

UNITED NATIONS COMMITTEE AGAINST TORTURE
60th Session of the UN Committee Against Torture
18 April – 22 May 2017

**STATEMENT BY THE INTERNATIONAL COMMISSION OF JURISTS AT THE
HALF-DAY OF GENERAL DISCUSSION ON THE ELABORATION OF A REVISED
GENERAL COMMENT ON ARTICLE 3, THE REFOULEMENT PROHIBITION, OF
THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR
DEGRADING TREATMENT OR PUNISHMENT**

Palais des Nations, Room XIX

28 APRIL 2017

Distinguished Committee Members, distinguished delegates,

Thank you for the opportunity to address you. We commend the Committee for its decision to revise its General Comment and for holding today's discussion.

Our remarks draw largely on the joint written observations that we submitted with other NGO colleagues. Given the time constraints, we will confine our comments to a few critical aspects of the *non-refoulement* principle. Our NGO colleagues have already covered other important aspects and we generally concur with them, including on the topic of diplomatic assurances. While only able to address certain issues, we are profoundly concerned about certain States parties' observations in their written submissions and this morning, which we cannot let go unaddressed.

First, as this Committee held in its General Comment No. 2:¹

- the prohibition of cruel, inhuman or degrading treatment or punishment under the Convention is, like the prohibition of torture itself, absolute and non-derogable;
- the obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture;
- in practice, the threshold between ill-treatment and torture is often difficult to establish; and
- the conditions that give rise to ill-treatment frequently facilitate torture.

In light of the foregoing, we recommend that the revised General Comment should emphasize that:

- the prohibition of *refoulement* with respect to a real risk of other ill-treatment is just as absolute as the *refoulement* prohibition with respect to a real risk of torture;

¹ CAT, General Comment No. 2: Implementation of Article 2 by States Parties, 24 January 2008, UN Doc. CAT/C/GC/2, paragraphs 3, 6, 19 and 25.

- and
- States parties must apply all the measures required to prevent torture, including effective compliance with the prohibition of *refoulement*, equally to prevent ill-treatment.

Second, we consider that the protection from *refoulement* must be ensured wherever the State in question exercises jurisdiction over a person, including where acting outside its territory or territorial waters, in international waters or in the territorial waters or territory of other states, for example, in the context of maritime search-and-rescue operations. We therefore recommend that the revised General Comment affirm that the extraterritorial reach of the *refoulement* prohibition protects anyone within the power or effective control of that State party, even if not situated within the territory of the State Party and against involuntary transfer across international borders, as well as within a State's borders.

Third, we consider that it would be a lost opportunity to confine the revised General Comment to addressing exclusively Article 3 obligations in the context of Article 22, particularly since most of the obligations already identified in the draft revised General Comment are measures required for the effective implementation of *refoulement* obligations under the Convention by all States parties. The prohibition of *refoulement* binds all States parties – whether or not they have made a declaration under Article 22. Therefore, we recommend that the revised General Comment should address States parties' *non-refoulement* under the Convention, as a whole, not exclusively in the context of Article 22 communications.

Thank you

Thank you Madame Chair.

I take the floor to address directly an observation made by one of the distinguished State delegates this morning.

I am referring to the assertion that in certain circumstances, such as those arising in connection with a state of emergency and a threat to the national security of the state or where an individual has been guilty of a particularly serious crime, the prohibition of *refoulement* under the Convention could exceptionally be waived notwithstanding the fact that the individual concerned continues to face a real risk of torture upon transfer.

Calling into question the absolute and non-derogable nature of the *refoulement* prohibition is to call into question absolute and non-derogable nature of the prohibition of torture itself.

While indeed under the Refugee Convention the *non-refoulement* principle recognizes that there may be certain cases in which an exception to the *non-refoulement* principle can legitimately be made. For example, with respect to refugees about whom there are reasonable grounds for regarding as a danger to the security of the country of asylum or where they have been convicted a particularly serious crime, and constitute a danger to the community of that country.

This is not the case with respect to the *refoulement* prohibition under human rights law and in particular under the Convention Against Torture as this Committee itself held in its General Comment No. 2:²

- the prohibition of *refoulement* – like the prohibition of torture and cruel, inhuman or degrading treatment or punishment itself, is absolute and non-derogable; recognizing no exceptions – whatsoever, regardless of the threat that the individual concerned may pose.

This position has been long confirmed and reiterated by this Committee, by other UN Treaty Bodies, including the UN Human Rights Committee and, as a matter of established international jurisprudence, by among others the European Court of Human Rights (ECtHR)

² CAT, General Comment No. 2: Implementation of Article 2 by States Parties, 24 January 2008, UN Doc. CAT/C/GC/2, paragraphs 3, 6, 19 and 25.

– its Grand Chamber, in giving judgment in *Saadi v. Italy*, took care to reaffirm its longstanding case-law, including its judgment in *Chahal v. the UK*.

While in *Saadi v. Italy* the Grand Chamber of the ECtHR underscored that the danger of terrorism could not be underestimated, it could not call into question the absolute nature of the prohibition of torture and other ill-treatment. Thus it reaffirmed that whenever it is established that the individual would face a real risk of torture or other ill-treatment upon transfer – proceeding with such a transfer would violate the Convention and constitute prohibited *refoulement*.

Thank you