

**NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME**



**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**PROCEDURES SPECIALES DU CONSEIL DES
DROITS DE L'HOMME**

**SPECIAL PROCEDURES OF THE UNITED
NATIONS HUMAN RIGHTS COUNCIL**

Téléfax: (41-22)-928 90 10
Télégrammes: UNATIONS, GENEVE
Télex: 41 29 62
Téléphone: (41-22)- 928 92 99
Internet : www.ohchr.org/english/bodies/chr/special/index.htm
E-mail: lwendland@ohchr.org



Address:
Palais des Nations
CH-1211 GENEVE 10

Mapping state obligations for corporate acts: an examination of the UN Human Rights Treaty System

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

Report No.5¹

**Prepared for the Special Representative of the Secretary-General on Human
Rights and Transnational Corporations and
Other Business Enterprises**

**With the support of
The Office of the United Nations High Commissioner for Human Rights**

December 2007

¹ The reports are numbered chronologically according to the date of adoption of the Convention.

PREFACE

The following report is part of a series of reports examining States' obligations in relation to corporate activity under the United Nations' core human rights treaties.² A report summarizing the main findings and trends from the treaty-specific reports was submitted by the Special Representative of the Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises to the fourth session of the Human Rights Council.³

The series of reports map the scope and content of States Parties' responsibilities to regulate and adjudicate the actions of business enterprises under the treaties and as elaborated by the respective treaty bodies.⁴ This mapping supports the work of the SRSG. The (then) United Nations Commission on Human Rights mandated the SRSG, *inter alia*, to:

“(b) elaborate on the role of States in effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights, including through international cooperation.”⁵

The reports analyze a representative sample of primary materials associated with each treaty:⁶ the actual treaty provisions; General Comments or Recommendations by the Committees; Concluding Observations on States Parties' periodic reports; and Views on Communications and under Early Warning Measures and Urgent Procedures.⁷

The reports are based on references by the treaties and treaty bodies to States Parties' duties to regulate and adjudicate corporate activities.⁸ However, as it is less common for the treaty bodies to refer explicitly to corporations, the reports also highlight more general

² The following treaties were considered as part of this series: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Rights of the Child (CRC); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW). The International Convention on the Rights of Persons with Disabilities (ICRPD) (adopted by the General Assembly in Dec. 2006) and the International Convention for the Protection of All Persons from Enforced Disappearances, which had not entered into force at the time of completing the research, have not been included. All reports are available at <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>.

³ A/HRC/4/35/Add.1.

⁴ The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. They are created in accordance with the provisions of the treaty that they monitor.

⁵ Commission on Human Rights Resolution 2005/69, para. (b). The SRSG now reports to the UN Human Rights Council.

⁶ The ICRMW report relies to some extent on secondary sources because of the scarcity of primary sources from the recently established Committee on Migrant Workers (CMW).

⁷ The ICCPR, CAT, ICERD, CEDAW and ICRMW all have associated individual complaints mechanisms. CEDAW and CAT also have procedures for urgent inquiries. ICERD has an early warning procedure.

⁸ Drawing on the SRSG's mandate, the reports uses “regulation” to refer to treaty body language recommending legislative or other measures designed to prevent or monitor abuse by business enterprises, and “adjudication” to refer to judicial or other measures to punish or remediate abuse.

references to State obligations regarding acts by non-State actors, especially where they help identify patterns and measures relevant to business enterprises. The reports do generally not document references to non-State actors that are unrelated to the mandate, such as armed groups, educational institutions, family members and religious leaders. Further, the reports focus on States' obligations in relation to rights impacted by corporate activities, rather than on corporate entities as possible rights-holders.⁹

The decision to focus the research on the treaties reflects the global importance of the United Nations' human rights treaty machinery. Due to time and resource constraints, other domains of human rights law, such as the regional human rights systems and international customary law, have not been included in this particular series, though they are referenced briefly in the SRSG's report to the fourth session of the Human Rights Council.¹⁰ The same is true of other branches of international law that are relevant to the mandate, such as international labor law.

Any views or recommendations expressed in this series do not necessarily represent the views of the Office of the United Nations High Commissioner for Human Rights or the various treaty monitoring bodies. The reports were completed purely for research purposes on behalf of the SRSG's mandate and do not represent his final views or recommendations in relation to the treaty bodies' consideration of business and human rights issues.

⁹ The UN human rights treaties have not been interpreted to protect the rights of corporate bodies. This is in contrast to e.g. the European Convention on Human Rights, many rights of which have been extended to benefit companies or other non-State legal entities.

¹⁰ A/HRC/4/35.

Introduction

This report focuses on States Parties' obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention) to protect against violations by non-State actors, as further elaborated by the Committee against Torture (CAT). No direct references to business enterprises are made in the Convention itself, nor have any been made by the Committee; instead, references to other categories of private actors have been used to map the scope of State obligations under the Convention in relation to acts involving non-State actors. While in some cases an analogy can be drawn between business and other non-State actors, there is no suggestion that corporate actors can generally be equated with the type of non-State actor groups which are referred to in this report.

This report differs somewhat from the other reports in this series where other treaty bodies have explored State duties specifically vis-à-vis corporate activities to a greater extent. However, given the state-action requirement in the scope of application of the Convention against Torture it is not surprising that corporate related acts have not been a focus of the Committee's work.

The report focuses on States' duties to regulate and adjudicate activities falling within the scope of the Convention by private actors. It is not intended as an examination of the extent to which business enterprises may have direct obligations under international law.

Methodology

Like the other treaty specific reports, this report is based on an examination of primary materials associated with the treaty, namely the treaty provisions themselves; General Comments;¹¹ Concluding Observations on States' periodic reports; and Decisions on Communications under article 22 of the Convention. Due to time and resource constraints, examination of Concluding Observations was limited to only those containing relevant search terms.¹² Individual communications were examined in their entirety.

Note that Annex A contains the substantive articles of the Convention and Annex B lists States Parties to the Convention.

PART 1 – GENERAL NATURE AND SCOPE OF STATE OBLIGATIONS

Scope and application of the Convention

The Convention against Torture applies only to acts which fall within the definition of torture contained in article 1, and of cruel and inhuman treatment as defined in article 16.

¹¹ The Committee has only adopted one General Comment which is on the issue of refoulement and communications (implementation of article 3 in the context of article 22) (A/53/44, annex IX, Committee Against Torture General Comment No. 1).

¹² The research did not extend to Concluding Observations by the Committee in 2007. To identify the relevant Concluding Observations searches were conducted using The Universal Human Rights Index (<http://www.universalhumanrightsindex.org/>). Search words included "private", "company", "corporation", "employer", "employment", "non-State actor", and "complicity".

According to the definition in article 1 three elements are required for an act to qualify as torture:

- The infliction of severe mental or physical pain or suffering;
- By or with the consent or acquiescence of a state official; and
- For a specific purpose, such as gaining information, punishment or intimidation.

In the context of the present report, it is of particular importance that the definition in article 1 is closely tied to the idea of torture being an *official* act for a specific purpose. This means that the Convention does not apply to *private acts of cruelty*, but rather to purposive acts which meet article 1's threshold severity which has some degree of official sanction.

Article 16 similarly requires the element of official sanction for an act to constitute cruel, inhuman or degrading treatment or punishment. The distinction between acts of torture covered by article 1 and cruel, inhuman or degrading treatment or punishment covered by article 16 is the severity of the degree of pain inflicted. Furthermore, article 16 does not require that the pain is inflicted for a particular purpose.

Article 3 of the Convention prohibits *refoulement* of persons to countries where they risk torture. According to the Committee against Torture, article 3 does not apply to cases where a person risks pain and suffering inflicted by a non-governmental entity.¹³ Rather than applying the Convention as an instrument requiring State parties to protect against exposure to risks posed by non-State actors in another state, the Committee has used the underlying purpose of article 3 to encourage (host) State parties to consider the dangers posed by third parties or non-State actors when determining asylum and removal proceedings.¹⁴ In other words, if a person faces a risk of persecution from non-State actors in a third country, this should be relevant in determining whether that person qualifies for asylum, but States have no duty under article 3 to take such a threat into consideration when deciding whether to expel the person.

By excluding *refoulement* cases where a person faces substantial risk from private actors acting without official sanction from consideration under article 3, the practical application of the Convention to corporate related acts is significantly narrowed, since the overwhelming majority of individual complaints considered by CAT concern article 3.¹⁵ In very particular or extreme circumstances the acts of a non-State actor who is exercising certain prerogatives that are comparable to those of a Government may fulfil the state action requirement.¹⁶ It is therefore possible that the Convention could apply to

¹³ 222/2002: Switzerland.

¹⁴ See for example, Concluding Observations on the third periodic report of Germany, CAT/C/CR/32/7 (2004), para. 3.

¹⁵ See also, 131/1999: Sweden; 94/1997: Switzerland; and 83/1997: Sweden.

¹⁶ Communication no. 120/1998, CAT/C/22/D/120/1998, para. 6.5, which concerned the application of article 3 to a case of *refoulement* to Somalia. The Committee noted that "for a number of years Somalia has been without a central government, that the international community negotiates with the warring factions and that some of the factions operating in Mogadishu have set up quasi-governmental institutions and are negotiating the establishment of a common administration. It follows then that, de facto, those factions exercise certain prerogatives that are comparable to those normally exercised by legitimate governments.

acts of torture or ill-treatment by non-State actors which may be attributed to the State, for example in situations where a private prison or private security company exercises functions which are normally considered to be the prerogative of governments.

While the state-action requirement excludes, or at least significantly narrows the scope of application of the Convention to private acts, the requisite element of official sanction has been interpreted broadly to include also “inaction by police and law-enforcement officials *who fail to provide adequate protection* against racially motivated attacks when such groups [Roma] have been threatened.”¹⁷ (emphasis added) The Committee has also interpreted the “acquiescence of a public official” to include the failure to take “appropriate steps in order to *protect*” persons at immediate risk.¹⁸ (emphasis added).

Territorial application

Article 2 extends the application of State Party obligations under the Convention to ‘any territory under its jurisdiction’. The Committee has stated that the prohibition of torture or cruel, inhuman or degrading treatment or punishment, pertains to all places of detention under the “de facto effective control” of State parties to the Convention, including where control is exercised by the State party’s civilian personnel.¹⁹ In this regard, the Committee has stated that the obligation to provide effective safeguards against acts of torture (article 2) includes the registration by States of all persons detained in any territory under a State party’s jurisdiction.²⁰

PART II – MEASURES THAT STATES ARE REQUIRED TO TAKE

Regulatory measures

Subject to its limitation to acts which have an element of official sanction, the Convention imposes obligations on States to take regulatory and adjudicatory measures to prevent and protect against acts of torture and cruel, inhuman or degrading treatment, including by non-State actors. State parties are required to prescribe legislation or take other measures to prevent, prohibit, and punish acts or attempted acts of torture and other cruel, inhuman or degrading treatment or punishment committed within any territory under their jurisdiction. States are also required to provide victims with the right to make legal complaints about torture and to receive adequate and fair compensation, including rehabilitation.

The obligation of States is not absolute, ie. they have no obligation to prevent absolutely or to ensure or guarantee the prevention of torture. The obligation is rather to take reasonable steps to prevent torture. If nevertheless such acts occur, other obligations

Accordingly, the members of those factions can fall, for the purposes of the application of the Convention, within the phrase “public officials or other persons acting in an official capacity” contained in article 1.”

¹⁷ Concluding Observations on initial report of Slovakia, CAT A/56/44 (2001), para. 104. See also Concluding Observations on the second periodic report of the Czech Republic, CAT A/56/44 (2001), para. 113 and Concluding Observations on the second periodic report of Georgia, CAT A/56/44 (2001), para. 81.

¹⁸ *Hajrizi Dzemajl et al. v. Federal Republic of Yugoslavia*, Communication 161/2000, CAT/C/29/D/161/2000.

¹⁹ CAT/C/USA/CO/2, 25 July 2006.

²⁰ CAT/C/USA/CO/2, 25 July 2006.

under the Convention become applicable, and the State may then be obliged under article 2 to take further effective measures in order to prevent a repetition. Such measures may include changes of personnel in a certain unit, stricter supervision, the issue of new instructions, etc.

The character of the measures to prevent torture is left to the discretion of the States concerned, but it includes making whatever changes are necessary in order to harmonise their internal order with international standards on prevention. States have a duty under the Convention to prevent and protect against acts by both State and non-State actors; if no adequate prevention measures are undertaken by the State against private acts, this may amount to acquiescence or consent and thus fulfil the requisite state action requirement.²¹ Such measures may, *inter alia*, include the requirement of police to provide adequate protection to vulnerable persons against extremist groups or other private persons. By implication, this involves the policing and regulation of certain non-State actors. The Committee has expressed concern in situations where there is a lack of an effective State policy to prevent and combat violence against vulnerable groups like women and children, and recommends the adoption of all necessary measures to “prevent, combat and punish” such violence, which would include when it is committed by private actors.²²

While some discretion is left to States under article 2 on the nature of preventive measures, article 4 requires States parties unequivocally to criminalise all acts, attempted acts of, and complicity or participation in torture as defined in article 1. The Committee has stated that the Convention requires States parties to define torture at least as precisely as article 1 in their national criminal codes.²³ The Committee has underlined the importance of States including the bifurcated definition that distinguishes between officially sanctioned acts of torture, and other, “acts of violence in the broad sense committed by non-State actors,” when codifying the offence of torture.²⁴

The reference in article 4 to complicity or participation in torture entails an obligation on States to criminalise complicity by any ‘person’, which – unless stated otherwise - must be assumed to also cover individual corporate actors, in officially sanctioned acts of torture. Although the Committee has not dealt directly with the issue of vicarious liability, this issue may be relevant in relation to complicity by corporate actors, some of whom have faced allegations and lawsuits about complicity in human rights violations.²⁵ States may be violating their obligations under the Convention if they do not ensure criminalisation of complicity or participation, including by corporate actors, in the crime of torture.

²¹ See for example, Concluding Observations on the third periodic report of Croatia, CAT/C/CR/32/3 (2004), para. 8.

²² CAT/C/ZAF/CO/1, para. 23.

²³ See for example, Initial Report of Armenia (1995), Official Records of the General Assembly, 51st Session, Supplement no. 44 (A/51/44). See also Concluding Observations in response to the initial report of South Africa, CAT/C/ZAF/CO/1, paras. 13-14.

²⁴ Concluding Observations on France, CAT/C/FRA/CO/3 (2006), para. 5.

²⁵ See e.g. *Crime, Commerce and Conflict: Legal Remedies for Private Sector Liability for Grave Breaches of International Law*, FAFO, available at <http://www.fafo.no/liabilities/index.htm>.

Article 10 of the Convention requires State parties to ensure that education and information regarding the prohibition against torture is provided to all persons who come into contact with detainees. This provision is particularly pertinent in relation to non-State actors in States where detention facilities are privatised or outsourced to private business operators. In such contexts, the Committee considers that States are responsible for ensuring that private security or detention personnel are properly informed of the prohibition against torture.

The Committee has stressed the importance of the Standard Minimum Rules for the Treatment of Prisoners and regularly questions whether prison regulations are consistent with these rules.²⁶ Of particular recent concern to the Committee has been the, “extremely harsh regime imposed on detainees in ‘supermaximum prisons’”.²⁷ The Committee has also emphasised that governments must systematically supervise all places in which persons can be detained or deprived of liberty.²⁸ In jurisdictions where detention facilities are privately operated, this provision necessitates the direct State regulation of corporate activity.

Adjudication measures

As well as obliging States Parties to criminalise torture, article 4 also requires States to punish perpetrators of torture. This provision is applicable to both officials and private persons acting with official sanction. In order to reflect the grave nature of the act of torture, penalties must be severe, meaning that article 4.2 has very serious implications for offenders.

Articles 13 and 14 of the Convention provide victims of torture and their dependants with the possibility of redress, protection, and compensation. The right of alleged victims contained within article 13 is two-fold: the right to lodge a complaint to the competent authorities, and the right to have that complaint investigated promptly and impartially. These provisions would come into effect in relation to private acts carried out with the consent or acquiescence of a public official. Finally, article 12 provides for prompt and impartial investigation where there are reasonable grounds to believe that torture has been committed.

PART III – SPECIFIC CATEGORIES OF PRIVATE ACTORS

Detention Facilities

While the Committee has made no explicit references to *privately operated* detention facilities, it has commented extensively upon the conduct and operation of detention facilities generally. Such facilities are increasingly under the control or operation of private businesses and therefore it may be inferred that comments by the Committee are applicable to such institutions. Particularly within the context of “super-maximum prisons”, the Committee has expressed concern about the effect of prolonged isolation periods on the mental health of detainees, and suggested that such detention could

²⁶ See for example, CAT/C/SR.30, § 57.

²⁷ Concluding Observations, United States of America, CAT/C/USA/CO/2, (2006), para. 36.

²⁸ CAT/C/SR.30, §22 and 23.

constitute cruel, inhuman or degrading treatment or punishment, thereby violating article 16.²⁹ The Committee has also expressed concern at efforts by States to limit the right of prisoners who are victims of cruel, inhuman or degrading treatment to bring civil actions, and has further recommended that States parties, “should design and implement appropriate measures to prevent all sexual violence in all its detention centres.”³⁰ Such concerns could be relevant where the detention facility has been either designed, constructed or operated by non-State actors.

Extremist Groups

While the text of the Convention itself makes no explicit reference to specific groups, the Committee has singled out certain extremist groups. The Committee has found that failure by police and law-enforcement officials to provide protection to threatened groups against extremists such as “skinheads” can constitute violations of the Convention.³¹

Rights of vulnerable groups

CAT regularly discusses in Concluding Observations the need for State parties to ensure the rights of minorities or other less empowered groups. The Committee has expressed concern at the alleged failures of State parties to, “prevent and fully and promptly investigate violent attacks by non-State actors against members of ethnic and other minorities.”³²

PART IV – REGULATION WITH EXTRA-TERRITORIAL EFFECT

Article 5 of the Convention requires States parties to establish jurisdiction over the offences referred to in article 4 – including complicity - where the offences are committed in any territory under its jurisdiction; where the alleged offender is a national; where the victim is a national if the State considers it appropriate; and where the alleged offender is present on its territory and it does not extradite him or her pursuant to article 8 of the Convention.

Articles 6—8 govern the exercise of extra-territorial jurisdiction as established in article 5. This includes *inter alia* the duty to take suspected persons into custody, to undertake inquiries into allegations of torture, and to submit suspected torturers to the prosecuting authorities.

PART V – ISSUES FOR FURTHER CLARIFICATION

This report shows that the Committee has considered the issue of States Parties’ duties regarding non-State actors even if it has not focused specifically on corporate actors.

Nevertheless, analogies may be drawn using the Committee’s guidance in order to strengthen understanding of what States might be required to do when faced with the risk

²⁹ CAT/C/USA/CO/2, 25 July 2006.

³⁰ CAT/C/USA/CO/2, 25 July 2006.

³¹ Concluding Observations on initial report of Slovakia, CAT A/56/44 (2001), para. 104.

³² Concluding Observations on the third periodic report of Croatia, CAT/C/CR/32/3 (2004), para. 8.

or knowledge of businesses engaging in, or being complicit in acts of torture or other prohibited treatment.

Accordingly, set out below are some areas which are key to the SRSG's mandate and where further elaboration of the scope and application of the Convention could assist his understanding, and help States, business enterprises and individuals to better appreciate their rights and obligations:

1. further elaboration of what constitutes acquiescence or consent by a public official in relation to abuse by private actors, including business enterprises, so as to make the State responsible under the Convention for the abuse;
2. further elaboration on the "appropriate steps" States are required to take in order to fulfil their duty to protect persons from immediate risk of abuse by private actors, including by business enterprises.
3. the potential for State parties to be held responsible for breach of the Convention for failing to take action against business actors complicit in State abuse, regardless of where it occurs;
4. linked to the point above, can the obligations under article 5 be understood to cover also a duty to establish universal jurisdiction over business enterprises suspected of torture; and
5. in addition to detention centres, whether there are situations where acts by State controlled companies (companies acting under the State's direction, instructions or control) amounting to torture or cruel, inhuman or degrading treatment may be viewed as official acts under the Convention and engender the State's responsibility. If so, when the Committee considers that a company, while not part of the State apparatus, may nevertheless be considered to engage directly the responsibility of the State because it acts under the State's direction, control or instructions.

ANNEX A: SUBSTANTIVE ARTICLES OF CAT³³

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

The States Parties to this Convention,

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

Recognizing that those rights derive from the inherent dignity of the human person, Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

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

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

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

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

³³ Note that most procedural Articles have been taken out of this version, leaving only the substantive Articles that are referred to in the report. Text sourced from the official site of the UN Office of the High Commissioner for Human Rights as at December 2007. See <http://www2.ohchr.org/english/law/cat.htm>.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

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

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

Article 4

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

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

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

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake

to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

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

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

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

Article 13

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

Article 14

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

Article 15

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

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

ANNEX B: STATES PARTIES TO CAT³⁴

Last update: 2 October 2007
Entry into force: 26 June 1987, in accordance with article 27 (1) 1 .
Registration: 26 June 1987, No. 24841.
Status: Signatories: 74, Parties: 145.
Text: United Nations, *Treaty Series* , vol. 1465, p. 85.

Note: The Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, was adopted by resolution 39/46 2 of 10 December 1984 at the thirty-ninth session of the General Assembly of the United Nations. The Convention is open for signature by all States, in accordance with its article 25.

Participant	Signature	Ratification, Accession (a), Succession (d)
Afghanistan	4 Feb 1985	1 Apr 1987
Albania	.	11 May 1994 a
Algeria	26 Nov 1985	12 Sep 1989
Andorra	5 Aug 2002	22 Sep 2006
Antigua and Barbuda	.	19 Jul 1993 a
Argentina	4 Feb 1985	24 Sep 1986
Armenia	.	13 Sep 1993 a
Australia	10 Dec 1985	8 Aug 1989
Austria	14 Mar 1985	29 Jul 1987
Azerbaijan	.	16 Aug 1996 a
Bahrain	.	6 Mar 1998 a
Bangladesh	.	5 Oct 1998 a
Belarus	19 Dec 1985	13 Mar 1987
Belgium	4 Feb 1985	25 Jun 1999
Belize	.	17 Mar 1986 a
Benin	.	12 Mar 1992 a
Bolivia	4 Feb 1985	12 Apr 1999
Bosnia and Herzegovina 3	.	1 Sep 1993 d
Botswana	8 Sep 2000	8 Sep 2000
Brazil	23 Sep 1985	28 Sep 1989
Bulgaria	10 Jun 1986	16 Dec 1986
Burkina Faso	.	4 Jan 1999 a
Burundi	.	18 Feb 1993 a
Cambodia	.	15 Oct 1992 a
Cameroon	.	19 Dec 1986 a
Canada	23 Aug 1985	24 Jun 1987
Cape Verde	.	4 Jun 1992 a
Chad	.	9 Jun 1995 a
Chile	23 Sep 1987	30 Sep 1988
China 4 , 5	12 Dec	4 Oct 1988

³⁴ As at 28 December 2007 – sourced from the official site of the UN Office of the High Commissioner for Human Rights: see <http://www2.ohchr.org/english/bodies/ratification/9.htm>.

	1986	
Colombia	10 Apr 1985	8 Dec 1987
Comoros	22 Sep 2000	.
Congo	.	30 Jul 2003 a
Costa Rica	4 Feb 1985	11 Nov 1993
Côte d'Ivoire	.	18 Dec 1995 a
Croatia 3	.	12 Oct 1992 d
Cuba	27 Jan 1986	17 May 1995
Cyprus	9 Oct 1985	18 Jul 1991
Czech Republic 6	.	22 Feb 1993 d
Democratic Republic of the Congo	.	18 Mar 1996 a
Denmark	4 Feb 1985	27 May 1987
Djibouti	.	5 Nov 2002 a
Dominican Republic	4 Feb 1985	.
Ecuador	4 Feb 1985	30 Mar 1988
Egypt	.	25 Jun 1986 a
El Salvador	.	17 Jun 1996 a
Equatorial Guinea	.	8 Oct 2002 a
Estonia	.	21 Oct 1991 a
Ethiopia	.	14 Mar 1994 a
Finland	4 Feb 1985	30 Aug 1989
France	4 Feb 1985	18 Feb 1986
Gabon	21 Jan 1986	8 Sep 2000
Gambia	23 Oct 1985	.
Georgia	.	26 Oct 1994 a
Germany 7 , 8	13 Oct 1986	1 Oct 1990
Ghana	7 Sep 2000	7 Sep 2000
Greece	4 Feb 1985	6 Oct 1988
Guatemala	.	5 Jan 1990 a
Guinea	30 May 1986	10 Oct 1989
Guinea-Bissau	12 Sep 2000	.
Guyana	25 Jan 1988	19 May 1988
Holy See	.	26 Jun 2002 a
Honduras	.	5 Dec 1996 a
Hungary	28 Nov 1986	15 Apr 1987
Iceland	4 Feb 1985	23 Oct 1996
India	14 Oct 1997	.
Indonesia	23 Oct 1985	28 Oct 1998
Ireland	28 Sep 1992	11 Apr 2002
Israel	22 Oct 1986	3 Oct 1991
Italy	4 Feb 1985	12 Jan 1989
Japan	.	29 Jun 1999 a
Jordan	.	13 Nov 1991 a
Kazakhstan	.	26 Aug 1998 a
Kenya	.	21 Feb 1997 a
Kuwait	.	8 Mar 1996 a
Kyrgyzstan	.	5 Sep 1997 a
Latvia	.	14 Apr 1992 a
Lebanon	.	5 Oct 2000 a
Lesotho	.	12 Nov 2001 a
Liberia	.	22 Sep 2004 a
Libyan Arab Jamahiriya	.	16 May 1989 a

Liechtenstein	27 Jun 1985	2 Nov 1990
Lithuania	.	1 Feb 1996 a
Luxembourg	22 Feb 1985	29 Sep 1987
Madagascar	1 Oct 2001	13 Dec 2005
Malawi	.	11 Jun 1996 a
Maldives	.	20 Apr 2004 a
Mali	.	26 Feb 1999 a
Malta	.	13 Sep 1990 a
Mauritania	.	17 Nov 2004 a
Mauritius	.	9 Dec 1992 a
Mexico	18 Mar 1985	23 Jan 1986
Monaco	.	6 Dec 1991 a
Mongolia	.	24 Jan 2002 a
Montenegro	.	23 Oct 2006 d
Morocco	8 Jan 1986	21 Jun 1993
Mozambique	.	14 Sep 1999 a
Namibia	.	28 Nov 1994 a
Nauru	12 Nov 2001	.
Nepal	.	14 May 1991 a
Netherlands 9	4 Feb 1985	21 Dec 1988
New Zealand	14 Jan 1986	10 Dec 1989
Nicaragua	15 Apr 1985	5 Jul 2005
Niger	.	5 Oct 1998 a
Nigeria	28 Jul 1988	28 Jun 2001
Norway	4 Feb 1985	9 Jul 1986
Panama	22 Feb 1985	24 Aug 1987
Paraguay	23 Oct 1989	12 Mar 1990
Peru	29 May 1985	7 Jul 1988
Philippines	.	18 Jun 1986 a
Poland	13 Jan 1986	26 Jul 1989
Portugal 5	4 Feb 1985	9 Feb 1989
Qatar	.	11 Jan 2000 a
Republic of Korea	.	9 Jan 1995 a
Republic of Moldova	.	28 Nov 1995 a
Romania	.	18 Dec 1990 a
Russian Federation	10 Dec 1985	3 Mar 1987
Saint Vincent and the Grenadines	.	1 Aug 2001 a
San Marino	18 Sep 2002	27 Nov 2006
Sao Tome and Principe	6 Sep 2000	.
Saudi Arabia	.	23 Sep 1997 a
Senegal	4 Feb 1985	21 Aug 1986
Serbia3	.	12 Mar 2001 d
Seychelles	.	5 May 1992 a
Sierra Leone	18 Mar 1985	25 Apr 2001
Slovakia 6	.	28 May 1993 d
Slovenia	.	16 Jul 1993 a
Somalia	.	24 Jan 1990 a
South Africa	29 Jan 1993	10 Dec 1998
Spain	4 Feb 1985	21 Oct 1987

Sri Lanka	.	3 Jan 1994 a
Sudan	4 Jun 1986	.
Swaziland	.	26 Mar 2004 a
Sweden	4 Feb 1985	8 Jan 1986
Switzerland	4 Feb 1985	2 Dec 1986
Syrian Arab Republic	.	19 Aug 2004 a
Tajikistan	.	11 Jan 1995 a
Thailand	.	2 Oct 2007 a
The Former Yugoslav Republic of Macedonia 3	.	12 Dec 1994 d
Timor-Leste	.	16 Apr 2003 a
Togo	25 Mar 1987	18 Nov 1987
Tunisia	26 Aug 1987	23 Sep 1988
Turkey	25 Jan 1988	2 Aug 1988
Turkmenistan	.	25 Jun 1999 a
Uganda	.	3 Nov 1986 a
Ukraine	27 Feb 1986	24 Feb 1987
United Kingdom of Great Britain and Northern Ireland 4 , 10	15 Mar 1985	8 Dec 1988
United States of America 11	18 Apr 1988	21 Oct 1994
Uruguay	4 Feb 1985	24 Oct 1986
Uzbekistan	.	28 Sep 1995 a
Venezuela (Bolivarian Republic of)	15 Feb 1985	29 Jul 1991
Yemen	.	5 Nov 1991 a
Zambia	.	7 Oct 1998 a