

COMPILATION OF DOCUMENTS ON TORTURE PREVENTION

By

**THE UN SUBCOMMITTEE ON THE PREVENTION OF TORTURE
AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT**

And

**THE COMMITTEE FOR THE PREVENTION OF TORTURE IN
AFRICA OF THE AFRICAN COMMISSION ON HUMAN AND
PEOPLES' RIGHTS**



**Subcommittee on Prevention of Torture
and Other Cruel, Inhuman or Degrading
Treatment or Punishment**



African Commission on Human and Peoples' Rights

The United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and the African Commission on Human and Peoples' Rights' Committee for the Prevention of Torture in Africa (CPTA), as part of their collaborative activities, have produced this compilation of documents on torture prevention for African States.

The SPT, established by the Optional Protocol to the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), began its work in 2007 and has a preventive mandate focused on an innovative, sustained and proactive approach to the prevention of torture and ill treatment. The SPT is composed of 25 independent and impartial experts coming from different backgrounds and from various regions of the world. The SPT has two primary operational functions. First, it may undertake visits to States Parties, during the course of which it may visit any place where persons may be deprived of their liberty. Second, it has an advisory function which involves providing assistance and advice to States Parties on the establishment of National Preventive Mechanisms (NPM), which OPCAT requires that they establish, and also providing advice and assistance to both the NPM and the State Party regarding the working of the NPM. In addition, the SPT cooperates, for the prevention of torture in general, with relevant United Nations organs and mechanisms as well as with international, regional, and national institutions or organizations. In order for the SPT to fully realize its mandate under the OPCAT, the SPT has so far devised four types of visits: these are SPT country visits, SPT country follow-up visits, NPM advisory visits and OPCAT advisory visits.

The CPTA (originally the 'Robben Island Guidelines Follow-up Committee') was created by the adoption of Resolution 61 of the 32nd Ordinary Session held in Banjul, The Gambia in October 2002. The Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa, adopted in 2002, were a tool to assist States in implementing their obligations under Article 5 of the African Charter on Human and Peoples' Rights. By Resolution 158, adopted at the 46th Ordinary Session held in Banjul, the Gambia in November 2009, its name was changed to the Committee for the Prevention of Torture in Africa. The mandate of the CPTA is that it:

- Organizes, with the support of other interested partners, seminars to disseminate the Robben Island Guidelines to national and international actors.
- Develops and proposes to the African Commission strategies to promote and implement the Robben Island Guidelines at national and regional level.
- Promotes and facilitates the implementation of the Robben Island Guidelines within the Member States.
- Reports to the African Commission at each regular session on the status of implementation of the Robben Island Guidelines.

The documents in this collection include UN instruments: the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and OPCAT. Provisions in other UN treaties which refer to the prohibition of torture are also included, as are extracts from the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules).

Article 5 of the African Charter on Human and Peoples' Rights sets out the general prohibition on torture and is the basis on which other soft-law instruments have been created by the African Commission. These include the Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa, adopted in 2002, and extracts from the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines).

The documents and extracts indicate not only the obligations States have with respect to torture prevention in its broadest sense, but also the mechanisms that they should adopt within their jurisdictions.

The two committees hope that this compilation will provide a useful tool for States, national human rights institutions, civil society organisations and others in their work in torture prevention within Africa. The Committees remain available for advice and assistance.

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Article 5 of the African (Banjul) Charter on Human and Peoples' Rights:

"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."

African Charter on the Rights of the Child:

"Article 16 (1)

States parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child."

Protocol to the African Charter on the Rights of Women in Africa:

"Article 4 (1)

Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited."



Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)

The African Commission on Human and Peoples' Rights, meeting at its 32nd ordinary session, held in Banjul, The Gambia, from 17th to 23rd October 2002;

Recalling the provisions of -:

- Article 5 of the African Charter on Human and Peoples' Rights that prohibits all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment;
- Article 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 legislation;
- Articles 3 and 4 of the Constitutive Act of the African Union wherein States Parties undertake to promote and respect the sanctity of human life, rule of law, good governance and democratic principles;

Recalling further its Resolution on the Right to Recourse Procedure and Fair Trial adopted during its 11th ordinary session, held in Tunis, Tunisia, from 2nd to 9th March 1992;

Noting the commitment of African States to ensure better promotion and respect of human rights on the continent as reaffirmed in the Grand Bay Declaration and Plan of Action adopted by the 1st Ministerial Conference on Human Rights in Africa;

Recognising the need to take concrete measures to further the implementation of existing provisions on the prohibition of torture and cruel, inhuman or degrading treatment or punishment;

Mindful of the need to assist African States to meet their international obligations in this regard;

Recalling the recommendations of the Workshop on the Prohibition and the Prevention of Torture and Ill-treatment, organised jointly by the African Commission and the Association for the Prevention of Torture, on Robben Island, South Africa, from 12th to 14th February 2002;

1. Adopts the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines).

2. **Establishes** a Follow-up Committee comprising of the African Commission, the Association for the Prevention of Torture and any prominent African Experts as the Commission may determine.

3. **Assigns** the following mandate to the Follow-up Committee -:

- To organise, with the support of interested partners, seminars to disseminate the Robben Island Guidelines to national and regional stakeholders.
- To develop and propose to the African Commission strategies to promote and implement the Robben Island Guidelines at the national and regional levels.
- To promote and facilitate the implementation of the Robben Island Guidelines within Member States.
- To make a progress report to the African Commission at each ordinary session.

4. **Urges** Special Rapporteurs and Members of the African Commission to widely disseminate the Robben Island Guidelines as part of their promotional mandate.

5. **Encourages** States parties to the African Charter, in their periodic reports to the African Commission, to bear in mind the Robben Island Guidelines.

6. **Invites** NGOs and other relevant actors to widely disseminate and utilise the Robben Island Guidelines in the course of their work.

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;
- 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;

Noting the commitment of African States as reaffirmed in the Grand Bay 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.
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.
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)¹.

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;

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.² 1 Annexed to UN GA Res. A/55/89, 4 Dec. 2000, UN Publication No.8, HR/P/PT/8. 2 UN GA/Res. 43/173, 9 Dec.1988

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.

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.

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.
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.
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

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 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 illtreatment received by one of its members can also be considered as victims.



Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa (Luanda Guidelines)

“4. Rights of an arrested person

The following rights shall be afforded to all persons under arrest:

a. The right to be free from torture and other cruel, inhuman and degrading treatment and punishment.”

“9. Questioning and confessions

[...]

c. No detained person while being questioned shall be subject to torture or other ill-treatment, such as violence, threats, intimidation or methods of questioning which impair his or her capacity of decision or his or her judgment.”

“22. Torture and other cruel, inhuman or degrading treatment or punishment and other serious human rights violations in police custody and pre-trial detention

a. All persons deprived of their liberty shall have the right to lodge a complaint with a competent, independent and impartial authority with a mandate to conduct prompt and thorough investigations Guidelines on the conditions of arrest, in a manner consistent with the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa.

b. If there are reasonable grounds to believe that an act of torture and other cruel, inhuman or degrading treatment or punishment, or another serious human rights violation has taken place, States shall ensure prompt investigation by independent and impartial authorities.”

“24. Physical conditions

Conditions of detention in police custody and pre-trial detention shall conform with all applicable international law and standards. They shall guarantee the right of detainees in police custody and pre-trial detention to be treated with respect for their inherent dignity, and to be protected from torture and other cruel, inhumane or degrading treatment or punishment.”

“38. Remedies

All persons who are victims of illegal or arbitrary arrest and detention, or torture and ill-treatment during police custody or pre-trial detention have the right to seek and obtain effective remedies for the violation of their rights. This right extends to immediate family or dependents of the direct victim. [...]”

“42. Monitoring mechanisms

a. States shall ensure access to detainees and places of detention for independent monitoring bodies or other neutral independent humanitarian organisations authorised to visit them.

b. A detained person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with the above principle, subject to reasonable conditions to ensure security and good order.

c. Access to places of detention shall also be provided to lawyers and other legal service providers, and other authorities such as judicial authorities and National Human Rights Institutions, subject to reasonable conditions to ensure security and good order.”

“43. Inquiries States shall establish mechanisms, including within existing independent oversight and monitoring mechanisms, for the prompt, impartial and independent inquiry of disappearances, extra-judicial executions, deaths in custody, torture and other cruel, inhuman or degrading treatment or punishment, and other serious violations of the human rights.”



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.

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 I 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 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.

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 1 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 1 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 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.

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.

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 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 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 1 of this article. The other States Parties shall not be bound by paragraph 1 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.

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.
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.

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 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;
- (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;

(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.

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.
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.
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.

Universal Declaration on Human Rights

(Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948)

“Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...]

b) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

International Covenant on Civil and Political Rights

(Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Entry into force 23 March 1976, in accordance with Article 49)

“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.”

“Article 10

1. All persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person.”

International Convention on the Elimination of All Forms of Racial Discrimination

(Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965. Entry into force 4 January 1969, in accordance with Article 19)

“Article 5(b)

The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution[...]

Convention on the Rights of the Child:

(Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entry into force 2 September 1990, in accordance with article 49)

“Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; [...]

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

(Adopted by General Assembly resolution 45/158 of 18 December 1990)

“Article 10

No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Convention on the Rights of Persons with Disabilities

(Adopted on 13 December 2006 by the General Assembly Resolution 61/106 on 13 December 2006. Entry into force on 3 May 2008.)

“Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment

1. 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 or her free consent to medical or scientific experimentation.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.”

“Article 33 - National implementation and monitoring

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.”



United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)

(Adopted by General Assembly Resolution 70/175 on 17 December 2015)

“Rule 1

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.”

“Internal and external inspections

Rule 83

1. There shall be a twofold system for regular inspections of prisons and penal services:
 - (a) Internal or administrative inspections conducted by the central prison administration;
 - (b) External inspections conducted by a body independent of the prison administration, which may include competent international or regional bodies.
2. In both cases, the objective of the inspections shall be to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that the rights of prisoners are protected.”

“Rule 84

1. Inspectors shall have the authority:
 - (a) To access all information on the numbers of prisoners and places and locations of detention, as well as all information relevant to the treatment of prisoners, including their records and conditions of detention;
 - (b) To freely choose which prisons to visit, including by making unannounced visits at their own initiative, and which prisoners to interview;
 - (c) To conduct private and fully confidential interviews with prisoners and prison staff in the course of their visits;
 - (d) To make recommendations to the prison administration and other competent authorities.

2. External inspection teams shall be composed of qualified and experienced inspectors appointed by a competent authority and shall encompass health-care professionals. Due regard shall be given to balanced gender representation. “

“Rule 85

1. Every inspection shall be followed by a written report to be submitted to the competent authority. Due consideration shall be given to making the reports of external inspections publicly available, excluding any personal data on prisoners unless they have given their explicit consent.

2. The prison administration or other competent authorities, as appropriate, shall indicate, within a reasonable time, whether they will implement the recommendations resulting from the external inspection.”

Human Rights Committee, General Comment 20, Article 7

(Adopted at the Committee's Forty-fourth session in 1992)

“1. This general comment replaces general comment 7 (the sixteenth session, 1982) reflecting and further developing it.

2. The aim of the provisions of article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. The prohibition in article 7 is complemented by the positive requirements of article 10, paragraph 1, of the Covenant, which stipulates that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

3. The text of article 7 allows of no limitation. The Committee also reaffirms that, even in situations of public emergency such as those referred to in article 4 of the Covenant, no derogation from the provision of article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority.

4. The Covenant does not contain any definition of the concepts covered by article 7, nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied.

5. The prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee's view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.

6. The Committee notes that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7. As the Committee has stated in its general comment No. 6 (16), article 6 of the Covenant refers generally to abolition of the death penalty in terms that strongly suggest that abolition is desirable. Moreover, when the death penalty is applied by a State party for the most serious crimes, it must not only be strictly limited in accordance with article 6 but it must be carried out in such a way as to cause the least possible physical and mental suffering.

7. Article 7 expressly prohibits medical or scientific experimentation without the free consent of the person concerned. The Committee notes that the reports of States parties generally contain little information on this point. More attention should be given to the need and means to ensure observance of this provision. The Committee also observes that special protection in regard to such experiments is necessary in the case of persons not capable of giving valid consent, and in particular those under any form of detention or imprisonment. Such persons should not be subjected to any medical or scientific experimentation that may be detrimental to their health.

8. The Committee notes that it is not sufficient for the implementation of article 7 to prohibit such treatment or punishment or to make it a crime. States parties should inform the Committee of the legislative, administrative, judicial and other measures they take to prevent and punish acts of torture and cruel, inhuman and degrading treatment in any territory under their jurisdiction.

9. In the view of the Committee, States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. States parties should indicate in their reports what measures they have adopted to that end.

10. The Committee should be informed how States parties disseminate, to the population at large, relevant information concerning the ban on torture and the treatment prohibited by article 7. Enforcement personnel, medical personnel, police officers and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training. States parties should inform the Committee of the instruction and training given and the way in which the prohibition of article 7 forms an integral part of the operational rules and ethical standards to be followed by such persons.

11. In addition to describing steps to provide the general protection against acts prohibited under article 7 to which anyone is entitled, the State party should provide detailed information on safeguards for the special protection of particularly vulnerable persons. It should be noted that keeping 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 is an effective means of preventing cases of torture and ill-treatment. To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. To the same effect, the time and place of all interrogations should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings. Provisions should also be made against incommunicado detention. In that connection, States parties should ensure that any places of detention be free from any equipment liable to be used for

inflicting torture or ill-treatment. The protection of the detainee also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members.

12. It is important for the discouragement of violations under article 7 that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment.

13. States parties should indicate when presenting their reports the provisions of their criminal law which penalize torture and cruel, inhuman and degrading treatment or punishment, specifying the penalties applicable to such acts, whether committed by public officials or other persons acting on behalf of the State, or by private persons. Those who violate article 7, whether by encouraging, ordering, tolerating or perpetrating prohibited acts, must be held responsible. Consequently, those who have refused to obey orders must not be punished or subjected to any adverse treatment.

14. Article 7 should be read in conjunction with article 2, paragraph 3, of the Covenant. In their reports, States parties should indicate how their legal system effectively guarantees the immediate termination of all the acts prohibited by article 7 as well as appropriate redress. The right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective. The reports of States parties should provide specific information on the remedies available to victims of maltreatment and the procedure that complainants must follow, and statistics on the number of complaints and how they have been dealt with.

15. The Committee has noted that some States have granted amnesty in respect of acts of torture. Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.”

General Recommendation 19 of the Committee for the Elimination of Discrimination against Women

(Adopted at the Committee’s Eleventh Session in 1992)

“General recommendation No. 19: Violence against women

Background

1. Gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.

[...]

6. The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or

sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:

(a) The right to life;

(b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;

[...]

8. The Convention applies to violence perpetrated by public authorities. Such acts of violence may breach that State's obligations under general international human rights law and under other conventions, in addition to breaching this Convention.

9. It is emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see articles 2 (e), 2 (f) and 5). For example, under article 2 (e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation. [...]"

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