

The medical aspects of the UN Convention against Torture

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Introduction

The Committee against Torture (CAT), is one of seven treaty bodies in the UN system. Table 1 gives an overview of the treaty bodies: when they entered into force, the number of experts and the number of State Parties to the Convention. A treaty body is “a committee of independent experts appointed to monitor the implementation by States Parties of the core international human rights treaties. They are called “treaty bodies” because each is created in accordance with the provisions of the treaty, which it oversees. In many important respects, they are independent of the United Nations system, although they receive support from the United Nations Secretariat and report to the General Assembly”¹.

The UN Convention against Torture and Cruel, Inhuman or Degrading Treatment or

Punishment (UNCAT) was adopted in 1984 and entered into force on 26 June 1987.

The CAT consist of ten experts nominated and elected by the State Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience. The experts should be of high moral standing and recognized competence in the field of human rights and serve in their personal capacity (article 17 of the Convention)².

The Committee meets twice a year in Geneva.

When a State Party has ratified the Convention it becomes legally binding and the Convention must be implemented in the national law.

The Convention has 33 articles: 1-16 contain the substantive part, 17-24 deal with the mandate and 25-33 deal with technical matters.

Since its first meeting in CAT in 1987, and up to now, one of the ten members has been a medical doctor. These medical members were also members of the European Council of the Committee for the Prevention of Torture (CPT), and consultants at the International Rehabilitation Council for Torture Victims (IRCT). The work in CPT and IRCT gave first hand information on the medical consequences of torture

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and medical aspects of conditions in places where persons are deprived of their liberty.

This article will deal with the medical aspects of the UN Convention against Torture (UNCAT).

The report system from State Parties under article 19 of UNCAT

The State Party shall submit their initial report one year after ratifying the UNCAT. Thereafter every fourth year. The authors draft guidelines on the form and context of initial reports that have been adopted by CAT in May 2005³. A decision is taken by CAT, one year in advance of receiving the reports, as to which ones will be examined during the plenary session. Priority is given to initial reports and State Parties that have been examined in relation to article 20 of the UNCAT (systematic torture). Based upon the State Party report CAT sends a list of issues to the State Party (except initial reports) and asks the State Party to give a reply in writing before the session or to give an oral answer in the session where the report is examined. After the reply the two rapporteurs and the other members of CAT may ask additional questions. The next day the State Party gives their reply to the additional questions. Both sessions are open sessions.

CAT meets in closed sessions to discuss its conclusions and recommendations.

CAT pays very close attention to information received by International and National Non Governmental Organisations (NGO's). Shadow or Alternative reports should be received three weeks in advance of the session, and these reports are also sent to the State Party. Often National Rehabilitation Centres for Torture Victims supply CAT with important information on torture occurring in the country.

The day before the State Party is to be examined by CAT, International and National NGO's are invited to a one-hour semi-open session with the members of the committee, and simultaneous translation is available.

Articles on the UNCAT of specific importance for the medical profession

Article 1

In order to establish the validity of persons allegedly tortured, a medical examination should be carried out as soon as possible after the alleged torture (the medical examination will be dealt with further in relation to article 11). It is important to keep in mind that the torture definition has four key elements:

Table 1. *The seven treaty bodies in the UN (update 7.10.2005).*

Name	Entry into force	No. of experts	No. of State Parties
Committee Against Torture (CAT)	26.6.1987	10	140
Human Rights Committee (HRC).....	23.3.1976	18	154
Committee on Economic, Social and Cultural Rights (CESCR).....	3.1.1976	18	151
Committee of the Rights of the Child (CRC).....	2.9.1990	18	192
Committee on the Elimination of Discrimination Against Women (CEDAW).....	3.9.1981	23	180 (1.9.2005)
Committee on the Elimination of Racial Discrimination (CERD)	4.9.1969	18	170
Committee on Migrant Workers (CMW) ..	1.7.2003	10	33

- 1) Any act by which severe pain or suffering, whether physical or mental, is inflicted
- 2) It is intentionally inflicted
- 3) It has a purpose
- 4) It is done by a public official or other persons acting in an official capacity

Article 2

Paragraph 3 of this article is also important for the medical profession: "An order from a superior officer or public authority may not be invoked as a justification of torture".

Medical examination of torture victims has found a high degree of allegation of medical participation in torture. Rasmussen 1990⁴ found that 41 of the 200 examined torture victims reported medical involvement (20%). Varying degrees took place:

- 1) Non therapeutic administration of drugs
- 2) Medical personnel present during the torture
- 3) Medical resuscitation during the torture
- 4) Medical attention resulting in hospitalisation
- 5) Medical attention and treatment

Smidt-Nielsen 1998⁵ found a higher degree in his study: participation in 41% of the examined torture victims.

International declarations such as the World Medical Association's Declaration of Tokyo and the UN Principles of Medical Ethics (1982) clearly condemn medical participation in torture, but have no automatic legal binding for individual doctors or medical associations. These declarations serve as international guidelines only. The national medical associations will have to incorporate international conventions and declarations into their national rules to which the medical profession is responsible.

Article 3

The medical aspects of returning a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture will be dealt with in relation to article 22.

Article 10

"Each State Party shall ensure that the education and information regarding the prohibition against torture are fully included in the training of law enforcement 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".

It is important that the State Party has a programme on training medical personnel dealing with detained persons or asylum seekers to detect physical and/or mental consequences of torture. A medical examination before and after police interrogation is an important way to assure that torture was not being used during the interrogation in order to obtain confession or for any other reason.

When dealing with article 11 the medical examination of detained persons will be dealt with further.

National Rehabilitation Centres for torture victims around the world can play a very important role in education and information regarding the prohibition against torture. The centres daily work with torture victims gives them unique inside information regarding all aspects of torture.

A special target group is the medical doctors working in prisons, police, army and refugee centres.

IRCT is offering training. One recent example: Following a recommendation of the UN's special rapporteur on torture, Mr van Bowen, after a visit to Uzbekistan, presented a list of 22 recommendations. One

of the recommendations is “to train medical staff working in the penitentiary system to recognise torture and ill-treatment”. In 2005 the IRCT, together with the World Health Organisation (WHO) carried out training for prison doctors and forensic experts in Uzbekistan. The project also included training health professionals in treatment and rehabilitation of torture victims.

Article 11

Article 11, similar to articles 10, 12 and 13 related to article 16, “shall apply with the substitution for reference to torture of references to other forms of cruel, inhuman or degrading treatment or punishment”. The article contains many important obligations, which are crucial for the prevention of torture. Three important safeguards for a person detained by the police are:

- 1) Access to a lawyer from the outset of the arrest
- 2) Access to a doctor – of one’s own choice
- 3) Right to inform, without delay, a close relative or a third party of their choice of their situation, either directly or through a police officer

In the case of foreign nationals consular notification should be granted.

When it comes to the treatment of persons deprived of their liberty the following rules and principles should be reflected in the domestic law and practise of the state: the Standard Minimum Rules for the Treatment of Prisoners; the Basic Principles for the Treatment of Prisoners; the Body of Principles for the Protection of All Persons under any Form of detention or Imprisonment; Principles of Medical Ethics relevant to the role of Health Personnel, particularly Physicians, in the Protection of Prisoners

and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; and the Code of Conduct for Law Enforcement Officials⁶.

In order to systematically review in places where people are deprived of their liberty, a national independent monitoring mechanism should be established. More information on the recommendations for such a mechanism can be found in the UN’s Optional Protocol to UNCAT (OPCAT)⁷. The OPCAT is very similar to the CPT. When ratifying the OPCAT the State party is obliged to create a National Independent Visiting Mechanism in addition to the International Visiting Mechanism. Fortyeight countries have signed and 13 ratified the OPCAT (October 2005).*

In order for OPCAT to enter into force it must be ratified by 20 countries. CPT entered into force on February 1, 1989⁸. Today all members of the COE have ratified the Convention (45 States). It is important to notice that CPT, during their visits, with very few exceptions, has medical expertise on the visiting delegation. The main task for the medical delegate will be to look into the medical treatment offered to the persons deprived of their liberty, to examine their medical files and see whether any injuries upon arrival or during the stay in the establishment have been recorded. The medical delegate should also have talks in private with inmates and staff. CPT strongly recommends that a medical certificate by the prison doctor should be issued if the inmate presents physical or mental signs. A medical examination by the prison doctor within 24 hours of the prisoner’s arrival is crucial to detect any signs of torture inflicted by the police prior to the arrival at the prison. In addition to the recording of the medical examination in the medical file and the issuing of a medical certificate, with a copy to the

*) Update just before publishing.

inmate, a register should be kept. The medical certificate should include:

- 1) The allegations
- 2) The medical findings
- 3) The doctors conclusion in the light of 1 and 2: If there is consistency and the degree of support to the alleged report of torture: a) high, b) moderate, c) slight and d) no support

In case of consistency the person should be referred to a medical specialist on examination of torture victims, who should carry out a thorough examination and report following the “Istanbul Protocol: Manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment”⁸.

Article 12

“Prompt and impartial investigation when there is reason to believe that torture or cruel or inhuman or degrading treatment or punishment has been committed”².

Such an investigation should include a thorough medical examination following the guidelines in the Istanbul Protocol⁹.

The IRCT has, together with Human Rights Foundation Turkey, the World Medical Association and the Physicians for Human Rights USA, in the last part of 2004 and first part of 2005, carried out a 1-week training seminar on the Istanbul Protocol in five countries: Mexico, Morocco, Uganda, Georgia and Sri Lanka. In each seminar 50 medical doctors and 25 lawyers participated.

The overall objective of these seminars was to bring perpetrators violating UNCAT to trial and combat impunity⁹.

Article 14

“Ensure in its legal system that victims of an act of torture obtains redress and adequate

compensation including the means for as full rehabilitation as possible”.

We use to talk about the three M’s:

- 1) Moral (~ redress)
- 2) Money (~ compensation)
- 3) Medical (~ rehabilitation)

About 200 medical centres and programmes for rehabilitation of torture victims exist around the world. It should be emphasised that a State Party, when ratifying the UN CAT, has a legal obligation to ensure that rehabilitation programmes exist in the country for victims of torture. Many countries make contributions to national rehabilitation centres.

The UN has a voluntary fund for victims of torture¹⁰. The board of the fund has never had a medical member since its creation in 1981.

Article 16

This article imposes upon the States the obligation to prohibit acts of cruel, inhuman or degrading treatment or punishment.

In this connection the role of the medical profession is to look into the living conditions where persons are deprived of their liberty. Special interest should be mentioned of: overcrowding, inter-prison violence, disciplinary measures against inmates, medical and sanitary conditions, common illnesses and their treatment, access to food and conditions of detention of minors.

Article 20

The CAT investigations for information of systematic torture in a State Party. Only seven such investigations have been carried out, and the last is still covered by confidentiality. The other six are: Turkey, Egypt, Peru, Sri Lanka, Mexico and Serbia Montenegro. The investigation of Turkey did not include

a medical doctor during the visit to the country in 1992. The examination of Egypt included the medical member of CAT, but no visit was granted by the State Party. In the last four countries a visit was carried out and a medical doctor was a member of the visiting delegation.

Article 22

Individual complaints to CAT are being dealt with in closed session but the final decision is being published in CAT's Annual Reports. The majority of the cases deal with complaints regarding article 3: "No State Party shall expel, return 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".

Very often the complainant has been evaluated by a medical doctor and a medical certificate has been issued describing allegations of earlier torture in the country. It is therefore convenient that a medical doctor with knowledge of torture and its consequences is a member of CAT in order to evaluate the medical certificate and explain it to the other members.

Discussion

The medical work against torture began in 1974¹¹. The work took place in international and national NGO's. In the beginning it concentrated on documenting torture.

Medical examination of torture victims added evidence to reports on torture¹². The only way to stop torture was to put pressure on the government by exposing them to torture allegations. The usual reaction by the government was that the allegations were unfounded, communistic propaganda done by leftist activists.

The UNCAT changed this situation. It now became possible to confront the government with the allegations of torture in public

sessions, and the conclusions and recommendations by the Committee became a tool that national and international NGO's could use in their constant effort to stop torture. The state parties were repeatedly reminded that, by ratifying the convention, it became legally binding.

The weaknesses of the UNCAT is that:

- There is no obligation to ratify the Convention.
- Although the convention stipulates the initial report is to be submitted one year after ratification, this very seldom happens, and countries have been more than 15 years late in their reporting obligation. CAT can do nothing, and the suggestion to exclude countries not living up to their obligations is out of the question.
- CAT can only deal with a country when their report is being examined, and there are very few exceptions to the rule.
- The permanent staff of the Committee is small and this makes it impossible to monitor the situation in all countries that are party to the convention. One improvement has, however, recently been developed by the new rules of procedures which allowed CAT to examine a State Party without a report.
- There is a very considerable number of overdue reports.

The initial report is extremely important in order to enter into a dialogue with the country, and OHCHR's technical support cooperation offers assistance to State Parties in writing their report. IRCT has also been involved in such training in Zambia, Kenya, Nepal and Uganda.

The OPCAT is a very attractive body which could strengthen the weaknesses of the UNCAT by monitoring the situation with regular visits to the country, to which

the country cannot object. It is therefore of paramount importance that the OPCAT enter into force, especially in countries where CPT is not operating.

Conclusions

In conclusion, it should be stressed that the UNCAT is extremely relevant for the medical profession as it includes all of the most important aspects of the medical work against torture:

- Medical examination and documentation of torture.
- Treatment and rehabilitation of torture victims.
- Education and information regarding the prohibition against torture to medical and law enforcement personnel.
- Keeping under systematic review interrogation rules and arrangements for the custody and treatment of persons deprived of their liberty.
- Work against impunity together with the legal profession.
- Inclusion of the prevention of inhuman and degrading treatment and punishment into medical work.
- Prevention for the medical profession from becoming involved in torture.

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