghana*, UN Doc CAT/C/GHA/CO/1 (15 June 2011) [6(d)].
 42. See, for example, registration of prisoners and ratification of the OPCAT.
 43. Committee against Torture, *Concluding Observations: Chile*, UN Doc CAT/C/CHL/CO/5 (23 June 2009) [22].
 44. Committee against Torture, *Concluding Observations: China*, UN Doc CAT/C/CHN/CO/4 (12 December 2008) [11].
 45. Committee against Torture, *Concluding Observations: Sri Lanka*, UN Doc CAT/C/LKA/CO/3-4 (8 December 2011) [14].
 46. Committee against Torture, *Concluding Observations: Australia*, UN Doc CAT/C/AUS/CO/3 (22 May 2008) [23(c)].
 47. Committee against Torture, *Concluding Observations: Chile*, UN Doc CAT/C/CHL/CO/5 (23 June 2009) [23]. As mentioned above, these matters have a general impact on human rights but are quoted in this article because they also have a direct relationship with the situation of closed environments. For example, the restriction of freedom of expression to denounce violation of human rights in closed environments or restrictions on the role of the judiciary have a direct bearing on individuals in closed environments.
 48. Committee against Torture, *Concluding Observations: Ghana*, UN Doc CAT/C/GHA/CO/1 (15 June 2011) [18] ('the Committee remains concerned at the fact that a visit request made by the NGO, Amnesty International, in March 2008 was refused by the Ghanaian government').

66. A full list of all publicly available conclusions and observations of inquiries under art 20 is available at the Office of the United Nations High Commissioner for Human Rights, *Confidential Inquiries Under Article 20 of the Convention against Torture* <www2.ohchr.org/english/bodies/cat/confidential_art20.htm>.
67. *Report of the Committee against Torture*, A/67/44 (2012) (Annex XIII).
68. *Report of the Committee against Torture*, Thirty-ninth session (5-23 November 2007) and Fortieth session (28 April-16 May 2008), UN Doc A/63/44 (18 July 2008) [64]-[72].
69. World Organization against Torture and ACAT Brazil, 'Information to the Committee against Torture submitted under article 20 of the Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment concerning the situation in Brazil' (4 November 2002); 'Follow-up to torture allegations in the State of São Paulo 2000/2002', a joint collaboration between the following NGOs: Ação dos Cristãos para a Abolição da Tortura ACAT/Brazil; Pastoral on Detention Centres/SP; Centre for Global Justice; AMAR; AFACE; Torture Never Again; Psychotherapist's Union/SP.
70. Committee against Torture, above n 68, [178]-[196].
71. *Ibid*, [178].
72. *Ibid*, [241]-[242] and [252] (disagreeing with the Committee on issues including: the existence of a deliberate policy supporting the practice of torture in Brazil; the difference between CIDT and a general lack of respect for prisoners; and the ability to identify a special degree of severity and absence of the specific purpose that would define torture).
73. In human rights law it is difficult to establish to what extent either alone or in conjunction with other processes a CAT inquiry impacts human rights within a state. By providing authoritative recommendations during an inquiry, the Committee provides benchmarks and recommendations for change. The human rights narrative is strengthened with accurate reporting by legitimate bodies, and the reporting should be included in the process to influence policy makers, domestic and international actors, and so forth. It is difficult, however, to measure outcomes with a simple accounting process. For the overall impact of international law and how it influences behaviour, see Harold Koh, 'Transnational Legal Processes' (1996) 75 *Nebraska Law Review* 181.
74. A visit requires that Committee members be fully prepared for an inquiry, both psychologically and physically. The visiting team faces numerous challenges during the on-site investigation including: developing the knowledge and ability required to talk privately with prisoners and alleged victims of torture, and gaining their trust so that they share information; handling in situ conflicts that might emerge with state authorities (for example, denial of access); and having regard to the confidential nature of the work handling the press and media, to mention a few.
75. See Nowak and McArthur, above n 25, 660 ('The inquiry procedure is the most innovative element of the monitoring mechanisms of the Convention and has no precedent in other human rights treaties. It has, since then, become a model for later human rights treaties').
76. OPCAT.
77. Convention, art 21.
78. The existence of the inquiry procedure under art 20 does not obviate the need for art 21 interstate reporting. It is possible that a State Party will refuse to cooperate with the Committee under art 20 and the only resort is the art 21 procedure. The art 21 procedure has a follow-up mechanism and results in a final determination.
79. Convention, art 22.
80. See above n 16 (listing the States Parties who have made declarations under art 22).
81. *2010-2011 Annual Report of the Committee against Torture*, UN Doc A/66/44 (2011), 160 (displaying a chart of 'Complaints in which the Committee has found violations of the Convention up to the forty-sixth session and for which the follow-up dialogue is ongoing').
82. See Nowak and McArthur, above n 25, 723 (noting that during the roughly 20 years of existence of the Convention, the vast majority of communications submitted to the Committee do not deal with the issue of torture but deal with art 3 or the issue of non-refoulement).
83. Convention, art 3(1) ('No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture'); see, for example, Committee against Torture, *Views: Communication No 120/1998*, 22nd sess, UN Doc CAT/C/22/D/120/1998 (25 May 1999)

- 31st sess, UN Doc CAT/C/31/D/189/2001(14 November 2003) [10.6] (*Ltaief v Tunisia*) ('[A]rticle 13 of the Convention does not require either the formal lodging of a complaint of torture under the procedure laid down in national law or an express statement of intent to institute and sustain a criminal action ... it is enough for the victim simply to bring the facts to the attention of an authority of the State for the latter to be obliged to consider it a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated').
96. *Abad v Spain*, UN Doc CAT/C/20/D/59/1996 [8.8] (regarding allegations of torture by police against a member of the ETA, the Committee stated that an 'investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might have been involved therein' and the failure to do was a violation of art 13).
97. Committee against Torture, *Views: Communication No 113/1998*, 26th sess, UN Doc CAT/C//D/113/1998 (11 May 2001) [9.5] (*Ristic v Yugoslavia*) (finding that the refusal by Yugoslavian authorities to allow the complainant access to a qualified medical professional because of an apparent lack of obvious traces of torture or ill-treatment was a violation of art 13).
98. Convention, art 4 ('1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature').
99. See Committee against Torture, *Views: Communication No 212/2002*, 34th sess, UN Doc CAT/C/34/D/212/2002 (17 May 2005) (*Guridi v Spain*) (finding that Spain in the case of torture by several civil guards violated art 4 by failing to impose appropriate penalties, allowing penalties to be reduced, allowing sentences to be pardoned, and failing to impose interim disciplinary measures while criminal proceedings were in progress).
100. In the same vein, the Committee has consistently reconfirmed that amnesty and statutes of limitation for crimes of torture are incompatible with a State Party's obligations under the Convention. See, for example, 'Concluding Observations: Azerbaijan', *Report of the Committee against Torture*, 23rd sess, UN Doc A/55/44(8-19 November 1999) [69(c)].
101. Convention, art 5 ('1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases: (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State; (b) When the alleged offender is a national of that State; (c) When the victim is a national of that State if that State considers it appropriate. 2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article').
102. See Committee against Torture, *Views: Communication No 181/2001*, 36th sess, UN Doc CAT/C/36/D/181/2001 (19 May 2006) (*Suleymane Guengueng v Senegal*) (finding Senegal in violation of art 5 of the Convention for failing to take necessary measures to secure jurisdiction to prosecute Hissène Habré for torture committed in Chad); *Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)* [2012] ICJ (finding Senegal in violation of several articles of the Convention against Torture in addition to noting that Senegal after *Suleymane Guengueng v Senegal* was decided had secured jurisdiction to prosecute Hissène Habré as required under art 5); Committee against Torture *Views: Communication No 176/2000*, 28th sess, UN Doc CAT/C/28/D/176/2000 (30 April 2002) [6.7] (*Rosenmann v Spain*) (declaring a case inadmissible concerning a request to extradite Augusto Pinochet while still holding that States Parties have an obligation under the Convention to 'bring to trial a person, alleged to have committed torture, who is found in its territory').
103. See Committee against Torture, *Views: Communication No 193/2001*, 29th sess, UN Doc CAT/C/D/193/2001 (21 November 2002) (*PE v France*).
104. See Committee against Torture, *Views: Communication No 233/2003*, 34th sess, UN Doc CAT/C/34/D/233/2003, (20 May 2005) [13.8] (*Agiza v Sweden*).
105. See Committee against Torture, *Views: Communication No 161/2000*, 29th sess, UN Doc CAT/C/29/D/161/2000 (2 December 2002)

