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COMMISSION ON HUMAN RIGHTS  
Thirty-eighth session  
Item 10 (a) of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF  
DETENTION OR IMPRISONMENT, IN PARTICULAR: (a) TORTURE AND OTHER  
CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Letter dated 22 December 1981 from the Ministry for Foreign Affairs  
of Sweden addressed to the Director of the Division of Human Rights.

When the Working Group set up by the Commission on Human Rights to prepare a draft Convention against Torture met last January, certain objections were raised against the Swedish draft Convention (E/CN.4/1285) in so far as it made the Human Rights Committee responsible for the implementation of the Convention. In order to meet those objections, the Swedish delegation has now prepared a set of alternative implementation provisions which I have the honour to enclose with this letter. I would be grateful if you could circulate these provisions some time before the next meeting of the Working Group at the end of January 1982 so as to facilitate a discussion of them at that meeting.

(Signed) Hans Danelius  
(Under-Secretary for  
Legal and Consular Affairs)

DRAFT ARTICLES REGARDING THE IMPLEMENTATION OF THE  
CONVENTION AGAINST TORTURE

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee). It shall consist of nine members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Convention and, so far as possible, of persons who are also members of the Human Rights Committee established in accordance with Article 23 of the International Covenant on Civil and Political Rights. The members of the Committee shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 18

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 17 and nominated for the purpose by the States Parties to the present convention.
2. Each State Party to the present Convention may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

Article 19

1. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention.
2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy in accordance with article 23, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Convention to submit their nominations for membership of the Committee within three months.
3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Convention no later than one month before the date of each election.
4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Convention convened by the Secretary-General of the United Nations at the Headquarters of the United Nations or at the United Nations Office at Geneva. At that meeting, for which two thirds of the States Parties to the present Convention shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 20

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 21

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated.
2. Elections at the expiry of office shall be held in accordance with the preceding articles of the present Convention.

Article 22

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.
2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 23

1. When a vacancy is declared in accordance with article 22 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Convention, which may within two months submit nominations in accordance with article 18 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Convention. The election to fill the vacancy shall then take place in accordance with the relevant provisions of the present Convention.
3. A member of the Committee elected to fill a vacancy declared in accordance with article 22 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 24

The States Parties to the present Convention shall be responsible, in the same proportions as their contributions to the general budget of the United Nations, for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 25

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 26

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations or at the United Nations Office at Geneva.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 27

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 28

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) six members shall constitute a quorum;

(b) decisions of the Committee shall be made by a majority vote of the members present.

Article 29

1. The States Parties to the present Convention undertake to submit to the Secretary-General of the United Nations,

(a) within one year of the entry into force of the Convention for the States Parties concerned, reports on measures they have taken to give effect to their undertakings under the Convention; and

(b) subsequently, when so requested by the Committee, reports or other information relating to the application of the Convention.

2. Such reports or other information shall be considered by the Committee, which shall transmit such comments or suggestions relating to them as it may consider appropriate to the States Parties. The Committee may also transmit such comments or suggestions to the Economic and Social Council along with copies of the reports it has received from the States Parties.

3. The States Parties may submit to the Committee observations on any comments or suggestions that may be made in accordance with paragraph 2 of this article.

#### Article 30

1. If the Committee receives reliably attested information from any source indicating that torture is being systematically practised in the territory of a State Party to the present Convention, the Committee, after giving that State Party the opportunity to state its views on the situation, may designate one or more of its members to make a confidential enquiry and to report to the Committee urgently.

2. An enquiry made in accordance with paragraph 1 of this article may include a visit to the territory of the State Party concerned, unless the Government of that State Party refuses to give its consent.

#### Article 31

1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party considers that another State Party is not giving effect to the provisions of the present Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of the present Convention.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in the present Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission.

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information.

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

- (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached.
- (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts: the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to the present Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article: no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

#### Article 32

1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party to the Convention which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the present Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to the present Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that

(a) the same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) the individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of the present Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to the present Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

### Article 33

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 31, paragraph 1 (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

### Article 34

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.