

# PRACTICAL MONITORING TOOLS TO PROMOTE FREEDOM FROM TORTURE



**Art.5 Initiative**

FREEDOM FROM TORTURE  
LIBÉRÉS DE LA TORTURE  
LIVRES DE TORTURA

# PRACTICAL MONITORING TOOLS TO PROMOTE FREEDOM FROM TORTURE

2013

Article 5 Initiative

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The Article 5 Initiative works for the prevention and eradication of torture in Africa through the development of practice-aimed resources. The Article 5 Initiative aims to support African institutions in improving domestic compliance with international law obligations, norms and procedures under the United Nations Convention against Torture, the African Charter on Human and Peoples' Rights and the Robben Island Guidelines.



**European Union**

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We hope that you will find the tools that this report contains useful.



Article 5 of the African Charter on Human and Peoples' Rights and Article 5 of the Universal Declaration on Human Rights both guarantee the right of all persons to be free from torture and other ill treatment. Under international law, there can never be any excuse for the use of torture and other ill treatment. These forms of abuse not only cause suffering to the victims and their families, but have a societal impact and undermines our notions of the rule of law and the duties placed on all states to protect and promote human rights.

Our task is to continuously engage with States to take all possible measures to prevent and eradicate torture and other ill treatment. When States ratify the UN Convention against Torture, they give a firm undertaking to all other States that they will take the necessary steps to eradicate torture and other ill treatment. In broad terms, States undertake: to combat impunity for the crime of torture; to prevent torture and other ill treatment; to provide redress to victims of torture and other ill treatment, and to report to the Committee against Torture. In recent years, notable advances have been made by a number of African States when they criminalised torture in domestic law, established national human rights institutions and signed and ratified the Optional Protocol to UNCAT. These are important milestones in our journey and States should be recognised for their achievements.

Much, however, remains to be done and the Article 5 Initiative, in collaboration with the African Commission on Human and Peoples' Rights have, with funding from the European Union, worked in six African States over the past three years to support domestic initiatives in collaboration with local stakeholders. This project has shown that much can be achieved to give practical expression to UNCAT and the African Charter when opportunities for dialogue are created to discuss policy and practice through evidence-driven engagements. The monitoring tools developed through this project are tailored to the domestic context and requirements, given that they were developed in partnership with local stakeholders from government, civil society and national human rights institutions.

In my capacity as the Special Rapporteur on Prisons and Conditions of Detention in Africa and a member of the Committee for the Prevention of Torture in Africa, I encourage all stakeholders to utilise the monitoring tools developed through the activities of the Article 5 Initiative. It is only when we collect evidence in a systematic and comprehensive manner that we can monitor progress and identify shortcomings in an objective manner.

A handwritten signature in black ink, appearing to be 'Med S.K. Kaggwa', written over a light blue circular stamp.

Commissioner Med S.K. Kaggwa  
African Commission on Human and Peoples' Rights  
Special Rapporteur on Prisons and Conditions of Detention in Africa  
Member of the Committee for the Prevention of Torture in Africa



## Abbreviations

ASI	The Article 5 Initiative
ACHPR	The African Commission on Human and Peoples' Rights
AChHPR	The African Charter on Human and Peoples' Rights
AU	The African Union
CAT	The Committee against Torture
CPTA	The Committee for the Prevention of Torture in Africa
CSO	Civil society organisation
CSP	Complainant State Party
DIP	Domestication and Implementation Package
GC	General Comment
HIV/AIDS	Human immunodeficiency virus / acquired immunodeficiency syndrome
ICCPR	The United Nations International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
LGBTI	Lesbian, gay, bisexual, transgender and intersex
NGO	Non-governmental organisation
NHRI	National Human Rights Institution
NPM	National Preventive Mechanism
OHCHR	Office of the UN High Commissioner for Human Rights
OPCAT	The Optional Protocol to the UN Convention against Torture
RIG	The Robben Island Guidelines (Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa)
RSP	Respondent State Party
SCSL	The Special Court for Sierra Leone
UN	United Nations
UNCAT	The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNSMR	The United Nations Standard Minimum Rules for the Treatment of Prisoners
UPR	Universal Periodic Review

## Introduction to the Article 5 Initiative (the 'A5I')

### What is the Article 5 Initiative?

A5I promotes the prevention and eradication of torture and other ill treatment in Africa by supporting African institutions to improve domestic compliance with international human rights law obligations, norms and procedures under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), the African Charter on Human and Peoples' Rights (AChHPR), the Robben Island Guidelines for the prevention of torture in Africa (RIG) and the Optional Protocol to UNCAT (OPCAT).

A5I targeted six African countries that have ratified UNCAT, namely Burundi (1993), Kenya (1997), Mozambique (1999), Rwanda (2008), South Africa (1998) and Uganda (1986). These States have made varying progress in relation to the strengthening of the rule of law, the development of good governance and oversight structures, and basic criminal justice reform aimed at promoting access to justice.

Ultimately, A5I focuses its efforts on people deprived of their liberty, who are at risk of torture and other ill treatment. Since the majority of people deprived of their liberty in Africa are detained in prisons and police holding cells, these facilities are the focus of the project. However, we anticipate that the tools and resources we provide here will have applicability in other places of detention (e.g. repatriation centres, psychiatric institutions, juvenile detention centres).

The project also focuses on the role of the African Commission on Human and Peoples' Rights (ACHPR), specifically the Special Rapporteur on Prisons and Conditions of Detention in Africa (SRPC), the Committee for the Prevention of Torture in Africa (CPTA), and that of State Parties in the promotion and protection of the rights of detained persons in Africa at State and civil society levels.

### Who is the Article 5 Initiative?

A5I is a partnership between the University of Cape Town (Gender, Health and Justice Research Unit), the University of the Western Cape (Civil Society Prison Reform Initiative at the Community Law Centre), the University of Bristol (Human Rights Implementation Centre) and the African Policing Civilian Oversight Forum. A5I is supported by the European Union (EU) through the European Instrument for the Development of Human Rights (EIDHR).

The Gender, Health and Justice Research Unit is an inter-disciplinary medico-legal research unit specialising in law and health reform in the areas of sexual and gender-based violence, incarcerated and institutionalised women as well as policing and security in relation to these areas in Southern and East Africa. The Civil Society Prison Reform Initiative is a research and advocacy project aimed at furthering the rights of prisoners and other detained persons in Africa. The project is housed in the well-respected Community Law Centre. The African Policing Civilian Oversight Forum is a network of African policing practitioners drawn from state and non-state institutions. It is active in promoting police reform through civilian oversight over policing. The School of Law at the University of Bristol has a renowned reputation in delivering ground-breaking research into the prevention and prohibition of torture and other ill treatment. The Human Rights Implementation Centre within the School of Law provides a unique forum for developing research, expertise, advice and scholarship on the role of institutions in the effective implementation of human rights at the national level.





## Why is the project called the 'Article 5 Initiative'?

Article 5 of the Universal Declaration of Human Rights and Article 5 of the African Charter on Human and Peoples' Rights (AChHPR) guarantee the right of all people to be free from torture and other cruel, inhuman and degrading treatment (hereafter, other ill treatment). The Article 5 Initiative draws its name from these two articles.

## Why was the Article 5 Initiative established?

African States have had a long and unfortunate history in the use of torture and other ill treatment, particularly in places of detention and during armed conflict. The suggestion that torture still takes place in detention facilities within emerging African democracies is sometimes met with indifference, despite evidence that it is being perpetrated. In post-conflict and developing contexts, the State's focus is often on broad nation-building efforts and institutional governance. The treatment of people deprived of their liberty is often overlooked in these efforts, notwithstanding that they are at particular risk of being subjected to torture and other ill treatment.

Despite the fact that the majority of African States have ratified UNCAT, progress has been slow in giving effect to the objectives of the Convention at ground level. In many regards, some of the standards set by UNCAT and other supportive international instruments are often too abstract to have meaningful impact at operational level. In addition, international instruments are sometimes perceived by States as 'foreign' or 'imposed' and often unattainable.

Since UNCAT does not formulate concrete operational standards on the prevention and eradication of torture and other ill treatment, implementation of the Convention can be a particular challenge at the domestic level. While the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR), adopted in 1955, are more precise in describing the minimum standards for humane detention of prisoners, we have seen little progress in the implementation of these standards in Africa. In the intervening years, other soft law instruments that relate to the prevention and eradication of torture and other ill treatment have been adopted by the UN and regional human rights structures.

In Africa, AChHPR and RIG are key instruments in advancing human rights and more specifically the prevention and eradication of torture and other ill treatment. While the concept of the eradication and prevention of torture in Africa has been embedded in these instruments, a lack of compliance with the absolute prohibition of torture and other ill treatment remains a problem throughout the continent. Moreover, while ACHPR has adopted RIG and created two Special Mechanisms mandated to examine the treatment of persons deprived of their liberty and their conditions of detention, namely the SRPC and the CPTA (formerly the Working Group on RIG), these Special Mechanisms have lacked the necessary resources and tools to systematically and effectively monitor the implementation of UNCAT and AChHPR in Africa.

There is no question that monitoring the compliance of state institutions with international human rights standards has proven to be a challenging task. While normative standards relating to torture and other ill treatment have been developed and broadly accepted in Africa, related 'home-grown' operational guidelines to be used by, amongst others, Special Mechanisms of ACHPR, domestic oversight structures, managers of detention facilities, police and civil society, are lacking. This gap is even more apparent in transitional States where the rule of law and criminal justice reform are continuous projects.

## Introduction

We are aware of and have considered in our methodology the following constraints on States to prevent and eradicate torture and other ill treatment:

- the absence of appropriate legislation addressing the crime of torture and related matters;
- the lack of proper infrastructure at detention facilities, which places a severe strain on meeting the minimum requirements for humane detention;
- the low priority of mainstreaming issues relating to the prevention and eradication of torture into the criminal justice system;
- the need for systematic and effective monitoring and reporting tools and mechanisms;
- the need for capacity-building of civil society organisations in order for them to render support services and to conduct monitoring of conditions of detention;
- competing agendas in law reform and the pressure on governments to be 'tough on crime and criminals'; and
- the need to shift focus from issues of confrontation to constructive interaction with governments in relation to the promotion of good governance, human rights and the rule of law.

Although States and National Human Rights Institutions (NHRIs) have a responsibility to report on cases of rights violations, it is a serious shortcoming that relevant and locally owned operational guidelines, mechanisms and instruments are frequently not available to aid the systematic monitoring and reporting of torture and other ill treatment. It is thus critical to develop a coherent and more locally owned methodology and accepted operational guidelines to enable the Special Mechanisms, States, NHRIs, and civil society to monitor, among other things:

- the prohibition and condemnation of torture and other ill treatment through legislative, administrative, judicial and other measures;
- adherence to international norms and procedures;
- the adoption and implementation of safeguards and procedures relating to places of detention;
- the provision of reparation and rehabilitation services for victims;
- the availability and effective functioning of domestic visiting mechanisms; and
- the procedures for investigating torture and other ill treatment.

A5I has therefore created instruments to strengthen the implementation of standards aimed at preventing and eradicating torture and other ill treatment in Africa. To achieve this, we developed a 'package' of context-specific tools and guidelines that can be used by relevant mechanisms of the African human rights system and national actors to promote and support the domestication of UNCAT on a practical level. These tools are called the Domestication and Implementation Packages (DIPs). In addition to this, we hope to improve in-country monitoring and reporting by States on measures taken to prevent and eradicate torture and other ill treatment as well as improve the range of tools available for country missions undertaken by the SRPC and the level of guidance from ACHPR in respect of State Party reports.

### Remaining contextually relevant within target countries

The six countries targeted in this project have all experienced some form of conflict in the recent past, during which time serious human rights violations were perpetrated. In all six countries, significant progress has been made in strengthening the rule of law, establishing NHRIs and addressing the rights violations perpetrated. Despite these advances, local situations remain complex and tensions can surface easily. These countries are all dealing with the conflict of the past,

## Introduction

development challenges and transformation in their own way. This has therefore required that the A5I project treated these contexts with sensitivity and respect for local processes such as law reform, internal politics and country-level efforts to advance human rights. Ultimately, the key inputs of A5I were to (1) provide technical advice on promoting compliance with UNCAT and RIG, and (2) to create opportunities for dialogue between stakeholders on preventing torture and other ill treatment in the future. As a result of this approach, the consultation workshops included representatives from government departments (including law enforcement agencies), legislatures, national human rights institutions and civil society. In-depth, inter-sectoral discussions with these key stakeholders have proven to be invaluable during the course of this project and, more specifically, in the finalisation of the tools developed through the A5I project, the Domestication and Implementation Packages (DIPs).

### **The Development of Partnerships**

In order to ensure that the DIPs are relevant to each country, A5I developed partnerships with key stakeholders. A5I entered into memoranda of understanding with local partners who were tasked with co-hosting consultations and actively participating in the work of the project. In most countries, the local partner was the human rights commission, who took on the role of 'in country-liaison' between the A5I team and country-level institutions, agencies and organisations. Substantive input by various State departments, NHRI and civil society organisations into the DIPs, which will be further outlined below, also help to improve the structure and contents of these tools.

A5I also established a working agreement with the ACHPR to support the objectives of the project, to facilitate in-country workshops and to support the institutionalisation of the tools developed through this project, the DIPs.

### **What was the overall objective of the Article 5 Initiative?**

The overall objective of A5I was to develop and institutionalise integrated DIPs. These DIPs aim to assist countries with the domestication of UNCAT through the creation of practical, context-specific norms and guidelines, that can be used by relevant mechanisms of the African human rights system and national actors to strengthen the implementation of standards aimed at preventing and eradicating torture and other ill treatment in Africa.

## The Purpose of this Publication

This publication reflects on the work of A5I undertaken over a three-year period in six African countries. Apart from providing a historical description of the project and the project's methodology, this publication also contains the key outputs of the project, namely, the generic Domestication and Implementation Packages (DIPs). The DIPs consist of two components that should provide a valuable resource in promoting compliance with UNCAT and RIG. These are the:

- Guidance Notes, which provide a user-friendly resource on the interpretation of the duties imposed on State Parties by UNCAT;
- an integrated Checklist for each DIP comprising of Requirements for Compliance with UNCAT, a Reporting Tool and a template of Guidelines for Reform.

The tools that we provide also include PowerPoint presentations that can be used for training as well as guidelines on reporting to the UN Committee against Torture and the African Commission on Human and Peoples' Rights. The DIPs are in a generic form but can easily be adapted to suit the local situation. The publication therefore provides a comprehensive resource to a variety of stakeholders on promoting and monitoring compliance with UNCAT and RIG. The DIPs will enable stakeholders to collect information on a continuous basis and, from that information, be able to make informed assessments, prepare reports and make recommendations that are based on evidence.

All A5I materials - including this report, the DIPs and the Powerpoint presentations - are available on the A5I website: [www.a5i.org](http://www.a5i.org)

### The Development of the Domestication and Implementation Packages

There were three main phases of the development of the Domestication and Implementation Packages (DIPs):

**Phase 1:** The research and development of comprehensive baseline studies on measures taken and implemented to give effect to obligations under UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) within the target countries. These baseline studies laid the foundation for the development of the DIPs.

These baseline studies provided a detailed description of legal and other relevant measures taken to eradicate torture and highlighted the unique challenges that the target countries currently face in attempting to domesticate UNCAT, as well as the potential opportunities for ensuring country-level compliance with UNCAT and other human rights instruments. The main drivers of torture and other ill treatment in each context were also considered.

The baseline studies contained a general overview of the situation relating to torture and other ill treatment in the target countries, including: the general human rights situation, the legal framework to protect people from torture and other ill treatment, the treatment of persons deprived of their liberty, conditions in places of detention, and the efficiency of any internal and external oversight mechanisms. The studies also highlighted good practices followed by each State in their compliance with UNCAT and made preliminary recommendations to strengthen areas identified in the study as falling short of UNCAT obligations.

Examples of resources used for these studies include: (i) country constitutions/bills of rights; (ii) any domestic laws, policies and regulations relating to the prohibition of torture and other ill treatment, particularly in places of detention; (iii) reports of constitutional commissions of inquiry and other governmental/parliamentary inquiries; (iv) domestic case law; (v) legal analyses found in domestic law journals and other regional/international academic journals pertaining to questions of torture and other ill treatment in target countries; (vi) documents produced for UN Universal Periodic Reviews, UN treaty bodies and Special Procedures, and the African Commission on Human and Peoples' Rights (ACHPR); (vii) reports produced by national and international civil society organisations; and (viii) local and international media reports. ASI disseminated the country-specific reports to our 'in-country liaisons' for review and verification of findings as well as of the feasibility of the recommendations and related actions.

**Phase 2:** The development of Domestication and Implementation Packages (DIPs) for each target country, consisting of Guidance Notes and Checklists, comprising of Requirements for Compliance with UNCAT and a Reporting Tool, which led to the development of context appropriate Operational Guidelines for Reform.

As the DIPs were developed in Africa for the African context, they were designed to not only to increase the effectiveness of measures to prevent and eradicate torture and other ill treatment within specific country-level contexts, but were also designed to facilitate solution-seeking approaches in resource-constrained environments. The DIPs will be explained in detail below under section "The Domestication and Implementation Packages Methodology".

**Phase 3:** On-going, in-depth consultation workshops with national human rights institutions (NHRIs), representatives of criminal justice departments and agencies as well as civil society organisations on the substance and structure of the DIPs.

## The Article 5 Initiative Methodology

These workshops took place over the course of a year and involved, at the outset, two two-day workshops in each country, followed by a third workshop that included building capacity on the use of the DIPs as well as making recommendations towards domestic policy reform. The workshops not only assisted A5I in clarifying the existing legal frameworks addressing torture and other ill treatment, but highlighted country-specific priorities, challenges with domestication of UNCAT, the feasibility of the implementation of the proposed DIPs as well as substantive recommendations for the reform of state-level laws, policies and interventions. These workshops not only facilitated localised and 'home-grown' interpretations of the requirements of UNCAT (and the Optional Protocol to UNCAT) but also allowed stakeholders to take full ownership of the DIPs.

In effect, the DIPs create a reporting methodology appropriate to the African human rights contexts for (a) States to implement and monitor compliance with UNCAT, (b) ACHPR to measure States' compliance with their obligations under the African Charter on Human and Peoples' Rights (AChHPR) and (c) civil society to record and report effectively on allegations of torture and other ill treatment. Using this pragmatic package, civil society should be able to enter more spaces more authoritatively and with a greater 'home-grown' rigour to their attempts at providing a third sector, independent voice.

## The Domestication and Implementation Packages Methodology

### The Format of the Domestication and Implementation Packages

The DIPs have been developed to form a package of tools that can be used to help improve domestic compliance with UNCAT, AChHPR and the Robben Island Guidelines (RIG), and to assist in reporting to the Committee against Torture (CAT) and ACHPR. The DIPs do not follow each article of UNCAT in order but are arranged according to the four broad duties imposed by UNCAT as a whole, which give rise to a number of obligations. These duties and obligations should be regarded as inter-related and mutually reinforcing. The four broad duties are addressed in the DIPs as follows:

- **DIP A: the duty to combat impunity**
- **DIP B: the duty to prevent torture and other ill treatment**
- **DIP C: the duty to provide redress to victims of torture and other ill treatment**
- **DIP D: the duty to report to the treaty monitoring bodies**

Each DIP consists of the following tools:

#### 1. A 'Guidance Note'

This explains in detail the duties and obligations contained in UNCAT. The Guidance Note focuses on the nature and causes of particular problems and challenges to domestication, the required standards, and guidelines on how these standards can be met. It provides practical guidelines about what is required and how it can be achieved in particular African contexts. To explain the nature and scope of the obligations imposed by UNCAT, the Guidance Note draws on authoritative interpretations of UNCAT by the UN Committee against Torture (CAT) and other expert bodies or mechanisms such as the UN Special Rapporteur on Torture. In order to fully understand the nature and scope of States' obligations with respect to the duties addressed by the DIPs, where necessary, the Guidance Note also draws upon other international and regional instruments, in particular RIG, the International Covenant on Civil and Political Rights (ICCPR), and the Optional Protocol to UNCAT (OPCAT).

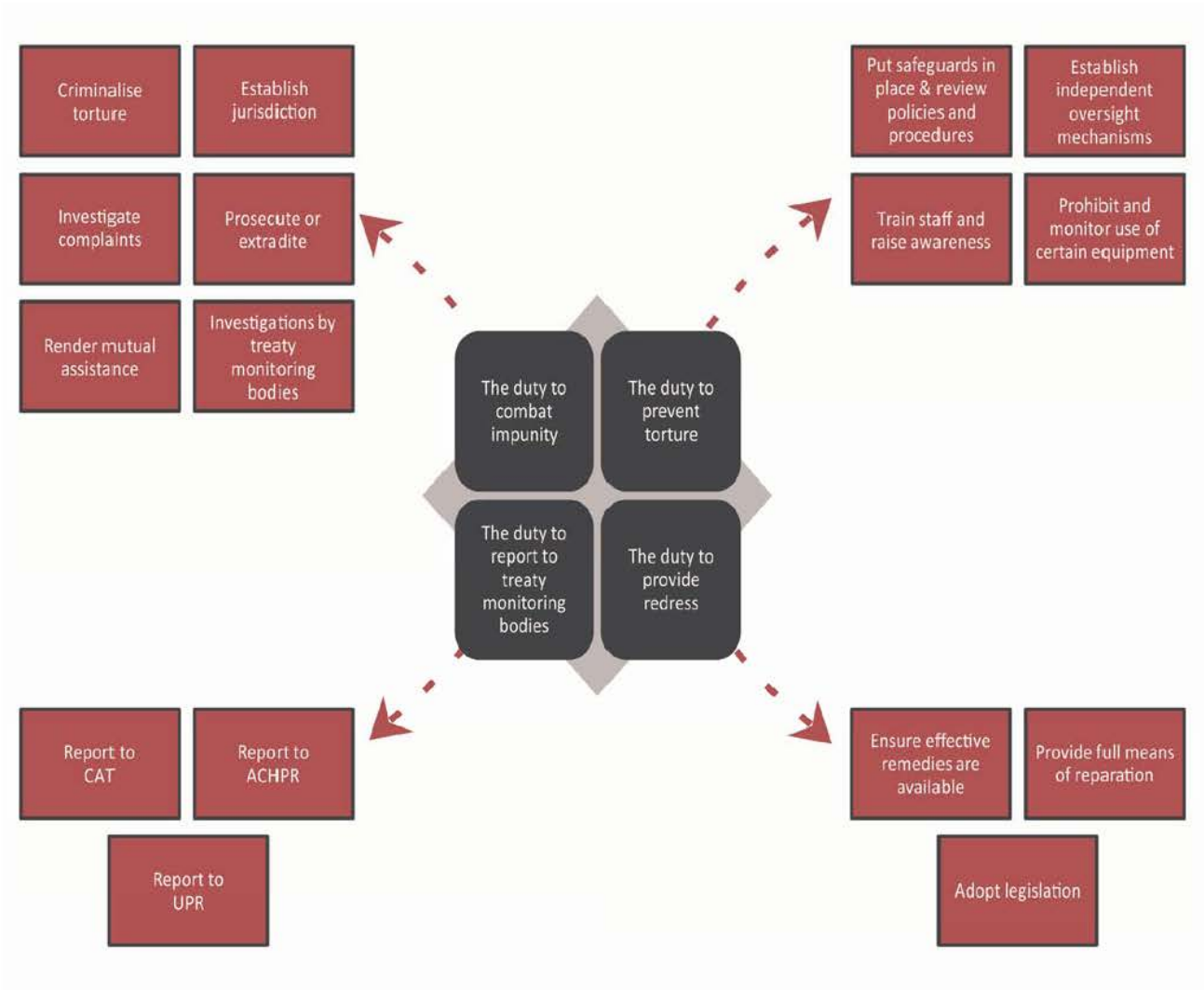
#### 2. A 'Checklist'

This comprises three integrated tools:

- (i) A **list** of specific questions aimed at monitoring the extent to which UNCAT has been domesticated (the Requirements for Compliance).
- (ii) A **reporting tool** to be used by the State, oversight institutions and civil society to verify and report on progress made towards compliance with UNCAT and AChHPR. This information can then form the basis or reports submitted to the treaty monitoring bodies (i.e. CAT and ACHPR) as well as the Universal Periodic Review process.
- (iii) **Guidelines for reform.** One should be able to identify the areas where reform is required in order to comply with UNCAT after having answered the questions on compliance. This will allow for the development of a national action plan for compliance with UNCAT.

# The Article 5 Initiative Methodology

Illustration of the format of the Domestication and Implementation Packages arranged according to the four broad duties imposed by UNCAT and their corresponding obligations





## Overview of the Content of the Domestication and Implementation Packages

### DIP A: The Duty to Combat Impunity

The duty to combat impunity requires State Parties to meet five obligations, namely:

- criminalising torture in domestic law;
- establishing jurisdiction over the crime of torture;
- prosecuting or extraditing suspected perpetrators of the crime of torture;
- rendering mutual assistance to other States in prosecuting or extraditing suspected perpetrators of the crime of torture; and
- assisting the treaty monitoring bodies to conduct investigations and gather information.

Fundamentally, these obligations are aimed at ensuring that there will be no safe havens for torturers. The duty to combat impunity rests with States and they must undertake the above steps to ensure this. While these steps are aimed at combating impunity, they also have a preventive function by demonstrating that perpetrators of torture will be held accountable.

### DIP B: The Duty to Prevent Torture and Other Ill Treatment

The duty to prevent torture and other ill treatment goes hand in hand with the obligation to prohibit these forms of abuse. The duty to prevent torture and other ill treatment encompasses four obligations, namely:

- to ensure that criminal justice procedural safeguards are in place and to systematically review interrogation and detention rules, methods and practice to ensure they are complied with;
- to ensure that measures are in place to prevent and prohibit excessive use of force by law enforcement and other public officials, to ensure that the production of and trade in equipment or substances designed to inflict torture or other ill treatment are prohibited by law, and to ensure that the use of other forms of equipment that might be used or misused to inflict torture or other ill treatment is monitored and carefully controlled;
- to establish independent oversight mechanisms with the mandate to conduct unannounced inspection visits to all places of detention; and
- to provide training on the absolute prohibition of torture and other ill treatment to all law enforcement officials and other persons working with or responsible for persons deprived of their liberty, and to engage in public education and awareness raising initiatives.

### DIP C: The Duty to Provide Redress

Article 14 of UNCAT imposes a duty on State Parties to provide redress to victims of torture and other ill treatment. Redress refers to of a broad range of institutions that the State must put in place, as well as services it must provide to victims of torture and other ill treatment. These institutions and services are not limited to financial compensation,

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but extend to rehabilitation services, measures of restitution and of satisfaction, as well as policy measures aimed at ensuring that acts of torture or other ill treatment do not take place in the future. To guarantee that victims effectively enjoy this right, State Parties should adopt legislation recognising a right to redress to victims of torture or other ill treatment, and ensure that mechanisms providing redress are in place.

## DIP D: The Duty to Report

UNCAT and AChHPR require State Parties to report periodically on measures taken to comply with their duties and obligations under the respective treaties. The periodic reporting procedures of UNCAT, AChHPR and the Universal Periodic Review (UPR) aim to monitor the implementation of the relevant instruments, and the reports submitted form the basis for dialogue between CAT, ACHPR and the UN Human Rights Council, and the State concerned. The treaty monitoring bodies encourage and welcome inputs from NHRIs and civil society organisations in the drafting of State reports as well as in the form of separate reports, often referred to as Shadow Reports.

## How to Use the Domestication and Implementation Packages

The overall purpose of the DIPs is to collect verifiable information in a systematic and comprehensive manner on measures taken by States to prevent and eradicate torture and other ill treatment.

### How to use the Guidance Notes and Checklists

The Checklists should always be used together with the relevant Guidance Note for a particular DIP. The Guidance Notes provide an explanation of the obligations contained in UNCAT. The Checklist then contains detailed questions to verify whether the obligations outlined in the Guidance Note are complied with in a particular country.

If anything is uncertain or unclear, the applicable Guidance Note should be consulted for more information. The structure of the Checklist follows the structure of the Guidance Note for ease of reference. There is also a Glossary of Terms that may help to clarify particular points.

The Checklists cover a broad range of topics, and especially civil society organisations may not have access to all the information that the Checklists request. For this reason, it is advisable to determine before completing the Checklists how the DIPs will be used and what the focus of the responses will be. For example, the focus may only be on prisons or police detention. Having a clear focus will assist in responding appropriately to the questions.

It should be noted that the responses to some questions in the Checklists will stay the same for a long period of time (e.g. if certain legislation is in place), whilst others may require more regular updating. It is therefore advisable to regard the Checklists as living documents that can be used as part of State Party reporting to treaty monitoring bodies, or as the basis for developing Guidelines for Reform.

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## How to Fill in the Checklists

The Checklists have six columns and follow the structure of the Guidance Note. Questions are grouped according to the sub-sections in the Guidance Note. The questions to which responses may remain the same for a long period are shaded in, for ease of reference.

The Checklist follows this format:

Nr	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
<b>(Heading of Guidance Note sub-section) (reference to the relevant section of the Guidance Note)</b>					
1	Question				

A description of what is required in each column follows:

### Column 1: Nr.

This simply lists the number of the question.

### Column 2: Requirement for Compliance

This sets out the questions to be answered. These are based on the obligations and standards contained in UNCAT, and where appropriate RIG and other international and regional human rights instruments. These obligations and standards are explained in more detail in the relevant Guidance Note and the Guidance Note should be consulted if there are queries as to why the question is being asked or to better understand the nature and scope of the question.

### Column 3: Response

This requires a 'Yes', 'No' or 'Partial' answer to be provided to the questions in the 'Requirement' column. This can be shortened to Y, N or P. Where questions have no simple 'Yes', 'No' or 'Partial' answer (for example, questions that ask "How many...?"), these blocks have been shaded in, and an answer only needs to be provided in the next column.

### Column 4: Description & Motivation for Response

Under this column more information should be provided to verify and supplement the answer given in the previous 'Response' column, e.g. the specific article within a law or regulation, case law, or information from reports or statements from the government, NHRI, civil society organisations, treaty bodies, etc. that can support the reason for the response. If the response is 'Partial' this should be explained.

## Column 5: Achievements & Challenges

This column provides an opportunity for a narrative discussion of what happens in practice in relation to all the questions being asked under that sub-section. It should therefore serve the purpose of providing a succinct report on the particular sub-theme. Any examples of good practice can be recorded, along with details of any problems with the implementation of the 'Requirements', listed in column two for that sub-section. The recording of good practice is encouraged since it demonstrates that active measures are being taken to address torture and other ill treatment.

## Column 6: Proposals for Reform

This column provides an opportunity to suggest any practical means or measures that could be taken to address any challenges with implementing the 'Requirements' listed in column two. It can also be used to record a range of possible reforms or measures that are required, such as a review or repeal of existing legislation, new legislation that needs to be enacted, the identification of documents that need to be translated into local languages and disseminated, training needs for law enforcement or other public officials, and public awareness raising initiatives. It can also be used to list any technical assistance that may be required in order to implement the 'Requirements' fully, for example any assistance in the provision of training that may be required, advice on the establishment of mechanisms, or model legislation on the criminalisation of torture, etc. The information provided in columns four and five should be used to identify, and possibly prioritise, the areas that require reform.

## Applying the Domestication and Implementation Packages in Practice

The DIPs have been designed to assist a range of stakeholders in securing and promoting the domestication and implementation of UNCAT as supported by RIG and other instruments. Therefore, it is anticipated that they will be of use to the following people and organisations: government officials, police officials, prison officials and other individuals charged with the care of persons deprived of their liberty; military personnel; medical professionals; parliamentarians; judges; lawyers; NHRIs; civil society organisations; as well as ACHPR and the UN treaty bodies and other experts. The DIPs can be used together or separately depending on the focus, expertise, and objectives of the user. Therefore, the DIPs have the following practical applications:

### **(i) Collecting information in a systematic and comprehensive manner and establishing a baseline of information on the four duties**

The Checklists will enable a range of stakeholders to systematically monitor and gather data on progress made in domesticating UNCAT and article 5 of AChHPR. This information is vital not only for government agencies, and other national actors, to be able to report fully to CAT and ACHPR on progress made in complying with their obligations under the respective treaties, but also for stakeholders to establish a constructive national dialogue on the prohibition and prevention of torture and other ill treatment.

### **(ii) Building up a record and monitoring developments over time of measures taken**

Linked to the collection of information, once completed, the Checklists will enable a record to be kept of the extent



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to which UNCAT has been domesticated and the areas where further reform is required. Monitoring compliance with human rights obligations should be an on-going process, and the DIPs can thus be a useful tool for building up an accurate picture of the status of the domestication of UNCAT and enabling a broad range of stakeholders to systematically monitor developments and progress made over time. This information can then feed into the revision of national action plans and advocacy efforts to ensure their relevance to the current national context.

### **(iii) Developing country-specific national action plans**

By completing the Checklists, a range of areas for reform will be identified and possible solutions and any technical assistance required will be noted. The overall objective is to use the answers from the Checklists to develop 'Guidelines for Reform' (a national action plan) for priority areas that will improve and strengthen the domestication of UNCAT. These Guidelines for Reform should specify the measures required to domesticate and implement UNCAT fully, and identify the relevant stakeholders and potential advocacy partners to take these measures forward. These Guidelines for Reform can then be monitored over time by relevant stakeholders to determine whether the goals have been achieved and whether further efforts to implement them are required. The DIPs can thus be used as a tool for establishing an on-going national strategy and dialogue for concrete measures to be taken for the effective prohibition and prevention of torture and other ill treatment and the provision of redress.

### **(iv) Reporting to treaty monitoring bodies and follow-up**

The DIPs have also been designed to assist with reporting to CAT on measures taken to implement UNCAT, and to ACHPR on measures taken to implement article 5 of AChHPR and RIG. The Checklists provide a comprehensive breakdown of the elements required to comply with the obligations contained in UNCAT and the standards set out in RIG.

In relation to reporting to CAT, the government will be able to use the DIPs to easily identify and report on areas where there is full compliance with UNCAT, as well as those areas where there is partial or no compliance. Where the answers in the Checklists have identified that there is partial or no compliance, the reasons for this will be noted and any possible measures required to comply with the obligation can be recorded and reported to CAT. This information will assist States to draft their reports but will also help to improve the quality of state reporting to CAT and strengthen the constructive dialogue between CAT and State Parties on measures required to comply with UNCAT. Using the DIPs will also demonstrate a willingness by the State Party to engage in a national process to domesticate and implement UNCAT.

Similarly, the DIPs can be used to strengthen reporting to ACHPR on any positive measures taken to implement article 5 of AChHPR and the standards contained in RIG, as well as identifying those areas where further reform is necessary and specifying the measures required for bringing these into conformity. Providing more detailed information on the measures taken to comply with article 5 of AChHPR, and in particular on areas where reform is still required, will enable ACHPR to have a more meaningful and constructive exchange with the State concerned.

The DIPs will not only assist States in complying with their reporting duties to CAT and ACHPR but will also be of use to NHRIs and civil society organisations when submitting their own reports to these bodies on the domestication and implementation of UNCAT, and article 5 of AChHPR and RIG in practice. The Checklists will enable NHRIs and civil society organisations to monitor measures taken to domesticate UNCAT and to take measures to comply with RIG,

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and identify any gaps or problems in practice, which can then be included in any submissions to CAT and ACHPR as appropriate.

As a practical tool that explains the requirements for complying with UNCAT, as well as article 5 of AChHPR and RIG, the DIPs can also be used to help with the follow-up process after a State Party report has been considered by CAT or ACHPR. Typically, CAT and ACHPR do not specify the exact measures required to be taken at the national level to comply with their Concluding Observations and Recommendations, allowing a certain margin of appreciation for States to determine the measures that are most appropriate to their specific context to comply with these findings. Therefore, governments, NHRIs and civil society organisations can use the DIPs as a tool to determine what concrete measures are required in order to comply with any Concluding Observations or Recommendations made by CAT and ACHPR and to draw up a national action plan to implement the necessary reforms. The process of using the DIPs will also enable the State and other actors to provide detailed reports to CAT and ACHPR on follow-up measures that have been taken or will be put in place.

### **(v) Reporting under the Universal Periodic Review Process**

All UN Member States are required to submit reports to the UPR process of the UN Human Rights Council. All UN Member States have now undergone the first round of reviews under this process and are now required to take measures to comply with the recommendations they have accepted and to submit a further report. Consequently, the DIPs can be used by government and other public officials, NHRIs, civil society organisations and other national actors as a practical tool to identify precise measures required to comply with these recommendations and to develop a national strategy for implementation and report back in detail to the UN Human Rights Council on the steps taken.



# DIP A

## THE DUTY TO COMBAT IMPUNITY

By  
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Gwénaëlle Dereymaeker, Louise Edwards, Debra Long,  
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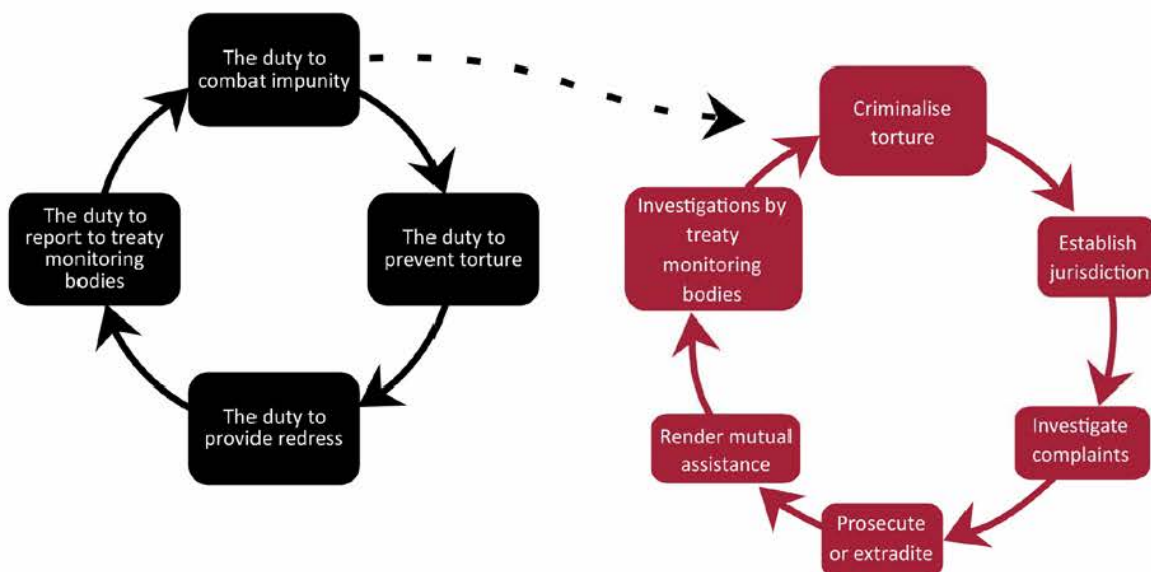
## DIP A: The Duty to Combat Impunity - Guidance Note

### DIP A: THE DUTY TO COMBAT IMPUNITY

If someone has impunity it means he/she is free from punishment. The duty to combat impunity for people who have committed torture requires State Parties to do five things:

- make torture a crime in domestic law;
- establish jurisdiction over the crime of torture;
- prosecute or extradite people suspected of the crime of torture;
- give mutual assistance to other States in prosecuting or extraditing people suspected of committing torture; and
- assist the treaty monitoring bodies to conduct investigations and gather information.

While these steps are aimed at fighting impunity, they also function to stop torture from happening by making it clear that perpetrators of torture will have to answer for their actions.



**PART A: Torture carries the status of a peremptory norm and States have a duty to criminalise torture in domestic law, and to specify punishments reflecting the gravity of the crime. Measures should also be implemented to eradicate and prevent other ill treatment.**

### **1. The crime of torture carries the status of a peremptory norm, meaning there can never be any excuse for its use.**

Under international law, the ban on torture has the status of a peremptory norm (an international law that cannot be derogated from by a State).<sup>1</sup> This means that the ban on torture has “a higher rank in the international hierarchy than treaty law and even ‘ordinary’ customary rules”,<sup>2</sup> and States accept the norm to be absolutely and fully binding, with no exceptions. States must not derogate<sup>3</sup> from the ban on torture, either through signing a conflicting treaty or in customary law:

The most conspicuous consequence of this higher rank is that the principle at issue cannot be derogated from by States through international treaties or local or special customs or even general customary rules not endowed with the same normative force.<sup>4</sup>

Because of the total prohibition of torture, no State is allowed to excuse itself from the application of the peremptory norm. Because the ban is absolute, the norm applies no matter what the status of the victim and the situation (for example, during states of war, siege or emergency). Torture is very strongly condemned and judges have described the torturer as someone who has become “like the pirate and slave trader before him – *hostis humani generis*, an enemy of all mankind”,<sup>5</sup> and torture itself as an act of barbarity which “no civilized society condones”,<sup>6</sup> “one of the most evil practices known to man”<sup>7</sup> and “an unqualified evil”.<sup>8</sup>

Because torture has the status of a peremptory norm, any State has the authority to punish people who commit the crime of torture, as “they are all enemies of mankind and all nations have an equal interest in their

<sup>1</sup> See the House of Lords decision in *A (FC) and others (FC) v. Secretary of State for the Home Department* (2004); *A and others (FC) and others v. Secretary of State for the Home Department* [2005] UKHL 71, para 33. See also *R v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte* (No. 3) [2000] 1 AC 147, paras 197-199; *Prosecutor v. Anto Furundzija (Trial Judgement)*, IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10 December 1998, paras 147-157.

<sup>2</sup> *Prosecutor v. Anto Furundzija (Trial Judgement)*, IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10 December 1998, para 153.

<sup>3</sup> When States become Parties to international human rights treaties, they are allowed to ‘suspend’ some of the rights under those treaties in certain situations or circumstances until the situation or circumstance that gave rise to the ‘suspension’ has come to an end. This is called derogation. For example, a State may ban people from travelling to some parts of the country during an outbreak of an epidemic. This may be interpreted by some people to mean that their right to freedom of movement has been infringed. International and national human rights law permit such derogations.

<sup>4</sup> *Prosecutor v. Anto Furundzija (Trial Judgement)*, IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10 December 1998, para 153.

<sup>5</sup> *Filatiga v. Pena-Irala* [1980] 630f (2<sup>nd</sup> Series) 876 US Court of Appeals 2<sup>nd</sup> Circuit, para 890.

<sup>6</sup> *A (FC) and others v. Secretary for the State for the Home Department* [2005] UKHL 71, para 67. Even States that use torture never say that they have a right to torture people. They either deny the allegations of torture or they try to justify it by calling it by different names such as ‘enhanced interrogation techniques’ or ‘intensive interrogation.’ They know that torture should not be used under any circumstances.

<sup>7</sup> *A (FC) and others v. Secretary for the State for the Home Department* [2005] UKHL 71, para 101.

<sup>8</sup> *A (FC) and others v. Secretary for the State for the Home Department* [2005] UKHL 71, para 160.



apprehension and prosecution”.<sup>9</sup> The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) therefore has the important function of making sure that under international law, persons accused of committing the crime of torture will not find a safe place to hide. Applying the principle of universal jurisdiction (which is discussed in Part D), UNCAT places the obligation on States to **either prosecute or extradite** any person suspected of committing the crime of torture. Doing nothing is not an option.

### **2. States should criminalise torture in domestic legislation, incorporating a definition of torture that contains at least the main elements of the definition of torture in article 1 of UNCAT.**

Impunity is one of the root causes of the spread of torture.<sup>10</sup> The UN Commission on Human Rights defines impunity as –

the impossibility, de jure or de facto, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.<sup>11</sup>

Impunity happens because of a political and social context in which laws against human rights violations are not obeyed or perpetrators are not adequately punished by the State.<sup>12</sup> Article 4 of UNCAT deals with one part of impunity – when authorities fail to punish individual acts of torture – by placing an obligation on States to make acts of torture a crime in their domestic law, and to establish punishments equal to the seriousness of the crime.

Article 5 of the African Charter on Human and Peoples’ Rights (AChHPR) prohibits, amongst other things, torture<sup>13</sup> and links it to the right to dignity. Article 1 of UNCAT defines the crime of torture and article 4 requires States to criminalise torture in domestic law and specify appropriate punishments that take into account the extremely serious nature of the crime. The two articles are closely linked, reinforcing the duty of State Parties to fight impunity as one of the main causes of torture across the world.<sup>14</sup> Robben Island Guideline (RIG) 4 encourages States to adopt the definition of torture in article 1 of UNCAT.

Based on the definition in article 1 of UNCAT, four conditions must be met for an act to qualify as torture:

- *It must result in severe mental and/or physical suffering:* It is important to know that torture is not only the infliction of physical suffering from, for example, beatings or electrical shocks. Putting mental or emotional pressure on a person may also meet the condition for torture (for example, threatening

<sup>9</sup> *Ex parte Pinochet* (No. 3), 2 All ER 97, pp. 108-109 (Lord Browne-Wilkinson) citing *Extradition of Demjanjuk* (1985), 776 F2d 571 in Robertson, G. (2006) *Crimes Against Humanity – The Struggle for Global Justice*. London: Penguin, p. 267.

<sup>10</sup> Nowak, M. and McArthur, E. (2008) *The United Nations Convention against Torture – A Commentary*. Oxford: Oxford University Press, p. 229.

<sup>11</sup> E/CN.4/2005/102/Add.1, p. 6. This definition differs slightly from the one adopted in 1996 (E/CN.4/Sub.2/1996/18) by adding the words “if found guilty, sentenced to appropriate penalties, and to making reparations to their victims”.

<sup>12</sup> Jorgensen, N. (2009) Impunity and oversight: when do governments police themselves, *Journal of Human Rights*, Vol. 8, p. 386.

<sup>13</sup> Article 5: ‘Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.’

<sup>14</sup> Nowak and McArthur (2008), p. 229.

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to hurt a person's family). The condition that torture must result in 'severe' suffering is not an absolute and objective standard, and will depend on the facts of the case and the context in which the acts happened.

- *It must be inflicted intentionally:* Article 1 requires that torture be inflicted intentionally for such purposes as obtaining information or a confession, as punishment or intimidation, or motivated by discrimination. It is important to note that the definition reads 'for such purposes as' and what follows should be understood to serve as examples and not an complete list of purposes set down by UNCAT. An act may therefore still meet the condition of 'purpose' if the purpose was something other than those listed in article 1.
- *It must be committed by or with the consent or acquiescence of a public official:* Torture may be committed directly by a public official, for example, by assaulting a criminal suspect. It may also be committed by a person who is not a public official, but with the consent of a public official (that is, the official allowed the torture to happen). An act of torture may also occur if a public official does not do anything to stop a non-state actor from causing severe mental and/or physical suffering to another person.<sup>15</sup> (In these Guidance Notes an 'actor' is anyone who carries out an action.)
- *It excludes pain and suffering as a result of lawful actions:* A lawful action is an act that is considered legal under the State's law – for example, a police officer handcuffing a suspect in order to secure their arrest. If a suspect resisted arrest and was injured in the process of police officers putting him/her in handcuffs, this would probably be considered a lawful (if somewhat violent) action, and would not be considered to be torture. There are, however, areas of state operations where force may be used that could fall in the grey area between what is lawful and what is not – for example, it is sometimes unclear whether the amount of force used to end a prison riot was more than the minimum amount of force required. Whether an action was lawful or not thus often has to be judged on a case-by-case basis. Further, the fact that something is lawful within a particular State does not necessarily mean that it meets the requirements of UNCAT. Indeed, this is a problem with UNCAT, because there are some acts that CAT considers to be unlawful but individual States consider to be lawful (for example, corporal punishment<sup>16</sup>).

When State Parties criminalise torture in domestic law, they do not have to adopt the exact words of the definition in article 1 of UNCAT, although this is good practice and is noted as such in RIG 4. The definition in domestic law should, however, contain the *main* parts of the definition in article 1.<sup>17</sup> States may add to the definition in article 1 in their domestic law, so long as the domestic law contains the main elements of the definition of torture in article 1 of UNCAT.<sup>18</sup> The definition of torture must apply fully in domestic law and no

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<sup>15</sup> CAT/C/GC/2, para 18.

<sup>16</sup> For example: Punishments such as the death penalty and corporal punishment will inflict severe physical and mental suffering. However, the Constitution of Botswana allows for corporal punishment to be inflicted as a form of punishment even though Botswana ratified UNCAT in 2000. Upon ratification, Botswana entered the following reservation: "The Government of the Republic of Botswana considers itself bound by Article 1 of the Convention to the extent that 'torture' means the torture and inhuman or degrading punishment or other treatment prohibited by Section 7 of the Constitution of the Republic of Botswana". United Nations Treaty Collection (no date) *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Available at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en) (accessed 27 September 2013). The UN Special Rapporteur on Torture has specifically asked for corporal punishment as a form of punishment to be abolished in all jurisdictions. UN Special Rapporteur on Torture (undated) *General Recommendations of the Special Rapporteur on Torture*. Available at <http://www.ohchr.org/Documents/Issues/SRTorture/recommendations.pdf> (accessed 27 September 2013).

<sup>17</sup> CAT/C/GC/2, para 8; CAT/C/CR/29/5 (Estonia), para 6(a); CAT/C/CR/30/6 (Belgium), para 6.

<sup>18</sup> CAT/C/GC/2, para 9.



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distinction may be made between different State officials and corresponding penalties for the crime of torture<sup>19</sup> – i.e. the definition of torture and the penalties to be imposed must be the same for everyone. Further, if ill treatment is defined in domestic law it would be a violation of UNACT to prosecute conduct as ill treatment where the conditions for torture are also present, and the conduct could instead be prosecuted as torture.<sup>20</sup>

If State Parties do not criminalise torture in their domestic law, they will be faced with a problem when incidents of torture occur: how do they establish jurisdiction over an act that is not defined or classified within their law?<sup>21</sup> The United Nations Committee against Torture (CAT) has also noted that even when the right to freedom from torture is recognised in a country's constitution, this is not enough and the criminal code of the country also needs to define the crime of torture.<sup>22</sup> The criminalisation requirement therefore applies to:

- monist constitutional states (where ratified international treaties and international law automatically become national law); as well as
- dualist constitutional states (where ratified international treaties and international law must be 'translated' into national laws before they have any force).

The criminalisation of torture in domestic law needs to specifically take account of:

- the need to define the crime of torture as a specific offence committed by, or at the instigation of (caused by), or with the consent (agreement), of a public official;
- any special intent to extract a confession or other information, to punish arbitrarily, to intimidate, to coerce or to discriminate;
- the need to legislate against complicity (being involved) in torture and attempts to commit torture as equally punishable as committing acts of torture;
- the need to exclude the legal applicability of any justification for acts of torture;
- the need to make sure that no statutory limitations are applied to the crime of torture;
- the need to procedurally exclude all evidence obtained by the use of torture in criminal and all other proceedings, except in proceedings against the perpetrator of torture him/herself;
- the need to legislate for and to enforce the prompt and impartial investigation of any substantiated (justified) allegations of torture;<sup>23</sup> and
- the need to recognise coercing (forcing) another person to commit torture as an offence in domestic law.<sup>24</sup>

As part of understanding the crime of torture, anything done to hide an act of torture or failing to punish an act of torture, may be seen as 'complicity or participation' in the crime of torture.<sup>25</sup> Complicity refers to, at least, unspoken agreement to torture, any attempt to and actual cover-up of torture, and hiding or keeping

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<sup>19</sup> In respect of the Republic of Korea, CAT noted as follows: "The Committee notes with concern that article 125 of the Criminal Code relating to violence and cruel acts is only applicable to specific individuals in investigation and trial processes, while other acts constituting torture that fall outside the scope of this article are dealt with under different provisions of the Criminal Code and are subject to lesser penalties." CAT/C/KOR/CO/2 (Republic of Korea), para 5.

<sup>20</sup> CAT/C/GC/2, para 10.

<sup>21</sup> Nowak and McArthur (2008), p. 234.

<sup>22</sup> Nowak and McArthur (2008), p. 235.

<sup>23</sup> A/52/44, para 241.

<sup>24</sup> Nowak and McArthur (2008), p. 237.

<sup>25</sup> Nowak and McArthur (2008), p. 238.

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secret the crime of torture.<sup>26</sup> An attempt to commit torture would also be a crime. For example, if a superior officer orders juniors to use torture methods on a suspect, but the junior officers refuse to obey the order, the senior officer would still be guilty of an attempt to commit torture.<sup>27</sup>

### 3. The punishment for torture should reflect the gravity of the crime and the harm it caused.

UNCAT and RIG 12 do not set a minimum punishment for perpetrators of torture, but state that these crimes must be punishable by penalties reflecting the extremely serious nature of the crime of torture. CAT regards non-custodial sentences as wholly inappropriate and not compliant with the requirement in article 4(2). CAT has regarded sentences of three, seven or 10 years imprisonment as not heavy enough,<sup>28</sup> but corporal punishment, life imprisonment and capital punishment are seen as equally inappropriate punishments.<sup>29</sup> However, CAT has held that of all crimes, the crime of torture should incur the heaviest punishment and CAT has approved of domestic legislation stating that if an act of torture resulted in the death of the victim, then life imprisonment is the appropriate punishment.<sup>30</sup>

**PART B: State Parties should establish jurisdiction over the crime of torture based on the territoriality and flag principle and the nationality principle. UNCAT establishes universal jurisdiction over the crime of torture.**

Article 5 of UNCAT and RIG 6 put an obligation on States to make sure that jurisdiction over the crime of torture is fully established and that perpetrators of torture cannot escape the consequences by fleeing to another country. Article 5(1) places an obligation on States to establish jurisdiction on the basis of:

- the territoriality and flag principle; as well as
- the active and, to a certain extent, the passive nationality principle.

Each of these principles is discussed in the following sections. By establishing jurisdiction, the courts will be able to rule on allegations of torture and other ill treatment.

CAT has confirmed the importance of the obligation to establish jurisdiction contained in article 5. It has done so by regularly asking for information on this matter<sup>31</sup> and by frequently criticising those State Parties that have not fully domesticated this article in their own laws.<sup>32</sup>

<sup>26</sup> Nowak and McArthur (2008), p. 239-240.

<sup>27</sup> Nowak and McArthur (2008), p. 248.

<sup>28</sup> CAT/C/SR.50, paras 32 and 39.

<sup>29</sup> Nowak and McArthur (2008), p. 250.

<sup>30</sup> Nowak and McArthur (2008), p. 241.

<sup>31</sup> See for example A/48/44, para 70; A/48/44, para 141; A/48/44, para 294; A/48/44, para 322; A/48/44, para 397; A/51/44, para 75. See also Nowak and McArthur (2008), p. 274.

<sup>32</sup> See for example A/54/44, paras 122(c), 162, 170-175. See also Nowak and McArthur (2008), p. 274.





### 4. States should establish jurisdiction over the crime of torture on the basis of the territoriality and flag principle.

Article 5(1) of UNCAT puts an obligation on States to take 'such measures as may be necessary' to establish jurisdiction over the crime of torture if the offence is committed anywhere in its territory. This form of jurisdiction is known as the 'territoriality and flag principle'. This obligation requires a State to exercise jurisdiction over acts committed on:

- the State's land territory;
- the State's territorial sea;
- airspace above the State's land and sea territories;
- ships or aircraft under the State's flag;
- territories under the State's military occupation;
- the State's overseas territories; and
- any other territories over which the State has (effective) control, such as oil-rigs and military bases.<sup>33</sup>

### 5. States should establish jurisdiction on the basis of nationality.

Under the *active* nationality principle, a State may claim jurisdiction when the alleged *offender* has the nationality of that State. Under the *passive* nationality principle, a State may claim jurisdiction over an offence when the *victim* of that offence has the nationality of that State. Article 5(1)(b) of UNCAT is very clear about the obligation to establish jurisdiction on the basis of active nationality, and State Parties violate UNCAT when they do not take the necessary measures to establish jurisdiction.

In the case of passive nationality, however, the State has the freedom to decide. Article 5(1)(c) states that such jurisdiction should be established 'if that State considers it appropriate'.<sup>34</sup> While UNCAT does not create an obligation in article 5(1)(c), such jurisdiction falls within the spirit of UNCAT and is encouraged as part of the fight against impunity for the crime of torture.

Given that the general purpose of UNCAT is to avoid safe havens for torturers, the term 'national' should be understood as widely as possible to cover those who have changed their nationality after having committed acts of torture. The States of both the earlier and the later nationality are obligated to establish their jurisdiction, as well as all relevant States in cases of dual or multiple nationalities.<sup>35</sup>

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<sup>33</sup> Nowak and McArthur (2008), p. 309.

<sup>34</sup> The difference in approach relates to the fact that the active nationality principle is a common legal practice across the world, while the passive nationality principle is not generally recognised like the grounds for jurisdiction in paragraphs 5(1)(a) and (b). See Burgers, J.H. and Danelius, H. (1988) *The United Nations Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Leiden: Martinus Nijhoff Publishers, p. 132. See for example New Zealand's explanation to CAT, stating that "it would be contrary to New Zealand's established legal practice to establish jurisdiction to deal with offences on the basis of the nationality of the victim". A/48/44, para 152.

<sup>35</sup> Nowak and McArthur (2008), p. 311.

### 6. UNCAT establishes universal jurisdiction over the crime of torture.

Article 5(2) of UNCAT gives States the choice to either prosecute under universal jurisdiction or extradite the alleged perpetrator (that is, return them to their home country, or the country in which they committed the crime [if it is not the same], or to another country that will prosecute them). Article 5(2) requires State Parties to establish jurisdiction to prosecute the crime of torture in all cases where the accused is present in any territory under their jurisdiction – it does not matter what the offender’s nationality is, or the place where the crime was committed. This form of jurisdiction is known as ‘universal jurisdiction’. The obligation is, however, limited to cases where the alleged offender is present in the territory under the State’s jurisdiction, and it does not create any obligation to allow for cases to be tried *in absentia* (that is, in a trial where the alleged offender is not physically present).

This form of jurisdiction is an important tool in combating impunity for the crime of torture when the State where the accused is physically present either decides not to extradite the suspect, or does not receive a request for extradition from another State (as discussed in relation to the obligation to extradite or prosecute in Part D, below).<sup>36</sup>

CAT has repeatedly expressed concern about States not taking the necessary measures to put article 5(2) into practice.<sup>37</sup> For example, in the Habré case against the former Head of State of Chad, CAT concluded that by not adopting legislation to establish jurisdiction over the alleged offences, Senegal had failed to fulfil its obligations under article 5(2) of UNCAT.<sup>38</sup> CAT has also stressed that there should be no immunity or amnesty for the crime of torture.<sup>39</sup>

### 7. CAT has consistently argued against the use of immunity and amnesty for the crime of torture.

Immunities may be granted to high-ranking State officials for the legitimate purpose of making sure that inter-State relations continue to function properly.<sup>40</sup> However, these immunities are not absolute and there are exceptions to immunity in the case of serious violations of human rights and humanitarian law, including acts of torture. The practice of international criminal tribunals – such as the International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR) and the Special Court for Sierra Leone (SCSL) – has

<sup>36</sup> Note that States have discretion to set time limits for extradition requests. See Burgers and Danelius (1988), p. 133.

<sup>37</sup> See for example CAT/C/DRC/CO/1, para 5(b); CAT/C/CR/34/UGA, para 5(c); CAT/C/CR/32/5, para 6(f); A/57/44, paras 59-67, 6(f); CAT/C/XXVII/Concl.2, para 5(d); A/56/44, para 134(d); A/55/44, para 59; A/54/44, § 159; A/54/44, para 122; A/51/44, para 75. See also Nowak and McArthur (2008), p. 274.

<sup>38</sup> The only individual complaint to CAT that directly addresses the obligation under article 5(2) of UNCAT is the case of *Suleymane Guengueng et al. v. Senegal* (Habré case). In this case against the former President of Chad, Hissène Habré, victims of torture of Chadian nationality filed a complaint regarding the failure of Senegal, where Habré was residing, to prosecute Habré for crimes allegedly committed under his regime in Chad. While Senegal initially arrested Habré, it later established that the national courts had no jurisdiction over this case and refrained from further prosecution. CAT/C/36/D/181/2001, para 9.6.

<sup>39</sup> See for example A/54/44, paras 76(f), 77(b); A/55/44, para 186(d); A/56/44, paras 58(h), 59(d); A/54/44, para 100; A/51/44, paras 112, 117; A/52/44, para 192; CAT/C/29/Add.1, para 75; A/54/44, para 66; CAT/C/CR/32/3, para 5; A/55/44, paras 59(g), 61(d); CAT/C/PER/CO/4, para 16; A/55/44, paras 68(e), 69(c).

See also Nowak and McArthur (2008), pp. 276-281.

<sup>40</sup> See for example *Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, International Court of Justice (ICJ), No. 121, 14 February 2002, para 53, which states that “the immunities accorded to Ministers for Foreign Affairs are not granted for their personal benefit, but to ensure the effective performance of their functions on behalf of their respective States”.



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been that Heads of State and other high-ranking government officials are not immune from prosecutions.<sup>41</sup> The Rome Statute of the International Criminal Court, in article 27, also clearly states that those acting in an official capacity are not free from criminal responsibility under the Statute and immunities shall not stop the Court from exercising its jurisdiction. The status of the Rome Statute as an international treaty means that it is more powerful than domestic laws granting immunities, in countries that have ratified the Statute.<sup>42</sup> Torture falls under the jurisdiction of these international tribunals as a war crime or as a crime against humanity, if its practice is part of a widespread or systematic attack against civilians (that is, people who are not in the police or army).

While statutes (laws) of international criminal tribunals cannot be directly applied in domestic jurisdictions, the ICTY did observe that its provision on immunity is “indisputably declaratory of customary international law”<sup>43</sup> and therefore binding on all States.

Unlike the abovementioned statutes, UNCAT does not explicitly exclude immunity, but it does establish a comprehensive obligation on State Parties to prosecute suspected perpetrators of torture. The discussion on this matter in the commentary on UNCAT led to the conclusion that “[i]n order to avoid impunity for torturers, the traditional immunity rules under customary international law must ... be interpreted in a narrow sense”.<sup>44</sup>

CAT has repeatedly argued against immunity from prosecution for acts of torture.<sup>45</sup> It stated its clear opinion regarding the cases against Pinochet (former Head of State of Chile) and Habré (former Head of State of Chad) that universal jurisdiction should be exercised over these torturers present in State Parties’ territories, whether or not they concern former Heads of State.<sup>46</sup>

There is nothing to stop State Parties to UNCAT from invoking functional immunity in relation to incumbent (current) Heads of State or Government, Ministers of Foreign Affairs and diplomats in order to make sure that they perform their diplomatic tasks on behalf of their States, while not providing such functional immunity to other officials.<sup>47</sup> But functional immunity can only be claimed when criminal proceedings are started by means of an indictment, the issue of an arrest warrant or an extradition request *at a time when the official is still holding office*. Functional immunity is thus lost as soon as an official loses his/her position.<sup>48</sup>

Also, while immunity may continue to exist for ‘official acts’ performed while holding a certain position, acts of torture or conspiracy to commit torture cannot be considered ‘official acts’.<sup>49</sup>

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<sup>41</sup> Articles 7(2) of the ICTY Statute, 6(2) of the ICTR Statute and 6(2) of the SCSL Statute all state that ‘the official position of any accused person, whether as Head of State or Government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment’. See for example these cases against two presidents and a prime minister: ICTR 97–23–S, *The Prosecutor v. Jean Kambanda*, judgment of 4 September 1998 (the issue of immunity was not raised by the Prime Minister); Decision of 8 November 2001 in *Prosecutor v. Slobodan Milosevic*, Decision on Preliminary Motions, paras 26–34; SCSL–2003–01–I–059, *Prosecutor v. Charles Ghankay Taylor*, Appeals Chamber, 31 May 2004, para 50.

<sup>42</sup> Nowak and McArthur (2008), p. 325.

<sup>43</sup> *Prosecutor v. Furundzija*, ICTY, 10 December 1998, para 156, 38 ILM (1999) 346, para 140.

<sup>44</sup> Nowak and McArthur (2008), p. 326.

<sup>45</sup> See for example A/54/44, paras 76(f), 77(b) and 77(f); A/54/44, para 100; A/55/44, para 186(d); A/56/44, paras 58(h) and 59(d).

<sup>46</sup> CAT/C/SR.354, para 39 and *Suleymane Guengueng et al. v. Senegal (Habré case)*, CAT/C/36/D/181/2001, para 9.8.

<sup>47</sup> Nowak and McArthur (2008), p. 327.

<sup>48</sup> Nowak and McArthur (2008), p. 327.

<sup>49</sup> See for example the Judgment of 24 March 1999 of the Judicial Committee of the House of Lords in the case of *R. v. Bartle and the Commissioner of Police for the Metropolis, ex parte Pinochet*. The International Court of Justice in the *Case Concerning the Arrest*

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In line with this understanding of immunity, CAT has also stated that acts of torture should not be covered by amnesty laws. It has criticised several State Parties that adopted amnesty laws that could result in impunity for perpetrators of torture<sup>50</sup> and expressed approval of amnesty laws that do not apply to torture.<sup>51</sup>

**PART C: All persons deprived of their liberty should have the right to lodge a complaint with competent, independent and impartial authorities who have the ability to conduct prompt investigations. Whenever there are reasonable grounds to believe that an act of torture has taken place in a State Party's jurisdiction, this should be investigated promptly by independent and impartial authorities.**

**8. Every person, including those deprived of their liberty, has the right to lodge a complaint regarding his or her treatment to an independent authority, including violations of the right to be free from torture and other ill treatment.**

Article 13 of UNCAT requires each State Party to make sure that any person who claims that he/she was the victim of torture in any territory under its jurisdiction has the right to complain to, and have his/her case promptly and impartially examined by, the competent authorities (people and institutions that have the legal ability and/or mandate to carry out such an examination). Further, article 16 of UNCAT expressly extends this right to victims of other ill treatment.

The right for victims of torture and other ill treatment to make a complaint is a fundamental guarantee that must always be upheld<sup>52</sup> and is closely linked to the duty to combat impunity. In order to realise the right to complain, mechanisms that people can use to make complaints must be set up both inside and outside places of detention, people must be able to use them without fear of reprisals, and people must know how to access these mechanisms.<sup>53</sup> This requires that detainees be told about the mechanisms and how to use them in a language they understand.<sup>54</sup> Such mechanisms could include, but are not limited to, prison authorities, police officers, lawyers, social workers and psychologists, judges, national human rights institutions, non-governmental organisations, etc.

The actual form that a complaint takes is not important and it should be enough for a victim to simply bring a violation(s) to the attention of a competent authority in order for an examination into the allegation to be

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*Warrant of 11 April 2000* came to a different conclusion. However, in their Joint Separate Opinion Judges Higgins, Kooijmans and Buergenthal noted that “serious international crimes cannot be regarded as official acts and that immunity prevails only as long as the Minister is in office and continues to shield him or her after the time only for ‘official’ acts” (paras 80-85). This interpretation is also in line with the interpretation of CAT and should therefore guide State Parties when implementing UNCAT.

<sup>50</sup> See for example A/55/44, paras 73(e), 75(c); A/57/44, para 5(i); CAT/C/CR/32/5, paras 6(b), 7(b); CAT/C/CR/34/BHR, para 6(g).

<sup>51</sup> See for example A/52/44, para 192; CAT/C/CR/32/3, para 5; CAT/C/CR/29.2, para 6(c). See also Nowak and McArthur (2008), pp. 278-281.

<sup>52</sup> Nowak and McArthur (2008), p. 442.

<sup>53</sup> Amnesty International (2003) *Combating Torture – A Manual for Action*. London: Amnesty International Publications, p. 143.

<sup>54</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 35.

initiated.<sup>55</sup> The official complaints process should allow for both written and verbal complaints, as well as anonymous complaints<sup>56</sup> and complaints made through a third party (for example, by a family member).

The right to complain will be further facilitated by ensuring access for persons deprived of their liberty to a lawyer, doctor and family members, as well as to independent monitoring bodies such as national human rights institutions and NGOs, (as discussed in DIP B).<sup>57</sup>

### **9. States should ensure that persons who have lodged complaints of torture and other ill treatment, as well as witnesses to such acts, are protected from retaliation and intimidation.**

A very important part of the right to complain is a guarantee against retaliation and intimidation. Article 13 of UNCAT and RIG 49 both outline the need to make sure that complainants and witnesses are protected against ill treatment and intimidation after they have reported torture or other ill treatment. RIG 49 also calls for investigators, human rights defenders, and families to be protected. Examples of measures to protect against retaliation and intimidation include:

- removing personnel who have been accused of torture or other ill treatment from active duty;
- moving the person who made the complaint to another place of detention; or
- changing the personnel who are responsible for the complainant.

Regular contact with lawyers, family members, and monitoring bodies as well as regular examinations by doctors can also offer more protection. Victim and witness protection units within courts and/or law enforcement agencies also have an important role to play.<sup>58</sup> (See also DIP C on victims' right to redress.)

### **10. Whenever there are reasonable grounds to believe that an act of torture has taken place in a State Party's jurisdiction, this should be investigated promptly by independent and impartial authorities.**

Article 12 of UNCAT requires State Parties to make sure that there is a prompt and impartial investigation when there are reasonable grounds (fairly good reasons) to believe that someone has committed an act of torture or other ill treatment in any territory under the State's jurisdiction. The purpose of investigation is to find evidence of torture and/or other ill treatment so that perpetrators can be held accountable for their actions and the interests of justice may be served. The obligation to investigate is linked to the duty to provide the right to access complaints mechanisms.<sup>59</sup>

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<sup>55</sup> *Blanco Abad v. Spain*, CAT/C/20/D/59/1996, para 8.6; *Abdelli v. Tunisia*, CAT/C/31/D/188/2001, para 10.6; *Ltaief v. Tunisia*, CAT/C/31/D/189/2001, para 10.6; *Dimitrov v. Serbia and Montenegro*, CAT/C/34/D/171/2000, para 7.2; see also Nowak and McArthur (2008), p. 448.

<sup>56</sup> Nowak and McArthur (2008), p. 449.

<sup>57</sup> A/56/44, para 82(c); see CAT/C/BIH/CO/1, para 19.

<sup>58</sup> Nowak and McArthur (2008), pp. 450-451. See also Niyizurugero, J-B. and Lessène, P. (2008) *Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa: Practical Guide for Implementation*. Geneva: Association for the Prevention of Torture, pp. 68-69; CAT/C/LKA/CO/2, para 15.

<sup>59</sup> Nowak and McArthur (2008), p. 414.

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In order to comply fully with this obligation, investigations need to be:

- prompt;
- impartial;
- thorough;
- able to lead to the identification of those responsible; and
- carried out by a competent authority.

UNCAT does not explain what ‘reasonable grounds’ are, but CAT has interpreted this broadly, and information that could trigger an investigation could come from many sources. For example, CAT has clearly stated that detailed allegations from NGOs are reasonable grounds and should result in an investigation.<sup>60</sup> Information that establishes reasonable grounds to initiate an investigation could also come from fellow or former detainees, family members, lawyers, medical staff and national human rights institutions.<sup>61</sup> Those responsible for places of detention should oversee the practices in these places by:

- making sure that there are regular inspections/oversight visits;
- talking to detainees; and
- inviting lawyers, medical staff and family members of detainees to report on possible acts of torture and ill treatment.<sup>62</sup>

UNCAT calls on investigations to be ‘prompt and impartial’, although these terms are not defined. CAT has stated that –

promptness is essential both to ensure that the victim cannot continue to be subjected to such acts and also because in general, unless the methods employed have permanent or serious effects, the physical traces of torture, and especially of cruel, inhuman or degrading treatment or punishment, soon disappear.<sup>63</sup>

In a number of cases brought before CAT there were violations regarding the promptness of an investigation where there was a long delay or no investigation at all. In one case, a delay of 15 months before starting an investigation into allegations of torture was found to be “unreasonably long” and in violation of article 12.<sup>64</sup> In another case, a victim complained at a court appearance of being tortured and the court waited three weeks before investigating. There were several delays in the follow-up to this hearing and in CAT’s view this was a violation of the obligation to promptly initiate an investigation.<sup>65</sup> Generally, it can be said that in order for States to fulfil their obligations, authorities should immediately start investigating when a case of torture or other ill treatment is suspected (‘immediately’ means within the next hours or days).<sup>66</sup>

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<sup>60</sup> A/57/44, 58(i); CAT/C/XXVII/concl.2, para 5(i).

<sup>61</sup> Nowak and McArthur (2008), p. 431.

<sup>62</sup> Nowak and McArthur (2008), p. 431.

<sup>63</sup> *Blanco Abad v. Spain*, CAT/C/20/D/59/1996, para 8.2.

<sup>64</sup> *Halimi-Nedzibi v. Austria*, CAT/C/8/D/8/1991, para 13.5. Another indicator of interest is a judgment by the European Court of Human Rights which considered that “prompt” would have been when questioning had been done “in the immediate aftermath of the incident, when memories would have been fresh”. *Assenov v. Bulgaria* (1999) ECHR Application 90/1997/874/1086, para 103.

<sup>65</sup> *Blanco Abad v. Spain*, CAT/C/20/D/59/1996, para 8.

<sup>66</sup> Nowak and McArthur (2008), p. 434.

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In order for investigations to be impartial, they must not be conducted by anyone who has close personal or professional links with the persons suspected of committing torture or other ill treatment, or who may want to protect these persons or the organisation/unit to which they belong.<sup>67</sup> While direct superiors, such as prison directors, can often initiate investigations, it is important that the entire investigation has independent, external bodies working on it.<sup>68</sup> If an investigation is not thorough, this may show a lack of impartiality.<sup>69</sup> Investigations should be carried out thoroughly and the authorities should pay equal attention to both the complainant and the defendant during investigations.<sup>70</sup> Further, the results of investigations into accusations of torture and other ill treatment should be made public.<sup>71</sup>

The Istanbul Protocol is an important tool for any investigation into allegations of torture and other ill treatment. Provision 77 of the Istanbul Protocol notes that the broad aim of an investigation is –

to establish the facts relating to alleged incidents of torture, with a view to identifying those responsible for the incidents and facilitating their prosecution, or for use in the context of other procedures designed to obtain redress for victims. ... To fulfil this purpose, those carrying out the investigation must, at a minimum, seek to obtain statements from the victims of alleged torture; to recover and preserve evidence, including medical evidence, related to the alleged torture to aid in any potential prosecution of those responsible; to identify possible witnesses and obtain statements from them concerning the alleged torture; and to determine how, when and where the alleged incidents of torture occurred as well as any pattern or practice that may have brought about the torture.

The Protocol is mainly aimed at forensic scientists, physicians, psychologists, human rights monitors and lawyers who are or could be involved in investigations into allegations of torture and other ill treatment. It provides a set of guidelines for assessing complaints, investigating cases, and reporting such findings to other investigative bodies and the judiciary. It contains internationally recognised standards and procedures on how to recognise and document symptoms of torture, so that the documents may be used as valid evidence in court. States should make sure that the Istanbul Protocol guides the work of all relevant investigative mechanisms.

**PART D: If States do not extradite suspected perpetrators of the crime of torture to the requesting State, they must prosecute the suspect.**

### **11. States should either prosecute or extradite suspected perpetrators of the crime of torture.**

UNCAT requires State Parties to either extradite or prosecute persons suspected of committing acts of torture. Extradition is dealt with in Part E below, and the focus here is on the duty to prosecute as established by

<sup>67</sup> Burgers and Danelius (1988), p. 145.

<sup>68</sup> CAT/C/SR.16, para 25; CAT/C/SR.97, para 57; CAT/C/SR/101, para 27; CAT/C/SR.22, paras 14 and 24.

<sup>69</sup> Amnesty International (2003), p. 75.

<sup>70</sup> *Barakat v. Tunisia*, CAT/C/23/D/60/1996, paras 11.10 and 12.

<sup>71</sup> See CAT/C/SR.245, para 37; CAT/C/SR.273, para 33, under E, 5.

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article 7 of UNCAT. The duty to prosecute is not linked to a request for extradition, and extradition is only possible when a State requests extradition.<sup>72</sup>

Measures taken by State Parties to prosecute the crime of torture, and to guarantee fair process (see the DIP B Guidance Note, Part A) in their domestic criminal law should also be guided by the human rights obligations that they have committed to under other treaties ratified by the State, including:

- the International Covenant on Civil and Political Rights (ICCPR);<sup>73</sup>
- jurisprudence of human rights bodies in the form of General Comments and Concluding Observations of CAT and the UN Human Rights Committee;<sup>74</sup>
- customary international law; and
- the decisions of international and regional human rights judicial authorities.

*The following sections describe the four conditions required for prosecution.*

### **12. Cases of torture must be referred to prosecutorial authorities where jurisdiction over the offence is established under article 5 of UNCAT, and where the State Party is not extraditing the suspect.**

Under article 5(2) of UNCAT, the obligation to extradite or prosecute requires that a State Party establish jurisdiction based solely on the presence in its territory of a person suspected of committing an act of torture, regardless of the nationality of the alleged offender and the place where the offence was committed, if the State decides not to extradite the accused.<sup>75</sup> As discussed in Part B (on jurisdiction) above, a main aim of UNCAT is to end impunity for torture, and article 7(1) supports the principle that there should be no safe havens for people accused of torture and other ill treatment.<sup>76</sup>

The State Party in whose jurisdiction the suspect is physically present has the choice of whether to extradite or prosecute. If the suspect is also potentially subject to one or more other States' jurisdiction, UNCAT does not have a system to determine which State's claim to jurisdiction will have priority.<sup>77</sup> However, article 7(1) does place a strict obligation on States to hand the case to domestic prosecuting authorities if the State Party has either

- a) decided not to grant a request for extradition; or

<sup>72</sup> Nowak and McArthur (2008), p. 360. See also the Habré case.

<sup>73</sup> Opened for signature 19 December 1966, 999 UNTS 171 (entered into force generally 23 March 1976).

<sup>74</sup> See for example, HRI/GEN/1/Rev.1 and United Nations Human Rights Committee (1992) *General Comment 20: Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment (Art 7)*, 10/3/92.

<sup>75</sup> See, Lord Browne-Wilkinson, Pinochet (3): "... it is clear that in all circumstances, if the Article 5(1) States do not choose to seek extradition or to prosecute the offender, other States must do so. The purpose of the [UNCAT] was to introduce the principle of *aut dedere aut punire* – either you extradite or you punish." *Regina V. Bow Street Metropolitan Stipendiary Magistrate And Others, Ex Parte Pinochet Ugarte* (No. 3) [2000] 1 A.C. 147 p. 200.

<sup>76</sup> A/54/426, para 48; A/51/457, para 120.

<sup>77</sup> Amnesty International (2001) *Universal Jurisdiction: The Duty of States to Enact or Enforce Legislation*, AI Index IOR 53/012/2001, Chapter 9.



- b) no request for extradition has been received from another State with jurisdiction to prosecute.<sup>78</sup>

### **13. States should ensure that the prosecutorial process, including standards of evidence for prosecution and conviction, are commensurate with the ordinary processes for serious criminal offences under domestic law.**

State Parties have a duty to make sure that investigations into allegations of torture follow the same domestic criminal law process as those for other serious crimes. Authorities that are investigating and prosecuting torture must carry out impartial investigations into the facts, following the standards for proper investigation set out in DIP B. Investigations that do not follow good practices, including in terms of standards of evidence, will fail to meet States' obligations to take 'effective measures' against torture under article 2(1) of UNCAT.

Article 7(3) of UNCAT places an obligation on States to guarantee the right to fair treatment of persons accused of torture (and other ill treatment) during all stages of proceedings. This includes following established procedural safeguards during investigations (see DIP B) and trials, and putting in place safeguards for minimum standards of detention, including pre-trial and administrative detention.<sup>79</sup>

The right to a fair trial is a peremptory norm of international customary law<sup>80</sup> and protected in article 14 of ICCPR. Articles 9, 10 and 15 of ICCPR deal with fair trials and establish procedural safeguards to promote:

- the right of everyone to full equality and to a fair and public hearing by an independent and impartial tribunal;
- the right to equality before the courts and tribunals;
- the protection of suspects from arbitrary detention;
- guarantees of the presumption of innocence and the right to have a case heard before an independent court or tribunal;
- restriction of the use of incommunicado detention;
- guaranteed access to lawyers, doctors and family members; and
- independent internal and external oversight.<sup>81</sup>

RIG also includes other safeguards, such as the right of an accused to inform a third party of his/her detention, the keeping of full records of interrogations, and establishing independent complaints mechanisms in places of detention.

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<sup>78</sup> Nowak and McArthur (2008), pp. 363-364. The obligation to prosecute is limited to the submission of the case by the State to the prosecuting authorities. It is then a matter for the relevant authorities to decide whether to seek prosecution and, based on the available evidence, whether to convict and sentence the perpetrator in accordance with domestic criminal procedure legislation – see *Suleymane Guengueng et al. v. Senegal*, CAT/C/36/D/181/2001, para 8.

<sup>79</sup> A/56/156, para 34.

<sup>80</sup> See CCPR/C/21/Rev.1/Add.11 and CCPR/C/GC/32, para 54.

<sup>81</sup> See also A/56/156, para 34. Articles 6 and 7 of AChHPR reflect ICCPR safeguards, and ACHPR has provided further guidance on the content of the right to fair treatment in the Resolution on the Right to Recourse and Fair Trial (Res.4(XI) 92) and the Principles and Guidelines on Rights to a Fair Trial and Legal Assistance in Africa (see also, *Rights International v. Nigeria*, African Commission on Human and Peoples Rights, Communication No. 215/98, para 29). See also, *Rights International v. Nigeria*, African Commission on Human and Peoples Rights, Communication No. 215/98, para 29.

As stated in article 10 of ICCPR, States have an obligation to make sure that the conditions of detention do not undermine fair treatment, including the accused's right to a fair trial. There are a number of UN standards that apply to the treatment of prisoners,<sup>82</sup> including the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR). These standards support and flesh out the obligation on State Parties to ensure that persons deprived of their liberty are treated with humanity and respect for their inherent dignity.

### **14. State Parties should prohibit the use of evidence collected as a result of torture, except as evidence in proceedings against a person accused of committing an act of torture.**

Article 15 of UNCAT, RIG 29 and customary international law (law that has been developed based on States' practices)<sup>83</sup> do not allow evidence that has been collected, or statements that are known to have been made, as a result of torture (including direct and indirect physical or psychological coercion) to be used in court.<sup>84</sup> The only time that this does not apply is if the statement given as a result of torture is used as evidence against a person accused of torture, in order to prove that the statement was obtained through torture. The obligation to exclude statements obtained by torture also applies to statements extracted by other forms of ill treatment, as defined in article 16 of UNCAT,<sup>85</sup> and to statements made about third parties (and therefore any information or evidence obtained as a result of that statement).<sup>86</sup> The prohibition of the use of such statements is also in line with the right to be free from self-incrimination, enshrined in ICCPR.<sup>87</sup> (Self-incrimination is when a person makes him/herself seem guilty of a crime, even though he/she may not be guilty.)

This rule of evidence helps to stop torture from happening. Article 15 prohibits the use of statements made under torture or other ill treatment, and this can prevent law enforcement personnel from committing torture and other ill treatment because the article makes any evidence or confessions useless if they were obtained through torture. Confessions obtained by torture or under threat of torture are, in any event, unreliable – as people will say anything to avoid/stop torture or other ill treatment – and so should not be used in criminal proceedings.<sup>88</sup>

To effectively implement article 15, State Parties should make sure that:

- their judicial procedures are not mainly confession-based;
- they support the right to freedom from self-incrimination; and

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<sup>82</sup> United Nations Human Rights Committee (1992) *General Comment 21: Replaces General Comment 9 Concerning Humane Treatment of Persons Deprived of Liberty (art. 10)*, 04/10/1992, para 5. These include: the Standard Minimum Rules for the Treatment of Prisoners (1957), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), the Code of Conduct for Law Enforcement Officials (1978), and the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982).

<sup>83</sup> Thienel, T. (2006) *The Admissibility of Evidence Obtained by Torture under International Law*, *European Journal of International Law*, Vol. 17, pp. 349, 364-365.

<sup>84</sup> United Nations Human Rights Committee, *General Comment 20*, para 12.

<sup>85</sup> CAT/C/GC/2, paras 3 and 6.

<sup>86</sup> Association for the Prevention of Torture and Centre for Justice and International Law (2008) *Torture in International Law: A Guide to Jurisprudence*. Switzerland: Association for the Prevention of Torture and Washington DC: Centre for Justice and International Law, p. 23. The prohibition also extends to all types of legal proceedings – both judicial and non-judicial (administrative).

<sup>87</sup> Article 14(3)(g) of ICCPR provides that everyone has the right 'not to be compelled to testify against himself or to confess guilt'.

<sup>88</sup> A/61/259, para 45.

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- they have effective oversight mechanisms to detect and prevent the use of torture and other ill treatment for obtaining evidence and other purposes.<sup>89</sup>

It is the duty of State Parties and the relevant prosecuting authorities to find out whether or not a statement was made as a result of torture or other ill treatment, including when the evidence relied on was obtained outside of the State's jurisdiction.<sup>90</sup> CAT has recommended that detainees should receive medical examinations before and after interrogations so that it will be possible to know if statements were made as a result of torture or other ill treatment.<sup>91</sup> Other safeguards include, but are not limited to:

- keeping a custody register;
- recording interrogations;
- facilitating prompt access to judicial authorities;
- access to lawyers medical personnel and family members; and
- the prohibition of incommunicado detention.

### **15. Prohibit the use of the 'superior orders' defence as a justification for the use of torture in all criminal proceedings.**

Article 2(3) of UNCAT reinforces the absolute nature of the prohibition of torture when it states that orders from a superior are not a defence for committing torture or other ill treatment.<sup>92</sup> Domestic criminal procedure laws must make sure that persons brought to trial for the crime of torture cannot use the defence of 'superior orders'. Someone who commits an act of torture is guilty of the crime even if he/she was asked or told to do so by his/her superior. Someone who refuses to carry out orders that they view as unlawful (including the order to commit torture or other ill treatment) or who cooperates in the investigation of torture or other ill treatment, including by superior officials, should be protected against retaliation of any kind.<sup>93</sup> While superior orders cannot be a justification for torture, they may be used in mitigation of sentence. However, care should be exercised so that this does not result in a too lenient a sentence that fails to recognise the seriousness of the crime.<sup>94</sup>

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<sup>89</sup> A/47/44, para 100 and CAT/C/SR.245, paras 44-45.

<sup>90</sup> See *P.E. v. France*, CAT/C/29/D/193/2001 (2002), 7 May 2003, para 6.10.

<sup>91</sup> CAT/C/SR.245, paras 44 and 47.

<sup>92</sup> This is a well-established principle of international law and is found in United Nations General Assembly Resolution 177(III), *Formulation of the Principles Recognised in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal*, 2<sup>nd</sup> session, A/519, 111-112, in the Statute of the International Criminal Tribunal for Rwanda (article 6(4)) and in the Statute of the International Criminal Tribunal for the Former Yugoslavia (article 7(4)).

<sup>93</sup> CAT/C/GC/2, para 26.

<sup>94</sup> Nowak and McArthur (2008), p. 125.

**PART E: State Parties should render each other mutual assistance to ensure that there is no safe haven for suspects of the crime of torture. Torture is an extraditable offence, but there are mandatory objections to requests for extradition. States must adhere to the principle of *non-refoulement*.**

### **16. State Parties should render each other mutual assistance to ensure that there is no safe haven for suspects of the crime of torture.**

As discussed in Part D above, UNCAT requires State Parties to either extradite or prosecute persons suspected of committing acts of torture as defined in article 4 of UNCAT. The focus in this Part is on the obligation to support effective extradition and to give mutual assistance established by articles 6, 8 and 9, and to discuss the principle of *non-refoulement* in article 3 of UNCAT. 'Mutual assistance' refers to the request by one State to one or more State Parties to assist in the investigation of a criminal matter, including allegations of torture and other ill treatment. Mutual assistance can include requests to assist with obtaining evidence (whether physical evidence or by way of interrogation and interviews), locating or identifying persons, serving documents, and transferring prisoners. States' mutual assistance arrangement should be guided by the Model Treaty on Extradition (as noted in section 17 below).<sup>95</sup>

International human rights law places the obligation on State Parties to respect, protect and fulfil each human right.<sup>96</sup> The obligation to protect requires that State Parties act to prevent third parties (including other States, governments, individuals, organisations and enterprises) from violating human rights, and refuse to give effect to human rights violations by third parties.

The content of this obligation to protect is discussed in detail below.

### **17. Torture as an extraditable offence.**

Article 8 of UNCAT places an obligation on States to make the crime of torture an extraditable offence that is included in every extradition treaty to which the State is a party. Where there is no extradition treaty, UNCAT can be used as the basis for extradition for the crime of torture.<sup>97</sup>

A State's extradition and mutual assistance arrangement should be guided by the United Nations Model Treaty on Extradition (Model Treaty on Extradition).<sup>98</sup> Following the Model Treaty on Extradition would help to make sure that a State's extradition and mutual assistance processes are in line with human rights obligations.

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<sup>95</sup> A/RES/45/116.

<sup>96</sup> See, for example, article 2 of ICCPR. See also CCPR/C/21/Rev.1/Add.13.

<sup>97</sup> A/56/156, para 26.

<sup>98</sup> A/RES/45/116.

### 18. States must adhere to the principle of non-refoulement.

Article 3 of UNCAT states the following about the established principle of *non-refoulement*:

no State Party shall expel, return ('*refouler*'), or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.<sup>99</sup>

This principle is described as being an 'inherent part' of the absolute prohibition of torture and places an obligation on State Parties to establish procedural safeguards and to make sure that extradition practices do not undermine the principle of *non-refoulement*, and that decisions to expel individuals are a result of due process and fair hearings.<sup>100</sup> Safeguards include:

- laws that establish clear procedures for extradition hearings that follow the rule of law and procedural fairness;
- judicial decisions to ensure that extradition cases will meet international human rights obligations;<sup>101</sup> and
- the right to a fair hearing and the right to access legal counsel, medical assistance and consular support.<sup>102</sup>

The UN Human Rights Committee has stated that States must not expose individuals to extradition where there is a danger that these rights may be violated.<sup>103</sup> It has stated that extradition in these circumstances would violate States' international human rights obligations.<sup>104</sup>

The UN Special Rapporteur on Torture (see Part F for a discussion on the Special Procedures and Mechanisms) has identified two factors that must be taken into account with the *non-refoulement* principle. The first is about the situation in the country to which the person is to be removed or may be removed ('prevailing political conditions'). The second factor is about how vulnerable the person is to torture or other forms of ill treatment ('personal circumstances').<sup>105</sup>

Article 3(2) of UNCAT requires that all relevant factors must be taken into account when assessing the prevailing political conditions in a State – such conditions might include, where applicable, the existence of a consistent pattern of gross, flagrant or mass violations of human rights.<sup>106</sup>

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<sup>99</sup> See also, United Nations Human Rights Committee (1992) *General Comment 20: Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment (art. 7)*, 10/3/92; A/59/324, para 26; and *Prosecutor v. Anto Furundzija (Trial Judgement)*, IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10 December 1998, para 148.

<sup>100</sup> See *Chahal v. the United Kingdom* [1996] ECHR 70/1995/576/662.

<sup>101</sup> See, for example, the United Kingdom *Extradition Act 2003*, section 31: '(1) If the judge is required to proceed under this section ... he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c.42). (2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge'.

<sup>102</sup> A/59/324, para 29.

<sup>103</sup> United Nations Human Rights Committee (1992) *General Comment 20: Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment (art. 7)*, 10/3/92, para 9; CCPR/C/21/Rev.1/Add.13, para 12.

<sup>104</sup> *Ng v. Canada* CCPR/C/49/D/469/1991 (1994), para 14.2; *Kindler v. Canada* CCPR/C/48/D/470/1991 (1993), para 13.1. See also, *Soering v. UK* [1989] ECHR Application no. 14038/88, paras 88-90. See also, *Chahal v. the United Kingdom*, ECHR, Application no. 22414/93.

<sup>105</sup> A/59/324, para 34.

<sup>106</sup> The use of the word 'including' makes it clear that the existence of a consistent pattern of gross, flagrant or mass violations is not necessarily the only determining factor. Rather, the general country situation may also be assessed together with other relevant considerations, in particular those relating to the vulnerability of the person concerned. A/59/324, 1, para 35.

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When assessing the prevailing political conditions in a State, the following sources can show possible signs of a consistent pattern of gross, flagrant or mass violations:

- information given to the UN treaty body committees (including to CAT as provided for in article 20 of UNCAT), the UN Human Rights Committee as part of the Universal Periodic Review process, and UN Special Mechanisms and Procedures, which may contain ‘well-founded indications that torture has been systematically practiced’;
- government, civil society or media reports of torture resulting from the actions or intentions of the government, or from government not taking action, particularly where the government does not have effective control over areas or non-state actors; and
- inadequate legislative protections against torture in domestic legislation, or evidence of a big difference between government policy and the implementation of policy.<sup>107</sup>

In relation to the ‘personal circumstances’ of the person subject to extradition proceedings, the UN Special Rapporteur on Torture recommends that State Parties consider questions regarding whether the individual has already been tortured, or whether he/she has been involved in political activity or other activity that would put him/her at risk of torture. This activity could include membership of any known group or collective on political, racial, national, ethnic, cultural, religious, gender or other grounds, such as sexual orientation, which put the person at risk.<sup>108</sup>

In the past 10 years, there has been increased use of ‘diplomatic assurances’ as part of extradition processes. This means that the State requesting extradition makes guarantees that the extradited person will not be tortured or ill treated after extradition. However, the UN Special Rapporteur on Torture holds the view that diplomatic assurances do not have any legal power, monitoring mechanisms after extradition are not guarantees against torture, and that the law cannot do anything if assurances are not met.<sup>109</sup> The Special Rapporteur has strongly stated: “diplomatic assurances with regard to torture are nothing but attempts to circumvent the absolute prohibition of torture and *refoulement*”.<sup>110</sup>

The deprivation of liberty of persons subject to extradition proceedings must be effected in a manner that does not violate the right to be free from inhumane treatment or torture (article 7 of ICCPR) and the right to inherent dignity of the person (article 10(1)). Safeguards to protect the rights of detainees include investigations into allegations of ill treatment and torture in custodial settings<sup>111</sup> and prohibitions of *incommunicado* detention<sup>112</sup> and absolute solitary confinement.<sup>113</sup>

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<sup>107</sup> A/59/324, para 36.

<sup>108</sup> A/59/324, para 39.

<sup>109</sup> E/CN.4/2006/6, para 31.

<sup>110</sup> E/CN.4/2006/6, para 32.

<sup>111</sup> E/CN.4/2006/120, para 90.

<sup>112</sup> *Polay Campos v. Peru*, CCPR/C/61/D/577/1994 paras 8.4, 8.6 and 8.7.

<sup>113</sup> *Ocalan v. Turkey*, ECHR, 46221/99, 12 March 2003 (paras 231-232); *Labita v. Italy*, ECHR, 26772/95, 6 April 2000, para 119.



Article 9 of ICCPR also requires that any detention be reasonable, necessary and proportionate and subject to judicial review.<sup>114</sup> Detention that is excessively long will be considered arbitrary. This includes pre-trial detention.<sup>115</sup>

In line with this, extradition procedures should include a presumption of bail and a presumption that detainees will not remain in detention unless it is appropriate, necessary and proportionate in light of the seriousness of the charge, the risk of flight and the length of time already spent in detention.<sup>116</sup>

### 19. There are certain mandatory objections to requests for extradition.

The duty to extradite is subject to ‘mandatory objections’ to a request for extradition – that is, there are conditions under which international law requires States to refuse to extradite. The discussion below will focus on requests for extradition of people who are accused of the crime of torture, although the mandatory objections apply to requests for extradition of all persons accused of any extraditable offence. The mandatory objections aim to protect the human rights of persons who a State has requested be extradited, and include the following categories:

*Death penalty:* Consistent with the right to life in article 6 of ICCPR, States have an obligation not to extradite a person when it is known that the person may be subject to the death penalty. For this reason, a person cannot be extradited to a country where the crime of torture is punishable by the death penalty.

*Torture and other ill treatment:* The right of individuals to be free of torture and other ill treatment places a non-derogable obligation on States not to extradite a person to a country where the person may be subject to torture and other ill treatment in that country.<sup>117</sup> For this reason, a person accused of torture cannot be extradited to a country where he/she is at risk of torture or other ill treatment.

*Conditions of detention that violate a person’s humanity and inherent dignity:* Article 10 of ICCPR requires that people in detention be treated with humanity and respect for their inherent dignity. Together with article 2 of UNCAT, this provision places an obligation on States not to extradite a person accused of torture to a country under circumstances in which it is foreseeable that the person will be deprived of their liberty, and that the conditions of detention will violate that person’s humanity and inherent dignity. The UN Human Rights Committee states that conditions of detention should, at the very least, be in line with UNSMR.<sup>118</sup> This means that State Parties are under an obligation not to extradite a person unless they are satisfied that the conditions of the person’s detention will comply with UNSMR.

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<sup>114</sup> *C v. Australia*, CCPR/C/76/D/900/1999 (2002), para 8.3.

<sup>115</sup> *Quinn v. France* [1995] ECHR Application no. 18580/91, para 41. See also, *Chahal v. The United Kingdom* [1996] ECHR Application no. 70/1995/576/662, para 113: “The Court recalls, however, that any deprivation of liberty under Article 5 para 1 (f) (art. 5-1-f) will be justified only for as long as deportation proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 para 1 (f).”

<sup>116</sup> Article 9, ICCPR contains the principle of the right to freedom from arbitrary detention.

<sup>117</sup> United Nations Human Rights Committee (1992) *General Comment 20: Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment (art. 7)*, 10/3/92. See also CCPR/C/21/Rev.1/Add.13, para 12.

<sup>118</sup> See also *BS v. Canada*, CAT/C/27/D/166/2000, 14 November 2001.

*Fair trial:* The right to a fair trial is a peremptory norm of customary law<sup>119</sup> and enshrined in article 14 of ICCPR. Its peremptory status and extra-territorial relevance should be reflected in the criminal codes of States, which make it an offence to aid or abet an unfair trial in another jurisdiction.<sup>120</sup> For this reason, extradition should be refused when the extraditable person accused of torture or other ill treatment has suffered a violation of the right to a fair trial or it is possible that after extradition the extraditable person will suffer a violation of the right to a fair trial. Additionally, mandatory objections to mutual assistance must be made if it relates to the prosecution of a person for an offence for which he/she has already been acquitted, punished, pardoned or tried *in absentia*.<sup>121</sup>

*Political offences:* If an extradition request is about a political offence, State Parties have a duty not to extradite persons to the requesting State if there is a real risk of them being tortured and ill treated.<sup>122</sup> This is in line with the condition that State Parties make sure that all people within their territory or subject to their jurisdiction are free from discrimination on the grounds of their political views.<sup>123</sup>

*Discrimination:* States should prevent a person from being extradited if the offence they are accused of is based on discrimination of any recognised kind, including that based on gender, sexual identity, religious or political persuasion, ethnicity, or any other protected attribute under international law.<sup>124</sup>

### **20. States must not provide mutual assistance to another State where doing so would give effect to a human rights violation in, or by, the State requesting that mutual assistance.**

As with extradition arrangements (see section 17, above), mutual assistance frameworks must also include mandatory objections to requests for assistance in the investigation and prosecution of the crime of torture and other ill treatment. As discussed in section 19, this includes objections if the request relates to:

- political offences;
- death penalty matters;<sup>125</sup>
- aiding, abetting, procuring or in any way causing any act of torture or other ill treatment;<sup>126</sup>
- prosecution on discriminatory grounds;<sup>127</sup>
- any offence not in line with international human rights norms; and
- circumstances in which it is anticipated that the person will be deprived of their liberty in conditions that violate UNSMR.

<sup>119</sup> See CCPR/C/21/Rev.1/Add.11 and CCPR/C/GC/32, para 54.

<sup>120</sup> *Soering v. UK* [1989] ECHR Application no. 14038/88, para 113. See also, *Brown (aka Bajinja) & Ors v. The Government of Rwanda Secretary & anor* [2009] EWHC 770 (Admin), judgment of 8 April 2009.

<sup>121</sup> See, for example, *AP v. Italy* (CCPR/C/31/D/204/1986), para 7.3, and *ARJ v. Australia* (CCPR/C/60/D/692/1996), para 6.4. This is consistent with the norm against 'double jeopardy', enshrined in article 14(7) of ICCPR, which prohibits a person from being prosecuted twice for the same offence. See also CCPR/C/GC/32, para 54.

<sup>122</sup> See, for example, *Ali Falakflaki v. Sweden* (CAT/C/20/D/89/1997).

<sup>123</sup> Articles 2 and 26, ICCPR.

<sup>124</sup> Articles 2 and 26, ICCPR.

<sup>125</sup> *Judge v. Canada* (CCPR/C/78/D/829/1998 (2003)), para 10.4.

<sup>126</sup> CAT/C/AUS/CO/3, para 15.

<sup>127</sup> Article 26, ICCPR.



Where a State has made a request for mutual assistance that has resulted in the receipt of statements or evidence that have been made as a result of torture or other ill treatment,<sup>128</sup> article 15 of UNCAT requires that this evidence not be used as evidence in any proceeding, except against a person accused of torture as evidence that he/she obtained the statement through torture.<sup>129</sup>

**PART F: The treaty monitoring bodies should be allowed and assisted to conduct investigations and gather information when they receive any communications regarding alleged acts of torture in the territory of a State Party.**

CAT is mandated to oversee the implementation of UNCAT, and the African Commission on Human and Peoples' Rights (ACHPR) is mandated to oversee the implementation of the African Charter on Human and Peoples' Rights (ACHPR). This part of DIP A examines the treaty monitoring bodies as well as the Special Procedures and Special Mechanisms whose mandates relate to conditions of detention and the prevention and eradication of torture and other ill treatment. RIGs 2 and 3 call on African states to cooperate with ACHPR, CAT, Special Mechanisms and Special Procedures.

The UN Human Rights Committee, which oversees (supervises) the implementation of the International Covenant on Civil and Political Rights (ICCPR), can also receive individual communications (that is, complaints) from persons who claim that they had been the victims of torture, since article 7 of ICCPR guarantees the right to be free from torture.<sup>130</sup> A recent complaint of torture handled by the Human Rights Committee was the McCallum case, which was brought against South Africa in an individual communication.<sup>131</sup> The discussion below will, however, only deal with CAT and ACHPR.

Both CAT and ACHPR have three types of mechanisms they can use, which are listed below. These are: investigative mechanisms; inter-State complaints mechanisms; and individual complaints mechanisms.

### **21. The mechanisms of the United Nations Committee against Torture.**

The UN Committee against Torture is made up of 10 independent members of 'high moral standing' who have 'recognized competence in the field of human rights'.<sup>132</sup> They serve in their personal capacities and are elected for a four-year renewable term by the States party to UNCAT.<sup>133</sup>

<sup>128</sup> United Nations Human Rights Committee, *General Comment 20, Replaces General Comment 7 Concerning the Prohibition of Torture or Cruel, Inhuman or Degrading Treatment or Punishment* (1992), para 12; CCPR/C/GC/32 paras 6 and 41 ..

<sup>129</sup> *A v. Secretary of State for the Home Department (No. 2)* [2006] 1 All ER 575; Tobias, T. (2006) The admissibility of evidence obtained by torture under international law, *European Journal of International Law* 17, pp. 349, 360.

<sup>130</sup> Article 7: 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.'

<sup>131</sup> United Nations Human Rights Committee Communication No. 1818/2008.

<sup>132</sup> Article 17(1) of UNCAT.

<sup>133</sup> Article 17(2) and 17(5) of UNCAT.

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CAT usually holds ordinary sessions twice a year in Geneva, around May and November.<sup>134</sup> It may also hold extraordinary sessions. During its sessions, it undertakes a wide range of activities, including the examination of State reports, assessing information on the practice of torture in State Parties' territories, and inter-State and individual communications. Parts of its sessions are held in private.

The tables below explain the procedure for CAT to investigate and decide on allegations of torture and other ill treatment. Initial and periodic reporting to CAT is dealt with in DIP D.

<b>Mechanism: Investigation, on its own initiative</b> This arises when CAT receives information regarding allegations of torture and other ill treatment and decides to investigate these further.		<b>UNCAT article or CAT Rule of Procedure</b>
<b>Source</b>	Article 20 of UNCAT	
<b>Preliminary requirement</b>	The State must not have made a reservation to article 20.	
<b>Prompted by</b>	Reliable and well-founded information (based on evidence) received by CAT on the practice of systematic torture in a State Party.	Art. 20(1)
<b>Procedure before CAT</b>	<ul style="list-style-type: none"> <li>• The entire proceedings are confidential.</li> <li>• CAT will invite the State Party to:               <ul style="list-style-type: none"> <li>○ co-operate;</li> <li>○ submit observations;</li> <li>○ agree to an inquiry team visiting its territory.</li> </ul> </li> <li>• CAT will first examine the admissibility of the request (whether the information is reliable and well-founded), and then the merits of the request.</li> <li>• CAT may launch a confidential inquiry –               <ul style="list-style-type: none"> <li>○ based on the State's submission (if made) and any other relevant information, including from other UN agencies or individuals;</li> <li>○ conducted by one or several of its members (inquiry team);</li> <li>○ resulting in a report to CAT.</li> </ul> </li> <li>• CAT then makes comments on the report.</li> </ul>	Art. 20(5)  Art. 20(3) Art. 20(1) Rule 85/86 Rule 81  Art. 20(2) Rule 82 to 84
<b>Outcome</b>	<ul style="list-style-type: none"> <li>• The inquiry team's report and comments or suggestions by CAT on the report are both sent to the State Party, confidentially.</li> <li>• A summary of the report is published in CAT's annual report, if the State Party agrees.</li> </ul>	Art. 20(4) Rule 89 Art. 20(5) Rule 90

<b>Mechanism: Inter-State communication</b> This arises when a State Party communicates to CAT alleging that another State Party is not fulfilling its obligations under UNCAT.		<b>UNCAT article or CAT Rule of Procedure</b>
<b>Source</b>	Article 21 of UNCAT	
<b>Preliminary requirements</b>	<ul style="list-style-type: none"> <li>• The State Party must make a declaration (formal statement) recognising the competence of CAT to receive and examine inter-State communications.</li> </ul>	Art. 21(1) Rule 91

<sup>134</sup> Rules 2 to 4 of the Rules of Procedure of CAT, CAT/C/3/Rev.5.

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Mechanism: Inter-State communication This arises when a State Party communicates to CAT alleging that another State Party is not fulfilling its obligations under UNCAT.		UNCAT article or CAT Rule of Procedure
	<ul style="list-style-type: none"> <li>• A State Party cannot submit a communication if both it and the State Party against which it complains have not made such a declaration.</li> <li>• Declarations may be made at any time.</li> </ul>	
<b>Prompted by</b>	Communication sent by a State Party claiming that another State Party is not fulfilling its obligations under UNCAT.	Art. 21(1)
<b>Procedure preceding CAT intervention</b>	<ul style="list-style-type: none"> <li>• The Complainant State Party (CSP) must inform the Respondent State Party (RSP) of alleged non-compliance with a provision or provisions of UNCAT (that is, failing to comply with a provision).</li> <li>• The CSP has three months to clarify and detail the complaint to the RSP.</li> </ul>	Art. 21(1)(a)
<b>Procedure before CAT</b>	<ul style="list-style-type: none"> <li>• Six months after the original CSP complaint, either the CSP or the RSP may refer the matter to CAT (that is, pass on the matter to CAT).</li> <li>• The CSP, RSP and CAT must be notified of the referral.</li> <li>• CAT will only examine a matter after all domestic remedies have been exhausted, unless such exhaustion is unreasonable or unlikely. (If a remedy is exhausted it has been tried or used up.)</li> <li>• CAT will first examine whether the request is admissible, and then the merits of the request.</li> <li>• CAT's examination is confidential.</li> <li>• CAT will first try to find an amicable solution (for example, to resolve the matter through discussions).</li> <li>• CAT may seek relevant information from the CSP and RSP.</li> <li>• The CSP and RSP are entitled to representation before CAT, and to make oral and written submissions.</li> </ul>	Art. 21(1)(b) to 21(1)(g) Rule 92, 95, 97 to 100
<b>Outcome</b>	CAT's report – <ul style="list-style-type: none"> <li>• is to be submitted within 12 months of notice of referral;</li> <li>• will rule on whether a violation of UNCAT took place;</li> <li>• must be limited to a statement of facts –               <ul style="list-style-type: none"> <li>○ in the form of a brief, if an amicable solution was found;</li> <li>○ that contains the CSP's and RSP's submissions, if no amicable solution was reached;</li> </ul> </li> <li>• will be transmitted (communicated) to the CSP and RSP;</li> <li>• will not be made public.</li> </ul>	Art. 21(1)(h) Rule 101
<b>Note</b>	States have to "opt in" by making a declaration to accept the jurisdiction of CAT to examine inter-state communications. Not all States have done so. Please check whether your country has made such a declaration under article 21(1) of UNCAT.  RIG 1(b) recommends that States make a declaration accepting CAT's jurisdiction under article 21 of UNCAT.	RIG 1

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Mechanism: Individual communication This procedure is used when an individual communicates with CAT alleging that acts of torture or other ill treatment have taken place.		UNCAT article or CAT Rule of Procedure
<b>Source</b>	Article 22 of UNCAT	
<b>Preliminary requirements</b>	<ul style="list-style-type: none"> <li>• The State Party must make a declaration recognising the competence of CAT to receive and examine individual communications.</li> <li>• The declaration may be made at any time.</li> </ul>	Art. 22(1) Rule 102
<b>Standing and admissibility requirements</b>	<ul style="list-style-type: none"> <li>• Communications may be made by individuals only if they are subject to the Respondent State Party (RSP)'s jurisdiction.</li> <li>• The individual must be an alleged victim of a violation of a provision or provisions of UNCAT by the RSP.</li> <li>• CAT will only examine the communication if:                             <ul style="list-style-type: none"> <li>○ the facts are not the subject of another international investigation or settlement;</li> <li>○ all domestic remedies have been exhausted, unless such exhaustion is unreasonable or unlikely; and</li> <li>○ the communication is not anonymous.</li> </ul> </li> </ul>	Art. 22(1)  Art. 22(2) Rule 104 Art. 22(5)
<b>Procedure before CAT</b>	<ul style="list-style-type: none"> <li>• CAT notifies the RSP that it has received the communication.</li> <li>• Within six months, the RSP must submit a written statement clarifying the issue and outlining possible remedies already granted domestically.</li> <li>• CAT will first examine the admissibility of the communication, and then the merits of the communication.</li> <li>• CAT may set up a working group or assign a rapporteur to examine the communication.</li> <li>• CAT may order that interim measures be implemented by the RSP (that is, measures taken in the short term) to make sure that irreparable damage is not caused to the victim during the examination of the communication.</li> <li>• CAT may receive written and oral submissions from or on behalf of the complainant and of the RSP.</li> <li>• CAT may examine the communication even if the complainant or the RSP does not appear before it.</li> <li>• CAT may also receive information from other sources, including UN agencies and organisations. Therefore, relevant stakeholders may enter as <i>amicus curiae</i> (that is, as impartial advisors).</li> <li>• CAT's examination is confidential.</li> </ul>	Art. 22(3)  Rule 113 Rule 112 Rule 114  Art. 22(4) Rule 115 & 117  Rule 118  Art. 22(6) Rule 107
<b>Outcome</b>	<p>CAT's decision –</p> <ul style="list-style-type: none"> <li>• will rule on whether a violation of UNCAT took place;</li> <li>• will be forwarded to the individual and the RSP;</li> <li>• may be joined by an individual (including dissident) opinion of a CAT member (a dissident opinion disagrees with or opposes official opinion or policy);</li> <li>• may be made public, if CAT so decides.</li> </ul>	Art. 22(7) Rule 119  Rule 121



Mechanism: Individual communication This procedure is used when an individual communicates with CAT alleging that acts of torture or other ill treatment have taken place.		UNCAT article or CAT Rule of Procedure
<b>Note</b>	States have to “opt in” by making a declaration to accept the jurisdiction of CAT to examine individual communications. Not all States have done so. If you want to make a complaint to CAT for a violation suffered, check first whether your country has made such a declaration under article 22(1) of UNCAT. RIG 1(b) recommends that States make a declaration accepting CAT’s jurisdiction under article 22 of UNCAT.	RIG 1

### 22. The mechanisms of the African Commission on Human and Peoples’ Rights

ACHPR is made up of 11 independent members ‘of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples’ rights’.<sup>135</sup> They serve in their personal capacities and are elected by the African Union (AU) Assembly of the Heads of State and Government for a six-year renewable term.

ACHPR holds ordinary sessions twice a year, in April/May and in October/November. It may also hold extraordinary sessions. The first part of an ordinary session is public, during which ACHPR exercises its ‘promotional mandate’; the second part of an ordinary session is private, and is used to exercise its ‘protective mandate’.<sup>136</sup> The protective mandate is examined below.

All African States have ratified AChHPR, with the exception, as at October 2013, of Morocco and South Sudan. State Parties to AChHPR are bound by the mechanisms examined below once they have ratified AChHPR, and cannot opt out of it. Initial and periodic reporting to ACHPR is dealt with in DIP D.

Mechanism: Investigation <sup>137</sup> This mechanism is used when ACHPR receives several individual communications against a State Party about serious human rights violations.		AChHPR article
<b>Source</b>	Article 46 of AChHPR	Art. 46
<b>Usual form</b>	Fact-finding mission to the country.	Art. 46
<b>Prompted by</b>	Several individual communications received against a State Party reporting serious human rights violations committed by a State Party.	Art. 46
<b>Procedure</b>	<ul style="list-style-type: none"> <li>• The State Party must agree to the country visit.</li> <li>• ACHPR conducts a fact-finding mission.</li> <li>• ACHPR can interview any person, either during the country visit or outside of it.</li> </ul>	Art. 46
<b>Outcome</b>	<ul style="list-style-type: none"> <li>• ACHPR produces a report.</li> <li>• The report is published in the ACHPR’s Activity Report, after approval is received from the AU Assembly of Heads of State and Government.</li> </ul>	Art. 46

<sup>135</sup> Article 31(1) of AChHPR.

<sup>136</sup> Viljoen, F. and Odinkalu, C. (2006) *The Prohibition of Torture and Ill-treatment in the African Human Rights System: A Handbook for Victims and Their Advocates*. Geneva: OMCT Publications, p. 27.

<sup>137</sup> Viljoen and Odinkalu (2006), pp. 86-88.

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<b>Mechanism: Inter-State communication</b> This mechanism is used when one State Party alleges that another State Party fails to comply with a provision or provisions of AChHPR.		<b>AChHPR article</b>
<b>Source</b>	Articles 47 to 53 and 59 to 61 of AChHPR	
<b>Preliminary requirement</b>	A State Party to AChHPR cannot make reservations (exclude itself from certain provisions, or limit its applicability) to specific provisions of AChHPR and is therefore automatically bound by all of its provisions, including inter-State communications.	
<b>Prompted by</b>	Alleged non-compliance with a provision or provisions of AChHPR.	
<b>Procedure preceding ACHPR intervention</b>	<ul style="list-style-type: none"> <li>• A Complainant State Party (CSP) may inform a Respondent State Party (RSP), in writing, of alleged non-compliance with a provision or provisions of AChHPR.</li> <li>• The CSP must also notify the Chairperson of the AU and the Chairperson of ACHPR of the allegation.</li> <li>• This preliminary procedure is not mandatory (that is, it is not required by law).</li> </ul>	Art. 47  Art. 49
<b>Procedure before ACHPR</b>	<ul style="list-style-type: none"> <li>• If the CSP has followed the preliminary procedure and informed the RSP of the alleged violation:                             <ul style="list-style-type: none"> <li>○ the RSP has three months to provide a written explanation regarding the alleged violation, including applicable legislation and possible remedies;</li> <li>○ the CSP and RSP should first seek to reach an amicable settlement; and</li> <li>○ within three months of the notification by the CSP, both the CSP and RSP can refer the matter to ACHPR. All States involved are notified of the referral.</li> </ul> </li> <li>• If the CSP decides not to use the preliminary procedure, the CSP may immediately inform the RSP, the Chairperson of the AU and the Chairperson of ACHPR of an alleged violation of AChHPR, thereby setting the ACHPR procedure in motion.</li> <li>• ACHPR will only examine the matter after all domestic remedies have been exhausted, unless such exhaustion is unreasonable or unlikely.</li> <li>• ACHPR will first examine the admissibility of the communication, and then the merits of the communication.</li> <li>• ACHPR may seek relevant information from the CSP and the RSP, and from any other source.</li> <li>• The CSP and RSP are entitled to representation before ACHPR, and to make oral and written submissions.</li> <li>• ACHPR will first attempt to facilitate (bring about) an amicable settlement.</li> </ul>	Art. 47  Art. 48  Art. 48  Art. 49  Art. 50  Art. 51(1)  Art. 52  Art. 51(2)  Art. 52
<b>Sources used by ACHPR</b>	<ul style="list-style-type: none"> <li>• Information communicated by the Parties.</li> </ul>	Art. 51 Art. 60

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<b>Mechanism: Inter-State communication</b>		<b>AChHPR article</b>
<b>This mechanism is used when one State Party alleges that another State Party fails to comply with a provision or provisions of AChHPR.</b>		
	<ul style="list-style-type: none"> <li>• ACHPR may 'draw inspiration' (ideas and motivation) from international human rights law.</li> <li>• This includes instruments adopted by UN treaty-monitoring bodies and UN Special Procedures and Special Mechanisms (see below for more information on these).</li> <li>• The Parties to the communication must be party to the international instruments referred to.</li> <li>• ACHPR may also refer to general international law, customary international law, and general principles of law, legal precedence and doctrine as subsidiary (supporting) sources.</li> </ul>	<p>Art. 60</p> <p>Art. 60</p> <p>Art. 61</p>
<b>Outcome</b>	<ul style="list-style-type: none"> <li>• ACHPR drafts a report, within 12 months of receiving the communication.</li> <li>• The report is sent to the CSP, the RSP, and to the AU Assembly of Heads of State and Government.</li> <li>• The report may contain recommendations.</li> <li>• The process and the outcome remain confidential until the AU Assembly of Heads of State and Government decides otherwise.</li> <li>• The report is published in the ACHPR's Activity Report, after approval of the AU Assembly of Heads of State and Government.</li> </ul>	<p>Art. 52</p> <p>Rule 92</p> <p>Art. 53</p> <p>Art. 59(1)</p>

<b>Mechanism: Individual communication</b>		<b>AChHPR article</b>
<b>This mechanism is used when a person has suffered a violation of a right contained in AChHPR.</b>		
<b>Source</b>	Articles 54 to 61 of AChHPR	
<b>Preliminary requirement</b>	<ul style="list-style-type: none"> <li>• A State Party to AChHPR cannot make reservations to specific provisions of AChHPR and is therefore automatically bound by all its provisions, including individual communications.</li> <li>• The ACHPR Secretariat will draft a list of all communications it receives at the beginning of each of its ordinary or extraordinary sessions.</li> <li>• A majority of Commissioners must agree for ACHPR to consider a particular individual communication.</li> </ul>	Art. 55
<b>Standing and admissibility requirements</b>	<p>Any person, or their representative, who is a victim of a violation of a right contained in AChHPR, [is] subject to the following cumulative conditions (that is, a conditions needs to be met before the next one can be considered):</p> <ul style="list-style-type: none"> <li>• the communication cannot be anonymous, but the applicant can request that his/her identity be withheld from the Respondent State Party (RSP) (if something is withheld it is not shared);</li> <li>• the communication must be compatible (in line with) with the AU Charter or AChHPR;</li> </ul>	<p>Art. 55(1)</p> <p>Art. 56(1) &amp; Rule 93</p> <p>Art. 56(2)</p>

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Mechanism: Individual communication	AChHPR article	
This mechanism is used when a person has suffered a violation of a right contained in AChHPR.		
<ul style="list-style-type: none"> <li>• the communication cannot be insulting;</li> <li>• the communication cannot be based on media allegations only;</li> <li>• all domestic remedies must have been exhausted, unless such exhaustion is unreasonable or unlikely;</li> <li>• the communication must be submitted within a reasonable time; and</li> <li>• the case must not have already been resolved through a fair and democratic process.</li> </ul>	<p>Art. 56(3) Art. 56(4) Art. 56(5)</p> <p>Art. 56(6) Art. 56(7) &amp; Rule 106</p>	
<b>Procedure before ACHPR</b>	<ul style="list-style-type: none"> <li>• The Chairperson of ACHPR will notify the RSP.</li> <li>• ACHPR may decide to join communications with the complainant against the RSP addressing similar facts or allegations.</li> <li>• ACHPR may set up a working group or rapporteur to examine the complaint.</li> <li>• ACHPR may order the RSP to take interim measures to make sure that irreparable damage is not caused to the victim during the examination of the complaint.</li> <li>• The RSP, the victim or his/her representative, or ACHPR may ask to hold a hearing, during which the Parties will present their arguments.</li> <li>• ACHPR may accept <i>amicus curiae</i>.</li> <li>• ACHPR or the Parties may request to hear testimony from witnesses and experts.</li> <li>• ACHPR may grant legal aid to the applicant(s).</li> <li>• ACHPR will first examine the admissibility of the request, and then the merits of the request.</li> <li>• ACHPR will first attempt to facilitate an amicable settlement.</li> <li>• ACHPR may receive written and oral submissions from or on behalf of the complainant and the RSP.</li> <li>• ACHPR's examination is confidential.</li> </ul>	<p>Art. 57 Rule 96</p> <p>Rule 97</p> <p>Rule 98</p> <p>Rule 99</p> <p>Rule 99(16) &amp; Rule 100</p> <p>Rule 104 &amp; Rule 101</p> <p>Rule 109 &amp; Rule 108 Rule 110</p>
<b>Sources used by ACHPR</b>	<ul style="list-style-type: none"> <li>• Information communicated by the Parties.</li> <li>• ACHPR may 'draw inspiration' from international human rights law.</li> <li>• Instruments adopted by UN treaty-monitoring bodies and UN Special Procedures and Special Mechanisms (see below for more information on these).</li> <li>• The State Parties to the communication must be party to the international instruments referred to.</li> <li>• ACHPR may also refer to general international law, customary international law, general principles of law, legal precedence and doctrine as subsidiary sources.</li> </ul>	<p>Rule 93/100 Art. 60</p> <p>Art. 60</p> <p>Art. 60</p> <p>Art. 61</p>
<b>Outcome</b>	<ul style="list-style-type: none"> <li>• If several communications reveal the existence of serious or mass human rights violations, ACHPR may notify the AU Assembly of Heads of State and Government, which may request that ACHPR conduct an in-depth investigation into the situation.</li> </ul>	<p>Art. 58(1) Art. 58(2)</p>



Mechanism: Individual communication	AChHPR article
This mechanism is used when a person has suffered a violation of a right contained in AChHPR.	
<ul style="list-style-type: none"> <li>• In cases of emergency, ACHPR may notify the Chairman of the AU Assembly of Heads of State and Government, who may also request that ACHPR conduct an in-depth investigation of the situation.</li> <li>• The decision of ACHPR may include recommendations.</li> <li>• The process and the decision remain confidential until the AU Assembly of Heads of State and Government decides otherwise.</li> <li>• The report is published in the ACHPR's Activity Report, after approval of the AU Assembly of Heads of State and Government.</li> </ul>	<p>Art. 58(3)</p> <p>Rule 110(2)</p> <p>Art. 59(1)</p>

### 23. Other Special Mechanisms and Special Procedures

The UN Human Rights Council and ACHPR have, respectively, established 'Special Procedures' and 'Special Mechanisms' with a mandate to monitor and address specific human rights situations, either on a geographical or a thematic basis. Their mandate is outlined in the resolutions creating them. A Special Procedure or Special Mechanism can be an individual or a group of individuals, always serving in their personal capacity. They can be civil servants or members of the broader civil society, such as lawyers, academics, doctors, etc.

Unlike the two treaty monitoring bodies examined above (CAT and ACHPR), Special Procedures and Special Mechanisms cannot find State Parties in violation of their international obligations. However, they have the authority to conduct a variety of activities in order to fulfil their mandate, including:

- conducting country visits on invitation;
- conducting investigations into particular human rights situations;
- receiving and responding to individual complaints, including by referring the complaint to other institutions and organisations;
- sending urgent appeals to State Parties to address a particular situation; and
- generally promoting the prevention and elimination of human rights abuses.

Further, their activities are not dependent upon a State having ratified a particular treaty. State Parties can offer their support and cooperation to the UN Special Procedures by issuing them 'standing invitations', which are permanent invitations to the Special Procedures to visit the country and review particular human rights situations. States cannot issue standing invitations to the ACHPR Special Mechanisms. The Special Procedures report to the UN on their activities once a year and Special Mechanisms report to ACHPR twice a year.

The following Special Procedures and Special Mechanisms are relevant to the field of torture and other ill treatment:

At the UN level:

- Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions

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- Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees on Non-Recurrence
- Special Rapporteur on the Situation of Human Rights Defenders
- Special Rapporteur on the Independence of Judges and Lawyers
- Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism
- Working Group on Arbitrary Detention
- Working Group on Enforced or Involuntary Disappearances

At the ACHPR level:

- Special Rapporteur on Prisons and Conditions of Detention in Africa
- Committee for the Prevention of Torture in Africa

## DIP A THE DUTY TO COMBAT IMPUNITY Checklist

**How to use the Checklist:**

- This Checklist should be used together with the Guidance Note for DIP A. If anything is uncertain or unclear, look at the Guidance Note for more information. The structure of the Checklist follows the structure of the Guidance Note.
- At the end of the DIPs there is a Glossary of Terms that may also help to clarify particular points.
- The DIP covers a broad range of topics, and especially civil society organisations may not have access to all the information that the Checklist may request. For this reason, before you complete the Checklist, try to find out how the DIP will be used and what the focus of the responses will be. For example, the focus may only be on prisons or police detention. Having a clear focus will help you to respond appropriately to the questions.
- Note that the responses to some questions will stay the same for a long period of time (e.g. if certain laws are in place), whilst others may require more regular updating. Questions to which responses may remain the same for a long period are shaded in. You are therefore advised to see the DIP as a living document that can be used as part of State Party reporting to treaty monitoring bodies.
- The second column, headed 'Requirement', sets out the questions to be answered. These are based on the obligations and standards contained in UNCAT, RIG and other international and regional human rights instruments. These obligations and standards are explained in more detail in the relevant Guidance Note.
- The third column, headed 'Response', requires a 'Yes', 'No', or 'Partial' answer to be given. That can be shortened to Y, N or P.
- In the fourth column headed 'Description & Motivation for Response', more information should be given to support and supplement the answer given in the previous 'Response' column. For example, the specific article within a law or regulation, case law, or information from a report or statement from the government, national human rights institution, civil society organisation, treaty body, etc.
- The fifth column, headed 'Achievements & Challenges', provides an opportunity to write about what happens in practice. Any examples of good practice can be recorded, along with details of any problems with the implementation of the 'Requirements' listed in column two, for that sub-section.
- The sixth column headed 'Proposals for Reform', provides an opportunity to suggest any practical means or measures that could be taken to address any challenges with implementing the 'Requirements' listed in column two. It can also be used to list any technical assistance that may be required in order to implement the 'Requirements' fully.

	Name of organisation(s) completing the DIP
	Name of responsible person
	Date last updated

# DIP A: The Duty to Combat Impunity - Checklist

**PART A: Torture carries the status of a peremptory norm and States have a duty to criminalise torture in domestic law, and to specify punishments reflecting the gravity of the crime.**

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
<b>Enactment of laws criminalising torture</b>					
1.	Is there a specific offence of torture in domestic law?				
2.	If "yes" to question 1, in which law is it contained? If "no", go to question 18.				
3.	Does this law apply to all situations or is it specific to a certain branch of government? (E.g. only to the police.)				
4.	Is the definition of torture used in domestic law a word-for-word copy of the definition in article 1 of UNCAT? If "yes" go to question 6.				
5.	If "no" to question 4, does the definition contain the following elements: a. It must result in severe mental and/or physical suffering. b. It must be inflicted intentionally (i.e. with a purpose).				

<sup>1</sup> Article 1: 'For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.'

## DIP A: The Duty to Combat Impunity - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	c. It must be committed by or with the consent or acquiescence of a public official. [See Guidance Note Part A section 2]				
	d. Does the definition of torture exclude pain and suffering as a result of lawful actions? [See Guidance Note Part A section 2]				
6.	Does the domestic definition of torture expand or strengthen the definition of torture in article 1 of UNCAT in any way?				
7.	Does the domestic law criminalise complicity in the crime of torture? <sup>2</sup>				
8.	Does the domestic law criminalise attempts to commit torture? [See Guidance Note Part A section 2]				
9.	Does the domestic law make it a criminal act to force another person to commit torture?				
10.	Does the domestic law exclude any justification for torture, including superior orders? <sup>3</sup>				
11.	Does the domestic law provide that				

<sup>2</sup> Complicity refers to at least tacit consent to torture, any attempt and actual cover-up of torture and concealment of the crime of torture.

<sup>3</sup> UNCAT article 2(2): 'No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture.'

## DIP A: The Duty to Combat Impunity - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
12.	no statutory limitations (time limit) shall be applied with regard to reporting, prosecution and sentencing of the crime of torture? Does the domestic law criminalising torture, or other relevant laws, require evidence to be excluded if it was obtained by the use of torture in criminal and all other proceedings? [See Guidance Note Part A section 2]				
13.	Is corporal punishment prohibited?				
<b>Sentencing</b>					
14.	Does the law make it possible to impose a sentence of life imprisonment if the torture committed resulted in the death of the victim?				
15.	Does the law make it possible to impose a custodial (prison) sentence reflecting the seriousness of the crime of torture?				
16.	Does the law prohibit persons convicted of torture from being employed by the State, or firms contracted by the State, in any law enforcement role or any other public or private capacity where				



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Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	he/she has contact with persons deprived of their liberty, or persons in a vulnerable situation? (This includes employment by privately operated security firms.)				
17.	Does the law provide that the criminal record of a conviction for the crime of torture may not be expunged (cleared), nor may it be removed by pardon or amnesty?				

**PART B: State Parties should establish jurisdiction over the crime of torture based on the territoriality and flag principle and the nationality principle. UNCAT establishes universal jurisdiction over the crime of torture.**

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
<b>Legislative measures regarding jurisdiction</b>					
18.	Is there a domestic law that establishes jurisdiction over the crime of torture committed in the territory of the State?				
19.	Is there a domestic law that establishes jurisdiction over the crime of torture on any extraterritorial location under the				

## DIP A: The Duty to Combat Impunity - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	State's jurisdiction? (E.g. on ships, aeroplanes and embassies)				
20.	Is there a domestic law that establishes jurisdiction over the crime of torture allegedly committed by a citizen <sup>4</sup> of the country, committed in another country?				
21.	Is there a domestic law that establishes jurisdiction over the crime of torture in cases where the victim is a citizen of or normally resident in the country, even if the crime was not committed in the country or/and the perpetrator is not a citizen of the country?				
22.	Is there a domestic law that establishes jurisdiction over the crime of torture in cases where the alleged perpetrator is present in any territory under the State's jurisdiction? (E.g. the alleged perpetrator is visiting the country and the State has not received a request for extradition.) [See Guidance Note Part B section 4]				

<sup>4</sup> It should be kept in mind that torture can be committed by a public official, or at the behest or acquiescence of a public official. The use of the word 'citizen' here is to encompass these different positions, meaning that it can be committed by a person who is not a public official but who acts with the consent of a public official.





**PART C: All persons deprived of their liberty should have the right to lodge a complaint with competent, independent and impartial authorities who have the ability to conduct prompt investigations. Whenever there are reasonable grounds to believe that an act of torture has taken place in a State Party's jurisdiction, this should be investigated promptly by independent and impartial authorities.**

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
<b>Legislative measures regarding complaints</b>					
23.	Does the law guarantee all detainees' right to complain to an internal complaints mechanism?				
24.	Does the law guarantee all detainees' right to complain to an external complaints mechanism?				
25.	Does the law require that complaints mechanisms are established in all places of detention?				
26.	Are there laws, and/or policies or regulations in place that make sure that complainants, witnesses and those conducting investigations are protected from violence, threats of violence or any other form of intimidation or reprisal that may arise as a result of the investigation?				
<b>Practical measures regarding complaints mechanisms</b>					
27.	Are detainees informed of their right to complain?				

## DIP A: The Duty to Combat Impunity - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
28.	Are detainees informed of the procedure to complain?				
29.	Are detainees informed of their right to complain and the complaints procedure in a language they understand?				
30.	Are detainees informed that they can complain in writing?				
31.	Are detainees informed that they can complain verbally?				
32.	Can detainees make anonymous complaints?				
33.	Can complaints be submitted through a third party (e.g. family members)?				
34.	Are detainees able to access relevant healthcare practitioners when making a complaint?				
<b>The duty to investigate</b>					
35.	Are there state institutions in place that have a mandate to receive and investigate complaints of torture and other ill treatment?				
36.	If "yes" to question 35, do these institutions meet the following requirements: a. Are they accessible?				



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Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	b. Are they impartial? c. Are they independent?				
37.	Do they carry out prompt investigations? For example, is there is specified time frame within which investigations must start?				
38.	Are they able to carry out investigations of their own accord (without interference)?				
39.	Do they have the necessary resources to carry out thorough investigations?				
40.	Are the results of investigations made public?				
41.	Are investigations guided by the Istanbul Protocol?				

**PART D: If States do not extradite suspected perpetrators of the crime of torture to the requesting State, they must prosecute the suspect.**

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
<b>The duty to prosecute</b>					
42.	Is there a policy in place that requires cases of torture to be referred to the head of the				

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Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	prosecution service <sup>5</sup> where the suspect is not extradited or there has been no request to extradite the suspect?				
43.	Is the prosecutorial process, including standards of evidence for prosecution and conviction for torture and other ill treatment, equal to the ordinary processes for serious criminal offences under domestic law?				
44.	Is the use of evidence <sup>6</sup> collected as a result of torture prohibited in criminal proceedings (except as evidence in proceedings against a person accused of committing an act of torture in order to prove that they obtained evidence through torture)?				
45.	Is the use of the 'superior orders' defence as a justification for the use of torture prohibited in all criminal proceedings?				

<sup>5</sup> Different countries use different terms for the head of the prosecution service, such as Attorney General, Director of the Public Prosecution Service, and Prosecutor General.

<sup>6</sup> Evidence refers here to both to statements made and hard evidence (e.g. an object) found following an act of torture or a threat of torture.



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**PART E: State Parties should render each other mutual assistance to ensure that there is no safe haven for suspects of the crime of torture. Torture is an extraditable offence, but there are mandatory objections to requests for extradition. States must adhere to the principle of *non-refoulement*.**

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
<b>Torture is an extraditable offence</b>					
46.	Have there been any extraditions granted or requested for the crime of torture since the State ratified UNCAT?				
<b>Mutual assistance with procedural safeguards</b>					
47.	Do the domestic laws and/or policies prohibit mutual assistance where there are reasonable grounds to believe that doing so may place a person at risk of serious human rights violations?				
48.	Do domestic laws guarantee that persons who may be subject to extradition must be informed of their rights in a language they understand (e.g. to remain silent, to inform a relative, to access a lawyer, etc.) when they are arrested or detained?				
49.	Do domestic laws guarantee the right of detained persons who are the subject of an extradition inquiry or request to be informed of the				

## DIP A: The Duty to Combat Impunity - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	reason for their arrest, restriction (e.g. house arrest) or detention regardless of where the act of torture was allegedly committed?				
50.	Do domestic laws guarantee the right of persons who are the subject of an extradition inquiry or request to access a lawyer of their own choice?				
51.	Do domestic laws guarantee the right of persons who are the subject of an extradition inquiry or request to have a lawyer appointed by the State if the suspect cannot afford legal representation?				
52.	Do domestic laws guarantee the right of persons who may be subject to extradition to challenge the lawfulness of their detention?				
53.	Do domestic laws guarantee the right of detained suspects who are the subject of an extradition inquiry or request to access a medical practitioner?				
54.	Do domestic laws guarantee the right of detained persons who are the subject of an extradition inquiry or request to access psychological				



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Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
55.	Do domestic laws guarantee the right of detained persons who are the subject of an extradition inquiry or request to access family members and spiritual support?				
56.	Do domestic laws guarantee the right of detained persons who are the subject of an extradition inquiry or request to be brought before a court within 48 hours of being arrested or detained?				
57.	Do domestic laws prohibit the use of incommunicado detention of persons who are the subject of an extradition inquiry or request?				
58.	Do domestic laws, regulations and standing orders provide for rules of interrogation of persons who are the subject of an extradition inquiry or request that meet the State's international human rights treaty obligations?				
<b>Non-refoulement and mandatory objections</b>					
59.	Do the domestic laws and policies prohibit extradition in cases where the extradited person may be at risk of serious human rights violations				

## DIP A: The Duty to Combat Impunity - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
60.	<p>by the State requesting the extradition, or non-state actors in that State?</p> <p>Do domestic laws, and existing extradition and mutual assistance treaties, provide for mandatory objections and exclusions from extradition? (These are: political offences, discrimination, the death penalty, torture and other ill treatment, conditions of detention that violate a person's humanity and inherent dignity, aiding or abetting an unfair trial, charges inconsistent with international human rights norms, double jeopardy, and use of foreign evidence obtained by torture.)</p>				





**PART F: The treaty monitoring bodies should be allowed and assisted to conduct investigations and gather information when they receive any communications regarding alleged acts of torture in the territory of a State Party.**

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
<b>The mechanisms of the United Nations Committee against Torture</b>					
61.	Has the State made any reservations under article 20 of UNCAT? [See Guidance Note Part F section 21]				
62.	Has the State in the past provided its support to CAT when CAT conducted an investigation under article 20 of UNCAT?				
63.	Has the State made a declaration under article 21 of UNCAT, declaring that it recognises that CAT can receive inter-State communications about the State's compliance with UNCAT?				
64.	Has the State made a declaration under article 22 of UNCAT, declaring that it recognises that CAT can receive individual communications about the State's compliance with UNCAT?				
65.	Has CAT received any individual communications under article 22 about the State's compliance with				

## DIP A: The Duty to Combat Impunity - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
66.	UNCAT? Has the UN Human Rights Committee received any individual communications about the State's compliance with article 7 of the International Covenant on Civil and Political Rights?				
67.	If "yes" to either question 65 or 66, did the State engage with CAT or the UN Human Rights Committee, as the case may be, about the individual communications?				
<b>The mechanisms of the African Commission on Human and Peoples' Rights</b>					
68.	Has the State received any requests from the ACHPR to conduct a fact-finding mission under article 46 of the African Charter?				
69.	Did the State, when such a request was made under article 46, cooperate with ACHPR? (E.g. respond to the request, supply information and allow the fact-finding mission to proceed.)				
70.	If a fact-finding mission was conducted in respect of article 46, did the State engage with ACHPR on the recommendations made? (I.e. did the State respond to the				



## DIP A: The Duty to Combat Impunity - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	recommendations made?)				
71.	If a fact-finding mission was conducted in respect of article 46, did the State authorise the publication of the report? [See Guidance Note Part F section 22]				
72.	Did the State engage with ACHPR when ACHPR received individual communications about the country? (I.e. did the State respond to the request?)				
73.	Are decisions by ACHPR concerning the country published locally inside and outside of government?				
<b>Other Special Mechanisms and Special Procedures</b>					
74.	Has the State received an urgent appeal from one or more of the following UN Special Procedures: a. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment b. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions c. Special Rapporteur on the				

## DIP A: The Duty to Combat Impunity - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	Promotion of Truth, Justice, Reparation and Guarantees on Non-Recurrence				
	d. Special Rapporteur on the Situation of Human Rights Defenders				
	e. Special Rapporteur on the Independence of Judges And Lawyers				
	f. Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism				
	g. Working Group on Arbitrary Detention				
	h. Working Group on Enforced or Involuntary Disappearances				
75.	Has the State received an urgent appeal from one or more of the following ACHPR Special Mechanisms:				
	a. Special Rapporteur on Prisons and Conditions of Detention in Africa				
	b. Committee for the Prevention of Torture in Africa				
76.	Has the State responded positively				



## DIP A: The Duty to Combat Impunity - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	to an invitation from one or more of the following UN Special Procedures:				
	a. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment				
	b. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions				
	c. Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees on Non-Recurrence				
	d. Special Rapporteur on the Situation of Human Rights Defenders				
	e. Special Rapporteur on the Independence of Judges and Lawyers				
	f. Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism				
	g. Working Group on Arbitrary Detention				
	h. Working Group on Enforced or				

## DIP A: The Duty to Combat Impunity - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
77.	Involuntary Disappearances Has the State responded positively to an invitation from one or more of the following ACHPR Special Mechanisms: a. Special Rapporteur on Prisons and Conditions of Detention in Africa b. Committee for the Prevention of Torture in Africa	<div style="background-color: #cccccc; height: 100%; width: 100%;"></div>	<div style="background-color: #cccccc; height: 100%; width: 100%;"></div>		
78.	Has the State issued standing invitations to one or more of the following UN Special Procedures: a. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment b. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions c. Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees on Non-Recurrence d. Special Rapporteur on the Situation of Human Rights Defenders e. Special Rapporteur on the	<div style="background-color: #cccccc; height: 100%; width: 100%;"></div>	<div style="background-color: #cccccc; height: 100%; width: 100%;"></div>		

## DIP A: The Duty to Combat Impunity - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	Independence of Judges and Lawyers				
	f. Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism				
	g. Working Group on Arbitrary Detention				
	h. Working Group on Enforced or Involuntary Disappearances				
79.	Has the State issued standing invitations to one or more of the following ACHPR Special Mechanisms:				
	a. Special Rapporteur on Prisons and Conditions of Detention in Africa				
	b. Committee for the Prevention of Torture in Africa				

# DIP B

# THE DUTY TO PREVENT TORTURE AND OTHER ILL TREATMENT

By

Debra Long with Lillian Artz, Gray Aschman, Gwénaëlle  
Dereymaeker, Louise Edwards, Tina Lorizzo, Lukas Muntingh  
and Sean Tait





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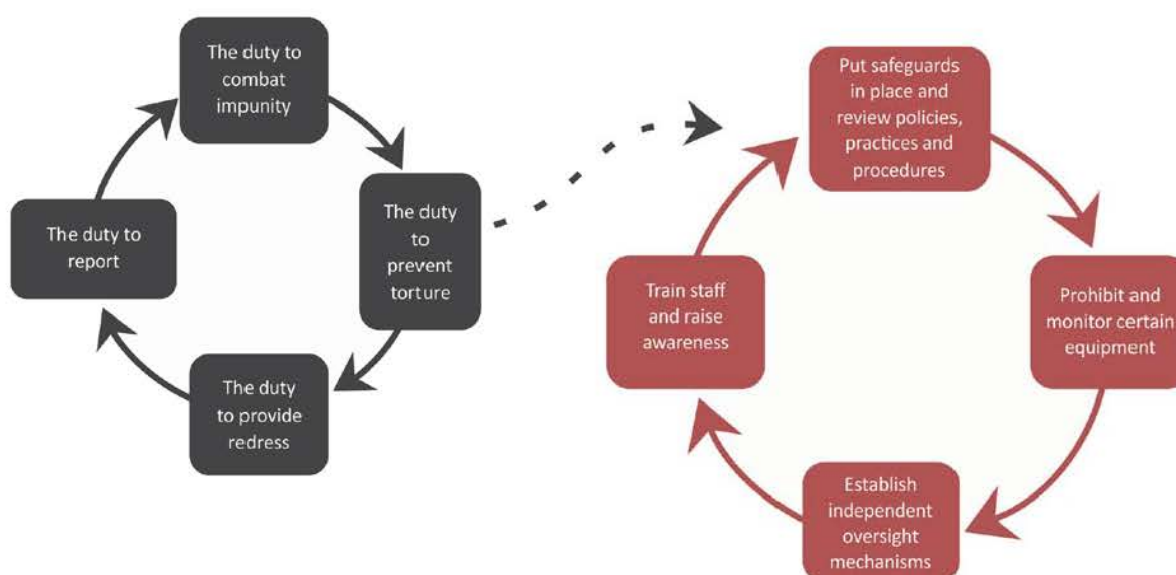
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9. All law enforcement officials and other persons working with or responsible for people deprived of their liberty should be trained on the absolute prohibition of torture and other ill treatment. .... 94
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### DIP B: THE DUTY TO PREVENT TORTURE AND OTHER ILL TREATMENT

The duty to prevent torture and other ill treatment requires State Parties to take four main measures. These are as follows:

- Ensure that safeguards are in place, and effectively review interrogation and detention rules, methods and practices to make sure that they are followed and that they respect the prohibition of torture and other ill treatment. This should be supported by the independence of the judiciary.
- Ensure that measures are in place to prevent and prohibit excessive use of force by law enforcement and other public officials; ensure that the law does not allow producing and trading in equipment or substances designed to inflict torture or other ill treatment; and ensure that the use of other forms of equipment that might be used or misused for torture or other ill treatment is monitored and carefully controlled.
- Establish independent oversight mechanisms with the mandate to inspect all places of detention without any advance notice.
- Provide training on the absolute prohibition of torture and other ill treatment to all law enforcement officials and other persons working with or responsible for persons deprived of their liberty, and to educate the public and raise awareness about torture and other ill treatment.



## Introduction

The duty to *prevent* torture and other forms of cruel, inhuman and degrading treatment and punishment (other ill treatment) goes together with the duty to *prohibit* torture and other ill treatment. The United Nations Committee against Torture (CAT) has stated that efforts to stop torture and other ill treatment should “first and foremost be concentrated on prevention”.<sup>1</sup>

Under article 2(1) of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), State Parties have an obligation to take ‘effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under [their] jurisdiction’.<sup>2</sup> Article 16(1) also requires State Parties to prohibit and prevent other forms of ill treatment that do not meet the definition of torture.<sup>3</sup> CAT has recognised that the “measures required to prevent torture must be applied to prevent ill treatment”.<sup>4</sup>

Unlike torture, UNCAT does not define cruel, inhuman or degrading treatment or punishment, and a broad range of acts can fall within this category of ‘other ill treatment’. Acts that CAT has held can amount to cruel, inhuman or degrading treatment or punishment include the following:

- lengthy or continued solitary confinement;<sup>5</sup>
- too much time in police custody;<sup>6</sup>
- overcrowding;<sup>7</sup>
- the use of hard labour;<sup>8</sup>
- the use of chain gangs;<sup>9</sup>
- the use of electroshock stun belts and similar instruments;<sup>10</sup>
- the use of restraint chairs;<sup>11</sup>
- corporal punishment;<sup>12</sup> and
- forms of capital punishment.<sup>13</sup>

However, this is not a full and complete list; other acts or omissions (failing to act) may also be understood as cruel, inhuman or degrading treatment or punishment. Also, whether an act is a form of torture or other ill treatment must be decided case-by-case. An act that CAT has stated is cruel, inhuman or degrading treatment or punishment in one case could be torture in another case if it meets the requirements of the

<sup>1</sup> A/58/44, p. 10, para 14.

<sup>2</sup> Article 2(1) UNCAT.

<sup>3</sup> Article 16(1) UNCAT.

<sup>4</sup> CAT/GC/2, para 3.

<sup>5</sup> See A/59/44, para 133; A/52/44, para 186; A/52/44, para 225; and A/53/44, para 156.

<sup>6</sup> See A/52/44, para 108; A/57/44, para 5(k); A/52/44, para 67; and A/53/44, para 218(a).

<sup>7</sup> See A/51/44, para 63; CAT/C/CR/31/6, para 4(b); CAT/C/SR.264, para 20; A/56/44, para 128(h).

<sup>8</sup> See CAT/C/SR.44, para 37; CAT/C/Sr.50, para 35; CAT/C/SR.130, para 33.

<sup>9</sup> See A/55/44, para 179.

<sup>10</sup> A/55/44, para 179.

<sup>11</sup> A/55/44, para 179.

<sup>12</sup> See CAT/C/CR/28/5, 2002, para 8(b).

<sup>13</sup> See A/48/44, para 58.

definition of torture in article 1 of UNCAT. CAT's interpretation of UNCAT is to give the greatest possible protection against torture and other forms of ill treatment, and these forms of abuse are all absolutely prohibited under international law.

While UNCAT lists some specific measures that must be taken by State Parties to prevent torture and other ill treatment – such as to provide training; to systematically review interrogation rules; to ensure the right to complain; to investigate allegations; to ensure that no one is returned to a country where they may be at risk of torture; to prohibit any statement obtained by torture being admitted as evidence; etc. – this is not a full list.<sup>14</sup> These are not the only measures that States can take to prevent torture and other ill treatment. CAT has noted that State Parties must take “all measures, as appropriate, to protect all members of society from acts of torture”.<sup>15</sup>

In order to fulfil their duty to prevent torture and other ill treatment, State Parties must take a range of measures that are not listed in UNCAT but that are known to be effective in preventing torture and other ill treatment. This DIP sets out the main measures required to prevent torture and other ill treatment.

**PART A: Procedural safeguards, supported by the independence of the judiciary, must be in place to ensure the rights of people deprived of their liberty. Secret detention, enforced disappearance and incommunicado detention must be prohibited. Interrogation and detention rules, methods and practices must be systematically reviewed**

### **1. All State Parties must ensure that the necessary procedural safeguards are in place when people are deprived of their liberty.**

UNCAT does not contain a comprehensive list of safeguards to protect persons under any form of arrest, detention or imprisonment. But CAT has acknowledged that the obligation to prevent torture in article 2(1) requires State Parties to guarantee a range of fundamental safeguards for people deprived of their liberty. These safeguards include but are not limited to:<sup>16</sup>

- the right to access to a lawyer;<sup>17</sup>
- the right to tell family members that they have been detained, and where they are;<sup>18</sup>
- the right to access to a doctor;<sup>19</sup>

<sup>14</sup> See articles 10, 11, 12, 13, 3, 15 respectively. Other articles of UNCAT can also have a preventative effect, such as the obligation to criminalise torture and to provide redress to victims.

<sup>15</sup> CAT/C/NPL/CO/2, para 13. See also Nowak, M. and McArthur, E. (2008) *The United Nations Convention against Torture – A Commentary*. Oxford: Oxford University Press, p. 95.

<sup>16</sup> See Nowak and McArthur (2008), p. 96, para 20.

<sup>17</sup> See for example CAT/C/SR.51, para 34; CAT/C/SR.130, para 13; CAT/C/SR.201, paras 16, 26; CAT/C/SR.234, para 79; CAT/C/24/3, para 21.

<sup>18</sup> See for example CAT/C/SR.51, para 34; CAT/C/SR.130, para 13; CAT/C/SR.201, paras 16, 26; CAT/C/SR.234, para 79; CAT/C/24/3, para 21.

<sup>19</sup> See A/48/44/Add.1, para 26; CAT/C/SR.50, para 21; CAT/C/SR.91, para 56; CAT/C/SR.201, paras 16, 26.



- the right to be given verbal and written information about their rights in a language that they understand;<sup>20</sup>
- the right to be informed of any charges against them;<sup>21</sup>
- the right to be brought promptly before a judicial authority (for example, a judge);<sup>22</sup>
- the right not to be held incommunicado (that is, when the person is not allowed to communicate with the outside world);<sup>23</sup>
- the right to be brought to trial without excessive delay;<sup>24</sup> and
- the right not to be held in police custody for more than 48 hours.<sup>25</sup>

Many of these fundamental safeguards for persons deprived of their liberty are also found in other international instruments, including the International Covenant on Civil and Political Rights (ICCPR) and Part II of the Robben Island Guidelines (RIGs 20-48),<sup>26</sup> and CAT has emphasised that it is very important for State Parties to comply with the UN Standard Minimum Rules for the Treatment of Prisoners.<sup>27</sup> States should also be guided by the jurisprudence and decisions of treaty bodies (which can be found in the General Comments and Concluding Observations of CAT and the UN Human Rights Committee)<sup>28</sup> and the judiciary and lawyers, and by UN standards and principles that regulate places of detention and the conduct of law enforcement personnel.<sup>29</sup> The African Commission on Human and Peoples' Rights (ACHPR) has also recommended that States implement the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment – specifically Principles 1-6, which provide the framework for the humane treatment of detainees, and support the right to be free from torture and other ill treatment.<sup>30</sup>

Further, an independent and impartial judiciary is required to safeguard the rule of law and protect the rights of people subject to any form of arrest, detention or imprisonment. Judicial impartiality and independence can only exist in a legal system in which judges are free to make decisions based on the facts and in line with the law without external interference, pressures and influences, and relies on a separation of powers between the judiciary and the executive.<sup>31</sup>

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<sup>20</sup> See for example CAT/C/SR.162, para 52; CAT/C/SR.191, para 46; CAT/C/SR.203, para 37; CAT/C/SR.213, para 37; CAT/C/SR.219, para 33; CAT/C/SR.234, para 54; CAT/C/SR.329, para 22.

<sup>21</sup> See A/48/44, para 53.

<sup>22</sup> A/48/44, para 53.

<sup>23</sup> CAT/C/SR.193, para 48; CAT/C/SR.234, para 29.

<sup>24</sup> See A/54/44, para 103.

<sup>25</sup> A/54/44, para 103.

<sup>26</sup> See in particular articles 9 and 14 of ICCPR, Part II of RIG, and the UN Standard Minimum Rules for the Treatment of Prisoners.

<sup>27</sup> See CAT/C/GTM/CO/4, para 18; CAT/C/TGO/CO/1, para 18; CAT/C/DRC/CO/1, para 11; A/56/44, para 95(c).

<sup>28</sup> See for example, HRI/GEN/1/Rev.9 (Vol.I); and HRI/GEN/1/Rev.6 at 151.

<sup>29</sup> Relevant standards: The Standard Minimum Rules for the Treatment of Prisoners (1957, 1977); Basic Principles for the Treatment of Prisoners (1990); the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (1988); United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (1990); Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982); Code of Conduct for Law Enforcement Officials (1979); Use of Force and Firearms by Law Enforcement Officials (1990); Basic Principles on the Role of Lawyers (1990); United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules 1990); United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).

<sup>30</sup> See for example, *Huri-Laws v. Nigeria* (2000), para 40; *Ouko v. Kenya* (2000), paras 24-25.

<sup>31</sup> Principle 2, UN Principles on the Independence of the Judiciary.

RIG 38 calls on States to ensure and support the independence and impartiality of the judiciary with due regard to the UN Basic Principles on the Independence of the Judiciary, which guide States' efforts to secure and promote an independent judiciary.

The importance of supporting the independence and impartiality of the judiciary is discussed in detail in DIP A.

### 2. State Parties must ensure humane conditions of detention.

As well as guaranteeing that the necessary procedural safeguards are in place to protect detained persons from torture and other ill treatment, State Parties must make sure that persons deprived of their liberty are treated humanely. CAT has held that poor conditions of detention can amount to cruel or inhuman treatment. According to CAT, conditions that may violate article 16 of UNCAT include:

- lack of ventilation;
- prison overcrowding;
- poor sanitary conditions;
- repeated use of prolonged isolation (that is, long periods where the detainee is not allowed to have any contact with other people);
- holding suspects incommunicado for a number of days;
- transferring detainees often from one prison to another; and
- holding pre-trial detainees together with convicted prisoners.<sup>32</sup>

ACHPR has also stated that poor conditions of detention may themselves amount to cruel, inhuman and degrading treatment or punishment. This includes overcrowding, unhygienic conditions, not enough or poor quality food, lack of access to medical care, lack of light, too much light, lack of fresh air, and shackling within cells.<sup>33</sup>

UNCAT does not set out exactly how to treat persons deprived of their liberty, but CAT has emphasised the importance of State Parties making sure that they meet the UN Standard Minimum Rules for the Treatment of Prisoners.<sup>34</sup> States should have clear, effective and adequate laws and policies on the treatment of those detained in order to make sure that these laws and policies are correctly followed, and effective monitoring and oversight mechanisms and complaints procedures should be in place. States should also be guided by the obligations contained in other treaties, including in particular articles 9, 10 and 14 of ICCPR. Article 10(2) of ICCPR obligates State Parties to ensure make sure that pre-trial detainees and convicted prisoners are held separately, in order to recognise the difference in status between the two groups, and to respect the right of those who have not been convicted to be presumed innocent until proven guilty.<sup>35</sup> Article 10(3)

<sup>32</sup> See A/48/44, paras 427 and 440; A/56/44, para 95(c), (f). See also Nowak and McArthur (2008), pp. 405-406.

<sup>33</sup> See, for example, *Huri-Laws v. Nigeria* (2000), para 40; *Ouko v. Kenya* (2000), paras 24-25.

<sup>34</sup> Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

<sup>35</sup> ICCPR, art. 10(2). The UN Human Rights Committee stresses this obligation in their *General Comment 21* (1992) in para 9. See also Principle 8 of the Body of Principles.



stresses the fact that prison sentences should aim to reform and socially rehabilitate prisoners. Prison and penitentiary systems should have accessible programmes in place for re-education, vocational guidance and training and for employment both within and outside the prison facilities.<sup>36</sup> Also, it is very important to ensure that detainees get at the very least one hour of outdoor exercise every day.

As noted in section 1 above, States should also be guided by the jurisprudence and decisions of international treaty bodies and the judiciary and lawyers, and UN standards and principles that regulate custodial settings and the conduct of law enforcement personnel.

### **3. People should only be detained in recognised, official places of detention and incommunicado detention is prohibited.**

Under international law, detaining people in unofficial places of detention and/or in secret is prohibited. An unofficial place of detention could be a private home or apartment, military camp, secret prison, or a hidden part of a larger recognised facility.<sup>37</sup>

*Incommunicado detention* means that the detainee is not able to communicate with anyone outside of the place of detention. A person who has contact with fellow detainees can still be understood as being held incommunicado if they are not allowed contact with anyone outside the place of detention.

*Secret detention* means that the detainee is not permitted any contact with the outside world, and the State authorities do not say where that person is, or they deny or conceal knowing where the person is, and/or what has happened to that person.<sup>38</sup> Secret detention does not require that the person be detained in a secret place. A person may be held in a recognised place of detention, but in a hidden section or part.<sup>39</sup>

CAT has stated that secret detention creates conditions that can lead to torture and other ill treatment, and that secret detention is itself a violation of UNCAT and must be prohibited.<sup>40</sup> Similarly, the UN Human Rights Committee has stated that persons must only be held in officially recognised places of detention, and that the names of all detainees and their location are "to be kept in registers readily available to those concerned, including relatives and friends".<sup>41</sup> The UN Special Rapporteur on Torture has also noted that:

interrogation should take place only at official centres and the maintenance of secret places of detention should be abolished under law. It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention.<sup>42</sup>

These safeguards are reflected in RIGs 23, 24 and 28.

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<sup>36</sup> UN Human Rights Committee (1992) *General Comment 21*, paras 10 and 11.

<sup>37</sup> See Amnesty International (2003) *Combating Torture: a manual for action*. Oxford: Alden Press, p. 96.

<sup>38</sup> See A/HRC/13/42, para 9.

<sup>39</sup> A/HRC/13/42, para 9.

<sup>40</sup> CAT/C/USA/CO/2, para 17.

<sup>41</sup> UN Human Rights Committee (1992) *General Comment 20*, para 11.

<sup>42</sup> See E/CN.4/2003/68, para 26(e).

Furthermore, every case of secret detention is also a case of enforced disappearance, which is absolutely prohibited under international law.<sup>43</sup> Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance defines ‘enforced disappearance’ as:

the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

The UN Joint Study on Secret Detention states that “the suffering caused to family members of a secretly detained (namely, disappeared) person may also amount to torture or other forms of ill treatment, and at the same time violates the right to the protection of family life”.<sup>44</sup>

RIG 24 also states that incommunicado detention should be prohibited. A person held incommunicado is not necessarily held in secret detention, as the fact of their detention and their location may be known to family members and others, but they are not allowed to make contact with them. Incommunicado detention is known to lead to torture and other ill treatment and can itself amount to such treatment.<sup>45</sup> The UN Special Rapporteur on Torture has noted that “torture is most frequently practised during incommunicado detention. Incommunicado detention should be made illegal, and persons held incommunicado should be released without delay”.<sup>46</sup>

#### **4. State Parties should develop, implement and systematically review the framework for safeguarding the rights of persons subject to any form of arrest, detention or imprisonment in any territory under their jurisdiction.**

Article 11 of UNCAT obligates State Parties to develop, implement and keep under systematic review interrogation rules, instructions, methods and practices, as well as arrangements for the custody and treatment of persons subject to arrest, detention or imprisonment in any territory under their jurisdiction, in order to prevent torture and other ill treatment.

Systematic reviews must be done regularly to make sure that the legislative framework and national policies to protect people deprived of their liberty are kept up-to-date and that any gaps in protection are identified and corrected. It is also very important to regularly review how these rules and procedures are applied in practice in order to identify at an early stage any actions that may not be in line with national and international standards. The obligation to systematically review the framework for safeguarding the rights of persons deprived of their liberty is closely linked to the obligation in article 10 of UNCAT to provide training, and reviews should therefore identify any training and education that may be required to raise awareness of the prohibition and prevention of torture and other ill treatment.

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<sup>43</sup> See A/HRC/13/42, para 28.

<sup>44</sup> See A/HRC/13/42, p. 3.

<sup>45</sup> See A/HRC/13/42, pp. 2-3; A/RES/60/148, article 11; E/CN.4/RES/2005/39, article 9; *El Megreisi v. Libya*, HRC Communication No. 440/1990, 23 March 1994, paras 5-4.

<sup>46</sup> See E/CN.4/2003/68, para 26(g).



Thus, State Parties must set up a system to review what legislation and national policies are in place governing when and how persons can be deprived of their liberty, their rights in detention, and how these rights are respected in practice. This requires both regular reviews, and urgent or unplanned reviews during times of crisis or following a change in a State's political situation, for example during times of conflict and post-conflict. Article 11 of UNCAT specifically refers to the review of *interrogation* rules, instructions, methods and practices, because it is during the investigative stages of the criminal procedure that persons deprived of their liberty are most at risk of being tortured or ill treated.

A systematic review should also consider the following, among other things:

- what is written in a State's constitution about depriving people of their liberty and safeguards for detained persons;
- laws on the deprivation of liberty and safeguards for persons deprived of their liberty such as penal codes, laws about the conduct of law enforcement, military and other relevant personnel, laws on the rights of women, refugees and children, and laws on mental health issues;
- official rules for the conduct of law enforcement and other relevant personnel; and
- codes of conduct and ethics for law enforcement personnel, military personnel, judges, lawyers and health professionals.

Reviews undertaken must effectively identify:

- any legislative or regulatory changes that may be required;
- any conduct that may be contrary to established standards; and
- any training that may be required to make sure that relevant personnel respond appropriately.

### **5. State Parties should support the independence and impartiality of the judiciary, in accordance with the UN Basic Principles on the Independence of the Judiciary.**

Measures to safeguard the rule of law, promote effective prosecution of torture, and put in place the safeguards for fair treatment require an independent and impartial judiciary. An independent and impartial judicial system is one in which judges are free to make decisions based on the facts and follow the law without external interference, pressures and bribes, and which presumes a separation of powers between the judiciary and the executive.<sup>47</sup> The UN General Assembly has adopted the Principles on the Independence of the Judiciary to guide States' efforts to secure and promote the independence of the judiciary.<sup>48</sup> The Principles promote the adoption by States of, among others, the following measures:

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<sup>47</sup> Principle 2, UN Principles on the Independence of the Judiciary.

<sup>48</sup> Adopted by the 7<sup>th</sup> United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. Although the Principles on the Independence of the Judiciary do not have the force of law, they have nonetheless been formally adopted by a number of States, who report their progress in meeting the standards to the UN, and are supported by the Special Rapporteur on the Independence of the Judiciary. RIG 38 makes specific reference to the Principles in its promotion of an independent and impartial judiciary to support other preventative measures to address torture across the African continent.

- safeguards to protect the judicial process from unnecessary interference, and constitutional guarantees of judicial independence and impartial review of the facts following the law without restrictions (limits), inappropriate influences, inducements, pressures, threats or interferences, whether direct or indirect (for example, political favours or bribes);
- jurisdiction over all judicial matters and exclusive authority to decide on its ability to hear individual matters;
- enough resources;
- respect for the right of all persons to be tried in ordinary courts or tribunals with established legal procedures;
- freedom of expression and association for members of the judiciary; and
- strict, transparent and non-discriminatory conditions for judicial qualification, selection, training, discipline, suspension and removal, tenure and conditions of service to be guaranteed by law.

Ensuring that the judiciary has adequate resources and independent control over its budgets is particularly important to make sure that judicial processes are carried out efficiently. An adequately resourced judiciary will ensure that judicial processes and case management runs smoothly without undue delay. It is also a safeguard against improper influences, inducements, pressures, threats or interferences, whether direct or indirect (for example, political favours or bribes) on the judiciary.

**PART B: Measures should be in place to prevent and prohibit excessive use of force by law enforcement and other public officials. The production of and trade in equipment or substances designed to inflict torture or other ill treatment should be prohibited by law. The production of and trade in other equipment which might be used or misused for torture or other ill treatment should be monitored and controlled.**

### **6. Measures should be in place to prevent and prohibit excessive use of force by law enforcement and other public officials.**

The use of force by law enforcement and other officials is strictly monitored and controlled by the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These standards require that force should only be used by law enforcement officials when strictly necessary, and the use of force should not be disproportionate to the legitimate objective to be achieved (that is, the amount of force should only be as much as is necessary to achieve some legal aim or purpose). Firearms should not be used except as an extreme measure in limited circumstances (that is, guns should not be used unless there is no other measure that will achieve a specific legal aim or purpose).

Rule 54 of the UN Standard Minimum Rules also regulates the use of force by prison officials. This rule requires that prison officers shall not use force *except*:

- in self-defence;
- in the case of attempted escape; or



- in the case of someone physically resisting an order based on law or regulations (this could be active or passive resistance).

Where force is used for one of the reasons listed above, it must be no more than strictly necessary and the officers must report the use of force immediately to the director of the institution.<sup>49</sup> This rule also states that prison officers shall be given special physical training to help them to restrain violent prisoners.<sup>50</sup> Rule 54(3) states the following about the use of firearms:

[e]xcept in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.<sup>51</sup>

CAT has also expressed concern about the unnecessary use of force in law enforcement outside of the context of detention, such as the excessive use of force by law enforcement staff during demonstrations and crowd control, the use of dogs,<sup>52</sup> the use of plastic bullets,<sup>53</sup> and the use of pepper spray.<sup>54</sup> This can amount to cruel, inhuman or degrading treatment.

### **7. States should prohibit and prevent the use, production and trade of equipment or substances designed to inflict torture or ill treatment.**

CAT has stated that the use of certain forms of equipment, such as electroshock stun belts and restraint chairs, can be a violation of UNCAT.<sup>55</sup> Types of equipment that have no real law enforcement purpose, such as serrated thumb-cuffs, should be banned entirely.

RIG 14 calls on States to prohibit and prevent the use, production and trade of equipment or substances (for example, chemicals or drugs) designed for torture or ill treatment. It also calls on States to ban the abuse of any equipment or substances that can be misused for torture or ill treatment. The Special Rapporteur on Torture has also noted that “the obligation to prevent torture in [UNCAT] necessarily includes the enactment of measures to stop the trade in instruments that can easily be used to inflict torture and ill treatment”.<sup>56</sup>

State Parties should enact laws and regulations to prohibit, control and restrict the production and trade of certain forms of equipment. Such regulations should prohibit the promotion, import, export, transit and transshipment of equipment which has no practical use other than for the purpose of torture and other ill treatment. These regulations should also establish controls on the promotion, import, export, transit and transshipment of other equipment which can be misused for torture and other ill treatment.

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<sup>49</sup> Rule 54(1) of the UN Standard Minimum Rules for the Treatment of Prisoners.

<sup>50</sup> Rule 54(2) of the UN Standard Minimum Rules for the Treatment of Prisoners.

<sup>51</sup> Rule 54(3) of the UN Standard Minimum Rules for the Treatment of Prisoners.

<sup>52</sup> See A/52/44, para 182.

<sup>53</sup> See A/54/44, para 76(g).

<sup>54</sup> See A/56/44, para 58(a).

<sup>55</sup> See A/55/44, para 179.

<sup>56</sup> See E/CN.4/2005/62, paras 14 and 37.

In developing such laws and regulations, State Parties should be guided by the following:

- The following items should be considered equipment with no practical use other than for torture, and so should be prohibited: body worn electric shock devices (including, but not limited to, shock belts), spiked batons, irons and chains, wall and floor handcuffs, thumb cuffs and thumb screws.
- The following items should be considered legitimate equipment that can be abused for torture, and so need to be carefully monitored: restraint chairs and shackle boards, leg-cuffs, gang-chains, shackles and individual cuffs or shackle bracelets, handcuffs, sjamboks or other specially designed whips, portable electric shock devices, and portable devices that administer an incapacitating chemical substance (for example, a syringe, used to give injections).
- Legislation should include a catch-all clause that requires States to prohibit the trade of any items that clearly have no practical use other than for the purposes of torture and other ill treatment, or where there are reasonable grounds to believe that such items would be used, or adapted for use, for the purposes of torture and other ill treatment.
- States should make sure that the trade industry and the general public are aware of the penalties for not complying with these laws and regulations, using, as appropriate, cases of successful prosecution as examples.<sup>57</sup>

**PART C: State Parties should establish independent external oversight mechanisms with the mandate to conduct unannounced inspections to all places of detention and to make recommendations aimed at the prevention of torture and other ill treatment.**

### **8. State Parties should establish and maintain independent mechanisms to systematically review practices concerning the treatment of all persons deprived of their liberty and the conditions of detention.**

Article 11 of UNCAT requires State Parties to systematically review the treatment of persons subject to any form of arrest, detention or imprisonment in any territory under their jurisdiction. While UNCAT does not explicitly state which mechanisms should be put in place to meet this obligation, CAT has interpreted the duty to prevent torture and other ill treatment as including an obligation to set up a system of regular and independent inspections of all places of detention.<sup>58</sup> Both CAT and the UN Human Rights Committee have recommended that prisons should be inspected regularly, preferably without advance notice.<sup>59</sup> Inspections should be independent from criminal justice agencies, such as the police and judiciary.<sup>60</sup>

Having a system of regular, unannounced visits to places of detention by independent bodies is recognised as one of the most effective ways of preventing torture and other ill treatment. For this reason, any national

<sup>57</sup> See Wassenaar Arrangement, Best Practices for Effective Export Enforcement (1 December 2000) Available at: [http://www.wassenaar.org/publicdocuments/2000/2000\\_effectiveenforcement.html](http://www.wassenaar.org/publicdocuments/2000/2000_effectiveenforcement.html) (accessed 20 September 2013).

<sup>58</sup> Nowak and McArthur (2008), p. 410.

<sup>59</sup> See CAT/C/SR.95, para 7 and CAT/C/SR.96, para 18.

<sup>60</sup> See CAT/C/SR.267, para 23 and UN Human Rights Committee (1992) *General Comment 21*, para 5.



framework to prevent torture and other ill treatment should make sure that there are independent monitoring bodies that can carry out regular, unannounced visits to all places of detention, their facilities and installations (for example, equipment). These independent bodies should make recommendations aimed at preventing torture and other ill treatment. Such bodies could include, but are not limited to, national human rights institutions and civil society organisations.

Independence is a very important part of any effective oversight body and it can be protected in a number of ways:

- The body should be established by a constitutional or legislative document that states certain key points, including mandate, powers, funding, how staff are selected, terms of office and lines of accountability.<sup>61</sup>
- The monitoring body should not be put under the institutional control of a ministry or minister of government, cabinet or executive council, President or Prime Minister.
- The members of the monitoring body should be experts that are personally and institutionally independent from the State authorities.
- The monitoring body should be able to choose its own staff.<sup>62</sup>
- The monitoring body should have enough financial resources to work effectively and be able to draft its own budget and decide how it spends its funds.<sup>63</sup>

Linked to the obligation to systematically review practices concerning the treatment of all persons deprived of their liberty and conditions of detention, CAT has often called upon State Parties to sign, ratify and implement the Optional Protocol to UNCAT (OPCAT).<sup>64</sup> OPCAT establishes a system of regular visits to places of detention by an international body, the Subcommittee on the Prevention of Torture, and National Preventive Mechanisms (NPMs) with the aim of preventing torture and other ill treatment. The ratification and implementation of OPCAT by State Parties to UNCAT should be seen as one of the most effective ways of preventing torture and other ill treatment.<sup>65</sup>

Even when States have not ratified OPCAT, it is useful in that it provides guidance on good practices for establishing any national mechanism to prevent torture and other ill treatment and ensuring they work effectively. In order to be effective, a national body with the mandate to visit places of detention should meet the following minimum guarantees:

- It must be independent.
- It must have a mandate to carry out visits to all places where people are or may be deprived of their liberty.
- It must have a mandate to carry out regular and unannounced visits to all places of detention and their installations and facilities.

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<sup>61</sup> Association for the Prevention of Torture (2006) *Establishment and Designation of National Preventive Mechanisms*. Geneva: Association for the Prevention of Torture, p. 39

<sup>62</sup> Association for the Prevention of Torture (2006), p. 40.

<sup>63</sup> Association for the Prevention of Torture (2006), p. 46.

<sup>64</sup> See A/58/44, paras 14 and 20; CAT/C/BLR/CO.4, para 30; CAT/C/DJI/CO/1, para 26; CAT/C/MDG/CO/1, para 21; CAT/C/LKA/CO/3, p. 4, para 16; CAT/C/TKM/CO/1, para 12; CAT/C/MCO/CO/4, para 16.

<sup>65</sup> Nowak and McArthur (2008), p. 88.

- It must have access to all information about the number of persons deprived of their liberty as well as their location.
- It must have access to all information about the treatment of persons deprived of their liberty and their conditions of detention.
- It must be able to choose to interview persons and to conduct interviews in private.
- It must make recommendations aimed at improving the treatment of detainees and conditions of detention.

If a State establishes a national body with the mandate to conduct visits to places of detention, such as a national human rights institution or a national preventive mechanism under OPCAT, this should not exclude civil society organisations from also carrying out visits. Civil society organisations have an important role to play in monitoring places of detention to make sure that detainees are treated in a way that meets international and national standards. These organisations give vital advice and practical or moral support to persons deprived of their liberty. They can also serve to check that oversight mechanisms put in place by the State are working properly.

**Part D: All law enforcement officials and other persons working with or responsible for people deprived of their liberty should be trained on the absolute prohibition of torture and other ill treatment. The content of the training should be comprehensive, focusing on the prohibition of torture and other ill treatment, as well as preventive and reactive measures addressing torture and other ill treatment. As well as training officials, State Parties should also promote public education and involve NGOs in such initiatives.**

### **9. All law enforcement officials and other persons working with or responsible for people deprived of their liberty should be trained on the absolute prohibition of torture and other ill treatment.**

Article 10 of UNCAT and RIGs 45-48 require that all relevant personnel are educated and trained on the prevention and eradication of torture and other ill treatment.

The duty to provide training on the prohibition of torture and other ill treatment applies to all personnel authorised to use force: police, prison, security, intelligence and other law enforcement personnel, whether civil or military, public or private, uniformed or without uniforms.<sup>66</sup> The reference to 'public officials' has also been recognised as including personnel from private security companies.<sup>67</sup>

In addition, article 10 of UNCAT states that training should also be provided to 'other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention

<sup>66</sup> CAT C/GC/2, p. 3; and Nowak and McArthur (2008), p. 397.

<sup>67</sup> Burgers, J.H. and Danelius, H. (1988) *The United Nations Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Leiden: Martinus Nijhoff Publishers, p. 142.



or imprisonment'.<sup>68</sup> For this reason, all persons responsible for the arrest, detention and imprisonment and care of persons deprived of their liberty – or otherwise in contact with persons deprived of their liberty – should receive training on the prohibition of torture and other ill treatment, and on human rights generally.<sup>69</sup> These persons will include, but are not restricted to: judges; lawyers; immigration officials; medical personnel; social workers; and staff working in prisons, pre-trial detention centres, police lock-ups, psychiatric hospitals, refugee centres and detention centres for minors, drug users and aliens pending deportation.<sup>70</sup>

CAT has emphasised that it is important to train doctors and other medical personnel working in detention centres.<sup>71</sup> This is important because they can be involved in acts of torture and other ill treatment, and also because medical staff can play a crucial role in preventing torture and other ill treatment by medically examining persons deprived of their liberty, and detecting and reporting suspected abuse. Medical personnel also have a vital role to play in the rehabilitation of survivors of torture and other ill treatment (that is, helping survivors to restore their health and return to a normal life).<sup>72</sup>

As part of the duty to provide and promote training, RIG 46 emphasises the need to develop codes of conduct and ethics for law enforcement and security personnel, and other relevant officials in contact with persons deprived of their liberty. Codes of conduct and ethics should be systematically and regularly reviewed to make sure that they meet international and regional standards.<sup>73</sup>

### **10. The content of the training should be comprehensive, focusing on the prohibition of torture and other ill treatment, as well as preventive and reactive measures addressing torture and other ill treatment.**

Personnel must know and understand the content of UNCAT, act professionally at all times, and be able to deal with 'difficult' situations and uncooperative detainees without using torture and other ill treatment.<sup>74</sup>

Therefore, training should deal with the following key issues:

- The absolute prohibition of torture and other ill treatment under all circumstances, even in times of war and when combating organised crime and terrorism.
- Torture is a serious crime, which will be punished with the most severe, appropriate penalties.
- An order from a superior officer or a public authority may never be given and accepted as a justification for torture.

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<sup>68</sup> Article 10 of UNCAT.

<sup>69</sup> Nowak and McArthur (2008), p. 396.

<sup>70</sup> Nowak and McArthur (2008), p. 397.

<sup>71</sup> Nowak and McArthur (2008), p. 397.

<sup>72</sup> Nowak and McArthur (2008), p. 397.

<sup>73</sup> CAT/C/USA/CO/2, para 23.

<sup>74</sup> Muntingh, L. (2011) *Guide to the UN Convention against Torture in South Africa*. Cape Town: CSPRI, Community Law Centre, pp. 26-27.

- All state officials have a duty to report every alleged case of torture and other ill treatment – whether committed by a person of equal, higher or lower rank or function – to a judge or other independent official.
- All personnel should be given relevant information, education and practical training on how to prevent torture and other ill treatment.<sup>75</sup>

Further, the content of international and regional documents that set out specific principles for the treatment of persons deprived of their liberty and conditions of detention – such as the RIG and the UN Standard Minimum Rules for the Treatment of Prisoners – should be part of any training on the prohibition and prevention of torture and other ill treatment.<sup>76</sup> The Concluding Observations, decisions on communications and General Comments of CAT and other treaty bodies can also be useful to personnel, and should be included in their training. The content of the UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) should be included in training, and the Protocol should be given to all personnel.

In addition, the training of law enforcement personnel must include training on international standards that regulate the use of force, such as the UN Standard Minimum Rules for the Treatment of Prisoners, the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. For example, Principle 15 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states that law enforcement personnel ‘in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened’. Training on the use of force as stated in international law must be given to all ranks, levels or titles of law enforcement personnel in their basic training and on an ongoing basis.

CAT has also emphasised the need to raise awareness of gender-specific issues, such as sexual violence against women and other vulnerable groups, in particular foreigners and ethnic and religious minorities.<sup>77</sup> This emphasis is also underlined by RIG 45, which refers to the establishment of training programmes that respect human rights standards for vulnerable groups such as women, children, sexual and gender minorities (lesbian, gay, bisexual, transgender and intersex peoples) and people living with HIV/AIDS. The training

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<sup>75</sup> Nowak and McArthur (2008), p. 397.

<sup>76</sup> See also for example: Basic Principles for the Treatment of Prisoners; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; United Nations Rules for the Protection of Juveniles Deprived of their Liberty; Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Code of Conduct for Law Enforcement Officials; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules); United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); Guidelines for Action on Children in the Criminal Justice System; United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines); Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Basic Principles on the Independence of the Judiciary; Basic Principles on the Role of Lawyers Guidelines on the Role of Prosecutors; Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions; Declaration on the Protection of All Persons from Enforced Disappearance; Basic Principles and Guidelines on the Right to a Remedy and Reparation; International Convention for the Protection of All Persons from Enforced Disappearance.

<sup>77</sup> See CAT/C/CR/33/2, para 6.





should teach officials and other individuals to be aware of the specific needs and rights of vulnerable groups so as to be able to protect vulnerable people from discrimination.<sup>78</sup>

Putting this measure in place will also require training for law enforcement officials (and other personnel responsible for the care of persons deprived of their liberty) on the proper use of security sector equipment to prevent the improper use of such equipment for torture and other ill treatment. Such training should also be available to personnel who come into contact with persons deprived of their liberty, such as judges, lawyers, immigration officials, and healthcare personnel, members of national human rights institutions and members of non-governmental organisations (NGOs), so that they are able to identify prohibited equipment. States should also make sure that if they provide training to police, prison, military, security, immigration and other law enforcement personnel from other countries, this training does not include the transfer of skills, knowledge and techniques that could be used for torture.

Training on the prevention and prohibition of torture and other ill treatment must be included in the regular pre-service education of all law enforcement, prison, military, immigration, and medical personnel as well as in regular in-service training. Training courses should be delivered not only by government, but also by expert academics and NGOs, who should also be involved in developing training programmes.<sup>79</sup> If it is reported that torture and other ill treatment happen often in a country, training needs to be reviewed, adjusted and increased.<sup>80</sup>

### **11. State Parties should promote public education on the prohibition of torture and other ill treatment and involve NGOs in such initiatives.**

RIGs 47 and 48 emphasise the important role public education plays in raising awareness about prohibiting and preventing torture and other ill treatment. Public education is an important tool in the prevention of torture and ill treatment. Spreading knowledge of human rights is a vital tool and safeguard against any kind of abuse and violation.<sup>81</sup> States should start and support public education efforts.<sup>82</sup>

NGO campaigns and the media can also create greater awareness among the general public on the absolute prohibition of torture and other ill treatment and the rights of detained persons. RIG 48 specifically calls for support and encouragement of NGOs and the media in spreading information and raising awareness about the prohibition and prevention of torture and other forms of ill treatment.

Public education must be accessible to all members of society. CAT has expressed particular concern over language and other barriers that may limit the 'right to know', and as a result limit the ability of all persons, especially vulnerable persons or groups, to exercise their rights under UNCAT. To make sure these rights are

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<sup>78</sup> See A/56/44, para 84(c).

<sup>79</sup> Association for the Prevention of Torture (2002) *A Handbook on State Obligations under the UN Convention against Torture*. Geneva: APT, p. 50.

<sup>80</sup> Nowak and McArthur (2008), p. 397.

<sup>81</sup> Niyizurugero, J-B. and Lessène, P. (2008) *Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa: Practical Guide for Implementation*, p. 64.

<sup>82</sup> RIG 47.

## DIP B: The Duty to Prevent Torture and Other Ill Treatment - Guidance Note

respected, UNCAT and other relevant documents should be available in all appropriate languages and must be available to members of all vulnerable groups living in a State Party.<sup>83</sup>

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<sup>83</sup> See CAT/C/ZAF/CO/1, para 21.

## DIP B THE DUTY TO PREVENT TORTURE AND OTHER ILL TREATMENT

### Checklist

**How to use the Checklist:**

- This Checklist should be used together with the Guidance Note for DIP B. If anything is uncertain or unclear, look at the Guidance Note for more information. The structure of the Checklist follows the structure of the Guidance Note.
- At the end of the DIPs there is a Glossary of Terms that may also help to clarify particular points.
- The DIP covers a broad range of topics, and especially civil society organisations may not have access to all the information that the Checklist may request. For this reason, before you complete the Checklist, try to find out how the DIP will be used and what the focus of the responses will be. For example, the focus may only be on prisons or police detention. Having a clear focus will help you to respond appropriately to the questions.
- Note that the responses to some questions will stay the same for a long period of time (e.g. if certain laws are in place), whilst others may require more regular updating. Questions to which responses may remain the same for a long period are shaded in. You are therefore advised to see the DIP as a living document that can be used as part of State Party reporting to treaty monitoring bodies.
- The second column, headed 'Requirement', sets out the questions to be answered. These are based on the obligations and standards contained in UNCAT, RIG and other international and regional human rights instruments. These obligations and standards are explained in more detail in the relevant Guidance Note.
- The third column, headed 'Response', requires a 'Yes', 'No', or 'Partial' answer to be given. That can be shortened to Y, N or P.
- In the fourth column headed 'Description & Motivation for Response', more information should be given to support and supplement the answer given in the previous 'Response' column. For example, the specific article within a law or regulation, case law, or information from a report or statement from the government, national human rights institution, civil society organisation, treaty body, etc.
- The fifth column, headed 'Achievements & Challenges', provides an opportunity to write about what happens in practice. Any examples of good practice can be recorded, along with details of any problems with the implementation of the 'Requirements' listed in column two, for that sub-section.
- The sixth column headed 'Proposals for Reform', provides an opportunity to suggest any practical means or measures that could be taken to address any challenges with implementing the 'Requirements' listed in column two. It can also be used to list any technical assistance that may be required in order to implement the 'Requirements' fully.

Name of organisation(s) completing the DIP	
Name of responsible person	
Date last updated	

# DIP B: The Duty to Prevent Torture and Other Ill Treatment - Checklist

**PART A: Procedural safeguards, supported by the independence of the judiciary, must be in place to ensure the rights of people deprived of their liberty. Secret detention, enforced disappearance and incommunicado detention must be prohibited. Interrogation and detention rules, methods and practices must be systematically reviewed.**

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
<b>Procedural safeguards</b> [See Guidance Note Part A sections 1–3]					
1.	Is the right to liberty guaranteed under domestic law?				
2.	Is secret detention specifically prohibited under domestic law? (I.e. persons may only be held in official places of detention.) [See Guidance Note Part A section 3]				
3.	Is enforced disappearance (i.e. where the State refuses to admit to the detention of or hides the fate or location of a person) specifically prohibited under domestic law? [See Guidance Note Part A section 3]				
4.	Is the use of incommunicado detention (i.e. no contact with a lawyer, family members, or healthcare practitioner) specifically prohibited under domestic law? [See Guidance Note Part A section 3]				

DIP B: The Duty to Prevent Torture and Other Ill Treatment - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
5.	Are the following strictly regulated by law: a. Solitary confinement b. Length of police custody c. Cell occupation d. The use of hard or forced labour				
6.	Does domestic law guarantee that all detainees have the right to be informed of the reason for their arrest, restriction (e.g. house arrest) or detention?				
7.	If "yes" to question 6, is it stated in law that the reasons must be given immediately?				
8.	If "yes" to question 6, is it stated in law that the reasons must be given in a language the person understands?				
9.	Does domestic law guarantee that persons must be notified of their rights in a language they understand (e.g. to remain silent, to inform a relative, to access a lawyer) when they are arrested or detained?				
10.	Does domestic law guarantee that anyone arrested or detained can				

## DIP B: The Duty to Prevent Torture and Other Ill Treatment - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	inform relatives or other appropriate persons of the arrest and detention and where they are held?				
11.	Does domestic law require that complete, official records of all arrests and detentions are kept?				
12.	Does domestic law guarantee the right of all arrested persons to be informed promptly of any charges against them?				
13.	Does domestic law guarantee the right to be brought before a court within 48 hours of being arrested or detained?				
14.	Is the right to challenge the lawfulness of detention guaranteed under domestic law?				
15.	If "yes" to question 14, can this right be restricted under certain circumstances?				
16.	Does domestic law guarantee the right of persons suspected of a criminal offence to be brought to trial promptly?				
17.	Does domestic law state that persons suspected of a criminal offence must usually be released				



DIP B: The Duty to Prevent Torture and Other Ill Treatment - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
18.	while awaiting trial? If "yes" to question 17, does domestic law list the exceptional circumstances in which persons may be detained while awaiting trial?				
19.	Are there procedures in place to enable a person's release (subject to reasonable guarantees that they will appear for trial), such as bail or requirements to report regularly to the authorities?				
20.	Does domestic law guarantee the right to access a lawyer of one's own choice?				
21.	If "yes" to question 20, when is access allowed?				
22.	Does domestic law guarantee that a lawyer will be appointed by the State if a person cannot afford legal representation?				
23.	Is there a public legal aid scheme?				
24.	Does domestic law guarantee the right to access a healthcare practitioner?				
25.	If "yes" to question 24, when is access allowed?				
26.	Does domestic law guarantee the right to access psychological				

## DIP B: The Duty to Prevent Torture and Other Ill Treatment - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	services?				
27.	If "yes" to question 26, when is access allowed?				
28.	Does domestic law guarantee the right to access family members?				
29.	If "yes" to question 28, when is access allowed?				
30.	Does domestic law guarantee the right to access spiritual support while in detention?				
<b>Systematic review of interrogation rules, instructions, methods and practices</b> [See Guidance Note Part A section 4]					
31.	Are there rules in place governing the conduct of law enforcement officials in interrogations/interviews with suspects?				
32.	If "yes" to question 31, do rules of interrogation specifically prohibit and provide for the prevention of torture and other ill treatment in the taking of statements and collection of evidence?				
33.	Are there rules in place that require complete written records to be kept (e.g. a register) of all interrogations/interviews with suspects, and for these records to				



DIP B: The Duty to Prevent Torture and Other Ill Treatment - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	include the identity of all persons present at the interrogation/interview?				
34.	Are interrogation/interview rules, instructions and methods reviewed by internal oversight bodies?				
35.	If "yes" to question 34, when are they reviewed?				
36.	Are interrogation/interview rules, instructions and methods reviewed by external oversight bodies?				
37.	If "yes" to question 36, when are they reviewed?				
<b>Independence and impartiality of the judiciary</b> [See Guidance Note Part A section 5]					
38.	Does domestic law specifically guarantee the right of all persons to be tried in ordinary courts or tribunals with legal procedures?				
39.	Does domestic law specifically guarantee the independence of the judiciary? (I.e. members of the judiciary are not restricted and are protected from improper influences, inducements, pressures, threats or interferences, whether direct or indirect.)				

## DIP B: The Duty to Prevent Torture and Other Ill Treatment - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
40.	Does domestic law provide for sufficient and independent resources for the judiciary? (E.g. it has independent control over its budget.)				
41.	Does domestic law guarantee the right to freedom of expression and association for members of the judiciary?				
42.	Are constitutional and legislative provisions in place providing for the transparent and non-discriminatory criteria for: <ul style="list-style-type: none"> <li>a. Selecting of members of the judiciary</li> <li>b. Their tenure</li> <li>c. Conditions of service, suspension, discipline and removal</li> </ul>				
43.	Do judges have immunity from civil suits that might result from the exercise of judicial functions?				

DIP B: The Duty to Prevent Torture and Other Ill Treatment - Checklist

**PART B: Measures should be in place to prevent and prohibit excessive use of force by law enforcement and other public officials. The production of and trade in equipment or substances designed to inflict torture or other ill treatment should be prohibited by law. The production of and trade in other equipment or substances which might be used or misused for torture or other ill treatment should be monitored and controlled.**

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
<p><b>Prohibition and prevention of excessive use of force by law enforcement and other public officials. Prohibition and restriction of the production of and trade in equipment or substances designed to inflict torture or other ill treatment</b>                      [See Guidance Note Part B sections 6–7]</p>					
44.	Are there measures (legislative and otherwise) in place to prevent and prohibit the excessive use of force by law enforcement and other public officials?				
45.	Does domestic law prohibit the use of equipment designed to inflict torture or other ill treatment? (E.g. body-worn electric-shock devices, spiked batons, irons and chains, wall and floor handcuffs, thumb cuffs and thumbscrews.)				
46.	Does domestic law prohibit the trade of any items that clearly have no practical use other than for the purposes of torture and other ill treatment?				
47.	Does domestic law control the trade of items where there are reasonable grounds to believe that such items				

## DIP B: The Duty to Prevent Torture and Other Ill Treatment - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
48.	<p>would be misused, or converted for misuse, for the purposes of torture and other ill treatment?</p> <p>Does domestic law specifically require a regular review by an independent body of the production of and trade in any equipment that can be misused, or converted for misuse, for the purposes of torture and other ill treatment? (E.g. restraint chairs, shackles and individual cuffs or bracelets, handcuffs; this includes the use of everyday objects for torture, e.g. plastic bags, wet towels, etc.)</p>				
49.	<p>If "yes" to question 48, how often and in what context are reviews carried out?</p>				
50.	<p>Does domestic law specifically require a regular review by an independent body on the use of equipment by relevant personnel to make sure that the equipment is not misused, or converted for misuse, for the purposes of torture and other ill treatment?</p>				
51.	<p>If "yes" to question 50, how often and in what context are reviews</p>				

DIP B: The Duty to Prevent Torture and Other Ill Treatment - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	carried out?				

**PART C: State Parties should establish independent external oversight mechanisms with the mandate to conduct unannounced inspections to all places of detention and to make recommendations aimed at the prevention of torture and other ill treatment.**

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
			Independent external oversight mechanisms [See Guidance Note Part C section 8]		
52.	Are there specific NHRIs or other independent external bodies (i.e. bodies that are not linked to State agencies such as the police, prison, or military services) that have a legal mandate to conduct visits to places of detention? <i>If only civil society organisations visit places of detention please go to question 63.</i>				
53.	Are members/office bearers of these bodies appointed to their jobs in a transparent manner following an open and inclusive appointment process?				

## DIP B: The Duty to Prevent Torture and Other Ill Treatment - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
54.	Are members of these bodies personally and institutionally independent from the State authorities? (I.e. they do not hold positions in the government, police, prison or military services.)				
55.	Are these bodies able to hire and dismiss their own staff?				
56.	Are these bodies able to choose how they spend their budget?				
57.	<p>Do these independent oversight bodies have the following powers:</p> <ul style="list-style-type: none"> <li>a. To conduct regular visits to places of detention</li> <li>b. To conduct unannounced visits to places of detention</li> <li>c. To choose freely which places to visit, and when to visit them</li> <li>d. To have access to all installations and facilities (e.g. all buildings, rooms, vehicles, etc.) within the place of detention</li> <li>e. To have access to all information about all detainees, including their number and location</li> <li>f. To choose who to interview or</li> </ul>				



DIP B: The Duty to Prevent Torture and Other Ill Treatment - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	<p>g. To conduct interviews or speak to persons of their choice in private</p>				
	<p>h. To make recommendations to the relevant authorities to improve the treatment of detainees and conditions of detention</p>				
58.	<p>Are the following places of detention inspected by independent oversight bodies, and if "yes", how often:</p> <ul style="list-style-type: none"> <li>a. Police stations</li> <li>b. Pre-trial/remand prisons</li> <li>c. Prisons</li> <li>d. Juvenile detention centres</li> <li>e. Immigration detention centres</li> <li>f. Border police facilities</li> <li>g. Transit zones</li> <li>h. Military detention facilities</li> <li>i. Security/intelligence service detention facilities</li> <li>j. Mental healthcare facilities</li> <li>k. State-run child care facilities such as orphanages and foster care homes</li> </ul>				
59.	<p>Do these bodies have sufficient</p>				

## DIP B: The Duty to Prevent Torture and Other Ill Treatment - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	financial resources to do their work?				
60.	Do these bodies have sufficient staff to do their work?				
61.	Do the authorities have an obligation to respond to the recommendations made by these bodies?				
62.	Can these bodies make their reports public?				
<b>Oversight of places of detention by civil society organisations and other bodies</b> [See Guidance Note Part C section 8]					
63.	Are civil society organisations allowed to conduct visits to places of detention?				
64.	If "yes" to question 63, which places of detention can they visit?				
65.	If "yes" to question 63, can they visit any place of detention they choose, and at any time?				
66.	Are there any other bodies or individuals who can visit places of detention?				
67.	If "yes" to question 66, which places of detention can they visit?				
68.	If "yes" to question 66, can they visit any place of detention they				





DIP B: The Duty to Prevent Torture and Other Ill Treatment - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	choose, and at any time?				

**PART D: All law enforcement officials and other persons working with or responsible for people deprived of their liberty should be trained on the absolute prohibition of torture and other ill treatment. The content of the training should be comprehensive, focusing on the prohibition of torture and other ill treatment, as well as preventive and reactive measures addressing torture and other ill treatment. As well as training officials, State Parties should also promote public education and involve NGOs in such initiatives.**

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
<b>Training of public officials</b> [See Guidance Note Part D section 9–10]					
69.	Does domestic law specifically require that government officials are trained on the prohibition and prevention of torture and other ill treatment?				
70.	If “yes” to question 69, does the law state which government officials must receive training?				
71.	Are there any other rules or policies that require the training of government officials on the prohibition and prevention of torture and other ill treatment?				

## DIP B: The Duty to Prevent Torture and Other Ill Treatment - Checklist

Mr.	Requirement	Response: Yes/No/Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
72.	<p>Do the following State officials who work with detainees receive specific training on the prohibition and prevention of torture and other ill treatment:</p> <p>a. Police personnel</p> <ul style="list-style-type: none"> <li>• If “yes”, when do they receive such training?</li> <li>• If “yes”, is such training available to personnel of all ranks/levels/designations?</li> </ul> <p>b. Prison personnel</p> <ul style="list-style-type: none"> <li>• If “yes”, when do they receive such training?</li> <li>• If “yes”, is such training available to personnel of all ranks levels/designations?</li> </ul> <p>c. Intelligence personnel</p> <ul style="list-style-type: none"> <li>• If “yes”, when do they receive such training?</li> <li>• If “yes”, is such training available to personnel of all ranks levels/designations?</li> </ul> <p>d. Military personnel (especially military police)</p> <ul style="list-style-type: none"> <li>• If “yes”, when do they receive such training?</li> <li>• If “yes”, is such training</li> </ul>	<p>Partially</p>			

DIP B: The Duty to Prevent Torture and Other Ill Treatment - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	available to personnel of all ranks levels/designations?				
	e. Private security personnel				
	• If "yes", when do they receive such training?				
	• If "yes", is such training available to personnel of all ranks levels/designations?				
	f. Immigration personnel				
	• If "yes", when do they receive such training?				
	• If "yes", is such training available to personnel of all ranks levels/designations?				
	g. Mental healthcare facility staff				
	• If "yes" when do they receive such training?				
	• If "yes", is such training available to personnel of all levels?				
	h. Childcare facility workers				
	• If "yes" when do they receive such training?				
	• If "yes", is such training available to personnel of all levels?				
	i. Substance abuse facility staff				
	• If "yes" when do they receive				

## DIP B: The Duty to Prevent Torture and Other Ill Treatment - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	such training? • If “yes”, is such training available to personnel of all levels?				
73.	Do the following people who come into contact with detainees receive specific training on the prohibition and prevention of torture and other ill treatment: a. Members of the judiciary • If “yes”, is such training available to personnel of all levels/designations? b. Attorneys and/or advocates • If “yes”, is such training available to personnel of all levels/designations? c. Healthcare practitioners • If “yes”, is such training available to personnel of all levels/designations?				
74.	Are specific measures aimed at the prohibition and prevention of torture and other ill treatment included in codes of conduct for the following: <sup>1</sup>				

<sup>1</sup> The measures aimed at the prohibition and prevention of torture and other ill treatment in codes of conduct must meet international and regional standards.

DIP B: The Duty to Prevent Torture and Other Ill Treatment - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	a. Police personnel b. Prison personnel c. Intelligence personnel d. Military personnel (especially military police) e. Immigration personnel				
75.	If "yes" to 74, how are the relevant personnel informed of the codes of conduct?				
76.	If "yes" to 74, do the following receive training on the code of conduct:				
	a. Police personnel b. Prison personnel c. Intelligence personnel d. Military personnel (especially military police) e. Immigration personnel				
<b>Public training and education</b> [See Guidance Note Part D section 11]					
77.	Have key documents on the prohibition and prevention of torture and other ill treatment been translated into all official languages? (E.g. UNCAT, RIG, concluding remarks of CAT and ACHPR?)				

## DIP B: The Duty to Prevent Torture and Other Ill Treatment - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
78.	Have any key documents on the prohibition and prevention of torture and other ill treatment been translated into any local languages?				
79.	Have any government departments organised any public education in the past 5 years about the prohibition and prevention of torture and other ill treatment?				
80.	Do any government departments provide any public education materials on the prohibition of torture and other ill treatment? (E.g. pamphlets, booklets, posters etc.)				
81.	Has the NHRI organised any public education in the past 5 years on the prohibition and prevention of torture and other ill treatment?				
82.	Has the NHRI provided any public education materials on the prohibition of torture and other ill treatment? (E.g. pamphlets, booklets, posters etc.)				
83.	Have any civil society organisations organised any public education in the past 5 years about the prohibition and prevention of torture and other ill treatment?				



## DIP B: The Duty to Prevent Torture and Other Ill Treatment - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
84.	Have any medical professional bodies organised any public education in the past 5 years about the prohibition and prevention of torture and other ill treatment?				
85.	Have there been independent assessments of the impact of any public education programmes?				

# DIP C

# THE DUTY TO PROVIDE REDRESS

By

Gwénaëlle Dereymaeker with Lillian Artz, Gray Aschman, Louise Edwards, Debra Long, Tina Lorizzo, Lukas Muntingh and Sean Tait





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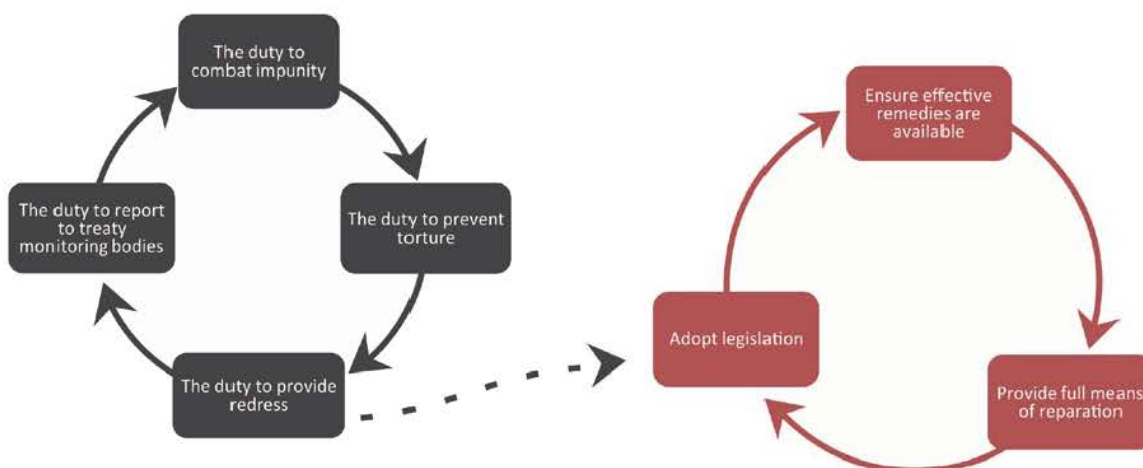
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## DIP C: The Duty to Provide Redress - Guidance Note

### DIP C: THE DUTY TO PROVIDE REDRESS

The purpose of this Guidance Note is to outline the details of the duty to provide redress to victims of torture and other ill treatment. This duty, which rests on State Parties, is contained in article 14 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). Redress is made up of a broad range of institutions the State must put in place, as well the services it must provide to victims of torture and other ill treatment. These institutions and services are not limited to financial compensation (money paid for loss or damage), but extend to rehabilitative services, means of restitution and of satisfaction, as well as policy measures aimed at ensuring that acts of torture or other ill treatment do not take place in the future. To guarantee that victims effectively enjoy this right, State Parties should firstly adopt legislation (laws) recognising a right to redress for victims of torture or other ill treatment, and make sure that mechanisms providing redress are in place.

*General Note: Article 14 of UNCAT recognises the right to obtain redress, including fair compensation and full rehabilitation, for all victims of torture and other ill treatment. However, the concept of 'redress' remains vague and, despite the Committee against Torture (CAT) having adopted a General Comment on the right to redress in December 2012 (CAT/C/GC/3), there is limited guidance from CAT on how this right can be practically achieved, in particular in countries with limited resources or in societies rebuilding themselves after a conflict. The purpose of this Guidance Note is therefore to provide a general framework of guidelines for redress, in order to help all relevant stakeholders to assess how the full needs of victims could be met, bearing in mind the limitations of each country's unique situation. State institutions and civil society organisations are therefore encouraged to be innovative in finding new ways to practically achieve the right to redress.*



### **Part A: Under international law, State Parties have a duty to provide full redress to victims of torture and other ill treatment. This duty extends to victims' relatives.**

Understanding the right to redress can be quite complex, and the aim of Part A is to explain some important ideas.

#### **1. Several international instruments recognise a right to redress.**

The right to redress must be seen as a fundamental and essential way to bring back the dignity of victims of torture or other ill treatment. States have a duty, under article 14(1) of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), to provide full redress to the victim and, if the victim is dead, to his/her dependants (for example, the family who the victim supported).

The State's duty to provide redress is a duty 'after the fact': even if the State adopts general preventive measures (discussed in DIP B), but fails to stop its own state officials from committing acts of torture or other ill treatment, the State still has a duty, under international law, to make sure that the victim receives redress.

Many international treaties and conventions recognise a right to redress for victims of gross human rights violations. These are, for example, the Universal Declaration of Human Rights (article 8), the International Covenant on Civil and Political Rights (articles 2(3), 9(5) and 14(6)), the International Convention on the Elimination of All Forms of Racial Discrimination (article 6), and the Rome Statute of the International Criminal Court (article 75). As stated, article 14(1) of UNCAT contains a positive obligation on State Parties to provide victims of torture or other ill treatment with a right to redress.

In December 2012, the United Nations Committee against Torture (CAT) adopted its third General Comment (GC) on implementing article 14 of UNCAT in practice (hereafter, GC 3).<sup>1</sup> This document is the most authoritative and detailed expert interpretation and explanation of article 14 of UNCAT, and it will be discussed throughout this Guidance Note.

Another important document that deals with the idea of redress is the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (the Van Boven and Bassiouni Principles), adopted by the United Nations General Assembly in 2006.<sup>2</sup> This document led to GC 3, and applies to all victims of gross international human rights violations.

At the regional level, the Robben Island Guidelines (RIG), formally adopted by the African Commission on Human and Peoples' Rights (ACHPR) in 2002, also include the right to redress.<sup>3</sup> The RIG clearly list what

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<sup>1</sup> CAT/C/GC/3.

<sup>2</sup> A/RES/60/147 (Van Boven and Bassiouni Principles), para 11.

<sup>3</sup> African Commission on Human and Peoples' Rights (2002) 'Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa' (Robben Island Guidelines), RIG 50.

## DIP C: The Duty to Provide Redress - Guidance Note

ACHPR understands States should provide to victims of torture and other ill treatment, their families and communities.

Neither the GC 3, the Van Boven and Bassiouni Principles nor the RIG are binding documents (that is, States cannot be forced to follow these rules, and they cannot be said to be breaking them), but they give us internationally accepted guidelines on key aspects of the right to remedy.

### 2. Key concepts: redress, remedy, and reparation are three different notions.

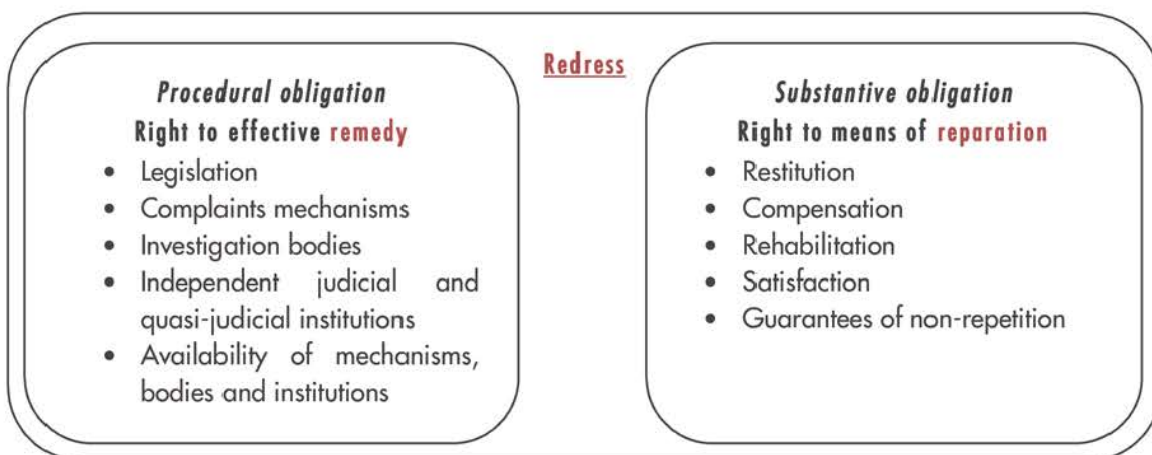
State Parties have a duty to effectively allow victims of torture and other ill treatment to seek *redress*. Redress is outlined in GC 3 and the Van Boven and Bassiouni Principles and has both procedural and substantive parts.

The procedural part is about what a State Party must put in place to make sure that effective *remedies* exist. Procedural measures include the passing of laws and the setting up of remedies, such as complaints systems, investigative bodies, and independent judicial and quasi-judicial institutions.

These remedies will allow victims to access means of *reparation*, which is the substantive part of redress (that is, the part that is about defining rights and duties). The five forms of reparation (discussed in detail in Part C below) are:

- restitution;
- compensation;
- rehabilitation;
- satisfaction; and
- guarantees of non-repetition.<sup>4</sup>

The most common understanding of *redress* is monetary compensation (money paid for loss or damage). However, CAT has insisted that monetary compensation for harm suffered as a result of a violation of the rights contained in UNCAT is not enough, and that redress must include other non-monetary elements.<sup>5</sup>



<sup>4</sup> CAT/C/GC/3, paras 2 and 6. See also Van Boven and Bassiouni Principles, para 18.

<sup>5</sup> CAT/C/34/D/212/2002, para 6.8.

Other provisions of UNCAT – in particular, articles 2 and 16 (prevention), 4 (criminalisation), 10 (public education and training of officials), 11 (systematic review of interrogation rules), 12 (States' duty to investigate), and 13 (victims' right to complain) – reinforce the procedural obligation, under article 14, to make sure that the victim has the right to an effective remedy. Therefore, the duty under article 14 should be read together with the rest of UNCAT. Furthermore, when a State Party complies with the other provisions of UNCAT, it begins to comply with its obligations under article 14.

### **3. State Parties are responsible for providing redress to victims of torture and other ill treatment. Victims are entitled to redress irrespective of whether the perpetrator has been identified.**

The duty to provide redress, including monetary compensation, is the duty of State Parties, not of individual people who commit torture or other ill treatment. Indeed, since torture and other ill treatment can only take place 'by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity',<sup>6</sup> the State under whose jurisdiction the official falls is responsible for the official's actions.

Indeed, because many people who commit torture or other ill treatment are never named, investigated or put on trial, redress cannot rely on the successful prosecution of the perpetrator.<sup>7</sup> If victims had to wait for perpetrators to be found guilty before they could receive redress, many would never be able to access the services they need for their health and well-being, or get their homes or identities back, or receive the necessary compensation to carry on with their lives. However, today, many laws around the world still require that the perpetrator be known or prosecuted before the victim can get monetary compensation.

On the other hand, state-funded and state-supported institutions can offer rehabilitative services (for health and well-being) even if the perpetrator is not known. Furthermore, measures of satisfaction (discussed below) include, among other things, the prosecution of and possible sanctions (criminal or otherwise) against people accused of torture and other ill treatment. These sanctions would be put in place by the State. Therefore, state structures are already providing some means of reparation; however, the State should, ideally, offer all five forms of reparation.

In relation to monetary compensation specifically, the State Party under whose jurisdiction the acts of torture or other ill treatment were committed bears the main responsibility for compensating the victim. If the perpetrator is prosecuted, a court might order him/her to pay compensation to the victim, but, under UNCAT, this cannot be the only way for victims to get compensation. Therefore, in countries working under the legal system of civil law, where victims usually have to bring a civil action for damages through criminal proceedings (that is, the victim is 'joined' to a criminal trial and has to present his/her claim alongside the

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<sup>6</sup> Article 1 of UNCAT. It should be noted that some States' definitions of torture don't limit perpetrators to State actors, and in these States civilians can be convicted of torture. Depending on these States' laws, courts may be able to order convicted civilian perpetrators to pay damages to the victim(s). However, this is not covered by UNCAT, and this would be something the State has decided to do because it thinks it is appropriate, and not because it has ratified UNCAT.

<sup>7</sup> CAT/C/GC/3, paras 5 and 37; Nowak, M. and McArthur, E. (2008) *The United Nations Convention against Torture – A Commentary*. Oxford: Oxford University Press, p. 466 and p. 484; Niyizurugero, J-B. and Lassène, P. (2008) *Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa: Practical Guide for Implementation*. Geneva: Association for the Prevention of Torture (APT), p. 68.

prosecutor), the State should make sure that the investigation and prosecution are not delayed, so that the victim can get redress quickly.<sup>8</sup> However, a victim should be able to seek civil damages even without the perpetrator being identified, investigated and prosecuted.

#### **4. Victims of torture and other ill treatment have been defined internationally.**

The UN Committee against Torture has defined victims of torture or other ill treatment, as:<sup>9</sup>

... persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention. A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim. The term 'victim' also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization.

CAT clearly provides that this definition applies to both victims of torture and victims of other ill treatment.<sup>10</sup>

#### **5. Under UNCAT, victims' dependants are entitled to redress only if the victim is deceased. However, the CAT General Comment 3 extends the provision of redress to the 'immediate family', 'dependants' and 'persons who have suffered harm in intervening to assist victims to prevent victimization', regardless of whether the direct victim is alive or deceased. The Robben Island Guidelines encourage States to provide redress to families and communities.**

The duties under article 14(1) of UNCAT and RIG 50 extend to victims' families. Although the wording of UNCAT contains four weak points, these limitations have been softened by CAT's GC 3.

Firstly, article 14(1) only allows 'dependants' to claim redress, and CAT has, in the past, given a narrow understanding of this term (dependants are defined as those who the victim was financially supporting before the violation occurred).<sup>11</sup> However, GC 3 now defines a 'victim' as including dependants, immediate family members and persons who have suffered harm when trying to help victims.<sup>12</sup> Therefore, immediate family members will no longer have to prove that they were relying on the victim's financial support in order to seek redress. However, those helping the victim will have to prove that they suffered harm in order to seek redress directly. Furthermore, the RIG call on African States to recognise both the individual victim and their family

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<sup>8</sup> CAT/C/GC/3, para 27.

<sup>9</sup> CAT/C/GC/3, para 3.

<sup>10</sup> CAT/C/GC/3, para 1, and CAT/C/GC/2, paras 3 and 15; CAT/C/29/D/161/2000, paras 9.6 and 10. See also Nowak and McArthur (2008), p. 475, and pp. 486-487, and Niyizurugero and Lassène (2008), pp. 67-69.

<sup>11</sup> Nowak and McArthur (2008), pp. 487-488.

<sup>12</sup> CAT/C/GC/3, para 3.

and community as victims, since they are also affected by the torture or other ill treatment inflicted on the direct victim.<sup>13</sup>

Secondly, UNCAT only gives the right to redress to dependants when the victim is dead. However, GC 3 no longer requires this. Therefore, we can assume that all victims, as broadly defined by CAT's GC 3, have the right to ask for redress, whether or not the direct victim is dead.

Thirdly, CAT has recognised that victims' dependants can claim the full range of means of reparations, and not only compensation, despite article 14(1) of UNCAT only mentioning 'compensation'.<sup>14</sup> CAT's GC 3 also gives all victims, including their relatives and immediate families, the full range of reparations. For example, victims' families could insist that they be told what happened to their loved one, that the case be independently investigated and the alleged perpetrator(s) be prosecuted, or that they benefit from specific pension schemes.

**Part B: State Parties have a duty to adopt legislation recognising a right to redress for victims of torture and other ill treatment, and a duty to ensure that mechanisms are in place to allow victims to seek redress.**

Part B outlines the *procedural* obligations on State Parties in relation to the right to redress – that is, what States are expected to do to protect victims' rights, and provide victims with an effective *remedy*. However, the right to redress cannot exist on its own and States have some duties that are part of the right to redress, and are also independent duties under other provisions of UNCAT. These include ensuring that victims can access the justice system (for example, making sure that victims can file a complaint after having suffered acts of torture or other ill treatment), making sure that complaints are independently investigated and that alleged perpetrators are brought to justice. These elements of UNCAT will be outlined below, and DIP A and DIP B look at them in more detail.

### **6. State Parties should adopt legislation recognising the victim's right to redress.**

States need to adopt laws that give victims of torture and other ill treatment "an effective remedy and the right to obtain adequate and appropriate redress, including compensation and as full rehabilitation as possible".<sup>15</sup> Such laws should make sure that victims are granted all five means of reparation outlined above and discussed further in Part C below.

<sup>13</sup> Niyizurugero and Lassène (2008), p. 68.

<sup>14</sup> *O.R., M.M. and M.S. v. Argentina*, CAT Communications 1/1988, 2/1988 and 3/1988, 23 November 1989, paras 9 and 10.

<sup>15</sup> CAT/C/GC/3, para 20.

### **7. State Parties should ensure that mechanisms, or remedies, are in place to allow the victim to obtain redress, in particular complaints and investigative mechanisms.**

The State Party must set up effective mechanisms to make sure that victims can successfully obtain all forms of redress. Such mechanisms can take several forms. They can be general institutions, such as national human rights institutions, or specific institutions providing a range of services to torture victims, including legal, medical, social, psychological, economic, or humanitarian services. Such services can be provided by state-funded institutions or by non-governmental organisations.

In particular, State Parties must set up effective complaints and investigative mechanisms. This reflects the obligations contained in articles 12 and 13 of UNCAT, but also is an essential part of the right to redress, as these mechanisms will allow individual victims to bring the violation they suffered to the attention of the police and prosecutorial authorities. Complaints mechanisms should be easily accessible and known to all, including to all people detained or imprisoned in places of detention. Investigations should be conducted promptly, effectively and impartially.<sup>16</sup> As the GC 3 puts it, “[a] State’s failure to investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts of torture in a prompt manner, may constitute a de facto [in practice] denial of redress and thus constitute a violation of the State’s obligations under article 14”.<sup>17</sup>

GC 3 recognises the importance of individual complaints, and of not limiting the right to redress to collective mechanisms.<sup>18</sup>

### **8. State Parties should ensure that mechanisms for redress are accessible.**

CAT has insisted on the importance of making sure that such mechanisms are effectively available and accessible, and that victims can express their opinions and needs. For example, the time frame within which victims can make a complaint or request services from an institution should not be limited to a short period after the events happened.<sup>19</sup> The State Party should also make sure that victims have access to all the resources they need to start the redress process.<sup>20</sup> For example, the State Party should make sure that detainees can access their medical records, as these records could contain evidence of the violation.<sup>21</sup> Most importantly, the State Party should make sure that investigations and judicial proceedings happen as soon as possible. With time passing, evidence disappears, people become older or die, alleged perpetrators can run away to other countries, etc. All of this will have an impact on the victim being able to file a complaint to investigative authorities and to ultimately get redress.

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<sup>16</sup> CAT/C/GC/3, paras 23 and 25.

<sup>17</sup> CAT/C/GC/3, para 17.

<sup>18</sup> CAT/C/GC/3, para 20.

<sup>19</sup> CAT/C/NPL/CO/2, para 28.

<sup>20</sup> CAT/C/CR/29/3, para 11(a); Nowak and McArthur (2008), p. 467.

<sup>21</sup> CAT/C/CR/32/6, para 5(d).



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The State must also make sure that these mechanisms – and how to use them – are known to the public, including to detainees, and that all people can use these mechanisms.<sup>22</sup> DIP B looks in more detail at the importance of training state employees and running public education campaigns.

Some things that are necessary in order to make sure that mechanisms for redress are effectively accessible are the following:

- victims must be able to get information on the means of reparation and on how to access those means;
- there must be transparency in providing redress;
- victims and their families should be protected when they file a complaint so that the perpetrator/s cannot harm them;<sup>23</sup>
- the State should set up non-discrimination as well as gender- and child-sensitive programmes when providing reparation; and
- the State should provide adequate training to all personnel who come into contact with victims, and set up human rights offices within police offices.<sup>24</sup>

Furthermore, GC 3 focuses on the importance of making judicial remedies (for example, being able to have a court hear one's complaint) available to victims of torture and other ill treatment in their search for redress. These judicial mechanisms, established by law, should make final decisions on victims' claims, and allow the victim to access medical records and other evidence needed to prove that acts of torture or other ill treatment took place. Finally, States should make sure that sufficient legal aid is available to victims of torture and other ill treatment in order to allow them to seek redress.<sup>25</sup>

**Part C: State Parties have a duty to ensure that full reparation is available to victims, which includes 'restitution', 'compensation', 'rehabilitation' 'satisfaction', and 'guarantees of non-repetition'.**

The substantive scope of the right to redress includes five forms of *reparation*: restitution, compensation, rehabilitation, satisfaction (including the right to know the truth), and guarantees of non-repetition. Therefore, for a State to fully meet its obligations under article 14(1) of UNCAT, it must be able to offer all five forms of reparation to victims of torture or other ill treatment.<sup>26</sup>

<sup>22</sup> Nowak and McArthur (2008), pp. 469-470.

<sup>23</sup> This is particularly relevant for torture victims, as they might be held in the same detention facility at the time of the complaint and at the time of the occurrence of the violation; it is therefore of utmost importance that the authority receiving the complaint assesses the risk of retaliation and possibly moves the victim to another facility where their safety will be guaranteed.

<sup>24</sup> CAT/C/GC/3, paras 29-36.

<sup>25</sup> CAT/C/GC/3, paras 5, 20 and 30.

<sup>26</sup> CAT/C/GC/3, para 6. See also A/55/44, Part IV, para 150(d), and Nowak and McArthur (2008), p. 467.

### 9. State Parties should be in a position to provide 'restitution'.

Restitution aims at offering services to the victim that will allow him/her, as far as possible, to go back to the state that he/she was in before the acts of torture or other ill treatment happened.<sup>27</sup> For example, this could involve removing the victim from the place of detention where the violation happened, or giving back the person's identity and/or citizenship, property or employment.<sup>28</sup>

It is essential that restitution does not cause the victim to be placed in or returned to a situation where he/she is again at risk of torture or other ill treatment. Detainees who have already been tortured or ill treated in detention, and who remain in detention after having reported the abuse, are very much at risk of re-victimisation. In such cases, there is a risk of retaliation and of the perpetrator(s) committing the violation again. Once a detainee complains that he/she suffered torture or other ill treatment, the State Party must provide effective protection to the victim so that the alleged perpetrator does not retaliate against them for having made a complaint. This might include moving the detainee to another detention facility (where the detainee must still be able to receive visits from his/her family and lawyer) or temporarily imposing an alternative sentence to custodial measures (for example, house arrest or temporary parole) until the complaint has been properly investigated and appropriately dealt with.

### 10. State Parties should be in a position to provide 'compensation'.

The victim should receive monetary compensation for all damage caused to the victim (that is, for damage and loss that can be given a monetary value). Such compensation should be "prompt, fair and adequate", equal to the harm suffered, and should cover "any economically assessable damage resulting from torture or ill treatment, whether pecuniary or non-pecuniary" (pecuniary means monetary).<sup>29</sup> The amount will therefore be worked out on a case-by-case basis.

For example, such compensation could cover, among other things:

- legal and medical expenses the victim has to pay after the violation;
- future rehabilitative services that the victim would need;
- money spent while filing a complaint and obtaining full redress; and
- compensation for physical and/or mental harm caused.<sup>30</sup>

However, CAT insists that monetary compensation should not be the only means of reparation (especially when the victim has to go through long and expensive court proceedings to get the compensation), and that State Parties must go beyond this in order to meet their duties and responsibilities under article 14 of UNCAT.<sup>31</sup>

<sup>27</sup> CAT/C/GC/3, para 8 and Niyizurugero and Lassène (2008), p. 68.

<sup>28</sup> CAT/C/GC/3, para 8 and Van Boven and Bassiouni Principles, para 19.

<sup>29</sup> CAT/C/GC/3, para 10, and Nowak and McArthur (2008), p. 467.

<sup>30</sup> Van Boven and Bassiouni Principles, para 20 and CAT/C/GC/3, para 10. See also Niyizurugero and Lassène (2008), p. 68.

<sup>31</sup> CAT/C/GC/3, para 9.

### 11. State Parties are encouraged to set up compensation funds.

State Parties should, where possible, set up national compensation funds for victims of torture or other ill treatment. Such funds should be managed by an independent body, in a transparent manner and should be accessible to victims (for example, for monetary compensation) and to organisations providing rehabilitative services to victims.<sup>32</sup>

For example, the United Nations manages a Voluntary Fund for Victims of Torture, which was established in 1981.<sup>33</sup> It receives voluntary contributions from States, NGOs and individuals. The Fund only offers grants to NGOs that provide medical, social, psychological, legal and economic assistance to victims.<sup>34</sup> Victims of torture or other ill treatment cannot use the Fund directly – this makes it very important for States to set up national funds that individual victims can access directly.<sup>35</sup> The full guidelines on how to apply for a grant from the Fund are available on the website of the Office of the High Commissioner for Human Rights.<sup>36</sup>

### 12. State Parties should be in a position to provide ‘rehabilitation’.

The aim of rehabilitative measures is to restore, to the maximum extent possible, the dignity of the victim. Rehabilitation includes medical and psychological care as well as legal and social services to allow the victim to be restored, as far as possible, with the “functions” he/she had before the violation happened, or to be taught “new skills”, in order for the victim to reintegrate into society as fully as possible.<sup>37</sup> CAT provides details on how rehabilitation should be made available, including the kind of measures States should put in place to make sure that there is effective and adequate access to means of rehabilitation.

CAT emphasises the fact that access to rehabilitation programmes cannot be limited to victims who pursue judicial remedies.<sup>38</sup> Further, rehabilitation and compensation for the cost of rehabilitation should not be confused: in the case of ‘rehabilitation’, the State Party provides such services directly, whereas under ‘compensation’, the victim would be financially compensated in order that he/she may pay for such services.

To provide rehabilitation, the State must develop services that address the specific needs of victims of torture and other ill treatment.<sup>39</sup> A wide range of institutions can provide these services, and can be state-funded or run by civil society. Such services may be expensive, but are necessary in order to fully acknowledge the absolute prohibition of torture and to ensure that victims receive full redress for violations suffered. CAT

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<sup>32</sup> CAT/C/GC/3, para 29.

<sup>33</sup> United Nations General Assembly Resolution 36/151 of 16 December 1981.

<sup>34</sup> United Nations Office of the High Commissioner for Human Rights (no date) *The United Nations Voluntary Fund for Victims of Torture – What the Fund is*. Available at <http://www.ohchr.org/EN/Issues/Torture/UNVFT/Pages/WhattheFundis.aspx> (accessed 27 September 2013).

<sup>35</sup> United Nations Office of the High Commissioner for Human Rights (no date) *United Nations Voluntary Fund for Victims of Torture: Guidelines of the Fund for the Use of Applicants and Grantees*, article 1.

<sup>36</sup> United Nations Office of the High Commissioner for Human Rights (no date) *United Nations Voluntary Fund for Victims of Torture: Guidelines of the Fund for the Use of Applicants and Grantees*.

<sup>37</sup> CAT/C/GC/3, para 11.

<sup>38</sup> CAT/C/GC/3, paras 13 and 15.

<sup>39</sup> Nowak and McArthur (2008), pp. 468-469.

emphasises that State funding for rehabilitation programmes cannot be delayed or restricted due to limited available resources.<sup>40</sup> However, it is worth noting here that limited resources are a problem for many States.

### 13. State Parties should be in a position to provide 'satisfaction'.

The term 'satisfaction' refers to various judicial and non-judicial measures that recognise the gross human rights violations committed by state officials and the harm suffered by victims. Such measures can be asked for by the victim, or ordered by the State. Most measures of satisfaction cannot be achieved without investigation and prosecution (duties discussed in DIPs A and B), which are two of the 'procedural' parts of providing redress, outlined in Part B above.

For example, measures of satisfaction, as part of the right to redress, could include:

- judicial and administrative sanctions against the perpetrator (the most common being criminal prosecution, but could also take the form of a disciplinary investigation, for example);
- an independent inquiry into the crime;
- the search, recovery, identification and burial of the bodies of dead victims of torture or other ill treatment;
- a public apology by the perpetrator or by the State;
- commemorations and tributes to the victim; and
- making sure that the story behind the human rights violations is recorded truthfully in the media, school manuals, university curricula and history books.<sup>41</sup>

The victim's right to know the truth (that is, the full details of what happened to them or their family member or community member) is a particularly important element of satisfaction for victims of torture or other ill treatment and their families. Indeed, without guaranteed transparency and honesty from the State, victims will not know what exactly has happened. Without transparency, there can be no accountability.

### 14. State Parties should be in a position to provide 'guarantees of non-repetition'.

The State Party should put several measures in place to make sure that acts of torture or other ill treatment will not take place in the future. These are usually broader policy measures, put in place at an institutional level. Again, the elements of this duty are a part of redress, but are also independent duties contained in UNCAT, and are discussed in DIPs A and B.

For example, guarantees of non-repetition could be achieved by, among other things:

- strengthening the independence of the judiciary;
- training and supporting officials to make sure that they fully understand the absolute prohibition of torture and that they are responsible for the effective prevention and prosecution of acts of torture or other ill treatment;

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<sup>40</sup> CAT/C/GC/3, paras 12 and 15.

<sup>41</sup> CAT/C/GC/3, paras 16 and 17.

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- reviewing and adapting codes of conduct to make sure that they comply with international norms and standards;
- making sure that security forces and the military are under civilian control;
- protecting legal and medical professionals who assist torture victims and who help to secure successful prosecutions;
- making sure that independent oversight mechanisms monitor all places of detention; and
- reviewing laws that allow impunity and human rights violations.<sup>42</sup>

All these duties are discussed in detail in DIPs A and B.

### **15. The means of redress provided to a particular victim must be determined on a case-by-case basis.**

The means of reparation granted will depend on the specific facts of each case, including the social norms and values of the society in which the violations took place, the needs of the victim, and the seriousness of the violations committed.<sup>43</sup> This also means that not all forms of reparation will be ordered after every violation.

### **16. State Parties are encouraged (but not obliged) to provide rehabilitative services to all victims of torture or other ill treatment, regardless of nationality.**

CAT has not called on States to enact universal civil jurisdiction for crimes of torture or other ill treatment; only universal criminal jurisdiction.<sup>44</sup> DIP A discusses the fact that State Parties should broaden their ordinary criminal jurisdiction when there are claims of torture or other ill treatment and allow their courts to prosecute an accused when there is even the tiniest link with the country of prosecution, or when the State Party cannot extradite the accused to the relevant State. UNCAT does not, however, require State Parties to provide redress to a wide range of individuals. A State Party must only provide redress if the perpetrator was an official of that State (however, once again, it is not necessary for that perpetrator to be formally identified,<sup>45</sup> arrested, investigated or prosecuted for the State Party to be obliged to provide the victim with redress).

This means that victims are only able to seek redress in the State of the nationality of the perpetrator, since redress is the responsibility of the State where the perpetrator is from.<sup>46</sup>

In practice, this means that, for example, if soldiers on a peacekeeping mission in a foreign State commit acts of torture or other ill treatment, the victim will only be able to claim redress (including compensation and

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<sup>42</sup> CAT/C/GC/3, para 18; Niyizurugero and Lassène (2008), p. 69.

<sup>43</sup> CAT/C/GC/3, para 6; Van Boven and Bassiouni Principles, para 15.

<sup>44</sup> Nowak and McArthur (2008), p. 471.

<sup>45</sup> While it is necessary for the victim or their family to be able to identify the perpetrator as a state official (as opposed to a civilian), they do not need to be able to identify them by name or by sight. For example, a victim may know that the person who tortured them was a police officer, but not know anything more about that officer (what they look like, their name, etc.).

<sup>46</sup> Nowak and McArthur (2008) p. 494, p. 496 and pp. 500-502. The US Alien Tort Claims Act, which allows foreigners to sue individuals or companies before US courts for a tort (which is an act committed by someone and having caused another person harm; and includes human rights violations) committed abroad, is a notable exception to this rule.

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rehabilitation) in the country of the nationality of the perpetrator, and not where the acts took place. This further means that UNCAT does not impose an obligation on a State Party to provide reparation, including rehabilitative services, to torture victims who seek refuge in that State. However, State Parties are encouraged to provide such services to everyone who needs them, especially because there are many torture victims who flee to other countries and are granted refugee status because they were tortured or suffered ill treatment in their home countries.

This said, CAT has recommended that States pass laws to allow all victims, no matter where the violation took place and what the victim's nationality is, to exercise their right under article 14.<sup>47</sup> In effect, this means that foreign victims should be able to access rehabilitation services and file a civil claim for damages in the countries where they live. Although GC 3 is silent on the issue, it is difficult to see how CAT meant that a civil claim could be filed by a victim against the State of his/her residence when the victim is not a national of that country, since the State of residence then has no responsibility for the acts committed. Therefore, a civil claim should only be filed against the individual perpetrator (and therefore be filed in a State where the alleged perpetrator lives or has assets) or against the State that had jurisdiction over the perpetrator when the violation happened.

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<sup>47</sup> CAT/C/GC/3, para 22.

## DIP C THE DUTY TO PROVIDE REDRESS

### Checklist

#### How to use the Checklist:

- This Checklist should be used together with the Guidance Note for DIP C. If anything is uncertain or unclear, look at the Guidance Note for more information. The structure of the Checklist follows the structure of the Guidance Note.
- At the end of the DIPs there is a Glossary of Terms that may also help to clarify particular points.
- The DIP covers a broad range of topics, and especially civil society organisations may not have access to all the information that the Checklist may request. For this reason, before you complete the Checklist, try to find out how the DIP will be used and what the focus of the responses will be. For example, the focus may only be on prisons or police detention. Having a clear focus will help you to respond appropriately to the questions.
- Note that the responses to some questions will stay the same for a long period of time (e.g. if certain laws are in place), whilst others may require more regular updating. Questions to which responses may remain the same for a long period are shaded in. You are therefore advised to see the DIP as a living document that can be used as part of State Party reporting to treaty monitoring bodies.
- The second column, headed 'Requirement', sets out the questions to be answered. These are based on the obligations and standards contained in UNCAT, RIG and other international and regional human rights instruments. These obligations and standards are explained in more detail in the relevant Guidance Note.
- The third column, headed 'Response', requires a 'Yes', 'No', or 'Partial' answer to be given. That can be shortened to Y, N or P.
- In the fourth column headed 'Description & Motivation for Response', more information should be given to support and supplement the answer given in the previous 'Response' column. For example, the specific article within a law or regulation, case law, or information from a report or statement from the government, national human rights institution, civil society organisation, treaty body, etc.
- The fifth column, headed 'Achievements & Challenges', provides an opportunity to write about what happens in practice. Any examples of good practice can be recorded, along with details of any problems with the implementation of the 'Requirements' listed in column two, for that sub-section.
- The sixth column headed 'Proposals for Reform', provides an opportunity to suggest any practical means or measures that could be taken to address any challenges with implementing the 'Requirements' listed in column two. It can also be used to list any technical assistance that may be required in order to implement the 'Requirements' fully.
- Several of the questions below have an asterisk (\*) after them. The answers to these questions should be provided to the UN Committee against Torture when submitting a State report as required by article 19 of the UNCAT, in the form of data disaggregated by age, gender, nationality, and other key factors affecting redress measures afforded to victims of torture and other ill treatment.

## DIP C: The Duty to Provide Redress - Checklist

General Note: Article 14 of UNCAT recognises the right to obtain redress, including fair compensation and full rehabilitation, for all victims of torture and other ill treatment. However, the concept of 'redress' remains vague and, despite CAT having adopted a General Comment on the right to redress in December 2012 (CAT/C/GC/3), there is limited guidance from CAT on how this right can be practically achieved, in particular in countries with limited resources or in societies rebuilding themselves after a conflict. The purpose of this Checklist is therefore to provide a general framework of guidelines for redress, in order to assist all relevant stakeholders to assess how the full needs of victims could be met, bearing in mind the limitations of each country's unique situation. State institutions and civil society organisations are therefore encouraged to find new ways to practically achieve the right to redress.

Name of organisation(s) completing the DIP	
Name of responsible person	
Date last updated	





**Part A: Under international law, State Parties have a duty to provide full redress to victims of torture and other ill treatment. This duty extends to victims' relatives.**

**Part B: State Parties have a duty to adopt legislation recognising a right to redress for victims of torture and other ill treatment, and a duty to ensure that mechanisms are in place to allow victims to seek redress.**

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
<b>Legislative measures</b>					
1.	Does the Constitution recognise a right to obtain redress for victims of human rights violations? If "yes", how is the provision worded? [See sections 2 and 6 of the Guidance Note]				
2.	Does the Constitution recognise a right to obtain redress for victims of torture and other ill treatment? If "yes", how is the provision worded? [See sections 2 and 6 of the Guidance Note]				
3.	Is there a law that provides victims of torture with a right to redress? [See sections 2 and 6 of the Guidance Note]				
4.	Is there a law that provides victims				

## DIP C: The Duty to Provide Redress - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	of ill treatment with a right to remedy and redress? [See sections 2, 4 and 6 of the Guidance Note]				
5.	Is there a law that provides a definition of 'victim' of torture and other ill treatment that is in line with the definition in CAT's General Comment 3? [See section 4 of the Guidance Note]				
6.	Is there a law that specifically provides for a right to: [See sections 2 and 6 and Part C of the Guidance Note]				
	a. Restitution				
	b. Compensation				
	c. Rehabilitation				
	d. Satisfaction				
	e. Guarantees of non-repetition				
7.	Is there a law that recognises a right to redress for the victim's family if the victim dies? [See section 5 of the Guidance Note]				



## DIP C: The Duty to Provide Redress - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
8.	Is there a law that recognises an independent right to redress for the victim's family, even when the victim is still alive? [See section 5 of the Guidance Note]				
9.	Is there a law that provides victims with a right to redress even if the alleged perpetrator has not been identified, arrested, investigated or prosecuted? [See section 3 of the Guidance Note]				
10.	If "yes" to question 9, how many victims have been able, in the past 5 years, to seek redress without the alleged perpetrator being identified, arrested, investigated or prosecuted?				
11.	Are there any limitations imposed for seeking redress for torture (for example, within a certain period of time)? If "yes", please state what the limitations are. [See section 8 of the Guidance				

## DIP C: The Duty to Provide Redress - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	[Note] Are there legislative and policy measures in place designed to actively search for and identify victims of torture and other ill treatment in order to provide them with redress? If "yes", please state what these measures are.				
<b>Access to complaints and investigative mechanisms</b> [These questions must be read in conjunction with questions 23–41 of the DIP A Checklist]					
13.	Are complaints mechanisms available to victims of torture and other ill treatment? If "yes", specify what these mechanisms are.				
14.	How are such mechanisms made known to victims (access to information)?				
15.	How are such mechanisms made effectively accessible to victims?				
16.	How many complaints have been received through such mechanisms in the past 5 years?*				
17.	What measures are being taken by the State to make sure that all claims of torture and other ill				



## DIP C: The Duty to Provide Redress - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	treatment are effectively investigated?				
<b>Process for obtaining redress</b> [See Part B of the Guidance Note]					
18.	What measures have been taken by the State to assist victims with the effects of torture and other ill treatment?				
19.	What are the available state and non-state mechanisms that victims of torture and other ill treatment can use to obtain redress? List all criminal, civil, administrative and non-judicial procedures.				
20.	Is there a specific government agency or institution that provides information to victims and their families about obtaining redress?				
21.	Does the National Human Rights Institution provide information to victims and their families about obtaining redress?				
22.	If "yes" to questions 20 and 21, are these institutions required to produce an annual report of their				

## DIP C: The Duty to Provide Redress - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	activities? Are these reports made public?				
23.	Do civil society organisations provide information about obtaining redress?				
24.	Is this information (either from a government institution, National Human Rights Institution or from civil society organisations) accessible to all people?				
25.	Do detainees have access to information on mechanisms for redress, either from state institutions, the National Human Rights Institution or from civil society organisations?				
26.	Are mechanisms for redress available on an equal basis, i.e. without discrimination?				
27.	Are mechanisms for redress accessible throughout the country (e.g. both in rural and in urban areas)?				
28.	Are mechanisms for redress free from external interference?				



## DIP C: The Duty to Provide Redress - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
29.	Are the processes for obtaining redress easy to follow and user-friendly?				
30.	Are the processes for obtaining redress completed promptly and without undue delay?				
31.	Do mechanisms for redress receive enough funding?				
32.	Do mechanisms for redress have enough staff?				
33.	Are the staff of such mechanisms trained on the specific needs of victims of torture and other ill treatment?				
34.	Can victims, their legal representatives or organisations providing assistance to victims easily access the evidence needed to prove that acts of torture and other ill treatment were committed (e.g. medical records)?				
35.	Is legal aid available to victims of torture and other ill treatment, witnesses and others who have intervened on the behalf of victims?				

## DIP C: The Duty to Provide Redress - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	<p>a. If "yes" to question 35, how is this service made known to victims?</p> <p>b. If "yes" to question 35, how is this service made available to victims in practice?</p> <p>c. If "yes" to question 35, how many victims have been granted legal aid in the past 5 years?*</p> <p>d. If "yes" to question 35, what is the State's evaluation of the effectiveness of this service?</p>				
36.	<p>Are there witness protection programmes available to victims of torture and other ill treatment, witnesses and others who have intervened on the behalf of victims?</p> <p>a. If "yes" to question 36, how is this service made known to victims?</p> <p>b. If "yes" to question 36, how is this service made available to victims in practice?</p> <p>c. If "yes" to question 36, how many persons have been</p>				





## DIP C: The Duty to Provide Redress - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	protected by state witness protection programmes in the past 5 years?*				
37.	d. If "yes" to question 36, what is the State's evaluation of the effectiveness of this service? What steps are taken to implement the judgements of national, regional or international courts ordering forms of redress for victims of torture and other ill treatment?				
38.	On average, how long does it take for judgements ordering forms of redress to be implemented? I.e. – how long does it take from the date of judgement for victims to actually be provided with redress? Please state an average time, and support your answer with specific data on shortest and longest implementation periods.				
39.	How many victims of torture and other ill treatment were selected to receive reparative measures through court judgements in the				

## DIP C: The Duty to Provide Redress - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
40.	<p>past 5 years?*</p> <p>How many victims of torture and other ill treatment <i>actually</i> received reparative measures ordered by court judgements in the past 5 years?*</p>				
41.	<p>For what violations have victims of torture and other ill treatment received reparative measures ordered by court judgements in the past 5 years?*</p>				
42.	<p>What safeguards are available for the special protection of members of marginalised or vulnerable groups who are victims of torture and other ill treatment, including women and children?</p>				



**Part C: State Parties have a duty to ensure that full reparation is available to victims, which includes 'restitution', 'compensation', 'rehabilitation', 'satisfaction', and 'guarantees of non-repetition'.**

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
<b>Mechanisms for redress</b> <b>Restitution</b> [See sections 9 and 15 of the Guidance Note]					
43.	Are there mechanisms in place that order measures of restitution? If "yes", please outline the type of mechanism or institution ordering such measures and the process for obtaining restitution. [Please refer to section 9 of the Guidance Note for an explanation of what 'restitution' is]				
44.	If mechanisms for restitution are in place, how many victims have accessed those mechanisms in the past 5 years?				
45.	How many victims have obtained restitution after accessing such mechanisms in the past 5 years?				
46.	What mechanisms are in place to reduce the risk of re-victimisation of				

## DIP C: The Duty to Provide Redress - Checklist

Mr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	the victim and his/her family once the act of torture and other ill treatment has been reported or once there are reasonable grounds to believe that torture and other ill treatment has happened?				
<b>Compensation</b> [See sections 10, 11 and 15 of the Guidance Note]					
47.	Can victims file a civil claim before the courts to obtain fair and adequate monetary compensation from the State for the damage caused by the violation? [Please refer to section 10 of the Guidance Note for an explanation of what 'compensation' is]				
48.	Can victims of torture and other ill treatment get compensation without the perpetrator being identified, arrested, detained and/or prosecuted?				
49.	How many victims of torture and other ill treatment have tried to get compensation through legal, administrative and other means in				



## DIP C: The Duty to Provide Redress - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	the past 5 years?*				
50.	What was the nature of the violations for which victims tried to get compensation?				
51.	How many victims of torture and other ill treatment were awarded compensation in the past 5 years?*				
52.	What amount of compensation was awarded to each victim identified in question 51?				
53.	Is there a national compensation fund accessible to victims of torture and other ill treatment? If "yes", please describe it.				
54.	Is the national compensation fund state-funded?				
55.	Can a court order a perpetrator to pay a fine into the national compensation fund?				
56.	Does the national compensation fund publish an annual report on its spending and granting of funds?				
57.	Is the national compensation fund audited by an independent body? If "yes", how often is the fund				

## DIP C: The Duty to Provide Redress - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	audited?				
<b>Rehabilitation</b> [See sections 12, 15 and 16 of the Guidance Note]					
58.	Can victims of torture and other ill treatment access state-run or state-supported specialised rehabilitation services? [Please refer to section 12 of the Guidance Note for an explanation of what 'rehabilitation is']				
59.	Are torture rehabilitation services accessible throughout the country (e.g. both in rural and in urban areas)?				
60.	Are torture rehabilitation services accessible to everyone, including to non-citizens?				
61.	How much money does the State spend on rehabilitation programmes for victims of torture and other ill treatment?				
62.	How many victims of torture and other ill treatment have requested support from rehabilitative services appropriate to their needs in the				



## DIP C: The Duty to Provide Redress - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	past 5 years?*				
63.	How many victims of torture and other ill treatment have received rehabilitative services appropriate to their needs in the past 5 years?*				
64.	How is the effectiveness of rehabilitation programmes and services assessed?				
65.	What are the results of such assessments? <sup>1</sup>				
66.	Is the UN Voluntary Fund for Victims of Torture accessible to civil society organisations? a. How many civil society organisations have applied to the UN Fund for funds in the past 5 years? b. How many of these applications were successful?				
<b>Satisfaction</b> [See sections 13 and 15 of the Guidance Note]					
67.	Are the following mechanisms in place that can order measures of				

<sup>1</sup> Please consider the following questions: Are assessment reports published? Are recommendations for improving services made? How are the results of the assessments followed up on?

## DIP C: The Duty to Provide Redress - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	<p>satisfaction, either at the victim's request or upon a recommendation from a state institution: [Please refer to section 13 of the Guidance Note for an explanation of what 'satisfaction' is]</p> <p>a. Criminal proceedings against the alleged perpetrator</p> <p>b. Disciplinary action against the alleged perpetrator</p> <p>c. An independent inquiry into the facts of the case and a full disclosure of the truth</p> <p>d. The search, recovery, identification and burial of dead victims of torture and other ill treatment</p> <p>e. A public apology by the perpetrator and/or by the State</p> <p>f. Commemorations and tributes to the victim</p> <p>g. The accurate and adequate historical reflection of human rights violations, including torture and other-ill treatment,</p>				



Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	in school manuals and university curricula h. Should any other measures of satisfaction be ordered? If "yes", which ones?				
<p style="text-align: center;"><b>Guarantees of Non-Repetition</b> [See sections 14 and 15 of the Guidance Note]</p>					
Measures aimed at guaranteeing non-repetition of the acts of torture and other ill treatment are policy measures which, for the most part, are examined under DIPs A and B. [Please refer to section 14 of the Guidance Note and to the Glossary of Terms for a definition of 'guarantees of non-repetition']					

# DIP D

# THE DUTY TO REPORT

By  
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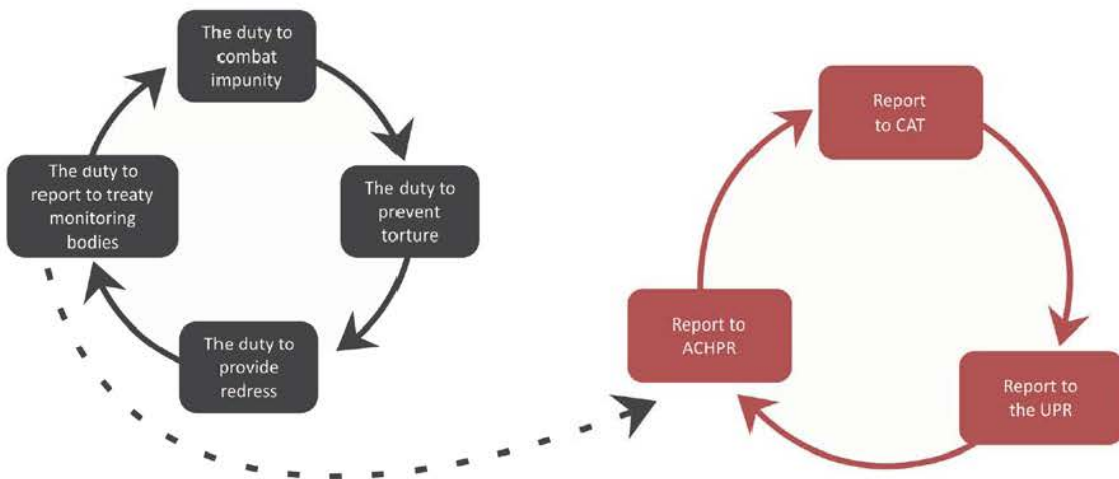
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## DIP D: The Duty to Report - Guidance Note

### DIP D: THE DUTY TO REPORT

The purpose of this Guidance Note is to describe the procedures for State Party reporting under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), the Universal Periodic Review (UPR) and the African Charter on Human and Peoples' Rights (ACHPR). In all three instances, the periodic reporting procedure aims to monitor how the relevant instruments are implemented. The submitted reports form the basis for dialogue between the treaty monitoring body – the United Nations Committee against Torture (CAT), the United Nations Human Rights Council and the African Commission on Human and People's Rights (ACHPR), respectively – and the State Party concerned. In the case of the UPR, the review process looks at the general human rights situation in a country. The monitoring bodies encourage and welcome inputs from civil society organisations in the drafting of State Party reports as well as in the form of separate reports, often called Shadow Reports.



**PART A: State Parties to UNCAT are required to submit an Initial Report within 12 months of ratification and thereafter Periodic Reports every four years. In order to avoid duplication of information, State Parties are also required to submit a Common Core Document that describes the State's constitutional and legal framework as well as other general and background information. Civil society organisations are encouraged to participate in the work of CAT. The Universal Periodic Review mechanism requires States to report to the Human Rights Council every four years.**

### **1. State Parties to UNCAT are required to submit an Initial Report within 12 months of ratification and thereafter Periodic Reports every four years.**

Under article 19(1) of UNCAT, State Parties are obliged to submit an Initial Report (their first report) to the United Nations Committee against Torture (CAT) within twelve months of ratifying UNCAT. After submitting this Initial Report, State Parties have a duty to report every four years to CAT on progress made towards implementing measures to give effect to UNCAT.<sup>1</sup> The UN Secretary General is mandated to distribute these reports to all States party to UNCAT.<sup>2</sup>

### **2. State Parties are required to submit and keep up to date a Common Core Document that provides an overall description of the State Party.**

The Harmonised Guidelines on Reporting under the International Human Rights Treaties require State Parties to submit a 'Common Core Document'. This is in order to avoid repeating long descriptions of States' historical, constitutional, legal and policy provisions in the Initial and Periodic Reports. The Common Core Document provides an overall description of the human rights situation in the territories of the State.<sup>3</sup> The Initial Report and all Periodic Reports to treaty bodies then only have to cover what is happening at the time, and any developments made since the last report. This split reporting aims to improve efficiency and prevent State Parties from repeating general information about human rights issues for each treaty-specific report. Furthermore, it obliges State Parties to report on specific measures taken, and not only repeat descriptions of the legislative framework, in Periodic Reports.

With regard to Initial Reports submitted under article 19(1) of UNCAT, CAT has issued the Guidelines on the Form and Content of Initial Reports under Article 19 to be Submitted by States Parties to the Convention against Torture<sup>4</sup> (the Guidelines), and these Guidelines note at the start that the Initial Report should cross-refer to the Common Core Document and not repeat what is already stated there.<sup>5</sup>

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<sup>1</sup> Article 19(1).

<sup>2</sup> Article 19(2).

<sup>3</sup> HRI/MC/2004/3.

<sup>4</sup> CAT/C/4/Rev.3.

<sup>5</sup> CAT/C/4/Rev.3, para 3.

Thus, given the fact that the Common Core Document should describe the overall historical, constitutional, legal and policy framework of the State Party, the Initial Report and all Periodic Reports to CAT will then provide CAT with recent information on measures taken by the State Party to meet the requirements of UNCAT.<sup>6</sup>

### **3. Initial and Periodic Reports should provide CAT with up to date information on the practical implementation of State Parties' obligations under UNCAT.**

The Guidelines direct State Parties towards giving evidence in the Initial and Periodic Reports of specific measures taken to give effect to UNCAT rather than just describing the overall legislative framework, and CAT "envisages receiving specific information related to the implementation of the Convention to the extent that it is not covered by the core document".<sup>7</sup> For this reason CAT expects the report to:

Provide an overview of the practical implementation of the Convention at the federal, central, regional and local levels of the State, and indicate any factors and difficulties that may affect the fulfilment of the obligations of the reporting State under the Convention. The report should include specific information related to the implementation of the Convention in such circumstances. Relevant documentation collected by the authorities or other private or public institutions is welcome.<sup>8</sup>

The Guidelines further emphasise the need to report on the:

- actions of the executive;
- distribution of functions within the executive;
- proactive measures taken to implement the provisions of UNCAT (for example, training programmes), and an assessment of how effective these measures are.

It is not necessary to describe these in detail here, but it is clear that the Guidelines are aimed at making sure that CAT is provided with the relevant information that would allow it to make a well-informed assessment of the current situation regarding the State Party's obligations under UNCAT. As part of the reporting process, CAT recommends that there should be broad-based consultations with stakeholders during the preparation of reports and it refers specifically to national institutions promoting and protecting human rights, as well as civil society and non-governmental organisations (NGOs).<sup>9</sup>

In summary, three main issues are important to preparing reports:

- the regularity of reporting (how often);
- the quality and scope of the report; and
- the desired inclusive nature of report preparation (who was involved).

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<sup>6</sup> CAT/C/4/Rev.3, para 1. This is also the same wording used in article 19(1) of UNCAT.

<sup>7</sup> CAT/C/4/Rev.3, para 5.

<sup>8</sup> CAT/C/4/Rev.3, para 5.

<sup>9</sup> CAT/C/4/Rev.3, para 4.

## DIP D: The Duty to Report - Guidance Note

It should be remembered that the report is not an end in itself, but forms the basis for dialogue between CAT and the State Party and may lead to further decisions and actions by CAT, for example, to ask for more information or even visit the State Party if CAT decides it is necessary.<sup>10</sup>

### 4. The 'List of Issues' is an alternative procedure to streamline and focus reporting.

In an effort to have efficient and focussed discussions about Periodic Reports, CAT changed its procedures in 2004 to provide for a 'List of Issues' to be sent to the State Party about one year before the consideration of the State Party's Periodic Report.<sup>11</sup> The State Party concerned should distribute the List of Issues widely, including to civil society organisations. The List of Issues is also available on CAT's website and is accessible to all members of civil society. Civil society organisations may also make submissions to CAT about issues that they would like to see included in the List of Issues communicated to the State Party in preparation of the Periodic Report.

CAT's website<sup>12</sup> contains the necessary information about when reports are due, whether they have been submitted, when reports will be considered, Lists of Issues, past State Party reports and reports submitted by civil society organisations. CAT's sessions are usually held in April/May and October/November each year in Geneva, Switzerland, and civil society reports should be submitted in good time before the sessions.

### 5. CAT encourages civil society to participate in its work through a number of avenues.

Opportunities are created for civil society organisations to provide CAT with more information to support State Parties' reports. Article 18(2) of UNCAT enables CAT to establish its own Rules of Procedure and CAT has crafted these in a way that supports civil society taking part in its work.<sup>13</sup> The Guidelines encourage civil society's participation in the preparation of Initial and Periodic Reports – submitted in accordance with article 19 – which should, as mentioned above, include broad-based consultations with stakeholders, and especially with civil society and non-governmental organisations and national institutions with a mandate to promote and protect human rights.<sup>14</sup> The Guidelines ask for, in particular, information on the process followed to achieve such consultation, presumably for CAT to assess the scope and depth of such consultations, and also to help it to assess the State Party's efforts to prepare the report in a transparent and inclusive manner.

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<sup>10</sup> CAT/C/3/Rev.5, Rules 69 and 86.

<sup>11</sup> United Nations Committee against Torture (no date) *Overview of the working methods*. Available at <http://www.ohchr.org/EN/HRBodies/CAT/Pages/WorkingMethods.aspx> (accessed 26 September 2013), para III(A).

<sup>12</sup> United Nations Committee against Torture (no date) *Sessions*. Available at <http://www2.ohchr.org/english/bodies/cat/sessions.htm> (accessed 26 September 2013).

<sup>13</sup> Such participation is provided for in the meetings of CAT itself, the Rules of Procedure (CAT/C/3/Rev.5), the Reporting Guidelines (CAT/C/4/Rev.3) and the Working Methods of CAT (United Nations Committee against Torture (no date) *Overview of the working methods*. Available at <http://www.ohchr.org/EN/HRBodies/CAT/Pages/WorkingMethods.aspx> (accessed 27 September 2013)), and a brief description of the relevant features follow with reference to reports submitted under article 19.

<sup>14</sup> CAT/C/4/Rev.3, para 4.

## DIP D: The Duty to Report - Guidance Note

The document called Working Methods of the Committee also supports involving national human rights institutions and NGOs in the consultation process while State Parties are preparing Periodic Reports.<sup>15</sup>

Once a State Party has submitted its Initial or Periodic Report, civil society organisations have the opportunity to submit written information to CAT in the form of Shadow Reports. This is probably the most often used and most accessible way for civil society to take part in CAT's work and is provided for under CAT's Rules of Procedure.<sup>16</sup>

Shadow Reports may provide a full overview of the State's implementation of all articles of UNCAT or they may elect to focus on one or more particular themes. There are no prescripts (rules or laws) about this. Civil society organisations are also free to submit one coordinated response or to make individual submissions. Rule 62 of the Working Methods of the Committee invites NGOs to participate in CAT's activities. NGOs usually engage with CAT under Rule 62 through written reports, copies of which are given to the State Party concerned – unless the authors object. Representatives of civil society organisations may also verbally brief CAT during the session when the State Party's report is considered, without State Party representatives being present at the session.<sup>17</sup> This confidential session takes place before CAT interacts with the State Party delegation, which happens in a session that is open to the public. Although the amount of time allocated for the session with civil society representatives is quite short, it is an important opportunity for all CAT members to formally interact with these stakeholders. During this session civil society representatives can raise and/or emphasise any particular issues with CAT, and also answer specific questions from Committee members. This is a useful opportunity for constructive dialogue between CAT and civil society representatives.

During the open session at which CAT considers the State Party's Report, the Committee members may ask questions of the State Party delegation and the State Party then has the opportunity to respond to such questions in writing by the following day. Civil society organisations that are present at this open session may also use the opportunity to respond in writing to these questions and are allowed to submit their responses to the CAT Secretariat by the following day.

After CAT has considered a State's report, it may make Concluding Remarks and Observations. The content of these remarks are discussed in a closed session, but once approved, are read into the minutes of the meeting and made available on the CAT website.<sup>18</sup> CAT may also ask the State Party to respond to certain issues within a given time frame.<sup>19</sup> The Concluding Remarks are presented in a structured format, dealing firstly with positive issues, followed by problematic aspects of the State Party's report. The State Party may then respond to all or a selection of the questions or issues raised by CAT. The State Party may

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<sup>15</sup> United Nations Committee against Torture (no date) *Overview of the working methods*. Available at <http://www.ohchr.org/EN/HRBodies/CAT/Pages/WorkingMethods.aspx>, para II.

<sup>16</sup> The Committee may invite specialised agencies, the relevant United Nations bodies, regional intergovernmental organisations and NGOs with consultative status with the Economic and Social Council to submit information, documentation and/or written statements that are relevant to CAT's activities under UNCAT (CAT/C/3/Rev.4, Rule 62(1)).

<sup>17</sup> United Nations Committee against Torture (no date) *Overview of the working methods*. Available at <http://www.ohchr.org/EN/HRBodies/CAT/Pages/WorkingMethods.aspx>, para VIII.

<sup>18</sup> Article 19(2) and United Nations Committee against Torture (no date) *Overview of the working methods*. Available at <http://www.ohchr.org/EN/HRBodies/CAT/Pages/WorkingMethods.aspx>, para III(C).

<sup>19</sup> CAT/C/3/Rev.5, Rule 69(2).





decide to have its responses made public, which will then be published as an official CAT document.<sup>20</sup> As the Concluding Remarks are made public soon after CAT has considered the State Party's report, this presents a further opportunity for civil society to submit additional information to CAT. The Concluding Remarks also provide an agenda for government and civil society to have a dialogue on the issues raised by CAT. Government may indeed use the Concluding Remarks as an opportunity for broad-based consultation in preparing its responses to questions asked by CAT, as it is encouraged to do in the Initial and Periodic Reports.

### 6. The Universal Periodic Review

Although the Universal Periodic Review (UPR) is not exclusively focused on UNCAT, it provides an important opportunity for States to report on progress made in human rights reform, including obligations under UNCAT. This section is an extract from the UN website 'Basic facts about the UPR'.<sup>21</sup>

#### Overview

The UPR is a process that involves a periodic review of the human rights records of all 193 UN member States. The UPR is a significant innovation of the UN Human Rights Council (the Council) and is based on equal treatment for all States. It provides an opportunity for States to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights. The UPR also includes a sharing of best human rights practices around the globe. Currently, no other mechanism of this kind exists.

#### History

The UPR was established when the UN Human Rights Council was created on 15 March 2006 by the UN General Assembly.<sup>22</sup> This mandated the Council to undertake a universal periodic review, based on objective and reliable information, of measures taken by States to meet their human rights obligations. On 18 June 2007, one year after its first meeting, members of the new Council agreed to its institution-building package<sup>23</sup> that provides a 'road map' guiding the future work of the Council. One of the key elements of this package was the new UPR. The mechanism was further refined during the review process through resolution 16/21 and decision 17/119. These two documents provided the necessary changes to the form of the review process in the second and later cycles.

#### Goal

The ultimate goal of the UPR is to improve the human rights situation in every country. The UPR is designed to prompt, support, and expand the promotion and protection of human rights on the ground. To achieve this, the UPR involves assessing States' human rights records and addressing human rights violations

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<sup>20</sup> Article 19(2) and United Nations Committee against Torture (no date) *Overview of the working methods*. Available at <http://www.ohchr.org/EN/HRBodies/CAT/Pages/WorkingMethods.aspx>, para III(C).

<sup>21</sup> United Nations Office of the High Commissioner for Human Rights (no date) *Basic facts about the UPR*. Available at <http://www.ohchr.org/en/hrbodies/upr/pages/BasicFacts.aspx> (accessed 26 September 2013).

<sup>22</sup> A/RES/60/251.

<sup>23</sup> A/HRC/RES/5/1.

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wherever they occur. The UPR also aims to provide technical assistance to States and improve their capacity to deal effectively with human rights challenges, and to share best practices in the field of human rights among States and other stakeholders.

### Frequency of review

During the first cycle of the UPR (2008-2011), all UN Member States were reviewed, with 48 States reviewed each year. The second cycle, which officially started in May 2012 with the 13th session of the UPR Working Group, will see 42 States reviewed each year. The reviews take place during the sessions of the UPR Working Group (see below), which meets three times a year. The order of review remains the same as in the first cycle and the number of States reviewed at each session is now 14 instead of 16.

### Structure

The reviews are conducted by the UPR Working Group, which consists of the 47 members of the Council. However, any UN member State can take part in the discussion/dialogue with the reviewed States. Each State review is assisted by groups of three States, known as 'troikas', who serve as rapporteurs. The troikas for each State are selected by a drawing of lots after elections for the Council membership in the General Assembly.

### Information

The reviews are based on the following documents:

- information provided by the State under review, which can take the form of a 'national report';
- reports of independent human rights experts and groups (known as the Special Procedures – see DIP A for more information on these), human rights treaty bodies, and other UN entities; and
- information provided by other stakeholders, including national human rights institutions and NGOs.

### Method

Reviews take place through an interactive discussion between the State under review and other UN member States. This takes place during a meeting of the UPR Working Group. During this discussion any UN member State can ask questions, make comments and/or recommendations to the States under review. The troikas may group issues or questions to be shared with the State under review to make sure that the interactive dialogue takes place in a smooth and orderly manner. During the first cycle, the time set for the review was three hours for each country in the Working Group. From the second cycle onwards the time has been extended to three hours and 30 minutes.

### NGOs participation

NGOs can submit information that can be added to the 'other stakeholders' report that is considered during the review. Information they provide can be referred to by any of the States taking part in the interactive discussion during the review at the Working Group meeting. NGOs can attend the UPR Working Group sessions and can make statements at the regular session of the Human Rights Council when the outcomes of the State reviews are considered. The United Nations Office of the High



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Commissioner for Human Rights (OHCHR) has released 'Technical guidelines for the submission of stakeholders'.<sup>24</sup>

### Scope

The UPR will assess the extent to which States respect their human rights obligations as set out in:

- the Charter of the United Nations;
- the Universal Declaration of Human Rights;
- human rights instruments to which the State is party (human rights treaties ratified by the State concerned);
- voluntary pledges and commitments made by the State (for example, national human rights policies and/or programmes implemented); and,
- applicable international humanitarian law.

### Outcome

Following the review by the Working Group, a report is prepared by the troika, with the involvement of the State under review and assistance from OHCHR. This report, referred to as the 'outcome report', provides a summary of the actual discussion. It consists of the questions, comments and recommendations made by States to the State under review, as well as the responses by the reviewed State.

### Adoption

During the Working Group session half an hour is allocated to adopt each of the 'outcome reports' for the States reviewed in that session. These take place no sooner than 48 hours after the country review. The reviewed State has the opportunity to make preliminary comments on the recommendations, choosing to either accept or note them. Both accepted and noted recommendations are included in the report. After the report is adopted, editorial changes can be made to the report by States on their own statements within the following two weeks. The report then has to be adopted at a plenary session of the Human Rights Council. During the plenary session, the State under review can reply to questions and issues that were not fully addressed during the Working Group and respond to recommendations that were raised by States during the review. Time is also allocated for member and observer States who may want to express their opinion on the outcome of the review and for national human rights institutions, NGOs and other stakeholders to make general comments.

### Follow-up

The State has the primary responsibility for implementing the recommendations contained in the final outcome. The UPR ensures that all States are accountable for progress or failure in implementing these recommendations. During the second review the State is expected to provide information on what they have been doing to implement the recommendations made during the first review, as well as on any developments in the field of human rights. The international community will consult with the State concerned

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<sup>24</sup> United Nations Office of the High Commissioner for Human Rights (2008) *Information and Guidelines for Relevant Stakeholders on the Universal Periodic Review Mechanism*. Available at <http://www.ohchr.org/EN/HRBodies/UPR/Documents/TechnicalGuideEN.pdf> (accessed 26 September 2013).

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and assist in implementing the recommendations and conclusions regarding capacity-building and technical assistance. If necessary, the Council will address cases where States are not co-operating.

### Non-cooperation by States

The Human Rights Council will decide on the measures it would need to take in the case of ongoing non-cooperation by a State with the UPR.

**PART B: Member States of the African Union are required to submit Periodic Reports to ACHPR every two years. In order to avoid duplication of information, State Parties are also required to submit a Common Core Document that describes the constitutional and legal framework as well as other general and background information. Civil society organisations are encouraged to participate in the work of ACHPR.**

### 7. State Parties to the African Charter on Human and Peoples' Rights are required to submit Periodic Reports every two years.

Article 62 of the African Charter on Human and Peoples' Rights (ACHPR) requires that State Parties submit to ACHPR every two years 'a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognised and guaranteed by the present Charter'. In order to guide and structure these reports, ACHPR adopted in 1989 the Guidelines for National Periodic Reports under the African Charter.<sup>25</sup> The 1989 Guidelines were, however, seen as "too lengthy and complicated making compliance a matter of impossibility".<sup>26</sup> With this criticism in mind, ACHPR adopted, less than ten years later, the 1998 Guidelines for National Periodic Reports under the African Charter.<sup>27</sup> The 1998 Guidelines have effectively rendered the old (1989) Guidelines redundant although it remains unclear whether the 1998 Guidelines have replaced them, or if the new Guidelines are supplementary.<sup>28</sup> However, States should consult the 1998 Guidelines when preparing reports.

The 1998 Guidelines require the submission of an Initial Report (the first report), which should contain a brief history of the State, its form of government, the legal system and the relationship between the different arms of government. Included in the Initial Report should be a description of the constitution, the criminal code and key jurisprudence in respect of human rights standards. The Initial Report should also reflect on the major human rights instruments to which the State is party and a summary of steps taken to give effect to them.

<sup>25</sup> Fifth Session held in Benghazi, Libya, 3-14 April 1989.

<sup>26</sup> Viljoen, F. (2007) *International Human Rights Law in Africa*. Oxford: Oxford University Press, p. 372.

<sup>27</sup> 23<sup>rd</sup> Session held in Banjul, the Gambia, 20-29 April 1998.

<sup>28</sup> Heyns, C. (ed.) (2004) *Human Rights Law in Africa – Vol 1*. Leiden: Martinus Nijhoff Publishers, p. 507. A third set of guidelines known as the 'Dankwa document' also exists, but it has never been adopted by ACHPR and is thus not dealt with here [Viljoen, F. (2007), p. 372]. See also Evans, M., Ige, T. and Murray, R. (2002) 'The reporting mechanism of the African Charter on Human and Peoples' Rights'. In Evans, M. and Murray, M. (eds) *The African Charter on Human and Peoples' Rights: The System in practice, 1986-2000*. Cambridge: Cambridge University Press, p. 45.



The 1998 Guidelines do not specifically mention persons deprived of their liberty and only require that States report on how the State Party is implementing civil and political rights.<sup>29</sup> The 1989 Guidelines did, however, clearly state that the right to be free from torture is part of an individual's civil and political rights. The 1998 Guidelines also require States to report on specific groups (women, children and people with disabilities) but do not list persons deprived of their liberty as a vulnerable group.<sup>30</sup> The 1998 Guidelines do, however, require reporting on steps taken to protect individual rights and measures taken to promote human rights education, as required by article 25 of AChHPR.

A particular challenge in respect of State reporting is infrequency. Very few States have met the two-year reporting requirement.<sup>31</sup> If, however, all 53 State Parties were to submit all their reports on time, ACHPR would have to deal with at least 13 Periodic Reports in every session. Based on recent history, this is clearly not possible. Unfortunately, most State Parties are late in their reporting.

### **8. Initial and Periodic Reports should provide ACHPR with an up to date description of measures taken to implement the rights contained in AChHPR.**

The most important aim of Initial and Periodic Reports submitted under article 62 is to provide ACHPR with an accurate description of the measures taken by States to guarantee the rights protected by AChHPR. Reports should also include the challenges that the State Party has met in implementing the provisions of AChHPR, or may meet in the future. This description, submitted through the Periodic Reports, should guide the dialogue between ACHPR and the State Party. State Party reports are considered during the Ordinary Sessions of ACHPR, normally held around April and October each year.

If the aim of state reporting is to facilitate substantive dialogue between State Parties and ACHPR on the realisation of rights, the Periodic Reports should support this. For this to happen it will be necessary for ACHPR to clarify the differences between the existing 1989 and 1998 Guidelines and provide States with clear and precise guidelines on what should be reported on.

### **9. State Parties should use the Robben Island Guidelines and other instruments to guide reporting on measures taken to prevent and eradicate torture and other ill treatment.**

State Parties should use the Robben Island Guidelines<sup>32</sup> (RIG) to structure their reports on the prevention and eradication of torture and other ill treatment. The Robben Island Guidelines focus on measures aimed

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<sup>29</sup> African Commission on Human and Peoples' Rights (1998) *Guidelines for National Periodic Reports under the African Charter*, Guideline 4(a).

<sup>30</sup> African Commission on Human and Peoples' Rights (1998) *Guidelines for National Periodic Reports under the African Charter*, Guideline 5.

<sup>31</sup> Please see the statuses on submission of State Initial/Periodic Reports to ACHPR at: African Commission on Human and Peoples' Rights (no date) *State Reports*. Available at <http://www.achpr.org/states/reports-and-concluding-observations/> (accessed 26 September 2013).

<sup>32</sup> Adopted at the 32<sup>nd</sup> Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul, The Gambia, ACHPR/Res.61 (XXXII) 02.

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at the prohibition and prevention of torture and other ill treatment and thus form a critical component of protecting prisoners' rights.

Other instruments such as the Resolution on Prisons in Africa (1995)<sup>33</sup> and the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa (2003)<sup>34</sup> (the Ouagadougou Declaration) can also guide States in reporting to ACHPR. In an important development, the Ouagadougou Declaration identified key problem areas, and included a plan of action under the following headings:

- Reducing the prison population
- Making African prisons more self-sufficient
- Promoting the reintegration of offenders into society
- Applying the rule of law in prison administration
- Encouraging best practice
- Promoting an African Charter on Prisoners' Rights
- Looking towards the United Nations Charter on the Basic Rights of Prisoners for guidance

While the Ouagadougou Declaration is not as comprehensive as some may want, it will still provide a legitimate and sensible structure for state reporting on prisons and prison reform. Also, of the seven key priorities listed above, only the first five would fall directly within the mandate of State Parties, as the promotion of an African Charter on Prisoners' Rights and a UN-driven Charter on the Basic Rights of Prisoners would more appropriately fall within ACHPR's mandate.

### 10. Civil society organisations are encouraged to participate in the work of ACHPR.

In the spirit of article 45 of ACHPR, civil society organisations and NGOs holding observer status<sup>35</sup> with ACHPR are permitted to submit information and make oral statements in response to general human rights issues as well as in response to State Party reports. ACHPR may also formally or informally interact with civil society organisations and ask for information from them.<sup>36</sup> Statements to be delivered during the public sessions of ACHPR should be submitted in advance.

### 11. Responding to the Follow-up Letter and Concluding Observations from ACHPR

In recent years state reports have been placed on ACHPR's website in advance of Ordinary Sessions, which was not the case in the past and is thus a substantial improvement. Following the review of a State Party report, ACHPR shall draft Concluding Observations and send these to the State Party. These Concluding

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<sup>33</sup> Adopted at the 17<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights, Lomé, Togo, ACHPR/Res.19 (XVII) 95.

<sup>34</sup> Adopted at the 34<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul, The Gambia, ACHPR/Res.64 (XXXIV) 03.

<sup>35</sup> NGOs may be granted observer status by ACHPR with reference to Rule 68 of its Rules of Procedure and the Resolution on the Granting of Observer Status (Res.31 Banjul, 31st October 1998).

<sup>36</sup> Rules of Procedures of the African Commission on Human and Peoples' Rights, Adopted on the 6<sup>th</sup> of October 1995, Rules 75-76.

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Observations may also identify concerns requiring urgent attention.<sup>37</sup> Ideally, these should be distributed widely and will also be available from the ACHPR website. The Concluding Observations should be used to facilitate dialogue between domestic stakeholders on improving the human rights situation in the country.

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<sup>37</sup> Rules of Procedure of the African Commission on Human and Peoples' Rights, Rules 77-78, Approved by the African Commission on Human and Peoples' Rights during its 47<sup>th</sup> ordinary session held in Banjul (The Gambia) from May 12-26, 2010. Available at <http://www.achpr.org/instruments/rules-of-procedure-2010/#ch1.9> (Accessed 29 September 2013).

## DIP D THE DUTY TO REPORT Checklist

**How to use the Checklist:**

- This Checklist should be used together with the Guidance Note for DIP B. If anything is uncertain or unclear, look at the Guidance Note for more information. The structure of the Checklist follows the structure of the Guidance Note.
- At the end of the DIPs there is a Glossary of Terms that may also help to clarify particular points.
- The DIP covers a broad range of topics, and especially civil society organisations may not have access to all the information that the Checklist may request. For this reason, before you complete the Checklist, try to find out how the DIP will be used and what the focus of the responses will be. For example, the focus may only be on prisons or police detention. Having a clear focus will help you to respond appropriately to the questions.
- Note that the responses to some questions will stay the same for a long period of time (e.g. if certain laws are in place), whilst others may require more regular updating. Questions to which responses may remain the same for a long period are shaded in. You are therefore advised to see the DIP as a living document that can be used as part of State Party reporting to treaty monitoring bodies.
- The second column, headed 'Requirement', sets out the questions to be answered. These are based on the obligations and standards contained in UNCAT, RIG and other international and regional human rights instruments. These obligations and standards are explained in more detail in the relevant Guidance Note.
- The third column, headed 'Response', requires a 'Yes', 'No', or 'Partial' answer to be given. That can be shortened to Y, N or P.
- In the fourth column headed 'Description & Motivation for Response', more information should be given to support and supplement the answer given in the previous 'Response' column. For example, the specific article within a law or regulation, case law, or information from a report or statement from the government, national human rights institution, civil society organisation, treaty body, etc.
- The fifth column, headed 'Achievements & Challenges', provides an opportunity to write about what happens in practice. Any examples of good practice can be recorded, along with details of any problems with the implementation of the 'Requirements' listed in column two, for that sub-section.
- The sixth column headed 'Proposals for Reform', provides an opportunity to suggest any practical means or measures that could be taken to address any challenges with implementing the 'Requirements' listed in column two. It can also be used to list any technical assistance that may be required in order to implement the 'Requirements' fully.

	Name of organisation(s) completing the DIP
	Name of responsible person
	Date last updated



## DIP D: The Duty to Report - Checklist

**PART A: State Parties to UNCAT are required to submit an Initial Report within 12 months of ratification and thereafter Periodic Reports every four years. In order to avoid duplication of information, State Parties are also required to submit a Common Core Document that describes the State's constitution and legal framework as well as other general and background information. Civil society organisations are encouraged to participate in the work of CAT. The Universal Periodic Review mechanism requires States to report to the Human Rights Council every four years.**

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
<b>Regularity of reporting to CAT</b>					
1.	Has the Initial Report been submitted?				
2.	Is the Initial Report accessible?				
3.	Have all the Periodic Reports been submitted as scheduled by CAT?				
4.	Are the Periodic Reports accessible?				
5.	Has the Common Core Document been submitted? [See Guidance Note Part A section 2]				
6.	Is the Common Core Document up to date?				
<b>Content and quality of reports to CAT</b>					
7.	Do the Initial and/or Periodic Reports cross-refer to the Common Core Document?				
8.	If submitted, do the Periodic Reports respond to the matters raised in the List of Issues? <sup>1</sup>				

<sup>1</sup> The List of Issues is circulated by CAT prior to the State Party Report becoming due and should be used to structure Periodic Reports. The List of Issues does not apply to Initial Reports.

## DIP D: The Duty to Report - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
9.	Does the Initial or last Periodic Report report on the following:				
	a. The actions of the executive				
	b. Proactive measures put in place (e.g. training programmes)				
	c. The distribution of functions in the executive				
10.	d. An assessment of the effectiveness of measures taken to implement the provisions of UNCAT				
	Does the Initial or last Periodic Report report on both achievements and problem areas?				
11.	If submitted, does the last Periodic Report report on achievements made based on the recommendations made by CAT in its Concluding Remarks and Observations?				
	<b>Stakeholder participation in reporting to CAT</b>				
12.	Have any civil society organisations made any submissions on drafting the content of the List of Issues?				
13.	Has the National Human Rights Institution made a submission on				



## DIP D: The Duty to Report - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	drafting the content of the List of Issues?				
14.	Was the List of Issues widely distributed inside and outside of government?				
15.	Is there a particular ministry or state official responsible for distributing the List of Issues?				
16.	Were civil society organisations invited by government to make submissions and participate in the drafting of the Initial or last Periodic Report?				
17.	Was the National Human Rights Institution invited by government to make submissions and participate in the drafting of the Initial or last Periodic Report?				
18.	Did civil society organisations make submissions (known as shadow reports) to CAT in respect of the Initial or last Periodic Report?				
19.	Did the National Human Rights Institution make submissions (known as Shadow Reports) to CAT in respect of the Initial or last Periodic Report?				

## DIP D: The Duty to Report - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
<b>Responding to the Concluding Remarks and Observations by CAT</b>					
20.	Were CAT's Concluding Remarks and Observations following the Initial or last Periodic Report distributed widely inside and outside of government?				
21.	If "Yes", who distributed the Concluding Remarks and Observations?				
22.	Is there a forum or are there opportunities for dialogue domestically for government, National Human Rights Institutions and civil society organisations to engage on the Concluding Remarks and Observations of CAT following the Initial or last Periodic Report?				
<b>Participation in the Universal Periodic Review</b>					
23.	Has the State been reviewed under the Universal Periodic Review (UPR) process?				
24.	Is the State up to date in submitting its report to the UPR process?				
25.	Does the last report to the UPR discuss measures taken to prevent and eradicate torture and other ill treatment?				



## DIP D: The Duty to Report - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
26.	Did the State accept the recommendations made during the last UPR session?				
27.	If accepted, were there opportunities for dialogue on these recommendations between the State, civil society organisations and the National Human Rights Institution?				

**PART B: Member States of the African Union are required to submit Periodic Reports to ACHPR every two years. In order to avoid duplication of information, State Parties are also required to submit a Common Core Document that describes the constitution and legal framework as well as other general and background information. Civil society organisations are encouraged to participate in the work of ACHPR.**

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
<b>Regularity of reporting to ACHPR</b>					
28.	Have all the Periodic Reports been submitted to ACHPR as scheduled? [See Guidance Note Part B section 7]				
<b>Content and quality of reports to ACHPR</b>					
29.	Did the last State Report specifically report on measures taken to give				

## DIP D: The Duty to Report - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
30.	<p>effect to Article 5 of the African Charter on Human and Peoples' Rights?</p> <p>Did the last State Report specifically report on measures taken to give effect to the Robben Island Guidelines?</p>				
31.	<p>Did the last State Report discuss the following as they relate to implementing the provisions of the Robben Island Guidelines:</p> <p>a. The actions of the executive</p> <p>b. The distribution of functions in the executive</p> <p>c. Proactive measures put in place (e.g. training programmes)</p> <p>d. The assessment of the effectiveness of measures taken</p>				
32.	<p>Did the last State Report report on the following:</p> <p>a. Both achievements and problem areas</p> <p>b. Achievements made in respect of recommendations made by ACHPR in Concluding Observations</p>				

## DIP D: The Duty to Report - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
<b>Stakeholder participation in reporting to ACHPR</b>					
33.	Were civil society organisations invited by government to make submissions and participate in the drafting of the State Report?				
34.	Was the National Human Rights Institution invited by government to make submissions and participate in the drafting of the last State Report?				
35.	Did any civil society organisation make any submissions on the last State Report?				
36.	Did the National Human Rights Institution make any submissions on the last State Report?				
<b>Responding to the Follow-up Letter and Concluding Observations from ACHPR</b>					
37.	Were the Follow-up Letter and Remarks from the Commission distributed widely, or are they available to the public?				
38.	Is there a forum or are there opportunities for dialogue domestically for government, National Human Rights Institutions and civil society organisations to engage on the Follow-up Letter and				

## DIP D: The Duty to Report - Checklist

Nr.	Requirement	Response: Yes/No/ Partially	Description & Motivation for Response	Achievements & Challenges	Proposals for Reform
	Remarks from ACHPR following the State's last Periodic Report?				





# GUIDANCE ON REPORTING TO CAT AND ACHPR

## Guidance on reporting to CAT

### Introduction

The Guidance Note for DIP D provides an overview of States' reporting obligations in accordance with Article 19 of UNCAT.

Rather than duplicate the information contained in the Guidance Note for DIP D, this section builds on that information by providing practical guidance on the content of State Parties' reports to CAT, and guidance for National Human Rights Institutions (NHRIs) and Civil Society Organisations (CSOs) in the preparation of their supplementary, or 'shadow', materials.

### State Parties: Initial Reports

CAT has issued guidelines on the form and content of State Parties' initial reports. The guidelines provide that the initial report should build on, and not repeat, what is already contained in the 'Common Core Document'. The report should therefore provide *recent, specific, and evidence-based* information related to the *practical implementation* of the UNCAT at all levels of government, and *challenges that affect the fulfilment* of the UNCAT obligations.<sup>1</sup>

The focus for States in the drafting of initial reports should be the extent to which the report provides the Committee with the information necessary to make a well-informed assessment of the current situation. The focus should therefore not be to describe the applicable legal framework, but rather to provide evidence to allow CAT to understand the achievements and challenges in the implementation of the country's legal framework. Therefore, CAT requests that State Parties provide the following type of information in addition to an overview of the legal framework:

- actions of the executive, including proactive measures and distribution of the functions of the executive;
- assessment, both quantitative and qualitative (including disaggregated data), of the effectiveness of UNCAT implementation measures; and
- relevant documentation by private or public institutions to support assertions made in the State Party's report.

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<sup>1</sup> UN Committee against Torture (2005) *Guidelines on the form and content of initial reports under Article 19 to be submitted by states parties to the Convention against Torture*, CAT/C/4/Rev.3, 18 July 2005, paras 3 and 5. See also DIP D, sections 2 and 3.

# Guidance on Reporting to CAT and ACHPR

## State Parties: Periodic Reporting

CAT has also issued guidelines on Periodic Reports submitted pursuant to Article 19(1).<sup>2</sup> The Guidelines require States to build on the information already contained in the Common Core Document and the Initial Report to CAT (in addition to previous Periodic Reports to CAT, where relevant). Specifically, it should contain *recent* (i.e. since the Initial Report or last Periodic Report), *specific*, and *evidence-based* information in relation to:

- data on the number of persons deprived of their liberty, and other relevant statistical information;
- new measures taken to implement the UNCAT with an assessment of their effectiveness in both qualitative and quantitative terms;
- challenges that prevent the State from fulfilling its UNCAT obligations, and the structural and practical reasons for these challenges;
- new developments that have occurred and are relevant to UNCAT obligations, with an assessment of their effectiveness in both qualitative and quantitative terms;
- legislative reform, particularly in relation to places of detention and training for law enforcement and medical personnel, and their impact, both qualitative and quantitatively;
- new judicial decisions relevant to the implementation of the UNCAT, and their impact;
- measures taken in relation to complaints, compensation, reparation, compensation, legal or other disciplinary proceedings, and sentences for torture or other ill-treatment – including statistical data in relation to each of these;
- administrative, legislative, policy and practical measures taken to implement CAT's previous conclusions and recommendations; and
- any other additional information requested by CAT (unless that information has already been provided to CAT in the intervening period).

The state report should provide information on each of Articles 1 to 16 of UNCAT, and present the information for each Article in the same order as it appears in the UNCAT.

## State Reports: Optional Reporting Procedure

Since 2004, CAT has offered an optional reporting procedure, which States may choose to engage. Rather than provide a Periodic Report as described in the section above, the State Party can respond to a List of Issues Prior to Reporting (LOIPR) that will be provided to the State by CAT. The information provided should also be *recent* (i.e. since the Initial Report or last Periodic Report), *specific*, and *evidence-based*. This procedure is described in section 4 of DIP D.

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<sup>2</sup> UN Committee against Torture (1998) *General guidelines regarding the form and contents of periodic reports to be submitted by States Parties*, UN Doc CAT/C/14/Rev.1. See also DIP D, section 3.



### NHRI and Civil Society Organisations Participation and Reporting

During the preparation of the Initial Report, Periodic Report or response to the LOIPR, CAT encourages State Parties to conduct broad-based consultations with stakeholders, including specifically with NHRIs and CSOs.<sup>3</sup> These consultations should provide stakeholders with an opportunity to review and critique the state report; and the State Party should take these views and recommendations into account in the development of the final report for submission to CAT.

This consultation process should encourage a contextualised and balanced state report that reports not only on achievements, but also on the challenges, in relation to implementation of UNCAT. Effective NGO engagement with the treaty review process has been recognised as enhancing “the relevance, efficiency and impact of treaty bodies’ work and contribut[ing] constructively to States’ understanding and implementation of their international human rights obligations.”<sup>4</sup>

Once a State Party has submitted its Initial or Periodic Report, NHRIs and CSOs can submit written information to CAT in the form of ‘alternative’ or ‘shadow’ reports.<sup>5</sup> NHRIs and human rights NGOs are often the authoritative voices on human rights situations on the ground, and have an important role to play in providing information and assessments to the Committee on the *practical* implementation of UNCAT measures.

There is no set form, and no word limit, for alternative reports to CAT, and submissions can provide information on each Article, or on a specific theme, and can consider the progress of implementation of previous CAT conclusions and recommendations. However, as for State Parties, evidence-based and accurate reports that provide recent and specific analysis on the challenges associated with a State’s implementation of UNCAT obligations will be most likely to provide CAT with the necessary information to make a well-informed and balanced assessment of the current situation. Well referenced (using reliable statistical information), and evidence-based alternative reports will best promote this aim.

Alternative and shadow reports can also highlight issues that NHRIs or CSOs believe are priority issues for UNCAT implementation, including issues that have been excluded from the State Party report.

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<sup>3</sup> UN Committee against Torture (2005) *Guidelines on the form and content of initial reports under Article 19 to be submitted by state parties to the Convention against Torture*, CAT/C/4/Rev.3, 18 July 2005, [4]. See also DIP D, section 5.

<sup>4</sup> *Pretoria Statement on the Strengthening and Reform of the UN Human Rights Treaty Body System* (June 2011), 3. See also Ngaire Wood, ‘Good Governance in International Organisations (1999) 5 *Good Governance* 39, which discusses the importance of ‘participation’, ‘accountability’ and ‘fairness’ to the good governance of UN agencies.

<sup>5</sup> UN Committee against Torture (2002) *Rules of Procedure*, CAT/C/3/Rev.4, 9 August 2002 [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/1447cc84665815d5c1256c4700309a65/\\$FILE/G0244257.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/1447cc84665815d5c1256c4700309a65/$FILE/G0244257.pdf) Rule 62(1).

## Guidance on reporting to the African Commission

### Introduction

The Guidance Note for DIP A provides an overview of States' reporting obligations in accordance with Article 62 of AChHPR.<sup>6</sup>

Rather than duplicate the information contained in the Guidance Note for DIP D, this section builds on that information by providing practical guidance on the content of State Parties' reports to the ACHPR, and guidance for NHRIs and CSOs in the preparation of their supplementary, or 'shadow', materials.

### State reporting

The ACHPR has issued reporting guidelines for national periodic reports under the AChHPR. Article 62 of the AChHPR requires States to report every two years on the legislative and other measures taken to implement the Charter. As with reports to CAT, the purpose of state reports to the ACHPR is to provide information on the achievements and challenges in a way that the Commission can make a well-informed assessment of the current situation of human rights in the State.

State Parties should include the following information (including both qualitative and quantitative data and analysis, as appropriate) in their Initial Report to facilitate a well-informed review by the ACHPR:<sup>7</sup>

- brief history of the State;
- political and legal structures (including form of government, form of legal system, and relationship between the different arms of government);
- description of the Constitution, criminal code and key court decisions in respect of human rights standards;
- major human rights instruments to which the State is a party, and summary of steps taken to give effect to these instruments (which should include UNCAT if the State is a party);
- implementation of civil and political rights – and in relation to torture and other ill-treatment, reporting should systematically and thoroughly address each of the requirements of the Robben Island Guidelines,<sup>8</sup> the Resolution on Prisons in Africa (1995),<sup>9</sup> and the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa (2003) (the Ouagadougou Declaration).<sup>10</sup> In particular, state reports should include discussion, as per the

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<sup>6</sup> See DIP D, section 7.

<sup>7</sup> *Guidelines for National Periodic Reports under the African Charter* (1998) Guideline 5. See also DIP D, sections 8 and 9.

<sup>8</sup> Adopted at the 32<sup>nd</sup> Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul, The Gambia, ACHPR/Res.61 (XXXII) 02.

<sup>9</sup> Adopted at the 17<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights, Lomé, Togo, ACHPR/Res.19 (XVII) 95.

<sup>10</sup> Adopted at the 34<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul, The Gambia, ACHPR/Res.64 (XXXIV) 03.



## Guidance on Reporting to CAT and ACHPR

Ougadougou Declaration plan of action, about measures taken, and challenges faced, in relation to reducing the prison population, making African prison more self-sufficient, promoting the reintegration of offenders into society, applying the rule of law in prison administration, encouraging best practice, and promoting an African Charter on Prisoners' Rights; and

- achievement and challenges in implementing Charter rights of individuals, specific vulnerable groups (women, children and the disabled); and
- measures taken to promote human rights education;

Subsequent periodic reports should build on, and not repeat, this information. The guidance on the content of subsequent reports to CAT provided earlier in this document also apply here. In summary, good practice periodic reporting should contain information and analysis that is *recent* (i.e. since the Initial Report or last Periodic Report), *specific*, and *evidence-based* (including qualitative and quantitative data) in relation to legislative, administrative, policy and practical achievements and challenges in the implementation of Charter rights.

### Civil Society and NHRI participation

Unlike the CAT review process, there is no formal procedure for written submissions by NHRIs and CSOs. However, organisations with observer status<sup>11</sup> may make oral statements during ACHPR sessions in response to State Party reports. The ACHPR tries to make these statements available on their website.<sup>12</sup>

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<sup>11</sup>Non-governmental organisations may be granted observer status by the ACHPR with reference to Rule 68 of its Rules of Procedure and the Resolution on the Granting of Observer Status (Res. 31 Banjul, 31st October 1998).

<sup>12</sup> See also DIP D, section 10.

# GLOSSARY OF TERMS



Actor	A person or organisation that carries out an action. A state actor is a person employed by, or acting on behalf of, the State (a public official), or an organisation within the State (e.g. a government department).
Administrative sanctions or procedures (for obtaining redress)	<p>Methods for victims of violations to obtain redress from the State, other than through the normal trial process and without intervention by a court or tribunal. These methods can include restitution, compensation, rehabilitation, satisfaction, guarantees of non-repetition and any number of alternative dispute resolution methods, including mediation, arbitration or conciliation.</p> <p>An administrative procedure is usually taken in relation to an 'administrative act', which is a decision, or refusal to make a decision, by a state official and which is subject to review either internally, or externally by the courts.</p>
Amnesty	A pardon granted by the government to a group or class of people who have committed an offence/s. When amnesty is granted, the government is not saying that the offence/s did not take place, but it agrees not to arrest and prosecute the perpetrators, or if they have already been convicted and sentenced, it agrees to expunge the record of conviction.
Arrest	The act of apprehending or taking into custody a person suspected of having committed a criminal offence, done in accordance with legal provisions that prescribe when and how a person may be deprived of their liberty.
Attempt	An unsuccessful act. For example, 'attempted torture' means that the perpetrator tried to torture the victim, but did not succeed in carrying out the torture. This is still a crime.
Audit (national compensation fund)	A systematic and independent evaluation of the performance and management of the fund.
Cell occupation	The number of inmates that sleep in a cell.
Charge	A formal accusation against an individual claiming that he/she has committed an offence. This is the first step required to prosecute an alleged offender.
Civil procedures (for obtaining redress)	Non-criminal legal action initiated by private individuals (claimants) for their own benefit, or by organisations on behalf of claimants. Civil procedures are carried out in civil, rather than criminal courts, which may award redress to the claimant, such as restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
Civil society organisation	An organisation, institution, foundation, trust or association, whether formally convened or ad-hoc, which is independent from the government, that represents the interests of a particular section of society, or a particular social issue. This can include non-governmental organisations, faith-based groups, trade unions, and <i>ad hoc</i> civilian advocacy organisations.

## Glossary of Terms

Code of conduct	A set of values and principles that may be supported by more specific rules and guidelines outlining the proper conduct for individuals within an organisation.
Commentary (on treaties)	An in-depth and authoritative analysis of a treaty, containing explanations of all or some of the provisions of the treaty. Commentaries may also contain suggestions for how States can practically meet their obligations under the treaty.
Common Core Document	A document provided to UN treaty monitoring bodies and to the ACHPR by State Parties that sets out an overall description of a State's historical, constitutional, legal and policy provisions as they relate to the protection of human rights, and a description of the human rights situation in the territories of the State. The purpose of this document is to avoid States having to repeat this information in subsequent Periodic Reports to treaty monitoring bodies.
Compensation	A monetary amount determined by a court or through alternative dispute resolution for all economically quantifiable damages caused to the victim by or as a result of a human rights violation. This could cover the value of actual money and property taken from the victim, but also legal and medical expenses incurred by the victim following the violation, future rehabilitative services that the victim needs, loss of future income, expenses incurred when filing a complaint and obtaining full redress, and compensation for physical and/or mental harm caused.
Complaints mechanisms	<p>A body to which a victim of a human rights violation, or an interested party on behalf of a victim, can lodge an official complaint.</p> <p>In relation to detainees, an external complaints mechanism is a body to which a detainee can report an offence (against them, or another person in the facility), that does not work for the detention facility, or for the government department whose responsibility the facility falls under.</p> <p>In relation to detainees, an internal complaints mechanism is body to which a detainee can report an offence (against them, or another person in the facility), that works for the detention facility, or for the government department whose responsibility the facility falls under.</p>
Complicity	Complicity refers to at least tacit consent to a crime, any cover-up of a crime and concealment of a crime. It also refers to consent to, or concealment of, attempted crimes.
Concluding Observations and Remarks	After a UN treaty monitoring body or the ACHPR has reviewed a State Party's Initial or Periodic Report, it makes Concluding Observations and Remarks, in which it discusses the content of the report. These deal both with positive issues and with problematic aspects of the report, and provide an agenda for future engagement with the issues.



## Glossary of Terms

Corporal punishment	Any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light, as a means of discipline or sanction.
Court	A tribunal within a government judicial system that has the authority to adjudicate and decide upon legal disputes between parties and carry out the administration of justice in civil, criminal, and administrative matters, in accordance with domestic and applicable international law.
Criminal procedure	The framework of laws and rules governing the administration of justice in cases where an individual has been accused of and charged with a crime. The procedure begins with the initial investigation of the crime and may conclude with the acquittal of the accused (a judgment of not guilty), or with a conviction and the imposition of a sentence.
Custodial sentence	A criminal sentence of imprisonment in a designated prison, handed down by a court.
Custody register	A register that records who is held in a particular detention facility, and at least when they were admitted to the facility, when they were transferred or released, and any other particular details to ensure that they are properly identified.
Customary law	Customary international law derives from the practice of States and is unwritten. The International Court of Justice accepts customary (international) law to be 'international custom, as evidence of a general practice accepted as law'. (Art 38(1)(b) Statute of the International Court of Justice)
Deprivation of liberty	Any form of detention or imprisonment or the placement of a person in a public or private custodial setting, which that person is not permitted to leave at will, by order of any judicial, administrative or other authority.
Derogate (derogable and non-derogable)	To derogate from, in human rights law, means to depart from or dilute or limit a right. A non-derogable right is a right for which there is no legal basis that could allow a State to depart from, dilute or limit the particular requirements that protect that right.
Detainee	A person who has been deprived of their liberty. Typically, this refers both to people who have been arrested but not yet tried in court (pre-trial detainees), and to people who have been found guilty of a crime and sentenced to imprisonment (prisoners). The term 'detainee' can also refer to persons detained under mental health or immigration laws.
Discrimination (unfair)	The prejudicial and/or distinguishing treatment of an individual based on their actual or perceived membership in a group or category of people. This treatment is always worse than how a person not perceived to be part of the group or category would be treated.

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Domestic law	The internal laws of a sovereign State (including the Constitution, legislation, or common law and precedent, where relevant) that apply only to the persons within or subject to that sovereign State's authority.
Domestication	The inclusion of international laws, and of obligations under international and regional treaties, in domestic laws, policies and practices. This includes criminalising acts that are considered to be illegal under international law (for example, making torture a crime in domestic law), and introducing policies to enforce treaties (for example, officially including the prevention of torture in police training curricula, to meet the UNCAT obligation to train officials on the prevention of torture).
Duty (on a State)	<p>A requirement that a State must fulfil in order to be compliant with a convention or treaty that it has signed and ratified. This could be a positive duty (to do something) or a negative duty (to not do something).</p> <p>UNCAT gives rise to four broad duties on States and each of these gives rise to one or more obligations.</p>
Electro-shock equipment	Weapons used for incapacitating a person by administering electric shocks. For example, stun guns, stun batons and electro-shock belts.
Enforced disappearance	<i>The International Convention for the Protection of All Persons from Enforced Disappearance</i> defines enforced disappearance as 'the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.'
Evidence	Things used to prove that something happened. This can include objects, photographs, medical records, forensic evidence, audio and video recordings and written or oral testimony.
Exceptional circumstances	Conditions under which a State or state official may be given additional powers in order to alleviate or mitigate unforeseen or unconventional problems. For example, a state official may be granted additional powers during a state of war or a threat of war, internal political instability or any other public emergency. However, under no circumstances may a State or state official be granted the power to use torture or other ill treatment.
Excessive use of force	The unnecessary use of physical, verbal and psychological tactics by security officials (police, military, prison officials and private security) to gain control over a person or group of people, when less severe measures could achieve the same goal.
Executive	The branch of government that has sole authority and responsibility for the daily administration of the State, and for executing the laws of the State. The executive is



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led by the Head of State (usually the President or Prime Minister).

- Expunged** A criminal record (of one or more crimes) is expunged when it is destroyed or sealed. It is as if the criminal act/s did not occur. This is different from a pardon or amnesty.
- Extradition** The transfer of a suspected or convicted offender from one State where the offender is physically present to another State that has jurisdiction over the offender, for the purpose of prosecuting and/or enforcing the sentence against the offender in the second State.
- Fact finding mission (ACHPR)** See definition of 'Investigation'.
- Follow-up Letter and Remarks** After the ACHPR has examined a State report, the Commission usually sends a Follow-up Letter to the State concerned, summarising the examination and highlighting questions that were not satisfactorily answered in the report, if any.
- Functional immunity** Exemption from prosecution for senior State officials for acts committed as part of their official duties which would otherwise constitute a prosecutable act in that person's country, or in another country. The immunity is permanent (i.e. if the person leaves their position in the State, they will still be immune from prosecution).
- Guarantees of non-repetition** Measures to ensure that human rights violations will not take place in the future. These are usually broad policy measures, implemented at an institutional level, and implemented by the State. For example, training of state officials in the prevention of torture.
- Hard or forced labour** Hard labour is compulsory physical labour imposed in addition to or as part of a sentence of imprisonment.
- CAT has held that hard labour can amount to cruel, inhuman or degrading treatment or punishment. However, the United Nations Standard Minimum Rules for the Treatment of Prisoners and two International Labour Organization conventions make exceptions to this in respect of compulsory labour performed by sentenced prisoners.
- Forced labour is 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily' (article 1 of the International Labour Organization's Convention concerning Forced or Compulsory Labour).
- Although forced labour is allowed in certain circumstances, the International Labour Organization's Abolition of Forced Labour Convention lists several circumstances in which it may not be used.

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Human rights violation	The infringement upon or breach of a fundamental and inalienable right to which all human beings are entitled, under international law. The UN Universal Declaration of Human Rights lists the core human rights.
Impartial	A person, organisation or investigation is regarded as impartial when it makes decisions or is conducted based on objective criteria, free from undue bias. Impartiality is a concept that is closely interlinked with independence.
Impunity	The UN Human Rights Commission defines impunity as “the impossibility, <i>de jure</i> or <i>de facto</i> , of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims”.
Incommunicado detention	Incommunicado detention is a form of detention in which a detainee is isolated from all other people, except for the detention facility staff and fellow detainees. They are not allowed to see or have any communication with people from outside the facility, such as family members, friends, lawyers, external healthcare professionals or external religious leaders.
Independent	<p>A person or group of people (e.g. the judiciary) or organisation (e.g. an oversight body) is independent when it is not accountable to any other group of people or organisation other than a parliament, and thus can make decisions without external influence. An investigation is independent, when it is not in the hands of bodies or persons who have close personal or professional links with the alleged perpetrators. Financial independence is also an important part of overall independence; when an independent group or organisation controls its own finances, it cannot be manipulated financially.</p> <p>Independence and impartiality as concepts that are closely interlinked.</p>
Individual communications (UN and ACHPR)	A complaint to a UN treaty monitoring body (e.g. CAT, the UN Human Rights Committee) or the ACHPR, made by an individual against a State Party, claiming that his/her rights have been violated by the State Party.
Initial Report	The first report States submit to UN treaty monitoring bodies after ratifying the relevant treaty, and the first report States submit to the ACHPR after ratifying the African Charter on Human and Peoples’ Rights.
Interrogation/ interview	Asking questions for the purpose of obtaining information from the person being questioned. In criminal cases, this involves state officials – such as police officers, intelligence officers and military officials – questioning a suspected offender or witness or any person that might have information regarding an offence. In civil cases, interrogations or interviews take the form of a pre-hearing process, in which a party asks written questions of their opponent, which must be answered under oath.



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Inter-State communications (UN and ACHPR)	A complaint made to a UN treaty monitoring body (e.g. CAT, the UN Human Rights Committee) or the ACHPR by one State Party against another State Party, claiming that the second State Party has failed to comply with a provision or provisions of a UN treaty or the ACHPR.
Intimidation	Intimidation is the act of making someone afraid. Generally, proof of actual fear is not required to establish that intimidation was used. It may be inferred from actions, words, or circumstances that could reasonably be said to have been used in order to make someone afraid.
Investigation (UN or ACHPR)	<p>UN: An investigation by a UN inquiry team (usually including a Special Rapporteur or Working Group members) to a country after well-founded information has been received by a treaty monitoring body indicating that human rights abuses are systematically practiced by a State Party. An investigation may include a visit to the State Party by the inquiry team. An investigation may be conducted on the initiative of the treaty monitoring body; it is therefore not dependent upon receiving a formal complaint.</p> <p>ACHPR: A fact-finding mission to a State Party by an ACHPR Commissioner(s), Special Rapporteur, or Committee member/s, for the purposes of collecting information about a particular human rights situation. Such a mission may be triggered by several individual complaints reporting to the ACHPR serious human rights violations committed by a State Party, or may follow a crisis in the State Party.</p>
Invitation (UN and ACHPR)	Written permission sent by a State Party to the Special Procedures of the UN and the Special Mechanisms of the ACHPR asking them to visit the country in order to inspect the human rights situation in the country. Invitations are usually made after a request to visit the country is sent to a State Party by a Special Mechanism.
Judicial independence	A judicial system in which judges are free to make decisions based on the facts and in accordance with the law without external restrictions, improper influences, inducements, pressures, threats or interferences. Judicial independence further presumes the existence of a separation of powers between the judiciary and the executive.
Jurisdiction	<p>The practical authority of a State to decide on legal matters, and the geographical area within which that decision can be applied and enforced.</p> <p>With regards to torture, States have jurisdiction over acts of torture when a) the torture is committed anywhere in the State's territory, b) when the alleged offender has the nationality of that State, and c) when the victim has the nationality of that State.</p>
Lawful action	An act that is considered legal under a State's law. Some acts may only be legal for some people to carry out. For example, only designated people (e.g. police officers, soldiers) may detain people, but most people are not allowed to detain other people

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against their will (that would be kidnapping). It is possible for something to be lawful in a State, but in contravention of international human rights law.

Lawful detention	The deprivation of a person's liberty according to the domestic laws and guidelines of a State – i.e. in an official place of detention, with respect for all the detainee's rights. It is possible for detention to be lawful in a State, but in contravention of international human rights law. For an act of detention to be considered 'lawful' within the meaning of UNCAT, it must be lawful under international law.
Legal aid	The provision of legal assistance and services by the State, often free of charge or at a reduced rate, to people who would otherwise be unable to afford legal representation and/or access to the judicial system. Legal aid aims to ensure the right to counsel for all people, and promotes equality before the law and the right to a fair trial.
Legitimate	When something or someone adheres to established and accepted rules, standards and practices.
Liberty	A person's agency and control over their own body and actions.
Life imprisonment	A sentence of imprisonment handed down by a court to a person found guilty of a serious crime, where the sentenced person is ordered to remain in prison for the rest of his/her life, or until parole is granted. The terms of the sentence of life imprisonment vary greatly between States.
List of Issues	UN treaty monitoring bodies send a 'List of Issues' to the State Party approximately one year before the consideration of the State Party's Periodic Report, listing all the human rights issues it would like the State Party to pay particular attention to in its report. Responding to the List of Issues complies with States' reporting requirements.
Mandatory objections and exclusions regarding extradition	Circumstances in which States are required by international law to refuse to extradite a person from their territory to another State, when sending that person to the State that requested them would likely result in the person's human rights being violated.
Means	A method, tool or process for doing something.
Medical professional bodies	Organisations (usually non-profit) with a mandate to further the medical profession, the interests of healthcare providers (doctors, nurses, hospital administrators, etc.), and the public interest as it relates to healthcare.
Members of the judiciary	Judges and magistrates working in a government judicial system.
Mutual assistance	The request by one State to one or more other States to assist in the investigation of a criminal matter, including allegations of torture and other ill treatment. Mutual assistance can include requests to assist with obtaining evidence (whether physical





## Glossary of Terms

evidence or by way of interrogation and interviews), locating or identifying persons, serving documents, and transferring prisoners.

### National Human Rights Institution (NHRI)

An administrative body established to protect and/or monitor human rights in a country. NHRIs are usually National Human Rights Commissions or Ombudsmen. NHRIs accept and investigate complaints regarding human rights abuses, and often also have a mandate to research and document human rights abuses, and to provide training and education about the protection of human rights. NHRIs also advise government departments, Parliaments and other relevant bodies on specific incidents of human rights violations, on issues relating to legislation and on the State's compliance with and implementation of international human rights instruments. NHRIs liaise with relevant national and international organisations and institutions. Some NHRIs are given quasi-judicial powers. NHRIs are often established by the constitution or in law, and should be independent from the government. International standards for NHRIs are contained in the Paris Principles, which outline the minimum conditions that NHRIs must meet in order to be considered legitimate and credible by other NHRIs and within the UN system.

### National Preventive Mechanisms (NPMs)

Independent national bodies designated, established or maintained by State Parties to the Optional Protocol to UNCAT (OPCAT), which have a mandate to visit all places of detention and make recommendations in accordance with the provisions of OPCAT.

### Non-judicial procedures (for obtaining redress)

Measures that do not rely on the orders of a judicial authority in order for them to be carried out.

### Non-refoulement

The principle of *non-refoulement* holds that 'no State Party shall expel, return ('*refouler*', in French), or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture', cruel, inhuman or degrading treatment or punishment or other human rights violations (article 3 of UNCAT).

### Non-state actor

A person, organisation or group that is not part of, supported by (implicitly or explicitly), or acting in an official capacity on behalf of a State.

### Non-state mechanism

A body or organisation that is not affiliated to the State. For example, non-governmental organisations, civil society organisations, academic institutions, private companies, etc.

### Obligation (on a State)

A task or action that a State is bound to perform for legal reasons, either derived from the State's ratification of a treaty or from customary law. This could be a positive obligation (to do something) or a negative obligation (to not do something).

UNCAT gives rise to four broad duties on States and each of these gives rise to one or more obligations.

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- Offence** A wrongful act or omission prohibited by the law.
- Officially designated places of detention** Places of detention listed and formally acknowledged by the State (see the list below under 'Places of detention' for examples of such places).
- An unofficial place of detention is any place where people are detained by state officials or with the knowledge or consent of the State, that is not officially acknowledged by or listed as being under the control of the State (e.g. a private home or apartment, military camp, secret prison, or a hidden part of a larger official facility).
- Other ill treatment** Torture is a form of ill treatment.
- 'Other ill treatment' refers to any cruel, inhuman or degrading treatment or punishment committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, that does *not* amount to torture as defined by article 1 of UNCAT. UNCAT does not define what these other forms of ill treatment could be, in order to provide the broadest possible protection for the security of the person. The difference between other ill treatment and torture is that unlike torture, other ill treatment may not have a purposive element (it is not used as a means to an end, like torture is, for example to obtain a confession), and/or it is not intentional, and/or because the pain and suffering it causes is not 'severe' within the meaning of article 1 of UNCAT. For example, CAT has held that poor conditions of detention, the use of hard labour, the use of chain gangs and the use of restraint chairs have amounted to other ill treatment. Whether an act amounts to torture or other ill treatment must be decided on a case-by-case basis. An act that CAT has stated constitutes cruel, inhuman or degrading treatment or punishment in one instance could amount to torture in another instance if it met the definitional requirements for torture under article 1 of UNCAT.
- Article 16(1) of UNCAT obligates State Parties to prohibit and prevent other ill treatment. As with torture, no exceptions whatsoever to this prohibition are allowed, even in states of emergency.
- Oversight** An oversight mechanism is a body (a person or organisation) that monitors another person or organisation to make sure that they comply with their mandate (do what they're supposed to do) and do not break any rules or laws. The person or organisation must account for their actions to the oversight mechanism.
- Pardon** A pardon is the forgiveness of a crime and the cancellation of the relevant penalty, if one has been ordered. Unlike an expunged record, a pardon does not eliminate any record of the crime; it only forgives the perpetrator for having committed the crime. A pardon is usually granted by a Head of State, or can be granted by an act of parliament.

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Peremptory norm	A peremptory norm of general international law is a norm accepted and recognised by the international community of States, as a norm from which no derogation is permitted. A peremptory norm can be modified only by a subsequent norm of general international law of similar character. (Article 53, Vienna Convention on the Law of Treaties 1969, 23 May 1969)
Periodic Report	The scheduled regular reports submitted to UN treaty monitoring bodies and the ACHPR, after the Initial Report has been submitted. These reports contain all information relevant to the State's adherence to the particular treaty being monitored by the treaty monitoring body to which the State is reporting. UN reports are submitted every four years, and ACHPR reports every two years.
Perpetrator	An individual who commits an illegal/criminal offence, and/or who violates another individual's human rights.
Person deprived of their liberty	A person who is under any form of detention or imprisonment or who is being held in a public or private custodial setting, who is not permitted to leave at will, by order of any judicial, administrative or other authority. This will include not only persons detained on suspicion of or on conviction of committing a criminal offence, but also persons held involuntarily in other settings such as mental health institutions, children's homes, and refugee centres.
Personnel	The people who work for an organisation, either as paid employees, reservists or volunteers.
Places of detention	Any facility or place where people are deprived of their liberty (detained) by virtue of an order given by a public authority or at its instigation, or with its consent or acquiescence. These include police stations, pre-trial/remand prisons, prisons, juvenile detention centres, immigration detention centres, refugee centres, border police facilities, transit zones, military detention facilities, security/intelligence service detention facilities, mental health care facilities, childcare facilities (such as orphanages and foster care homes) and substance abuse treatment centres.
Pre-trial detention	Also known as remand detention, pre-trial detention involves depriving an individual of his/her liberty before he/she has been tried by a court, usually because he/she is suspected of having committed an offence. Alleged offenders are usually detained pre-trial because a court has denied them bail, either because it deems them to be a flight risk, or a risk to society, or because it is concerned that they may interfere with evidence or witnesses, or because they are unable to pay the set bail amount.
Procedural safeguards	A set of rules followed in a criminal court, aimed at protecting accused persons' liberty wherever possible, and preventing any form of arbitrary arrest or detention.
Prohibition	When something is forbidden by law.

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Prompt investigation	An investigation started as soon as possible after a complaint is received, and carried out quickly and without unnecessary delays. It is vital that investigations be prompt, while victims', witnesses' and alleged offenders' memories are still fresh, and while it is still possible to collect evidence.
Proportionate	In proportion with; appropriate; correct in amount or degree.
Prosecution	Legal proceedings against a person accused of committing an offence.
Provision	A stipulation, condition or arrangement stated in a document.
Public official	Any person employed by the State or acting as an agent of the State.
Quasi-judicial institution	An individual or body, generally of a public administrative agency, with powers and procedures similar to those of a judge or court of law. These institutions objectively determine and assess the facts of a case, and make decisions about what official action should be followed. Such actions aim to remedy a situation, sometimes by imposing legal penalties, or ordering other forms of remedy. For example, arbitrators, tribunal boards, parole boards, national human rights committees, commissions of enquiry, etc.
Ratify (a treaty)	The act whereby a State indicates an intention to be legally bound by a treaty. The usual process of ratification is that (1) a State signs a treaty, indicating its consent to be bound to the terms of that treaty, (2) the State satisfies the requirements of its own national processes (e.g. a domestic constitutional or legislative provision that requires the legislature to formally agree to be bound), and (3) an instrument of ratification is prepared by the State and deposited with the UN.
Redress	Redress is comprised of a broad range of institutions the State must put in place, as well the services it must provide to victims of human rights violations. These institutions and services are not limited to financial compensation, but extend to rehabilitative services, measures of restitution and of satisfaction, as well as policy measures aimed at ensuring that acts of torture and other ill treatment do not take place in the future.
Refuge	A place of safety or protection.
Rehabilitation	Measures, including medical and psychological care and legal and social services, to allow a victim to be restored, as far as possible, with the 'functions' that he/she possessed before the violation occurred, or to be provided with 'new skills', in order for him/her to reintegrate into society as fully as possible.
Remand detention	See the definition of pre-trial detention.
Remedy	A remedy is a solution to a problem. With regard to redress for victims, remedy includes laws aimed at preventing and eliminating immunity for human rights violations, the establishment of complaints mechanisms and investigative bodies, independent judicial (courts) and quasi-judicial institutions, and the availability of



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mechanisms for providing the various forms of reparation.

- Reparation** The replenishment of a previously inflicted loss by the offender or the State to the victim, through: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
- Repatriation** The process of returning a person to his/her place of origin or reinstating his/her citizenship.
- Reservation (UN)** A statement made by a State Party in order to exclude or modify the legal effect of a specific term or terms of a UN treaty; usually a claim that the State Party is not bound by that term/s. A reservation must be made at the time of signing, ratifying, accepting, approving or acceding to a treaty. A reservation is not valid if it is prohibited under the treaty, or is not a specified reservation allowed by the treaty concerned, or is generally incompatible with the object and purpose of the treaty. A State Party can sign and ratify a treaty, but object to one or more of its terms.
- The AChHPR does not allow reservations.
- Restitution** Services provided to the victim that will allow him/her, as far as possible, to return to the State that he/she was in before the human rights violation/s occurred.
- Restore** To return something or someone to their former condition, status or position.
- Restriction** A decision handed down by a court limiting one's mobility and/or association. The terms of an offender's restriction will be decided upon on a case-by-case basis. Restriction may include house arrest, electronic monitoring, limitations on where and when the offender may travel, etc.
- Retaliation** Acting against someone in a negative way (attacking them) in response to something they have done.
- Re-victimisation** When a victim of an offence again becomes the victim of a similar or different offence.
- Satisfaction** Various judicial and non-judicial measures that recognise both the gross human rights violations committed at the hands of state officials and the harm suffered by victims. Satisfaction can include, for example, disclosure of the truth, judicial determinations that restore the reputation or dignity of victim, sanctions, and human rights training.
- Secret detention** The State authorities do not disclose the current whereabouts and/or fate of an individual and deny having any knowledge of the whereabouts of an individual, and the individual is held incommunicado. Secret detention does not require that the person be detained in a secret place; an individual may be held in a recognised place of detention, but in a hidden section or wing. Secret detention effectively amounts to enforced disappearance and incommunicado detention. Secret detention not only facilitates torture and other ill treatment but is itself a violation of

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- Shadow report** Once a State Party has submitted its Initial or Periodic Report to a UN treaty monitoring body or the ACHPR, civil society organisations have the opportunity to submit written information to the UN treaty monitoring body or the ACHPR in the form of shadow reports. These shadow reports may provide a comprehensive overview of the State's implementation of all articles of the treaty/ACHPR or they may elect to focus on one or more particular themes.
- Solitary confinement** When a person is detained on his/her own in single cell, having no contact with other prisoners or persons outside the detention facility, and only with officials.
- Special Mechanisms of the ACHPR** An individual (Special Rapporteur) or a group of individuals (Committee) with a mandate to monitor and address specific human rights situations, either on a geographical or a thematic basis. Their mandates are outlined in the ACHPR resolutions that create them. A Special Rapporteur is a Commissioner of the ACHPR and members of a Committee can be Commissioners of the ACHPR, or other civil servants or members of the broader civil society, such as lawyers, academics, doctors, etc. They always serve in their personal capacity (not as a representative of any organisation or government). Broadly speaking, a Special Mechanism has both promotional and protective mandates.
- Special Procedures of the UN** An individual (Special Rapporteur) or a group of individuals (Working Group) with a mandate to monitor and address specific human rights situations, either on a geographical or a thematic basis. Their mandate is outlined in the resolutions creating them. These individuals can be civil servants or members of the broader civil society, such as lawyers, academics, doctors, etc., and they always serve in their personal capacity (not as a representative of any organisation or government).
- Standing invitation (UN)** A permanent invitation made by a State Party to UN Special Procedures to visit the country and review particular human rights situations.
- State mechanism** Official government bodies or processes that provide and facilitate various services. For example, national human rights institutions, complaints and oversight bodies, investigative bodies, prosecution services, state hospitals and clinics, social services, etc.
- State Party** A government that has signed and ratified or acceded to an international or regional treaty. The State is thus a party to the treaty.
- State Report** The report that a State Party to an international treaty submits to the treaty monitoring body, on a regular basis. For example, States' Periodic Reports to CAT and ACHPR.
- Stateless person** A person who is not considered to be a national of any State – i.e. a person who has no formal citizenship or nationality.



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Statutory limitation	<p>A maximum timeframe, established by domestic law, in which certain crimes must be prosecuted. After the maximum period of time has elapsed since the commission of the crime, it is no longer possible to prosecute perpetrator of the crime.</p> <p>No statute of limitations is allowed for acts of torture and other ill treatment. All victims of torture or other ill treatment, regardless of when the violation occurred or whether it was carried out by or with the acquiescence of a former regime, must be able to access their rights to remedy and to obtain redress.</p>
Superior Orders	<p>A defence used in a court of law requesting that a public official not be held responsible for actions that he/she was ordered to commit by a superior (commanding) officer. This defence is not permitted under UNCAT.</p>
Torture	<p>Article 1 of UNCAT defines torture as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.'</p>
Transit zone	<p>An area adjacent to an international port of entry into a country (airport, seaport, train station, etc.), where goods are stored before being imported/exported. Goods passing through a transit zone are normally not subject to the customs laws, duties and import restrictions of the State in which the transit zone is located.</p>
Transparency	<p>Openness and truthfulness; nothing hidden.</p>
Treaty monitoring body	<p>A treaty monitoring body is a group of people who are responsible for overseeing the implementation of the provisions of an international or regional treaty by the States that have ratified it. States that have ratified a treaty must report to such a treaty monitoring body to explain how they have domesticated and implemented the obligations imposed on them by the treaty. Treaty monitoring bodies may also conduct investigations into alleged non-compliance with the terms of a treaty (i.e. – human rights abuses).</p> <p>CAT is mandated to oversee the implementation of UNCAT. ACHPR is mandated to oversee the implementation of ACHPR. The UN Human Rights Committee is mandated to oversee the implementation of ICCPR. See also the definition of 'Universal Periodic Review'.</p>
Tribunal	<p>A court (or other structure) set up to settle certain types of disputes. These may, for example, be criminal or civil disputes.</p>

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Universal Periodic Review (UPR)	A process involving a periodic review of the human rights records of all 193 UN Member States, coordinated by the UN Human Rights Council.
Urgent appeal	A request made by a UN Special Procedure or an ACHPR Special Mechanism, asking a State Party to immediately address (investigate and/or act upon) situations that are endangering or violating an individual's or group of people's human rights.
Victim	CAT has defined victims of torture and other ill treatment, as: '... persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention. A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim. The term "victim" also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization.'
Visit	Going to a place of detention for the purpose of inspecting the facilities and talking to detainees to monitor their treatment.
Vulnerable	Exposed to the possibility of being attacked, harmed or subject to unlawful discrimination, either physically or psychologically.
Witness	An individual who has knowledge of an act or event, who provides testimonial evidence of that knowledge, either orally or in writing (in court, or to an investigator).
Witness protection programme	A state system providing protection for witnesses and other individuals involved in the justice system (including victims and alleged offenders), who are threatened as a result of their involvement in a case. Protection may be provided before, during and/or after a trial, usually by the police. Protection may simply be physical protection (e.g. by an armed police officer), or it may be more comprehensive, with individuals being relocated and provided with a new identity after the trial.





# APPENDICES

## **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

**Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984**

**entry into force 26 June 1987, in accordance with article 27 (1)**

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

### **PART I**

#### ***Article 1***

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

#### ***Article 2***

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

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### *Article 3*

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

### *Article 4*

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

### *Article 5*

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
  - (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
  - (b) When the alleged offender is a national of that State;
  - (c) When the victim is a national of that State if that State considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

### *Article 6*

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary inquiry into the facts.
3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.
4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.



### *Article 7*

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

### *Article 8*

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

### *Article 9*

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

### *Article 10*

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

## *Article 11*

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

## *Article 12*

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

## *Article 13*

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

## *Article 14*

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

## *Article 15*

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

## *Article 16*

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

## **PART II**

## *Article 17*

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts

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shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

### **Article 18**

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.

3. 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 this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

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### *Article 19*

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.
2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.
3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.
4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph I of this article.

### *Article 20*

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.
3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.
4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.
5. All the proceedings of the Committee referred to in paragraphs I to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

### *Article 21*

1. A State Party to this 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 this 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 this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after





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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 this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article; (e) Subject to the provisions of subparagraph

(e), 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 this 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 this 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 22*

1. A State Party to this 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 which has not made such a declaration.

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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 this 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 this 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 this 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 this 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 has made a new declaration.

### *Article 23*

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, 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 24*

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

## **PART III**

### *Article 25*

1. This Convention is open for signature by all States. 2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

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### *Article 26*

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

### *Article 27*

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

### *Article 28*

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.
2. Any State Party having made a reservation in accordance with paragraph I of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

### *Article 29*

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering an d voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.
2. An amendment adopted in accordance with paragraph I of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.
3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

### *Article 30*

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by paragraph I of this article with respect to any State Party having made such a reservation.
3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

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### *Article 31*

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.
3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

### *Article 32*

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions under articles 25 and 26;
- (b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;
- (c) Denunciations under article 31.

### *Article 33*

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

### **Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

**Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199 entered into force on 22 June 2006**

#### **PREAMBLE**

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention, Have agreed as follows:

#### **PART I**

##### **General principles**

###### *Article 1*

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

###### *Article 2*

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

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2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.

3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

### *Article 3*

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

### *Article 4*

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

## **PART II**

### **Subcommittee on Prevention**

### *Article 5*

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

5. No two members of the Subcommittee on Prevention may be nationals of the same State.

6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

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### *Article 6*

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2.

(a) The nominees shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) No more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

### *Article 7*

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

### *Article 8*

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the

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qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

### *Article 9*

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 ( d).

### *Article 10*

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.
2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:
  - (a) Half the members plus one shall constitute a quorum;
  - (b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;
  - (c) The Subcommittee on Prevention shall meet in camera.
3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

## **PART III**

### **Mandate of the Subcommittee on Prevention**

### *Article 11*

1. The Subcommittee on Prevention shall:
  - (a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
  - (b) In regard to the national preventive mechanisms:
    - (i) Advise and assist States Parties, when necessary, in their establishment;
    - (ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
    - (iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
    - (iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;





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(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

### *Article 12*

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

- (a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;
- (b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- (c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;
- (d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

### *Article 13*

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.
2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.
3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.
4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

### *Article 14*

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:
  - (a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
  - (b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;
  - (c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;

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(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;

(e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

### *Article 15*

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

### *Article 16*

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.

2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

## **PART IV**

### **National preventive mechanisms**

#### *Article 17*

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

#### *Article 18*

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

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3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

### *Article 19*

The national preventive mechanisms shall be granted at a minimum the power:

(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) To submit proposals and observations concerning existing or draft legislation.

### *Article 20*

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;

(e) The liberty to choose the places they want to visit and the persons they want to interview;

(f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

### *Article 21*

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

### *Article 22*

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

### *Article 23*

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

### **PART V**

#### **Declaration**

##### *Article 24*

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.
2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

### **PART VI**

#### **Financial provisions**

##### *Article 25*

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.
2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

##### *Article 26*

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.
2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

### **PART VII**

#### **Final provisions**

##### *Article 27*

1. The present Protocol is open for signature by any State that has signed the Convention.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

##### *Article 28*

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.



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2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

### *Article 29*

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

### *Article 30*

No reservations shall be made to the present Protocol.

### *Article 31*

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

### *Article 32*

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

### *Article 33*

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.

3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

### *Article 34*

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

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2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

### *Article 35*

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

### *Article 36*

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

- (a) Respect the laws and regulations of the visited State;
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

### *Article 37*

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

## AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS

## African Charter on Human and Peoples Rights

Adopted in Nairobi June 27, 1981

Entered into Force October 21, 1986

**Preamble**

The African States members of the Organization of African Unity, parties to the present Convention entitled »African Charter on Human and Peoples' Rights »;

*Recalling* Decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of a »preliminary draft on an African Charter on Human and Peoples' Rights providing inter alia for the establishment of bodies to promote and protect human and peoples' rights»;

*Considering* the Charter of the Organization of African Unity, which stipulates that »freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples»;

*Reaffirming* the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote International cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights;

*Taking into consideration* the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples rights;

*Recognizing* on the one hand, that fundamental human rights stem from the attributes of human beings, which justifies their national and international protection and on the other hand that the reality and respect of peoples rights should necessarily guarantee human rights;

*Considering* that the enjoyment of rights and freedom also implies the performance of duties on the part of everyone;

*Convinced* that it is henceforth essential to

pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

*Conscious* of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence and undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism and to dismantle aggressive foreign military bases and all forms of discrimination, particularly those based on race, ethnic group, colour, sex, language, religion or political opinions;

*Reaffirming* their adherence to the principle of human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the Organization of African Unity, the Movement of Non-Aligned Countries and the United Nations;

*Firmly convinced* of their duty to promote and protect human and peoples' rights and freedoms taking into account the importance traditionally attached to these rights and freedom in Africa;

Have agreed as follows:

**Part I. Rights and Duties****Chapter I. Human and Peoples' Rights***Article 1*

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.

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### AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS

#### *Article 2*

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

#### *Article 3*

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

#### *Article 4*

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

#### *Article 5*

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

#### *Article 6*

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

#### *Article 7*

1. Every individual shall have the right to have his cause heard. This comprises:
  - a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
  - b) the right to be presumed innocent until proved guilty by a competent court or tribunal;

- c) the right to defence, including the right to be defended by counsel of his choice;
  - d) the right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

#### *Article 8*

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

#### *Article 9*

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

#### *Article 10*

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligations of solidarity provided for in Article 29 no one may be compelled to join an association.

#### *Article 11*

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the Safety, health, ethics and rights and freedom of others.

#### *Article 12*

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.





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### AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS

2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and International conventions.
4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

#### *Article 13*

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of his country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

#### *Article 14*

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

#### *Article 15*

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

#### *Article 16*

1. Every individual shall have the right to enjoy the best attainable state of physical

and mental health.

2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

#### *Article 17*

1. Every individual shall have the right to education.
2. Every individual may freely take part in cultural life of his community.
3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

#### *Article 18*

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also censure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

#### *Article 19*

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

#### *Article 20*

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

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### AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS

2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
3. All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

#### *Article 21*

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.
4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.
5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

#### *Article 22*

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

#### *Article 23*

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.
2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that:
  - a) any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter;
  - b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

#### *Article 24*

All peoples shall have the right to a general satisfactory environment favourable to their development.

#### *Article 25*

States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

#### *Article 26*

States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

### **Chapter II. Duties**

#### *Article 27*

1. Every individual shall have duties to-



### AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS

wards his family and society, the State and other legally recognized communities and the international community.

2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

#### *Article 28*

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

#### *Article 29*

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;
2. To serve his national community by placing his physical and intellectual abilities at its service;
3. Not to compromise the security of the State whose national or resident he is;
4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law;
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;
7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;
8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

## **Part II. Measures of Safeguard**

### **Chapter I. Establishment and Organization of the African Commission on Human and Peoples' Rights**

#### *Article 30*

An African Commission on Human and Peoples' Rights, hereinafter called "the Commission", shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa.

#### *Article 31*

1. The commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to persons having legal experience.
2. The members of the Commission shall serve in their personal capacity.

#### *Article 32*

The Commission shall not include more than one national of the same state.

#### *Article 33*

The members of the Commission shall be elected by secret ballot by the Assembly of Heads of State and Government, from a list of persons nominated by the States parties to the present Charter.

#### *Article 34*

Each State party to the present Charter may not nominate more than two candidates. The candidates must have the nationality of one of the States parties to the present Charter. When two candidates are nominated by a State, one of them may not be a national of that State.

#### *Article 35*

1. The Secretary General of the Organization of African Unity shall invite States parties to the present Charter at least four months before the elections to nominate candidates;

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### AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS

2. The Secretary General of the Organization of African Unity shall make an alphabetical list of the persons thus nominated and communicate it to the Heads of State and Government at least one month before the elections.

#### *Article 36*

The members of the Commission shall be elected for a six year period and shall be eligible for re-election. However, the term of office of four of the members elected at the first election shall terminate after two years and the term of office of the three others, at the end of four years.

#### *Article 37*

Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organization of African Unity shall draw lots to decide the names of those members referred to in Article 36.

#### *Article 38*

After their election, the members of the Commission shall make a solemn declaration to discharge their duties impartially and faithfully.

#### *Article 39*

1. In case of death or resignation of a member of the Commission, the Chairman of the Commission shall immediately inform the Secretary General of the Organization of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.
2. If, in the unanimous opinion of other members of the Commission, a member has stopped discharging his duties for any reason other than a temporary absence, the Chairman of the Commission shall inform the Secretary General of the Organization of African Unity, who shall then declare the seat vacant.
3. In each of the cases anticipated above, the Assembly of Heads of State and Government shall replace the member whose seat became vacant for the re-

maining period of his term unless the period is less than six months.

#### *Article 40*

Every member of the Commission shall be in office until the date his successor assumes office.

#### *Article 41*

The Secretary General of the Organization of African Unity shall appoint the Secretary of the Commission. He shall also provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organization of African Unity shall bear the costs of the staff and services.

#### *Article 42*

1. The Commission shall elect its Chairman and Vice Chairman for a two year period. They shall be eligible for re-election.
2. The Commission shall lay down its rules of procedure.
3. Seven members shall form a quorum.
4. In case of an equality of votes, the Chairman shall have a casting vote.
5. The Secretary General may attend the meetings of the Commission. He shall neither participate in deliberations nor shall he be entitled to vote. The Chairman of the Commission may, however, invite him to speak.

#### *Article 43*

In discharging their duties, members of the Commission shall enjoy diplomatic privileges and immunities provided for in the General Convention on the Privileges and Immunities of the Organization of African Unity.

#### *Article 44*

Provision shall be made for the emoluments and allowances of the members of the Commission in the Regular Budget of the Organization of African Unity.

### **Chapter II. Mandate of the Commission**

#### *Article 45*

The functions of the Commission shall be:



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1. To promote Human and People's Rights and in particular:
  - a) to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to Governments.
  - b) to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.
  - c) co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.
2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.
3. Interpret all the provisions of the present Charter at the request of a State party, an institution of the OAU or an African Organization recognized by the OAU.
4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

#### **Chapter III. Procedure of the Commission**

##### *Article 46*

The Commission may resort to any appropriate method of investigation; it may hear from the Secretary General of the Organization of African Unity or any other person capable of enlightening it.

#### **Communication from States**

##### *Article 47*

If a State party to the present Charter has good reason to believe that another State party to this Charter has violated the provisions of the Charter, it may draw, by written communication, the attention of the State to the matter. This communication shall also be addressed to the Secretary General of the

OAU and to the Chairman of the Commission. Within three months of the receipt of the communication, the State to which the communication is addressed shall give the enquiring State, written explanation or statement elucidating the matter. This should include as much as possible relevant information relating to the laws and rules of procedure applied and applicable, and the redress already given or course of action available.

##### *Article 48*

If within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either State shall have the right to submit the matter to the Commission through the Chairman and shall notify the other States involved.

##### *Article 49*

Notwithstanding the provisions of Article 47, if a State party to the present Charter considers that another State party has violated the provisions of the Charter, it may refer the matter directly to the Commission by addressing a communication to the Chairman, to the Secretary General of the Organization of African Unity and the State concerned.

##### *Article 50*

The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

##### *Article 51*

1. The Commission may ask the States concerned to provide it with all relevant information.
2. When the Commission is considering the matter, States concerned may be represented before it and submit written or oral representation.

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#### *Article 52*

After having obtained from the States concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of Human and Peoples' Rights, the Commission shall prepare, within a reasonable period of time from the notification referred to in Article 48, a report stating the facts and its findings. This report shall be sent to the States concerned and communicated to the Assembly of Heads of State and Government.

#### *Article 53*

While transmitting its report, the Commission may make to the Assembly of Heads of State and Government such recommendations as it deems useful.

#### *Article 54*

The Commission shall submit to each ordinary Session of the Assembly of Heads of State and Government a report on its activities.

### **Other Communications**

#### *Article 55*

1. Before each Session, the Secretary of the Commission shall make a list of the communications other than those of States parties to the present Charter and transmit them to the members of the Commission, who shall indicate which communications should be considered by the Commission.
2. A communication shall be considered by the Commission if a simple majority of its members so decide.

#### *Article 56*

Communications relating to human and peoples' rights referred to in Article 55 received by the Commission shall be considered if they:

1. Indicate their authors even if the latter request anonymity,
2. Are compatible with the Charter of the Organization of African Unity or with the present Charter,

3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity,
4. Are not based exclusively on news discriminated through the mass media,
5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter, and
7. Do not deal with cases which have been settled by these States involved in accordance with the principle of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provision of the present Charter.

#### *Article 57*

Prior to any substantive consideration, all communications shall be brought to the knowledge of the State concerned by the Chairman of the Commission.

#### *Article 58*

1. When it appears after deliberations of the Commission that one or more communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases.
2. The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its findings and recommendations.
3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Government who may request an in-depth study.

#### *Article 59*

1. All measures taken within the provisions



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of the present Chapter shall remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide.

2. However, the report shall be published by the Chairman of the Commission upon the decision of the Assembly of Heads of State and Government.
3. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.

#### **Chapter IV. Applicable Principles**

##### *Article 60*

The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members.

##### *Article 61*

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by member states of the Organization of African Unity, African practices consistent with international norms on human and peoples' rights, customs generally accepted as law, general principles of law recognized by African states as well as legal precedents and doctrine.

##### *Article 62*

Each party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter.

##### *Article 63*

1. The present Charter shall be open to signature, ratification or adherence of the member states of the Organization of African Unity.
-

**GUIDELINES AND MEASURES  
FOR THE PROHIBITION AND PREVENTION OF  
TORTURE, CRUEL, INHUMAN OR DEGRADING  
TREATMENT OR PUNISHMENT IN AFRICA**

---

**THE ROBBEN ISLAND GUIDELINES**

*Preamble*

**Recalling** the universal condemnation and prohibition of torture, cruel, inhuman and degrading treatment and punishment;

**Deeply** concerned about the continued prevalence of such acts;

**Convinced** of the urgency of addressing the problem in all its dimensions;

**Recognising** the need to take positive steps to further the implementation of existing provisions on the prohibition of torture, cruel, inhuman and degrading treatment and punishment;

**Recognising** the importance of preventive measures in the furtherance of these aims;

**Recognising** the special needs of victims of such acts;

**Recalling** the provisions of:

- Art. 5 of the African Charter on Human and Peoples' Rights which prohibits all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment;
- Art. 45 (1) of the African Charter which mandates the African Commission to, inter alia, formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations;





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- Arts. 3 and 4 of the Constitutive Act of the African Union by which States Parties undertake to promote and respect the sanctity of human life, rule of law, good governance and democratic principles;

**Recalling** further the international obligations of States under:

- Art. 55 of the United Nations Charter, calling upon States to promote universal respect for and observance of human rights and fundamental freedoms;
- Art. 5 of the UDHR, Art. 7 of the ICCPR stipulating that no one shall be subjected to torture, inhuman or degrading treatment or punishment;
- Art. 2 (1) and 16 (1) of the UNCAT calling upon each State to take effective measures to prevent acts of torture and other acts of cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction;

**Declaration** and Plan of Action adopted by the 1st Ministerial Conference on Human Rights in Africa to ensure better promotion and respect of human rights on the continent;

**Desiring** the implementation of principles and concrete measures in order to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment in Africa and to assist African States to meet their international obligations in this regard;

The “**Robben Island Workshop on the Prevention of Torture**”, held from 12 to 14 February 2002, has adopted the following guidelines and measures for the prohibition and prevention of torture, cruel, inhuman and degrading treatment or punishment and recommends that they are adopted, promoted and implemented within Africa.

### **PART I: PROHIBITION OF TORTURE**

#### **A. Ratification of Regional and International Instruments**

1. States should ensure that they are a party to relevant international and regional human rights instruments and ensure that these instruments are fully implemented in domestic legislation and accord individuals the maximum scope for accessing the human rights machinery that they establish. This would include:
  - a) Ratification of the Protocol to the African Charter of Human and Peoples' Rights establishing an African Court of Human and Peoples' Rights;
  - b) Ratification of or accession to the UN Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment without reservations, to make declarations accepting the jurisdiction of the Committee against Torture under Articles 21 and 22 and recognising the competency of the Committee to conduct inquiries pursuant to Article 20;
  - c) Ratification of or accession to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the First Optional Protocol thereto without reservations;
  - d) Ratification of or accession to the Rome Statute establishing the International Criminal Court.

#### **B. Promote and Support Co-operation with International Mechanisms**

2. States should co-operate with the African Commission on Human and Peoples' Rights and promote and support the work of the Special Rapporteur on prisons and conditions of detention in Africa, the Special Rapporteur on arbitrary, summary and extra-judicial executions in Africa and the Special Rapporteur on the rights of women in Africa.



## Appendix 4 - RIG

3. States should co-operate with the United Nations Human Rights Treaty Bodies, with the UN Commission on Human Rights' thematic and country specific special procedures, in particular, the UN Special Rapporteur on Torture, including the issuance of standing invitations for these and other relevant mechanisms.

### **C. Criminalization of Torture**

4. States should ensure that acts, which fall within the definition of torture, based on Article 1 of the UN Convention against Torture, are offences within their national legal systems.
5. States should pay particular attention to the prohibition and prevention of gender-related forms of torture and ill-treatment and the torture and ill-treatment of young persons.
6. National courts should have jurisdictional competence to hear cases of allegations of torture in accordance with Article 5 (2) of the UN Convention against Torture.
7. Torture should be made an extraditable offence.
8. The trial or extradition of those suspected of torture should take place expeditiously in conformity with relevant international standards.
9. Circumstances such as state of war, threat of war, internal political instability or any other public emergency, shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.
10. Notions such as "necessity", "national emergency", "public order", and "ordre public" shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.
11. Superior orders shall never provide a justification or lawful excuse for acts of torture, cruel, inhuman or degrading treatment or punishment.
12. Those found guilty of having committed acts of torture shall be subject to appropriate sanctions that reflect the gravity of the offence, applied in accordance with relevant international standards.

## Appendix 4 - RIG

13. No one shall be punished for disobeying an order that they commit acts amounting to torture, cruel, inhuman or degrading treatment or punishment.
14. States should prohibit and prevent the use, production and trade of equipment or substances designed to inflict torture or ill-treatment and the abuse of any other equipment or substance to these ends.

### **D. Non-Refoulement**

15. States should ensure no one is expelled or extradited to a country where he or she is at risk of being subjected to torture.

### **E. Combating Impunity**

16. In order to combat impunity States should:
  - a) Ensure that those responsible for acts of torture or ill-treatment are subject to legal process;
  - b) Ensure that there is no immunity from prosecution for nationals suspected of torture, and that the scope of immunities for foreign nationals who are entitled to such immunities be as restrictive as is possible under international law;
  - c) Ensure expeditious consideration of extradition requests to third states, in accordance with international standards;
  - d) Ensure that rules of evidence properly reflect the difficulties of substantiating allegations of ill-treatment in custody;
  - e) Ensure that where criminal charges cannot be sustained because of the high standard of proof required, other forms of civil, disciplinary or administrative action are taken if it is appropriate to do so.

### **F. Complaints and Investigation Procedures**

17. Ensure the establishment of readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment.
18. Ensure that whenever persons who claimed to have been or who appear to have been tortured or ill-treated are brought before competent authorities an investigation shall be initiated.
19. Investigations into all allegations of torture or ill-treatment, shall be conducted promptly, impartially and effectively, guided by the UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol)<sup>1</sup>.

## **PART II: PREVENTION OF TORTURE**

### **A. Basic Procedural Safeguards for those Deprived of their Liberty**

20. All persons who are deprived of their liberty by public order or authorities should have that detention controlled by properly and legally constructed regulations. Such regulations should provide a number of basic safeguards, all of which shall apply from the moment when they are first deprived of their liberty. These include:
  - a) The right that a relative or other appropriate third person is notified of the detention;
  - b) The right to an independent medical examination;
  - c) The right of access to a lawyer;
  - d) Notification of the above rights in a language, which the person deprived of their liberty understands;

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<sup>1</sup> - Annexed to UN GA Res. A/55/89, 4 Dec. 2000, UN Publication No.8, HR/P/PT/8.

## Appendix 4 - RIG

### B. Safeguards during the Pre-trial Process

States should:

21. Establish regulations for the treatment of all persons deprived of their liberty guided by the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>2</sup> :
22. Ensure that those subject to the relevant codes of criminal procedure conduct criminal investigations.
23. Prohibit the use of unauthorised places of detention and ensure that it is a punishable offence for any official to hold a person in a secret and/or unofficial place of detention.
24. Prohibit the use of incommunicado detention ;
25. Ensure that all detained persons are informed immediately of the reasons for their detention.
26. Ensure that all persons arrested are promptly informed of any charges against them.
27. Ensure that all persons deprived of their liberty are brought promptly before a judicial authority, having the right to defend themselves or to be assisted by legal counsel, preferably of their own choice.
28. Ensure that comprehensive written records of all interrogations are kept, including the identity of all persons present during the interrogation and consider the feasibility of the use of video and/or audio taped recordings of interrogations.
29. Ensure that any statement obtained through the use of torture, cruel, inhuman or degrading treatment or punishment shall not be admissible as evidence in any proceedings except against persons accused of torture as evidence that the statement was made.
30. Ensure that comprehensive written records of those deprived of their liberty are kept at each place of detention, detailing, inter alia, the date, time, place and reason for the detention.

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2 - AUN GA/Res. 43/173, 9 Dec.1988.



## Appendix 4 - RIG

31. Ensure that all persons deprived of their liberty have access to legal and medical services and assistance and have the right to be visited by and correspond with family members.
32. Ensure that all persons deprived of their liberty can challenge the lawfulness of their detention.

### **C. Conditions of Detention**

States should:

33. Take steps to ensure that the treatment of all persons deprived of their liberty are in conformity with international standards guided by the UN Standard Minimum Rules for the Treatment of Prisoners<sup>3</sup>;
34. Take steps to improve conditions in places of detention, which do not conform to international standards.
35. Take steps to ensure that pre-trial detainees are held separately from convicted persons.
36. Take steps to ensure that juveniles, women, and other vulnerable groups are held in appropriate and separate detention facilities.
37. Take steps to reduce overcrowding in places of detention by, inter alia, encouraging the use of non-custodial sentences for minor crimes.

### **D. Mechanisms of Oversight**

States should:

38. Ensure and support the independence and impartiality of the judiciary including by ensuring that there is no interference in the judiciary and judicial proceedings, guided by the UN Basic Principles on the Independence of the Judiciary<sup>4</sup>;

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3 - UN ECOSOC Res. 663 C (XXIV), 31 July 1957, amended by UN ECOSOC Res. 2076 (LXII), 13 May 1977.

4 - UN Doc. E/CN.4/1995/39

## Appendix 4 - RIG

39. Encourage professional legal and medical bodies to concern themselves with issues of the prohibition and prevention of torture, cruel, inhuman and degrading treatment or punishment.
40. Establish and support effective and accessible complaint mechanisms which are independent from detention and enforcement authorities and which are empowered to receive, investigate and take appropriate action on allegations of torture, cruel, inhuman or degrading treatment or punishment.
41. Establish, support and strengthen independent national institutions such as human rights commissions, ombudspersons and commissions of parliamentarians, with the mandate to conduct visits to all places of detention and to generally address the issue of the prevention of torture, cruel, inhuman and degrading treatment or punishment, guided by the UN Paris Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights<sup>5</sup>;
42. Encourage and facilitate visits by NGOs to places of detention.
43. Support the adoption of an Optional Protocol to the UNCAT to create an international visiting mechanism with the mandate to visit all places where people are deprived of their liberty by a State Party.
44. Examine the feasibility of developing regional mechanisms for the prevention of torture and ill-treatment.

### **E. Training and Empowerment**

States should:

45. Establish and support training and awareness-raising programmes which reflect human rights standards and emphasise the concerns of vulnerable groups;
46. Devise, promote and support codes of conduct and ethics and develop training tools for law enforcement and security personnel, and other

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5 - UN A/Res/48/134, 20 Dec. 1993



## Appendix 4 - RIG

relevant officials in contact with persons deprived of their liberty such as lawyers and medical personnel.

### **F. Civil Society Education and Empowerment**

47. Public education initiatives, awareness-raising campaigns regarding the prohibition and prevention of torture and the rights of detained persons shall be encouraged and supported.
48. The work of NGOs and of the media in public education, the dissemination of information and awareness-raising concerning the prohibition and prevention of torture and other forms of ill-treatment shall be encouraged and supported.

### **PART III: RESPONDING TO THE NEEDS OF VICTIMS**

49. Ensure that alleged victims of torture, cruel, inhuman and degrading treatment or punishment, witnesses, those conducting the investigation, other human rights defenders and families are protected from violence, threats of violence or any other form of intimidation or reprisal that may arise pursuant to the report or investigation.
50. The obligation upon the State to offer reparation to victims exists irrespective of whether a successful criminal prosecution can or has been brought. Thus all States should ensure that all victims of torture and their dependents are:
  - a) Offered appropriate medical care;
  - b) Have access to appropriate social and medical rehabilitation;
  - c) Provided with appropriate levels of compensation and support;

In addition there should also be a recognition that families and communities which have also been affected by the torture and ill-treatment received by one of its members can also be considered as victims.

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**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**COMMITTEE AGAINST TORTURE**

**CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR  
DEGRADING TREATMENT OR PUNISHMENT**

**GENERAL COMMENT No. 2**

**Implementation of article 2 by States parties**

1. This general comment addresses the three parts of article 2, each of which identifies distinct interrelated and essential principles that undergird the Convention's absolute prohibition against torture. Since the adoption of the Convention against Torture, the absolute and non-derogable character of this prohibition has become accepted as a matter of customary international law. The provisions of article 2 reinforce this peremptory *jus cogens* norm against torture and constitute the foundation of the Committee's authority to implement effective means of prevention, including but not limited to those measures contained in the subsequent articles 3 to 16, in response to evolving threats, issues, and practices.

2. Article 2, paragraph 1, obliges each State party to take actions that will reinforce the prohibition against torture through legislative, administrative, judicial, or other actions that must, in the end, be effective in preventing it. To ensure that measures are in fact taken that are known to prevent or punish any acts of torture, the Convention outlines in subsequent articles obligations for the State party to take measures specified therein.

3. The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "ill-treatment") under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. Article 16, identifying the means of prevention of ill-treatment, emphasizes "*in particular*" the measures outlined in articles 10 to 13, but does not limit effective prevention to these articles, as the Committee has explained, for example, with respect to



compensation in article 14. In practice, the definitional threshold between ill-treatment and torture is often not clear. Experience demonstrates that the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment. Accordingly, the Committee has considered the prohibition of ill-treatment to be likewise non-derogable under the Convention and its prevention to be an effective and non-derogable measure.

4. States parties are obligated to eliminate any legal or other obstacles that impede the eradication of torture and ill-treatment; and to take positive effective measures to ensure that such conduct and any recurrences thereof are effectively prevented. States parties also have the obligation continually to keep under review and improve their national laws and performance under the Convention in accordance with the Committee's concluding observations and views adopted on individual communications. If the measures adopted by the State party fail to accomplish the purpose of eradicating acts of torture, the Convention requires that they be revised and/or that new, more effective measures be adopted. Likewise, the Committee's understanding of and recommendations in respect of effective measures are in a process of continual evolution, as, unfortunately, are the methods of torture and ill-treatment.

### **II. Absolute prohibition**

5. Article 2, paragraph 2, provides that the prohibition against torture is absolute and non-derogable. It emphasizes that *no exceptional circumstances whatsoever* may be invoked by a State Party to justify acts of torture in any territory under its jurisdiction. The Convention identifies as among such circumstances a state of war or threat thereof, internal political instability or any other public emergency. This includes any threat of terrorist acts or violent crime as well as armed conflict, international or non-international. The Committee is deeply concerned at and rejects absolutely any efforts by States to justify torture and ill-treatment as a means to protect public safety or avert emergencies in these and all other situations. Similarly, it rejects any religious or traditional justification that would violate this absolute prohibition. The Committee considers that amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability.

6. The Committee reminds all States parties to the Convention of the non-derogable nature of the obligations undertaken by them in ratifying the Convention. In the aftermath of the attacks of 11 September 2001, the Committee specified that the obligations in articles 2 (whereby "no exceptional circumstances whatsoever...may be invoked as a justification of torture"), 15 (prohibiting confessions extorted by torture being admitted in evidence, except against the torturer), and 16 (prohibiting cruel, inhuman or degrading treatment or punishment) are three such provisions that "must be observed in all circumstances"<sup>1</sup>. The Committee considers that articles 3 to 15 are likewise obligatory as applied to both torture and ill-treatment. The Committee recognizes that States parties may choose the measures through which they fulfill these obligations, so long as they are effective and consistent with the object and purpose of the Convention.

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<sup>1</sup> On 22 November 2001, the Committee adopted a statement in connection with the events of 11 September which was sent to each State party to the Convention (A/57/44, paras. 17-18).

7. The Committee also understands that the concept of “any territory under its jurisdiction,” linked as it is with the principle of non-derogability, includes any territory or facilities and must be applied to protect any person, citizen or non-citizen without discrimination subject to the de jure or de facto control of a State party. The Committee emphasizes that the State’s obligation to prevent torture also applies to all persons who act, de jure or de facto, in the name of, in conjunction with, or at the behest of the State party. It is a matter of urgency that each State party should closely monitor its officials and those acting on its behalf and should identify and report to the Committee any incidents of torture or ill-treatment as a consequence of anti-terrorism measures, among others, and the measures taken to investigate, punish, and prevent further torture or ill-treatment in the future, with particular attention to the legal responsibility of both the direct perpetrators and officials in the chain of command, whether by acts of instigation, consent or acquiescence.

### **III. Content of the obligation to take effective measures to prevent torture**

8. States parties must make the offence of torture punishable as an offence under its criminal law, in accordance, at a minimum, with the elements of torture as defined in article 1 of the Convention, and the requirements of article 4.

9. Serious discrepancies between the Convention’s definition and that incorporated into domestic law create actual or potential loopholes for impunity. In some cases, although similar language may be used, its meaning may be qualified by domestic law or by judicial interpretation and thus the Committee calls upon each State party to ensure that all parts of its Government adhere to the definition set forth in the Convention for the purpose of defining the obligations of the State. At the same time, the Committee recognizes that broader domestic definitions also advance the object and purpose of this Convention so long as they contain and are applied in accordance with the standards of the Convention, at a minimum. In particular, the Committee emphasizes that elements of intent and purpose in article 1 do not involve a subjective inquiry into the motivations of the perpetrators, but rather must be objective determinations under the circumstances. It is essential to investigate and establish the responsibility of persons in the chain of command as well as that of the direct perpetrator(s).

10. The Committee recognizes that most States parties identify or define certain conduct as ill-treatment in their criminal codes. In comparison to torture, ill-treatment may differ in the severity of pain and suffering and does not require proof of impermissible purposes. The Committee emphasizes that it would be a violation of the Convention to prosecute conduct solely as ill-treatment where the elements of torture are also present.

11. By defining the offence of torture as distinct from common assault or other crimes, the Committee considers that States parties will directly advance the Convention’s overarching aim of preventing torture and ill-treatment. Naming and defining this crime will promote the Convention’s aim, inter alia, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture. Codifying this crime will also (a) emphasize the need for appropriate punishment that takes into account the gravity of the offence, (b) strengthen the deterrent effect of the prohibition itself, (c) enhance the ability of responsible officials to track the specific crime of torture and (d) enable and empower the public to monitor and, when required, to challenge State action as well as State inaction that violates the Convention.



12. Through review of successive reports from States parties, the examination of individual communications, and monitoring of developments, the Committee has, in its concluding observations, articulated its understanding of what constitute effective measures, highlights of which we set forth here. In terms of both the principles of general application of article 2 and developments that build upon specific articles of the Convention, the Committee has recommended specific actions designed to enhance each State party's ability swiftly and effectively to implement measures necessary and appropriate to prevent acts of torture and ill-treatment and thereby assist States parties in bringing their law and practice into full compliance with the Convention.

13. Certain basic guarantees apply to all persons deprived of their liberty. Some of these are specified in the Convention, and the Committee consistently calls upon States parties to use them. The Committee's recommendations concerning effective measures aim to clarify the current baseline and are not exhaustive. Such guarantees include, inter alia, maintaining an official register of detainees, the right of detainees to be informed of their rights, the right promptly to receive independent legal assistance, independent medical assistance, and to contact relatives, the need to establish impartial mechanisms for inspecting and visiting places of detention and confinement, and the availability to detainees and persons at risk of torture and ill-treatment of judicial and other remedies that will allow them to have their complaints promptly and impartially examined, to defend their rights, and to challenge the legality of their detention or treatment.

14. Experience since the Convention came into force has enhanced the Committee's understanding of the scope and nature of the prohibition against torture, of the methodologies of torture, of the contexts and consequences in which it occurs, as well as of evolving effective measures to prevent it in different contexts. For example, the Committee has emphasized the importance of having same sex guards when privacy is involved. As new methods of prevention (e.g. videotaping all interrogations, utilizing investigative procedures such as the Istanbul Protocol of 1999<sup>2</sup>, or new approaches to public education or the protection of minors) are discovered, tested and found effective, article 2 provides authority to build upon the remaining articles and to expand the scope of measures required to prevent torture.

#### **IV. Scope of State obligations and responsibility**

15. The Convention imposes obligations on States parties and not on individuals. States bear international responsibility for the acts and omissions of their officials and others, including agents, private contractors, and others acting in official capacity or acting on behalf of the State, in conjunction with the State, under its direction or control, or otherwise under colour of law. Accordingly, each State party should prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, for example, in prisons, hospitals, schools, institutions that engage in the care of children, the aged, the mentally ill or disabled, in military service, and other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm. The Convention does not, however, limit the

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<sup>2</sup> *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*

international responsibility that States or individuals can incur for perpetrating torture and ill-treatment under international customary law and other treaties.

16. Article 2, paragraph 1, requires that each State party shall take effective measures to prevent acts of torture not only in its sovereign territory but also “in any territory under its jurisdiction.” The Committee has recognized that “any territory” includes all areas where the State party exercises, directly or indirectly, in whole or in part, de jure or de facto effective control, in accordance with international law. The reference to “any territory” in article 2, like that in articles 5, 11, 12, 13 and 16, refers to prohibited acts committed not only on board a ship or aircraft registered by a State party, but also during military occupation or peacekeeping operations and in such places as embassies, military bases, detention facilities, or other areas over which a State exercises factual or effective control. The Committee notes that this interpretation reinforces article 5, paragraph 1 (b), which requires that a State party must take measures to exercise jurisdiction “when the alleged offender is a national of the State.” The Committee considers that the scope of “territory” under article 2 must also include situations where a State party exercises, directly or indirectly, de facto or de jure control over persons in detention.

17. The Committee observes that States parties are obligated to adopt effective measures to prevent public authorities and other persons acting in an official capacity from directly committing, instigating, inciting, encouraging, acquiescing in or otherwise participating or being complicit in acts of torture as defined in the Convention. Thus, States parties should adopt effective measures to prevent such authorities or others acting in an official capacity or under colour of law, from consenting to or acquiescing in any acts of torture. The Committee has concluded that States parties are in violation of the Convention when they fail to fulfil these obligations. For example, where detention centres are privately owned or run, the Committee considers that personnel are acting in an official capacity on account of their responsibility for carrying out the State function without derogation of the obligation of State officials to monitor and take all effective measures to prevent torture and ill-treatment.

18. The Committee has made clear that where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State’s indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties’ failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.

19. Additionally, if a person is to be transferred or sent to the custody or control of an individual or institution known to have engaged in torture or ill-treatment, or has not implemented adequate safeguards, the State is responsible, and its officials subject to punishment

for ordering, permitting or participating in this transfer contrary to the State's obligation to take effective measures to prevent torture in accordance with article 2, paragraph 1. The Committee has expressed its concern when States parties send persons to such places without due process of law as required by articles 2 and 3.

### **V. Protection for individuals and groups made vulnerable by discrimination or marginalization**

20. The principle of non-discrimination is a basic and general principle in the protection of human rights and fundamental to the interpretation and application of the Convention. Non-discrimination is included within the definition of torture itself in article 1, paragraph 1, of the Convention, which explicitly prohibits specified acts when carried out for "*any reason based on discrimination of any kind...*". The Committee emphasizes that the discriminatory use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture.

21. The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, transgender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum-seekers, refugees or others under international protection, or any other status or adverse distinction. States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection, including but not limited to those outlined above.

22. State reports frequently lack specific and sufficient information on the implementation of the Convention with respect to women. The Committee emphasizes that gender is a key factor. Being female intersects with other identifying characteristics or status of the person such as race, nationality, religion, sexual orientation, age, immigrant status etc. to determine the ways that women and girls are subject to or at risk of torture or ill-treatment and the consequences thereof. The contexts in which females are at risk include deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes. Men are also subject to certain gendered violations of the Convention such as rape or sexual violence and abuse. Both men and women and boys and girls may be subject to violations of the Convention on the basis of their actual or perceived non-conformity with socially determined gender roles. States parties are requested to identify these situations and the measures taken to punish and prevent them in their reports.

23. Continual evaluation is therefore a crucial component of effective measures. The Committee has consistently recommended that States parties provide data disaggregated by age, gender and other key factors in their reports to enable the Committee to adequately evaluate the implementation of the Convention. Disaggregated data permits the States parties and the Committee to identify, compare and take steps to remedy discriminatory treatment that may otherwise go unnoticed and unaddressed. States parties are requested to describe, as far as

possible, factors affecting the incidence and prevention of torture or ill-treatment, as well as the difficulties experienced in preventing torture or ill-treatment against specific relevant sectors of the population, such as minorities, victims of torture, children and women, taking into account the general and particular forms that such torture and ill-treatment may take.

24. Eliminating employment discrimination and conducting ongoing sensitization training in contexts where torture or ill-treatment is likely to be committed is also key to preventing such violations and building a culture of respect for women and minorities. States are encouraged to promote the hiring of persons belonging to minority groups and women, particularly in the medical, educational, prison/detention, law enforcement, judicial and legal fields, within State institutions as well as the private sector. States parties should include in their reports information on their progress in these matters, disaggregated by gender, race, national origin, and other relevant status.

### **VI. Other preventive measures required by the Convention**

25. Articles 3 to 15 of the Convention constitute specific preventive measures that the States parties deemed essential to prevent torture and ill-treatment, particularly in custody or detention. The Committee emphasizes that the obligation to take effective preventive measures transcends the items enumerated specifically in the Convention or the demands of this general comment. For example, it is important that the general population be educated on the history, scope, and necessity of the non-derogable prohibition of torture and ill-treatment, as well as that law enforcement and other personnel receive education on recognizing and preventing torture and ill-treatment. Similarly, in light of its long experience in reviewing and assessing State reports on officially inflicted or sanctioned torture or ill-treatment, the Committee acknowledges the importance of adapting the concept of monitoring conditions to prevent torture and ill-treatment to situations where violence is inflicted privately. States parties should specifically include in their reports to the Committee detailed information on their implementation of preventive measures, disaggregated by relevant status.

### **VII. Superior orders**

26. The non-derogability of the prohibition of torture is underscored by the long-standing principle embodied in article 2, paragraph 3, that an order of a superior or public authority can never be invoked as a justification of torture. Thus, subordinates may not seek refuge in superior authority and should be held to account individually. At the same time, those exercising superior authority - including public officials - cannot avoid accountability or escape criminal responsibility for torture or ill-treatment committed by subordinates where they knew or should have known that such impermissible conduct was occurring, or was likely to occur, and they failed to take reasonable and necessary preventive measures. The Committee considers it essential that the responsibility of any superior officials, whether for direct instigation or encouragement of torture or ill-treatment or for consent or acquiescence therein, be fully investigated through competent, independent and impartial prosecutorial and judicial authorities. Persons who resist what they view as unlawful orders or who cooperate in the investigation of torture or ill-treatment, including by superior officials, should be protected against retaliation of any kind.





## Appendix 5 - CAT GC2

27. The Committee reiterates that this general comment has to be considered without prejudice to any higher degree of protection contained in any international instrument or national law, as long as they contain, as a minimum, the standards of the Convention.

United Nations

CAT/C/GC/3



## Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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### Committee against Torture

#### General comment No. 3 (2012)

##### Implementation of article 14 by States parties

1. This general comment explains and clarifies to States parties the content and scope of the obligations under article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Each State party is required to “ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.” The Committee considers that article 14 is applicable to all victims of torture and acts of cruel, inhuman or degrading treatment or punishment (hereafter “ill-treatment”) without discrimination of any kind, in line with the Committee’s general comment No. 2.
2. The Committee considers that the term “redress” in article 14 encompasses the concepts of “effective remedy” and “reparation”. The comprehensive reparative concept therefore entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention.
3. Victims are persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention. A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim. The term “victim” also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization. The term “survivors” may, in some cases, be preferred by persons who have suffered harm. The Committee uses the legal term “victims” without prejudice to other terms which may be preferable in specific contexts.
4. The Committee emphasizes the importance of victim participation in the redress process, and that the restoration of the dignity of the victim is the ultimate objective in the provision of redress.
5. The obligations of States parties to provide redress under article 14 are two-fold: procedural and substantive. To satisfy their procedural obligations, States parties shall enact legislation and establish complaints mechanisms, investigation bodies and institutions, including independent judicial bodies, capable of determining the right to and awarding redress for a victim of torture and ill-treatment, and ensure that such mechanisms and



bodies are effective and accessible to all victims. At the substantive level, States parties shall ensure that victims of torture or ill-treatment obtain full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible.

### **Substantive obligations: the scope of the right to redress**

6. As stated in paragraph 2 above, redress includes the following five forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The Committee recognizes the elements of full redress under international law and practice as outlined in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles and Guidelines).<sup>1</sup> Reparation must be adequate, effective and comprehensive. States parties are reminded that in the determination of redress and reparative measures provided or awarded to a victim of torture or ill-treatment, the specificities and circumstances of each case must be taken into consideration and redress should be tailored to the particular needs of the victim and be proportionate to the gravity of the violations committed against them. The Committee emphasizes that the provision of reparation has an inherent preventive and deterrent effect in relation to future violations.

7. Where State authorities or others acting in their official capacity have committed, know or have reasonable grounds to believe that acts of torture or ill-treatment have been committed by non-State officials or private actors and failed to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors in accordance with the Convention, the State bears responsibility for providing redress for the victims (general comment No. 2).

### **Restitution**

8. Restitution is a form of redress designed to re-establish the victim's situation before the violation of the Convention was committed, taking into consideration the specificities of each case. The preventive obligations under the Convention require States parties to ensure that a victim receiving such restitution is not placed in a position where he or she is at risk of repetition of torture or ill-treatment. In certain cases, the victim may consider that restitution is not possible due to the nature of the violation; however the State shall provide the victim with full access to redress. For restitution to be effective, efforts should be made to address any structural causes of the violation, including any kind of discrimination related to, for example, gender, sexual orientation, disability, political or other opinion, ethnicity, age and religion, and all other grounds of discrimination.

### **Compensation**

9. The Committee emphasizes that monetary compensation alone may not be sufficient redress for a victim of torture and ill-treatment. The Committee affirms that the provision of monetary compensation only is inadequate for a State party to comply with its obligations under article 14.

10. The right to prompt, fair and adequate compensation for torture or ill-treatment under article 14 is multi-layered and compensation awarded to a victim should be sufficient to compensate for any economically assessable damage resulting from torture or ill-treatment, whether pecuniary or non-pecuniary. This may include: reimbursement of

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<sup>1</sup> United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147.

medical expenses paid and provision of funds to cover future medical or rehabilitative services needed by the victim to ensure as full rehabilitation as possible; pecuniary and non-pecuniary damage resulting from the physical and mental harm caused; loss of earnings and earning potential due to disabilities caused by the torture or ill-treatment; and lost opportunities such as employment and education. In addition, adequate compensation awarded by States parties to a victim of torture or ill-treatment should provide for legal or specialist assistance, and other costs associated with bringing a claim for redress.

### **Rehabilitation**

11. The Committee affirms that the provision of means for as full rehabilitation as possible for anyone who has suffered harm as a result of a violation of the Convention should be holistic and include medical and psychological care as well as legal and social services. Rehabilitation, for the purposes of this general comment, refers to the restoration of function or the acquisition of new skills required as a result of the changed circumstances of a victim in the aftermath of torture or ill-treatment. It seeks to enable the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the person's physical and social environment. Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society.

12. The Committee emphasizes that the obligation of States parties to provide the means for "as full rehabilitation as possible" refers to the need to restore and repair the harm suffered by a victim whose life situation, including dignity, health and self-sufficiency may never be fully recovered as a result of the pervasive effect of torture. The obligation does not relate to the available resources of States parties and may not be postponed.

13. In order to fulfil its obligations to provide a victim of torture or ill-treatment with the means for as full rehabilitation as possible, each State party should adopt a long-term, integrated approach and ensure that specialist services for victims of torture or ill-treatment are available, appropriate and readily accessible. These should include: a procedure for the assessment and evaluation of individuals' therapeutic and other needs, based on, inter alia, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol); and may include a wide range of inter-disciplinary measures, such as medical, physical and psychological rehabilitative services; re-integrative and social services; community and family-oriented assistance and services; vocational training; education etc. A holistic approach to rehabilitation which also takes into consideration the strength and resilience of the victim is of utmost importance. Furthermore, victims may be at risk of re-traumatization and have a valid fear of acts which remind them of the torture or ill-treatment they have endured. Consequently, a high priority should be placed on the need to create a context of confidence and trust in which assistance can be provided. Confidential services should be provided as required.

14. The requirement in the Convention to provide these forms of rehabilitative services does not extinguish the need to provide medical and psychosocial services for victims in the direct aftermath of torture, nor does such initial care represent the fulfilment of the obligation to provide the means for as full rehabilitation as possible.

15. States parties shall ensure that effective rehabilitation services and programmes are established in the State, taking into account a victim's culture, personality, history and background and are accessible to all victims without discrimination and regardless of a victim's identity or status within a marginalized or vulnerable group, as illustrated in paragraph 32, including asylum seekers and refugees. States parties' legislation should establish concrete mechanisms and programmes for providing rehabilitation to victims of torture or ill-treatment. Torture victims should be provided access to rehabilitation

programmes as soon as possible following an assessment by qualified independent medical professionals. Access to rehabilitation programmes should not depend on the victim pursuing judicial remedies. The obligation in article 14 to provide for the means for as full rehabilitation as possible can be fulfilled through the direct provision of rehabilitative services by the State, or through the funding of private medical, legal and other facilities, including those administered by non-governmental organizations (NGOs), in which case the State shall ensure that no reprisals or intimidation are directed at them. The victim's participation in the selection of the service provider is essential. Services should be available in relevant languages. States parties are encouraged to establish systems for assessing the effective implementation of rehabilitation programmes and services, including by using appropriate indicators and benchmarks.

### **Satisfaction and the right to truth**

16. Satisfaction should include, by way of and in addition to the obligations of investigation and criminal prosecution under articles 12 and 13 of the Convention, any or all of the following remedies: effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; the search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification, and reburial of victims' bodies in accordance with the expressed or presumed wish of the victims or affected families; an official declaration or judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; judicial and administrative sanctions against persons liable for the violations; public apologies, including acknowledgement of the facts and acceptance of responsibility; commemorations and tributes to the victims.

17. A State's failure to investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts of torture in a prompt manner, may constitute a de facto denial of redress and thus constitute a violation of the State's obligations under article 14.

### **Guarantees of non-repetition**

18. Articles 1 to 16 of the Convention constitute specific preventive measures that the States parties deemed essential to prevent torture and ill-treatment. To guarantee non-repetition of torture or ill-treatment, States parties should undertake measures to combat impunity for violations of the Convention. Such measures include issuing effective, clear instructions to public officials on the provisions of the Convention, especially the absolute prohibition of torture. Other measures should include any or all of the following: civilian oversight of military and security forces; ensuring that all judicial proceedings abide by international standards of due process, fairness and impartiality; strengthening the independence of the judiciary; protecting human rights defenders and legal, health and other professionals who assist torture victims; establishing systems for regular and independent monitoring of all places of detention; providing, on a priority and continued basis, training for law enforcement officials as well as military and security forces on human rights law that includes the specific needs of marginalized and vulnerable populations and specific training on the Istanbul Protocol for health and legal professionals and law enforcement officials; promoting the observance of international standards and codes of conduct by public servants, including law enforcement, correctional, medical, psychological, social service and military personnel; reviewing and reforming laws contributing to or allowing torture and ill-treatment; ensuring compliance with article 3 of the Convention prohibiting refoulement; ensuring the availability of temporary services for

individuals or groups of individuals, such as shelters for victims of gender-related or other torture or ill-treatment. The Committee notes that by taking measures such as those listed herein, States parties may also be fulfilling their obligations to prevent acts of torture under article 2 of the Convention. Additionally, guarantees of non-repetition offer important potential for the transformation of social relations that may be the underlying causes of violence and may include, but are not limited to, amending relevant laws, fighting impunity, and taking effective preventative and deterrent measures.

### **Procedural obligations: implementation of the right to redress**

#### **Legislation**

19. Under article 2 of the Convention, States parties shall enact “effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” As clarified by the Committee in its general comment No. 2, “States parties must make the offence of torture punishable as an offence under its criminal law, in accordance, at a minimum, with the elements of torture as defined in article 1 of the Convention, and the requirements of article 4.” The failure of States parties to enact legislation that clearly incorporates their obligations under the Convention and criminalizes torture and ill-treatment, and the resulting absences of torture and ill-treatment as criminal offences, obstructs the victim’s capacity to access and enjoy his or her rights guaranteed under article 14.

20. To give effect to article 14, States parties shall enact legislation specifically providing a victim of torture and ill-treatment with an effective remedy and the right to obtain adequate and appropriate redress, including compensation and as full rehabilitation as possible. Such legislation must allow for individuals to exercise this right and ensure their access to a judicial remedy. While collective reparation and administrative reparation programmes may be acceptable as a form of redress, such programmes may not render ineffective the individual right to a remedy and to obtain redress.

21. States parties should ensure that their domestic laws provide that a victim who has suffered violence or trauma should benefit from adequate care and protection to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

22. Under the Convention, States parties are required to prosecute or extradite alleged perpetrators of torture when they are found in any territory under its jurisdiction, and to adopt the necessary legislation to make this possible. The Committee considers that the application of article 14 is not limited to victims who were harmed in the territory of the State party or by or against nationals of the State party. The Committee has commended the efforts of States parties for providing civil remedies for victims who were subjected to torture or ill-treatment outside their territory. This is particularly important when a victim is unable to exercise the rights guaranteed under article 14 in the territory where the violation took place. Indeed, article 14 requires States parties to ensure that all victims of torture and ill-treatment are able to access remedy and obtain redress.

#### **Effective mechanisms for complaints and investigations**

23. The Committee has, in its concluding observations, identified other State obligations that shall be met in order to ensure that the article 14 rights of a victim are fully respected. In this regard, the Committee underscores the important relationship between States parties’ fulfilment of their obligations under article 12 and 13, and their obligation under article 14. According to article 12, States parties shall undertake prompt, effective and impartial investigations, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction as the result of its actions or omissions and,

as set out in article 13 and affirmed by the Committee in its general comment No. 2, ensure that impartial and effective complaints mechanisms are established. Full redress cannot be obtained if the obligations under articles 12 and 13 are not guaranteed. Complaints mechanisms shall be made known and accessible to the public, including to persons deprived of their liberty, whether in detention, psychiatric facilities, or elsewhere, via, for example, telephone hotlines or confidential complaints boxes in detention facilities, and to persons belonging to vulnerable or marginalized groups, including those who may have limited communication abilities.

24. At the procedural level, States parties shall ensure the existence of institutions competent to render enforceable final decisions through a procedure established by law to enable victims of torture or ill-treatment to secure redress, including adequate compensation and rehabilitation.

25. Securing the victim's right to redress requires that a State party's competent authorities promptly, effectively and impartially investigate and examine the case of any individual who alleges that she or he has been subjected to torture or ill-treatment. Such an investigation should include as a standard measure an independent physical and psychological forensic examination as provided for in the Istanbul Protocol. Undue delays in initiating or concluding legal investigations into complaints of torture or ill-treatment compromise victims' rights under article 14 to obtain redress, including fair and adequate compensation and the means for as full rehabilitation as possible.

26. Notwithstanding the evidentiary benefits to victims afforded by a criminal investigation, a civil proceeding and the victim's claim for reparation should not be dependent on the conclusion of a criminal proceeding. The Committee considers that compensation should not be unduly delayed until criminal liability has been established. Civil liability should be available independently of criminal proceedings and the necessary legislation and institutions for such purpose should be in place. If criminal proceedings are required by domestic legislation to take place before civil compensation can be sought, then the absence of or undue delay in those criminal proceedings constitutes a failure on the part of the State party to fulfil its obligations under the Convention. Disciplinary action alone shall not be regarded as an effective remedy within the meaning of article 14.

27. Under article 14, a State party shall ensure that victims of any act of torture or ill-treatment under its jurisdiction obtain redress. States parties have an obligation to take all necessary and effective measures to ensure that all victims of such acts obtain redress. This obligation includes an obligation for State parties to promptly initiate a process to ensure that victims obtain redress, even in the absence of a complaint, when there are reasonable grounds to believe that torture or ill-treatment has taken place.

28. The Committee strongly encourages States parties to recognize the Committee's competence to consider individual complaints under article 22 to allow victims to submit communications and seek the views of the Committee. The Committee furthermore encourages States parties to ratify or accede to the Optional Protocol to the Convention against Torture in order to strengthen preventive measures against torture and ill-treatment.

### **Access to mechanisms for obtaining redress**

29. The Committee highlights the importance of the State party affirmatively ensuring that victims and their families are adequately informed of their right to pursue redress. In this regard, the procedures for seeking reparation should be transparent. The State party should moreover provide assistance and support to minimize the hardship to complainants and their representatives. Civil proceedings, or other proceedings, should not impose a financial burden upon victims that would prevent or discourage them from seeking redress. Where existing civil proceedings are unable to provide adequate redress to victims, the

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Committee recommends implementing mechanisms that are readily accessible to victims of torture and ill-treatment, including the establishment of a national fund to provide redress for victims of torture. Special measures should be adopted to ensure access by persons belonging to groups which have been marginalized or made vulnerable.

30. Judicial remedies must always be available to victims, irrespective of what other remedies may be available, and should enable victim participation. States parties should provide adequate legal aid to those victims of torture or ill-treatment lacking the necessary resources to bring complaints and to make claims for redress. States parties shall also make readily available to the victims all evidence concerning acts of torture or ill-treatment upon the request of victims, their legal counsel, or a judge. A State party's failure to provide evidence and information, such as records of medical evaluations or treatment, can unduly impair victims' ability to lodge complaints and to seek redress, compensation and rehabilitation.

31. The State party should also take measures to prevent interference with victims' privacy and to protect victims, their families and witnesses and others who have intervened on their behalf against intimidation and retaliation at all times before, during and after judicial, administrative or other proceedings that affect the interests of victims. Failure to provide protection stands in the way of victims filing complaints and thereby violates the right to seek and obtain redress and remedy.

32. The principle of non-discrimination is a basic and general principle in the protection of human rights and fundamental to the interpretation and application of the Convention. States parties shall ensure that access to justice and to mechanisms for seeking and obtaining redress are readily available and that positive measures ensure that redress is equally accessible to all persons regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, gender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum-seekers, refugees or others under international protection, or any other status or adverse distinction, and including those marginalized or made vulnerable on bases such as those above. Culturally sensitive collective reparation measures shall be available for groups with shared identity, such as minority groups, indigenous groups, and others. The Committee notes that collective measures do not exclude the individual right to redress.

33. Judicial and non-judicial proceedings shall apply gender-sensitive procedures which avoid re-victimization and stigmatization of victims of torture or ill-treatment. With respect to sexual or gender-based violence and access to due process and an impartial judiciary, the Committee emphasizes that in any proceedings, civil or criminal, to determine the victim's right to redress, including compensation, rules of evidence and procedure in relation to gender-based violence must afford equal weight to the testimony of women and girls, as should be the case for all other victims, and prevent the introduction of discriminatory evidence and harassment of victims and witnesses. The Committee considers that complaints mechanisms and investigations require specific positive measures which take into account gender aspects in order to ensure that victims of abuses such as sexual violence and abuse, rape, marital rape, domestic violence, female genital mutilation and trafficking are able to come forward and seek and obtain redress.

34. To avoid re-victimization and stigmatization of victims of torture or ill-treatment, the protections outlined in the preceding paragraph equally apply to any person marginalized or made vulnerable on the basis of identities and groups such as those examples listed under the principle of non-discrimination in paragraph 32. In judicial and non-judicial proceedings sensitivity must be exercised toward any such person. Accordingly, the Committee notes that judicial personnel must receive specific training on



the various impacts of torture and ill-treatment, including those on victims from marginalized and vulnerable groups, and on how to exercise sensitivity towards victims of torture and ill-treatment, including in the form of sexual or gender-based discrimination, in order to prevent re-victimization and stigmatization.

35. The Committee considers the training of relevant police, prison staff, medical personnel, judicial personnel and immigration personnel, including training on the Istanbul Protocol, to be fundamental to ensuring effective investigations. Furthermore, officials and personnel involved in efforts to obtain redress should receive methodological training in order to prevent re-traumatization of victims of torture or ill-treatment. This training should include, for health and medical personnel, the need to inform victims of gender-based and sexual violence and all other forms of discrimination of the availability of emergency medical procedures, both physical and psychological. The Committee also urges States parties to establish human rights offices within police forces, and units of officers specifically trained to handle cases of gender-based and sexual violence, including sexual violence perpetrated against men and boys, and violence against children and ethnic, religious, national or other minorities and other marginalized or vulnerable groups.

36. The Committee furthermore underlines the importance of appropriate procedures being made available to address the needs of children, taking into account the best interests of the child and the child's right to express his or her views freely in all matters affecting him or her, including judicial and administrative proceedings, and of the views of the child being given due weight in accordance with the age and maturity of the child. States parties should ensure the availability of child-sensitive measures for reparation which foster the health and dignity of the child.

### **Obstacles to the right to redress**

37. A crucial component of the right to redress is the clear acknowledgement by the State party concerned that the reparative measures provided or awarded to a victim are for violations of the Convention, by action or omission. The Committee is therefore of the view that a State party may not implement development measures or provide humanitarian assistance as a substitute for redress for victims of torture or ill-treatment. The failure of a State party to provide the individual victim of torture with redress may not be justified by invoking a State's level of development. The Committee recalls that subsequent governments as well as successor States still have the obligation to guarantee access to the right of redress.

38. States parties to the Convention have an obligation to ensure that the right to redress is effective. Specific obstacles that impede the enjoyment of the right to redress and prevent effective implementation of article 14 include, but are not limited to: inadequate national legislation, discrimination with regard to accessing complaints and investigation mechanisms and procedures for remedy and redress; inadequate measures for securing the custody of alleged perpetrators, State secrecy laws, evidential burdens and procedural requirements that interfere with the determination of the right to redress; statutes of limitations, amnesties and immunities; the failure to provide sufficient legal aid and protection measures for victims and witnesses; as well as the associated stigma, and the physical, psychological and other related effects of torture and ill-treatment. In addition, the failure of a State party to execute judgements providing reparative measures for a victim of torture, handed down by national, international or regional courts, constitutes a significant impediment to the right to redress. States parties should develop coordinated mechanisms to enable victims to execute judgements across State lines, including recognizing the validity of court orders from other States parties and assisting in locating the assets of perpetrators.

39. With regard to the obligations in article 14, States parties shall ensure both de jure and de facto access to timely and effective redress mechanisms for members of groups marginalized and/or made vulnerable, avoid measures that impede the ability of members of such groups to seek and obtain redress, and address formal or informal obstacles that they may face in obtaining redress. These may include, for example, inadequate judicial or other procedures for quantifying damages which may have a negative disparate impact on such individuals in accessing or keeping money. As the Committee has emphasized in its general comment No. 2, “gender is a key factor. Being female intersects with other identifying characteristics or status of the person...to determine the ways that women and girls are subject to or at risk of torture or ill-treatment”. States parties shall ensure due attention to gender in providing all the elements cited above in the process of ensuring that everybody, in particular members of groups made vulnerable, including lesbian, gay, bisexual and transgender (LGBT) people, must be treated fairly and equally and obtain fair and adequate compensation, rehabilitation and other reparative measures which respond to their specific needs.

40. On account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them. For many victims, passage of time does not attenuate the harm and in some cases the harm may increase as a result of post-traumatic stress that requires medical, psychological and social support, which is often inaccessible to those who have not received redress. States parties shall ensure that all victims of torture or ill-treatment, regardless of when the violation occurred or whether it was carried out by or with the acquiescence of a former regime, are able to access their rights to remedy and to obtain redress.

41. The Committee has consistently held that amnesties for the crime of torture are incompatible with the obligations of States parties under the Convention, including under article 14. As was pointed out in general comment No. 2, “amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability.” The Committee considers that amnesties for torture and ill-treatment pose impermissible obstacles to a victim in his or her efforts to obtain redress and contribute to a climate of impunity. The Committee therefore calls on States parties to remove any amnesties for torture or ill-treatment.

42. Similarly, granting immunity, in violation of international law, to any State or its agents or to non-State actors for torture or ill-treatment, is in direct conflict with the obligation of providing redress to victims. When impunity is allowed by law or exists de facto, it bars victims from seeking full redress as it allows the violators to go unpunished and denies victims full assurance of their rights under article 14. The Committee affirms that under no circumstances may arguments of national security be used to deny redress for victims.

43. The Committee considers reservations which seek to limit the application of article 14 to be incompatible with the object and purpose of the Convention. States parties are therefore encouraged to consider withdrawing any reservations to article 14 that limit its application so as to ensure that all victims of torture or ill-treatment have access to redress and remedy.

### **United Nations Voluntary Fund for Victims of Torture**

44. Voluntary contributions to international funds for victims of torture play an important role in providing assistance to them. The Committee highlights the important work done by the United Nations Voluntary Fund for Victims of Torture, which provides humanitarian assistance to victims of torture. The Committee highlights also the possibility

for States parties to make voluntary contributions to this fund, irrespective of the national measures taken or contributions made.

### **Monitoring and reporting**

45. States parties shall establish a system to oversee, monitor, evaluate, and report on their provision of redress measures and necessary rehabilitation services to victims of torture or ill-treatment. Accordingly, States parties should include in their reports to the Committee data disaggregated by age, gender, nationality, and other key factors regarding redress measures afforded to victims of torture or ill-treatment, in order to meet their obligation as recalled in general comment No. 2 to provide continual evaluation of their efforts to provide redress to victims.

46. On the implementation of article 14, the Committee has observed the need to provide adequate information on the implementation of article 14 in States parties' reports. Therefore, the Committee wishes to underscore that specific information should be provided on the following:

- (a) The number of victims of torture or ill-treatment who have sought compensation through legal, administrative and other means and the nature of the violations alleged; the number of victims who have been awarded compensation; and in what amounts;
- (b) The measures taken to assist victims in the direct aftermath of torture;
- (c) The rehabilitation facilities available to victims of torture or ill-treatment and the accessibility thereof, as well as the budget allocation for rehabilitation programmes and the number of victims who have received rehabilitative services appropriate to their needs;
- (d) The methods available for assessing the effectiveness of rehabilitation programmes and services, including the application of appropriate indicators and benchmarks, and the result of such assessment;
- (e) The measures taken to ensure satisfaction and guarantees of non-repetition;
- (f) The domestic legislation which provides victims of torture or ill-treatment with the right to remedy and redress, and relevant implementation measures taken by the State party. Where such legislation is lacking, reports should include information on the measures taken by the State party to adopt and implement such legislation.
- (g) The measures taken to ensure that all victims of torture or ill-treatment are able to exercise and enjoy their rights under article 14.
- (h) The complaints mechanisms available for victims of torture or ill-treatment, including how such mechanisms are made known and accessible to all victims. States parties should also include data disaggregated by age, gender, nationality, location and alleged violation, on the number of complaints received through such mechanisms.
- (i) The measures taken by States parties to ensure that all allegations of torture and ill-treatment are effectively investigated.
- (j) The legislation and policy measures designed to positively identify victims of torture in order to provide them with redress.
- (k) The available avenues for a victim of torture or ill-treatment to obtain redress, including all criminal, civil, administrative and non-judicial procedures, such as administrative reparation programmes, as well as information on the number of victims who have accessed such mechanisms, how many obtained redress and reparative measures, and in what forms and/or amounts.

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(l) The legal aid and witness protection available to victims of torture or ill-treatment as well as witnesses and others who have intervened on behalf of victims, including how such protection is made known and how it is made available in practice; the number of victims who have been granted legal aid; the number of persons who have been protected by State witness protection; and the State party's evaluation of the effectiveness of such protection.

(m) The steps taken to implement judgements by national, regional or international courts, including the amount of time lapsed from the date of the judgement and the actual provision of compensation or other forms of redress. States parties should also include disaggregated data on the number of victims designated to receive reparative measures in court judgements and the number who actually received redress, and for what violations.

(n) The safeguards available for the special protection of members of marginalized or vulnerable groups, including women and children seeking to exercise their rights guaranteed under article 14 of the Convention.

(o) Any such other matters that the Committee may require.

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