

Sixteenth session (1982)

General comment No. 7: Article 7 (Prohibition of torture or cruel, inhuman or degrading treatment or punishment)

[General comment No. 7 has been replaced by general comment No. 20]

1. In examining the reports of States parties, members of the Committee have often asked for further information under article 7 which prohibits, in the first place, torture or cruel, inhuman or degrading treatment or punishment. The Committee recalls that even in situations of public emergency such as are envisaged by article 4 (1) this provision is non-derogable under article 4 (2). Its purpose is to protect the integrity and dignity of the individual. The Committee notes that it is not sufficient for the implementation of this article to prohibit such treatment or punishment or to make it a crime. Most States have penal provisions which are applicable to cases of torture or similar practices. Because such cases nevertheless occur, it follows from article 7, read together with article 2 of the Covenant, that States must ensure an effective protection through some machinery of control. Complaints about ill-treatment must be investigated effectively by competent authorities. Those found guilty must be held responsible, and the alleged victims must themselves have effective remedies at their disposal, including the right to obtain compensation. Among the safeguards which may make control effective are provisions against detention incommunicado, granting, without prejudice to the investigation, persons such as doctors, lawyers and family members access to the detainees; provisions requiring that detainees should be held in places that are publicly recognized and that their names and places of detention should be entered in a central register available to persons concerned, such as relatives; provisions making confessions or other evidence obtained through torture or other treatment contrary to article 7 inadmissible in court; and measures of training and instruction of law enforcement officials not to apply such treatment.

2. As appears from the terms of this article, the scope of protection required goes far beyond torture as normally understood. It may not be necessary to draw sharp distinctions between the various prohibited forms of treatment or punishment. These distinctions depend on the kind, purpose and severity of the particular treatment. In the view of the Committee the prohibition must extend to corporal punishment, including excessive chastisement as an educational or disciplinary measure. Even such a measure as solitary confinement may, according to the circumstances, and especially when the person is kept incommunicado, be contrary to this article. Moreover, the article clearly protects not only persons arrested or imprisoned, but also pupils and patients in educational and medical institutions. Finally, it is also the duty of public authorities to ensure protection by the law against such treatment even when committed by persons acting outside or without any official authority. For all persons deprived of their liberty, the prohibition of treatment contrary to article 7 is supplemented by the positive requirement of article 10 (1) of the Covenant that they shall be treated with humanity and with respect for the inherent dignity of the human person.

3. In particular, the prohibition extends to medical or scientific experimentation without the free consent of the person concerned (art. 7, second sentence). The Committee notes that the reports of States parties have generally given little or no information on this point. It takes the view that at least in countries where science and medicine are highly developed, and even for peoples and areas outside their borders if affected by their experiments, more attention should be given to

the possible need and means to ensure the observance of this provision. Special protection in regard to such experiments is necessary in the case of persons not capable of giving their consent.