

Annex V

**GENERAL COMMENT No. 33 ON OBLIGATIONS OF STATES PARTIES
UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL
COVENANT ON CIVIL AND POLITICAL RIGHTS**

1. The Optional Protocol to the International Covenant on Civil and Political Rights was adopted and opened for signature, ratification and accession by the same act of the General Assembly, resolution 2200 A (XXI) of 16 December 1966, by which the Covenant itself was adopted. Both the Covenant and the Optional Protocol entered into force on 23 March 1976.
2. Although the Optional Protocol is organically related to the Covenant, it is not automatically in force for all States parties to the Covenant. Article 8 of the Optional Protocol provides that States parties to the Covenant may become parties to the Optional Protocol only by a separate expression of consent to be bound. A majority of States parties to the Covenant have also become parties to the Optional Protocol.
3. The preamble to the Optional Protocol states that its purpose is “further to achieve the purposes” of the Covenant by enabling the Human Rights Committee, established in Part IV of the Covenant, “to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant”. The Optional Protocol sets out a procedure, and imposes obligations on States parties to the Optional Protocol arising out of that procedure, in addition to their obligations under the Covenant.
4. Article 1 of the Optional Protocol provides that a State party to the Optional Protocol “recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State party of any of the rights set forth in the Covenant”. It follows that States parties are obliged not to hinder access to the Committee and must prevent any retaliatory measures against any person who has submitted a communication to the Committee.
5. Article 2 of the Optional Protocol requires that individuals who submit communications to the Committee must have exhausted all available domestic remedies. In its response to a communication, a State party, where it considers that this condition

has not been met, should specify the available and effective remedies that the author of the communication has failed to exhaust.

6. Although not a term found in the Optional Protocol or the Covenant, the Human Rights Committee uses the description “author” to refer to an individual who has submitted a communication to the Committee under the Optional Protocol. The Committee uses the term “communication” contained in article 1 of the Optional Protocol instead of terms such as “complaint” or “petition”, although the latter term is reflected in the current administrative structure of the Office of the High Commissioner for Human Rights, where communications under the Optional Protocol are initially handled by a section known as the Petitions Team.

7. Terminology similarly reflects the nature of the role of the Human Rights Committee in receiving and considering a communication. Subject to the communication being found admissible, after considering the communication in the light of all written information made available to it by the individual and by the State party concerned, “the Committee shall forward its views to the State party concerned and to the individual”.ⁱ

8. The first obligation of a State party against which a claim has been made by an individual under the Optional Protocol is to respond to the communication within the time limit of six months set out in article 4, paragraph 2. Within that time limit, “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”. The Committee’s rules of procedure amplify these provisions, including the possibility in exceptional cases of treating separately questions of the admissibility and merits of the communication.ⁱⁱ

9. In responding to a communication that appears to relate to a matter arising before the entry into force of the Optional Protocol for the State party (the *ratione temporis* rule), the State party should invoke that circumstance explicitly, including any comment on the possible “continuing effect” of a past violation.

10. In the experience of the Committee, States do not always respect their obligation. In failing to respond to a communication, or responding incompletely, a State which is the object of a communication puts itself at a disadvantage, because the Committee is then compelled to consider the communication in the absence of full information relating to the communication. In such circumstances, the Committee may conclude that the allegations contained in the communication are true, if they appear from all the circumstances to be substantiated.

11. While the function of the Human Rights Committee in considering individual communications is not, as such, that of a judicial body, the Views issued by the Committee under the Optional Protocol exhibit some of the principal characteristics of a judicial decision. They are arrived at in a judicial spirit, including the impartiality and independence of Committee members, the considered interpretation of the language of the Covenant, and the determinative character of the decisions.

12. The term used in article 5, paragraph 4, of the Optional Protocol to describe the decisions of the Committee is “Views”.ⁱⁱⁱ These decisions state the Committee’s findings on the violations alleged by the author of a communication and, where a violation has been found, state a remedy for that violation.

13. The Views of the Committee under the Optional Protocol represent an authoritative determination by the organ established under the Covenant itself charged with the interpretation of that instrument. These Views derive their character, and the importance which attaches to them, from the integral role of the Committee under both the Covenant and the Optional Protocol.

14. Under article 2, paragraph 3 (a), of the Covenant, each State party undertakes “to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity”. This constitutes the basis of the wording consistently used by the Committee in issuing its Views in cases where a violation has been found:

“In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is required to provide the author with an effective remedy. By becoming a party to the Optional Protocol the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established. In this respect, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee’s Views.”

15. The character of the Views of the Committee is further determined by the obligation of States parties to act in good faith, both in their participation in the procedure under the Optional Protocol and in relation to the Covenant itself. A duty to cooperate with the Committee arises from an application of the principle of good faith to the observance of all treaty obligations.^{iv}

16. The Committee decided, in 1997, under its rules of procedure, to appoint a member of the Committee as Special Rapporteur for follow-up on Views.^v That member, through written representations, and frequently also through personal meetings with diplomatic representatives of the State party concerned, urges compliance with the Committee’s Views and discusses factors that may be impeding their implementation. In a number of cases, this procedure has led to acceptance and implementation of the Committee’s Views where previously the transmission of those Views had met with no response.

17. It is to be noted that failure by a State party to implement the Views of the Committee in a given case becomes a matter of public record through the publication of the Committee’s decisions, inter alia, in its annual reports to the General Assembly.

18. Some States parties, to which the Views of the Committee have been transmitted in relation to communications concerning them, have failed to accept the Committee's Views, in whole or in part, or have attempted to reopen the case. In a number of those cases, these responses have been made where the State party took no part in the procedure, having not carried out its obligation to respond to communications under article 4, paragraph 2, of the Optional Protocol. In other cases, rejection of the Committee's Views, in whole or in part, has come after the State party has participated in the procedure and where its arguments have been fully considered by the Committee. In all such cases, the Committee regards dialogue between the Committee and the State party as ongoing with a view to implementation. The Special Rapporteur for follow-up on Views conducts this dialogue, and regularly reports on progress to the Committee.

19. Measures may be requested by an author, or decided by the Committee on its own initiative, when an action taken or threatened by the State party would appear likely to cause irreparable harm to the author or the victim unless withdrawn or suspended pending full consideration of the communication by the Committee. Examples include the imposition of the death penalty and violation of the duty of non-refoulement. In order to be in a position to meet these needs under the Optional Protocol, the Committee established, under its rules of procedure, a procedure to request interim or provisional measures of protection in appropriate cases.^{vi} Failure to implement such interim or provisional measures is incompatible with the obligation to respect in good faith the procedure of individual communication established under the Optional Protocol.

20. Most States do not have specific enabling legislation to receive the Views of the Committee into their domestic legal order. The domestic law of some States parties does, however, provide for the payment of compensation to the victims of violations of human rights as found by international organs. In any case, States parties must use whatever means lie within their power in order to give effect to the Views issued by the Committee.

Notes

ⁱ Art. 5, para. 4, of the Optional Protocol.

ⁱⁱ Rule 97, para. 2, of the rules of procedure of the Human Rights Committee (CCPR/C/3/Rev.8).

ⁱⁱⁱ In French, the term is "constatations", and in Spanish, "observaciones".

^{iv} Art. 26, 1969 Vienna Convention on the Law of Treaties.

^v Rule 101 of the rules of procedure of the Human Rights Committee.

^{vi} Rule 92 (previously rule 86) of the rules of procedure of the Human Rights Committee:

“The Committee may, prior to forwarding its Views on the communication to the State party concerned, inform that State of its Views as to whether interim measures may be desirable to avoid irreparable damage to the victim of the alleged violation. In doing so, the Committee shall inform the State party concerned that such expression of its Views on interim measures does not imply a determination on the merits of the communication.”