

Combating Torture

This manual outlines the duties and responsibilities of judges and prosecutors to prevent and investigate acts of torture, and other forms of ill-treatment, to ensure that those who perpetrate such acts are brought to justice and to provide redress for their victims. It also provides practical advice, drawn from best practice, about how torture can be combated at a procedural level. Although primarily aimed at judges and prosecutors, it can be used as a resource by defence lawyers and others concerned with the prevention and investigation of acts of torture. A well-informed and sensitised legal profession has a vital role to play in eradicating torture and this manual is also aimed at helping its members to fulfil that professional function.

This manual should be seen as complementary to *The Torture Reporting Handbook*, produced by the University of Essex. A second handbook in the series has been produced by the Human Rights Centre, *Reporting Killings as Human Rights Violations*.



Participants at a seminar at the Foreign and Commonwealth Office in London 1 November 2002 discuss an early draft of the manual.

Left to right:
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Combating Torture: A Manual for Judges and Prosecutors

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Foreword

Despite its absolute prohibition under both international law and the laws of most, if not all, national jurisdictions, the use of torture persists. Although publicly condemned it is practised clandestinely in many states throughout the world. Indeed torture is typically perpetrated by the same state officials who are responsible for upholding and enforcing the law.

Judges and prosecutors have a crucial role to play in combating torture. First, they are pivotal in maintaining any rule of law. Nothing is so corrosive of the rule of law than official lawlessness, especially official criminality. Second, when a state engages in and fails to prevent torture, it is in breach of its obligations under international law. Those responsible for the administration of justice need to be alert to their role in avoiding placing the state in that position. Third, whereas the executed and legislated branches of government may be tempted to ignore the rule of law and human rights in response to public pressures for increased security from common criminality and, especially since the atrocities of 11 September 2001, transnational terrorism, the judicial branch is better placed to save society from the trap of allowing short-term expedience to trump the long-term institutional stability and fundamental values of society.

Combating torture requires judges and prosecutors to wield both the shield and the sword of the law. The shield they must provide involves respecting national and international safeguards to protect those in the hands of law enforcement from being subjected to torture and similar prohibited ill-treatment. The sword they must brandish involves holding the perpetrators of such treatment accountable for their own law breaking.

This manual outlines the duties and responsibilities of judges and prosecutors to prevent and investigate acts of torture, and other forms of ill-treatment, to ensure that those who perpetrate such acts are brought to justice and that their victims receive redress. It also provides practical advice, drawn from best practice, about how torture can be combated at a procedural level.

Although primarily aimed at judges and prosecutors, the manual can also be used as a resource by defence lawyers who play a vital role in criminal trials and who represent one of the most important bulwarks against torture, and other forms of ill-treatment, for those who have been deprived of their liberty. A well-informed and sensitised legal profession has a vital role to play in eradicating torture and this manual is also aimed at helping its members to fulfil that professional function.

The manual should be seen as complementary to the University of Essex Human Rights Centre's *The Torture Reporting Handbook* by Camille Giffard. Like that handbook, the present manual is the result of a project supported and financed by the United Kingdom Government's Foreign and Commonwealth Office within the framework of an anti-torture programme first launched by the UK Government in 1998. As director of the project and on behalf of the University of Essex, its Human Rights Centre and all who have contributed to the project, I gratefully acknowledge that support.

Professor Sir Nigel Rodley KBE

Human Rights Centre, University of Essex, March 2003

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Glossary of terms as used in this manual

Allegation (of torture)	A claim (as yet neither proved nor disproved) that an incident of torture has occurred.
<i>Amicus curiae</i> brief	A submission by a non-party to judicial proceedings which is designed to inform the judicial body about a specific matter relating to the proceedings.
Applicant	Person making an application under an individual complaint procedure.
Application	Letter or other form of submission asking a judicial body to consider a case under an individual complaint procedure.
Arrest	The act of apprehending a person for the alleged commission of an offence or by the action of an authority.
Asylum	Asylum is sought by individuals who do not wish to return to a country, usually their own, where they are at risk. If granted, it means being allowed to remain in a country which is not their own. It may be temporary or permanent.
Communication	Letter or other form of submission transmitting information to an international body. The term is often used within the UN to refer to applications under an individual complaint procedure. The person who writes a communication is often referred to as the author of the communication.
Complainant	Person making a complaint under an individual complaint procedure.
Corroboration	Evidence which supports or confirms the truth of an allegation.
Court judgment	Legally-binding decision in which a court expresses its conclusions in a case.
Criminal charge	Official notification given to an individual by the competent authorities that he or she has committed a criminal offence.
Crimes against humanity	Serious acts, such as torture, committed as part of a widespread or systematic attack against a civilian population, whether or not they are committed in the course of an armed conflict.
Declaration	A particularly formal resolution, usually of the United Nations General Assembly, which is not as such legally-binding, but sets out standards which states undertake to respect.
Deportation	Expulsion from a country.
Derogate	To temporarily suspend or limit.
Detention	Depriving a person of personal liberty except as a result of conviction for an offence.
Domestic law or legal system	National law or legal system; law or legal system which is specific to a particular country.

Enforcement (of obligations)	Making the obligations effective; ensuring that they are respected.
Entry into force (of a treaty)	The moment at which treaty obligations begin to apply.
Fact-finding	Carrying out an investigation to discover the facts.
Gross violations of human rights	Particularly serious violations of human rights, such as torture or extra-judicial killing.
Implementation (of obligations)	The way in which obligations are carried out or respected, or measures aimed at achieving this.
Impunity	Being able to avoid punishment for illegal or undesirable behaviour.
Incommunicado detention	Being held by the authorities without being allowed any contact with the outside world.
Individual complaint	A complaint relating to a specific set of facts affecting an individual or individuals.
Instrument	A general term to refer to international law documents, whether legally binding or not.
Inter-governmental body	A body or organisation composed of the governmental representatives of more than one country.
Judicial procedure	A procedure before a judicial body.
Jurisdiction (of a state)	Area or persons over which a state exercises its authority.
Jurisdiction (of a judicial body)	Matters which fall within the jurisdiction of a judicial or quasi-judicial body are those which it is has the authority to examine.
Leave	Permission.
Legally-binding	If something is legally-binding on a state, this means that the state is obliged to act in accordance with it, and there may be legal consequences if it does not do so.
Litigation	The process of bringing and conducting a case before a court.
Lodging a complaint	Registering a complaint.
Mandate	The authorised powers of a mechanism – the document which explains what the mechanism is authorised to do.
Merits	The stage of an individual complaint procedure at which the judicial, or quasi-judicial, body examines the facts of a case and decides if a violation has occurred.
Monitoring	Seeking and receiving information for the purpose of reporting on a subject or situation.
Non-governmental actors	Private persons or groups acting independently of the authorities.
Observations	Comments, assessment.
Perpetrator	The person who has carried out an act.
Petition	Request for action, e.g. request for a matter to be investigated.

Provisional measures	Temporary measures which can be requested by a judicial or quasi-judicial body before having completed its consideration of a case, in order to avoid irreparable damage.
Quasi-judicial procedure	A procedure before a body which considers cases in a similar way to a judicial body, but which is not composed of judges and the decisions of which are not of themselves legally-binding.
Ratification	The process through which a state agrees to be bound by a treaty.
Recommendation	A suggested course of action. Recommendations are not legally-binding.
Reparation	Measures to repair damage caused, eg. compensation.
Reservation	At the time of agreeing to be bound by a treaty, a state can register a reservation: a statement intended to modify its obligations under the treaty in some way.
Resolution	Official decision of an international body, often adopted through a vote. It is usually a recommendation and therefore not legally binding.
Rules of procedure	The detailed rules which a judicial or quasi-judicial body adopts, setting out the way in which proceedings before it should be carried out.
Sanction	A penalty imposed for a state's failure to respect its legal obligations.
State responsibility	Holding a state accountable under international law.
State Party (to a treaty)	State which has agreed to be bound to a treaty.
Supervisory body	A body set up to supervise the ways in which states implement their obligations under a treaty.
Transmission (of an allegation)	Sending the allegation, e.g. to the state concerned.
Treaty	International law document which sets out legally-binding obligations for states.
Treaty article	The term used to refer to individual sections of a treaty.
Treaty body	A body set up by a treaty.
Violation (of obligations)	Failure by a state to respect its obligations under international law.
War Crimes	Grave breaches of the Geneva Conventions 1949, committed in the course of an armed conflict against persons or property protected by the Conventions, and other criminal violations of the rules of war.

Introduction

Who is this manual for?

- 0.1 This manual has been written as an information resource for judges and prosecutors throughout the world in order to assist them to prevent and investigate acts of torture. Based on international standards, it also contains check-lists of good practice and advice that should be applicable in any legal system. Given the different legal systems, rules of evidence and methods of procedure that exist in different countries it is not possible to produce a detailed legal reference book that will be universally applicable in every jurisdiction. This manual instead aims to provide a practical guide for judges and prosecutors whose decisions may, in many cases, have a direct impact on the problem of torture and other prohibited forms of ill-treatment.
- 0.2 Torture is absolutely prohibited under international law and cannot be justified under any circumstances. The United Nations (UN) has condemned torture as a denial of the purposes of its Charter and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights. Torture is also prohibited by most domestic legal systems in the world. Even where there is no specific crime of torture in domestic law, there are usually other laws under which the perpetrators can be held to account. Nevertheless, acts of torture and ill-treatment remain widespread across the world.
- 0.3 Preventing torture and other forms of ill-treatment is primarily an act of political or professional will and the responsibility to combat it extends to all those in authority in society. Judges and prosecutors, given their role in upholding the rule of law, have a particular responsibility to help prevent acts of torture and ill-treatment by promptly and effectively investigating such acts, prosecuting and punishing those responsible and providing redress to the victims. Preventing and investigating alleged acts of torture poses particular problems for judges and prosecutors, and for the administration of justice, because the crime is usually committed by the same public officials who are generally responsible for upholding and enforcing the law. This makes it more difficult to deal with than other forms of criminality. Nevertheless, judges and prosecutors have a legal duty to ensure that the integrity of their profession and the justice they uphold are not compromised by the continued tolerance of torture, or other forms of ill-treatment.
- 0.4 As well as considering the specific safeguards detailed in this manual it is important that all those in authority – particularly those responsible for law enforcement and the administration of justice – publicly condemn torture in all its forms whenever it occurs. They should make it clear that those responsible for committing acts of torture and those in charge of places of detention at the time such abuses are perpetrated will be held personally responsible for these abuses.

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- 0.5 Torture and other forms of ill-treatment may take place in virtually any location. People are particularly at risk when they are deprived of their liberty, held in pre-trial detention or subject to interrogation. The greatest risk is in the first phase of arrest and detention, before the person has access to a lawyer or court. People being held in incommunicado detention – without access to anyone in the outside world – are particularly vulnerable.
- 0.6 Judges and prosecutors have a responsibility to ensure that they do not themselves, unintentionally or otherwise, collude with acts of torture while carrying out their official functions. In some legal systems, prosecutors may be directly involved in conducting interrogations in which coercive methods of extracting confessions and information are used. In some situations, prosecutors may rely on information or confessions, when conducting cases, without satisfying themselves that these were not obtained by coercive means.
- 0.7 Sometimes judges and prosecutors fail to ensure that the laws and procedures designed to protect people in detention, and prevent acts of torture and other forms of ill-treatment, are upheld. They may also fail to require that a person making a statement or confession does so in their presence; fail to explore for signs of physical or mental distress on a detainee who is brought before them; return a detainee to the custody of law enforcement officials where there is reason to believe that the detainee will suffer ill-treatment; fail to react to signs which indicate that a person may have been ill-treated even in the absence of a formal complaint; fail to take complaints of ill-treatment sufficiently seriously; fail to investigate such allegations with a view to bringing proceedings against the perpetrators; and fail to exercise their powers to carry out thorough inspections of places of detention.
- 0.8 Conversely, judges and prosecutors may exercise their powers to prevent and investigate acts of torture. They may demand that a suspect be brought before them at the earliest opportunity and check that he or she is being properly treated. Where they have discretion, they may interpret the balance of proof, with respect to allegations of torture and the admissibility of evidence obtained through it, in ways that discourage law enforcement officers, and those in charge of places of detention, from carrying out, or permitting others to carry out, torture and other forms of ill-treatment. They may also stay alert to all possibilities that their own courts or tribunals do not conform to the highest possible standards with respect to preventing and investigating torture.
- 0.9 While international law provides a basic minimum, there are also examples from different countries that can be drawn on when developing standards of good practice. The case studies contained in this manual, which only represent a brief snap-shot of such cases drawn from around the world, are intended to illustrate how judges and prosecutors have sought to combat torture within their own national jurisdictions.
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How to use this manual

- 0.10 The first chapter of this manual briefly sets out the prohibition of torture in international law and the obligations that flow from this prohibition. It also refers to some of the international supervisory mechanisms that exist. The second chapter outlines the safeguards that exist for people who have been deprived of their liberty not to be subjected to torture or any other forms of ill-treatment. It includes both treaty and non-treaty standards and regional as well as universal instruments. Together with the case-law and reports of international monitoring bodies and institutions these provide an important legal source that can help inform the domestic judge and prosecutor.
- 0.11 The third chapter describes the role of judges and prosecutors in ensuring that these standards are upheld in practice. This includes check-lists of safeguards for those deprived of their liberty and advice on carrying out inspections of detention facilities. It also considers the role of judges and prosecutors when it is alleged that evidence in a criminal trial has been obtained by torture or other forms of ill-treatment. The positive duty to protect a person who may be at risk of torture in other countries – in the context of deportation or extradition proceedings, or claims for asylum – is also briefly discussed.
- 0.12 The fourth chapter outlines how those responsible for investigating acts of torture should respond to allegations and gather evidence relating to torture. It discusses who should carry out such investigations and the general principles governing them. It also provides advice on interviewing victims, witnesses and suspects and protecting witnesses during investigations and trials of suspected torturers.
- 0.13 The fifth chapter relates to the prosecution of those involved in torture or other forms of ill-treatment. It discusses the legal definition of torture and other crimes of ill-treatment, who should be held culpable for such crimes and how they can be identified and prosecuted. The issues of universal jurisdiction, amnesties, punishment and redress are briefly discussed.
- 0.14 The texts of some international instruments are contained as appendices to this manual. A table of the status of ratification of the principal human rights treaties is also attached.

1 The prohibition of torture in international law

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16	International criminal courts and tribunals
16	The International Committee of the Red Cross (ICRC)

1 The prohibition of torture in international law

- 1.1 This chapter briefly sets out the prohibition of torture in international law and the obligations that flow from this prohibition. It also describes some of the supervisory bodies that have been established to monitor compliance with this obligation. The practice of these bodies can help inform the judge and prosecutor about the scope of international standards as they seek to apply them at the national level.
- 1.2 The international community has developed standards to protect people against torture that apply to all legal systems in the world. The standards take into account the diversity of legal systems that exist and set out minimum guarantees that every system should provide. Judges and prosecutors have a responsibility to ensure that these standards are adhered to, within the framework of their own legal systems. Even if a country has not ratified a particular treaty prohibiting torture, because the prohibition of torture is so fundamental, the country is in any event bound on the basis of general international law.¹
- 1.3 In many countries, the courts are expected to apply treaties ratified by their states, or general (or customary) international law or both. Failure to do so is a failure of professional duty. Even in those countries where international law may not be directly invoked before the courts it is prudent that the judiciary do not place the state in violation of its international law obligations, including the prohibition of torture. This is because, under international law, no state may invoke its national constitution or laws to justify a breach of international law.
- 1.4 The standards cited in this manual have differing legal status. Some are contained in treaties that are legally binding on those states that have signed and ratified or acceded to them. Many of the more detailed safeguards against torture are contained in 'soft law' instruments – such as declarations, resolutions, or bodies of principles – or in the reports of international monitoring bodies and institutions. While not directly binding these standards have the persuasive power of having been negotiated by governments and/or adopted by political bodies such as the UN General Assembly. Sometimes they affirm principles that are already considered to be legally binding as principles of general or customary international law. They often also spell out in more detail the necessary steps to be taken in order to safeguard the fundamental right of all people to be protected against torture.
- 1.5 A number of UN bodies have been created by particular conventions to monitor compliance with these standards and provide guidance on how they should be interpreted. These bodies generally issue general comments and recommendations, review reports by states parties and issue concluding observations on the compliance of a state with the relevant convention. Some also consider complaints from individuals who claim to have suffered violations. In this way they can provide authoritative interpretations of the treaty provisions and the obligations that these place on states parties.

1 Article 38 of the Statute of the International Court of Justice lists the means for determining the rules of international law as: international conventions establishing rules, international custom as evidence of a general practice accepted as law, the general principles of law recognised by civilised nations and judicial decisions and the teaching of eminent publicists. General international law (customary international law) consists of norms that emanate from various combinations of these sources.

1.6 The UN has also set up a number of extra-conventional mechanisms to examine particular issues of special concern to the international community or the situation in specific countries. These monitor all states, irrespective of whether they have ratified a particular convention, and can draw attention to particular violations.

General prohibition

1.7 The prohibition of torture is found in a number of international human rights and humanitarian treaties and is also regarded as a principle of general international law. The prohibition of torture is also considered to carry a special status in general international law, that of *jus cogens*, which is a ‘peremptory norm’ of general international law.² General international law is binding on all states, even if they have not ratified a particular treaty. Rules of *jus cogens* cannot be contradicted by treaty law or by other rules of international law.

1.8 The prohibition of torture is found in Article 5 of the Universal Declaration of Human Rights (1948) and a number of international and regional human rights treaties. The vast majority of states have ratified treaties that contain provisions that prohibit torture and other forms of ill-treatment. These include: the International Covenant on Civil and Political Rights (1966),³ the European Convention on Human Rights (1950),⁴ the American Convention on Human Rights (1978)⁵ and the African Charter on Human and People’s Rights (1981).⁶ The texts of the Articles relating to torture from some of these treaties and a table of country ratifications of selected universal treaties are included in the Appendices to this manual.

1.9 A number of treaties have also been drawn up specifically to combat torture. These are:

- the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (Convention against Torture)
- the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment 1987
- the Inter-American Convention to Prevent and Punish Torture 1985.

The absolute prohibition of torture and ill-treatment is underlined by its non-derogable status in human rights law. There are no circumstances in which states can set aside or restrict this obligation, even in times of war or other emergency threatening the life of the nation, which may justify the suspension or limitation of some other rights.⁷ States are also restricted from making derogations which may put individuals at risk of torture or ill-treatment – for example, by allowing excessive periods of

2 Human Rights Committee, General Comment 24 (52), General comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.6 (1994), para 10. See also, International Criminal Tribunal for the former Yugoslavia, *Prosecutor v Delalic and Others*, Case IT-96-21-T, Judgment 16 November 1998, paras 452, 454; *Prosecutor v Furundzija*, Case IT-95-17/1-T, Judgment 10 December 1998, paras 139 and 143; *Prosecutor v Kunarac and Others*, Case IT-96-23-T & IT-96-23/I-T, para 466.

3 ICCPR Article 7 and 10(1).

4 ECHR Article 3.

5 ACHR Article 5(2).

6 African Charter Article 5.

7 Article 4 of the ICCPR, Article 15 of the ECHR and Article 27 of the ACHR provide, in certain strictly defined circumstances, that states may derogate from certain specified obligations, to the extent that is strictly required by the exigencies of the situation. No derogations are permitted with respect to the Articles prohibiting torture or cruel, inhuman or degrading treatment or punishment. The African Charter contains no emergency clause and therefore allows no such derogation.

incommunicado detention or denying a detainee prompt access to a court.⁸ This prohibition operates irrespective of circumstances or attributes, such as the status of the victim or, if he or she is a criminal suspect, upon the crimes that the victim is suspected of having committed.⁹

1.10 State officials are prohibited from inflicting, instigating or tolerating the torture or other cruel, inhuman or degrading treatment or punishment of any person. An order from a superior officer or a public authority may not be invoked as a justification for torture.¹⁰ States are also required to ensure that all acts of torture are offences under their criminal law, establish criminal jurisdiction over such acts, investigate all such acts and hold those responsible for committing them to account.¹¹

1.11 Torture and other ill-treatment of any person in the power of another party are also banned as a war crime under the laws of armed conflict (humanitarian law).¹² The prohibition against torture in humanitarian law is expressly found in Common Article 3 of the Geneva Conventions and in various provisions of the four Geneva Conventions, including the grave breaches provisions,¹³ and the Additional Protocols of 1977.¹⁴ Torture is also considered to be a crime against humanity when the acts are perpetrated as part of a widespread or systematic attack against a civilian population, whether or not they are committed in the course of an armed conflict. Thus, for example, Article 7 of the Rome Statute of the International Criminal Court (ICC) includes torture and rape within the Court's jurisdiction. The text of Common Article 3 of the Geneva Conventions and Articles 7 and 8 of the Rome Statute are included in Appendix One of this manual.

1.12 The main focus of this manual is on torture and ill-treatment by state agents, particularly law enforcement officials. However, there is also a growing acceptance of the importance of safeguarding people from similar treatment carried out by private groups or individuals against persons under the effective control of those groups or individuals. States are responsible for safeguarding the rights of everyone within their jurisdiction and may be held accountable for acts carried out by private individuals if it supports or tolerates them, or fails in other ways to provide effective protection in law against them.¹⁵

8 Human Rights Committee General Comment No. 29, States of Emergency (art. 4), adopted at the 1950th meeting, on 24 July 2001, para 16; *Aksoy v Turkey*, ECtHR, Judgment 18 December 1996; *Brannigan and MacBride v UK*, ECtHR, Judgment 26 May 1993; *Brogan v UK*, ECtHR Judgment 29 November 1988; 'Habeas Corpus in Emergency Situations', Advisory Opinion OC-8/87 of 30 January 1987, Annual Report of the Inter-American Court, 1987, OAS/Ser.L/V/III.17 doc.13, 1987; and 'Judicial Guarantees in States of Emergency', Advisory Opinion OC-9/87 of 6 October 1987, Annual Report of the Inter-American Court, 1988, OAS/Ser.L/V/III.19 doc.13, 1988.

9 Article 2, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. See also The Reports of the Committee Against Torture, *Mutambo v Switzerland* (13/1993) GAOR, 49th Session Supplement No.44 (1994) *Khan v Canada* (15/1994), GAOR, 50th Session, Supplement No.44 (1995); and *Ireland v UK*, ECtHR Series A 25, (1978); *Chahal v UK*, ECtHR, Judgment 15 November 1996; *Tomasi v France*, ECtHR, Series A, No. 241-A (1993); *Selmouni v France*, ECtHR, Judgment 28 July 1999.

10 Article 2, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This principle was also enshrined in the Charter of the Nuremberg and Tokyo Tribunals 1946, and subsequently reaffirmed by the UN General Assembly. It can also be found in the Statutes of the international criminal tribunals for Rwanda and Yugoslavia and, with minor modification in the Statute of the International Criminal Court.

11 Articles 4, 5, 7, 12 and 13 the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. See also Human Rights Committee General Comment 20, paras 13 and 14.

12 War crimes include 'grave breaches' of the Geneva Conventions 1949, committed in the course of an international armed conflict against persons or property protected by the Conventions and, as confirmed by the International Criminal Tribunal for the former Yugoslavia (ICTY), violations of Common Article 3 of the Geneva Conventions (*Prosecutor v Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Case No. IT-94-I-AR72, 2 October 1995, para 134). Crimes Against Humanity are acts committed as part of a widespread or systematic attack against a civilian population, whether or not they are committed in the course of an armed conflict.

13 Article 12 and 50 Geneva Convention I; Article 12 and 51 Geneva Convention II; Article 13, 14, 87 and 130 Geneva Convention III; Article 27, 32 and 147 Geneva Convention IV.

14 Article 75 of Additional Protocol 1 and Article 4 of Additional Protocol 2.

15 *Velásquez Rodríguez Case*, Judgment 29 July 1988, Inter-Am. Ct HR Series C, No. 4; *H.L.R. v France*, ECtHR, Judgment 29 April 1997; *D. v UK*, ECtHR, Judgment 2 May 1997.

1.13 The right of an individual to protection against torture and other prohibited forms of ill-treatment includes the right not to be returned to a country where there are substantial grounds for believing that he or she is at risk of suffering such treatment.¹⁶ People have a right not to be forcibly returned where they are at risk of suffering torture – even if they have not yet been recognised as refugees. A state responding to an extradition request also needs to ensure that the other country is complying with its obligations under international law in respect of torture and ill-treatment before it may hand someone over to that jurisdiction.¹⁷

The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984

1.14 The UN Convention against Torture was adopted by the UN General Assembly in 1984. One hundred and thirty states were party to the Convention by August 2002. The Convention defines torture and specifies that states parties must prohibit torture in all circumstances. Torture cannot be justified during a state of emergency, or other exceptional circumstances, nor because of superior orders received by an official.¹⁸ The Convention prohibits the forcible return or extradition of a person to another country where he or she is at risk of torture.¹⁹ States must ensure that all acts of torture are offences under its criminal law – including complicity and participation in and incitement to such acts.²⁰ States must establish jurisdiction over such offences in cases of torture where the alleged offenders are not extradited to face prosecution in another state, regardless of the state in which the torture was committed, or the nationality of the perpetrator or the victim ('universal jurisdiction').²¹ In exercising universal jurisdiction states are obliged to take suspected perpetrators of torture into custody, to undertake inquiries into allegations of torture and to submit suspected torturers to the prosecuting authorities.²² States must also co-operate with one another to bring torturers to justice.²³ Statements made as a result of torture may not be invoked in evidence – except against the alleged torturer.²⁴ Victims of torture also have a right to redress and adequate compensation.²⁵

1.15 The Convention against Torture also obliges states parties to take effective measures to combat torture. States undertake to train law enforcement and medical personnel, and any other persons who may be involved in the custody, interrogation or treatment of detained individuals, about the prohibition of torture and ill-treatment.²⁶ Interrogation rules and custody arrangements are to be kept under review with a view to preventing any acts of torture and ill-treatment.²⁷ States must actively investigate acts of torture and ill-treatment – even if there has not been a formal complaint about it.²⁸

16 Article 3, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Article 33, Convention Relating to the Status of Refugees, *Chahal v UK*, ECtHR, Judgment 15 November 1996.

17 *Soering v UK*, ECtHR, Judgment 7 July 1989, Ser. A No. 161.

18 Article 2, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

19 Article 3 *ibid*.

20 Article 4, *ibid*.

21 Articles 5, *ibid*.

22 Articles 6-8, *ibid*.

23 Article 9, *ibid*.

24 Article 15, *ibid*.

25 Article 14, *ibid*.

26 Article 10, *ibid*.

27 Article 11, *ibid*.

28 Article 12, *ibid*.

Individuals have a right to complain about acts of torture and ill-treatment, to have their complaints investigated and to be offered protection against consequent intimidation or ill-treatment.²⁹ Acts of cruel, inhuman or degrading treatment or punishment that do not amount to acts of torture are also prohibited and the provisions discussed in this paragraph also apply to such acts.³⁰

Other Relevant Standards

1.16 In addition to international human rights law and the laws of armed conflict, a considerable range of other rules and standards have been developed to safeguard the right of all people to protection against torture and other forms of ill-treatment. Although not of themselves legally binding, they represent agreed principles which should be adhered to by all states and can provide important guidance for judges and prosecutors. These include:

- Standard Minimum Rules for the Treatment of Prisoners (1957 as amended in 1977)
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975)
- Code of Conduct for Law Enforcement Officials (1979)
- Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1982)
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)
- Basic Principles on the Independence of the Judiciary (1985)
- Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (1987)
- Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment (1988)
- Basic Principles for the Treatment of Prisoners (1990)
- Basic Principles on the Role of Lawyers (1990)
- Guidelines on the Role of Prosecutors (1990)
- Rules for the Protection of Juveniles Deprived of their Liberty (1990)
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1990)
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)
- Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (1991)
- Declaration on the Protection of All Persons from Enforced Disappearance (1992)
- Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) (1999)

Selected extracts from some of these instruments are contained in Appendix One of this manual.

²⁹ Article 13, *ibid.*

³⁰ Article 16, *ibid.*

Legal definitions

1.17 Article 1 of the Convention against Torture sets out an internationally agreed definition of acts that constitute 'torture'. This states that:

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.

1.18 The exact boundaries between 'torture' and other forms of 'cruel, inhuman or degrading treatment or punishment' are often difficult to identify and may depend on the particular circumstances of the case and the characteristics of the particular victim. Both terms cover mental and physical ill-treatment that has been intentionally inflicted by, or with the consent or acquiescence of, the state authorities. The 'essential elements' of what constitutes *torture* contained in Article 1 of the Convention against Torture include:

- The infliction of severe mental or physical pain or suffering;
- By or with the consent or acquiescence of the state authorities;
- For a specific purpose, such as gaining information, punishment or intimidation.

1.19 *Cruel treatment*, and *inhuman or degrading treatment or punishment* are also legal terms. These refer to ill-treatment that does not have to be inflicted for a specific purpose, but there does have to be an *intent* to expose individuals to the conditions which amount to or result in the ill-treatment. Exposing a person to conditions reasonably believed to constitute ill-treatment will entail responsibility for its infliction. Degrading treatment may involve pain or suffering less severe than for torture or cruel or inhuman treatment and will usually involve humiliation and debasement of the victim. The essential elements which constitute *ill-treatment not amounting to torture* would therefore be reduced to:

- Intentional exposure to significant mental or physical pain or suffering;
- By or with the consent or acquiescence of the state authorities

It is often difficult to identify the exact boundaries between the different forms of ill-treatment as this requires an assessment about degrees of suffering that may depend on the particular circumstances of the case and the characteristics of the particular victim. In some cases, certain forms of ill-treatment or certain aspects of detention which would not constitute torture on their own may do so in combination with each other. *Ill-treatment* is, however, prohibited under international law and even where the treatment does not have the purposive element or, as far as degrading treatment is concerned, is not considered severe enough (in legal terms) to amount to torture, it may still amount to prohibited ill-treatment.³¹

31 Only the practice of the European Court of Human Rights explicitly uses the notion of relative severity of suffering as relevant to the borderline between 'torture' and 'inhuman treatment'. The usual approach is to use the existence or otherwise of the purposive element to determine whether or not the behaviour constitutes torture.

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- 1.20 The Human Rights Committee has stated that: ‘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.’³² It has, however, stated that 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.³³ The European Court of Human Rights has also noted in *Selmouni v France*: ‘Certain acts which were classified in the past as ‘inhuman and degrading treatment’ as opposed to ‘torture’ could be classified differently in the future . . . the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.’³⁴
- 1.21 The drafters of the Geneva Conventions also avoided a detailed list of prohibited acts. In its Commentary on the Geneva Conventions, the International Committee of the Red Cross has stated ‘It is always dangerous to go into too much detail – especially in this domain. However great the care taken in drawing up a list of all the various forms of infliction, it would never be possible to catch up with the imagination of future torturers who wished to satisfy their bestial instincts; the more specific and complete a list tries to be, the more restrictive it becomes. The form of wording adopted is flexible, and, at the same time, precise.’³⁵

International supervisory machinery and complaints procedures

The Human Rights Committee

- 1.22 The Human Rights Committee is established as a monitoring body by the International Covenant on Civil and Political Rights (ICCPR). The Committee comprises 18 independent experts elected by the states parties to the Covenant. It examines reports which states parties are obliged to submit periodically and issues concluding observations that draw attention to points of concern and make specific recommendations to the state. The Committee can also consider communications from individuals who claim to have been the victims of violations of the Covenant by a state party. For this procedure to apply to individuals, the state must also have become a party to the first Optional Protocol to the Covenant. The Committee has also issued a series of General Comments, to elaborate on the meaning of various Articles of the Covenant and the requirements that these place on states parties. The General Comment regarding Article 7 is contained in Appendix One of this manual.

32 Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1. at 30 (1994), para 4.

33 Ibid., para 5.

34 *Selmouni v France*, ECtHR Judgment of 28 July 1999, para 101.

35 Jean Pictet *Commentary – IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, ICRC, 1958, p.39.

The UN Committee against Torture

1.23 The Committee against Torture is a body of ten independent experts established under the Convention against Torture. It considers reports submitted by States Parties regarding their implementation of the provisions of the Convention and issues concluding observations. It may examine communications from individuals, if the state concerned has agreed to this procedure by making a declaration under Article 22 of the Convention. There is also a procedure, under Article 20, by which the Committee may initiate an investigation if it considers there to be 'well-founded indications that torture is being systematically practised in the territory of a State Party'.

1.24 A new Optional Protocol was adopted by the UN General Assembly in December 2002. This establishes a complementary dual system of regular visits to places of detention in order to prevent torture and ill-treatment. The first of these is an international visiting mechanism, or a 'Sub-Committee' of ten independent experts who will conduct periodic visits to places of detention. The second involves an obligation on states parties to set up, designate or maintain one or several national visiting mechanisms, which can conduct more regular visits. The international and national mechanisms will make recommendations to the authorities concerned with a view to improving the treatment of persons deprived of their liberty and the conditions of detention.

Regional mechanisms

1.25 A number of regional human rights treaties have also been developed within the Council of Europe (CoE), the Organisation of American States (OAS) and the African Union (AU).³⁶ The rights protected by these treaties derive from, and are similar to, those of the Universal Declaration of Human Rights, but each treaty has developed unique approaches when seeking to implement them. The principal instruments referred to here are:

- the European Convention on Human Rights
- the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment
- the American Convention on Human Rights
- the Inter-American Convention to Prevent and Punish Torture
- the African Charter on Human and Peoples' Rights.

1.26 The European Court of Human Rights, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the African Commission on Human Rights and the (soon to be established) African Court on Human Rights are responsible for monitoring state-compliance with their respective treaties. These bodies examine allegations of torture on the same level as other alleged human rights violations. However, the Council of Europe has also created a specific body for preventing torture in its member states.

³⁶ Formerly the Organisation for African Unity (OAU).

1.27 The European Committee for the Prevention of Torture (CPT) was set up under the 1987 Council of Europe European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment. It is composed of as many independent and impartial members as there are states parties to the Convention and may be assisted by *ad hoc* experts. Currently all members of the Council of Europe have also ratified the European Convention for the Prevention of Torture. The CPT conducts periodic and *ad hoc* visits in any places under the jurisdiction of a contracting state where persons are deprived of their liberty by a public authority. States parties are obliged to provide the CPT with access to its territory and the right to travel without restriction; full information on the places where persons deprived of their liberty are being held; unlimited access to any place where persons are deprived of their liberty, including the right to move inside such places without restriction; and other information which is necessary for the CPT to carry out its task.³⁷ The CPT is also entitled to interview in private persons deprived of their liberty and to communicate freely with anyone whom it believes can supply relevant information. The report on the visit and detailed recommendations sent to the government are confidential unless the government concerned decides that they can be published. In practice, most reports have been made public.

Other monitoring mechanisms

1.28 A number of other mechanisms have been developed by the UN Commission on Human Rights to look at specific types of human rights violations wherever in the world they occur. These country-specific and thematic mechanisms include special rapporteurs, representatives and independent experts or working groups. They are created by resolution in response to situations that are considered to be of sufficient concern to require an in-depth study. The procedures report publicly to the Commission on Human Rights each year and some also report to the UN General Assembly.

1.29 The main thematic mechanisms of relevance for this manual are: the Special Rapporteur on Torture, the Special Rapporteur on Violence Against Women, the Special Rapporteur on the Independence of Judges and Lawyers, the Working Group on Enforced or Involuntary Disappearances, and the Working Group on Arbitrary Detention. Numerous of other thematic mechanisms also exist. The work of these bodies is not mutually exclusive and they may make either joint or separate interventions in connection with the same allegation.

³⁷ Article 8, European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment 1987.

The UN Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment

- 1.30 This mandate was established in 1985 by the UN Commission on Human Rights. It is a non-treaty, 'UN Charter-based' body the purpose of which is to examine international practice relating to torture in any state regardless of any treaty the state may be bound by. On the basis of information received, the Special Rapporteur can communicate with governments and request their comments on cases that are raised. He or she can also make use of an 'urgent action' procedure, requesting a government to ensure that a particular person, or group of persons, are treated humanely. The Special Rapporteur can also conduct visits if invited, or given permission, by a state to do so. The reports of these missions are usually issued as addenda to the main report of the Special Rapporteur to the UN Commission on Human Rights.
- 1.31 The Special Rapporteur reports annually and publicly to the UN Commission on Human Rights and to the UN General Assembly. The reports to the Commission contains summaries of all correspondence transmitted to governments by the Special Rapporteur and of correspondence received from governments. The reports may also include general observations about the problem of torture in specific countries, but do not contain conclusions on individual torture allegations. The reports may address specific issues or developments that influence or are conducive to torture in the world, offering general conclusions and recommendations.

International criminal courts and tribunals

- 1.32 National criminal courts are primarily responsible for the investigation and prosecution of crimes of torture and other criminal forms of ill-treatment. A number of *ad hoc* international criminal tribunals have been established in recent years – including the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Crimes of torture as crimes against humanity and war crimes are included in the Statute of ICTY,³⁸ ICTR³⁹ and the Rome Statute of the International Criminal Court (ICC).⁴⁰ The Statute of the ICC was agreed in 1998 and received the 60 ratifications necessary for it to come into effect in 2002. The ICC will, in future, be able to prosecute some crimes of torture when national courts are unable or unwilling to do so.

The International Committee of the Red Cross (ICRC)

- 1.33 The International Committee of the Red Cross is an independent and impartial humanitarian body with a specific mandate assigned to it under international humanitarian law, particularly the four Geneva Conventions. It is active in providing many forms of protection and assistance to victims of armed conflict, as well as situations of internal strife. In cases of international armed conflict between states party to the Geneva Conventions, the ICRC is authorised to visit all places of internment, imprisonment and labour where prisoners of war or civilian internees are held. In cases of non-

38 Article 5, ICTY.

39 Article 3, ICTR.

40 Articles 7 and 8, ICC.

international armed conflicts, or situations of internal strife and tensions, it may offer its services to the conflicting parties and, with their consent, be granted access to places of detention. Delegates visit detainees with the aim of assessing and, if necessary, improving the material and psychological conditions of detention and preventing torture and ill-treatment. The visit procedures require access to all detainees and places of detention, that no limit be placed on the duration and frequency of visits, and that the delegates be able to talk freely and without witness to any detainee. Individual follow-up of the detainees' whereabouts is also part of ICRC standard visiting procedures. Visits and the reports made on them are confidential – although the ICRC may publish its own comments if a state publicly comments on a report or visit.

Namunjepo & Ors v The Commanding Officer, Windhoek Prison & Anor, Namibia, Supreme Court, 9 July 1999, 2000 (6) BCLR (NmS); [2000] 3 LRC 360; (1999) 2 CHRLD 331 (Namibia)

The appellants, five prisoners in pre-trial detention, were placed in chains after four of them escaped from prison and the fifth was alleged to have attempted to do so. They filed an application arguing that their constitutional rights to dignity and to be free from torture, cruel, inhuman or degrading treatment or punishment had been violated.

The Supreme Court drew on international standards when considering the case including the United Nations Standard Minimum Rules for the Treatment of Prisoners and the Revised European Standard Minimum Rules for the Treatment of Prisoners. It also stated that Namibia's accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights is significant and 'makes clear that prisoners retain their right to respect for their human dignity and their humanity.' The Court also noted that the case law and legislative provisions of other countries indicate a movement away from the arbitrary and unnecessary use of mechanical restraints. Most countries use these only when absolutely necessary, under strict control and for short periods of time; in some countries, their use is prohibited.

The Court held that: 'Whatever the circumstances, the practice to use chains and leg-irons on human beings is a humiliating experience which reduces the person placed in irons to the level of a hobbled animal whose mobility is limited so that it cannot stray. It is furthermore still a strong reminder of days gone by when people of this continent were carted away in bondage to be sold like chattels. To be continuously in chains or leg-irons and not to be able to properly clean oneself and the clothes one is wearing sets one apart from other fellow human beings and is in itself a humiliating and undignified experience.'

2 Safeguards against torture for those deprived of their liberty

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2 Safeguards against torture for those deprived of their liberty

- 2.1 This chapter outlines the safeguards that exist in international law to protect people in detention from torture and other forms of ill-treatment.
- 2.2 Everyone has the right to liberty and security of person – including the right to be free from arbitrary arrest or detention.¹ When the state deprives a person of liberty, it assumes a duty of care to maintain that person's safety and safeguard his or her welfare. Detainees are not to be subjected to any hardship or constraint other than that resulting from the deprivation of liberty.² These rights are guaranteed by Article 7 and 10(1) of the International Covenant on Civil and Political Rights (ICCPR) which, respectively, prohibit torture and ill-treatment and safeguard the rights of people deprived of their liberty. They are also reflected in a number of other international human rights treaties.³ The prohibition on torture and ill-treatment apply to all people all the time. Certain rights in the treaties, such as the right not to be subject to arbitrary detention, may under certain circumstances be restricted in a public emergency, but safeguards necessary for the prohibition of torture, such as limiting periods in which people can be held in incommunicado detention, must continue to apply.⁴
- 2.3 Individuals may be at risk of torture or ill-treatment before they are subject to legal formalities such as arrest and charge.⁵ Indeed the European Committee for the Prevention of Torture (CPT) has stressed that it is during the period immediately following deprivation of liberty that the risk of torture and ill-treatment is at its greatest.⁶ The following international standards, therefore, apply from the moment that someone is deprived of his or her liberty.

- 1 Article 9 (1) International Covenant on Civil and Political Rights; Article 5 European Convention on Human Rights; Article 6 African Charter of Human and People's Rights; Article 7 American Convention on Human Rights.
- 2 Human Rights Committee, General Comment 21, Article 10 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 33 (1994), para. 3.
- 3 For example, Article 3 European Convention on Human Rights; Article 5 American Convention on Human Rights; Article 5 African Charter on Human and People's Rights; Article 37 Convention on the Rights of the Child; Article 1 Convention on the Elimination of All Forms of Discrimination Against Women; Articles 2 and 4 The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women; Article XVI The African Charter on the Rights and Welfare of the Child.
- 4 Human Rights Committee General Comment No. 29, States of Emergency (art. 4), adopted at the 1950th meeting, on 24 July 2001, para. 16. See also *Aksoy v Turkey*, ECtHR, Judgment 18 December 1996; *Brannigan and MacBride v UK*, ECtHR, Judgment 26 May 1993; *Brogan v UK*, ECtHR Judgment 29 November 1988; 'Habeas Corpus in Emergency Situations', Advisory Opinion OC-8/87 of 30 January 1987, Annual Report of the Inter-American Court, 1987, OAS/Ser.L/V/III.17 doc.13, 1987; and 'Judicial Guarantees in States of Emergency', Advisory Opinion OC-9/87 of 6 October 1987, Annual Report of the Inter-American Court, 1988, OAS/Ser.L/V/III.19 doc.13, 1988.
- 5 The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment uses the following terms: (a) 'Arrest' means the act of apprehending a person for the alleged commission of an offence or by the action of an authority; (b) 'Detained person' means any person deprived of personal liberty except as a result of conviction for an offence; (c) 'Imprisoned person' means any person deprived of personal liberty as a result of conviction for an offence; (d) 'Detention' means the condition of detained persons as defined above; (e) 'Imprisonment' means the condition of imprisoned persons as defined above; (f) The words 'a judicial or other authority' mean a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.
- 6 European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, *the CPT Standards, Substantive Sections of the CPT's General Reports*, Council of Europe, October 2001, CPT/Inf/E(2002), p.12, para. 41.

Notifying people of their rights

- 2.4 Everyone deprived of liberty has the right to be given a reason for the arrest and detention. Article 9(1) of the ICCPR states that: 'Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.' Article 9(2) of the ICCPR states that: 'Anyone who is arrested shall be informed, at the time of arrest, of the reasons for arrest and shall be informed promptly of any charges against him.' The Human Rights Committee has stated that it is not sufficient simply to inform a detainee that he or she has been arrested without any indication of the substance of the complaint against him or her.⁷ Even in 'national security cases', police and security officials are required to provide written reasons for a person's arrest, which should be made public and subject to review by the courts.⁸
- 2.5 The European Court of Human Rights has stated that every person arrested should 'be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness.'⁹ The CPT has recommended that everyone who is deprived of his/her liberty should be informed of their right to notify a person of their choice, their right to have access to a lawyer and their right to have access to a doctor including to a doctor of their choice. These rights should apply from the very outset of their custody (i.e. from the moment when they are obliged to remain with the police).¹⁰ The CPT has also recommended that: 'a form setting out these rights be given systematically to [persons in custody] at the outset of custody. This form should be available in different languages. Further, the detainee should be asked to sign a statement attesting that he has been informed of these rights.'¹¹
- 2.6 The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provide that 'any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.'¹²

7 *Adolfo Drescher Caldas v Uruguay*, Communication No. 43/1979 (11 January 1979), U.N. Doc. Supp. No. 40 (A/38/40) at 192 (1983).

8 Concluding Observations of the Human Rights Committee: Sudan, UN Doc. CCPR/C/79/Add.85, 19 November 1997, para.13.

9 *Fox, Campbell and Hartley*, ECtHR, Case no. 18/1989/178/234-236, Judgment 30 August 1990, para. 40.

10 CPT/Inf/E (2002) 1, 'Extract from the 12th General Report', p.12, para. 40 and p.13, para. 42.

11 *Ibid.*, p.13, para. 44.

12 Principle 13.

Use of officially recognised places of detention and the maintenance of effective custody records

- 2.7 The Human Rights Committee has stated that ‘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.’¹³ The European Court of Human Rights has stated that the unacknowledged detention of an individual is a ‘complete negation’ of the guarantees contained in the European Convention against arbitrary deprivations of the right to liberty and security of the person.¹⁴
- 2.8 The CPT recommends that there should be a complete custody record for each detainee which should record ‘all aspects of custody and action taken regarding them (when deprived of liberty and reasons for that measure; when told of rights; signs of injuries, mental illness, etc; when next of kin/consulate and lawyer contacted and when visited by them; when offered food; when interrogated; when transferred or released, etc). Further, the detainee’s lawyers should have access to such a custody record.’¹⁵
- 2.9 The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment state that the authorities must keep and maintain up-to-date official registers of all detainees, both at each place of detention and centrally.¹⁶ The information in such registers must be made available to courts and other competent authorities, the detainee, or his or her family.¹⁷ Further to this, these principles state that ‘in order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment . . . subject to reasonable conditions to ensure security and good order in such places.’¹⁸
- 2.10 The UN Special Rapporteur on Torture has recommended that: ‘Interrogation should take place only at official centres and the maintenance of secret places of detention should be abolished under law. It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention. Any evidence obtained from a detainee in an unofficial place of detention and not confirmed by the detainee during interrogation at official locations should not be admitted as evidence in court. No statement or confession made by a person deprived of liberty, other than one made in the presence of a judge or a lawyer, should have a probative value in court, except as evidence against those who are accused of having obtained the confession by unlawful means.’¹⁹

13 Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1. at 30 (1994), para. 11.

14 *Çakici v Turkey*, ECtHR, Judgment 8 July 1999, para. 104.

15 CPT/Inf/E (2002) 1, p.7, para. 40.

16 Principle 12.

17 Ibid.

18 Principle 29.

19 Report of the Special Rapporteur on Torture, UN Doc.A/56/156, July 2001, para. 39(d).

Avoiding incommunicado detention

- 2.11 International standards do not expressly prohibit incommunicado detention – where a detainee is denied all contact with the outside world – in all circumstances. However, international standards provide and expert bodies have maintained that restrictions and delays in granting detainees access to a doctor and lawyer and to having someone notified about their detention are permitted only in very exceptional circumstances for very short periods of time.
- 2.12 The Human Rights Committee has found that the practice of incommunicado detention is conducive to torture²⁰ and may itself violate Article 7 or Article 10 of the ICCPR.²¹ It has stated that provision should also be made against incommunicado detention as a safeguard against torture and ill-treatment.²² The Inter-American Commission on Human Rights has stated that the practice of incommunicado detention is not in keeping with respect for human rights, as it ‘creates a situation conducive to other practices including torture’, and punishes the family of the detainee impermissibly.²³ The Inter-American Commission also considers that the right to receive visits from relatives is ‘a fundamental requirement’ for ensuring respect for the rights of detainees.²⁴ It has stated that the right to visits applies to all detainees, independently of the nature of the offence of which they are accused or convicted, and that regulations allowing only short, infrequent visits and the transfer of detainees to distant facilities are arbitrary sanctions.²⁵
- 2.13 The UN Commission on Human Rights has stated that ‘prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment.’²⁶ The UN Special Rapporteur on Torture has stated that ‘torture is most frequently practised during incommunicado detention. Incommunicado detention should be made illegal, and persons held incommunicado should be released without delay.’²⁷
- 2.14 The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that everyone who is arrested, detained or imprisoned has the right to inform, or have the authorities notify, their family or friends.²⁸ The information must include the fact of the arrest or detention and the place where he or she is being kept in custody. If the person is transferred to another place of custody, his or her family or friends must again be informed. This notification is to take place immediately, or at least without delay.²⁹

20 Preliminary Observations of the Human Rights Committee: Peru, UN Doc. CCPR/C/79/Add.67, paras 18 and 24, 25 July 1996.

21 *Albert Womah Mukong v Cameroon*, (458/1991), 21 July 1994, UN Doc. CCPR/C/51/D/458/1991; *El-Megreisi v Libyan Arab Jamahiriya*, (440/1990), 23 March 1994, UN Doc. CCPR/C/50/D/440/1990.

22 Human Rights Committee General Comment 20, para.11.

23 Inter-American Commission, Ten Years of Activities 1971 - 1981, at 318; see Report on the Situation of Human Rights in Bolivia, OEA/Ser.L/V/II.53, doc.6, rev.2, 1 July 1981, at 41- 42; and Annual Report of the Inter-American Commission, 1982 - 1983, OEA/Ser.L/V/II/61, doc.22, rev.1; Annual Report of the Inter-American Commission, 1983 - 1984, OEA/Ser.L/V/II/63, doc.22.

24 *Ms. X v Argentina*, Case 10.506, Report No. 38/96, Inter-Am.C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 50 (1997).

25 Annual Report of the Inter-American Commission, 1983 - 1984, OEA/Ser.L/V/II/63, doc.10, Uruguay; Seventh Report on the Situation of Human Rights in Cuba, 1983, OEA/Ser.L/V/II.61, doc.29, rev.1.

26 Resolution 1997/38, para. 20.

27 Report of the Special Rapporteur on Torture, UN Doc.A/56/156, July 2001, para. 39(f).

28 Principle 16.

29 Principle 15.

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- 2.15 Foreign nationals are entitled to have their consulates or other diplomatic representative notified.³⁰ If they are refugees or under the protection of an intergovernmental organisation, they have the right to communicate or receive visits from representatives of the competent international organisation.³¹

Humane conditions of detention

- 2.16 The Human Rights Committee has stated that the duty to treat detainees with respect for their inherent dignity is a basic standard of universal application. States cannot claim a lack of material resources or financial difficulties as a justification for inhumane treatment. States are obliged to provide all detainees and prisoners with services that will satisfy their essential needs.³² Failure to provide adequate food and recreational facilities constitutes a violation of Article 10 of the ICCPR, unless there are exceptional circumstances.³³ The Committee has also stated that prolonged solitary confinement may amount to a violation of the prohibition against torture and ill-treatment in Article 7 of the ICCPR.³⁴
- 2.17 The Human Rights Committee has instructed states to ensure that all places of detention are free from any equipment liable to be used for inflicting torture or ill-treatment.³⁵ The Committee against Torture has recommended that states abolish the use of electro-shock stun belts and restraint chairs as a method of restraining those in custody as their use 'almost invariably' results in practices that amount to cruel, inhuman or degrading treatment or punishment.³⁶
- 2.18 The UN Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment state that everyone detained or imprisoned has the right to request improvements in their treatment or to complain about their treatment. The authorities must reply promptly, and if the request or complaint is refused, it may be brought to a judicial or other authority.³⁷
- 2.19 The Standard Minimum Rules on the Treatment of Prisoners state that restraints, such as handcuffs, chains, irons and strait-jackets, should only be used on detained or imprisoned people for genuine security reasons, and not as a punishment.³⁸ When used, restraints must not be applied for longer than is strictly necessary and the central prison administration is to decide on the pattern and manner of use of instruments of restraint.³⁹ Force may only be used on people in custody when it is strictly necessary for the maintenance of security and order within the institution, in cases of attempted escape, when there is resistance to a lawful order, or when personal safety is threatened. In any event, force may be used only if non-violent means have proved ineffective.⁴⁰

30 Principle 16 (2) UN Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment. See also LaGrand, (*Germany v United States*) International Court of Justice Judgment 27 June 2000, <http://www.icj-cij.org>.

31 Principle 16 (2) UN Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment.

32 *Kelly v Jamaica*, (253/1987), 8 April 1991, Report of the Human Rights Committee, (A/46/40), 1991; *Párkányi v Hungary* (410/1990), 27 July 1992, Report of the Human Rights Committee, (A/47/40), 1992.

33 *Kelly v Jamaica*, (253/1987), para. 5.

34 Human Rights Committee General Comment 20, para. 6.

35 *Ibid.*, para.11.

36 Conclusions and Recommendations of the Committee against Torture: United States of America, 15 May 2000, UN Doc. A/55/44, para. 180 (c).

37 Principle 33.

38 Rule 33.

39 Rule 34.

40 Rule 54.

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- 2.20 The CPT has stressed that ‘a prisoner against whom means of force have been used should have the right to be immediately examined and, if necessary, treated by a doctor. In those rare cases where resort to instruments of physical restraint is required, the prisoner should be kept under constant and adequate supervision. Instruments of restraint should be removed at the earliest opportunity and they should never be applied or their application prolonged as a punishment. A record should be kept of every instance of the use of force against prisoners.’⁴¹
- 2.21 The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials state that force may be used only if other means remain ineffective,⁴² care must be taken to minimise damage and injury and assistance and medical aid must be provided at the earliest possible moment.⁴³ Firearms may only be used by law enforcement officers in defence against an imminent threat of death or serious injury, to prevent a crime involving grave threat to life, to arrest a person presenting such a danger or to prevent their escape, and only when less extreme means are insufficient. Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.⁴⁴
- 2.22 The Basic Principles for the Treatment of Prisoners provide that states should undertake efforts to abolish solitary confinement as a punishment or to restrict its use.⁴⁵ The Standard Minimum Rules for the Treatment of Prisoners specify that ‘corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.’⁴⁶ The CPT has stressed that solitary confinement can have ‘very harmful consequences for the person concerned’ and that, in certain circumstances, solitary confinement can ‘amount to inhuman and degrading treatment’ and should, in all circumstances be applied for as short a period as possible.⁴⁷

41 CPT/Inf/E (2002) 1, p.19, para. 53(2).

42 Principle 4.

43 Principle 5.

44 Principle 9.

45 Principle 7 of the Basic Principles for the Treatment of Prisoners.

46 Rule 31.

47 CPT/Inf/E (2002) 1, p.20 para. 56(2).

Harding v Superintendent of Prisons & Anor, St Lucia, High Court, 31 July 2000, (2000) 3 CHRLD 128 (St Lucia)

H, who had been convicted of a firearms offence, was imprisoned in solitary confinement for an extended period in the maximum security wing also used to house death-row inmates. During his confinement he was continuously shackled for an initial period of 10 months and 15 days and thereafter whenever he visited the bathroom or met his legal adviser. He was also denied daily exercise, access to sunlight and visitation rights and suffered two asthmatic attacks as an alleged result of having to sleep on the wet floor of his cell for a period of two months. H alleged these actions violated St Lucia's constitutional prohibition of torture, inhuman and degrading punishment, and the Prison Rules which prohibit the use of mechanical restraints except under very limited circumstances. The respondents did not deny the allegations made in respect of the continuous use of mechanical restraints, but disputed that this had caused the severe injuries to his ankles and feet.

The Court noted the definition of torture, inhuman and degrading punishment or other treatment made by the European Court of Human Rights in *Ireland v UK*. The Court also stated that 'nowhere in the Prison Rules is it permitted to shackle a dangerous or potentially dangerous prisoner for an extended period. In these circumstances the use of shackles on H for 24 hours a day, including while he bathed, ate and slept, for such a prolonged period is a brutal and severe assault on his person and psyche amounting to both a clear breach of the Prison Rules and a form of torture. . . Further, confining H to a solitary cell for an extended period, without access to exercise and sunlight, constitutes unreasonable punishment and is inhumane and repugnant to the values and attitudes of any civilised society. . . Cellular confinement is not ordinarily permitted as a punishment under the Prison Rules and can only be authorised on a temporary basis by the Board of Visiting Justices, renewable monthly, for a valid reason such as security, discipline or the administration of justice. In the present case none of these conditions were fulfilled.'

Limits on interrogation

- 2.23 Article 11 of the Convention against Torture requires states to keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons under arrest, detention or imprisonment. The Human Rights Committee has stated 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.'⁴⁸ The Committee has also stated that, 'the wording of Article 14(3)(g) – i.e. that no one shall be compelled to testify against himself or to confess guilt – must be understood in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. *A fortiori*, it is unacceptable to treat an accused person in a manner contrary to Article 7 of the Covenant in order to extract a confession.'⁴⁹
- 2.24 The CPT considers that clear rules or guidelines should exist on the manner in which interrogations are to be conducted. A detainee should be informed of the identity of all those present at the interview. There should also be clear rules covering the permissible length of the interview, rest periods and breaks, places in which interviews may take place, whether the detainee will be required to remain standing when questioned, and the questioning of persons under the influence of drugs and alcohol. It should also be required that a record be kept of the time at which interviews start and end, of requests made by detainees during interviews and of persons present during interviews.⁵⁰
- 2.25 The UN Guidelines on the Role of Prosecutors state that: 'When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.'⁵¹
- 2.26 The UN Body of Principles for the Protection of the All Persons under Any Form of Detention or Imprisonment state that no one should be compelled 'to confess, to incriminate himself otherwise or to testify against any other person . . . No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.'⁵²
- 2.27 The UN Special Rapporteur on Torture has stated that: 'All interrogation sessions should be recorded and preferably video-recorded, and the identity of all persons present should be included in the records. Evidence from non-recorded interrogations should be excluded from court proceedings.'⁵³

48 Human Rights Committee General Comment 20, para. 11.

49 *Kelly v Jamaica*, (253/1987), 8 April 1991, Report of the Human Rights Committee, (A/46/40), 1991; *Conteris v Uruguay*, (139/1983), 17 July 1985, 2 Sel. Dec. 168; *Estrella v Uruguay*, (74/1980), 29 March 1983, 2 Sel. Dec. 93.

50 CPT/Inf/E (2002) 1, p.7, para. 39.

51 Guideline 16.

52 Principle 21.

53 Report of the Special Rapporteur on Torture, UN Doc.A/56/156, July 2001, para. 39(f).

Access to a lawyer and respect for the functions of a lawyer

- 2.28 The general right of those who have been arrested and detained to have access to legal advice is recognised in Article 14 of the ICCPR and a variety of other instruments relating to the right to a fair trial. The promptness of access to a lawyer is also most important from the point of view of preventing torture and ill-treatment. The Human Rights Committee has stressed that the protection of the detainee requires prompt and regular access be given to doctors and lawyers⁵⁴ and that 'all persons arrested must have immediate access to counsel' for the more general protection of their rights.⁵⁵ Counsel must communicate with the accused in conditions giving full respect for the confidentiality of their communications.⁵⁶ The authorities must also ensure that lawyers advise and represent their clients in accordance with professional standards, free from intimidation, hindrance, harassment, or improper interference from any quarter.⁵⁷
- 2.29 The European Court of Human Rights has expressed concern that the denial of access to legal advice during an extended detention may violate the right to a fair trial.⁵⁸ It has also specified that access to a lawyer is a 'basic safeguard against abuse' during periods of extended detention⁵⁹ and that the absence of such safeguards during an extended detention would leave a detainee 'completely at the mercy of those detaining him.'⁶⁰
- 2.30 The Inter-American Commission on Human Rights considers that in order to safeguard the rights not to be compelled to confess guilt and to freedom from torture, a person should be interrogated only in the presence of his or her lawyer and a judge.⁶¹ It has also concluded that the right to counsel applies on the first interrogation.⁶² The CPT considers that this is a right which must exist from the very outset of detention, that is from the first moment that a person is obliged to remain with the police, and that this includes 'in principle, the right for the person concerned to have the lawyer present during interrogation.'⁶³ Where access to a particular lawyer is prevented on security grounds, the CPT recommends that access to another independent lawyer who can be trusted not to compromise the interests of the criminal investigation should be arranged.⁶⁴
- 2.31 The Basic Principles on the Role of Lawyers states that 'all persons arrested or detained, with or without a criminal charge, shall have prompt access to a lawyer'⁶⁵ and that such persons 'shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality.'⁶⁶

54 Human Rights Committee General Comment 20, para. 11.

55 Concluding Observations of the Human Rights Committee: Georgia, UN Doc. CCPR/C/79/Add.74, 9 April 1997, para. 28.

56 Human Rights Committee, General Comment 13, Article 14 (Twenty-first session, 1984), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 14 (1994), para. 9.

57 Ibid.

58 *Murray v UK*, ECtHR, Judgment 8 February 1996.

59 *Brannigan and MacBride v UK*, ECtHR, Judgment 26 May 1993, para. 66.

60 *Aksoy v Turkey*, ECtHR, Judgment 18 December 1996, para. 83.

61 Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin, OEA Ser.L/V/11.62, doc.10, rev. 3, 1983, at 100.

62 Annual Report of the Inter-American Commission, 1985-1986, OEA/Ser.L/V/II.68, doc. 8 rev. 1, 1986, p. 154, El Salvador.

63 CPT/Inf/E (2002) 1, p.6, para. 38.

64 Ibid., p.9, para. 15.

65 Principle 7.

66 Principle 8.

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- 2.32 The Principles further state that it is the responsibility of the state to ensure that lawyers '(a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.'⁶⁷ Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.⁶⁸ Lawyers must not be identified with their clients or their clients' causes as a result of discharging their functions.⁶⁹
- 2.33 The UN Special Rapporteur on the Independence of Judges and Lawyers has recommended that 'it is desirable to have the presence of an attorney during police interrogation as an important safeguard to protect the rights of the accused. The absence of legal counsel gives rise to the potential for abuse.'⁷⁰ The Special Rapporteur on Torture has stated that: 'In exceptional circumstances, under which it is contended that prompt contact with a detainee's lawyer might raise genuine security concerns, and where restriction of such contact is judicially approved, it should at least be possible to allow a meeting with an independent lawyer, such as one recommended by a bar association.'⁷¹

Access to a doctor

- 2.34 The Human Rights Committee has stated that the protection of detainees requires that each person detained be afforded prompt and regular access to doctors.⁷²
- 2.35 The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment state that 'a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.'⁷³ Detainees have the right to request a second medical opinion by a doctor of their choice, and to have access to their medical records.⁷⁴ The UN Standard Minimum Rules for the Treatment of Prisoners state that detainees or prisoners needing special treatment must be transferred to specialised institutions or civil hospitals for that treatment.⁷⁵
- 2.36 The CPT has stressed that even if state-appointed doctors are available to treat detainees, in the interests of the prevention of ill-treatment, it is desirable that they should, in addition, have access to a doctor of their choice.⁷⁶

67 Principle 16.

68 Principle 17.

69 Principle 18.

70 Report on the Mission of the Special Rapporteur to the United Kingdom, UN Doc. E/CN.4/1998/39/add.4, para. 47, 5 March 1998.

71 Report of the Special Rapporteur on Torture, UN Doc.A/56/156, July 2001, para. 39(f).

72 Human Rights Committee General Comment 20, para. 11.

73 Principle 24.

74 Principle 25.

75 Rule 22(2) of the Standard Minimum Rules.

76 CPT/Inf/E (2002) 1, p.6, para 36 and footnote 1.

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- 2.37 The UN Special Rapporteur on Torture has recommended that: 'At the time of arrest, a person should undergo a medical inspection, and medical inspections should be repeated regularly and should be compulsory upon transfer to another place of detention.'⁷⁷ He has further stated that: 'Governments and professional medical associations should take strict measures against medical personnel that play a role, direct or indirect, in torture. Such prohibition should extend to such practices as examining a detainee to determine his 'fitness for interrogation', procedures involving ill-treatment or torture, as well as providing medical treatment to ill-treated detainees so as to enable them to withstand further abuse.'⁷⁸

The right to challenge the lawfulness of detention

- 2.38 Article 9 (3) of the ICCPR states that: 'Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.' The Human Rights Committee has stated that the right to challenge the legality of detention applies to all persons deprived of their liberty and not just to those suspected of committing a criminal offence.⁷⁹
- 2.39 This issue has been extensively considered by the Human Rights Committee, the European Court of Human Rights and the African Commission on Human and Peoples' Rights. These have established that the authority in question must be a formally constituted court or tribunal with the power to order the release of the detainee.⁸⁰ It must be impartial and independent from the body making the decision to detain the person and must also make its decision without delay.⁸¹
- 2.40 The right to challenge the lawfulness of detention, while primarily a safeguard against arbitrary deprivations of the right to liberty, is also a guarantee essential for the protection of other rights. The Inter-American Court of Human Rights has stated that while *habeas corpus*, or *amparo*, procedures are designed mainly to protect the derogable right to liberty, they are also an essential instrument for the protection of prisoners' non-derogable rights to life and to freedom from torture. The Court has therefore held that the right to the remedies of *habeas corpus* and *amparo* may never be suspended since they are among those judicial remedies that are essential for the protection of various rights whose derogation is prohibited.⁸²

⁷⁷ Report of the Special Rapporteur on Torture, UN Doc.A/56/156, July 2001, para. 39(f).

⁷⁸ *Ibid.*, para. 39(l).

⁷⁹ Human Rights Committee, General Comment 8, Article 9 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 8 (1994), para.1.

⁸⁰ *Brincat v Italy*, ECtHR, Judgment 26 November 1992; *De Jong, Baljet and van den Brink*, ECtHR Judgment 22 May 1984, 77 Ser. A 23; Concluding Observations of the Human Rights Committee: Belarus, UN Doc. CCPR/C/79/Add.86, 19 November 1997, para. 10; *Rencontre Africaine pour la défense de droits de l'homme v Zambia*, (71/92), 10th Annual Report of the African Commission, 1996 -1997, ACHPR/RPT/10th.

⁸¹ *Vuolanne v Finland*, (265/1987), 7 April 1989, Report of the Human Rights Committee, (A/44/40), 1989; *Torres v Finland*, (291/1988), 2 April 1990, Report of the Human Rights Committee vol II, (A/45/40), 1990, para.7; *Chahal v UK*, ECtHR Judgment 15 November 1996; *Navarra v France*, ECtHR, Judgment 23 November 1993.

⁸² 'Habeas Corpus in Emergency Situations', Advisory Opinion OC-8/87 of 30 January 1987, Annual Report of the Inter-American Court, 1987, OAS/Ser.L/V/III.17 doc.13, 1987; and 'Judicial Guarantees in States of Emergency', Advisory Opinion OC-9/87 of 6 October 1987, Annual Report of the Inter-American Court, 1988, OAS/Ser.L/V/III.19 doc.13, 1988.

2.41 The Inter-American Commission has stated that if a court is not officially informed of a detention, or is informed only after significant delay, the rights of a detainee are not protected. It has pointed out that such situations lend themselves to other types of abuses, erode respect for the courts and lead to the institutionalisation of lawlessness.⁸³ The African Commission has stated that denying detainees considered illegal aliens the opportunity to appeal to national courts violates the African Charter.⁸⁴ The European Court has stated that the review of the lawfulness of the detention must ensure that the detention is carried out according to procedures established by national law, and that the grounds for detention are authorised by national law.⁸⁵ The detention must comply with both the substantive and procedural rules of national legislation. Courts must also ensure that the detention is not arbitrary according to international standards.⁸⁶ Both the Human Rights Committee and the European Court of Human Rights have stated that prompt access to a court is an essential safeguard against torture and ill-treatment even during a state of emergency.⁸⁷

2.42 The CPT recommends that 'all persons detained by the police whom it is proposed to remand to prison should be physically brought before the judge who must decide that issue. . . Bringing the person before the judge will provide a timely opportunity for a criminal suspect who has been ill-treated to lodge a complaint. Further, even in the absence of an express complaint, the judge will be able to take action in good time if there are other indications of ill-treatment (e.g. visible injuries; a person's general appearance or demeanour).'⁸⁸

The State v Williams and Others, [1995] 2 LRC 103, South Africa Constitutional Court, 1995 (South Africa)

The applicants in this case were a group of six male juveniles who had been sentenced to receive a 'moderate correction' of a number of strokes with a light cane. The issue for the Court to consider was whether the sentence of juvenile whipping is consistent with the provisions of South Africa's Constitution.

The Court said that in imposing punishment, the state must do so in accordance with certain standards, which will reflect the values which underpin the Constitution. The courts have a role to play in the promotion and development of a new culture 'founded on the recognition of human rights'. One of the implications of the new order is that old rules and practices can no longer be taken for granted; they must be subjected to constant reassessment to bring them into line with the provisions of the Constitution.

83 Inter-American Commission, Second Report on the Human Rights Situation in Surinam, OEA/Ser. L/V/II.66, doc. 21 rev. 1, 1985, at 24.

84 *Rencontre Africaine pour la défense de droits de l'homme v Zambia*, (71/92), 10th Annual Report of the African Commission, 1996-1997, ACHPR/RPT/10th.

85 *Navarra v France*, ECtHR, Judgment 23 November 1993, para. 26.

86 *Ibid.*

87 Human Rights Committee General Comment No. 29, States of Emergency (art. 4), adopted at the 1950th meeting, on 24 July 2001, para. 16; *Aksoy v Turkey*, ECtHR, 1996, App. No. 21987/93.

88 CPT/Inf/E (2002) 1, p.14, para. 45.

It further stated that: 'No compelling interest has been proved which can justify the practice of juvenile whipping as a form of punishment. It has not been shown that there are no other punishments which are adequate to achieve the purposes for which it is imposed. Nor has it been shown to be a significantly effective deterrent. Its effect is likely to be coarsening and degrading rather than rehabilitative. It is moreover unnecessary. There are enough sentencing options in the South African justice system to conclude that whipping does not have to be resorted to. Juvenile whipping is, at this time so close to the dawn of the 21st century, cruel, it is inhuman and it is degrading.'

The Court reviewed international jurisprudence on the definition of what constituted 'cruel', 'inhuman' and 'degrading' when considering the legality of corporal punishment. It stated that: 'While our ultimate definition of these concepts must necessarily reflect our own experience and contemporary circumstances as the South African community, there is no disputing that valuable insights may be gained from the manner in which the concepts are dealt with in public international law as well as in foreign case law.' It noted that the UN Human Rights Committee has not considered it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment and that the distinctions depend on the nature, purpose and severity of the treatment applied. It also stated that the European Court of Human Rights has distinguished the concepts primarily by the degree of suffering inflicted. The Court quoted the European Court's judgment in *Tyler v UK* that: 'The very nature of judicial corporal punishment is that it involves one human being inflicting physical violence on another human being. Furthermore, it is institutionalised violence, that is in the present case violence permitted by the law, ordered by the judicial authorities of the State and carried out by the police authorities of the State. . . The institutionalised character of this violence is further compounded by the whole aura of official procedure attending the punishment and by the fact that those inflicting it were total strangers to the offender.'

The Court concluded that: 'It is regrettable, but undeniable, that since the middle 1980's our society has been subjected to an unprecedented wave of violence. Disputes, whether political, industrial or personal, often end in violent assaults. In addition, during the same period, there has been a marked increase in violent crimes, such as armed robbery and murder. The process of political negotiations which resulted in the Constitution was a rejection of violence. In this context, it cannot be doubted that the institutionalised use of violence by the State on juvenile offenders as authorised by section 294 of the Act is a cruel, inhuman and degrading punishment. The Government has a particular responsibility to sustain and promote the values of the Constitution. If it is not exacting in its acknowledgement of those values, the Constitution will be weakened. A culture of authority which legitimates the use of violence is inconsistent with the values for which the Constitution stands.'

Safeguards for special categories of detainees

- 2.43 All detained people have the right to equal treatment without discrimination on the grounds of race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status. Particular allowances should, however, be made for the rights and needs of special categories of detainees including women, juveniles, elderly people, foreigners, ethnic minorities, people with different sexual orientation, people who are sick, people with mental health problems or learning disabilities, and other groups or individuals who may be particularly vulnerable during detention. Some groups may be targeted for discriminatory abuse by the staff of the institution where they are detained. They may also be vulnerable to abuse from other detainees.

Women in detention

- 2.44 The Human Rights Committee has expressed concern at the practice of allowing male prison officers access to women's detention centres, which has led to serious allegations of sexual abuse of women and the invasion of their privacy.⁸⁹ It has also stated that female staff should be present during the interrogation of female detainees and prisoners and should be solely responsible for conducting body searches.⁹⁰
- 2.45 The Standard Minimum Rules for the Treatment of Prisoners state that women in custody should be supervised by female members of staff.⁹¹ They should also either be held in separate institutions, or segregated within an institution, under the authority of female staff. No male staff should enter the part of the institution set apart for women unaccompanied by a female member of staff.⁹² In institutions where women are held in custody, facilities for pre-natal and post-natal care and treatment must be provided.⁹³ Whenever possible, arrangements should be made for children to be born in a hospital outside the institution.⁹⁴ The UN Special Rapporteur on Torture has recommended that states should provide gender-sensitive training for judicial and law enforcement officers and other public officials.⁹⁵

Juvenile detainees

- 2.46 Some specific obligations with respect to the use of pre-trial detention in cases involving children are found in the Convention on the Rights of the Child. The Convention applies to children up to the age of 18, who would normally be regarded as juveniles within most criminal justice systems. Article 37 emphasises that the detention of children – pre-trial or any other form – should be a measure of last resort and used for the shortest appropriate period of time. It requires due account to be taken of the needs of children who are deprived of their liberty and that they should be kept separately from adults unless it is considered in their best interest not to do so. Article 39 obliges states, *inter alia*, to promote

89 Observations of the Human Rights Committee: USA, UN Doc. CCPR/C/79/Add.50, 7 April 1995, para.20.

90 Human Rights Committee, General Comment 16, (Twenty-third session, 1988), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 21 (1994), para. 8.

91 Standard Minimum Rules 8(a) and 53.

92 Ibid.

93 Rule 23.

94 Ibid.

95 Report of the UN Special Rapporteur on Torture, UN Doc. E/CN.4/1995/34, p. 8.

physical and psychological recovery and social reintegration of a child victim of torture or any other form of cruel, inhuman or degrading treatment or punishment as well as any form of neglect, exploitation, or abuse.

- 2.47 The CPT has laid down some specific safeguards for protecting children against ill-treatment. It stresses 'that it is essential that all persons deprived of their liberty (including juveniles) enjoy, as from the moment when they are first obliged to remain with the police, the rights to notify a relative or another third party of the fact of their detention, the right of access to a lawyer and the right of access to a doctor. Over and above these safeguards, certain jurisdictions recognise that the inherent vulnerability of juveniles requires that additional precautions be taken. These include placing police officers under a formal obligation themselves to ensure that an appropriate person is notified of the fact that a juvenile has been detained (regardless of whether the juvenile requests that this be done). It may also be the case that police officers are not entitled to interview a juvenile unless such an appropriate person and/or a lawyer is present.'⁹⁶

People with mental health problems

- 2.48 The Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care state that: 'All persons with a mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person.'⁹⁷ 'All persons with a mental illness, or who are being treated as such persons, have the right to protection from economic, sexual and other forms of exploitation, physical or other abuse and degrading treatment.'⁹⁸
- 2.49 The Standard Minimum Rules for the Treatment of Prisoners also state that people with mental health problems shall not be detained in prisons and 'shall be observed and treated in specialized institutions under medical management.'⁹⁹
- 2.50 The CPT has stated that: 'A mentally ill prisoner should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff. That facility should be a civil mental hospital or a specially equipped psychiatric facility within the prison system.'¹⁰⁰ A mentally disturbed violent prisoner should be treated through close supervision and nursing support. While sedatives may be used, if considered appropriate, instruments of physical restraint should only be used rarely and must either expressly be authorised by a medical doctor or be immediately brought to the attention of a doctor. These should be removed at the earliest opportunity and should never be used as a means of punishment. All uses of physical restraint should be recorded in writing.¹⁰¹

⁹⁶ CPT/Inf/E (2002) 1, p. 57, para. 23.

⁹⁷ Principle 2.

⁹⁸ Principle 3.

⁹⁹ Standard Minimum Rules para. 82.

¹⁰⁰ CPT/Inf/E (2002) 1, p. 33, para. 43.

¹⁰¹ Ibid. p. 33, para. 44.

D K Basu v State of West Bengal; Ashok K Johri v State of Uttar Pradesh, India, Supreme Court, 18 December 1996, (1997) 1 SCC 416, AIR 1997 SC 610; (1996) 2 CHRLD 86 (India)

This case arose from a complaint brought by a registered non-political organisation to the Chief Justice of India. The Court held that, despite the existence of constitutional and procedural protections to safeguard individuals' rights, instances have come to its notice where these have been routinely ignored. The Court also noted that the prosecution of offences of torture and custodial death was hampered by an exaggerated adherence to, and insistence upon, establishing proof beyond every reasonable doubt. It stated that this ignores the reality, and the peculiar circumstances of a given case and often results in a miscarriage of justice. It drew Parliament's attention to the urgent need to amend the rules of evidence regarding prosecution of police officials accused of custodial violence, in particular the recommendations of the Law Commission of India in its 113th Report regarding a shift in the burden of proof, with the introduction of a presumption of custodial violence if there is evidence that the detainee's injury was caused during the period of detention, and the consideration by the court of all relevant circumstances.

The Court stated that in addition to the statutory and constitutional requirements referred to above, it would be useful and effective to structure appropriate machinery for contemporaneous recording and notification of all cases of arrest and detention to bring in transparency and accountability. As preventive measures, it stated that the following requirements are to be followed in all cases of arrest or detention until legal provisions are enacted:

- (i) police personnel carrying out arrest and interrogation should wear accurate, visible and clear identification and name tags with their designations, the details of which should be recorded in a register;
- (ii) a memo of arrest (including the relevant date and time) shall be prepared by the arresting police officer and shall be attested by at least one witness (either a relative of the arrestee or a respectable local person) and countersigned by the arrestee;
- (iii) one friend or relative of the arrestee (or another person known to him or her who has an interest in his or her welfare) shall be informed, as soon as practicable, of the arrest and detention at the place in question;
- (iv) where the next friend or relative of the arrestee lives outside the district or town in question, he or she must be notified by the police of the time, place of arrest and venue of custody within 8 to 12 hours of the arrest;
- (v) the arrestee must be informed of this right as soon as he or she is arrested or detained;
- (vi) an entry must be made in the diary at the place of detention regarding the arrest of the person, including the name of the next friend who has been informed and the names and particulars of the police officers in whose custody the arrestee is detained;
- (vii) on request, the arrestee should be examined for injuries at the time of arrest and provided with a copy of the resulting report, signed by both the officer and arrestee;
- (viii) the arrestee should undergo a medical examination every 48 hours by a doctor from an approved panel;

(ix) copies of all documents regarding the arrest are to be sent to the appropriate local Magistrate for his or her records;

(x) the arrestee may be permitted to meet with his or her lawyer during interrogation, though not throughout the interrogation;

(xi) a police control room must be established at all district and State headquarters where information regarding the arrest should be received within 12 hours of the arrest and displayed on a conspicuous noticeboard.

(xii) These requirements are in addition to existing safeguards and do not detract from other directions given by the courts on this matter. They will apply with equal force to the other governmental agencies which have the power to detain and interrogate individuals. They need to be followed strictly; failure to comply shall render the official concerned liable for departmental action and contempt of court proceedings.

The Court also held that where an infringement of fundamental rights is established, the Court cannot merely issue a declaration to that effect; it must proceed further and award compensatory relief, not by way of damages as in a civil action, but by way of compensation under the public law jurisdiction for the wrong done due to a breach of public duty by the State for not protecting the fundamental right to life of the citizen. Mere punishment of the offender cannot give much solace to the family of the victim and a civil action for damages is a long drawn out and cumbersome judicial process. Monetary compensation for redressing the infringement of the indefeasible right to life of the citizen is, therefore, useful and at times perhaps the only effective remedy for the family members of the deceased victim, who may have been the breadwinner of the family. The State's vicarious liability for the acts of public servants in infringing such rights is now well-accepted in most jurisdictions.

In the assessment of compensation, the emphasis has to be on the compensatory rather than the punitive element. Awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the state, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action, such as a civil suit for damages, which is lawfully available to the victim (or the heirs of the deceased victim) with respect to the same subject matter for the tortuous act committed by state functionaries. The quantum of compensation will depend upon the peculiar facts of each case and no rigid formula can be evolved. The amount of compensation awarded by the court (and paid by the State) to redress the wrong done may, in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil claim.

3 The role of judges and prosecutors in protecting detainees and criminal suspects from torture

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3 The role of judges and prosecutors in protecting detainees and criminal suspects from torture

- 3.1 International human rights law requires states to 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, as an effective means of preventing cases of torture and ill-treatment.¹ States are also required to investigate complaints of ill-treatment of detainees and establish independent mechanisms to monitor detainees.²
- 3.2 This chapter focuses on the role of judges and prosecutors in protecting those deprived of their liberty from acts of torture or other forms of ill-treatment. In particular, it considers how the safeguards set out in chapter two should be applied. It provides practical advice for how judges and prosecutors can satisfy themselves that detainees brought before them have not been subject to torture or other prohibited forms of ill-treatment. It also highlights the obligation on prosecutors to ensure that evidence gathered in the course of a criminal investigation has been properly obtained and that the fundamental right of the criminal suspect not to be tortured or ill-treated has not been violated in the process. The risk of such treatment is all the greater if the legal system bases convictions mainly or substantially on confessions and on evidence obtained in pre-trial detention.
- 3.3 Judges and prosecutors exercise different functions in different legal systems and their role in (a) deciding on the admissibility of evidence, (b) questioning witnesses and (c) summing up cases will also vary. The discretion that judges and prosecutors will enjoy in carrying out their functions will partly depend on what legal system they are operating under. For example, in civil or common law systems, criminal justice may follow respectively either inquisitorial or adversarial models. Trials may also be conducted in different ways depending on whether they take place in front of a jury or judges sitting on their own. The following principles will need to be interpreted within the framework of the specific criminal justice system of different countries.

1 Human Rights Committee General Comment 20, para. 11.

2 Concluding Observations of the Human Rights Committee: France, UN Doc.CCPR/C/79/Add.80, 4 August 1997, para.16.

The role of judges

- 3.4 The basic role of judges is to uphold national law – including international law when this has been incorporated into domestic legislation – and to preside independently and impartially over the administration of justice. In deciding guilt or innocence, or in weighing the merits of claims between individuals and the state, judges must have reference only to the facts, so far as they can be established; the merits of each party’s position; and the relevant law. But justice also requires that judges understand all the factors relevant to the situation they are considering, including those which may affect the way that those present in the courtroom behave, or perceive the trial process. This does not just involve controlling procedures, making rulings on points of law, summing up cases, giving judgments, or passing sentences, but also ensuring that their court proceedings are managed in a way that is fair and is seen to be fair.
- 3.5 It is the responsibility of judges to ensure that defendants, witnesses and victims are treated fairly and that those accused of having committed a criminal offence receive a fair trial. This involves ensuring that their rights are respected at all times, and that only evidence which has been properly obtained should be admissible in court. It also means ensuring that those responsible for upholding the law are themselves bound by its strictures. This may involve taking an assertive role to ensure that all testimony and evidence has been given freely and has not been obtained using coercive means. Judges should at all times be alert to the possibility that defendants and witnesses may have been subject to torture or other ill-treatment. If, for example, a detainee alleges that he or she has been ill-treated when brought before a judge at the end of a period of police custody, it is incumbent upon the judge to record the allegation in writing, immediately order a forensic medical examination and take all necessary steps to ensure the allegation is fully investigated.³ This should also be done in the absence of an express complaint or allegation if the person concerned bears visible signs of physical or mental ill-treatment.
- 3.6 While legal systems vary in some respects in different parts of the world, the legal prohibition of torture is universal. The primary role of judges in preventing acts of torture, therefore, is to ensure that the law is upheld at all times.

The role of prosecutors

- 3.7 Judges and prosecutors can play significantly different roles in different criminal justice systems – depending on whether these are based on an adversarial or inquisitorial process. Many of the points regarding the role and responsibilities of judges will also apply to prosecutors in many countries.
- 3.8 Prosecutors also have a particular responsibility to ensure that all evidence gathered in the course of a criminal investigation has been properly obtained and that the fundamental rights of the criminal suspect have not been violated in the process. When prosecutors come into possession of evidence against suspects that they know, or believe on reasonable grounds, was obtained through recourse to unlawful methods, notably torture, they should reject such evidence, inform the court accordingly, and take all necessary steps to ensure that those responsible are brought to justice.⁴ Any evidence obtained through the use of torture or similar ill-treatment can only be used as evidence against the perpetrators of these abuses.⁵

3 CPT/Inf/E (2002) 1, p. 14, para 45.

4 UN Guidelines on the Role of Prosecutors, Guideline 16

5 The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 15.

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- 3.9 In some jurisdictions it is necessary for prosecutors to request investigating judges to act before the latter can initiate investigations. It is, therefore, essential that prosecutors take this duty seriously when it involves the possible commission of the crime of torture by law enforcement officials. Almost all jurisdictions oblige prosecutors to pursue the perpetrators of criminal offences and this duty includes the pursuit of law enforcement officials who may be accused of criminal offences, such as committing acts of torture. In many jurisdictions there is no need for prosecutors to receive a formal complaint before they can act to pursue evidence of a crime. Indeed they frequently have a legal duty to take such action if information comes to their attention in any way.

Safeguards during detention

- 3.10 Prosecutors and judges should ensure respect for the elements contained in the following check-list of standards set out in the previous chapter. This check-list is based on the safeguards in international law. However, international standards only provide a basic minimum. Many states offer greater protection and these can also be considered as models of good practice. Where these standards have not been adhered to there is a particular risk that detainees may have been subject to torture or other forms of ill-treatment. Failure to adhere to some of these standards may also subsequently make it more difficult to identify and prosecute those responsible for these acts:

- **Notifying people of their rights.** All people deprived of their liberty have the right to be told the reasons for their arrest or detention and what their rights are in detention. They have the right to inform, or have the authorities notify, their family or friends of the fact of the detention and the place where they are being held. If the person is transferred to another place their family or friends must again be informed. This notification should preferably take place immediately, or at least without delay. People held in pre-trial detention should be given all reasonable facilities to communicate with family and friends and to receive visits from them.

- **Use of officially recognised places of detention and the maintenance of effective custody records.** Everyone deprived of their liberty should be held in places that are officially designated and publicly known. Interrogation should only take place at official centres and any evidence obtained from a detainee in an unofficial place of detention, and not confirmed during interrogation at official locations, should be excluded as evidence in court – unless it is used as evidence against an alleged torturer. Timely and accurate custody records, held in publicly accessible registers, are an essential element in protecting people against torture or ill-treatment. The authorities should keep and maintain up-to-date official registers of all detainees, both at each place of detention and centrally. These records should include the names of detainees, their place of detention and the identity of those responsible for their detention. Cells should be numbered and the cell in which the detainee was placed should be recorded. A complete record of all contact with the detainee should also be kept, including requests that the detainee has made, responses by the authorities and decisions taken in relation to the detainee. Custody records should be kept using means where any tampering can be easily detected – such as bound books with pre-numbered pages and retained for a substantial period (i.e. several years).

• **Avoiding incommunicado detention.** People are particularly at risk of torture and ill-treatment when they are detained incommunicado – that is when a detainee has no access to the outside world, to their family, lawyers or to independent doctors. This risk increases the longer that they are held as it allows a longer period for injuries to be inflicted and for the visible marks of these injuries subsequently to fade. Judges should exercise any discretion that they have to ensure restrictions and delays in granting detainees access to the outside world are kept to the minimum.

• **Access to a lawyer and respect for the functions of a lawyer.** Detainees have the right to access to legal advice without delay. They should be able to consult, in private, with a lawyer while in custody, to have a lawyer present during any interrogations and to have a lawyer represent them when they appear in court. Lawyers should advise and represent their clients in accordance with professional standards, free from intimidation, hindrance, harassment, or improper interference from any quarter.

• **Access to a doctor.** Detainees should be medically examined as soon as possible after they are deprived of their liberty and at all stages of their detention. They have an additional right to be examined by an independent and fully qualified doctor of their choosing. Medical examinations should be conducted out of the hearing, and preferably out of the sight, of police officers. The results of every examination, as well as relevant statements by the detainee and the doctor's own conclusions, should be formally recorded by the doctor and made available to the detainee and his or her lawyer.

• **Safeguards for special categories of detainees.** All detained people have the right to equal treatment without discrimination on the grounds of race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status. Particular allowances should, however, be made for the rights and needs of vulnerable detainees including women, juveniles, elderly people, foreigners, ethnic minorities, people with different sexual orientation, people who are sick, people with mental health problems or learning disabilities, and other vulnerable groups or individuals. Some groups may be targeted for discriminatory abuse by the staff of the institution where they are detained. They may also be vulnerable to abuse from other detainees.

Interrogations

3.11 Prosecutors have a responsibility to ensure that they do not participate in interrogations in which coercive methods are used to extract confessions or information. They should also satisfy themselves that such methods are not used by law enforcement officials in order to obtain evidence to bring criminal charges against a suspect. Where a suspect or witness is brought before a prosecutor, the prosecutor should ensure that any information or confession offered is being given freely. The prosecutor should also explore for signs of physical or mental distress, take all allegations of torture or other forms of ill-treatment seriously, and refuse to return anyone to custody where he or she is at risk of such treatment.

3.12 The risk of torture and ill-treatment under interrogation is all the greater if the legal system bases convictions mainly or substantially on confessions and on evidence obtained in pre-trial detention – particularly when interrogations are conducted without a detainee's lawyer being present. In all circumstances, strict procedures should be followed to ensure that interrogations are properly conducted and that abuses are not inflicted while a detainee is being questioned. It is particularly

important that the details of all interrogations are recorded and the interrogation itself is transcribed. This information should also be available for the purposes of judicial or administrative proceedings.

3.13 Prosecutors and judges should ensure respect for the elements contained within the following check-list of good practice concerning interrogations, which is based on recommendations by the CPT and the UN Special Rapporteur on Torture:⁶

- Interrogation should take place only at official centres and any evidence obtained from a detainee in an unofficial place of detention and not confirmed by the detainee during interrogation at official locations should not be admitted as evidence in court against the detainee;
- The detainee should have the right to have a lawyer present during any interrogation;
- At the outset of each interrogation, the detainee should be informed of the identity (name and/or serial number) of all persons present;
- The identity of all persons present should be noted in a permanent record which details the time at which interrogations start and end and any request made by the detainee during the interrogation;
- The detainee should be informed of the permissible length of an interrogation; the procedure for rest periods between interviews and breaks during an interrogation, places in which interrogations may take place; and whether the detainee may be required to stand while being questioned. All such procedures should be laid down by law or regulation and be strictly adhered to;
- Blindfolding or hooding should be forbidden as they can render the subject vulnerable, involve sensory deprivation and may themselves amount to torture or ill-treatment. They may also make prosecutions virtually impossible as it will be more difficult to identify the perpetrators.
- All interrogation sessions should be recorded or transcribed and the detainee or, when provided by law, his or her counsel should have access to these records;
- The authorities should have and should regularly review procedures governing the questioning of persons who are under the influence of drugs, alcohol or medicine or who are in a state of shock;
- The situation of particularly vulnerable persons (for example, women, juveniles and people with mental health problems) should be the subject of specific safeguards.

3.14 The electronic recording of interviews significantly helps reduce the risk of torture and ill-treatment and can be used by the authorities as a defence against false allegations. As a precaution against tampering with the recordings, one tape should be sealed in the presence of the detainee and another used as a working copy. Adherence to such procedures also helps to ensure that a country's constitutional and legislative prohibition of torture and ill-treatment is respected and verifiable.

3.15 The term 'interrogation' does not only refer to the time in which a person is being formally questioned. It may include periods before, during and after the questioning when physical and psychological pressures are applied to individuals to disorient them and coerce them into compliance during formal questioning. All such practices must be absolutely prohibited.

6 CPT/Inf/E (2002) 1, p.10-16, para 33-50; Report of the Special Rapporteur on Torture, 2001, UN Doc.A/56/156, July 2001, para 39.

Independent inspections

- 3.16 Regular inspection of places of detention, especially when carried out as part of a system of periodic visits, constitute one of the most effective preventive measures against torture. The CPT has stated that it 'attaches particular importance to regular visits to each prison establishment by an independent body (e.g. a board of visitors or supervisory judge), possessing powers to hear (and if necessary, take action on) complaints from prisoners and to inspect the establishment's premises. Such bodies can *inter alia* play an important role in bridging differences that arise between prison management and a given prisoner or prisoners in general.'⁷ It has also welcomed the existence of mechanisms to inspect police premises as 'making an important contribution towards the prevention of ill-treatment of persons held by the police and, more generally, of ensuring satisfactory conditions of detention in police stations'.⁸ The Special Rapporteur on Torture has stated that 'unannounced visits to police stations, pre-trial detention facilities and penitentiaries' provide one effective safeguard against torture.⁹
- 3.17 National law often requires members of the judiciary and/or prosecutors to carry out inspections. Law enforcement officials, defence lawyers and physicians, as well as independent experts and other representatives of civil society may also be involved in inspections. Ombudsmen and national or human rights institutions, the International Committee of the Red Cross (ICRC) and independent non-governmental organisations (NGOs) should also be authorised to have full access to all places of detention on request.
- 3.18 Places of detention should be visited regularly – and without prior warning – and every effort must be made to communicate directly and confidentially with people being detained or imprisoned. Places to be visited include police lock-ups, pre-trial detention centres, security service premises, administrative detention areas and prisons. Inspection teams should be free to report publicly on their findings should they choose to do so.
- 3.19 The Association for the Prevention of Torture (APT), which is a non-governmental organisation, has produced a report, based on a number of CPT reports and recommendations, concerning national visiting mechanisms. This contains the following basic check-list for judges and prosecutors conducting inspections.¹⁰

- **Independent.** The visiting body should demonstrate its independence and impartiality, distinct from the staff and administration of the place of detention. It must make it clear that its only concern is to ensure that detention conditions are humane and that detainees are treated justly.
- **Expert.** Those involved in conducting inspections should have specific knowledge and expertise regarding the particular kind of place of detention that which they are involved in inspecting.
- **Direct and personal contact with detainees.** The visiting body should strive to establish direct contact with detainees during visits. Detainees who have not requested an interview with the monitoring body should be chosen at random and interviewed as part of a regular visit. Detainees should also have a right to register complaints, both within and outside of the detention facility.

7 2nd General Report on the CPT's Activities, 1991, para 54.

8 CPT/Inf/E (99) 1 (REV. 2), para 97.

9 Report of the Special Rapporteur on Torture, 2001, UN Doc.A/56/156, para 39(c).

10 *CPT Recommendations Concerning National Visiting Mechanisms*, The Association for the Prevention of Torture, June 2000.

- **Confidential.** The visiting body should be able to communicate with detainees out of sight and hearing of the staff of the place of detention.
- **Regular.** Weekly visits to prisons and other places of detention are most effective. Monthly visits may be an acceptable alternative. Visiting bodies should be provided with adequate time and resources to make visits with a regularity sufficient to ensure effectiveness.
- **Unannounced.** Visiting bodies should have, and exercise, the power to visit any place of detention on any day and at any time that they choose.
- **All parts of the facility.** The visiting body should have, and seek, access to all parts of the facility.
- **Regular reports.** The visiting body should make regular reports of their visits available to relevant national institutions.

3.20 As well as talking to detainees and observing their physical condition, overall demeanour and their relationship with the staff in the detention facility, members of the visiting body should also be observant for any equipment or implements that could be used to inflict torture or ill-treatment. The staff of the detention facility should always be questioned about any such items and detainees should also be questioned, separately from the staff.

Conditions of detention

3.21 While conditions of detention will vary, the CPT has provided a general check-list¹¹ of factors that need to be considered when assessing the suitability of a place used for *short-term* detention:

- Cells should be clean, of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should have natural light;
- Cells should be equipped with a means of rest (a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and blankets;
- Persons in custody should be allowed to comply with the needs of nature in clean and decent conditions, and be offered adequate washing facilities;
- Persons in custody should have ready access to drinking water and be given food at appropriate times, including at least one full meal every day;
- Those detained for extended periods, 24 hours or more, should be allowed to take outdoor exercise.

These are to be regarded as minimum standards. Any further period in detention should normally be in a facility designed for longer-term detentions where the standards to be expected are more exacting. Deprivation of liberty in conditions which do not meet these standards can amount to inhuman or degrading treatment in contravention of international human rights law.¹²

¹¹ CPT/Inf/E (2002) 1, p.8, para 42.

¹² *Peers v Greece*, ECtHR, Judgment 19 April 2001; *Kalashnikov v Russia*, ECtHR, Judgment 15 July 2002.

Blanchard & Others v Minister of Justice, Legal and Parliamentary Affairs & Anor, Supreme Court, Zimbabwe, 9 July 1999, 1999 (10) BCLR 1169 (ZS), [2000] 1 LRC 671; (1999) 2 CHLRD 326 (Zimbabwe)

The applicants had been charged with several serious offences, including terrorism and sabotage, and were detained in a high-security prison pending trial. They filed an application to the Supreme Court alleging that the respondents had violated their constitutional right not to be subject to torture or inhuman or degrading treatment by detaining them in continuously lit, single, locked cells; forcing them to wear prison clothing; stripping and shackling them in leg-irons each night, and preventing them from receiving food from sources outside the prison.

In July 1999 the Supreme Court of Zimbabwe made a declaratory order that the applicants' cells should be left unlocked in the day, that the light in their cells should be switched off at night time, and that while they remained unconvicted prisoners, the applicants should be allowed to wear their own clothing and were entitled to receive food from outside the prison.

The Court considered international jurisprudence including the European Court of Human Rights cases of *Ireland v UK* and *Koskinen v Finland* and specifically referred to the UN Standard Minimum Rules for the Treatment of Prisoners. It condemned the use by prison authorities of leg-irons and handcuffs, except for the prevention of escape during transportation or to restrain violent behaviour in the absence of other effective methods. It stated that although persons in custody do not possess the full range of freedoms of unincarcerated individuals, any restraints imposed upon them must be circumscribed and absolutely necessary. They must be measured against the State's sole objective of bringing the prisoner to trial, and be judged against a standard of basic humanity towards persons innocent in the eyes of the law rather than against abstract penological standards. Punishment, deterrence or retribution are not compatible with the presumption of innocence. Although there may be special circumstances in which it is permissible to subject a prisoner awaiting trial to more severe treatment than other such prisoners, the onus is on the prison authorities to justify such action. In the present case, the respondents had not alleged that the applicants' conduct posed a threat to prison security. Stripping the applicants and shackling them in leg irons is, therefore, manifestly inhuman. Insisting on continuous lighting was irrational and aimed to exacerbate the effect of the confinement by making it as uncomfortable and severe as possible, particularly as the applicants were, in effect, being held in solitary confinement.

The Court also stated that Zimbabwe's Constitution aims to protect both the dignity and the physical and mental integrity of the individual and this protection is similar to the provisions of the European Convention on Human Rights and the International Covenant on Civil and Political Rights. The prolonged duration of the ill-treatment endured by the applicants, and its physical and mental effects upon them, had attained the minimum level of severity necessary to constitute a violation of this right. It also commented that the constitutional prohibition on torture and other ill-treatment was intended to protect persons from acts causing not only physical but also mental suffering. The respondents were ordered to pay costs on the higher scale as a mark of the Court's disapproval of the arbitrary harshness of the treatment meted out to the applicants.

Appearance before a judicial authority

- 3.22 All detained persons have the right to challenge the lawfulness of the detention. This is sometimes referred to as a *habeas corpus* procedure, which means the delivering of the body before the court. This can provide an important safeguard against torture as well as a means to challenge arbitrary detentions – although sometimes judges restrict this procedure to ensuring that the detention itself is lawful without giving sufficient weight as to whether the conditions of the detention also fully comply with the law.
- 3.23 The application to challenge a detention may be made by the detainee or by someone acting on his or her behalf. Such procedures must be acted on expeditiously. If it is within their discretion to do so, judges should also require that the detainee is physically brought to court and that, while in court the detainee is able to communicate with his or her lawyer in confidence.
- 3.24 Whenever a detainee is brought before them from custody, judges should be particularly attentive to his or her condition. Where necessary, judges should routinely carry out a visual inspection for any signs of physical injury – or order one to be carried out by a doctor. This could involve a check for physical bruising that may be hidden under clothing. Many forms of torture leave no visible marks and others are inflicted using methods that are difficult to detect. Judges should, therefore, also be alert to other clues, such as the individual's physical and mental condition and overall demeanour, the behaviour of the police and guards involved in the case and the detainee's attitude towards them. Judges should actively seek to demonstrate that they will take allegations of torture or ill-treatment seriously and will take action where necessary to protect those at risk.
- 3.25 Where a suspect does not speak the language in which the trial is being conducted, the requirements of a fair trial dictate that he or she must be provided with full interpretation facilities.¹³ This is also an important safeguard to ensure that all acts of torture and other forms of ill-treatment are reported.
- 3.26 Those responsible for the security of courts and for guarding detainees during court appearances should always be organisationally separate from, and independent of, those guarding detainees in custody and those conducting investigations into the crime that the detainee is suspected of committing. Remand prisoners are at particular risk if they are being held by, or can be transferred back into, the custody of, the investigating authorities. While in court the detainee should be held in a place that is physically separate from where the police or investigating officers involved in the case are waiting. If there are any suspicions that an individual has been subjected to torture, or other forms of ill-treatment, that individual must be removed from the custody of his or her alleged torturers immediately.

¹³ Article 14 (3)(f) International Covenant on Civil and Political Rights.

3.27 In order to be alert to signs of torture or ill-treatment, judges need to give some consideration to the physical lay-out of their courtrooms.

- Can the judge clearly see and hear the detainee at all times while he or she is in the courtroom, sufficient to detect any visible signs of physical or mental injury?
- Is the level of security in which the detainee is being held appropriate to any real danger that he or she may pose?
- Can the detainee communicate with his or her lawyer in confidence?
- Can the detainee communicate to the court freely without any threat or intimidation?

Legal assistance

3.28 Judges should ensure that all defendants are aware of their right to call upon the assistance of a lawyer of their choice. Defence lawyers should be able to perform their professional functions without intimidation, hindrance, harassment or improper interference, including the right to consult with their clients freely.¹⁴ They should not be identified with their clients or their clients' causes as a result of discharging their functions. Nor should they suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with their professional duties, standards and ethics. Where the security of lawyers is threatened as a result of discharging their functions, they should be adequately safeguarded and protected by the authorities.¹⁵

Admissibility of evidence

3.29 In many jurisdictions, judges play a crucial role in deciding what evidence should be heard in the main trial, or before a jury, and what evidence should be deemed inadmissible. Clearly evidence obtained through torture or other forms of ill-treatment must be deemed inadmissible.¹⁶ This will usually be specified in the national law – although some forms of physical and mental ill-treatment are not always adequately covered in national legislation. Unless the written law admits no other interpretation, judges should always interpret it in ways that are consistent with international standards and best-practices regarding torture and other forms of ill-treatment.

3.30 It is the duty of the court to ensure that evidence produced is admissible. It is, therefore, incumbent on the judge to satisfy herself/himself that any confession or other evidence has not been obtained through torture or other forms of ill-treatment. Even if no complaint is made by the accused, the judge must be prepared to ask the prosecution to prove beyond reasonable doubt that the confession was obtained voluntarily.

14 Human Rights Committee, General Comment 13, Article 14 (Twenty-first session, 1984), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 14 (1994), para. 9; Basic Principles on the Role of Lawyers, principles 16-18.

15 Ibid.

16 *Kelly v Jamaica*, (253/1987), 8 April 1991, Report of the Human Rights Committee, (A/46/40), 1991; *Conteris v Uruguay*, (139/1983), 17 July 1985, 2 Sel. Dec. 168; *Estrella v Uruguay*, (74/1980), 29 March 1983, 2 Sel. Dec. 93.

3.31 Evidence may be deemed admissible in a trial even though there is an allegation that it was obtained through coercive means – as not all such claims will necessarily be accepted as genuine. In some cases, judges may hold a separate hearing – or a ‘trial within a trial’ – into such claims before deciding whether this evidence can be presented before the main court. Where a trial is conducted with a jury, it may be excluded from this part of the proceedings. However, there may also be cases where evidence is heard in the main trial which the defence alleges was obtained through torture or other prohibited forms of ill-treatment. In any case where such an allegation has been made, judges have a particular responsibility to ensure that witnesses are properly examined about the allegation and that sufficient weight is given to this during their deliberations and when summing up the case.

Examining witnesses

3.32 Particular attention should be paid to any witness who appears to have suffered or witnessed physical injuries or mental trauma while in custody. Such injuries or trauma may not necessarily be the result of torture or other forms of ill-treatment and not all claims of such ill-treatment can be taken at face value. Nevertheless, appropriate allowance should be made for the fact that a witness testifying about such acts may be particularly vulnerable, frightened or disorientated. Care should be taken to ensure that the witness is not re-traumatised during questioning and that the quality of his or her evidence suffers as little as possible because of any particular vulnerabilities. Allowance should also be made for the fact that the witness may be suffering from post-traumatic stress, or from a mental disability unrelated to the alleged ill-treatment, and that this may affect his or her memory, communication skills, and responses to perceived aggression during questioning.

3.33 The following practices should be adhered to during questioning and the reasons for this explained to the court, where necessary:

- **Repeating questions.** Questions may need to be repeated or rephrased as some people can take longer to absorb, comprehend and recall information.
- **Keeping questions simple.** Questions should be kept simple as some people may experience difficulty in understanding and answering them. They may also have a limited vocabulary and find it difficult to explain things in a way that others find easy to follow.
- **Keeping questions non-threatening and open.** Questions should be non-threatening as some people may respond to rough questioning either by excessive aggression or by trying to please the questioner. Questions should also be kept open as some people are prone to repeating information provided to them or suggested by the interviewer.

3.34 Judges and prosecutors should also be aware that physical and mental torture and other forms of ill-treatment may have been carried out within a particular social, cultural or political specificity that the witness might find difficult to explain to the court. An action that might seem trivial or harmless in one context could be deeply demeaning or traumatic in another. A comment that might seem completely innocuous when repeated could easily have been understood – and have been intended to be – a dangerous implied threat when it was first made. This might be because of certain cultural sensitivities or taboos, such as ‘honour’ and ‘shame’. It might also be because certain social and political groups

believe that the police routinely behave in ways that others might find it very difficult to comprehend. For example, coded threats may have been made against a witness, or a member of his or her family, by the police which the witness has difficulty in explaining to the court. The judge should actively draw out such nuances if the lawyers have failed to do so during their own questioning of witnesses.

3.35 In many jurisdictions, where a prosecution witness is of doubtful character, there is a duty to disclose this to the defence. In some countries, law enforcement services or agencies may be required to disclose the criminal or disciplinary records of individual officers so that the defence may cross-examine them where their credibility is an issue. Where it is within their discretion to do so, judges should ensure that the previous disciplinary or criminal offences on the record of a law enforcement officer appearing as a prosecution witness, is disclosed to the defence. This will be particularly important in any case where there is an allegation of torture or ill-treatment if the officer has previously been disciplined or convicted of such behaviour. It can also act as a disincentive to individual officers to engage in such practices as their value as prosecution witnesses in subsequent cases will be undermined.

3.36 When a judge sums up, concludes a trial or delivers his or her reasoning it is important to ensure that adequate weight has been given to allegations of torture and ill-treatment and to the testimony of those who allege that it has taken place. Where the trial is being held before a jury, it should be carefully explained why all forms of torture and ill-treatment are prohibited, irrespective of the nature of the person alleging that they have been subjected to this, or any crime that he or she may be suspected of committing. This will be particularly important in cases where the person making the allegation is of a different race, sex, sexual orientation, or nationality, has a different political or religious belief, or comes from a different social, cultural or ethnic background from the majority of the jurors. It will also be important if the person making the allegation is accused of a particularly serious or obnoxious crime.

3.37 In societies where a particular social group is generally perceived negatively, or where members of this group are identified with particular types of crime, juries must be discouraged from following their prejudices that lead them to conclude that the victim 'deserved' the torture or ill-treatment that he or she is alleged to have suffered. Equally where other evidence in the trial points to the guilt of a particular defendant, juries must be dissuaded from regarding allegations of torture or other forms of ill-treatment in a less serious light – or concluding that the police were merely trying to 'improve' their case. In providing direction as to the law to jurors, judges must always point out the total unacceptability of torture and other forms of ill-treatment under all circumstances.

3.38 Judges should, however, also instruct the jury to give due weight to 'cultural' factors when applying their 'common sense' to such allegations. While not applying prejudicial stereotypes to particular groups – or instinctively finding the evidence of some more credible than that of others – jurors should be guided towards attempting to understand the impact that various forms of physical and mental ill-treatment might have on a victim from a different background to their own.

Duty to protect in cases of expulsion

- 3.39 Judges may also, on occasion, be required to make decisions regarding the sending or return of an individual to a situation where he or she faces a real risk of being tortured. This might arise, for example, because of an extradition request or a challenge to a decision regarding an impending deportation.
- 3.40 The right of a person not to be sent to a country where there are substantial grounds for believing that he or she would face a real risk of being subject to treatment that amounts to torture or cruel, inhuman or degrading treatment or punishment is also well established in human rights law. This right applies to all people and at all times. This right is recognised as forming a part of the right to be protected against acts of torture and other prohibited forms of ill-treatment contained in the International Covenant on Civil and Political Rights 1966, the European Convention on Human Rights 1950, the American Convention on Human Rights 1978, the African Charter on Human and People's Rights 1981, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 and the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment 1987.
- 3.41 Both the Human Rights Committee and the European Court have stated that exposing someone to a 'real risk' of suffering inhuman or degrading treatment would violate their right to protection against such acts.¹⁷ The Human Rights Committee has stated that '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*.'¹⁸ The European Court has stated that the absolute prohibition of torture and other forms of ill-treatment applies irrespective of the victim's conduct and cannot be overridden by a state's national interest or in dealing with suspected terrorists.¹⁹ Even if the threat emanates from private groups, such as armed insurgents or criminals, if the state concerned is unable or unwilling to protect the individual from such treatment this would amount to a violation.²⁰ In exceptional circumstances, the European Court has also found that the lack of adequate medical facilities in the country to which someone is threatened with return could amount to a violation of Article 3.²¹ The Committee against Torture has also requested states party to the Convention not to expel someone who can show a 'real and personal risk' of being exposed to such treatment.²² The Committee has stressed that this protection is absolute, 'irrespective of whether the individual concerned has committed crimes and the seriousness of these crimes.'²³

17 *Soering v UK*, 1989, ECtHR, Series A, No. 161. See also *Cruz Varas v Sweden*, 1991, ECtHR Series A no.201, *Vilvarajah v UK*, 1991, ECtHR Series A, No. 215, *H.L.R. v France*, 1997, ECtHR Series A, *D v UK*, 1997, Judgment 2 May, *Jabari v UK*, 2000, Judgment 11 November. UN Human Rights Committee decision on the communication *Ng v Canada*, (469/1991), Report of the Human Rights Committee, Vol II, GAOR, 49th Session, Supplement No. 40 (1994), Annex IX CC; and Human Rights Committee, General Comment 2, Reporting guidelines (Thirteenth session, 1981), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 3 (1994) para 3.

18 Human Rights Committee, General Comment 20, para 9.

19 *Chahal v UK*, ECtHR, 1996, Judgment 15 November.

20 *Ahmed v Austria*, ECtHR, Judgment 17 December 1996; *H.L.R. v France*, ECtHR, Judgment 29 April 1997.

21 *D. v UK*, ECtHR, Judgment 2 May 1997.

22 See for example: The Reports of the Committee Against Torture, *Mutambo v Switzerland*, (13/1993) GAOR, 49th Session Supplement No.44 (1994) *Khan v Canada*, (15/1994), GAOR, 50th Session, Supplement No.44 (1995).

23 *Ibid.*

3.42 The Convention Relating to the Status of Refugees 1951 and the 1967 Protocol, make specific provision for refugees and these principles should also be upheld by domestic courts. The most essential component of refugee status and of asylum is protection against return to a country where a person has reason to fear persecution. This protection has found expression in the principle of *non-refoulement* – the right of a person not to be returned to a country where his or her life or freedom would be threatened – which is widely accepted by states. The principle of *non-refoulement* has been set out in a number of international instruments relating to refugees, both at the universal and regional levels.

3.43 The Convention Relating to the Status of Refugees provides, in Article 33(1), that: ‘No Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.’ The principle of *non-refoulement* constitutes one of the basic Articles of the 1951 Convention. It is also an obligation under the 1967 Protocol to this Convention. Unlike various other provisions in the Convention, its application is not dependent on the lawful residence of a refugee in the territory of a contracting state. The principle also applies irrespective of whether or not the person concerned has been formally recognised as a refugee – if this status has yet to be determined. Because of its wide acceptance at universal level, it is being increasingly considered as a principle of general or customary international law, and even *jus cogens*, and so is binding on all states. Therefore no government should expel a person in these circumstances.

4 Conducting investigations and inquiries into acts of torture

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4 Conducting investigations and inquiries into acts of torture

- 4.1 This chapter outlines how prosecutors and judges should conduct investigations and inquiries into acts of torture. It discusses how they should respond to allegations and gather evidence. It also provides advice on interviewing victims, witnesses and suspects and protecting witnesses during investigations and trials.
- 4.2 The responsibility to carry out such investigations and inquiries is firmly established in international law. The Convention against Torture requires states parties of their own initiative to carry out investigations of torture, even if there has not been a formal complaint, and to provide individuals with a right to complain, to have their complaints investigated and to be offered protection against any consequent threats or ill-treatment.¹ The same obligations apply in respect of other cruel, inhuman or degrading treatment or punishment.²
- 4.3 The Human Rights Committee has commented that the right to lodge complaints against torture or other forms of ill-treatment must be recognised in domestic law. Complaints must be investigated promptly and impartially by competent authorities. States must also hold those responsible to account for such acts whether the involvement has been through ‘encouraging, ordering, tolerating or perpetrating’ them.³ The European Court of Human Rights has held that states are obliged to investigate all ‘arguable claims’ of torture and that this is implicit both in the notion of the right to an effective remedy and the right to be protected from acts of torture.⁴ It has stated that ‘where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the state to provide a plausible explanation as to the cause of the injury.’⁵ Where an individual raises an arguable claim that he has been seriously ill-treated by agents of the state the authorities are obliged to carry out an effective and independent official investigation – including the taking of witness statements and the gathering of forensic evidence – capable of leading to the identification and punishment of those responsible.⁶ Without such a duty to investigate the Court noted that ‘the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice and it would be possible in some cases for agents of the state to abuse the rights of those within their control with virtual impunity.’⁷ The Inter-American Court of Human Rights has similarly found the failure to mount an investigation to be a violation of the right to be protected against torture and inhuman treatment.⁸

1 Articles 12 and 13, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2 Article 16, *ibid.*

3 Human Rights Committee General Comment 20, paras 13 and 14.

4 *Assenov and others v Bulgaria* ECtHR, Judgment 28 October 1998; *Aksoy v Turkey* ECtHR, Judgment 18 December 1996.

5 *Ribitsch v Austria*, ECtHR, Judgment 4 December 1995; *Aksoy v Turkey* ECtHR, Judgment 18 December 1996; *Assenov and others v Bulgaria* ECtHR, 28 October 1998, *Kurt v Turkey* ECtHR, Judgment 25 May 1998, *Çakici v Turkey*, ECtHR, Judgment of 8 July 1999, *Akdeniz and others v Turkey*, ECtHR, Judgment 31 May 2001.

6 *Ibid.*; See also *Sevtap Veznedaroglu v Turkey*, ECtHR, Judgment 11 April 2000; *Kelly and Others v UK*, ECtHR, Judgment 4 May 2001.

7 *Ibid.*; see also *Selmouni v France*, ECtHR Judgment 28 July 1999.

8 *Velásquez Rodríguez Case*, Judgment 29 July 1988, Inter-Am. Ct HR Series C, No. 4.

4.4 The Special Rapporteur on Torture has stated that ‘when a detainee or relative or lawyer lodges a torture complaint, an inquiry should always take place . . . Complaints about torture should be dealt with immediately and should be investigated by an independent authority with no relation to that which is investigating or prosecuting the case against the alleged victim.’⁹

Case No. 0002.00.049085 9-00, Vara 19, Forum Criminal de São Paulo, 15 August 2002 (Brazil)

Two men were arrested on 10 January 2000 and accused of carrying illegal weapons. They were taken to Jardim Ranieri, a newly-opened military police base south of São Paulo city where they were also questioned about a robbery in which a security guard had been killed.

The security guard was also a police officer, who had been working for a private company while he was off-duty. The police officers investigating the murder had received information that the two arrested men had been implicated in the robbery. They proceeded to question them in order to obtain either a confession of guilt, or the names of those responsible for the murder of their colleague.

The victims alleged that while they were detained in Jardim Ranieri they were subject to repeated torture. They said that they were punched and kicked and suffocated by having plastic bags placed over their heads. One of them was also subjected to electric shocks by having a live wire repeatedly connected to his ring finger. He subsequently lost the finger of this hand. Medical reports indicated that the injuries that the men suffered were consistent with their accounts of being tortured.

As a result of this torture the victims implicated another man, nick-named ‘Pezinho’, as having been involved in the robbery in which the security guard was killed. ‘Pezinho’ was taken to the police station at Jardim Ranieri, without being formally arrested. He, in turn, implicated another man, nick-named ‘Alemão’, who it was claimed had directly carried out the killing. ‘Alemão’ was subsequently shot dead by the police ‘while resisting arrest.’

The facts of this case came to light as São Paulo’s Governor had been asked to inaugurate the new police base at Jardim Ranieri at around the same time. After hearing rumours about what had happened he ordered a full investigation which ultimately resulted in a prosecution of the police officers responsible.

Two police officers were convicted of carrying out the torture directly – and received sentences of eight and nine years imprisonment respectively. A third, the Chief of Police at the station, was convicted of failing to prevent or investigate the crime and received a sentence of two years imprisonment. The judge commented that he had failed to carry out his duty to investigate the actions of his subordinates despite numerous irregularities involving the case about which he must have been aware. The two officers convicted of carrying out the torture were also barred from holding public functions for periods after they had completed their sentences.

9 Report of the Special Rapporteur on Torture, UN Doc.A/56/156, July 2001, para 39(d).

Responding to allegations of torture

- 4.5 When a detainee or relative or lawyer lodges a torture complaint, an inquiry must always take place promptly. In all cases of death occurring in custody or shortly after release, an inquiry must be held by judicial or other impartial authorities.
- 4.6 The process of registering a complaint should be straightforward and, initially, confidential. The existence of complaint mechanisms should be widely publicised and people encouraged to report all acts of torture or other forms of ill-treatment. If it is necessary to fill in a form to make a complaint these should be widely available and in all commonly spoken first languages. It should be possible to pass complaints to the body in a sealed envelope so that they cannot be read by custodial staff who come into contact with the complainant. The complaints body should acknowledge receipt of the complaint promptly. Where the case is current, and an individual is at risk, it should be acted upon immediately. In all cases there should be tight time-limits or targets for investigating and answering complaints. Victims and their legal representatives should have access to information relevant to the investigation.
- 4.7 Victims and witnesses should also be protected during and after investigations. Those implicated by the investigation should be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation. Unless the allegation is manifestly ill-founded, public officials involved should be suspended from their duties pending the outcome of the investigation and any subsequent legal or disciplinary proceedings. In cases where current inmates are at risk, they should be transferred to another detention facility where special measures for their security can be taken. Where appropriate, victims and witnesses to acts of torture should be placed in witness protection programmes. Witness protection programmes should be open to all victims and witnesses to acts of torture, regardless of whether they have criminal convictions.

Principles governing investigations

- 4.8 Inquiries and investigations may be carried out by Prosecutors, Magistrates and Judges, National Human Rights Institutions (such as Ombudsmen and Human Rights Commissions in some countries) or Inspectorates depending on the nature of the country's legal system. Some countries may also develop specialised 'torture investigation units' within a particular institution – such as the Office for Public Prosecution.
- 4.9 Inquiries may also take the form of internal investigations by the police or other law enforcement bodies with a view to possible disciplinary sanctions or referral to the prosecuting authorities; judicial inquiries or coroner's inquests into deaths, judicial commissions of inquiry into a specific pattern of abuse or a major incident; specialised complaints investigation bodies responsible for directly investigating police abuses or supervising internal investigations. Where the findings reveal *prima facie* evidence of a crime, then a criminal investigation should always follow.

4.10 Prosecutors and judges who are involved in conducting investigations should, wherever possible, ensure respect for the following principles:

- Investigations should be carried out by competent, qualified and impartial experts, who are independent of the suspected perpetrators and the agency that they serve.
- Investigators should have access to all necessary information, budgetary resources and technical facilities to investigate fully all aspects of complaints.
- Investigators should have unrestricted access to places of custody, documents and persons. The investigative body should be entitled to issue summonses to witnesses, to demand the production of evidence and to seize all relevant operational orders and related briefing materials.

The findings of all investigations should be made public.

4.11 Even when a complaint of torture or ill-treatment is not upheld by an investigation, it is important to ensure that the investigation has been properly conducted and can be shown to have been properly conducted. The complainant should be given a reasoned decision in writing which sets out the evidence as well as the finding once the investigation is completed. There should be a clearly auditable trail established, which demonstrates that a robust, impartial and expeditious investigation took place and why it reached its particular conclusions. The conduct of each investigation should also be regularly reviewed and the findings recorded so that best-practices can be identified and the 'lessons learned' can help to improve the quality of future investigations.

4.12 Investigations should clarify the facts about allegations of torture, identify any patterns relating to these practices and recommend measures needed to prevent their recurrence. The investigation should aim to identify not just those responsible for the torture or ill-treatment, but also those responsible for the supervision of the detainee when it occurred, as well as those responsible for the supervision and management of these staff, and any patterns of alleged torture or ill-treatment that may be identified.

4.13 The purpose of such an investigation is to uncover the truth about an allegation. If there is substance to the allegation then the investigations must also gather evidence for three distinct purposes:

- Disciplinary action against those responsible;
- Criminal prosecution of those responsible;
- Compensation for the victim and full reparations and redress from the state.

4.14 The standard of proof may be different for each of the above and – even where it has been carried out expeditiously – considerable time may elapse between the different phases of the investigation. It is vital that the evidence collected is of a sufficient quality to be used for all of the above purposes and can be used to corroborate or disprove any allegations to the required standard.

4.15 One of the most important aspects of any investigation into possible cases of torture or other forms of ill-treatment is the systematic recording of why various lines of enquiry were pursued, or why they were not pursued. The detailed recording of such decisions and the reasons for making each decision should be a matter of course. All actions performed and information received must also be recorded accurately and a definitive record maintained for subsequent use at any court or tribunal.

4.16 The following is a basic check-list for investigators:

- All incidents should be investigated as potential crimes of torture or ill-treatment until the contrary is proved;
- The investigation should be planned and structured to ensure that all information received is acted upon and that urgent inquiries are conducted so as to establish the facts quickly and accurately;
- The circumstances should be investigated thoroughly and impartially. All information should be recorded and documented to ensure that the highest levels of evidence can be presented before a court or tribunal;
- All parties should be provided with appropriate levels of information, whilst care is taken not to impede the progress of the investigation;
- Victims and witnesses must be properly protected during the investigation and every effort should be made to ensure that those implicated are not able to obstruct or subvert the inquiry;
- Victims of torture or ill-treatment must be handled sensitively at all times and provided with appropriate support. Care should be taken not to re-traumatise them during the investigation;
- Where the torture or ill-treatment has resulted in a death similar consideration should be shown to relatives, partners and next of kin;
- The investigation should take full account of vulnerable persons involved;
- The investigation should also be sensitive to factors such as race, sex, sexual orientation and the nationality, political or religious beliefs, and social, cultural or ethnic background of the alleged victims or perpetrators.

4.17 Investigations into acts of torture should follow the same principles as investigations into any other serious crime. The main difference is that the suspected crime may have been committed by law enforcement officials, or other state officials, which it makes it more difficult to deal with than other forms of criminality. Crimes of torture are often also committed in places closed to the outside world, with no independent witnesses. Evidence may be destroyed or concealed and there may be a culture of silence by the law enforcement or state officials suspected. Victims and witnesses may also be intimidated into remaining silent.

4.18 Any investigation is mainly a matter of obtaining, recording, refining and interpreting evidence gathered. The gathering, preservation and production of this material is the job of the investigator. It is for a court to weigh the evidential value of this material. In all investigations it is vitally important to:

- **identify** the 'scene of the crime',
- **protect** the 'scene of the crime',
- **secure** the 'scene of the crime'.

Most torture occurs in places where people are held in some form of custody, so preserving physical evidence or having unrestricted access to the scene may be difficult. Investigators should be given authority to obtain such access to any place or premises, and be able to secure the setting where torture allegedly took place. Otherwise the investigation risks being compromised through the movement of exhibits, the obliteration of evidence, the loss of evidence or additional evidence being added.

4.19 Investigators should document the chain of custody involved in recovering and preserving physical evidence in order to use such evidence in future legal proceedings, including potential criminal prosecution. The investigator should look for the presence or absence of elements that support or disprove the allegation, and any evidence of a pattern of such practices.

4.20 Investigators must obey domestic laws and rules, including the presumption of innocence, and giving warnings, where appropriate, to those who are being investigated. Investigators should also keep an open mind, be patient, listen to what they are told and show tact and sensitivity, particularly when dealing with torture victims.

4.21 The following is a basic check-list for a 'scene of the crime' torture investigation:

- Any building or area under investigation should be closed off so as not to lose any possible evidence. Only investigators and their staff should be allowed entry into the area once it has been designated as under investigation;
- Material evidence must be properly collected, handled, packaged, labelled and placed in safekeeping to prevent contamination, tampering with or loss of evidence. If the alleged torture has taken place recently enough for such evidence to be relevant, any samples found of body fluids (such as blood or semen), hair, fibres and threads, should be collected, labelled and properly preserved;
- Any implements that could potentially be used to inflict torture should be taken and preserved;
- If recent enough to be relevant, any fingerprints located, should be lifted and preserved;
- A labelled sketch of the premises or place where torture has allegedly taken place, should be made to scale, showing all relevant details, such as the location of different floors in a building, different rooms, entrances, windows; furniture, surrounding terrain, etc.;
- Photographs should be taken at the scene of the crime with a polaroid camera, where this is available, so that relevant details can be marked or highlighted at the time of the inspection;
- Photographs should also be taken at the scene with a standard camera so that the negatives can be stored and multiple copies made so that these can be subsequently used in evidence;
- Photographs should be taken of any injuries received, in colour, and using a ruler and colour chart to show the size and severity of these injuries;
- A record of the identity of all persons at the alleged torture scene should be made, including complete names, addresses and telephone numbers or other contact information;
- All clothing of the person alleging torture should be taken, and tested at a laboratory, if available, for bodily fluids and other physical evidence;
- All clothing of the persons allegedly responsible for carrying out the torture should also be taken for forensic examination;
- Any relevant papers, records or documents should be saved for evidentiary use and handwriting analysis.

Medical evidence

4.22 Medical evidence is vital for most torture investigations. Torture often does not leave physical traces or long-term physical marks. Conversely, not all marks or injuries suffered by a detainee are the result of torture as they may be the product of other causes. However, medical evidence can demonstrate that injuries or behaviour patterns recorded in the alleged victim are consistent with the torture he or she has described or alleged. Sophisticated medical techniques can often detect soft tissue or nerve trauma that might not be visible to the naked eye. A competent forensic medical examiner can also detect even minor signs of injury if he or she has early access to the person who has been tortured or ill-treated.

4.23 Torture usually leaves psychological trauma and the evidence of this can also be collected. The psychological symptoms of torture are often subjective and relate to changed patterns of behaviour or evidence of stress, that could have a variety of causes. Nevertheless, a psychological assessment should be sought where this is practical. Where there is a combination of physical and psychological evidence consistent with an allegation, this will strengthen the overall value of the medical evidence.

4.24 Where medical examinations are carried out upon arrival at a place of detention, it is particularly useful to ask to see the medical report of the first examination and all subsequent medical reports. Doctors and other medical personnel should also be interviewed about the circumstances in which they conducted their examinations. For example:

- Were they able to carry out an independent examination?
- Was anyone present during the examination?
- Did they issue a medical report?
- What did it say?
- Did the victim have any obvious signs of injury at the time?
- Was any attempt made to interfere with the medical report or was the doctor put under pressure to alter their findings in any way?

4.25 In many countries, both therapeutic and forensic medical examinations are carried out by the same health professionals. One of the difficulties of therapeutic medical examinations, which are more concerned with treating the symptoms of the patient, may be that injuries are described without listing a probable cause. The objective of forensic medicine is to establish the causes and origins of injuries, and is a specialised field. A proper forensic medical examination should always be carried out during an investigation into alleged acts of torture. The report of that investigation should document:

- a full account of statements made by the person concerned which are relevant to the medical examination (including a description of the person's state of health and any allegations of ill-treatment);
- a full account of the medical findings based on a thorough examination of the person concerned;
- conclusions that indicate the degree of consistency between the allegations made and the objective medical findings.

4.26 When obtaining medical evidence relating to torture it is also important for the investigator to show full respect for medical ethics and patient confidentiality. This issue, and others relating to the investigation and documentation of torture allegations, is discussed in more detail in the Istanbul Protocol, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.¹⁰

Conducting interviews

4.27 The general rules for conducting interviews with victims, witnesses and suspects during any criminal or disciplinary investigation also apply to interviews during investigations into acts of torture. The role of the investigative interview is to obtain accurate and reliable information from suspects, witnesses or victims in order to discover the truth about matters under investigation. When conducting interviews it is important to develop a trusting and professional relationship between interviewer and interviewee, consider the location and setting in which the interview takes place, and be patient and methodical. This issue is also considered in detail in the Istanbul Protocol.¹¹

4.28 Interviews can be valuable sources of information, but are only one part of the whole evidence gathering process and investigators should not over-rely on interviews. They should also be particularly aware of the dangers of over-reliance on confessions. Particular care should be taken to respect the rights of potential suspects. On no account should an interview be conducted with someone who might subsequently be charged with a criminal offence in relation to the investigation, in circumstances where that statement would then be ruled inadmissible.

4.29 Interviews should be approached with an 'open mind' and information obtained should always be tested against what the interviewer already knows or what can reasonably be established. When questioning anyone, the interviewer must act fairly in the circumstances of each individual case, but the interviewer is not constrained by the rules applied to lawyers in a court. Interviewers are not bound to accept the first answer given and questioning is not unfair merely because it is persistent. Even when a suspect exercises the right of silence, the interviewer will have the right to put questions and record any response, or lack of response.

4.30 The interviewer should also be familiar with the cultural and religious beliefs of the interviewee. This may prevent any inaccurate assumptions being made based on the individual's behaviour. The interviewer should also be careful not to make assumptions based on his or her own cultural background. Vulnerable people, whether victims, witnesses or suspects must be treated with particular consideration at all times and rules governing their treatment must be strictly adhered to.

¹⁰ The Istanbul Protocol, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Office for the High Commissioner for Human Rights, New York and Geneva, 2001.

¹¹ Ibid.

4.31 As a basic check-list, the interviewer should:

- Know as much as possible about the alleged crime and circumstances.
- Know what evidence is already available.
- Know what explanations he or she requires from the interviewee.
- Know the 'points to prove' for the offence under consideration.
- Know as much as possible about the person being interviewed.

The circumstances of the interview should always be recorded, and the substance of the interview – questions, answers, and any occurrences – should be transcribed or recorded, *verbatim*, at the time (in writing if not by electronic means).

Interviewing alleged torture victims

4.32 The questioning of an alleged torture victim will usually be of critical importance to an investigation as the main evidence in many cases will be his or her testimony, together with any medical evidence.

4.33 Interviews must be conducted in a sensitive manner and allowance should be made for the interviewee's physical and emotional state. Particular care should be taken to avoid re-traumatising the interviewee or placing them in further danger. The interview may also need to be conducted in several stages and over a period of time as some details of what happened may not emerge until the interviewer has won the interviewee's trust. Indeed, it may be advisable for the interviewer to spend some time discussing matters other than the alleged ill-treatment in order to establish a 'climate of confidence' which will make it easier to discuss more sensitive subjects.

4.34 The basic aim of the interview is to obtain as detailed a factual record as possible of:

- What was done?
- When was it done?
- Where did it occur?
- Who did it?
- How often was it done?
- Why was it done?
- What have been the effects?

4.35 The more direct the source of the information, the greater the level of detail and the more consistent the account, the greater its credibility will be. However, allowance should be made for some inconsistencies. For example, a victim may be scared, confused or suffering from post-traumatic stress. The interviewee may have been intimidated into making an earlier false statement. He or she may also have delayed making a complaint until it was safe to do so. Inconsistencies do not necessarily mean that an allegation is false. The interviewee may also have found some questions difficult to understand. Inconsistencies can sometimes be resolved by asking the same question in a different way or coming back to it in subsequent interviews.

4.36 The following check-list for investigators when conducting interviews with alleged torture victims has been produced by the Human Rights Centre at the University of Essex:¹²

- The circumstances leading up to the torture, including arrest or abduction and detention. Had the interviewee received any threats prior to their arrest? In what manner was the person arrested and did he or she suffer any injuries during the course of this arrest? Did anyone witness the arrest? Did the interviewee suffer any ill-treatment before being taken into custody?
- The place where the interviewee was held, including the name and location of the institution.
- How long the interviewee was held.
- Was the interviewee transferred from one institution to another? If so, where to, by whom and on what approximate dates? How did he or she get there? Was any reason given for the transfer? If it was temporary, how long did it last?
- Approximate dates and times of the alleged torture, including when the last instance occurred.
- A detailed description of those involved in the arrest, detention and alleged torture.
- Contents of what the interviewee was told or asked.
- Description of the usual routine in the place of detention and the pattern of alleged torture.
- Description of the facts of the alleged torture, including methods of torture and a description of weapons or other physical objects used.
- Any distinctive things about the room in which the alleged torture occurred. If appropriate the interviewee might be asked to draw a diagram of the location and lay-out of the room in which the alleged torture occurred.
- Whether the interviewee was sexually assaulted.
- Physical injuries sustained in the course of the alleged torture.
- The identity of any other witnesses to the events – such as co-detainees and any civilian staff of the institution.
- Were any medical personnel present just before, during or after the alleged torture - if so, did they identify themselves and what was their role?
- Did the interviewee receive any medical treatment, immediately or any time later, including on release? Was the doctor able to carry out an independent examination? Was anyone present during the examination? Did the doctor issue a medical report? What did it say?
- Did the interviewee complain to anyone about his or her treatment or tell anyone in authority? What was the response? Was any investigation carried out? What did it involve? Were any witnesses interviewed? Were the alleged perpetrators interviewed?
- Has the interviewee had any contact with the officials who took him or her into custody (or other officials from the same service or agency) since the incident?

12 Camille Giffard, *The Torture Reporting Handbook*, Human Rights Centre, University of Essex in conjunction with the Foreign and Commonwealth Office of the United Kingdom, 2000.

4.37 A statement taken for use in a judicial investigation should be made in the first person and can include considerable detail about how the detainee felt at particular stages. The interviewee should be asked, wherever possible, to relate what happened to more everyday experiences, including any familiar sensations that he or she encountered. For example: How did the interviewee know that a room was a particular size? What did a particular smell remind him or her of? Who did one of the officers look like (if, for example, they resembled a TV personality or another well-known personality)? This type of questioning will provide additional information for corroboration, and may help identify inconsistencies or prompt the interviewee to remember more about what happened to him or her. Attention should also be paid to the interviewee's senses other than sight – such as what he or she could hear, smell or touch. This will be particularly important if the interviewee was blindfolded for part of his or her time in detention or interrogation.

4.38 The sort of information that needs to be recorded includes:

- **Location of the room within the institution:** Did the interviewee have to go upstairs or down, if so, roughly how many steps or flights of stairs; what could he or she hear and smell; did the interviewee notice any landmarks on the way; if there was a window in the room could anything be seen outside?
- **The room itself:** What size was it; what were the walls, floor, ceiling, door made of; what shape was it and was there anything unusual or distinctive about it?
- **Others held in the room:** Were any other people held there; if so, how many; and are any of them possible witnesses; would they have noticed anything about the state of health of the alleged victim; what state of health were the other people in?
- **Isolation:** If the interviewee was held in isolation, for how long and in what manner?
- **Content of the room:** What was in the room - bedding, furniture, toilet, sink?
- **Climate of the room:** What was the temperature like; was there any ventilation; was there any dampness?
- **Light:** Was there any light; was it natural light from a window, or electric light; if it was electric light, how much of the time was it on; what did the light look or feel like, e.g. colour, intensity?
- **Hygiene:** Were there any facilities for personal hygiene; where and how did the interviewee go to the toilet or bathe; what was the general hygiene of the place like; and was it infested in any way?
- **Clothes:** What clothes did the interviewee wear and could he or she wash or change these?
- **Food and drinking water:** How often and how much food and water was given; what was the quality like; who provided it; was it provided free of charge?
- **Exercise:** Was there any opportunity to leave the cell and, if so, for how long and how often?
- **Regime:** Were there any especially stringent or monotonous aspects to the regime?
- **Medical facilities:** Was a doctor or any other form of healthcare professional present or available; was the interviewee examined or treated in a separate medical facility such as by a family doctor or hospital; were medicines available; who were they provided by?
- **Family visits:** Did the interviewee have access to family visits; if so, where did these take place; could conversations be overheard; did the family know where the interviewee was?

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- **Legal representation:** Did the interviewee have access to a legal representative; when was access first given, i.e. how long after the interviewee was first taken into custody; how often was it given; where did visits take place; could the conversation be overheard?
 - **Appearance before a judicial officer:** Did the interviewee appear before a magistrate or court; when did this happen, i.e. how long after he or she was first taken into custody?
 - **Requests:** Did the interviewee make any additional requests, if so to whom and what was the result?
 - **Bribes:** Did the interviewee have to pay any bribes for any facilities and was a bribe requested at any time?

It should, however, be remembered that torture and ill-treatment can often take place outside a detention facility and the interviewer should ensure that the interview includes a full account of all the alleged ill-treatment that the victim claims to have suffered, irrespective of where this took place.

Interviewing alleged victims of sexual violence

- 4.39 Particular sensitivity is called for when questioning alleged victims of sexual violence. Discussion of such subjects is taboo, or extremely sensitive, in many societies and interviewees may find describing these events a particular ordeal. Statements should preferably be taken by someone who is the same sex as the alleged victim – depending on this person's own wishes – and rules of confidentiality are even more important. However, the subject should not be avoided and every effort should be made to obtain a detailed and thorough account of what happened so that the perpetrators can be held to account.
- 4.40 Most people will tend to answer a question on 'sexual assault' as meaning actual rape or sodomy. Investigators should be sensitive to the fact that verbal assaults, disrobing, groping, biting, lewd or humiliating acts, or blows or electric shocks to the genitals are often not taken by the victim as constituting sexual assault. Nevertheless, these acts all violate the individual's intimacy, and should be considered as being part and parcel of sexual assault. Conversely, such acts often accompany physical rape or sodomy and may be regarded as 'clues' that these acts also took place. Very often victims of sexual assault will not say anything, or even deny any sexual assault at first. It is often only on the second or third contact, if earlier contact has been empathic and sensitive to the person's culture and personality, that more of the story will come out. Investigators should, therefore, show particular tact and patience during such questioning.
- 4.41 In all cases of alleged sexual assault intimate examinations should only be carried out with the full consent of the alleged victim and by suitably qualified medical personnel, preferably of the same sex as the interviewee.

Interviewing children and juveniles

- 4.42 Children may have been tortured themselves or forced to witness the torture of others, particularly parents or close family members. This can have a particularly traumatic effect on children and particular care must be taken not to re-traumatise the child during the interview. Interviewing children is very different from interviewing adults, and needs to be treated as such. Interviewers should have some experience of working with children – and some training in how to conduct interviews with children – or the effects of an interview may be more detrimental than the potential benefits. A child should always be interviewed in the presence of his or her parent, relative or guardian. Particular attention should be paid to non-verbal signals. Children’s ability to express themselves verbally depends on their age and stage of development, and their behaviour may reveal more about what happened to them than their words. Children are particularly sensitive to tiredness and should not be pressed during an interview. The child should also be provided with support immediately after the interview has finished.

Interviewing suspects

- 4.43 Most of the general points about conducting interviews also apply to interviewing those suspected of involvement with acts of torture or ill-treatment. Given that those involved are likely to be state officials – and often with considerable experience of the criminal justice system themselves – particular care needs to be taken with planning and structuring the interview and points to be put to the suspect or suspects. A proper investigation should include interviews not only with those suspected of directly inflicting the ill-treatment, but also, potentially, with anyone in a responsible position within the institution in which the detainee was being held who knew that it was being perpetrated and failed to act to prevent it or report it.
- 4.44 Interviews should be conducted in a clearly independent, impartial and professional manner. Allowance should also be made for the fact that the issues raised may be particularly emotive and that officers being investigated may generate considerable sympathy from their colleagues. Appropriate procedures should be developed to deal with representation, welfare, conflicts of interest, conflicts of loyalty and other factors that may impact upon the investigation.
- 4.45 Suspects should always be interviewed separately and not allowed to confer with one another between interviews. If necessary they should be suspended from duty to prevent collusion between officers. Care should also be taken to respect the rights of potential suspects and not to render statements taken from them inadmissible as evidence.

Identifying other witnesses

- 4.46 Witnesses who saw the detainee either before or when he or she was arrested may be able to say what physical state he or she was in prior to arrest, the circumstances leading up to the arrest, the manner in which the arrest was carried out and the identity of the arresting officers.
- 4.47 Co-detainees who did not directly witness the alleged torture may be able to provide information such as when the detainee was taken away for interrogation and describe his or her condition both prior and subsequent to being taken away, or that he or she never returned. They may be able to give evidence of sounds that they heard, such as screams or shouting, or of bloodstains or torture implements they might have seen. They may be aware of new injuries that became visible after the person arrived in custody or of existing injuries that worsened during the detention. They may be able to provide information about particular patterns of alleged torture – such as names, places, times, or dates.
- 4.48 They may also be able to give accounts of their own torture or that of other individuals they might have witnessed which would help to establish that torture occurs in the establishment in question, or that a particular police officer or prison warden has previously engaged in torture or ill-treatment.
- 4.49 Civilian staff, or other police officers or prison staff at the police station or detention facility may have seen or heard the detainee at various stages during the detention. They may have seen or heard the torture or ill-treatment being carried out, heard it being discussed by other staff or detainees. They may also have been asked to clean up the place where it took place or to collude in covering up evidence about it.
- 4.50 Where the victim is not the person making the allegation because he or she is dead, ‘disappeared’, or still in detention, the next-of-kin, neighbours or members of the local community may be able to suggest possible witnesses, or may themselves be able to provide useful information.

Witness protection issues

- 4.51 Prosecution witnesses, particularly those who are likely to be called to give evidence at court proceedings may find the prospect of testifying stressful and daunting. Witnesses also often suffer intimidation, verbal threats, and/or physical violence from others attempting to dissuade them from testifying in court. Various forms of witness protection have been developed in response to these threats. At the simplest level a prosecution witness may be accompanied to court by someone prepared to sit with them while they wait to give evidence, as this is often the most stressful period for a witness. Other common forms of witness protection include:
- advice on personal security;
 - physical security measures at the individual’s home such as the fitting of alarms, locks, or bars;
 - moving home or to another place of work;
 - complete change of identity and relocation;
 - ensuring that the individual is not put in a situation where false ‘counter allegations’ could be made;
 - physical protection through the deployment of personal security guards.
- 4.52 Bearing these points in mind and in so far as it is within their powers, prosecutors and judges should consult witnesses about the different forms of witness protection. Care must, however, be taken to ensure that this cannot be misinterpreted as amounting to an inducement to a witness to testify.

Scrupulous financial records should be kept, all policy decisions should be logged and signed agreements may also need to be made with the witness to guard against this.

- 4.53 Protecting witnesses is of crucial importance before and during a trial of people suspected of carrying out acts of torture or other prohibited forms of ill-treatment. The nature of these crimes means that the evidence of victims and witnesses is likely to be crucial to a successful prosecution. However, victims and witnesses are likely to face particular pressure not to testify, partly due to the effects that the crime in question has had on them and partly because they may be fearful of threats and intimidation. The fact that those accused of acts of torture are often likely to be state officials or law enforcement officers may make victims and witnesses feel particularly vulnerable should they testify.
- 4.54 In some cases, witnesses or victims may be held in custody, for other offences, in the period before or during the trial in which they will be called to give evidence. This will leave them particularly vulnerable to threats or ill-treatment designed to stop them testifying. In cases where current inmates are at risk, they ought to be transferred to another detention facility where special measures for their security can be taken. In other cases the victims or witnesses may have a criminal record and, therefore, be excluded from certain types of witness protection programmes. It is vital that such witnesses receive adequate protection and special arrangement should be considered, in these circumstances, to safeguard them.
- 4.55 Trials may commence some time after the original incident, or the conclusion of an investigation, and are sometimes subject to further delays. This can be particularly unnerving for prosecution witnesses. Witnesses should be kept informed of the progress of the case and should feel able to contact a member of the investigation team at any time. If a witness expresses concern for his or her personal safety or is subjected to any threats or intimidation, appropriate action should be taken to protect him or her and to hold the perpetrator to account.
- 4.56 Where the case involves a death as a result of torture or ill-treatment, and the next-of-kin or family are likely to be called as witnesses, special consideration should be given to the added grief and trauma that they are likely to experience through and beyond the trial. Special consideration should also be given to particularly vulnerable witnesses, such as juveniles, and the particular problems that they may experience attending court to give evidence. Providing video-link evidence, where the facilities exist for this, may help to prevent unnecessary distress to child witnesses and could provide the best environment for securing coherent and full evidence, without prejudice to the right of the accused to a fair trial. Some witnesses may also require special support in preparing them to attend court to give evidence because of their race, sex, sexual orientation, nationality, political or religious belief, or their social, cultural or ethnic background.
- 4.57 Even if a complaint of torture or ill-treatment is withdrawn during an investigation or prosecution this should not automatically lead to the case being dropped. In some cases victims or witnesses may have been put under pressure or intimidated into withdrawing their evidence. However, as with other crimes, there is nothing to prevent the case continuing on the basis of other evidence.

V v Mr. Wijesekara and Others, Supreme Court, Sri Lanka 24 August 2002, SC App. No. 186/2001 (Sri Lanka)

V, a 27 year old Tamil woman from Kayta, had refused to go through with an arranged marriage after learning that her husband was already married with two children. She fled after receiving threats that from him that he would use his influence to have her arrested by the police as a suspected Tamil Tiger suicide bomber. On 21 June 2000 she was arrested in Trincomalee by a group of policemen in civilian clothes. Her brother was also arrested and they were taken to Negombo police station.

Between 21 and 26 June she was repeatedly tortured at this police station. She was beaten and had her head covered in a bag containing chilli powder and petrol which caused her to suffocate. She was stripped and hung up by the wrists where she was beaten again. She was then held down on a table and sexually assaulted, which left her with internal injuries to her vagina. As a result of this torture she agreed to sign statements that she had not read or understood as they were written in Sinhala. She was then transferred to the Terrorist Investigation Division in Colombo on 26 June and held there until 20 September 2000. She was subject to repeated assaults here and forced to write out dictated statements in Tamil, admitting to being a member of the Tamil Tigers. On 21 July 2002 she appeared in Colombo Magistrates Court, where she attempted to inform the magistrate about her treatment, but was prevented by the officer accompanying her from the Terrorist Investigation Division. She appeared in court again on 21 September 2000 – with strict instructions not to attempt to speak to the magistrate – and was then remanded to prison. On 23 October her lawyer brought an application for her to receive a medical examination and she was admitted to Ragama Government hospital for three days. In prison she also recognised one of the men who had tortured her from a newspaper photograph. On 4 November 2000 V obtained an independent medical examination.

The respondents, who were police officers, objected that the complaint had not been filed within one month of either appearing in court or having contact with her lawyer, as required by Sri Lanka's Constitution. V submitted a counter-affidavit stating that she had been warned not to complain and that her first meeting with a lawyer took place in the presence of four police officers. She said that she could not complain in custody for fear of reprisals and did not receive a copy of the judicial medical officer's report until 12 March 2001, whereupon she filed a complaint within seven days.

Although the medical report in this case was not conclusive, the Court noted several contradictions in the accounts of the different respondents and also stated that the first medical examination occurred while V was still in the custody of the police. The second medical examination – which took place after her release – was more thorough and revealed both physical injuries and mental trauma consistent with her account of being tortured. The Court held that V had been tortured and awarded the highest compensation payment yet ordered for such a case. The judge also directed the Attorney General 'to consider taking steps under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act No.22 of 1994 against the respondents and any others who are responsible for the acts of torture perpetrated on the petitioner.'

5 Prosecuting suspected torturers and providing redress to the victims of torture

Contents

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5 Prosecuting suspected torturers and providing redress to the victims of torture

5.1 This chapter relates to the prosecution of those involved in torture and other forms of ill-treatment. It outlines who may be held liable for such crimes and describes some of the legal and procedural steps involved in prosecuting those responsible. Laws and procedures will, obviously, vary in different jurisdictions. This chapter also discusses the issues of amnesties and universal jurisdiction and highlights the importance of providing redress to the victims of torture and other forms of ill-treatment.

5.2 It primarily falls to states to enforce criminal laws. The role of judges and prosecutors in enforcing these laws will also vary in different criminal justice systems. Torture and other forms of ill-treatment are already prohibited by most domestic legal systems in the world. Even where there are no specific crimes of torture or ill-treatment in domestic law, there are usually other laws under which the perpetrators can be held to account, such as crimes against the person. Where such acts are committed by representatives of the state or law enforcement officials, however, this should be considered an aggravating circumstance as the official is betraying the professional duty that he or she is under to serve and protect the people of that state.

Torture as a criminal offence

5.3 The UN Convention against Torture provides that:

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. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.¹

5.4 There are no exceptional circumstances that may be invoked to justify the use of torture, nor may an order from a superior officer or a public authority be invoked as a justification.² The Human Rights Committee has stated that: '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.'³

1 Article 4, UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984.

2 Article 2, *ibid.* This principle was also enshrined in the Charter of the Nuremberg and Tokyo Tribunals 1946, and subsequently reaffirmed by the UN General Assembly. It can also be found in the Statutes of the international criminal tribunals for Rwanda and the former Yugoslavia and, with minor modification, in the Statute of the International Criminal Court.

3 Human Rights Committee General Comment 20, para 13.

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- 5.5 The Inter-American Convention to Prevent and Punish Torture states that: ‘The States Parties shall ensure that all acts of torture and attempts to commit torture are offences under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.’⁴ It also states that ‘A public servant or employee who acting in that capacity orders, instigates or induces the use of torture, or who directly commits it or who, being able to prevent it, fails to do so, will be held guilty of the crime of torture. A person who, at the instigation of a public servant or employee, orders, instigates, or induces the use of torture, directly commits it or is an accomplice to such acts will also be held guilty of the crime.’⁵

Culpability for crimes of torture or other forms of ill-treatment

- 5.6 When the state deprives a person of liberty, it assumes a duty of care to maintain the person’s safety and safeguard the person’s welfare. This places an obligation on all those responsible for the deprivation of liberty and the care of the detainee.⁶ Where an act of torture or other form of ill-treatment has taken place the prosecutor should consider bringing charges against all those who failed to fulfil this obligation.
- 5.7 Culpability will extend to anyone in a responsible position within the institution in which the detainee was being held who knew or ought to have known that torture or ill-treatment was being perpetrated and failed to act to prevent it or report it. This could include police station commanders and their deputies, custody officers, and doctors or medical personnel, as well as other officers and staff in the place of detention. It might also include prosecutors and judges or others responsible for inspecting places of detention if they knowingly ignored or disregarded evidence that torture or other forms of ill-treatment was being perpetrated in the places that they visited – or on people who had been brought before them.
- 5.8 To prove responsibility a prosecutor will generally need to show that the defendant committed, or attempted to commit the crime, whether as an individual, jointly with another or through another person; ordered, solicited or induced the commission of the crime or attempted crime; aided, abetted or otherwise assisted in its commission or its attempted commission; or in any other way contributed to the commission of the crime or attempted crime. This could involve an individual participating directly in the torture or ill-treatment, assisting it in some way which had a substantial effect on the perpetration of the crime, or ordering it to be carried out. It could also involve failing to prevent it from being carried out by people over whom the person had command or management responsibility, where that person either knew, or owing to the circumstances at the time, should have known, that the torture or ill-treatment was taking place and failed to take all necessary and reasonable measures to prevent it or to submit the matter to the competent authorities for investigation and prosecution.
- 5.9 Failure to report criminal activity, even where the individual is not directly or indirectly responsible for the crimes being committed is also generally regarded as a criminal offence – albeit of a less serious nature.

⁴ Article 6, Inter-American Convention to Prevent and Punish Torture 1985.

⁵ Article 3, *ibid.*

⁶ Human Rights Committee, General Comment 21, Article 10 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 33 (1994), para. 3.

Identifying and prosecuting those responsible

- 5.10 Criminal charges will usually need to be brought against identified individuals. This may prove difficult in cases of torture, or other forms of ill-treatment, as those responsible may have concealed their identity from the victim and be able to rely on either a protective 'wall of silence' from their colleagues – or even their active collusion in concocting a false story. Even if the victim has identified them, perpetrators may argue that it is 'one person's word against another' and that this is insufficient to prove guilt.
- 5.11 Where an individual officer has been identified by name, by physical description, or through a serial or personal identification number, it should be possible to trace the officer through the official records. If the victim has been held at an officially recognised place of detention then the custody records should identify those responsible for the detention and anyone else who came into contact with the victim during this period. Other records held at police stations and detention facilities may also contain relevant information. This could include: duty records and parade books (indicating which officers are on duty in a particular station); message pads and radio logs (recording all telephone and radio communications in a particular station); and crime reports and notebooks (recording specific action taken by individual officers in the course of their duties). If properly kept and preserved this information can help to piece together evidence that could lead to the successful identification of someone accused of torture. It may also help to corroborate or disprove a particular allegation.
- 5.12 Where there are no independent witnesses, prosecutors may believe that the chances of a conviction are not high enough to justify taking a case. Some believe that if the evidence is simply one person's word against another, then the required standard of proof for criminal conviction ('beyond reasonable doubt', '*intime conviction*', etc.) can never be satisfied. The assumption that a law enforcement officer accused of committing a crime in the course of his or her duties may stand a better chance of subsequently being acquitted than the average criminal defendant may also make some prosecutors reluctant to pursue a case. However, these factors need to be balanced against the public interest served in ensuring that those in positions of authority do not abuse it and this may justify bringing a prosecution even in cases where there is a greater likelihood of acquittal than would usually be the case. Where there is strong evidence that someone has suffered prohibited forms of ill-treatment in custody, and strong evidence that an identified officer, or group of officers, was present at the time of this ill-treatment, they could either be charged jointly with carrying out or aiding and abetting the ill-treatment or individually with failing to protect someone in their care.

5.13 Where there is no dispute that an identified officer has used force that resulted in a detainee suffering injury, the issue is likely to hinge on whether – if the alleged victim was not under the officer’s control – the force was necessary, reasonable or proportionate. Laws governing the use of force on detainees will vary in different countries. However, the prohibition of torture is absolute. Neither the dangerous character of a detainee, nor the lack of security in a detention facility can be used to justify torture.⁷ According to international standards, force may only be used on people in custody when it is strictly necessary for the maintenance of security and order within the institution, in cases of attempted escape, when there is resistance to a lawful order, or when personal safety is threatened. In any event, force may be used only if non-violent means have proved ineffective.⁸

5.14 Criminal charges should also be brought against those in positions of responsibility who either knew or consciously disregarded information which indicated that their subordinates were committing crimes of torture or ill-treatment and failed to take reasonable measures to prevent it or report this. Where patterns of torture or ill-treatment emerge or there has been systematic failure to prevent them or hold the perpetrators to account, this could be taken as evidence that those in authority are effectively condoning such practices.

5.15 The presumption that the injuries a detainee has suffered were the result of torture or other prohibited forms of ill-treatment may be rebutted if a plausible alternative explanation exists, but it is for the authorities and alleged perpetrators to demonstrate convincingly that allegations are unfounded. Given the difficulties of proving allegations of torture, in the circumstances of detention, appropriate weight should also be given to corroborative evidence. Judges should not make the standard of proof so high that it cannot be realistically discharged. This is especially important when dealing with claims for redress (see below). Factors that should be taken as corroborative evidence that an allegation of torture is well-founded may include:

- where a detainee has been held at an unofficial or secret place of detention;
- where a detainee has been held incommunicado for any period of time;
- where a detainee has been held for a long period in isolation or solitary confinement;
- where proper custody records have not been maintained or where significant discrepancies exist in these records;
- where a detainee has not been fully informed of his or her rights at the start of the detention and before any interrogation;
- where a detainee has been denied early access to a lawyer;
- where a foreign national detainee has been denied consular access;
- where a detainee has not been subject to an immediate medical examination and regular examinations thereafter;

7 Article 2, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. See also The Reports of the Committee Against Torture, *Mutambo v Switzerland* (13/1993) GAOR, 49th Session, Supplement No.44 (1994); *Khan v Canada* (15/1994), GAOR, 50th Session, Supplement No.44 (1995); and *Ireland v UK*, ECtHR Series A 25, (1978); *Chahal v UK*, ECtHR Judgment 15 November 1996; *Tomasi v France*, ECtHR Series A, No. 241-A (1993); *Selmouni v France*, ECtHR Judgment 28 July 1999.

8 Rule 54, Standard Minimum Rules for the Treatment of Prisoners; Principles 4, 5 and 9, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

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- where medical records have not been fully kept or have been improperly interfered with or falsified;
 - where statements have been taken by the investigating authorities without a lawyer being present;
 - where the circumstances in which statements were taken have not been properly recorded and the statements themselves were not fully transcribed contemporaneously;
 - where statements have been subsequently improperly altered;
 - where a detainee has been blindfolded, hooded, gagged, manacled or subject to other physical restraint, or been deprived of their own clothes, without reasonable cause, at any point during the detention;
 - where independent visits to the place of detention by *bona fide* human rights organisations, established visitor schemes or experts have been blocked, delayed or otherwise interfered with.

R v Fryer, Nichol, Lawrie EWCA Crim 825 Court of Appeal Criminal Division, Royal Courts of Justice, Tuesday 19th March 2002 (United Kingdom)

On 15 March 1998, a prisoner at Wormwood Scrubs prison, was subjected to serious and sustained assaults by three prison officers in the segregation unit at the prison.

The prisoner, the complainant in this case, had been taken for a strip search and was then taken down to the segregation unit. He was slapped across the face, then grabbed by the neck, arms and legs and taken from the cell to an open area, in the centre of the block where he was thrown to the floor. He suffered two separate assaults during which he was punched and kicked repeatedly while he lay on the floor until he was visibly bleeding. He was then carried back to the cell and kicked from behind into the cell wall. The officers subsequently fabricated bogus complaints against the prisoner, which resulted in him being placed in solitary confinement and losing remission from his sentence. A number of other prisoners complained of similar ill-treatment at around the same time and criminal charges were eventually brought against 27 prison officers in connection with 13 separate complainants of ill-treatment and assaults, some of which were said to amount to torture.

On 14 September 2001 three prison officers were convicted in relation to the above case and received sentences of three-and-a-half to four years imprisonment. In upholding the sentences the Court of Appeal stated that there were 'special and aggravating circumstances' in the case, including the seriousness of the assault and the fact that it was not an isolated assault but a sustained and repeated assault after an interval. The Court also stated that: 'Prisoners are entitled to the protection of the law, from assaults on them by prison officers. Society is entitled to the proper discharge of the onerous responsibilities which prison officers undertake. They are heavy responsibilities. But more than that too, these appellants did not take the opportunity they could have taken at an early stage and by this we mean the very earliest stage where they could have accepted responsibility for what they did. They attempted, by bogus charges and disciplinary proceedings, to salvage their own situation.'

The obligation to prosecute

- 5.16 Article 5 of the Convention against Torture obliges states that have ratified it to 'take such measure 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'.
- 5.17 It further obliges states to 'take such measure as may be necessary to establish jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction', if it does not extradite the person to another state. This obligation is regardless of where the crime was committed, the nationality of the victim and the nationality of the alleged perpetrator. Article 7 of the Convention requires states '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.' The 'try or extradite' obligation under the Convention against Torture applies to territories subject to the jurisdiction of the state party, which includes any territory over which it has effective control. The Inter-American Convention to Prevent and Punish Torture also obliges every state party to try or extradite people found 'within the area under its jurisdiction,' regardless of where the crime was committed or the nationality of victim and alleged perpetrator.⁹
- 5.18 The four Geneva Conventions also require states to exercise universal jurisdiction in respect of 'grave breaches' of the Convention and bring cases before their own national courts. The Conventions require states parties to search for people alleged to have committed or ordered grave breaches of the Conventions, such as torture and inhuman treatment, or who have failed in their duties as commanding officers to prevent such grave breaches occurring. The 'search and try' obligation is without frontiers under the Geneva Conventions.
- 5.19 States which are not bound by any of these Conventions are still permitted to exercise universal jurisdiction if an alleged foreign perpetrator of torture is found on their territory as general or customary international law permits the exercise of universal jurisdiction over torture. Judges and prosecutors have a particularly important role to play in ensuring that these obligations are fulfilled with respect to the prosecution of people suspected of committing acts of torture or ancillary crimes.

9 Article 12, Inter-American Convention to Prevent and Punish Torture.

Fair trials

- 5.20 Judges and prosecutors must ensure that the trials of people accused of torture and ancillary crimes are conducted fairly under national and international law and fully respect the rights of suspects and the interests of victims and their families. Suspects must have the right to legal advice and assistance of their own choice, at all stages of the criminal proceedings. National courts should also protect victims, witnesses and their families – including the provision of effective security. Such protection measures should not prejudice the right of suspects to a fair trial, including the right to cross-examine witnesses. This right should not, however, be permitted to be exercised in such a way as to intimidate or re-traumatise alleged victims or witnesses.
- 5.21 Where trials are conducted under universal jurisdiction, particular arrangements may need to be made to bring witnesses from overseas or to arrange video-link facilities, where these are available, to enable them to give evidence. Full interpretation facilities must also be provided where necessary.

Immunities, amnesties and statutes of limitation

- 5.22 The judiciary has a duty to carry out, within their realm of jurisdiction, the international obligations to investigate, bring to justice and punish the perpetrators of crimes of torture. No one should be allowed to claim exemption from this because of their official capacity. Amnesties and other similar measures which prevent the perpetrators of gross human rights violations, such as torture, from being brought before the courts, tried and sentenced are incompatible with state obligations under international human rights law, including the obligations to investigate, bring to justice and punish those responsible for gross human rights violations.
- 5.23 The Statute of the International Criminal Court specifies that it 'shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.¹⁰ Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.'¹¹ It further states that: 'The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.'¹² Although Protocol II to the four Geneva Conventions proposes that states should grant 'the broadest possible amnesty' to persons who have participated in an armed conflict following the end of hostilities, this is not believed to have been intended to provide immunity for acts amounting to war crimes.¹³

10 Article 27(1), Statute of the International Criminal Court.

11 Article 27(2), *ibid.*

12 Article 29, *ibid.*

13 Article 6.5, Additional Protocol II 1977 to the Geneva Conventions of 1949.

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- 5.24 The Human Rights Committee has also stated: ‘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.’¹⁴ It has stressed that these types of amnesty help to create a climate of impunity for the perpetrators of human rights violations and undermine efforts to re-establish respect for human rights and the rule of law.¹⁵ The Vienna Declaration of the World Conference on Human Rights called on states to ‘abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law.’¹⁶
- 5.25 The Inter-American Court of Human Rights has stated that ‘it is unacceptable to use amnesty provisions, statutes of limitations or measures designed to remove criminal liability as a means of preventing the investigation and punishment of those responsible for gross violations of human rights such as torture, summary, extra-legal or arbitrary executions and disappearances, all of which are prohibited as breaches of non-derogable rights recognized under international human rights law.’¹⁷
- 5.26 Where it is within their discretion to do so, courts should, therefore, refrain from enforcing laws which are contrary to a state’s international obligations and in breach of internationally-protected human rights, and declare them to be null and void.
- 5.27 Truth commissions often play an important role in establishing an authoritative record of the past and in providing victims with a platform to tell their stories and obtain redress. But truth commissions are not a substitute for justice in the form of full and fair prosecutions. Where truth commissions are established, they should respect due process, establish the truth, facilitate reparations to victims and make recommendations designed to prevent a repetition of the crimes. They should also operate alongside the courts in bringing perpetrators to justice and not be used as an alternative.

14 Human Rights Committee General Comment 20, para 15.

15 Concluding Observations of the Human Rights Committee: Argentina, 5 April 1995, UN Doc CCPR/C/79/Add.46; A/50/40, para 146.

16 Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna 14-25 June 1993, UN Doc. A/CONF.157/23 12 July 1993, para 60.

17 *Case of Barrios Altos (Chumbipuma Aguirre and others v Peru)*, Inter-Am Ct.H.R., Judgment 14 March 2001, para 41.

Causa No. 8686/2000 caratulada 'Simón, Julio, Del Cerro, Juan s/Sustracción de menores de 10 año' del registro de la Secretaría Nro. 7 de este Antonio Juzgado Nacional en lo Criminal y Correccional Federal No. 4, 6 March 2001 (Argentina)

In March 2001 a federal judge in Argentina ruled that the Punto Final Law and the Law of Due Obedience, which granted immunity from prosecution for human rights violations committed under the military government, were unconstitutional and void. This ruling related to criminal prosecutions regarding the 'disappearance' in 1978 of José Liborio Poblete Roa, his wife, Gertrudis Marta Hlaczik, and their daughter. In November 2001, the Federal Appeals Court upheld the decision.

Actuaciones Sumariales registradas bajo el No. 13.445/1999, caratuladas: "Videla Jorge Rafael y otros s/Privación Ilegal de la Libertad Personal" del registro de ésta Secretaria No.14, pertenecientes al Juzgado Nacional en lo Criminal y Correccional Federal No.7, 20 July 2001, (Argentina)

In June and July 2001, a federal judge issued three judicial decisions indicting and requesting the arrest of a number of former members of the armed forces of Argentina, Chile, Paraguay and Uruguay for their involvement in a criminal plan characterized by a systematic pattern of forced disappearances known as 'Operation Condor'. In his decision the judge ordered the trial and preventive arrest of the former President Jorge Rafael Videla. The judge also requested the provisional arrest, pending requests for extradition, of former Chilean President Augusto Pinochet. In December 2001, in a separate decision, the judge requested the provisional arrest pending requests for extradition of the former Bolivian President, Hugo Banzer Suárez.

Punishment

5.28 Punishment for crimes of torture will be determined by domestic law. However, the Convention against Torture states that states parties 'shall make these offences punishable by appropriate penalties which take into account their grave nature.'¹⁸ As well as involving acts of physical or mental violence, these crimes are often an abuse of authority and a betrayal of public trust. Where it is in their discretion to do so, judges and prosecutors should, therefore, ensure that acts of torture are treated as such. If the law has no crime by that name, or the facts cannot fit within a national definition that is narrower than the international definition, then the next most serious category of crime covering the facts should be invoked. This is so as to ensure that the court hands down a sentence commensurate with the gravity of the facts and to ensure that the premature application of periods of prescription (statutes of limitation) is avoided.

18 UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, Article 4.

Redress

5.29 Judges and prosecutors should, to the maximum extent allowed by national law, also ensure that everyone who has suffered torture and other unlawful acts is aware of their right to claim compensation for moral and physical suffering and help to create the necessary conditions for them actually to benefit from this right. Victims of torture and ill-treatment have the right to know the truth about what happened to them, to see those responsible being brought to justice and to have reparations awarded for the harm done to them.

5.30 The Special Rapporteur on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights, Cherif Bassiouni, attached draft basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law (the Van Boven-Bassiouni Principles) in his final report to the UN Commission on Human Rights in 2000.¹⁹ The Van Boven-Bassiouni Principles, which are contained in Appendix One of this manual, acknowledge the following forms of reparation:

- **Restitution:** steps should be taken to restore the victim to the situation he or she was in before the violation occurred, including restoration of his or her legal rights, social status, family life, place of residence, property and employment;
- **Compensation:** steps should be taken to compensate for any economically assessable damage resulting from violations including physical or mental harm, emotional distress, lost educational opportunities, loss of earnings, legal and/or medical costs;
- **Rehabilitation:** steps should be taken to ensure medical and psychological care if necessary as well as legal and social services;
- **Satisfaction and guarantees of non-repetition:** steps should be taken to ensure cessation of continuing violations, public disclosure of truth behind violations, official declaration of responsibility and/or apologies, public acknowledgement of violations, as well as judicial or administrative sanctions, and preventive measures including human rights training.

5.31 Sometimes victims need expensive long-term medical care or therapy. Sometimes they are unable to work as a result of their experiences or they find their lives fundamentally altered in other ways. If torture has been inflicted by state agents, or with their acquiescence, the state must, as far as possible, repair the harm that it has done. Where it is within their discretion, judges should ensure that victims of torture receive redress that fully reflects the grave and serious nature of the crime to which they have been subjected. If the victim dies as a result of torture, the person's dependents are entitled to redress.

¹⁹ UN Doc. E/CN.4/2000/62, 18 January 2000.

5.32 The Special Rapporteur on the Question of Impunity, Louis Joinet, elaborated a set of principles for the protection and promotion of human rights through action to combat impunity in his 1997 report to the UN Commission on Human Rights (the Joinet Principles).²⁰ These principles include:

- **Principle 33. Rights and duties arising out of the obligation to make reparation.** Any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying a duty on the part of the state to make reparation and the possibility for the victim to seek redress from the perpetrator.

- **Principle 34. Reparation procedures.** All victims shall have access to a readily available, prompt and effective remedy in the form of criminal, civil, administrative or disciplinary proceedings ... In exercising this right they shall be afforded protection against intimidation and reprisals. Exercise of the right to reparation includes access to the applicable international procedures.

- **Principle 35. Publicising reparation procedures.** *Ad hoc* procedures enabling victims to exercise their right to reparation should be given the widest possible publicity by private as well as public communication media. Such dissemination should take place both within and outside the country, including through consular services, particularly in countries to which large numbers of victims have been forced into exile.

- **Principle 36. Scope of the right to reparation.** The right to reparation shall cover all injuries suffered by the victim; it shall include individual measures concerning the right to restitution, compensation and rehabilitation, and general measures of satisfaction... In the case of forced disappearances, when the fate of the disappeared person has become known, that person's family has the imprescriptible right to be informed thereof and, in the event of decease, the person's body must be returned to the family as soon as it has been identified, whether the perpetrators have been identified, prosecuted or tried or not.

²⁰ UN Doc. E/CN.4/Sub.2/1997/20/Rev.1, 2 October 1997.

P v Marksman & Anor, St Vincent & the Grenadines, High Court, 13 April 1999, [2000] 1 LRC 1, (1999) 2 CHRLD 430, (St Vincent & the Grenadines)

P, a prisoner, successfully applied to the High Court for a declaration that the Superintendent of Prisons had violated his constitutional right not to be subjected to torture or to inhuman or degrading punishment by ordering him to be flogged with a Cat-o-nine tails and to be shackled in solitary confinement for an extended period of time.

In July 1997 the Court held that flogging with a Cat-o-nine tails (as a punishment for attacking a prison guard) contravened the Constitutional prohibition on torture and other forms of ill-treatment. Citing earlier cases in Zimbabwe and South Africa with approval, the Judge held that: 'Such flogging is incompatible with the standards of decency that are expected of the Prison Service. It brutalises not only the person being flogged, but also it brutalises the society that permits it. It breeds hatred and bitterness of the law and of society. Flogging with a Cat-o-nine tails meets the definition of torture found at Article 1 of the UN Declaration on the Prevention of Crime and the Treatment of Offenders... Today, let the Cat-o-nine tail whip of the Male Prison in St Vincent take its place in the prison museum along with such other instruments as the rack, the whipping post, the thumb screw, and the body cage in which rebellious West Indians were once suspended until they had starved to death.'

The Court held that the liability of the state to pay compensation for breaches of constitutional rights is based on its primary liability for its wrongful action, and not on a vicarious liability for torts committed by its servants. Exemplary damages are payable for high-handed and oppressive conduct by officers of the state. In assessing the exemplary damages a Court should take account of the injury the plaintiff has endured to his or her dignity and pride, mental suffering and loss of reputation. Awards for exemplary damages must balance the competing interests of the state in preserving law and order and the citizen in not having his or her constitutional rights violated. In view of the considerable pain and suffering suffered by the applicant, the assault on his dignity and the distress, inconvenience, disgrace and humiliation caused to him, the applicant was awarded compensatory damages. Pursuant to their broad discretion to enforce constitutional rights under the Constitution, the Courts may, *inter alia*, initiate legal proceedings against public officials responsible for breaches of constitutional rights, award damages against them or subject them to disciplinary proceedings. In view of the failure of both the state and the Superintendent of Prisons to make a written apology for violating P's constitutional rights, P was also awarded exemplary damages. The Court further ordered disciplinary proceedings to be instituted against the Superintendent of Prisons.

Appendices

Appendix 1: Selected international instruments

- 89 1. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Articles 1-16
- 93 2. International Covenant on Civil and Political Rights, Articles 7 and 10; the European Convention on
Human Rights, Article 3; the American Convention on Human Rights, Article 5; the African Charter on
Human and Peoples' Rights, Article 5
- 94 3. Common Article 3 to the four Geneva Conventions 1949
- 95 4. The Statute of the International Criminal Court, Articles 7 and 8
- 100 5. Human Rights Committee General Comment 20 to the International Covenant on Civil and Political
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- 103 6. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- 110 7. Guidelines on the Role of Prosecutors (extracts)
- 111 8. Basic Principles on the Independence of the Judiciary (extracts)
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- 113 10. Recommendations of the Special Rapporteur on Torture (extracts)
- 117 11. The right to restitution, compensation and rehabilitation for victims of gross violations of human
rights and fundamental freedoms, Final Report of the Special Rapporteur, Professor M. Cherif
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- 122 12. Principles on the effective investigation and documentation of torture and other cruel, inhuman or
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Appendix One:

Selected international instruments

1.

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

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 I 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 I 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.

2.

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

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 shall be treated with humanity and with respect for the inherent dignity of the human person.

European Convention for the Protection of Human Rights and Fundamental Freedoms

Signed at Rome 4 November 1950

Article 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

American Convention on Human Rights

Signed at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969

Article 5

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
3. Punishment shall not be extended to any person other than the criminal.
4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.
5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.
6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

African Charter on Human and Peoples' Rights

Adopted by the Organisation of African Unity in Banjul on 27 June 1981

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.

3.

Common Article 3 to the four Geneva Conventions 1949

Adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva, from April 21 to August 12, 1949

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
 - (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (b) taking of hostages;
 - (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- (2) The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

4.

The Statute of the International Criminal Court

Agreed in Rome, 17 July 1998

Article 7. Crimes against humanity

1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
 - (a) Murder;
 - (b) Extermination;
 - (c) Enslavement;
 - (d) Deportation or forcible transfer of population;
 - (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - (f) Torture;
 - (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
 - (i) Enforced disappearance of persons;
 - (j) The crime of apartheid;
 - (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:
 - (a) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
 - (b) “Extermination” includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
 - (c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
 - (d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

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- (e) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
 - (f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
 - (g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
 - (h) “The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
 - (i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.
3. For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.

Article 8. War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
2. For the purpose of this Statute, “war crimes” means:
 - (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - (i) Wilful killing;
 - (ii) Torture or inhuman treatment, including biological experiments;
 - (iii) Wilfully causing great suffering, or serious injury to body or health;
 - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
 - (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - (vii) Unlawful deportation or transfer or unlawful confinement;
 - (viii) Taking of hostages.

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- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
 - (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
 - (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
 - (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
 - (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
 - (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
 - (xii) Declaring that no quarter will be given;
 - (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
 - (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
 - (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
 - (xvi) Pillaging a town or place, even when taken by assault;
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- (xvii) Employing poison or poisoned weapons;
 - (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
 - (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
 - (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles
 - (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
 - (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
 - (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
 - (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
 - (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
 - (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (iii) Taking of hostages;
 - (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
 - (d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
 - (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
 - (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
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- (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - (v) Pillaging a town or place, even when taken by assault;
 - (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
 - (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
 - (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (ix) Killing or wounding treacherously a combatant adversary;
 - (x) Declaring that no quarter will be given;
 - (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
- (f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.
3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

5.

Human Rights Committee General Comment 20 to the International Covenant on Civil and Political Rights

Article 7, Forty-fourth Session, 1992. Compilation of General Comments and General Recommendations Adopted by the Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1. at 30.

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.

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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.

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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.

6.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Adopted by General Assembly resolution 43/173 of 9 December 1988

Scope of the Body of Principles

These principles apply for the protection of all persons under any form of detention or imprisonment.

Use of Terms

For the purposes of the Body of Principles:

- (a) "Arrest" means the act of apprehending a person for the alleged commission of an offence or by the action of an authority;
- (b) "Detained person" means any person deprived of personal liberty except as a result of conviction for an offence;
- (c) "Imprisoned person" means any person deprived of personal liberty as a result of conviction for an offence;
- (d) "Detention" means the condition of detained persons as defined above;
- (e) "Imprisonment" means the condition of imprisoned persons as defined above;
- (f) The words "a judicial or other authority" means a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.

Principle 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 2

Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

Principle 3

There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.

Principle 4

Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.

Principle 5

1. These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.

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- Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

Principle 6

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

Principle 7

- States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.
- Officials who have reason to believe that a violation of this Body of Principles has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers.
- Any other person who has ground to believe that a violation of this Body of Principles has occurred or is about to occur shall have the right to report the matter to the superiors of the officials involved as well as to other appropriate authorities or organs vested with reviewing or remedial powers.

Principle 8

Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

Principle 9

The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

Principle 10

Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

Principle 11

- A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.
- A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.
- A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

Principle 12

- There shall be duly recorded:
 - The reasons for the arrest;
 - The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;

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- (c) The identity of the law enforcement officials concerned;
 - (d) Precise information concerning the place of custody.
2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

Principle 13

Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.

Principle 14

A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

Principle 15

Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

Principle 16

1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.
2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.
3. If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.
4. Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.

Principle 17

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

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2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

Principle 18

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.
2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.
3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.
4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.
5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

Principle 19

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

Principle 20

If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.

Principle 21

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.
2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

Principle 22

No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health.

Principle 23

1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.
2. A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described in paragraph 1 of the present principle.

Principle 24

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Principle 25

A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.

Principle 26

The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.

Principle 27

Non-compliance with these principles in obtaining evidence shall be taken into account in determining the admissibility of such evidence against a detained or imprisoned person.

Principle 28

A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.

Principle 29

1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.
2. A detained or imprisoned 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 paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.

Principle 30

1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.
2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.

Principle 31

The appropriate authorities shall endeavour to ensure, according to domestic law, assistance when needed to dependent and, in particular, minor members of the families of detained or imprisoned persons and shall devote a particular measure of care to the appropriate custody of children left with out supervision.

Principle 32

1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.
2. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

Principle 33

1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.
2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.
3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.
4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

Principle 34

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

Principle 35

1. Damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules or liability provided by domestic law.
2. Information required to be recorded under these principles shall be available in accordance with procedures provided by domestic law for use in claiming compensation under the present principle.

Principle 36

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

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2. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

Principle 37

A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.

Principle 38

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.

Principle 39

Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

General clause

Nothing in this Body of Principles shall be construed as restricting or derogating from any right defined in the International Covenant on Civil and Political Rights.

7.

Guidelines on the Role of Prosecutors (extracts)

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990

Role in criminal proceedings

10. The office of prosecutors shall be strictly separated from judicial functions.
11. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.
12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.
13. In the performance of their duties, prosecutors shall:
 - (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;
 - (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
 - (c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;
 - (d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.
15. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.
16. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

8.

Basic Principles on the Independence of the Judiciary (extracts)

Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

9.

Basic Principles on the Role of Lawyers (extracts)

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990

Access to lawyers and legal services

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.
3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.
4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

Special safeguards in criminal justice matters

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.
7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.
8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

10.

Recommendations of the Special Rapporteur on Torture (extracts)

Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2001/62, E/CN.4/2003/68, 17 December 2002, Annex 1

The Special Rapporteur included in his report to the Commission on Human Rights (see E/CN.4/2001/66) a revised version of the recommendations that he had compiled in 1994 (see E/CN.4/1995/34). As stated earlier, these recommendations may all be resolved into one global recommendation – an end to de facto or de jure impunity. He would like to encourage States to reflect upon them as a useful tool in efforts to combat torture. A further revised version of the recommendations follows:

(a) Countries that are not party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or the International Covenant on Civil and Political Rights should sign and ratify or accede to these Conventions. Torture should be designated and defined as a specific crime of the utmost gravity in national legislation. In countries where the law does not give the authorities jurisdiction to prosecute and punish torture, wherever the crime has been committed and whatever the nationality of the perpetrator or victim (universal jurisdiction), the enactment of such legislation should be made a priority;

(b) Countries should sign and ratify or accede to the Rome Statute of the International Criminal Court with a view to bringing to justice perpetrators of torture in the context of genocide, crimes against humanity and war crimes and at the same time ensure that their national courts also have jurisdiction over these crimes on the basis of universal jurisdiction;

(c) The highest authorities should publicly condemn torture in all its forms whenever it occurs. The highest authorities, in particular those responsible for law enforcement activities, should make public the fact that those in charge of places of detention at the time abuses are perpetrated will be held personally responsible for the abuses. In order to give effect to these recommendations, the authorities should, in particular, make unannounced visits to police stations, pre-trial detention facilities and penitentiaries known for the prevalence of such treatment. Public campaigns aimed at informing the civilian population at large of their rights with respect to arrest and detention, in particular to lodge complaints regarding treatment received at the hands of law enforcement officials, should be undertaken;

(d) Interrogation should take place only at official centres and the maintenance of secret places of detention should be abolished under law. It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention. Any evidence obtained from a detainee in an unofficial place of detention and not confirmed by the detainee during interrogation at official locations should not be admitted as evidence in court. No statement of confession made by a person deprived of liberty, other than one made in the presence of a judge or a lawyer, should have a probative value in court, except as evidence against those who are accused of having obtained the confession by unlawful means. Serious consideration should be given to introducing video- and audio-taping of proceedings in interrogation rooms;

(e) Regular inspection of places of detention, especially when carried out as part of a system of periodic visits, constitutes one of the most effective preventive measures against torture. Independent non-governmental organizations should be authorized to have full access to all places of detention, including police lock-ups, pre-

trial detention centres, security service premises, administrative detention areas and prisons, with a view to monitoring the treatment of persons and their conditions of detention. When inspection occurs, members of the inspection team should be afforded an opportunity to speak privately with detainees. The team should also report publicly on its findings. In addition, official bodies should be set up to carry out inspections, such teams being composed of members of the judiciary, law enforcement officials, defence lawyers and physicians, as well as independent experts and other representatives of civil society. Ombudsmen and national or human rights institutions should be granted access to all places of detention with a view to monitoring the conditions of detention. When it so requests, the International Committee of the Red Cross should be granted access to places of detention;

(f) Torture is most frequently practised during incommunicado detention. Incommunicado detention should be made illegal, and persons held incommunicado should be released without delay. Information regarding the time and place of arrest as well as the identity of the law enforcement officials having carried out the arrest should be scrupulously recorded; similar information should also be recorded regarding the actual detention. Legal provisions should ensure that detainees are given access to legal counsel within 24 hours of detention. Security personnel who do not honour such provisions should be punished. In exceptional circumstances, under which it is contended that prompt contact with a detainee's lawyer might raise genuine security concerns and where restriction of such contact is judicially approved, it should at least be possible to allow a meeting with an independent lawyer, such as one recommended by a bar association. In all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours. At the time of arrest, a person should undergo a medical inspection, and medical inspections should be repeated regularly and should be compulsory upon transfer to another place of detention. Each interrogation should be initiated with the identification of all persons present. All interrogation sessions should be recorded and preferably video-recorded, and the identity of all persons present should be included in the records. Evidence from non-recorded interrogations should be excluded from court proceedings. The practice of blindfolding and hooding often makes the prosecution of torture virtually impossible, as victims are rendered incapable of identifying their torturers. Thus, blindfolding or hooding should be forbidden. Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention which, in any case, should not exceed a period of 48 hours. They should accordingly be transferred to a pre-trial facility under a different authority at once, after which no further unsupervised contact with the interrogators or investigators should be permitted;

(g) Administrative detention often puts detainees beyond judicial control. Persons under administrative detention should be entitled to the same degree of protection as persons under criminal detention. At the same time, countries should consider abolishing, in accordance with relevant international standards, all forms of administrative detention;

(h) Provisions should give all detained persons the ability to challenge the lawfulness of the detention - e.g., through habeas corpus or amparo. Such procedures should function expeditiously;

(i) Countries should take effective measures to prevent prisoner-on-prisoner violence by investigating reports of such violence, prosecuting and punishing those responsible, and offering protective custody to

vulnerable individuals, without marginalizing them from the prison population more than necessitated by the needs of protection and without rendering them at further risk of ill-treatment. Training programmes should be considered to sensitize prison officials as to the importance of taking effective steps to prevent and remedy prisoner-on-prisoner abuse and to provide them with the means to do so. In accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,¹ prisoners should be segregated along the lines of gender, age and seriousness of the crime, as well as first-time/repeat offenders and pre-trial/convicted detainees;

(j) When a detainee or relative or lawyer lodges a torture complaint, an inquiry should always take place and, unless the allegation is manifestly ill-founded, public officials involved should be suspended from their duties pending the outcome of the investigation and any subsequent legal or disciplinary proceedings. Where allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill-treatment. Serious consideration should also be given to the creation of witness protection programmes for witnesses to incidents of torture and similar ill-treatment which ought to extend fully to cover persons with a previous criminal record. In cases where current inmates are at risk, they ought to be transferred to another detention facility where special measures for their security should be taken. A complaint that is determined to be well founded should result in compensation to the victim or relatives. In all cases of death occurring in custody or shortly after release, an inquiry should be held by judicial or other impartial authorities. A person in respect of whom there is credible evidence of responsibility for torture or severe maltreatment should be tried and, if found guilty, punished. Legal provisions granting exemptions from criminal responsibility for torturers, such as amnesties, indemnity laws etc., should be abrogated. If torture has occurred in an official place of detention, the official in charge of that place should be disciplined or punished. Military tribunals should not be used to try persons accused of torture. Independent national authorities, such as a national commission or ombudsman with investigatory and/or prosecutorial powers, should be established to receive and to investigate complaints. Complaints about torture should be dealt with immediately and should be investigated by an independent authority with no relation to that which is investigating or prosecuting the case against the alleged victim. Furthermore, the forensic medical services should be under judicial or other independent authority, not under the same governmental authority as the police and the penitentiary system. Public forensic medical services should not have a monopoly of expert forensic evidence for judicial purposes. In that context, countries should be guided by the Principles on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as a useful tool in the effort to combat torture;²

(k) Training courses and training manuals should be provided for police and security personnel and, when requested, assistance should be provided by the United Nations programme of advisory services and technical assistance. Security and law enforcement personnel should be instructed on the Standard Minimum Rules for the Treatment of Prisoners,³ the Code of Conduct for Law Enforcement Officials,⁴ the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,⁵ and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and these instruments should be translated into the relevant national languages. In the course of training, particular stress should be placed upon the principle that

the prohibition of torture is absolute and non-derogable and that there exists a duty to disobey orders from a superior to commit torture. Governments should scrupulously translate into national guarantees the international standards they have approved and should familiarize law enforcement personnel with the rules they are expected to apply;

(l) Health-sector personnel should be instructed on the Principles of Medical Ethics relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Detainees and Prisoners against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁶ Governments and professional medical associations should take strict measures against medical personnel that play a role, direct or indirect, in torture. Such prohibition should extend to such practices as examining detainees to determine their “fitness for interrogation” and procedures involving ill-treatment or torture, as well as providing medical treatment to ill-treated detainees so as to enable them to withstand further abuse. In other cases, the withholding of appropriate medical treatment by medical personnel should be subject to sanction.

Notes:

- 1 General Assembly resolution 43/173, annex.
- 2 See General Assembly resolution 55/89, annex.
- 3 Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1955.
- 4 General Assembly resolution 34/169, annex.
- 5 Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 1990.
- 6 General Assembly resolution 37/194, annex.

11.

The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, final report of the Special Rapporteur, Professor M. Cherif Bassiouni

Submitted in accordance with Commission resolution 1999/33, Commission on Human Rights, Fifty-sixth session, under item 11.d of the provisional agenda on 18 January 2000 (E/CN.4/2000/62)

I. OBLIGATION TO RESPECT, ENSURE RESPECT FOR AND ENFORCE INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

Every State has the obligation to respect, ensure respect for and enforce international human rights and humanitarian law norms that are, inter alia:

- (a) Contained in treaties to which it is a State party;
- (b) Found in customary international law; or
- (c) Incorporated in its domestic law.

To that end, if they have not already done so, States shall ensure that domestic law is consistent with international legal obligations by:

- (a) Incorporating norms of international human rights and humanitarian law into their domestic law, or otherwise implementing them in their domestic legal system;
- (b) Adopting appropriate and effective judicial and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;
- (c) Making available adequate, effective and prompt reparation as defined below; and
- (d) Ensuring, in the case that there is a difference between national and international norms, that the norm that provides the greatest degree of protection is applied.

II. SCOPE OF THE OBLIGATION

The obligation to respect, ensure respect for and enforce international human rights and humanitarian law includes, inter alia, a State's duty to:

- (a) Take appropriate legal and administrative measures to prevent violations;
- (b) Investigate violations and, where appropriate, take action against the violator in accordance with domestic and international law;
- (c) Provide victims with equal and effective access to justice irrespective of who may be the ultimate bearer of responsibility for the violation;
- (d) Afford appropriate remedies to victims; and
- (e) Provide for or facilitate reparation to victims.

III. VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW THAT CONSTITUTE CRIMES UNDER INTERNATIONAL LAW

Violations of international human rights and humanitarian law norms that constitute crimes under international law carry the duty to prosecute persons alleged to have committed these violations, to punish perpetrators adjudged to have committed these violations, and to cooperate with and assist States and appropriate international judicial organs in the investigation and prosecution of these violations.

To that end, States shall incorporate within their domestic law appropriate provisions providing for universal jurisdiction over crimes under international law and appropriate legislation to facilitate extradition or surrender of offenders to other States and to international judicial bodies and to provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to and protection of victims and witnesses.

IV. STATUTES OF LIMITATIONS

Statutes of limitations shall not apply for prosecuting violations of international human rights and humanitarian law norms that constitute crimes under international law.

Statutes of limitations for prosecuting other violations or pursuing civil claims should not unduly restrict the ability of a victim to pursue a claim against the perpetrator, and should not apply with respect to periods during which no effective remedies exist for violations of human rights and international humanitarian law norms.

V VICTIMS OF VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

A person is “a victim” where, as a result of acts or omissions that constitute a violation of international human rights or humanitarian law norms, that person, individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person’s fundamental legal rights. A “victim” may also be a dependant or a member of the immediate family or household of the direct victim as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental, or economic harm.

A person’s status as “a victim” should not depend on any relationship that may exist or may have existed between the victim and the perpetrator, or whether the perpetrator of the violation has been identified, apprehended, prosecuted, or convicted.

VI. TREATMENT OF VICTIMS

Victims should be treated by the State and, where applicable, by intergovernmental and non-governmental organizations and private enterprises with compassion and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety and privacy as well as that of their families. The State should ensure that its domestic laws, as much as possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her retraumatization in the course of legal and administrative procedures designed to provide justice and reparation.

VII. VICTIMS' RIGHT TO A REMEDY

Remedies for violations of international human rights and humanitarian law include the victim's right to:

- (a) Access justice;
- (b) Reparation for harm suffered; and
- (c) Access the factual information concerning the violations.

VIII. VICTIMS' RIGHT TO ACCESS JUSTICE

A victim's right of access to justice includes all available judicial, administrative, or other public processes under existing domestic laws as well as under international law. Obligations arising under international law to secure the individual or collective right to access justice and fair and impartial proceedings should be made available under domestic laws. To that end, States should:

- (a) Make known, through public and private mechanisms, all available remedies for violations of international human rights and humanitarian law;
- (b) Take measures to minimize the inconvenience to victims, protect their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect the interests of victims;
- (c) Make available all appropriate diplomatic and legal means to ensure that victims can exercise their rights to a remedy and reparation for violations of international human rights or humanitarian law.

In addition to individual access to justice, adequate provisions should also be made to allow groups of victims to present collective claims for reparation and to receive reparation collectively.

The right to an adequate, effective and prompt remedy against a violation of international human rights or humanitarian law includes all available international processes in which an individual may have legal standing and should be without prejudice to any other domestic remedies.

IX. VICTIMS' RIGHT TO REPARATION

Adequate, effective and prompt reparation shall be intended to promote justice by redressing violations of international human rights or humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered.

In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for its acts or omissions constituting violations of international human rights and humanitarian law norms.

In cases where the violation is not attributable to the State, the party responsible for the violation should provide reparation to the victim or to the State if the State has already provided reparation to the victim.

In the event that the party responsible for the violation is unable or unwilling to meet these obligations, the State should endeavour to provide reparation to victims who have sustained bodily injury or impairment of physical or mental health as a result of these violations and to the families, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of the violation. To that end, States should endeavour to establish national funds for reparation to victims and seek other sources of funds wherever necessary to supplement these.

A State shall enforce its domestic judgements for reparation against private individuals or entities responsible for the violations. States shall endeavour to enforce valid foreign judgements for reparation against private individuals or entities responsible for the violations.

In cases where the State or Government under whose authority the violation occurred is no longer in existence, the State or Government successor in title should provide reparation to the victims.

X. FORMS OF REPARATION

In accordance with their domestic law and international obligations, and taking account of individual circumstances, States should provide victims of violations of international human rights and humanitarian law the following forms of reparation: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition.

Restitution should, whenever possible, restore the victim to the original situation before the violations of international human rights or humanitarian law occurred. Restitution includes: restoration of liberty, legal rights, social status, family life and citizenship; return to one's place of residence; and restoration of employment and return of property.

Compensation should be provided for any economically assessable damage resulting from violations of international human rights and humanitarian law, such as:

- (a) Physical or mental harm, including pain, suffering and emotional distress;
- (b) Lost opportunities, including education;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Harm to reputation or dignity; and
- (e) Costs required for legal or expert assistance, medicines and medical services, and psychological and social services.

Rehabilitation should include medical and psychological care as well as legal and social services.

Satisfaction and guarantees of non-repetition should include, where applicable, any or all of the following:

- (a) Cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further unnecessary harm or threaten the safety of the victim, witnesses, or others;
- (c) The search for the bodies of those killed or disappeared and assistance in the identification and reburial of the bodies in accordance with the cultural practices of the families and communities;
- (d) An official declaration or a judicial decision restoring the dignity, reputation and legal and social rights of the victim and of persons closely connected with the victim;
- (e) Apology, including public acknowledgement of the facts and acceptance of responsibility;
- (f) Judicial or administrative sanctions against persons responsible for the violations;
- (g) Commemorations and tributes to the victims;
- (h) Inclusion of an accurate account of the violations that occurred in international human rights and humanitarian law training and in educational material at all levels;
- (i) Preventing the recurrence of violations by such means as:
- (j) Ensuring effective civilian control of military and security forces;

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- (k) Restricting the jurisdiction of military tribunals only to specifically military offences committed by members of the armed forces;
 - (l) Strengthening the independence of the judiciary;
 - (m) Protecting persons in the legal, media and other related professions and human rights defenders;
 - (n) Conducting and strengthening, on a priority and continued basis, human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials;
 - (o) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as the staff of economic enterprises;
 - (p) Creating mechanisms for monitoring conflict resolution and preventive intervention.

XI. PUBLIC ACCESS TO INFORMATION

- 26. States should develop means of informing the general public and in particular victims of violations of international human rights and humanitarian law of the rights and remedies contained within these principles and guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access.

XII. NON-DISCRIMINATION AMONG VICTIMS

- 27. The application and interpretation of these principles and guidelines must be consistent with internationally recognized human rights law and be without any adverse distinction founded on grounds such as race, colour, gender, sexual orientation, age, language, religion, political or religious belief, national, ethnic or social origin, wealth, birth, family or other status, or disability.

12.

Principles on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (the Istanbul Protocol)

UN Office for the High Commissioner for Human Rights, New York and Geneva, 2001

The Commission on Human Rights in its resolution 2000/43 and the UN General Assembly in its resolution 55/89 drew the attention of Governments to the Principles and strongly encouraged Governments to reflect upon the Principles as a useful tool in combating torture.

1. The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment (hereafter torture or other ill-treatment) include the following:
 - (i) Clarification of the facts and establishment and acknowledgment of individual and State responsibility for victims and their families;
 - (ii) Identification of measures needed to prevent recurrence;
 - (iii) Facilitating prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible, and demonstrating the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.
2. States shall ensure that complaints and reports of torture or ill-treatment shall be promptly and effectively investigated. Even in the absence of an express complaint, an investigation should be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission, investigations by impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards, and the findings shall be made public.
3. (a) The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry. The persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence.
3. (b) Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.

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4. Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing, as well as to all information relevant to the investigation, and shall be entitled to present other evidence.
 5. (a) In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse, or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles. Under certain circumstances, professional ethics may require information to be kept confidential. These requirements should be respected.
 5. (b) A written report, made within a reasonable time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. On completion, this report shall be made public. It shall also describe in detail specific events that were found to have occurred, the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, reply to the report of the investigation and, as appropriate, indicate steps to be taken in response.
 6. (a) Medical experts involved in the investigation of torture or ill-treatment should behave at all times in conformity with the highest ethical standards and in particular shall obtain informed consent before any examination is undertaken. The examination must conform to established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.
 6. (b) The medical expert should promptly prepare an accurate written report. This report should include at least the following
 - (i) Circumstances of the interview: name of the subject and names and affiliations of those present at the examination; the exact time and date; the location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house, etc.); the circumstances of the subject at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner, threatening statements to the examiner, etc.); and any other relevant factor;
 - (ii) History: a detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;
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- (iii) Physical and psychological examination: a record of all physical and psychological findings on clinical examination, including appropriate diagnostic tests and, where possible, colour photographs of all injuries;
 - (iv) Opinion: an interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and/or further examination should be given;
 - (v) Authorship: the report should clearly identify those carrying out the examination and should be signed.
6. (c) The report should be confidential and communicated to the subject or his or her nominated representative. The views of the subject and his or her representative about the examination process should be solicited and recorded in the report. It should also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report should not be made available to any other person, except with the consent of the subject or on the authorization of a court empowered to enforce such transfer.

Appendix Two: The CPT Standards – Selected extracts

“Substantive” sections of the CPT’s General Reports (extracts from the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, the CPT Standards, Substantive Sections of the CPT’s General Reports, Council of Europe, October 2001, CPT/Inf/E (2002))

I. Police custody

Extract from the 12th General Report [CPT/Inf (2002) 15]

33. It is essential to the good functioning of society that the police have the powers to apprehend, temporarily detain and question criminal suspects and other categories of persons. However, these powers inherently bring with them a risk of intimidation and physical ill-treatment. The essence of the CPT’s work is to seek ways of reducing that risk to the absolute minimum without unduly impeding the police in the proper exercise of their duties. Encouraging developments in the field of police custody have been noted in a number of countries; however, the CPT’s findings also highlight all too often the need for continuing vigilance.
34. The questioning of criminal suspects is a specialist task which calls for specific training if it is to be performed in a satisfactory manner. First and foremost, the precise aim of such questioning must be made crystal clear: that aim should be to obtain accurate and reliable information in order to discover the truth about matters under investigation, not to obtain a confession from someone already presumed, in the eyes of the interviewing officers, to be guilty. In addition to the provision of appropriate training, ensuring adherence of law enforcement officials to the above-mentioned aim will be greatly facilitated by the drawing up of a code of conduct for the questioning of criminal suspects.
35. Over the years, CPT delegations have spoken to a considerable number of detained persons in various countries, who have made credible claims of having been physically ill-treated, or otherwise intimidated or threatened, by police officers trying to obtain confessions in the course of interrogations. It is self-evident that a criminal justice system which places a premium on confession evidence creates incentives for officials involved in the investigation of crime - and often under pressure to obtain results - to use physical or psychological coercion. In the context of the prevention of torture and other forms of ill-treatment, it is of fundamental importance to develop methods of crime investigation capable of reducing reliance on confessions, and other evidence and information obtained via interrogations, for the purpose of securing convictions.
36. The electronic (i.e. audio and/or video) recording of police interviews represents an important additional safeguard against the ill-treatment of detainees. The CPT is pleased to note that the introduction of such systems is under consideration in an increasing number of countries. Such a facility can provide a complete and authentic record of the interview process, thereby greatly facilitating the investigation of any allegations of ill-treatment. This is in the interest both of persons who have been ill-treated by the police

and of police officers confronted with unfounded allegations that they have engaged in physical ill-treatment or psychological pressure. Electronic recording of police interviews also reduces the opportunity for defendants to later falsely deny that they have made certain admissions.

37. The CPT has on more than one occasion, in more than one country, discovered interrogation rooms of a highly intimidating nature: for example, rooms entirely decorated in black and equipped with spotlights directed at the seat used by the person undergoing interrogation. Facilities of this kind have no place in a police service.

In addition to being adequately lit, heated and ventilated, interview rooms should allow for all participants in the interview process to be seated on chairs of a similar style and standard of comfort. The interviewing officer should not be placed in a dominating (e.g. elevated) or remote position vis-à-vis the suspect. Further, colour schemes should be neutral.

38. In certain countries, the CPT has encountered the practice of blindfolding persons in police custody, in particular during periods of questioning. CPT delegations have received various - and often contradictory - explanations from police officers as regards the purpose of this practice. From the information gathered over the years, it is clear to the CPT that in many if not most cases, persons are blindfolded in order to prevent them from being able to identify law enforcement officials who inflict ill-treatment upon them. Even in cases when no physical ill-treatment occurs, to blindfold a person in custody - and in particular someone undergoing questioning - is a form of oppressive conduct, the effect of which on the person concerned will frequently amount to psychological ill-treatment. The CPT recommends that the blindfolding of persons who are in police custody be expressly prohibited.

39. It is not unusual for the CPT to find suspicious objects on police premises, such as wooden sticks, broom handles, baseball bats, metal rods, pieces of thick electric cable, imitation firearms or knives. The presence of such objects has on more than one occasion lent credence to allegations received by CPT delegations that the persons held in the establishments concerned have been threatened and/or struck with objects of this kind.

A common explanation received from police officers concerning such objects is that they have been confiscated from suspects and will be used as evidence. The fact that the objects concerned are invariably unlabelled, and frequently are found scattered around the premises (on occasion placed behind curtains or cupboards), can only invite scepticism as regards that explanation. In order to dispel speculation about improper conduct on the part of police officers and to remove potential sources of danger to staff and detained persons alike, items seized for the purpose of being used as evidence should always be properly labelled, recorded and kept in a dedicated property store. All other objects of the kind mentioned above should be removed from police premises.

40. As from the outset of its activities, the CPT has advocated a trinity of rights for persons detained by the police: the rights of access to a lawyer and to a doctor and the right to have the fact of one's detention notified to a relative or another third party of one's choice. In many States, steps have been taken to introduce or reinforce these rights, in the light of the CPT's recommendations. More specifically, the right of access to a lawyer during police custody is now widely recognised in countries visited by the CPT; in those few countries where the right does not yet exist, plans are afoot to introduce it.

41. However, in a number of countries, there is considerable reluctance to comply with the CPT's recommendation that the right of access to a lawyer be guaranteed from the very outset of custody. In some countries, persons detained by the police enjoy this right only after a specified period of time spent in custody; in others, the right only becomes effective when the person detained is formally declared a "suspect".

The CPT has repeatedly stressed that, in its experience, the period immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer during that period is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect upon those minded to ill treat detained persons; further, a lawyer is well placed to take appropriate action if ill-treatment actually occurs. The CPT recognises that in order to protect the legitimate interests of the police investigation, it may exceptionally be necessary to delay for a certain period a detained person's access to a lawyer of his choice. However, this should not result in the right of access to a lawyer being totally denied during the period in question. In such cases, access to another independent lawyer should be arranged.

The right of access to a lawyer must include the right to talk to him in private. The person concerned should also, in principle, be entitled to have a lawyer present during any interrogation conducted by the police. Naturally, this should not prevent the police from questioning a detained person on urgent matters, even in the absence of a lawyer (who may not be immediately available), nor rule out the replacement of a lawyer who impedes the proper conduct of an interrogation.

The CPT has also emphasised that the right of access to a lawyer should be enjoyed not only by criminal suspects but also by anyone who is under a legal obligation to attend – and stay at – a police establishment, e.g. as a "witness".

Further, for the right of access to a lawyer to be fully effective in practice, appropriate provision should be made for persons who are not in a position to pay for a lawyer.

42. Persons in police custody should have a formally recognised right of access to a doctor. In other words, a doctor should always be called without delay if a person requests a medical examination; police officers should not seek to filter such requests. Further, the right of access to a doctor should include the right of a person in custody to be examined, if the person concerned so wishes, by a doctor of his/her own choice (in addition to any medical examination carried out by a doctor called by the police).

All medical examinations of persons in police custody must be conducted out of the hearing of law enforcement officials and, unless the doctor concerned requests otherwise in a particular case, out of the sight of such officials.

It is also important that persons who are released from police custody without being brought before a judge have the right to directly request a medical examination/certificate from a recognised forensic doctor.

43. A detained person's right to have the fact of his/her detention notified to a third party should in principle be guaranteed from the very outset of police custody. Of course, the CPT recognises that the exercise of this right might have to be made subject to certain exceptions, in order to protect the legitimate interests of the police investigation. However, such exceptions should be clearly defined and strictly limited in time, and resort to them should be accompanied by appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the reasons therefor, and to require the approval of a senior police officer unconnected with the case or a prosecutor).

44. Rights for persons deprived of their liberty will be of little value if the persons concerned are unaware of their existence. Consequently, it is imperative that persons taken into police custody are expressly informed of their rights without delay and in a language which they understand. In order to ensure that this is done, a form setting out those rights in a straightforward manner should be systematically given to persons detained by the police at the very outset of their custody. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights.

45. The CPT has stressed on several occasions the role of judicial and prosecuting authorities as regards combatting ill-treatment by the police.

For example, all persons detained by the police whom it is proposed to remand to prison should be physically brought before the judge who must decide that issue; there are still certain countries visited by the CPT where this does not occur. Bringing the person before the judge will provide a timely opportunity for a criminal suspect who has been ill-treated to lodge a complaint. Further, even in the absence of an express complaint, the judge will be able to take action in good time if there are other indications of ill-treatment (e.g. visible injuries; a person's general appearance or demeanour).

Naturally, the judge must take appropriate steps when there are indications that ill-treatment by the police may have occurred. In this regard, whenever criminal suspects brought before a judge at the end of police custody allege ill-treatment, the judge should record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the judge should request a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment.

The diligent examination by judicial and other relevant authorities of all complaints of ill-treatment by law enforcement officials and, where appropriate, the imposition of a suitable penalty will have a strong deterrent effect. Conversely, if those authorities do not take effective action upon complaints referred to them, law enforcement officials minded to ill-treat persons in their custody will quickly come to believe that they can do so with impunity.

46. Additional questioning by the police of persons remanded to prison may on occasion be necessary. The CPT is of the opinion that from the standpoint of the prevention of ill-treatment, it would be far preferable for such questioning to take place within the prison establishment concerned rather than on police premises. The return of remand prisoners to police custody for further questioning should only be sought and authorised when it is absolutely unavoidable. It is also axiomatic that in those exceptional circumstances where a remand prisoner is returned to the custody of the police, he/she should enjoy the three rights referred to in paragraphs 40 to 43.

47. Police custody is (or at least should be) of relatively short duration. Nevertheless, conditions of detention in police cells must meet certain basic requirements.

All police cells should be clean and of a reasonable size¹ for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded); preferably

¹ As regards the size of police cells, see also paragraph 43 of the 2nd General Report (CPT/Inf (92) 3).

cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets. Persons in police custody should have access to a proper toilet facility under decent conditions, and be offered adequate means to wash themselves. They should have ready access to drinking water and be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day. Persons held in police custody for 24 hours or more should, as far as possible, be offered outdoor exercise every day.

Many police detention facilities visited by CPT delegations do not comply with these minimal standards. This is particularly detrimental for persons who subsequently appear before a judicial authority; all too frequently persons are brought before a judge after spending one or more days in substandard and filthy cells, without having been offered appropriate rest and food and an opportunity to wash.

48. The duty of care which is owed by the police to persons in their custody includes the responsibility to ensure their safety and physical integrity. It follows that the proper monitoring of custody areas is an integral component of the duty of care assumed by the police. Appropriate steps must be taken to ensure that persons in police custody are always in a position to readily enter into contact with custodial staff.

On a number of occasions CPT delegations have found that police cells were far removed from the offices or desks where police officers are normally present, and were also devoid of any means (e.g. a call system) enabling detained persons to attract the attention of a police officer. Under such conditions, there is considerable risk that incidents of various kinds (violence among detainees; suicide attempts; fires etc.) will not be responded to in good time.

49. The CPT has also expressed misgivings as regards the practice observed in certain countries of each operational department (narcotics, organised crime, anti-terrorism) in a police establishment having its own detention facility staffed by officers from that department. The Committee considers that such an approach should be discarded in favour of a central detention facility, staffed by a distinct corps of officers specifically trained for such a custodial function. This would almost certainly prove beneficial from the standpoint of the prevention of ill-treatment. Further, relieving individual operational departments of custodial duties might well prove advantageous from the management and logistical perspectives.

50. Finally, the inspection of police establishments by an independent authority can make an important contribution towards the prevention of ill-treatment of persons held by the police and, more generally, help to ensure satisfactory conditions of detention. To be fully effective, visits by such an authority should be both regular and unannounced, and the authority concerned should be empowered to interview detained persons in private. Further, it should examine all issues related to the treatment of persons in custody: the recording of detention; information provided to detained persons on their rights and the actual exercise of those rights (in particular the three rights referred to in paragraphs 40 to 43); compliance with rules governing the questioning of criminal suspects; and material conditions of detention.

The findings of the above-mentioned authority should be forwarded not only to the police but also to another authority which is independent of the police.

III. Training of law enforcement personnel

Extract from the 2nd General Report [CPT/Inf (92) 3]

59. Finally, the CPT wishes to emphasise the great importance it attaches to the training of law enforcement personnel¹ (which should include education on human rights matters – cf. also Article 10 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). There is arguably no better guarantee against the ill-treatment of a person deprived of his liberty than a properly trained police or prison officer. Skilled officers will be able to carry out successfully their duties without having recourse to ill-treatment and to cope with the presence of fundamental safeguards for detainees and prisoners.
60. In this connection, the CPT believes that aptitude for interpersonal communication should be a major factor in the process of recruiting law enforcement personnel and that, during training, considerable emphasis should be placed on developing interpersonal communication skills, based on respect for human dignity. The possession of such skills will often enable a police or prison officer to defuse a situation which could otherwise turn into violence, and more generally, will lead to a lowering of tension, and raising of the quality of life, in police and prison establishments, to the benefit of all concerned.²

¹ The expression “law enforcement personnel” in this report includes both police and prison officers.

² The CPT also encourages national authorities to seek to integrate human rights concepts into practical professional training for handling high-risk situations such as the apprehension and interrogation of criminal suspects; this will prove more effective than separate courses on human rights.

VII. Juveniles deprived of their liberty

Extract from the 9th General Report [CPT/Inf (99) 12]

Preliminary remarks

20. In certain of its previous general reports, the CPT has set out the criteria which guide its work in a variety of places of detention, including police stations, prisons, holding centres for immigration detainees and psychiatric establishments.

The Committee applies the above-mentioned criteria, to the extent to which they are appropriate, in respect of juveniles (i.e. persons under the age of 18) deprived of their liberty. However - regardless of the reason for which they may have been deprived of their liberty - juveniles are inherently more vulnerable than adults. In consequence, particular vigilance is required to ensure that their physical and mental well-being is adequately protected. In order to highlight the importance which it attaches to the prevention of ill-treatment of juveniles deprived of their liberty, the CPT has chosen to devote this chapter of its 9th General Report to describing some of the specific issues which it pursues in this area.

In the following paragraphs, the Committee identifies a number of the safeguards against ill-treatment which it considers should be offered to all juveniles deprived of their liberty, before focussing on the conditions which should obtain in detention centres specifically designed for juveniles. The Committee hopes in this way to give a clear indication to national authorities of its views regarding the manner in which such persons ought to be treated. As in previous years, the CPT would welcome comments on this substantive section of its General Report.

21. The Committee wishes to stress at the outset that any standards which it may be developing in this area should be seen as being complementary to those set out in a panoply of other international instruments, including the 1989 United Nations Convention on the Rights of the Child; the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).

The Committee also wishes to express its approval of one of the cardinal principles enshrined in the above-mentioned instruments, namely that juveniles should only be deprived of their liberty as a last resort and for the shortest possible period of time (cf. Article 37 b. of the Convention on the Rights of the Child and Rules 13 and 19 of the Beijing Rules).

Safeguards against the ill-treatment of juveniles

22. Given its mandate, the CPT's first priority during visits to places where juveniles are deprived of their liberty is to seek to establish whether they are being subjected to deliberate ill-treatment. The Committee's findings to date would suggest that, in most of the establishments which it visits, this is a comparatively rare occurrence.

23. However, as is the case for adults, it would appear that juveniles run a higher risk of being deliberately ill-treated in police establishments than in other places of detention. Indeed, on more than one occasion, CPT delegations have gathered credible evidence that juveniles have featured amongst the persons tortured or otherwise ill-treated by police officers.

In this context, the CPT has stressed that it is during the period immediately following deprivation of liberty that the risk of torture and ill-treatment is at its greatest. It follows that it is essential that all persons

deprived of their liberty (including juveniles) enjoy, as from the moment when they are first obliged to remain with the police, the rights to notify a relative or another third party of the fact of their detention, the right of access to a lawyer and the right of access to a doctor.

Over and above these safeguards, certain jurisdictions recognise that the inherent vulnerability of juveniles requires that additional precautions be taken. These include placing police officers under a formal obligation themselves to ensure that an appropriate person is notified of the fact that a juvenile has been detained (regardless of whether the juvenile requests that this be done). It may also be the case that police officers are not entitled to interview a juvenile unless such an appropriate person and/or a lawyer is present. The CPT welcomes this approach.

24. In a number of other establishments visited, CPT delegations have been told that it was not uncommon for staff to administer the occasional “pedagogic slap” to juveniles who misbehaved. The Committee considers that, in the interests of the prevention of ill-treatment, all forms of physical chastisement must be both formally prohibited and avoided in practice. Inmates who misbehave should be dealt with only in accordance with prescribed disciplinary procedures.

25. The Committee’s experience also suggests that when ill-treatment of juveniles does occur, it is more often the result of a failure adequately to protect the persons concerned from abuse than of a deliberate intention to inflict suffering. An important element in any strategy to prevent such abuse is observance of the principle that juveniles in detention should as a rule be accommodated separately from adults.

Examples of a failure to respect this principle which have been observed by the CPT have included: adult male prisoners being placed in cells for male juveniles, often with the intention that they maintain control in those cells; female juveniles being accommodated together with adult women prisoners; juvenile psychiatric patients sharing accommodation with chronically ill adult patients.

The Committee accepts that there may be exceptional situations (e.g. children and parents being held as immigration detainees) in which it is plainly in the best interests of juveniles not to be separated from particular adults. However, to accommodate juveniles and unrelated adults together inevitably brings with it the possibility of domination and exploitation.

26. Mixed gender staffing is another safeguard against ill-treatment in places of detention, in particular where juveniles are concerned. The presence of both male and female staff can have a beneficial effect in terms of both the custodial ethos and in fostering a degree of normality in a place of detention.

Mixed gender staffing also allows for appropriate staff deployment when carrying out gender sensitive tasks, such as searches. In this respect, the CPT wishes to stress that, regardless of their age, persons deprived of their liberty should only be searched by staff of the same gender and that any search which requires an inmate to undress should be conducted out of the sight of custodial staff of the opposite gender; these principles apply a fortiori in respect of juveniles.

27. Lastly, in a number of establishments visited, CPT delegations have observed custodial staff who come into direct contact with juveniles openly carrying batons. Such a practice is not conducive to fostering positive relations between staff and inmates. Preferably, custodial staff should not carry batons at all. If, nevertheless, it is considered indispensable for them to do so, the CPT recommends that the batons be hidden from view.

VIII. Women deprived of their liberty

Extract from the 10th General Report [CPT/Inf (2000) 13]

Preliminary remarks

21. In certain of its previous general reports, the CPT has set out the criteria which guide its work in a variety of places of detention, including police stations, prisons, holding centres for immigration detainees, psychiatric establishments and detention centres for juveniles.

Naturally, the Committee applies the above-mentioned criteria in respect of both women and men who are deprived of their liberty. However, in all Council of Europe member States, women inmates represent a comparatively small minority of persons deprived of their liberty. This can render it very costly for States to make separate provision for women in custody, with the result that they are often held at a small number of locations (on occasion, far from their homes and those of any dependent children), in premises which were originally designed for (and may be shared by) male detainees. In these circumstances, particular care is required to ensure that women deprived of their liberty are held in a safe and decent custodial environment. In order to highlight the importance which it attaches to the prevention of ill-treatment of women deprived of their liberty, the CPT has chosen to devote this chapter of its 10th General Report to describing some of the specific issues which it pursues in this area. The Committee hopes in this way to give a clear indication to national authorities of its views regarding the manner in which women deprived of their liberty ought to be treated. As in previous years, the CPT would welcome comments on this substantive section of its General Report.

22. It should be stressed at the outset that the CPT's concerns about the issues identified in this chapter apply irrespective of the nature of the place of detention. Nevertheless, in the CPT's experience, risks to the physical and/or psychological integrity of women deprived of their liberty may be greater during the period immediately following apprehension. Consequently, particular attention should be paid to ensuring that the criteria enunciated in the following sections are respected during that phase.

The Committee also wishes to emphasise that any standards which it may be developing in this area should be seen as being complementary to those set out in other international instruments, including the European Convention on Human Rights, the United Nations Convention on the Rights of the Child, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women and the United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.

Mixed gender staffing

23. As the CPT stressed in its 9th General Report, mixed gender staffing is an important safeguard against ill-treatment in places of detention. The presence of male and female staff can have a beneficial effect in terms of both the custodial ethos and in fostering a degree of normality in a place of detention.

Mixed gender staffing also allows for appropriate staff deployment when carrying out gender sensitive tasks, such as searches. In this context, the CPT wishes again to emphasise that persons deprived of their liberty should only be searched by staff of the same gender and that any search which requires an inmate to undress should be conducted out of the sight of custodial staff of the opposite gender.

Separate accommodation for women deprived of their liberty

24. The duty of care which is owed by a State to persons deprived of their liberty includes the duty to protect them from others who may wish to cause them harm. The CPT has occasionally encountered allegations of woman upon woman abuse. However, allegations of ill-treatment of women in custody by men (and, more particularly, of sexual harassment, including verbal abuse with sexual connotations) arise more frequently, in particular when a State fails to provide separate accommodation for women deprived of their liberty with a preponderance of female staff supervising such accommodation.

As a matter of principle, women deprived of their liberty should be held in accommodation which is physically separate from that occupied by any men being held at the same establishment. That said, some States have begun to make arrangements for couples (both of whom are deprived of their liberty) to be accommodated together, and/or for some degree of mixed gender association in prisons. The CPT welcomes such progressive arrangements, provided that the prisoners involved agree to participate, and are carefully selected and adequately supervised.

Equality of access to activities

25. Women deprived of their liberty should enjoy access to meaningful activities (work, training, education, sport etc.) on an equal footing with their male counterparts. As the Committee mentioned in its last General Report, CPT delegations all too often encounter women inmates being offered activities which have been deemed “appropriate” for them (such as sewing or handicrafts), whilst male prisoners are offered training of a far more vocational nature. In the view of the CPT, such a discriminatory approach can only serve to reinforce outmoded stereotypes of the social role of women. Moreover, depending upon the circumstances, denying women equal access to regime activities could be qualified as degrading treatment.

Ante natal and post natal care

26. Every effort should be made to meet the specific dietary needs of pregnant women prisoners, who should be offered a high protein diet, rich in fresh fruit and vegetables.

27. It is axiomatic that babies should not be born in prison, and the usual practice in Council of Europe member States seems to be, at an appropriate moment, to transfer pregnant women prisoners to outside hospitals. Nevertheless, from time to time, the CPT encounters examples of pregnant women being shackled or otherwise restrained to beds or other items of furniture during gynaecological examinations and/or delivery. Such an approach is completely unacceptable, and could certainly be qualified as inhuman and degrading treatment. Other means of meeting security needs can and should be found.

28. Many women in prison are primary carers for children or others, whose welfare may be adversely affected by their imprisonment.¹ One particularly problematic issue in this context is whether - and, if so, for how long - it should be possible for babies and young children to remain in prison with their mothers. This is a difficult question to answer given that, on the one hand, prisons clearly do not provide an appropriate environment for babies and young children while, on the other hand, the forcible separation of mothers and infants is highly undesirable.

¹ Cf. also Recommendation 1469 (2000) of the Parliamentary Assembly of the Council of Europe on the subject of mothers and babies in prison.

29. In the view of the CPT, the governing principle in all cases must be the welfare of the child. This implies in particular that any ante and post natal care provided in custody should be equivalent to that available in the outside community. Where babies and young children are held in custodial settings, their treatment should be supervised by specialists in social work and child development. The goal should be to produce a child-centred environment, free from the visible trappings of incarceration, such as uniforms and jangling keys. Arrangements should also be made to ensure that the movement and cognitive skills of babies held in prison develop normally. In particular, they should have adequate play and exercise facilities within the prison and, wherever possible, the opportunity to leave the establishment and experience ordinary life outside its walls. Facilitating child-minding by family members outside the establishment can also help to ensure that the burden of child-rearing is shared (for example, by the child's father). Where this is not possible, consideration should be given to providing access to creche-type facilities. Such arrangements can enable women prisoners to participate in work and other activities inside the prison to a greater extent than might otherwise be possible.

Hygiene and health issues

30. The Committee also wishes to call attention to a number of hygiene and health issues in respect of which the needs of women deprived of their liberty differ significantly from those of men.

31. The specific hygiene needs of women should be addressed in an adequate manner. Ready access to sanitary and washing facilities, safe disposal arrangements for blood-stained articles, as well as provision of hygiene items, such as sanitary towels and tampons, are of particular importance. The failure to provide such basic necessities can amount, in itself, to degrading treatment.

32. It is also essential that the health care provided to persons deprived of their liberty be of a standard equivalent to that enjoyed by patients in the outside community.

Insofar as women deprived of their liberty are concerned, ensuring that this principle of equivalence of care is respected will require that health care is provided by medical practitioners and nurses who have specific training in women's health issues, including in gynaecology.

Moreover, to the extent that preventive health care measures of particular relevance to women, such as screening for breast and cervical cancer, are available in the outside community, they should also be offered to women deprived of their liberty.

Equivalence of care also requires that a woman's right to bodily integrity should be respected in places of detention as in the outside community. Thus, where the so-called "morning after" pill and/or other forms of abortion at later stages of a pregnancy are available to women who are free, they should be available under the same conditions to women deprived of their liberty.

33. As a matter of principle, prisoners who have begun a course of treatment before being incarcerated should be able to continue it once detained. In this context, efforts should be made to ensure that adequate supplies of specialist medication required by women are available in places of detention.

As regards, more particularly, the contraceptive pill, it should be recalled that this medication may be prescribed for medical reasons other than preventing conception (e.g. to alleviate painful menstruation). The fact that a woman's incarceration may – in itself – greatly diminish the likelihood of conception while detained is not a sufficient reason to withhold such medication.

Appendix Three: Further information and contact organisations

Inter-Governmental Organisations (IGOs)

African Commission on Human and Peoples' Rights

90 Kairaba Avenue

P.O. Box 673

Banjul

The Gambia

Tel.: + 220 392962; 372070

Fax.: + 220 390764

E-mail: idoc@achpr.org

<http://www.achpr.org>

Council of Europe

F - 67075 Strasbourg-Cedex

France

Telephone: + 33-3-88 41 20 18

Fax: + 33-3-88 41 27 30

<http://www.echr.coe.int/>

Inter-American Commission on Human Rights:

Inter-American Commission on Human Rights

1889 F St., NW, Washington, D.C., USA 20006.

Telephone: + 1-202-458 6002

Fax: + 1-202-458 3992.

E-mail: cidhoha@oas.org

<http://www.cidh.oas.org/>

Inter-American Court of Human Rights:

Inter-American Court of Human Rights

Apdo 6906-1000

San José, Costa Rica

Telephone: + 506-234 0581 or + 506-225 3333

Fax: + 506-234 0584

E-mail: corteidh@sol.racsa.co.cr

<http://www1.umn.edu/humanrts/iachr/iachr.html>

Inter-American Institute of Human Rights

A.P. 10.081-1000

San José, Costa Rica

Tel.: + 506-234 0404

Fax: + 506-234 0955

E-mail: instituto@iidh.ed.cr

<http://www.iidh.ed.cr/>

Office of the UN High Commissioner for Human Rights

OHCHR-UNOG

CH 1211 Geneva 10, Switzerland

Telephone: + 41-22-917 9000

Fax: + 41-22-917 0099

E-mail: webadmin.hchr@unog.ch

<http://www.unhchr.ch/>

Organization for Security and Co-operation in Europe

Office for Democratic Institutions and Human Rights

Aleje Ujazdowskie 19

00-557 Warsaw

Poland

Telephone: + 48-22-520 06 00

Fax: + 48-22-520 06 05

E-mail: office@odhr.osce.waw.pl

<http://www.osce.org/odhr/>

Non-Governmental Organisations (NGOs) and Professional Associations

Amnesty International (AI)

International Secretariat

1 Easton St

London

WC1X 8DJ

UK

Telephone: + 44 20 7413 5500

Fax: + 44 20 7956 1157

E-mail: amnestyis@amnesty.org

<http://www.amnesty.org/>

Association pour la Prévention de la Torture (APT)

Route de Ferney 10
Case postale 2267
CH-1211 Geneva 2
Switzerland
Telephone: + 41-22-734 2088
Fax: + 41-22-734 5649
Email: apt@apt.ch
<http://www.apt.ch/>

Federation Internationale des Ligues des Droits de l'homme (Fidh)

17 Passage de la Main d'Or
75011 Paris, FRANCE
Telephone : + 33-1-43 55 25 18
Fax : + 33-1-43 55 18 80
E-mail : fidh@csi.com
<http://www.fidh.imagnet.fr/>

Human Rights Watch (HRW)

350 Fifth Avenue, 34th Floor
New York, NY
10118-3299 USA
Telephone: + 1-212-290 4700
Fax: + 1-212-736 1300
E-mail: hrwnyc@hrw.org
<http://www.hrw.org/>

International Association of Judges

Palazzo di Giustizia
Piazza Cavour
00193 Roma
Italy
Tel.: + 39 066 883 2213
Fax.: + 39 066 87 1195
E-mail: secretariat@iaj-uim.org
<http://www.iaj-uim.org>

The International Bar Association

271 Regents Street

London

W1B 2AQ

UK

Tel.: + 44 20 7629 1206

Fax.: + 44 20 7409 0456

<http://www.ibanet.org>

International Commission of Jurists

P.O. Box 216

81a Avenue de Chatelaine

1219 Geneva

Switzerland

Tel.: + 41 22 979 3800

Fax.: + 41 22 979 3801

E-mail: info@icj.org

<http://www.icj.org>

International Committee of the Red Cross

19 Avenue de la Paix

CH 1202 Geneva

Switzerland

Telephone: + 41-22-734 60 01

Fax: + 41-22-733 20 57 (Public Information Centre)

E-mail: webmaster.gva@icrc.org

<http://www.icrc.org/>

International Helsinki Federation for Human Rights:

Rummelhardtg. 2/18

A-1090 Vienna

AUSTRIA

Telephone: + 43-1-408 88 22

Fax: + 43-1-408 88 22-50

E-mail: office@ihf-hr.org

<http://www.ihf-hr.org/>

International Rehabilitation Centre for Torture Victims (IRCT)

P.O. Box 2107

DK-1014 Copenhagen K

Denmark

Telephone: + 45-33-76 06 00

Fax: + 45-33-76 05 00

E-mail: irct@irct.org

<http://www.irct.org> (includes the contact details of centres for victims of torture in many countries)

International Service for Human Rights:

1 Rue de Varembe

P.O. Box 16

Ch-1211 Geneva CIC

Switzerland

Telephone: + 41-22-733 5123

Fax: + 41-22-733 0826

Lawyers Committee for Human Rights (LCHR)

333 Seventh Avenue, 13th Floor

New York, NY 10001

United States

Telephone: + 1-212-845 5200

Fax: + 1-212-845 5299

E-Mail: lchrbin@lchr.org

<http://www.lchr.org/>

Penal Reform International

Unit 114, The Chandlery

50 Westminster Bridge Rd

London SE1 7QY

United Kingdom

Telephone: + 44-171-721 7678

Fax: + 44-171-721 8785

E-mail: [Headofsecretariat @pri.org.uk](mailto:Headofsecretariat@pri.org.uk)

<http://www.penalreform.org>

Physicians for Human Rights (PHR)

100 Boylston St.

Suite 702

Boston, MA 02116

United States

Telephone: + 1-617-695 0041

Fax: + 1-617-695 0307

Email: phrusa@igc.apc.org

<http://www.phrusa.org/>

World Medical Association (WMA)

PO Box 63

01212 Ferney-Voltaire Cedex

France

Telephone: + 33-4-50 40 75 75

Fax: + 33-4-50 40 59 37

E-mail: info@wma.net

<http://www.wma.net/>

World Organisation Against Torture/Organisation Mondiale Contre La Torture (OMCT)

International Secretariat

PO Box 35 - 37 Rue de Varembe

CH1211 Geneva CIC 20

Switzerland

Telephone: + 41-22-733 3140

Fax: + 41-22-733 1051

Email: omct@omct.org

<http://www.omct.org/>

Appendix Four: Table of ratification status of selected human rights instruments

Status of ratifications of selected international human rights treaties as of 21 August 2002

- (1) the International Covenant on Civil and Political Rights (CCPR)
- (2) the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- (3) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- (4) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- (5) the Convention on the Rights of the Child (CRC)

The following chart of States shows which are a party (indicated by the date of adherence: ratification, accession or succession) or signatory (indicated by an "s" and the date of signature) to the United Nations human rights treaties listed above.

Country	CCPR	CERD	CEDAW	CAT	CRC
Afghanistan	24 Jan 83	06 Jul 83	14 Aug 80	01 Apr 87	28 Mar 94
Albania	04 Oct 91	11 May 94	11 May 94	11 May 94	27 Feb 92
Algeria	12 Sep 89	14 Feb 72	22 May 96	12 Sep 89	16 Apr 93
Andorra	<i>s:05 Aug 02</i>	<i>s:05 Aug 02</i>	15 Jan 97	<i>s:05 Aug 02</i>	02 Jan 96
Angola	10 Jan 92		17 Sep 86		06 Dec 90
Antigua and Barbuda		25 Oct 88	01 Aug 89	19 Jul 93	06 Oct 93
Argentina	08 Aug 86	02 Oct 68	15 Jul 85	24 Sep 86	05 Dec 90
Armenia	23 Jun 93	23 Jun 93	13 Sep 93	13 Sep 93	23 Jun 93
Australia	13 Aug 80	30 Sep 75	28 Jul 83	08 Aug 89	17 Dec 90
Austria	10 Sep 78	09 May 72	31 Mar 82	29 Jul 87	06 Aug 92
Azerbaijan	13 Aug 92	16 Aug 96	10 Jul 83	16 Aug 96	13 Aug 92
Bahamas		05 Aug 75	06 Oct 93		20 Feb 91
Bahrain		27 Mar 90	18 Jun 02	06 Mar 98	13 Feb 92
Bangladesh	07 Sep 00	11 Jun 79	06 Nov 84	05 Oct 98	03 Aug 90
Barbados	05 Jan 73	08 Nov 72	16 Oct 80		09 Oct 90
Belarus	12 Nov 73	08 Apr 69	04 Feb 81	13 Mar 87	02 Oct 90
Belgium	21 Apr 83	07 Aug 75	10 Jul 85	25 Jun 99	16 Dec 91
Belize	10 Jun 96	14 Nov 01	16 May 90	17 Mar 86	02 May 90
Benin	12 Mar 92	30 Nov 01	12 Mar 92	12 Mar 92	03 Aug 90
Bhutan		<i>s:26 Mar 73</i>	31 Aug 81		01 Aug 90
Bolivia	12 Aug 82	22 Sep 70	08 Jun 90	12 Apr 99	26 Jun 90
Bosnia Herzegovina	01 Sep 93	16 Jul 93	01 Sep 93	01 Sep 93	01 Sep 93
Botswana	08 Sep 00	20 Feb 74	13 Aug 96	08 Sep 00	14 Mar 95
Brazil	24 Jan 92	27 Mar 68	01 Feb 84	28 Sep 89	25 Sep 90
Brunei Darussalam					27 Dec 95
Bulgaria	21 Sep 70	08 Aug 66	08 Feb 82	16 Dec 86	03 Jun 91
Burkina Faso	04 Jan 99	18 Jul 74	14 Oct 87	04 Jan 99	31 Aug 90
Burundi	09 May 90	27 Oct 77	08 Jan 92	18 Feb 93	19 Oct 90
Cambodia	26 May 92	28 Oct 83	15 Oct 92	15 Oct 92	15 Oct 92
Canada	19 May 76	14 Oct 70	10 Dec 81	24 Jun 87	13 Dec 91
Cape Verde	06 Aug 93	03 Oct 79	05 Dec 80	04 Jun 92	04 Jun 92
Central African Republic	08 May 81	16 Mar 71	21 Jun 91		23 Apr 92
Chad	09 Jun 95	17 Aug 77	09 Jun 95	09 Jun 95	02 Oct 90
Chile	10 Feb 72	20 Oct 71	08 Dec 89	30 Sep 88	13 Aug 90
China	<i>s:05 Oct 98</i>	29 Dec 81	04 Nov 80	04 Oct 88	03 Mar 92
Colombia	29 Oct 69	02 Sep 81	19 Jan 82	08 Dec 87	28 Jan 91
Comoros		<i>s:22 Sep 00</i>	31 Oct 94	<i>s:22 Sep 00</i>	23 Jun 93
Congo	05 Oct 83	11 Jul 88	26 Jul 82		14 Oct 93

Country	CCPR	CERD	CEDAW	CAT	CRC
Cook Islands					06 Jun 97
Costa Rica	29 Nov 68	16 Jan 67	04 Apr 86	11 Nov 93	21 Aug 90
Croatia	12 Oct 92	12 Oct 92	09 Sep 92	12 Oct 92	12 Oct 92
Cuba	15 Feb 72	17 Jul 80	17 May 95	21 Aug 91	
Cyprus	02 Apr 69	21 Apr 67	23 Jul 85	18 Jul 91	07 Feb 91
Czech Republic	21 Feb 93	22 Feb 93	22 Feb 93	01 Jan 93	22 Feb 93
Côte d'Ivoire	26 Mar 92	04 Jan 73	18 Dec 95	18 Dec 95	04 Feb 91
Democratic People's Republic of Korea	14 Sep 81		21 Feb 01		21 Sep 90
Democratic Republic of the Congo	01 Nov 76	21 Apr 76	17 Oct 86	18 Mar 96	28 Sep 90
Denmark	06 Jan 72	09 Dec 71	21 Apr 83	27 May 87	19 Jul 91
Djibouti			02 Dec 98		06 Dec 90
Dominica	17 Jun 93		15 Sep 80		13 Mar 91
Dominican Republic	04 Jan 78	25 May 83	02 Sep 82	<i>s:04 Feb 85</i>	11 Jun 91
Ecuador	06 Mar 69	22 Sep 66	09 Nov 81	30 Mar 88	23 Mar 90
Egypt	14 Jan 82	01 May 67	18 Sep 81	25 Jun 86	06 Jul 90
El Salvador	30 Nov 79	30 Nov 79	19 Aug 81	17 Jun 96	10 Jul 90
Equatorial Guinea	25 Sep 87		23 Oct 84		15 Jun 92
Eritrea	23 Jan 02	01 Aug 01	05 Sep 95		03 Aug 94
Estonia	21 Oct 91	21 Oct 91	21 Oct 91	21 Oct 91	21 Oct 91
Ethiopia	11 Jun 93	23 Jun 76	10 Sep 81	13 Mar 94	14 May 91
Fiji	11 Jan 73	28 Aug 95		13 Aug 93	
Finland	19 Aug 75	14 Jul 70	04 Sep 86	30 Aug 89	21 Jun 91
France	04 Nov 80	28 Jul 71	14 Dec 83	18 Feb 86	08 Aug 90
Gabon	21 Jan 83	29 Feb 80	21 Jan 83	08 Sep 00	09 Feb 94
Gambia	22 Mar 79	29 Dec 78	16 Apr 93	<i>s:23 Oct 85</i>	08 Aug 90
Georgia	03 May 94	02 Jun 99	26 Oct 94	26 Oct 94	02 Jun 94
Germany	17 Dec 73	16 May 69	10 Jul 85	01 Oct 90	06 Mar 92
Ghana	08 Sep 00	08 Sep 66	02 Jan 86	08 Sep 00	05 Feb 90
Greece	05 May 97	18 Jun 70	07 Jun 83	06 Oct 88	11 May 93
Grenada	06 Sep 91	<i>s:17 Dec 81</i>	31 Aug 90		05 Nov 90
Guatemala	06 May 92	18 Jan 83	12 Aug 82	05 Jan 90	06 Jun 90
Guinea	24 Jan 78	14 Mar 77	09 Aug 82	10 Aug 89	13 Jul 90
Guinea-Bissau	<i>s:12 Sep 00</i>	<i>s:12 Sep 00</i>	23 Aug 85	<i>s:12 Sep 00</i>	21 Aug 90
Guyana	15 Feb 77	15 Feb 77	17 Jul 80	19 May 88	14 Jan 91
Haiti	06 Feb 91	19 Dec 72	20 Jul 81		09 Jun 95
Holy See		01 May 69		26 Jun 02	20 Apr 90
Honduras	25 Aug 97		03 Mar 83	05 Dec 96	10 Aug 90
Hungary	17 Jan 74	01 May 67	22 Dec 80	15 Apr 87	08 Oct 91

Country	CCPR	CERD	CEDAW	CAT	CRC
Iceland	22 Aug 79	13 Mar 67	18 Jun 85	23 Oct 96	28 Oct 92
India	10 Apr 79	03 Dec 68	09 Jul 93	<i>s:14 Oct 97</i>	11 Dec 92
Indonesia		25 Jun 99	13 Sep 84	28 Oct 98	05 Sep 90
Iran (Islamic Republic of)	24 Jun 75	29 Aug 68			13 Jul 94
Iraq	25 Jan 71	14 Jan 70	13 Aug 86		15 Jun 94
Ireland	08 Dec 89	29 Dec 00	23 Dec 85	11 Apr 02	28 Sep 92
Israel	03 Oct 91	03 Jan 79	03 Oct 91	03 Oct 91	03 Oct 91
Italy	15 Sep 78	05 Jan 76	10 Jun 85	12 Jan 89	05 Sep 91
Jamaica	03 Oct 75	04 Jun 71	19 Oct 84		14 May 91
Japan	21 Jun 79	15 Dec 95	25 Jun 85	29 Jun 99	22 Apr 94
Jordan	28 May 75	30 May 74	01 Jul 92	13 Nov 91	24 May 91
Kazakhstan		26 Aug 98	26 Aug 98	26 Aug 98	12 Aug 94
Kenya	01 May 72	13 Sep 01	09 Mar 84	21 Feb 97	31 Jul 90
Kiribati					11 Dec 95
Kuwait	21 May 96	15 Oct 68	02 Sep 94	08 Mar 96	21 Oct 91
Kyrgyzstan	07 Oct 94	05 Sep 97	10 Feb 97	05 Sep 97	07 Oct 94
Lao People's Democratic Republic	<i>s:07 Dec 00</i>	22 Feb 74	14 Aug 81		08 May 91
Latvia	14 Apr 92	14 Apr 92	15 Apr 92	14 Apr 92	15 Apr 92
Lebanon	03 Nov 72	12 Nov 71	21 Apr 97	05 Oct 00	14 May 91
Lesotho	09 Sep 92	04 Nov 71	22 Aug 95	13 Nov 01	10 Mar 92
Liberia	<i>s:18 Apr 67</i>	05 Nov 76	17 Jul 84		04 Jun 93
Libyan Arab Jamahiriya	15 May 70	03 Jul 68	16 May 89	16 May 89	16 Apr 93
Liechtenstein	10 Dec 98	01 Mar 00	22 Dec 95	02 Nov 90	22 Dec 95
Lithuania	20 Nov 91	10 Dec 98	18 Jan 94	01 Feb 96	31 Jan 92
Luxembourg	18 Aug 83	01 May 78	02 Feb 89	29 Sep 87	07 Mar 94
Madagascar	21 Jun 71	07 Feb 69	17 Mar 89	<i>s:01 Oct 01</i>	19 Mar 91
Malawi	22 Dec 93	11 Jun 96	12 Mar 87	11 Jun 96	03 Jan 91
Malaysia			05 Jul 95		17 Feb 95
Maldives		24 Apr 84	01 Jul 93		11 Feb 91
Mali	16 Jul 74	16 Jul 74	10 Sep 85	26 Feb 99	21 Sep 90
Malta	13 Sep 90	27 May 71	08 Mar 91	13 Sep 90	30 Sep 90
Marshall Islands					05 Oct 93
Mauritania		13 Dec 88	10 May 01		16 May 91
Mauritius	12 Dec 73	30 May 72	09 Jul 84	09 Dec 92	26 Jul 90
Mexico	23 Mar 81	20 Feb 75	23 Mar 81	23 Jan 86	21 Sep 90
Micronesia (Federated States of)					05 May 93
Monaco	28 Aug 97	27 Sep 95		06 Dec 91	21 Jun 93
Mongolia	18 Nov 74	06 Aug 69	20 Jul 81	24 Jan 02	06 Jul 90

Country	CCPR	CERD	CEDAW	CAT	CRC
Morocco	03 May 79	18 Dec 70	22 Jun 93	21 Jun 93	21 Jun 93
Mozambique	21 Jul 93	18 Apr 83	16 Apr 97	14 Sep 99	26 Apr 94
Myanmar			22 Jul 97		15 Jul 91
Namibia	28 Nov 94	11 Nov 82	23 Nov 92	28 Nov 94	01 Oct 90
Nauru	<i>s:12 Nov 01</i>	<i>s:12 Nov 01</i>		<i>s:12 Nov 01</i>	27 Jul 94
Nepal	14 May 91	30 Jan 71	22 Apr 91	14 May 91	14 Sep 90
Netherlands	11 Dec 78	10 Dec 71	23 Jul 91	21 Dec 88	06 Feb 95
New Zealand	28 Dec 78	22 Nov 72	10 Jan 85	10 Dec 89	06 Apr 93
Nicaragua	12 Mar 80	15 Feb 78	27 Oct 81	<i>s:15 Apr 85</i>	05 Oct 90
Niger	07 Mar 86	27 Apr 67	08 Oct 99	05 Oct 98	30 Sep 90
Nigeria	29 Jul 93	16 Oct 67	13 Jun 85	28 Jun 01	19 Apr 91
Niue				20 Dec 95	
Norway	13 Sep 72	06 Aug 70	21 May 81	09 Jul 86	08 Jan 91
Oman				09 Dec 96	
Pakistan		21 Sep 66	12 Mar 96		12 Nov 90
Palau				04 Aug 95	
Panama	08 Mar 77	16 Aug 67	29 Oct 81	24 Aug 87	12 Dec 90
Papau New Guinea		27 Jan 82	12 Jan 95		02 Mar 93
Paraguay	10 Jun 92	<i>s:13 Sep 00</i>	06 Apr 87	12 Mar 90	25 Sep 90
Peru	28 Apr 78	29 Sep 71	13 Sep 82	07 Jul 88	05 Sep 90
Philippines	23 Oct 86	15 Sep 67	05 Aug 81	18 Jun 86	21 Aug 90
Poland	18 Mar 77	05 Dec 68	30 Jul 80	26 Jul 89	07 Jun 91
Portugal	15 Jun 78	24 Aug 82	30 Jul 80	09 Feb 89	21 Sep 90
Qatar	22 Jul 76		11 Jan 00	04 Apr 95	
Republic of Korea	10 Apr 90	05 Dec 78	27 Dec 84	09 Jan 95	20 Nov 91
Republic of Moldova	26 Jan 93	26 Jan 93	01 Jul 94	28 Nov 95	26 Jan 93
Romania	09 Dec 74	15 Sep 70	07 Jan 82	18 Dec 90	28 Sep 90
Russian Federation	16 Oct 73	04 Feb 69	23 Jan 81	03 Mar 87	17 Aug 90
Rwanda	16 Apr 75	16 Apr 75	02 Mar 81		24 Jan 91
Saint Kitts and Nevis			25 Apr 85		24 Jul 90
Saint Lucia		14 Feb 90	08 Oct 82		16 Jun 93
Saint Vincent and the Grenadines	09 Nov 81	09 Nov 81	05 Aug 81	01 Aug 01	26 Oct 93
Samoa		25 Sep 92		29 Nov 94	
San Marino	18 Oct 85	12 Mar 02			25 Nov 91
Sao Tome and Principe	<i>s:31 Oct 95</i>	<i>s:06 Sep 00</i>	<i>s:31 Oct 95</i>	<i>s:06 Sep 00</i>	14 May 91
Saudi Arabia		23 Sep 97	08 Sep 00	23 Sep 97	26 Jan 96
Senegal	13 Feb 78	19 Apr 72	05 Feb 85	21 Aug 86	01 Aug 90
Seychelles	05 May 92	07 Mar 78	06 May 92	05 May 92	07 Sep 90

Country	CCPR	CERD	CEDAW	CAT	CRC
Sierra Leone	23 Aug 96	02 Aug 67	11 Nov 88	25 Apr 01	18 Jun 90
Singapore			05 Oct 95		05 Oct 95
Slovakia	28 May 93	28 May 93	28 May 93	28 May 93	28 May 93
Slovenia	06 Jul 92	06 Jul 92	06 Jul 92	16 Jul 93	06 Jul 92
Solomon Islands		17 Mar 82	06 May 02		10 Apr 95
Somalia	24 Jan 90	26 Aug 75		24 Jan 90	<i>s:09 May 0?</i>
South Africa	10 Dec 98	10 Dec 98	15 Dec 95	10 Dec 98	16 Jun 95
Spain 27 Apr 77	13 Sep 68	05 Jan 84	21 Oct 87	06 Dec 90	
Sri Lanka	11 Jun 80	18 Feb 82	05 Oct 81	03 Jan 94	12 Jul 91
Sudan 18 Mar 76	21 Mar 77		<i>s:04 Jun 86</i>	03 Aug 90	
Suriname	28 Dec 76	15 Mar 84	02 Mar 93		02 Mar 93
Swaziland		07 Apr 69			08 Sep 95
Sweden	06 Dec 71	06 Dec 71	02 Jul 80	08 Jan 86	29 Jun 90
Switzerland	18 Jun 92	29 Nov 94	27 Mar 97	02 Dec 86	24 Feb 97
Syrian Arab Republic	21 Apr 69	21 Apr 69			15 Jul 93
Tajikistan	04 Jan 99	11 Jan 95	26 Oct 93	11 Jan 95	26 Oct 93
Thailand	29 Oct 96		09 Aug 85		27 Mar 92
The Former Yugoslav Republic of Macedonia	18 Jan 94	18 Jan 94	18 Jan 94	12 Dec 94	02 Dec 93
Togo	24 May 84	01 Sep 72	26 Sep 83	18 Nov 87	01 Aug 90
Tonga	16 Feb 72			06 Nov 95	
Trinidad and Tobago	21 Dec 78	04 Oct 73	12 Jan 90		06 Dec 91
Tunisia	18 Mar 69	13 Jan 67	20 Sep 85	23 Sep 88	31 Jan 92
Turkey	<i>s:15 Aug 00</i>	<i>s:13 Oct 72</i>	20 Dec 85	02 Aug 88	04 Apr 95
Turkmenistan	01 May 97	29 Sep 94	01 May 97	25 Jun 99	20 Sep 93
Tuvalu		06 Oct 99		22 Sep 95	
Uganda	21 Jun 95	21 Nov 80	23 Jul 85	03 Nov 86	17 Aug 90
Ukraine	12 Nov 73	07 Mar 69	12 Mar 81	24 Feb 87	28 Aug 91
United Arab Emirates		20 Jun 74			03 Jan 97
United Kingdom of Great Britain and Northern Ireland	20 May 76	07 Mar 69	07 Apr 86	08 Dec 88	16 Dec 91
United Republic of Tanzania	11 Jun 76	27 Oct 72	20 Aug 85		11 Jun 91
United States of America	08 Jun 92	21 Oct 94	<i>s:17 Jul 80</i>	21 Oct 94	<i>s:16 Feb 9?</i>
Uruguay	01 Apr 70	30 Aug 68	09 Oct 81	24 Oct 86	20 Nov 90
Uzbekistan	28 Nov 95	28 Sep 95	19 Jul 95	28 Sep 95	29 Jul 94
Vanuatu			08 Sep 95		07 Jul 93

Country	CCPR	CERD	CEDAW	CAT	CRC
Venezuela	10 May 78	10 Oct 67	02 May 83	29 Jul 91	14 Sep 90
Viet Nam	24 Sep 82	09 Jul 82	17 Feb 82		28 Feb 90
Yemen	09 Feb 87	18 Oct 72	30 May 84	05 Nov 91	01 May 91
Yugoslavia	12 Mar 01	12 Mar 01	26 Feb 82	12 Mar 01	03 Jan 91
Zambia	10 Apr 84	04 Feb 72	21 Jun 85	07 Oct 98	06 Dec 91
Zimbabwe	13 May 91	13 May 91	14 May 91		11 Sep 90

Further Reading

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