Chapter VI

Filling the Gaps - Contributions by the Human Rights Committee to the Fight Against Torture

by Walter Kälin

Both the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) as well as Article 7 of the Covenant on Civil and Political Rights (CCPR) prohibit torture and cruel, inhuman or degrading treatment or punishment. Therefore, both the Committee against Torture and the Human Rights Committee deal with issues of torture when examining state reports or individual communications. Does this lead to a duplication of work or, even worse, contradictions in the jurisprudence of the two treaty bodies, or rather create a healthy relationship between the two conventions and their committees generating synergies that ultimately strengthen the fight against torture?

These were questions raised already at the time when the text of the Convention against Torture was negotiated. In order to reduce the potential problems caused by the overlap between the two Committees, the drafters of the Convention suggested in Article 17(2) that in the context of electing
members of the Committee against Torture, States Parties “bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee [...] and who are willing to serve on the Committee against Torture.” As this model of simultaneous membership in the two Committee’s has not been used in practice, the question of the relationship of the two Committees remains pertinent today. How has it evolved in the 20 years since Joseph Voyame became the Committee’s first Chairman in 1988?

This short contribution attempts to address this question not from a historical perspective but by identifying some important areas where the Human Rights Committee is making significant contributions to the fight against torture and is able to address issues not covered or only marginally embraced by the Committee against Torture.

1 Overview

A first important contribution made by the Human Rights Committee is the fact that, for a long time, it was and is able to examine issues of torture in countries that are party to the Covenant on Civil and Political Rights but not to the Convention against Torture. While this ratification gap still remains with presently 161 States Parties to the Covenant as compared to the 145 States that have ratified the Convention against Torture, it is much less significant today than it was during the time when Joseph Voyame chaired the Committee against Torture and the number of ratifications was still rather low.¹

Second, there is a significant difference in the number and content of individual communications submitted to each of the two Committees. While the very large majority of cases submitted by victims to the Committee against Torture claim a violation of Article 3 CAT prohibiting expulsion, forcible return or extradition of “a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”,² most cases submitted by or on behalf of actual victims of torture are addressed to the Human Rights Committee. This may look surprising but

¹On the other hand, the Committee against Torture was and still is able to deal with torture in countries that have not ratified the Covenant (e.g. China and until 2008 Cuba).
²OHCHR’s treaty body database contains 15 decisions adopted by the Committee against Torture in 2007. Only one of these cases deals with actual torture whereas all the others address Article 3 CAT.