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**APT**

# **Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa**

**Practical Guide for Implementation**

*By*

*Jean-Baptiste Niyizurugero  
and Patrick Lessène*

**PUBLISHED BY THE ASSOCIATION FOR THE  
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***“We want Robben Island to reflect the triumph of freedom  
and dignity over oppression and humiliation”***

Ahmed Katharada, former Robben Island detainee



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# FOREWORD

Like other human rights systems, the African Charter on Human and Peoples' Rights establishes the absolute prohibition of torture, cruel, inhuman or degrading treatment or punishment. Article 5 of the Charter provides that *"every individual shall have the right to respect of the inherent dignity of the human being and that all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."* The Charter also establishes a regional human rights body, the African Commission on Human and Peoples' Rights, with the mandate to promote respect for the Charter, ensure the protection of the rights and fundamental freedoms contained therein, and make recommendations for its application.

To fulfil its mission, the African Commission works with different partners, which include the authorities of States party to the African Charter, national human rights institutions and non-governmental organizations (NGOs). It is in this context of cooperation that the Association for the Prevention of Torture (APT) - an international NGO with Observer Status at the African Commission - suggested, during the African Commission's 28th ordinary session held in Cotonou, Benin, in October 2000, that a joint workshop be organised to draw up concrete measures for implementation of the provisions of Article 5 of the Charter and other international instruments aimed at preventing torture.

The workshop was held from 12 to 14 February 2002 on Robben Island, hence the name "Robben Island Guidelines (RIG)." Robben Island is a deeply symbolical place for Africa, since it was there that President Nelson Mandela was detained for several years, together with other opponents of the South African apartheid regime. This prison, built by men in the middle of the ocean with the purpose of humiliating, isolating and breaking the spirit of other men, is today a symbol of the victory of freedom over oppression, a beacon of hope and a reminder of our shared humanity.

The workshop brought together African and international experts from different professional backgrounds dealing with the issue of torture from its various angles. These joint efforts culminated in the drafting of a set of guidelines and measures for the prohibition and prevention of torture and cruel, inhuman or degrading punishment or treatment in Africa, now known as the "Robben Island Guidelines." These are contained in a document of some fifty articles comprising three main parts: the prohibition of torture, the prevention of torture, and rehabilitation of victims.

The Robben Island Guidelines were formally adopted by a resolution of the African Commission during its 32nd ordinary session in October 2002<sup>1</sup> and approved by the Conference of Heads of State and Government of the African Union held in Maputo, Mozambique, in July 2003.

During its 35th session held in Banjul, Gambia, from 21 May to 4 June 2004, the African Commission on Human and Peoples' Rights established a follow-up committee<sup>2</sup> to promote the implementation of the Guidelines and help the African Commission deal effectively with the question of torture in Africa.

The goal of this brochure is to highlight the role that the Robben Island Guidelines can play in combating torture in Africa and to provide national actors with a suggested approach for implementing them. Five years after the Guidelines were adopted, we felt it would be useful to propose a series of concrete measures, based on the results of the consultative meeting on the implementation of the Guidelines, which was organized jointly by the APT and the African Commission in Ouagadougou, Burkina Faso, on 8-9 December 2003. The recommendations from this meeting constitute a veritable "users' manual," which should be followed to ensure more effective application of the Guidelines. These recommendations were approved by the African Commission during its 36th session held in Dakar, Senegal, in November 2004.

Implementation of the Robben Island Guidelines requires a methodical and progressive approach. For this reason, this brochure highlights the need to determine the state of affairs in each country with respect to application of the Guidelines, in order to identify needs and areas for improvement. This evaluation should be as comprehensive as possible and include the legal framework and, above all, the practice in order to better identify priorities and take appropriate action.

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<sup>1</sup> ACHPR/ Res. 61 (XXXII) 02 (2002).

<sup>2</sup> The following Experts were nominated Members of the Follow-up Committee:

The following Experts were nominated Members of the Follow-up Committee:

Commissioner Ms. Sanji Monageng as former Chairperson ; Mr. Jean-Baptiste Niyizurugero as Vice-Chairperson - Africa Programme Officer, Association for the Prevention of Torture (APT); Mrs. Hannah Forster – African Centre for Democracy and Human Rights Studies (ACDHRS); Mrs. Leila Zerrougui – Magistrate and Professor of Law at the National Institute of Magistracy in Algiers and former Chairperson of the United Nations Working Group on Arbitrary Detention; Ms. Karen McKenzie, ; Advocate, – Director of the Independent Complaints Directorate of South Africa; Mr. Malick Sow- Coordinator of the Senegalese Committee of Human Rights and member of the United Nations Working Group on Arbitrary Detention.

During the 42nd session of the African Commission, Commissioner Dupe Atoki was appointed as new Chairperson of the Committee to replace Ms. Sanji Monageng who was elected President of the African Commission on Human and Peoples' Rights.



It goes without saying that, to ensure efficiency and consistency, the initiatives identified as priorities should be noted down in a detailed plan of action, if possible with a timeline.

Lastly, we would like to thank all those who, in one way or another, have contributed to the publication of this brochure. Our gratitude goes particularly to the experts who participated in the Ouagadougou meeting<sup>3</sup>, whose recommendations provided the basis for this text.

Our sincere thanks also go to the Ministries of Foreign Affairs of Switzerland and Denmark and to the Sigrid Rausing Trust for their financial contribution, without which this publication would not have been possible.

Jean Baptiste Niyizurugero  
Vice-Chairperson of the Follow-up  
Committee on the RIG

Commissioner Dupe Atoki  
Chairperson of the Follow-up  
Committee on the RIG

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<sup>3</sup> Mrs Salimata Sawadogo (former President of the African Commission on Human and Peoples' Rights and current Minister for the Promotion of Human Rights of Burkina Faso), Mrs Sandji Monageng (President of the African Commission on Human and Peoples' Rights and current President of the Robben Island Guidelines Follow-up Committee), Mrs Leila Zerrougui (Magistrate and former President of the United Nations Working Group on Arbitrary Detention), Mrs Lucienne Zouma (President of the ACAT-Burkina and member of the International Bureau of Fiacat), Mrs Fiona Adolu (former legal adviser at the African Commission on Human and Peoples' Rights), Mrs Karen Mckenzie (former Executive Director of the Independent Complaints Directorate), Mr Malick Sow (President of the Senegalese Committee of Human Rights and member of the United Nations Working Group on Arbitrary Detention, Prof. Malcolm Evans of the University of Bristol, Mr Vincent Zakané of the University of Ouagadougou, and Mr Honoré Tougouri (Magistrate and President of the African Penitentiary Association).



## The Robben Island Guidelines - a tool for preventing torture in Africa

### 1. Torture - a very widespread phenomenon

Although recent years have seen certain progress in the struggle against torture - for instance the establishment of the International Criminal Court (ICC), the adoption of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 18 December 2002, and attempts to apply universal jurisdiction, as in the cases of Pinochet and Hissen Habré - torture is still a deeply rooted phenomenon, and cruel, inhuman or degrading punishment or treatment continue to be tolerated and widely applied in many countries. The shocking images of the treatment of the presumed terrorists detained in Guantanamo and the question of illegal transfers of detainees towards States where they risk being tortured illustrate the prevalence of this abject practice from which no State in the world, not even the most democratic, appears to be completely free.

According to reports by different national and international human rights organizations, torture still exists in over half the countries of the world and is present on all continents. Africa is reported to register the highest incidence of torture and ill-treatment, followed by Asia. The Amnesty International Report 2007 documented acts of torture, extra-judicial executions and arbitrary arrests committed in 32 countries.<sup>4</sup>

In Africa, torture is thus still a flagrant reality which, in addition to its institutional aspect – entailing a vertical relationship between the authorities and citizens – also has a horizontal character, not yet conventional, ranging from the atrocities inflicted on civilian populations by militias and armed groups to acts of social violence. While violations of human rights stem primarily from abuses of power by the authorities, they also grow out of social relations, the criminalization of society, the warping of pseudo-traditions, cultural manipulation, social pressure, the practice of lynching, the dehumanization of certain social categories, the desire for a share in the corruption pie, and so on. Above all, it is the responsibility of States to ensure respect for and protection of the dignity and physical and mental integrity of the individual against all such kinds of abuse and violations.<sup>5</sup>

<sup>4</sup> Amnesty International Report 2007. ([www.amnesty.org](http://www.amnesty.org)).

<sup>5</sup> See paragraph 2 of General Comment No. 20 of the Human Rights Committee adopted on 10/03/92 during its 44th session. [www.unhcr.ch/tbs/doc.nsf](http://www.unhcr.ch/tbs/doc.nsf).

In most African countries, while situations of conflict, discrimination of all kinds and impunity constitute a breeding ground for torture and other forms of cruel and inhuman treatment, the lack of access to monitoring mechanisms and the non-respect for the judicial procedures of arrest and detention also favour the practice of torture. Furthermore, there are different kinds of torture, moral and physical. There are also different ways of inflicting same, these include but not limited to intimidation, mutilation, beating with sticks, solitary confinement, deprivation of sleep, etc.

## 2. Absolute and non-derogable condemnation of torture

Despite its prevalence and seemingly ineradicable nature, torture is prohibited by a number of international and regional human rights instruments, such as:

- The Universal Declaration of Human Rights (1948);<sup>6</sup>
- Standard Minimum Rules for the Treatment of Prisoners (1955);<sup>7</sup>
- The International Covenant on Civil and Political Rights (1966);<sup>8</sup>
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975);<sup>9</sup>
- Code of Conduct for Law Enforcement Officials;<sup>10</sup>
- The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988);<sup>11</sup>
- The African Charter on Human and Peoples' Rights (1981);<sup>12</sup>

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<sup>6</sup> Article 5.

<sup>7</sup> United Nations Economic and Social Council Resolution 663 C (XXIV) of 31 July 1957.

<sup>8</sup> Article 7.

<sup>9</sup> United Nations General Assembly Resolution 3452 (XXX) of 9 December 1975.

<sup>10</sup> Articles 2 and 5.

<sup>11</sup> Article 1.

<sup>12</sup> Article 5.

- The Convention for the Protection of Human Rights and Fundamental Freedoms (or European Convention on Human Rights) (1950);<sup>13</sup>
- The American Convention on Human Rights (1969);<sup>14</sup>
- The Inter-American Convention for the Prevention and Repression of Torture (1985).

The prohibition of torture is generally considered to belong to the category of “*jus cogens*”, that is, peremptory norms having the force of law for the international community. It is part of customary law, which applies to all States, whether they have signed a particular international instrument or not. Torture is universally condemned and “*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*”.<sup>15</sup> As a result, the individual’s right not to be subjected to torture is a non-derogable right that is linked to the absolute respect for the dignity inherent to the human being and is part of the “hard core” of human rights.

### **3. The prohibition and prevention of torture - two interrelated obligations**

Respect for the dignity inherent to the human person entails, among other things, a dual obligation to prohibit and to prevent torture. The international ban on torture demands of States that they prohibit and punish acts of torture, in particular through their internal legislation, and that they provide the victims with the necessary legal and material remedies.

The obligation to prevent torture means that governments must take positive action, for example, by:

- introducing measures to combat impunity, in particular by guaranteeing an independent judicial system and respect for the right to a fair trial;
- ensuring proper training of security and other law enforcement officials;

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<sup>13</sup> Article 3.

<sup>14</sup> Article 5.2.

<sup>15</sup> Article 2(2) of the United Nations Convention against Torture.

- establishing fundamental guarantees for persons deprived of their liberty, especially during the period of custody and pre-trial detention;
- introducing oversight and monitoring mechanisms;
- implementing measures to improve conditions of detention, etc.

Therefore, enforcing the ban on torture goes beyond States' obligation not to practice torture and not to resort to other forms of ill-treatment. It is not enough for a State to adopt a passive attitude of abstention. The preventive aspect of the obligation requires a proactive approach involving the adoption of concrete measures to prevent or at least limit the risk of torture and ill-treatment.<sup>16</sup> Whether the prohibition against torture is effective or not can only be evaluated and appreciated in light of the preventive measures taken to guarantee protection of all persons against the risk of torture and cruel, inhuman or degrading treatment. In other words, the duty to prohibit and the duty to prevent go hand in hand. The latter is the natural consequence of the former.

The United Nations Convention against Torture of 1984 illustrates this relationship clearly. It goes further than asserting the simple principle of prohibition and introduces the duty to prevent when it provides that: "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction."<sup>17</sup>

Moreover, this obligation to prevent applies not only to acts of torture but also to other kinds of cruel, inhuman or degrading punishment or treatment. Article 16 of the same Convention states that: "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."

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<sup>16</sup> See Paragraph 8 of General Comment No. 20 of the Human Rights Committee adopted on 10/03/92 during its 44th session. [www.unhchr.ch/tbs/doc.nsf](http://www.unhchr.ch/tbs/doc.nsf).

<sup>17</sup> Article 2 of the United Nations Convention against Torture.

## **4. The Robben Island Guidelines - an ideal tool for the prohibition and prevention of torture in Africa**

If the principles of the prohibition and the prevention of torture are to be implemented effectively, national actors need some form of guidance in putting the provisions contained in the different regional and international instruments into practice. This was the rationale behind the adoption of the Robben Island Guidelines.

The Guidelines constitute an essential tool for States in fulfilling their national, regional and international obligations to strengthen and implement the prohibition and prevention of torture. The African Commission and NGOs can also use them as a platform for continuously challenging States and other stakeholders to take action to prevent torture and other cruel, inhuman or degrading treatment.

The Robben Island Guidelines reiterate the absolute, universal and non-derogable condemnation of torture. They are divided into three parts: “Prohibition of Torture”, “Prevention of Torture”, and “Responding to the Needs of Victims.”

The first part calls on States to ratify existing legal instruments and integrate them into domestic legislation. In particular, the act of torture must be “criminalized” and prosecuted. At the same time, it invites States to cooperate with regional and international human rights mechanisms.

The second part presents a range of preventive measures, covering the different stages of criminal law procedure in which there is a real risk of torture occurring. It details the safeguards that should be provided in particular during arrest, custody, temporary detention, trial and imprisonment in general. The Guidelines also highlight the need to establish mechanisms of oversight, for example a system for regular visits to places of detention and independent bodies empowered to receive complaints. They further advocate for the setting up of educational and awareness-raising programmes for the public as well as human rights training, in particular for law enforcement officials.

The third part of the Guidelines looks at ways of responding to the needs of the victims. Indeed, assisting the victims is also a duty of States, which should take measures to treat, support and provide reparation and rehabilitation for the victims.

## **5. The importance of implementing the Robben Island Guidelines at national level**

The adoption of the Robben Island Guidelines represents an essential step forward in the promotion of human rights and the prevention of torture and ill-treatment in Africa, but it is not an end in itself. To have a real impact and contribute to improving the human rights situation in Africa, the Robben Island Guidelines must be promoted and applied at national level. This requires cooperation, dialogue, sustained efforts and commitment by many different actors, such as State authorities, parliamentarians, national human rights institutions and members of civil society. The African Commission must also continue to promote good practices in the application of these Guidelines.

In light of the above, the aim of this guide is to propose a practical approach for effective implementation of the prohibition and prevention of torture at national level. The text has therefore been structured as follows:

It is divided into three main chapters covering the three parts of the Robben Island Guidelines. The relevant articles from the Guidelines are reproduced in italics, followed by a brief comment and a series of concrete questions. These should be used to evaluate the situation in the country concerned in order to identify needs and determine priorities.

Lastly, suggestions for concrete action are made, intended for relevant actors such as States, civil society, the African Commission and its Follow-up Committee on the Implementation of the Robben Island Guidelines "Follow-up Committee".

This guide therefore serves as a complementary tool to the Robben Island Guidelines, aimed at facilitating their effective implementation.



# **PART I. PROHIBITION OF TORTURE**

**A- Ratification of regional and international instruments 13**



**B- Promote and support co-operation with international mechanisms 17**

**C- Criminalization of torture 26**


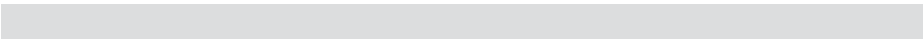
**D- Non-refoulement 31**

**E- Combating impunity 35**

**F- Complaints and investigation procedures 38**



***The prohibition of torture and ill-treatment is embedded in international treaties and customary international law. States must respect, promote and ensure this prohibition in law and in practice. The Guidelines identify various measures to be taken, which will be expanded on below.***



# A - RATIFICATION OF REGIONAL AND INTERNATIONAL INSTRUMENTS

## Article 1

*States should ensure that they are a party to relevant international and regional human rights instruments and ensure that these instruments are fully implemented in domestic legislation and accord individuals the maximum scope for accessing the human rights machinery that they establish. This would include:*

*a- Ratification of the Protocol to the African Charter of Human and Peoples' Rights establishing an African Court of Human and Peoples' Rights;*

*b- Ratification of or accession to the UN Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment without reservations, to make declarations accepting the jurisdiction of the Committee against Torture under Articles 21 and 22 and recognising the competency of the Committee to conduct inquiries pursuant to Article 20;*

*c- Ratification of or accession to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the First Optional Protocol thereto without reservations;*

*d- Ratification of or accession to the Rome Statute establishing the International Criminal Court;*

## Commentary

Full participation in relevant international human rights instruments is an important first step indicative of a State's willingness to address torture. The obligations they contain constitute benchmarks against which States can develop their own internal law and practice and against which their performance can be assessed.

Thus, for effective implementation of the prohibition of torture, it is necessary first to make sure that the State has ratified without reservation the following main treaties:

- The African Charter on Human and Peoples' Rights of 27 June 1981;<sup>18</sup>
- The Protocol to the African Charter on Human and Peoples' Rights Establishing an African Court on Human and Peoples' Rights, and made a declaration under Article 34(6) of the Protocol Establishing the African Court;<sup>19</sup>
- The International Covenant on Civil and Political Rights and its first Protocol;
- The International Covenant on Economic, Social and Cultural Rights;
- The Rome Statute of the International Criminal Court (ICC);<sup>20</sup>
- The UN Convention against Torture (UNCAT), and made declarations regarding Articles 21 and 22;<sup>21</sup>
- The Optional Protocol to the UN Convention against Torture (OP-CAT).<sup>22</sup>

However, ratification is only the first stage. After ratification, the State must integrate the legal instruments into its internal legal system, notably by publishing them in the official national gazette, so that they have obligatory value and can be invoked by all citizens.

While most African national constitutions mention some of these instruments in their preambles, few of them integrate their provisions into constitutional law or into the national legal corpus.<sup>23</sup> This explains the importance of passing a law implementing the international obligations contained in the ratified treaties.

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is an imperative standard of international law belonging to "*jus cogens*",

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<sup>18</sup> The African Charter of Human and Peoples' Rights has been ratified by all 53 States of the African Union.

<sup>19</sup> As at 26 May 2007, there were 23 ratifications and 49 signatures ([www.africa-union.org/root/au/Documents/Treaties/List/](http://www.africa-union.org/root/au/Documents/Treaties/List/)).

<sup>20</sup> As at 1 January 2007, 29 African countries had adhered to the Rome Statute ([www.icc-cpi.int/asp/statesparties.html](http://www.icc-cpi.int/asp/statesparties.html)).

<sup>21</sup> As at 20 July 2007, 42 African countries had ratified it and six had signed it.

<sup>22</sup> The Protocol came into force on 22 June 2006. Only 13 African States out of 53 have clearly shown their will to adhere to this international treaty: five States have ratified it (Mali, Benin, Liberia, Mauritius and Senegal) and eight have already signed it (Burkina Faso, Gabon, Ghana, Guinea, Madagascar, Sierra Leone, South Africa and Togo).

<sup>23</sup> Examples: Article 40 of the Constitution of Benin of 1990 and Article 63 of the Constitution of Cameroon of 1996, which integrate these conventions into constitutional law.

and as such it expresses the imperatives of the universal consciousness. Thus, the treaties relating to it cannot admit reservations which would empty them of their substance. Reservations are not forbidden because they can play a useful role in allowing States to make specific elements in their legislation compatible with the rights inherent to the individual.<sup>24</sup> But a State cannot emit any reservation it so pleases. According to Article 19, paragraph 3 of the Vienna Convention on the Law of Treaties of 1969, a State can emit a reservation as far as it is not incompatible with the object and the purpose of the treaty.<sup>25</sup> This is highlighted in the Robben Island Guidelines.

In light of these observations, States and national actors should examine any reservations made regarding the instruments mentioned above and ensure that they are compatible with the object and purpose of the treaties. No reservations should refer to the core provisions regarding the prohibition and the prevention of torture contained in the international or regional instruments.

## Questions for consideration

Has the country ratified, without reservations:

- The African Charter on Human and Peoples' Rights?
- The Protocol to the African Charter on Human and Peoples' Rights Establishing an African Court on Human and Peoples' Rights and made a declaration under Article 34(6) of the Protocol Establishing the African Court?
- The International Covenant on Civil and Political Rights and its first Protocol?
- The International Covenant on Economic, Social and Cultural Rights?
- The Rome Statute of the International Criminal Court (ICC)?
- The UN Convention against Torture (UNCAT), and made declarations regarding Articles 21 and 22?
- The Optional Protocol to the UN Convention against Torture (OP-CAT)?

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<sup>24</sup> See Paragraph 4 of General Comment No. 24 of the Human Rights Committee adopted on 1/11/94 during its 52nd session. ([www.unhchr.ch/tbs/doc.nsf](http://www.unhchr.ch/tbs/doc.nsf))

<sup>25</sup> See Paragraph 6 of General Comment No. 24 of the Human Rights Committee adopted on 11/11/94 during its 52nd session. ([www.unhchr.ch/tbs/doc.nsf](http://www.unhchr.ch/tbs/doc.nsf))

- Have appropriate instruments of ratification been publicized in the official national gazette?
- Have reservations been made to any of the treaties above? If so what are they?
- What is the relative status of international legal obligations within the country's legal order?
- Has appropriate legislation been enacted implementing the above treaty obligations?

## Recommendations

### To States

- **Ratify and implement these instruments in their entirety without reservations as a priority;**
- **Consider withdrawing any reservations that have been made.**

### To Civil Society

- **Campaign for ratification and implementation of these instruments;**
- **Lobby relevant authorities, such as ministers and parliamentarians, for ratification;**
- **Develop tools to assist States in implementing their obligations under these instruments.**

### **To the African Commission and the Follow-up Committee on the Implementation of the Robben Island Guidelines (Follow-up Committee)**

- **Promote ratification without reservations and implementation of these instruments by all Member States.**

## B - PROMOTE AND SUPPORT CO-OPERATION WITH INTERNATIONAL MECHANISMS

### *Article 2*

*States should co-operate with the African Commission on Human and Peoples' Rights and promote and support the work of the Special Rapporteur on Prisons and Conditions of Detention in Africa, the Special Rapporteur on Arbitrary, Summary and Extra-judicial Executions in Africa and the Special Rapporteur on the Rights of Women in Africa.*

### *Article 3*

*States should co-operate with the United Nations Human Rights Treaty Bodies, with the UN Commission on Human Rights' thematic and country specific special procedures, in particular, the UN Special Rapporteur on Torture, including the issuance of standing invitations for these and other relevant mechanisms.*

### **Commentary**

Participation in international instruments is only a starting point. States must cooperate with international bodies in order to realize their international obligations. This cooperation can take many forms, some of which are indicated by the questions below.

At the universal level, several specific mechanisms for combating torture, or that deal with this question within their mandate, have been established by United Nations treaties. Thus:

- The Committee against Torture was established by the Convention against Torture on 10 December 1984 and is composed of ten independent experts, elected by the States Parties, who serve in an individual capacity. On receiving information that torture is being systematically practised in a State Party, it can proceed to a confidential inquiry (Article 20 of the Convention against Torture). Individuals can submit communications to the Committee (Article 22 of the Convention against Torture). All States Parties are required to submit reports to the Committee on the measures they are taking to implement the commitments assumed by signing the treaty. The first report must be submitted one year after the Convention enters into force for the State concerned; subsequent reports must be submitted every four years.

- The Subcommittee on the Prevention of Torture (SPT) was established by the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted on 18 December 2002 and entered into force in June 2006. The SPT was effectively established on 18 December 2006 and is composed of ten independent experts elected by the States Parties and serving in an individual capacity. It has a mandate to conduct regular and unexpected visits to places of detention in a spirit of cooperation, to prevent torture and ill-treatment (Article 11-a). The mandate concerning visits is one of the aspects of the Protocol which makes it unique within the framework of the UN system for the protection of human rights.

The SPT also has competence to proactively offer advice and assistance about national preventive mechanisms, by addressing either the States Parties or the mechanisms directly (Article 11-b).

Lastly, the SPT cooperates with other international and regional mechanisms, but also with national, regional and international NGOs. These can supply detailed information on the situation of persons deprived of their liberty in the States Parties, as well as on the functioning of national preventive mechanisms and on the extent to which its recommendations have been implemented.

- The Human Rights Committee was established by the International Covenant on Civil and Political Rights on 16 December 1966. It is composed of 18 independent experts elected by the States Parties and serving in an individual capacity. It has competence to receive individual and State communications (Article 41 of the Covenant). All States party to the Covenant must submit a report on the steps they are taking to grant the rights recognized by the treaty. Their first report must be submitted at the end of one year, and subsequent reports whenever the Committee so requests.
- The Committee on the Elimination of Racial Discrimination is composed of 18 independent experts elected by the States Parties and serving in an individual capacity. It receives individual and State communications (Article 14 of the Convention).
- The Committee on the Rights of the Child was established by the Convention on the Rights of the Child on 20 November 1989. It is composed of 18 independent experts elected by the States Parties and serving in an individual capacity. The Committee is empowered to examine the reports submitted by each State.



In addition to these Convention-based mechanisms, the former Commission of Human Rights, which became the Council of Human Rights on 15 March 2006, established thematic mechanisms. Concerning torture, these are:

- The United Nations Special Rapporteur on Torture, empowered to examine questions related to torture since 1985. He sends communications to governments. He can send urgent appeals to governments to ensure protection of individuals at risk of being subjected to torture or cruel, inhuman and degrading treatment or punishment. He submits an annual report, with recommendations, to the Council of Human Rights;
- The Special Rapporteur on Extra-Legal, Arbitrary and Summary Executions, appointed in 1982 to intervene in all cases where the right to life is violated, especially where death occurs as a result of torture during detention. He receives allegations, forwards urgent appeals, and may effect on-site missions of inquiry and visit persons deprived of liberty provided the State in question gives its permission. He submits an annual report to the Council of Human Rights;
- The Working Group on Arbitrary Detention, formed in 1991. It is composed of five independent experts. Its mission is to investigate cases of detention imposed arbitrarily or in any other manner incompatible with international norms. Like the other thematic mechanisms, it is competent to receive allegations, forward urgent appeals to governments and, with the permission of the State concerned, visit its territory and make inquiries there. The Working Group submits an annual report to the Council of Human Rights.

Like other regions, Africa has established a certain number of Convention-based and thematic mechanisms at the regional level aimed at guaranteeing an effective right to all persons not to be subjected to torture or cruel, inhuman or degrading treatment or punishment. These include:

- The African Commission on Human and Peoples' Rights, which is empowered to promote human and peoples' rights and ensure their protection in Africa. It is composed of 11 members elected for their competence in matters of human and peoples' rights, their high morality and integrity.<sup>26</sup> They are elected for a six-year period and are eligible for re-election. They serve in their personal capacity.

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<sup>26</sup> Article 31, paragraph 2 of the African Charter.

The African Commission has a broad mandate: to collect documents, undertake studies and research on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, and formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights. The African Commission is empowered to interpret all the provisions of the African Charter at the request of a State Party, an institution of the Organization of the African Union (OAU) or an African organization recognized by the OAU.<sup>27</sup> It may resort to any appropriate method of investigation and visit on-site to evaluate the situation of human rights.<sup>28</sup> States party to the African Charter are required to submit a report every two years. It has competence to receive State communications (Articles 47-54 of the African Charter) or individual communications (Articles 55 in 56 of the African Charter);

- The African Court on Human and Peoples' Rights, established by the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights which was adopted at Ouagadougou in 1998 and entered into force on 25 January 2004. It is composed of 11 judges elected in an individual capacity. They are elected for a period of six years and may be re-elected only once. They undertake their duties impartially and faithfully (Articles 16 and 17, paragraph 1). The first judges were elected on January 2006.

The jurisdiction of the Court extends to all cases and disputes submitted to it concerning the interpretation and application of the African Charter, the Protocol and any other relevant human rights instruments ratified by the States concerned. It has competence to receive communications from the African Commission, States, NGOs and individuals.<sup>29</sup> The Court hears submissions by all States Parties and if deemed necessary orders an enquiry. The States concerned shall assist by providing relevant facilities for the efficient handling of the case (Article 26, paragraph 1).

The rulings of the African Court have a broad reach.<sup>30</sup>

According to Article 27, paragraph 1 of the Protocol, the Court can order measures of reparation.

<sup>27</sup> Article 45 of the African Charter.

<sup>28</sup> Article 46 of the African Charter.

<sup>29</sup> Article 5 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. Individuals and NGOs can only submit cases to the Court if the State concerned has made a declaration accepting the competence of the Court to receive cases.

<sup>30</sup> Article 28 of the Protocol to the African Charter on Human and Peoples' Rights.

As regards African thematic mechanisms, the African Commission has created a certain number of specific procedures, including:

- The Special Rapporteur on Prisons and Conditions of Detention in Africa has the mission to evaluate the conditions of detention in Africa and to identify the main problems existing in prisons. On the basis of these observations, he formulates specific recommendations with the aim of improving conditions of detention in Africa. He encourages reflection to find pragmatic and concrete solutions, and refers directly to governments through urgent appeals. He may also visit places of detention in various countries to collect information on conditions of detention directly. He meets with representatives of the national authorities, the prison service and human rights NGOs. During his visits to places of detention, the Special Rapporteur asks for access to the entire premises and conducts interviews in private with the detainees.

Before leaving the country, the Special Rapporteur meets again with the national authorities and the prison service to discuss his observations with them. He formulates a number of recommendations on the most striking problems. Afterwards, the Special Rapporteur drafts a report and submits it to the government of the country visited, which then communicates its comments or measures taken since the Special Rapporteur's visit. Reports are presented for validation during the sessions of the African Commission. They are then published and sent to the authorities of the country concerned and to all Member States of the African Union.

- The Follow-Up Committee on the Implementation of the Robben Island Guidelines<sup>31</sup> was established by the African Commission on Human and Peoples' Rights during its 35th session in Banjul, Gambia, from 21 May - 4 June 2004. The Follow-up Committee's mandate is: to organize, with the support of interested partners, seminars to disseminate the Robben Island Guidelines to national and regional stakeholders; to develop and propose to the African Commission strategies to promote and implement the Robben Island Guidelines at the national and regional levels; to promote and facilitate the implementation of the Robben Island Guidelines within Member States; and to make a progress report to the African Commission at each ordinary session.

Cooperation with these different mechanisms may take several forms: the submission and presentation of reports as well as the invitation to conduct visits on site.

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<sup>31</sup> See footnote on page 2 for the composition of the Follow-up Committee.

## - Submission and presentation of reports

Firstly, States submit reports to the African Commission on Human and Peoples' Rights. Indeed, by ratifying the African Charter, States are required to submit reports every two years on the human rights situation<sup>32</sup> and on the measures they are taking to implement the commitments assumed by signing the Charter.<sup>33</sup> On 29 June 2007, only 14 States had submitted and presented all their reports,<sup>34</sup> two States had submitted all their reports and were going to present them to the 42nd session of the African Commission,<sup>35</sup> eight had submitted two reports but were late in the presentation,<sup>36</sup> 14 States had submitted only one report<sup>37</sup> and 15 States had never submitted or presented a report.<sup>38</sup>

The examination of these reports allows the African Commission and the Follow-up Committee to determine the evolution of the implementation of the Robben Island Guidelines and the fight against torture or cruel, inhuman and degrading treatment or punishment in general.

Thus, the Robben Island Guidelines have become a systematic tool for the examination and evaluation of periodic reports by the African Commission. For example, during the 37th session of the African Commission, the president of the Follow-up Committee asked the Rwandan delegation if Rwanda had implemented these guidelines and had established acts of torture as autonomous violations to be punished by the law.<sup>39</sup> Similarly, during the 41st session of the Commission, the members of the Commission asked the Kenyan delegation to supply elements on the implementation of the Robben Island Guidelines, notably as regards the protection of persons deprived of their liberty.<sup>40</sup>

The States should also submit reports to UN mechanisms such as the Committee of Human Rights and the Committee against Torture.

<sup>32</sup> Article 62 of the African Charter on Human and Peoples' Rights.

<sup>33</sup> Articles 81-86 of Rules of Procedures of the African Commission on Human and Peoples' Rights.

<sup>34</sup> Cameroon, Central Africa Republic, Egypt, Libya, Mauritania, Nigeria, Rwanda, Seychelles, South Africa, Sudan, Uganda, Kenya, Zambia and Zimbabwe.

<sup>35</sup> Algeria and Angola.

<sup>36</sup> Benin (2 reports late), Burkina Faso (1 report late), Gambia (5 reports late), Ghana (2 reports late), Namibia (2 reports late), Senegal (1 report late), Togo (2 reports late) and Tunisia (5 reports late).

<sup>37</sup> Burundi, Cape Verde, Chad, Republic of the Congo, Democratic Republic of the Congo, Republic of Guinea, Lesotho, Mali, Mauritius, Mozambique, Niger, Sahrawi Arab Democratic Republic, Swaziland and Tanzania.

<sup>38</sup> Botswana, Djibouti, Equatorial Guinea, Eritrea, Gabon, Guinea-Bissau, Ivory Coast, Liberia, Madagascar, Malawi, Sao Tome and Principe, Sierra Leone and Somalia.

<sup>39</sup> 37th Session of African Commission held to Banjul, The Gambia, 27 April - 11 may 2005.

<sup>40</sup> 41th Session of African Commission held to Accra, Ghana, 6 - 30 may 2007.

The reports should contain precise information about all measures taken to implement the Robben Island Guidelines. Similarly, these mechanisms should emphasize the need to apply the measures contained in the Guidelines in their recommendations.

NGOs should also obtain the governments' reports for comments and should submit alternative reports in light of the Robben Island Guidelines to the regional and universal mechanisms.

### - Cooperation with thematic mechanisms

If the measures prohibiting and preventing torture or cruel, inhuman and degrading treatment or punishment are to be effective, a constructive dialogue must exist between States and regional and international human rights mechanisms. This dialogue can be fruitful only if it is based on visits by these mechanisms.

In Africa, this cooperation could, for example, consist of inviting the Special Rapporteur on Prisons and Conditions of Detention or the Rapporteur on the Rights of Women in Africa to effect missions in each State Party.<sup>41</sup>

At the international level, States should issue standing invitations to visit to the mechanisms most concerned by the question of torture, such as the Committee of Human Rights and the Committee against Torture, but also the Special Rapporteur on Torture and the UN Working Group on Arbitrary Detention.<sup>42</sup>

### Questions for consideration

- What is the country's record of submitting reports to human rights treaty bodies?
- Does the country submit its reports on time? Does the country follow the reporting guidelines issued by the treaty bodies?

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<sup>41</sup> For lack of invitations and of means, the Special Rapporteur on prisons and conditions of detention in Africa made very few missions besides ten years of existence. For further information, visit the site: <http://www.achpr.org>. Read also Frans Viljoen et Chidi Odinkalu, *The Prohibition of Torture and Ill-treatment in the African Human Rights System*, a handbook for victims and their advocates, OMCT, 2006, pp.116-123. Otherwise, the position of the Special Rapporteur on Extra-Judicial, Summary and Arbitrary Executions in Africa has been vacant for the last few years

<sup>42</sup> It is advisable to highlight that the Subcommittee of the prevention of torture, established by the Optional Protocol to the United Nations Convention against torture of 18 December 2002, does not need a particular invitation to conduct visit in a State Party. In effect, by ratifying the optional Protocol, the State recognizes it automatically the right of access to all place of detention (articles 12 and 14 of the Optional Protocol of 18 December 2002).

- Who is responsible for the drafting of periodic reports to the treaty bodies? Are national, international and regional human rights institutions or organizations consulted during the process?
- Has the country received and cooperated fully with any visits or requests for visits made by regional or international special mechanisms?
- Has the country issued a standing invitation to these different mechanisms to conduct a visit?
- Have the conclusions and recommendations adopted by the treaty bodies or special mechanisms been disseminated widely and fully implemented?
- Does the country fully cooperate with the work of treaty bodies with regard to complaints procedures?
- Is there any ongoing dialogue with any treaty monitoring body? Who is responsible for that dialogue?

## **Recommendations**

### **To States**

- **Issue standing invitations to conduct country visits;**
- **Submit periodic reports on time to treaty bodies;**
- **Designate a particular department with responsibility for drafting periodic reports;**
- **Implement conclusions and recommendations adopted by treaty bodies or special mechanisms;**
- **Refer to the Guidelines when preparing periodic reports;**
- **Consult with national, international and regional human rights institutions and organizations when preparing periodic reports;**

- **Make publicly available periodic reports and widely disseminate any recommendations received;**
- **Fully cooperate with any follow-up requests from these mechanisms;**
- **Fully cooperate and respond positively to any requests made by relevant treaty bodies or special mechanisms.**

### **To Civil Society**

- **Submit information, alternative reports and cases to treaty bodies and other relevant mechanisms;**
- **Follow up on conclusions and recommendations by treaty bodies and other relevant mechanisms.**
- **Make sure government reports and follow-up answers and treaty body or special mechanism conclusions, recommendations and follow-up requests are publicly available and widely disseminated.**

### **To the African Commission and the Follow-up Committee**

- **Provide technical assistance to national bodies and institutions;**
- **Identify and promote best practices regarding cooperation with international mechanisms;**
- **Exchange experience with the UN and other regional mechanisms;**
- **In the examination of State reports, urge Member States to promote and implement the Guidelines;**
- **Publish (including via its website) State reports and concluding observations as soon as possible after their examination.**

## C - CRIMINALIZATION OF TORTURE

### Article 4

*States should ensure that acts, which fall within the definition of torture, based on Article 1 of the UN Convention against Torture, are offences within their national legal systems.*

### Article 5

*States should pay particular attention to the prohibition and prevention of gender-related forms of torture and ill-treatment and the torture and ill-treatment of young persons.*

### Article 6

*National courts should have jurisdictional competence to hear cases of allegations of torture in accordance with Article 5 (2) of the UN Convention against Torture.*

### Article 7

*Torture should be made an extraditable offence.*

### Article 8

*The trial or extradition of those suspected of torture should take place expeditiously in conformity with relevant international standards.*

### Article 9

*Circumstances such as state of war, threat of war, internal political instability or any other public emergency, shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.*

### Article 10

*Notions such as “necessity”, “national emergency”, “public order”, and “ordre public” shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.*



*Article 11*

*Superior orders shall never provide a justification or lawful excuse for acts of torture, cruel, inhuman or degrading treatment or punishment.*

*Article 12*

*Those found guilty of having committed acts of torture shall be subject to appropriate sanctions that reflect the gravity of the offence, applied in accordance with relevant international standards.*

*Article 13*

*No one shall be punished for disobeying an order that they commit acts amounting to torture, cruel, inhuman or degrading treatment or punishment.*

*Article 14*

*States should prohibit and prevent the use, production and trade of equipment or substances designed to inflict torture or ill-treatment and the abuse of any other equipment or substance to these ends.*

## Commentary

States should ensure that all acts of torture are criminal offences leading to appropriate sanctions (i.e. taking into account the grave nature of such acts) within their national legal systems, and that any definition of torture is at least consistent with that contained in Article 1 of the UNCAT.<sup>43</sup>

Given the postulate that the threat of sanctions is often an effective means for fighting crime, the criminalization of torture is achieved through the enactment of consequent punishments for violations of this prohibition. Penal and civil sanctions would need to be foreseen, as well as the aggravating circumstances of the offence. As for all offences, the law should determine cases of complicity and attempts to commit torture.

Due to the absolute nature of the ban on torture, the inadmissibility of certain means of defence should be clearly established. States should also ensure that exceptional circumstances such as states of emergency, political instability or armed conflict

<sup>43</sup> Example of criminalization of torture: Article 132 of the Criminal Law of Cameroon of 10 January 1997.

cannot be invoked to justify the use of torture. Moreover, orders from a superior should not be considered as a justification for acts of torture (although they may be a mitigating circumstance). Due to the inviolable and absolute character of the prohibition of torture and other cruel, inhuman and degrading treatment or punishment, there can be no circumstances that permit the use of torture no matter the time or the place.

By contrast, the absolute prohibition of torture means that the legal argument could be made to justify disobedience to an order to commit an act of torture and other cruel, inhuman and degrading treatment or punishment.

States should also ensure that their courts have jurisdictional competence to hear cases of allegations of torture in accordance with Article 5(2) of the UNCAT. To this end, the competence of national jurisdictions should extend to all acts of torture, including those:

- committed on the national territory of the State or in any other place under its jurisdiction, including notably ships or aircraft registered in the State;
- in which the alleged perpetrator is a national of the State;
- in which the victim is a national of the State;
- in which the alleged perpetrator, after perpetration of the act, is located on the national territory of the State or in any other place under its jurisdiction.

Moreover, in accordance with the principle that, in matters of torture, States have the “obligation to prosecute or extradite,” States must either prosecute all alleged perpetrators of torture located on their territory or extradite them so that they can be judged by another competent State if the latter should so request. Extradition to a third State should take place respecting the principle of “non-refoulement,” which is dealt with the following section. In addition, States should not grant perpetrators of acts of torture amnesty or other immunities<sup>44</sup> which would guarantee them impunity. Acts of torture and other cruel, inhuman and degrading treatment or punishment should be declared imprescriptible.

States must also ensure that any allegations or other evidence of torture are promptly, effectively and impartially investigated, that victims have access to

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<sup>44</sup> International Court of Justice, *Congo v Belgium*, paragraphs 59-61, (<http://www.icj-cij.org/docket/files/121/8125.pdf>)

justice, that their cases are adequately and effectively examined and that they are suitably indemnified.<sup>45</sup>

## Questions for consideration

- Is torture defined in the national legislation? If so, is it consistent with Article 1 of UNCAT?
- Is torture a serious criminal offence? What penalty does it attract in law and in practice?
- Is torture an aggravating circumstance for any other criminal offence, for instance in the civil law system?
- Under what circumstances can a domestic court exercise jurisdiction over acts of torture committed extra-territorially?
- Has any national been prosecuted in a foreign country for acts related to torture? What was the national authorities' reaction?
- Is "state of emergency" a situation legally identified and regulated? How?
- Does domestic law permit a state of emergency to justify departure from provisions related to torture?
- Are superior orders considered as a lawful excuse for torture? Have law enforcement officials been prosecuted and condemned for obeying or disobeying superior orders for torture or ill-treatment? What is the practice of your courts in this respect?
- Have any cases of torture been referred from your national jurisdiction to international tribunals/bodies?
- What systems are in place to investigate allegations of torture? Are these allegations promptly, effectively and impartially investigated?

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<sup>45</sup> See below, Part Three.

## **Recommendations**

### **To States**

- **Ensure that all acts of torture are serious offences within the national criminal legal system;**
- **Effectively implement appropriate criminal law procedures.**

### **To Civil Society**

- **Monitor the application of the criminalization and punishment of torture;**
- **Sensitize and enter into dialogue with relevant authorities, parliamentarians, judges, etc.**
- **Carry out national awareness campaigns on the prohibition of torture.**

### **To the African Commission and the Follow-up Committee**

- **Advise State institutions to adopt appropriate national legislation.**

## D - NON-REFOULEMENT

### Article 15

*States should ensure no one is expelled or extradited to a country where he or she is at risk of being subjected to torture.*

### Commentary

The principle of non-refoulement is a general principle of international law. In pursuance of this, States must take and implement measures to ensure that the risk of being subjected to torture is duly taken into consideration by the relevant authorities when a decision is taken to expel or extradite a person to another country. Indeed, a State can be responsible for possible violations of the ban on torture and other cruel, inhuman and degrading treatment or punishment, if the decision to extradite or evict creates a real risk for the person affected by this measure of being subjected to such practices.<sup>46</sup>

The ban on torture creates an unconditional right which states that nobody can be expelled or deported towards a country where he/ she could be tortured. In such cases it is necessary to take into account all relevant information about the country, including any deliberate and widespread violations of human rights and persistent acts of injustice.

This rule applies, for example, to extradition linked to the fight against terrorism. Thus, persons suspected of acts of terrorism should not be extradited towards States where they would be tortured with the aim of extracting information from them.

The principle of “non-refoulement,” which is linked to the ban on torture, constitutes a strong clause which should reinforce other international instruments such as, for instance, the Convention relating to the Status of Refugees of 1951, by which the prevention of expulsion depends on whether it is established that there is persecution based on race, religion, nationality, political beliefs or membership of a particular social group.

<sup>46</sup> European Court of Human Rights, *Soering v. United Kingdom*, judgment of 7 July 1989; Ahmed Hussein Mustafa Kamil Agiza v. Sweden, Decision of the Committee against Torture, CAT/34/D/233/2003 of 24 May 2005.

One question which arises with respect to “non-refoulement” is that of diplomatic assurances.<sup>47</sup> In cases of eviction or extradition, this involves the requesting State (“addressee”) guaranteeing the requested State (“sender”) by diplomatic means that the expelled or extradited person will not be subjected to torture. Such assurances aim to ensure that the fundamental rights of the expelled or extradited person will be respected by the recipient State in application of its international obligations. Practice shows, however, that these diplomatic assurances do not adequately protect against torture and other cruel, inhuman and degrading treatment or punishment because of their non-binding character and the absence of any effective control over their effects, as acts of torture are mostly committed in secret. For this reason, recourse to such diplomatic assurances is incompatible with the absolute character of the ban on the torture.<sup>48</sup>

Concerning expulsion towards States where capital punishment is applied, the African Charter on Human and Peoples’ Rights as well as the UN Convention against Torture of 1984 do not explicitly prohibit it. The African Commission on Human and Peoples’ Rights adopted a resolution during its 26th ordinary session of November 1999 in Kigali, Rwanda, in which it invited States party to the Charter where capital punishment was legal to abstain from applying it.<sup>49</sup> It is thus easy to conclude that the expulsion of a person who would be at risk of receiving the death sentence would be incompatible with the ban on torture.<sup>50</sup>

### Questions for consideration

- Has the country entered into any extradition treaties? If so, do the provisions comply with the State’s international obligations?
- Are there cases where the country met a request for extradition? How?
- Are there cases where the country asked for the extradition of a suspected torturer?

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<sup>47</sup> Diplomatic assurances are agreements concluded between the governments of two States guaranteeing the rights of an individual in particular when he is being sent from one State to another.

<sup>48</sup> Sarah Joseph, Katie Mitchell, Linda Gyorki & Carin Benninger-Budel, *Seeking Remedies for Torture Victims, A handbook on the Individual Complaints Procedures of the UN Treaty Bodies*, OMCT Handbook, volume 4, pp. 224-227; Committee against Torture, Final Observations on USA, (2006) UN doc. CAT/C. USA/CO/2, § 21; Call to action against diplomatic assurances concerning the risk of torture or ill-treatment, common statement of NGOs (<http://web.amnesty.org/library/index/FRA.ACT>).

<sup>49</sup> Resolution Urging the State to Envisage a Moratorium on the Death Penalty (1999), ACHPR/Res.42 (XXVI) 99.

<sup>50</sup> Soering, op.cit.

- Is the risk of being subjected to torture taken into consideration when determining whether a person might be extradited from the jurisdiction of a State?
- Is the risk of being subjected to torture taken into consideration when determining whether a person might be expelled from the jurisdiction of a State?
- Is the risk of being subjected to torture taken into consideration when determining whether a person might be returned (“refoulement”) from the jurisdiction of a State?

## Recommendations

### To States

- **Ensure that extradition treaties and procedures comply with international obligations;**
- **Provide appropriate procedures to ensure the safety of people being returned, expelled or extradited to a third country;**
- **Provide an effective appeals process against the decision to return, expel or extradite them to a third country;**
- **Fully respect treaty body decisions (and await pending decisions) concerning a person at risk of torture if returned, expelled or extradited and make appropriate alternative provisions for that person;**
- **Ensure proper respect for the principle of non-refoulement in bilateral and multilateral treaties already concluded and to be concluded with third States.**

### **To Civil Society**

- **Provide the authorities with relevant information to assist them in making a risk assessment;**
- **Raise States' awareness of their duty to protect people from the risk of torture or other forms of ill-treatment, even in third countries;**
- **Monitor States' compliance with the principle of non-refoulement and submit information, in appropriate cases, against a return, expulsion or extradition to the relevant authorities including, where appropriate, UN treaty bodies;**
- **Provide legal assistance, where necessary, to persons being returned, expelled or extradited.**

### **To the African Commission and the Follow-up Committee**

- **Raise awareness amongst the Member States of the scope of application of their duty to protect any person within their jurisdiction against the risk of torture in third countries.**



## E - COMBATING IMPUNITY

### Article 16

*In order to combat impunity States should:*

- a) Ensure that those responsible for acts of torture or ill-treatment are subject to legal process.*
- b) Ensure that there is no immunity from prosecution for nationals suspected of torture, and that the scope of immunities for foreign nationals who are entitled to such immunities be as restrictive as is possible under international law.*
- c) Ensure expeditious consideration of extradition requests to third states, in accordance with international standards.*
- d) Ensure that rules of evidence properly reflect the difficulties of substantiating allegations of ill-treatment in custody.*
- e) Ensure that where criminal charges cannot be sustained because of the high standard of proof required, other forms of civil, disciplinary or administrative action are taken if it is appropriate to do so.*

### Commentary

The Vienna Declaration and Programme of Action adopted by the 1993 World Conference on Human Rights acknowledged as an issue of major importance the question of impunity for violations of human rights. It “view[ed] with concern the issue of impunity of perpetrators of human rights violations” and affirmed that States “should 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.” In effect, whether it comes about by legal means (amnesty, immunity, etc.) or by actual means (absence of investigations and prosecution, etc.), impunity constitutes a breeding ground for grave violations of human rights and torture in particular.

Africa’s recent history has been marked by multiple forms of impunity granted to agents of the State or to private individuals acting under the orders of, in complicity with or with the approval of the authorities. Thus, even in countries where torture is prohibited by law, the dissuasive effect is sometimes annulled by impunity, if in practice those who commit acts of torture are not prosecuted and punished.

As a further safeguard against impunity, and to ensure full access to justice for victims of torture, States should ensure that no time limit is imposed for commencing criminal proceedings against alleged perpetrators of torture. This is consistent with current international human rights law relating to serious violations and reflects the reality that in many instances a long time can pass between the infliction of the suffering and the ability of the victim to seek recourse to justice. This principle should apply equally to civil proceedings, thus responding to the different legal systems present in Africa, in which there are differences in the relationship between criminal and civil law procedures, penalties and remedies.

As well as disrupting social law and order, the act of torture causes physical or moral damage to the victim. The victim should therefore be granted the possibility of seeking redress before civil jurisdictions and to have a competent judge assert the reality of the damage done and establish the responsibility of the perpetrator and obtain reparation. The victim should also be able to take steps by associating in a court action with the public prosecutor. Thus, if these two courses of action are guaranteed, the rights of the victim to seek and to obtain redress will be protected whatever the outcome of the criminal proceedings.

### Questions for consideration

- Are allegations of torture investigated, promptly and effectively? By whom?
- Is there a specific body empowered to investigate allegations of torture?
- Are those suspected of acts of torture brought to trial? Are there statistics?
- What sanctions are imposed? Are sentences implemented?
- Do any amnesty laws exist which could apply to persons suspected of torture?
- Are there any statutes of limitations applying to criminal or civil proceedings concerning acts of torture?
- What is the State's approach to the application of immunity as provided for in international law?

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<sup>51</sup> See above, p. 31.

## **Recommendations**

### **To States**

- **Ensure that national legislation and regulations allow full access to justice for victims of torture;**
- **Review existing amnesty laws;**
- **Provide training for judges and lawyers;**
- **Facilitate the provision of legal assistance;**
- **Apply the principle of universal jurisdiction over acts of torture.**

### **To Civil Society**

- **Carry out studies on and raise public awareness of impunity;**
- **Observe trials;**
- **Facilitate the provision of assistance in court to victims;**
- **Assist victims to attend in person criminal and/or civil proceedings;**
- **Lobby for changes in legislation to comply fully with regional and international norms;**
- **Assist in the process of amending legislation;**
- **Engage parliamentarians, judges, lawyers etc. in the campaign against impunity.**

### **To the African Commission and the Follow-up Committee**

- **Advise States to amend existing legislation in order to combat impunity.**

## F - COMPLAINTS AND INVESTIGATION PROCEDURES

### Article 17

*Ensure the establishment of readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment.*

### Article 18

*Ensure that whenever persons who claimed to have been or who appear to have been tortured or ill-treated are brought before competent authorities an investigation shall be initiated.*

### Article 19

*Investigations into all allegations of torture or ill-treatment shall be conducted promptly, impartially and effectively, guided by the UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol)*<sup>52</sup>

## Commentary

It is important to ensure that States take immediate action when they have reasonable grounds to believe that torture and other acts of cruel, inhuman or degrading treatment have been committed within their jurisdiction. States have the obligation to conduct an effective investigation of allegations of torture and other acts of cruel, inhuman or degrading treatment. The authorities must conduct prompt and impartial investigations whatever the origin of the suspicion.

The effectiveness of complaints and investigation procedures presupposes the existence of a strong and independent judicial system, including an independent Bar.

To this end, States must carry out legal and institutional reforms. In a number of African countries, most of the texts date from the colonial period and have not been brought into line with the fundamental principles of human rights. New

<sup>52</sup> Annexed to UN GA Res. A/55/89, 4 December 2000, UN Publication No.8, HR/P/PT/8.

<sup>53</sup> Paragraph M (7)(j) Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, ACHPR/Res.41(XXVI) 99 (1999).

criminal laws and procedures would therefore need to be drawn up which refer to the Robben Island Guidelines and other relevant texts.

Lastly, national jurisdictions should absorb these norms and be granted adequate means.

## Questions for consideration

- What is the internal procedure for complaints including disciplinary procedures against law enforcement officials?
- Is there an external complaints mechanism?
- How does it function? How independent is it?
- How effective is it?
- Can the mechanism investigate cases?
- Do victims have access to such a complaints mechanism?
- In what percentage of cases is a finding of torture or ill-treatment established?
- Does the mechanism conduct investigations effectively?
- Does the public know the existence of this mechanism?
- Do complaints related to torture receive priority?
- To what extent is it possible for NGOs to bring a complaint on behalf of or to assist a victim of torture?
- What specific training do investigating officers receive? Does this training include issues related to torture?

## **Recommendations**

### **To States**

- **Establish independent national complaints mechanisms.**

### **To Civil Society**

- **Monitor complaints and investigation procedures;**
- **Lobby for the establishment of complaints mechanisms.**

### **To the African Commission and the Follow-up Committee**

- **Conduct research and promote best practices in relation to monitoring complaints and investigation procedures**

## **PART II: PREVENTION OF TORTURE**

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***Any adequate response to torture and ill-treatment requires not only responsive and remedial action, but also preventive measures. These measures will not “prevent” in the sense of making torture or ill-treatment impossible. They seek to prevent by reducing the opportunities, lessening the motives and increasing the risk of discovery. As such, the Robben Island Guidelines provide an important tool in the protection of all persons against torture because, for the first time, the emphasis is expressly put on the prevention of torture and ill-treatment. This concern to prevent is expressed notably in the recognition of fundamental guarantees for persons deprived of their liberty and the positive obligation to respect them.***



## A. BASIC PROCEDURAL SAFEGUARDS FOR PERSONS DEPRIVED OF THEIR LIBERTY

### *Article 20*

*All persons who are deprived of their liberty by public order or authorities should have that detention controlled by properly and legally constructed regulations. Such regulations should provide a number of basic safeguards, all of which shall apply from the moment when they are first deprived of their liberty. These include:*

*The right that a relative or other appropriate third person is notified of the detention;*

*The right to an independent medical examination;*

*The right of access to a lawyer;*

*Notification of the above rights in a language, which the person deprived of their liberty understands.*

### **Commentary**

The proactive nature of the measures expressed by the Robben Island Guidelines is justified by the postulate that, during the initial period of custody, detainees are often in a state of shock and bewilderment, feeling disoriented and isolated, frightened and easily influenced, unaware of their rights. Even in the best regulated systems, the police are able to capitalize on this vulnerability in order to press home their advantage: now is the time to get the suspect to talk, to provide information, to confess.

Moreover, it is fully recognized that torture most often occurs during a detainee's initial period of custody. These vulnerable hours are usually spent incommunicado, when the security forces maintain total control over the fate of the detainee, denying access to relatives, a lawyer or an independent doctor.

Therefore, all persons who are, de facto, deprived of their liberty by public order or by any public authorities should have that detention controlled by properly and legally constructed regulations, notably the Standard Minimum Rules for the Treatment of Prisoners. Such regulations should provide a number of basic

safeguards applicable from the very outset of detention such as the notification of an appropriate person,<sup>54</sup> access to a lawyer or legal service, access to a doctor<sup>55</sup> and notification of the person about his rights.

## Questions for consideration

- What is the legal framework concerning compliance with safeguards for persons deprived of their liberty by public authorities including the police:
- Ability to inform a relative or other appropriate third person?
- Access to a lawyer?
- Access to a medical doctor?
- Notification of the above rights in an understandable language?
- What is the situation in practice regarding the implementation of these safeguards?
- Are these safeguards guaranteed immediately after deprivation of liberty?

## Recommendations

### To States

- **Ensure that domestic legislation and regulations conform to the provisions of the Robben Island Guidelines;**
- **Allow access to all places of detention and persons deprived of their liberty by independent experts and NGOs;**
- **Permit NGOs to assist in the provision of effective legal assistance.**

<sup>54</sup> Human Rights in the Administration of Justice, Notes of the Secretary General, United Nations, E/AC-57/24, 22 April 1976, p.7, paragraph 10.

<sup>55</sup> Communication 250/2002, Zegveld and Ephrem v. Eritrea, 17th Activity Report of the African Commission on Human and Peoples' Rights 2003-2004.

## **To Civil Society**

- **Lobby for changes in domestic legislation and regulations to comply with the provisions of the Robben Island Guidelines;**
- **Monitor the implementation of these safeguards;**
- **Establish or assist with a system of monitoring places of detention;**
- **Raise awareness among legal and medical professionals of the rights of persons deprived of their liberty;**
- **Raise awareness among the general public of the rights of persons deprived of their liberty;**
- **Assist in translating the rights of persons deprived of their liberty into relevant languages.**

## **To the African Commission and the Follow-up Committee**

- **Identify and promote best practices concerning the realization of basic safeguards amongst Member States;**
- **Provide technical assistance to States concerning the realization of basic safeguards;**
- **Encourage the development of training programmes amongst security personnel, and legal and medical professionals on the rights of persons deprived of their liberty.**

## B. SAFEGUARDS DURING THE PRE-TRIAL PROCESS

*States should:*

### *Article 21*

*Establish regulations for the treatment of all persons deprived of their liberty guided by the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.*

### *Article 22*

*Ensure that those subject to the relevant codes of criminal procedure conduct criminal investigations.*

### *Article 23*

*Prohibit the use of unauthorized places of detention and ensure that it is a punishable offence for any official to hold a person in a secret and/or unofficial place of detention.*

### *Article 24*

*Prohibit the use of incommunicado detention.*

### *Article 25*

*Ensure that all detained persons are informed immediately of the reasons for their detention.*

### *Article 26*

*Ensure that all persons arrested are promptly informed of any charges against them.*

### *Article 27*

*Ensure that all persons deprived of their liberty are brought promptly before a judicial authority, having the right to defend themselves or to be assisted by legal counsel, preferably of their own choice.*

*Article 28*

*Ensure that comprehensive written records of all interrogations are kept, including the identity of all persons present during the interrogation and consider the feasibility of the use of video and/or audio taped recordings of interrogations.*

*Article 29*

*Ensure that any statement obtained through the use of torture, cruel, inhuman or degrading treatment or punishment shall not be admissible as evidence in any proceedings except against persons accused of torture as evidence that the statement was made.*

*Article 30*

*Ensure that comprehensive written records of those deprived of their liberty are kept at each place of detention, detailing, inter alia, the date, time, place and reason for the detention.*

*Article 31*

*Ensure that all persons deprived of their liberty have access to legal and medical services and assistance and have the right to be visited by and correspond with family members.*

*Article 32*

*Ensure that all persons deprived of their liberty can challenge the lawfulness of their detention.*

**Commentary**

In Africa, all the criminal justice systems foresee the possibility of provisional detention while awaiting trial. Its length can be limited to some days, but it generally extends to at least several weeks or months, even years. It is during this detention that many people run the risk of being tortured or subjected to other cruel, inhuman or degrading treatment or punishment. Consequently, imperative guarantees must be applied during the pre-trial process. These safeguards concern the treatment of those deprived of their liberty as well as the means by which they can challenge the lawfulness of their detention. The safeguards aim at guaranteeing the physical and moral integrity of the persons deprived of their liberty.

For detainees in the pre-trial process, being informed of the reasons for their detention and being brought before a judge are essential elements of security. But remaining in contact with their families and their legal adviser is even more important. The authorities should therefore establish a system whereby detainees in the pre-trial process can communicate with their families and receive visits, which would be subject only to the usual security constraints. They must be able to contact legal advisers, and be able to receive visits from them in order to ensure their defence.

One of the fundamental guarantees is the ban on secret or incommunicado detention, which is qualified by the African Commission on Human and Peoples' Rights as a grave violation of human rights which can constitute a form of cruel, inhuman or degrading treatment or punishment if it is "*prolonged*" and entails "*solitary confinement*."<sup>57</sup> The effectiveness of such a guarantee implies the adoption of clear and precise imperative standards forbidding secret detention, in line with which administrations should establish a list of all places of detention (official or not) for communication to the oversight and monitoring mechanisms. During visits, such mechanisms should have free access to all places of detention.

The holding of proper detention registers which the oversight or monitoring mechanism can consult freely constitutes a further essential element in the protection of detainees.

### Questions for consideration

- Who has the competence to conduct preliminary/criminal investigations and under whose authority?
- Are there any circumstances in which it is possible to hold a person in secret or incommunicado detention and are there any official or unofficial facilities or places in which such persons are held?
- Does the code of criminal procedure provide for informing all persons arrested of the reasons of their arrest and of charges against them? What is the practice?
- Is there a right of access to legal advice and representation throughout the investigation and trial process (i.e. from preliminary investigations to final trial proceedings), for all offences?

<sup>57</sup> Paragraph 55 of Communication 250/2002, Zegveld and Ephrem v. Eritrea, 17th Activity Report of African Commission on Human and Peoples' Rights 2003-2004.

- Are there any restrictions upon the right of access to a lawyer for persons in detention and during the pre-trial process?
- Are interrogations recorded (audio or video) and the names of all persons present registered?
- General aspects of detention - What are the maximum periods of detention permitted by law before charge and before trial?
- What is the process by which confession evidence is recorded and placed before the courts? How does the court respond to evidence, or information leading to evidence, which it suspects or it is alleged has been acquired through torture or ill-treatment?
- Can a person deprived of his/her liberty legally challenge the lawfulness of his/her detention?
- What is the legal framework of administrative detention? What is the maximum duration of this type of detention? Can the legality of such a detention be challenged?

## **Recommendations**

### **To States**

- **Amend legislation or regulations relating to criminal procedure to incorporate the provisions of the Robben Island Guidelines relating to safeguards during the pre-trial process.**

### **To Civil Society**

- **Advocate for respect for safeguards during pre-trial detention in practice;**
- **If there is a legal gap, lobby for change and adaptation of the domestic legislation or regulations;**
- **Raise awareness among legal and medical professionals;**
- **Facilitate access to legal advice and practical assistance to persons deprived of their liberty;**
- **Draw attention to places or facilities in which it is suspected that persons are being held unofficially or in secret.**

### **To the African Commission and the Follow-up Committee**

- **Identify and promote best practices concerning the realization of basic safeguards among Member States.**



## C. CONDITIONS OF DETENTION

*States should:*

### *Article 33*

*Take steps to ensure that the treatment of all persons deprived of their liberty are in conformity with international standards guided by the UN Standard Minimum Rules for the Treatment of Prisoners.<sup>58</sup>*

### *Article 34*

*Take steps to improve conditions in places of detention, which do not conform to international standards.*

### *Article 35*

*Take steps to ensure that pre-trial detainees are held separately from convicted persons.*

### *Article 36*

*Take steps to ensure that juveniles, women, and other vulnerable groups are held in appropriate and separate detention facilities.*

### *Article 37*

*Take steps to reduce overcrowding in places of detention by, inter alia, encouraging the use of non-custodial sentences for minor crimes.*

## Commentary

Article 10(1) of the ICCPR states that: “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Article 5 of the African Charter speaks of the right “of every individual to the respect of the dignity inherent in a human being.”

Conditions of detention can in themselves constitute a breach of these provisions. International human rights law does not address the sentence itself but the way it is executed. In this regard, States must take measures to comply with relevant

<sup>58</sup> UN ECOSOC Res. 663 C (XXIV), 31 July 1957, amended by UN ECOSOC Res. 2076 (LXII), 13 May 1977.

international standards and jurisprudence related to the physical conditions of detention and activities of the penitentiary regime.

The measures recommended by the Robben Island Guidelines impose three categories of obligation on States: the obligations to respect, to protect and to implement.

The **obligation to respect** international standards requires that States regulate positively the exercise of the rights attributed to detainees. As such, it is advisable to integrate into national legislation the Robben Island Guidelines and the Minimum Standards for the Treatment of Prisoners adopted by the United Nations.

The **obligation to protect** implies the duty to take measures to separate vulnerable groups and those in the pre-trial process from sentenced detainees. Vulnerable persons are notably:

- Juveniles, who must always be separated from the adult prisoners (Article 10 of the ICCPR). In addition, incarceration of juveniles should be the exception rather than the rule;
- Women, who must always be separated from male detainees. Children detained with their mothers must also be treated with proper care;
- Apart from women and juveniles, the following can be classified in the category of vulnerable detainees: the elderly, handicapped, persons in the terminal phase of an illness, including those who are HIV-positive, victims of torture, drug addicts and foreign nationals.<sup>59</sup>

The obligation to implement concerns the improvement of the conditions of detention in places of detention. The conditions in which the detainees are accommodated are one of the factors that determine their frame of mind, their self-respect and their dignity. The place itself and the way a person feeds, sleeps and satisfies his/her bodily needs have a considerable impact on his/her physical and mental well-being. This means that, as a rule, the detainees should not be accommodated in conditions that are worse than those prevailing in the community from which they have come, but which, on the contrary, should be as close as possible to the environment existing outside the prison.

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<sup>59</sup> OUATARA Diallo (Diénabo) and DANKWA (Emmanuel), *Vulnerable Prisoners, their Conditions of Detention, in Conditions of Detention in Africa, Acts of a Pan-African Seminar, Kampala, Uganda, 19-21 September 1996*, Penal Reform International, Paris, October 1997, p. 94.

This obligation to implement requires closer attention and political will to increase the budget assigned to the judicial and penitentiary systems, which must have the necessary financial, human and material means (toilets, educational programmes, visit premises allowing the preservation of family links, facilities for exercise or physical activities, medical care, places of worship, etc.).

## Questions for consideration

- Which authority is responsible for the penitentiary administration?
- What is the situation regarding :
  - The official occupancy level, official capacity of the system, and the present population of the place of detention?
  - Duration of pre-trial detention?
  - Percentages of pre-trial detainees?
  - Treatment of detainees (food, outdoor exercise, hygiene and health care, visits by family and other relatives, religious facilities, etc.)?
  - Physical condition of the buildings and available facilities?
  - Separation of pre-trial detainees and convicted persons?
  - Separation of juveniles, women and other vulnerable groups?
  - The legal framework and working conditions for detainees?
- What is the disciplinary regime?
- What complaints mechanisms exist regarding disciplinary sanctions and ill-treatment?
- What response is given to any evidence of corruption within the police, prison guards and administration?

## **Recommendations**

### **To States**

- **Ensure that domestic legislation, regulations and practice are in conformity with international standards on conditions of detention;**
- **Take measures to reduce overcrowding;**
- **Take measures to limit the length of periods in remand;**
- **Promote alternatives to pre-trial custody;**
- **Provide sufficient resources (budget, staff and other facilities) to the administration of places of detention;**
- **Develop training programmes for staff involved with the care of persons deprived of their liberty including on human rights;**
- **Separate pre-trial detainees and convicted persons, juveniles, women and other vulnerable groups.**

### **To Civil Society**

- **Raise awareness of the situation and needs of prison populations within the communities at large;**
- **Raise public awareness of the rights of detainees;**
- **Visit persons deprived of their liberty and facilitate their access to material and practical assistance according to their needs;**
- **Lobby relevant authorities (ministers, parliamentarians, etc.) for improvement of conditions of detention;**
- **Help to provide practical assistance and access to legal and medical assistance.**

### **To the African Commission and the Follow-up Committee**

- **Identify and promote best practices concerning the realization of basic safeguards amongst Member States;**
- **Encourage the development of training programmes and materials.**

## D. MECHANISMS OF OVERSIGHT

*States should:*

### *Article 38*

*Ensure and support the independence and impartiality of the judiciary including by ensuring that there is no interference in the judiciary and judicial proceedings, guided by the UN Basic Principles on the Independence of the Judiciary.<sup>60</sup>*

### *Article 39*

*Encourage professional legal and medical bodies to concern themselves with issues of the prohibition and prevention of torture, cruel, inhuman and degrading treatment or punishment.*

### *Article 40*

*Establish and support effective and accessible complaint mechanisms which are independent from detention and enforcement authorities and which are empowered to receive, investigate and take appropriate action on allegations of torture, cruel, inhuman or degrading treatment or punishment.*

### *Article 41*

*Establish, support and strengthen independent national institutions such as human rights commissions, ombudspersons and commissions of parliamentarians, with the mandate to conduct visits to all places of detention and to generally address the issue of the prevention of torture, cruel, inhuman and degrading treatment or punishment, guided by the UN Paris Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights.<sup>61</sup>*

### *Article 42*

*Encourage and facilitate visits by NGOs to places of detention.*

<sup>60</sup> UN Doc. E/CN.4/1995/39.

<sup>61</sup> UN A/Res/48/134, 20 Dec. 1993.

*Article 43*

*Support the adoption of an Optional Protocol to the UNCAT to create an international visiting mechanism with the mandate to visit all places where people are deprived of their liberty by a State Party.*

*Article 44*

*Examine the feasibility of developing regional mechanisms for the prevention of torture and ill-treatment.*

**Commentary**

The fate of persons deprived of their liberty should not be left under the sole responsibility of law enforcement officials. Other professionals such as lawyers and doctors, and other institutions such as NGOs, national human rights institutions and ombudsmen should also be involved.

As such, all law enforcement officials should be accountable for their work to independent judicial and disciplinary authorities.

Oversight and complaints mechanisms that are internal to the institution or authority concerned as well as other external ones, such as national human rights committees and parliamentary committees, should also be given this responsibility.

Moreover, conditions of detention should be monitored through regular visits to the places where people are detained. The mere possibility of a visit can act as a deterrent and reduce the risk of torture or ill-treatment. Visiting experts can make recommendations for improvements to both conditions and working practices. These can form the basis for constructive dialogue. Visits also provide moral and practical support to persons deprived of their liberty. This is the basic idea which led to the adoption of the Optional Protocol to the United Nations Convention against Torture (OP CAT). Indeed, the Optional Protocol is the first international instrument that seeks to prevent torture and other forms of ill-treatment by establishing a system of regular visits to places of detention by independent experts. In accordance with the Protocol, at the international level the Subcommittee on the Prevention of Torture was set up,<sup>62</sup> whereas at the national level, the Protocol requires each State Party to establish a “national preventive mechanism” (NPM) with the mandate to conduct regular visits to all places of detention. The NPM must enjoy

<sup>62</sup> See above, p.18.

functional and financial independence as well as the necessary guarantees for it to be effective in preventing torture<sup>63</sup>.

## Questions for consideration

- Has the OP CAT of 2002 been ratified? If so, what bodies have been designated as the national preventive mechanism?
- Are there internal and external oversight mechanisms for prisons, police stations and other places of detention? What are the powers of these mechanisms?
- Does the external oversight mechanism conduct its own independent investigation of complaints?
- Does this mechanism make recommendations to the prosecutorial authority for criminal prosecution?
- Does this mechanism make recommendations for disciplinary action against suspect or offending officials?
- Does this mechanism make pro-active recommendations to prevent the recurrence of the complaint which was the object of the investigation?
- To whom does this mechanism report? Does this body/government department to which it reports follow any recommendations that are made?
- Can other bodies carry out visits to places of detention, such as parliamentary commissions, ombudspersons, national, international and regional human rights institutions or NGOs? Are such visits effective?
- Do the powers of these various bodies correspond with those set out in Article 14(1) of the OP CAT?
- What are the restrictions to the right of access to places of detention for all the above various bodies?
- Who comprises the visiting delegation of these various bodies?

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<sup>63</sup> More information: ([http://www.ap.t.ch/component/option,com\\_docman/Itemid,59/lang,en/](http://www.ap.t.ch/component/option,com_docman/Itemid,59/lang,en/)).



- How often do these various bodies visit?
- To whom do these various bodies report?
- What is their follow-up procedure after a visit?
- Do all the above various bodies have a procedure for enforcement or other recourse for action?

## **Recommendations**

### **To States**

- **Ratify and implement the OP CAT;**
- **Allow all oversight mechanisms and visiting bodies full access to all places of detention, in accordance with the OP CAT criteria;**
- **Cooperate fully with oversight mechanisms and visiting bodies;**
- **Establish and ensure the effective functioning of one or several national preventive mechanisms;**
- **Establish external oversight mechanisms for law enforcement agencies;**
- **Maintain constructive dialogue with national mechanisms and civil society to effectively implement improvements.**

### **To Civil Society**

- **Visit places of detention;**
- **Promote best practices and methodology on visiting places of detention;**
- **Lobby for the ratification of the OP CAT and for its full implementation.**

### **To the African Commission and the Follow-up Committee**

- **Identify and promote best practices concerning the realization of basic safeguards amongst Member States;**
- **Encourage ratification of the OP CAT;**
- **Research and promote best practices and methodology on visiting places of detention;**
- **Promote external oversight of law enforcement.**

## E. TRAINING AND EMPOWERMENT

*States should:*

### *Article 45*

*Establish and support training and awareness-raising programmes, which reflect human rights standards and emphasize the concerns of vulnerable groups.*

### *Article 46*

*Devise, promote and support codes of conduct and ethics and develop training tools for law enforcement and security personnel, and other relevant officials in contact with persons deprived of their liberty such as lawyers and medical personnel.*

### **Commentary**

In general, the protection of persons deprived of their liberty depends on the existence of a mindset favourable to their rights. It is thus necessary to develop a philosophy and practice that create the objective conditions for respect for these rights. These conditions are linked to the creation of an environment favourable to respect for human dignity and the rights of detainees in particular. To this end, States should take measures to ensure that education and information regarding the prohibition of torture and ill-treatment are fully included in the training of all persons who come into contact with detainees. Those should include law enforcement personnel, whether civil or military, medical personnel, public officials and other persons who may be involved in the holding in custody, interrogation or treatment of any individuals subjected to any form of deprivation of liberty.

The serious personal consequences of engaging or acquiescing in acts of torture and ill-treatment should be highlighted in the training of law enforcement personnel.

Furthermore, it should be made absolutely clear that torture and acts of cruel, inhuman or degrading treatment or punishment are not permitted under any circumstances whatsoever, even in a state of emergency or during armed conflict.

## Questions for consideration

- Do law enforcement officials (police, prison staff, judges, etc.) receive specific human rights training during their basic training?
- What is the content of this training?
- Who is in charge of this specific training?
- Do other personnel in contact with persons deprived of their liberty receive specific human rights training? Are they regularly trained on human rights including on the prohibition and prevention of torture?
- Do security forces (services) have a specific code of conduct? Who drafted it? How was it adopted and by whom?
- What is the content of these codes? Who are the recipients of these codes?

## **Recommendations**

### **To States**

- **Implement training programmes for law enforcement officials and other relevant personnel on human rights standards in general and in particular on the prohibition and the prevention of torture and other forms of ill-treatment;**
- **Promote the elaboration of codes of conduct for law enforcement officials in conformity with existing international recognized norms.**

### **To Civil Society**

- **Co-operate with local authorities to provide training and awareness-raising of law enforcement officials and other concerned groups, including community-based organizations and traditional leaders.**

### **To the African Commission and the Follow-up Committee**

- **Encourage the development of training programmes for law enforcement officials and other groups whose work bears upon the treatment of detainees.**

## F. CIVIL SOCIETY EDUCATION AND EMPOWERMENT

### *Article 47*

*Public education initiatives, awareness-raising campaigns regarding the prohibition and prevention of torture and the rights of detained persons shall be encouraged and supported.*

### *Article 48*

*The work of NGOs and of the media in public education, the dissemination of information and awareness-raising concerning the prohibition and prevention of torture and other forms of ill-treatment shall be encouraged and supported.*

### **Commentary**

Civil society has an important role to play in the prevention of torture and ill-treatment. This role consists mainly of raising public awareness through media and NGO campaigns and lobbying for positive change. Spreading knowledge of human rights undoubtedly constitutes a strong guarantee against any kind of abuse and violation.

Integration of international human rights instruments into the internal legislative system is an important step, but it is not enough in order to ensure the protection of persons deprived of their liberty. The starting point for implementing these measures lies primarily in generating knowledge and understanding of human rights among the general public. This is based on the double postulate that people who know their rights have a better chance of having them respected, and will be more likely to be responsible for these rights and to respect those of others, thus paving the way for the advent of a more humane society.

One way of achieving this is through promotion and dissemination of the texts on the prohibition and prevention of torture, including the Robben Island Guidelines, by all relevant actors.

Civil society in Africa should therefore work on promoting the Guidelines through active lobbying of ministerial, parliamentary and judicial authorities aimed at the integration of the Guidelines and other relevant instruments into internal legislative and judicial systems. It should also ensure their effectiveness by taking charge of those persons and groups that have difficulty in understanding or being informed

of their rights. It is recommended that civil society establish intelligent policies for awareness-raising and education based on the Guidelines. These efforts can take the form of training and information seminars for judicial, police or prison staff, but should also be extended to society as a whole (schools, universities, churches, etc.).

### **Questions for consideration**

- How is the prohibition of torture reflected in the political debate, the media, and public opinion?
- How are the law enforcement services perceived? Is there confidence in the system?
- Do cases of private justice exist (vigilantism)?
- Are vulnerable groups legally protected within society?
- Are there traditional practices that are harmful for vulnerable groups or are contrary to respect for human dignity?

## **Recommendations**

### **To States**

- **Engage in education and awareness-raising concerning the manner in which violence or social violence can feed and develop into acts of torture;**
- **Enter into a constructive dialogue with civil society to implement positive change.**

### **To Civil Society**

- **Sensitize and promote public education and awareness campaigns against torture and other forms of ill-treatment;**
- **Conduct research and studies on the situation of torture and other forms of ill-treatment in their country;**
- **Provide training for various groups in the community;**
- **Provide counseling services to victims of torture.**

### **To the African Commission and the Follow-up Committee**

- **Encourage education and awareness raising concerning issues of torture and ill-treatment and their prevention.**



## PART III. RESPONDING TO THE NEEDS OF VICTIMS

The Robben Island Guidelines bestow on States a triple obligation regarding victims. On the one hand, States are invited to make sure that victims and their families are protected against violence and reprisals. On the other hand, States have the obligation to provide reparation to the victims, irrespective of the outcome of any criminal prosecution. They also have the obligation to bear the cost of any medical care and to ensure access to full rehabilitation, compensation and effective support to the victims and their families.

### *Article 49*

*Ensure that alleged victims of torture, cruel, inhuman and degrading treatment or punishment, witnesses, those conducting the investigation, other human rights defenders and families are protected from violence, threats of violence or any other form of intimidation or reprisal that may arise pursuant to the report or investigation.*

### *Article 50*

*The obligation upon the State to offer reparation to victims exists irrespective of whether a successful criminal prosecution can or has been brought. Thus all States should ensure that all victims of torture and their dependents are:*

*Offered appropriate medical care;*

*Have access to appropriate social and medical rehabilitation;*

*Provided with appropriate levels of compensation and support;*

*In addition there should also be recognition that families and communities which have also been affected by the torture and ill-treatment received by one of its members can also be considered as victims.*

### **Commentary**

Prosecution and punishment of those responsible for torture and ill-treatment form a vital part of the States' response to the harm done to the victim, his or her family and the community. The State also has an obligation to provide full reparation to the victim irrespective of whether a successful criminal prosecution can or has been brought.

Prosecution and punishment of those responsible for torture and ill-treatment form a vital part of the States' response to the harm done to the victim, his or her family and the community. The State also has an obligation to provide full reparation to the victim irrespective of whether a successful criminal prosecution can or has been brought.

From the point of view of the Robben Island Guidelines, the concept of "victim" includes the family and communities affected by the torture and/or ill-treatment inflicted on one of its members.

It is also crucial that the victim be protected from any further victimization and other forms of reprisals. Witnesses should also be fully protected.

The right to an effective appeal and compensation is recognized under international law. In the opinion of the United Nations Human Rights Committee, the victims have "the right to an effective remedy, including compensation and such full rehabilitation as may be possible." The realization of this right includes access to justice, restitution, compensation, rehabilitation, moral satisfaction and guarantees of non-repetition for the victims.

Restitution is reparation that aims at erasing, in as far as possible, all the consequences of the torture and/or cruel, inhuman or degrading treatment or punishment and at restoring the state that would credibly have existed if these acts had not been committed. This means that the victims' right to liberty, security and civil rights as well as their right to family life are restored.

The State should also take steps to rehabilitate the victims, including the provision of medical, psychological or psychiatric care. In addition, the State could provide compensation which covers the physical, material and moral damage done to the victims. To this end, each State should establish a compensation fund for victims of torture and other grave violations of human rights.

Reparation also implies that the State recognizes the victims' right to know the truth. The victims have the right to know the truth about the circumstances in which the violations they suffered were committed.

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<sup>64</sup> General Comment No. 20 of the Human Rights Committee, The right not to be subjected to torture and cruel, inhuman or degrading treatment or punishment, Article 7, June 1982.(supprimer).1993.

Lastly, the State should provide victims of torture and ill-treatment with assurances and guarantees that the acts will not be repeated or renewed, by taking a certain number of measures. First, it should identify the perpetrators of these acts and prosecute them. Second, it should refrain from adopting measures that favour impunity. Third, it should take preventive administrative measures aimed at sidelining public officials involved in acts of torture or cruel, inhuman or degrading treatment or punishment.

### **Questions for consideration**

- Are victims and witnesses protected from victimization and all forms of reprisals? If so how? Is this protection effective in practice?
- Is there a victim support programme?
- What provisions oblige the State to provide reparation to torture victims in addition to remedies available under the criminal or civil justice systems?

## **Recommendations**

### **To States**

- **Establish a comprehensive victim support programme;**
- **Ensure adequate provision for victims, families and communities to receive varied forms of reparation;**
- **Ensure holistic training for police officers, judges, legal advisers and lawyers, immigration personnel and other relevant actors.**

### **To Civil Society**

- **Raise awareness of the needs of victims, families and communities;**
- **Build networks to facilitate contact between victims;**
- **Provide medical, legal and other appropriate assistance to victims.**

### **To the African Commission and the Follow-up Committee**

- **Raise awareness of the variety of needs of victims, families and communities;**
- **Promote and encourage the provision of full and appropriate reparation to victims, families and communities by Member States.**

## CONCLUSION

The present guide does not claim to contain all possible measures for full implementation of the Robben Island Guidelines. Its main objective is to open up horizons by proposing issues for reflection to relevant actors that should lead to concrete action. In other words, any study or new idea, whether at the regional or national level - which takes into account the specific characteristics of the local context - and which contributes to the fight against torture and cruel, inhuman or degrading treatment, will strengthen these measures in Africa.

As has been clearly stated in the lines above, the decision to implement the Robben Island Guidelines depends above all on the will of States. As guarantors of the physical integrity and security of the population, governments have a responsibility to take all necessary measures to guarantee respect for the absolute ban on torture and to ensure the prevention of torture and other cruel, inhuman treatment or punishment. Measures such as the ratification of relevant human rights instruments, judicial and prison reform, the establishment of national mechanisms and cooperation with regional and international mechanisms, and respect for reparation measures for victims are benchmarks of the will to bring about an evolution in the situation of human rights in Africa. After all, the Robben Island Guidelines are the fruit of the African Commission on Human and Peoples' Rights, which is an African mechanism and the specialized human rights body of the African Union. This "africanization" of legal standards deserves to be effective in all senses of the term.

Secondly, civil society in Africa should play fully its role in raising awareness of human rights in the collective consciousness in Africa. Despite its human, material and financial limits, civil society remains the key actor in the promotion and distribution of these Guidelines vis-à-vis the general public and above all the relevant authorities. It should strive to create a culture of human rights through the dissemination of the Robben Island Guidelines.

Lastly, the African Commission on Human and Peoples' Rights (in particular through the examination of State reports and during promotion missions) and its Follow-up Committee on the Implementation of the Guidelines should identify and promote best implementation practices, as well as providing the technical support and training required by various actors.

It is through the concerted efforts of all these actors that strategies ensuring full effectiveness of the Robben Island Guidelines in particular and human rights in Africa in general, will emerge.

## ANNEX I

# RESOLUTION ON GUIDELINES AND MEASURES FOR THE PROHIBITION AND PREVENTION OF TORTURE, CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN AFRICA

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

Recalling the provisions of -:

- Article 5 of the African Charter on Human and Peoples' Rights that prohibits all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment;
- Article 45 (1) of the African Charter which mandates the African Commission to, inter alia, formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation;
- Articles 3 and 4 of the Constitutive Act of the African Union wherein States Parties undertake to promote and respect the sanctity of human life, rule of law, good governance and democratic principles;

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

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

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

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

**Recalling** the recommendations of the Workshop on the Prohibition and the Prevention of Torture and Ill-treatment, organised jointly by the African Commission

and the Association for the Prevention of Torture, on Robben Island, South Africa, from 12th to 14th February 2002;

1. **Adopts** the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines).
2. **Establishes** a Follow-up Committee comprising of the African Commission, the Association for the Prevention of Torture and any prominent African Experts as the Commission may determine.
3. **Assigns** the following mandate to the Follow-up Committee :-
  - To organise, with the support of interested partners, seminars to disseminate the Robben Island Guidelines to national and regional stakeholders.
  - To develop and propose to the African Commission strategies to promote and implement the Robben Island Guidelines at the national and regional levels.
  - To promote and facilitate the implementation of the Robben Island Guidelines within Member States.
  - To make a progress report to the African Commission at each ordinary session.
4. **Urges** Special Rapporteurs and Members of the African Commission to widely disseminate the Robben Island Guidelines as part of their promotional mandate.
5. **Encourages** States parties to the African Charter, in their periodic reports to the African Commission, to bear in mind the Robben Island Guidelines.
6. **Invites** NGOs and other relevant actors to widely disseminate and utilise the Robben Island Guidelines in the course of their work.

Done in Banjul, The Gambia, 23rd October 2002

# GUIDELINES AND MEASURES FOR THE PROHIBITION AND PREVENTION OF TORTURE, CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN AFRICA

## THE ROBBEN ISLAND GUIDELINES

### Preamble

**Recalling** the universal condemnation and prohibition of torture, cruel, inhuman and degrading treatment and punishment;

**Deeply** concerned about the continued prevalence of such acts;

**Convinced** of the urgency of addressing the problem in all its dimensions;

**Recognising** the need to take positive steps to further the implementation of existing provisions on the prohibition of torture, cruel, inhuman and degrading treatment and punishment;

**Recognising** the importance of preventive measures in the furtherance of these aims;

**Recognising** the special needs of victims of such acts;

**Recalling** the provisions of:

- Art. 5 of the African Charter on Human and Peoples' Rights which prohibits all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment;
- Art. 45 (1) of the African Charter which mandates the African Commission to, inter alia, formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations;
- Arts. 3 and 4 of the Constitutive Act of the African Union by which States Parties undertake to promote and respect the sanctity of human life, rule of law, good governance and democratic principles;



**Recalling** further the international obligations of States under:

- Art. 55 of the United Nations Charter, calling upon States to promote universal respect for and observance of human rights and fundamental freedoms;
- Art. 5 of the UDHR, Art. 7 of the ICCPR stipulating that no one shall be subjected to torture, inhuman or degrading treatment or punishment;
- Art. 2 (1) and 16 (1) of the UNCAT calling upon each State to take effective measures to prevent acts of torture and other acts of cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction;

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

**Desiring** the implementation of principles and concrete measures in order to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment in Africa and to assist African States to meet their international obligations in this regard;

The ***“Robben Island Workshop on the Prevention of Torture”***, held from 12 to 14 February 2002, has adopted the following guidelines and measures for the prohibition and prevention of torture, cruel, inhuman and degrading treatment or punishment and recommends that they are adopted, promoted and implemented within Africa.

# PART I: PROHIBITION OF TORTURE

## A. Ratification of Regional and International Instruments

1. States should ensure that they are a party to relevant international and regional human rights instruments and ensure that these instruments are fully implemented in domestic legislation and accord individuals the maximum scope for accessing the human rights machinery that they establish. This would include:
  - a) Ratification of the Protocol to the African Charter of Human and Peoples' Rights establishing an African Court of Human and Peoples' Rights;
  - b) Ratification of or accession to the UN Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment without reservations, to make declarations accepting the jurisdiction of the Committee against Torture under Articles 21 and 22 and recognising the competency of the Committee to conduct inquiries pursuant to Article 20;
  - c) Ratification of or accession to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the First Optional Protocol thereto without reservations;
  - d) Ratification of or accession to the Rome Statute establishing the International Criminal Court;

## B. Promote and Support Co-operation with International Mechanisms

2. States should co-operate with the African Commission on Human and Peoples' Rights and promote and support the work of the Special Rapporteur on prisons and conditions of detention in Africa, the Special Rapporteur on arbitrary, summary and extra-judicial executions in Africa and the Special Rapporteur on the rights of women in Africa.

3. States should co-operate with the United Nations Human Rights Treaty Bodies, with the UN Commission on Human Rights' thematic and country specific special procedures, in particular, the UN Special Rapporteur on Torture, including the issuance of standing invitations for these and other relevant mechanisms.

## **C. Criminalization of Torture**

4. States should ensure that acts, which fall within the definition of torture, based on Article 1 of the UN Convention against Torture, are offences within their national legal systems.
5. States should pay particular attention to the prohibition and prevention of gender-related forms of torture and ill-treatment and the torture and ill-treatment of young persons.
6. National courts should have jurisdictional competence to hear cases of allegations of torture in accordance with Article 5 (2) of the UN Convention against Torture.
7. Torture should be made an extraditable offence.
8. The trial or extradition of those suspected of torture should take place expeditiously in conformity with relevant international standards.
9. Circumstances such as state of war, threat of war, internal political instability or any other public emergency, shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.
10. Notions such as "necessity", "national emergency", "public order", and "ordre public" shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.
11. Superior orders shall never provide a justification or lawful excuse for acts of torture, cruel, inhuman or degrading treatment or punishment.

12. Those found guilty of having committed acts of torture shall be subject to appropriate sanctions that reflect the gravity of the offence, applied in accordance with relevant international standards.
13. No one shall be punished for disobeying an order that they commit acts amounting to torture, cruel, inhuman or degrading treatment or punishment.
14. States should prohibit and prevent the use, production and trade of equipment or substances designed to inflict torture or ill-treatment and the abuse of any other equipment or substance to these ends.

#### **D. Non-Refoulement**

15. States should ensure no one is expelled or extradited to a country where he or she is at risk of being subjected to torture.

#### **E. Combating Impunity**

16. In order to combat impunity States should:
  - a) Ensure that those responsible for acts of torture or ill-treatment are subject to legal process.
  - b) Ensure that there is no immunity from prosecution for nationals suspected of torture, and that the scope of immunities for foreign nationals who are entitled to such immunities be as restrictive as is possible under international law.
  - c) Ensure expeditious consideration of extradition requests to third states, in accordance with international standards.
  - d) Ensure that rules of evidence properly reflect the difficulties of substantiating allegations of ill-treatment in custody.
  - e) Ensure that where criminal charges cannot be sustained because of the high standard of proof required, other forms of civil, disciplinary or administrative action are taken if it is appropriate to do so.

## **F. Complaints and Investigation Procedures**

17. Ensure the establishment of readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment.
18. Ensure that whenever persons who claimed to have been or who appear to have been tortured or ill-treated are brought before competent authorities an investigation shall be initiated.
19. Investigations into all allegations of torture or ill-treatment, shall be conducted promptly, impartially and effectively, guided by the UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol)<sup>65</sup>.

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<sup>65</sup> Annexed to UN GA Res. A/55/89, 4 Dec. 2000, UN Publication No.8, HR/P/PT/8.

## PART II: PREVENTION OF TORTURE

### A. Basic Procedural Safeguards for those Deprived of their Liberty

20. All persons who are deprived of their liberty by public order or authorities should have that detention controlled by properly and legally constructed regulations. Such regulations should provide a number of basic safeguards, all of which shall apply from the moment when they are first deprived of their liberty. These include:
  - a) The right that a relative or other appropriate third person is notified of the detention;
  - b) The right to an independent medical examination;
  - c) The right of access to a lawyer;
  - d) Notification of the above rights in a language, which the person deprived of their liberty understands;

### B. Safeguards during the Pre-trial Process

States should:

21. Establish regulations for the treatment of all persons deprived of their liberty guided by the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>66</sup>
22. Ensure that those subject to the relevant codes of criminal procedure conduct criminal investigations.
23. Prohibit the use of unauthorised places of detention and ensure that it is a punishable offence for any official to hold a person in a secret and/or unofficial place of detention.
24. Prohibit the use of incommunicado detention.
25. Ensure that all detained persons are informed immediately of the reasons for their detention.

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<sup>66</sup> UN GA/Res. 43/173, 9 Dec.1988

26. Ensure that all persons arrested are promptly informed of any charges against them.
27. Ensure that all persons deprived of their liberty are brought promptly before a judicial authority, having the right to defend themselves or to be assisted by legal counsel, preferably of their own choice.
28. Ensure that comprehensive written records of all interrogations are kept, including the identity of all persons present during the interrogation and consider the feasibility of the use of video and/or audio taped recordings of interrogations.
29. Ensure that any statement obtained through the use of torture, cruel, inhuman or degrading treatment or punishment shall not be admissible as evidence in any proceedings except against persons accused of torture as evidence that the statement was made.
30. Ensure that comprehensive written records of those deprived of their liberty are kept at each place of detention, detailing, inter alia, the date, time, place and reason for the detention.
31. Ensure that all persons deprived of their liberty have access to legal and medical services and assistance and have the right to be visited by and correspond with family members.
32. Ensure that all persons deprived of their liberty can challenge the lawfulness of their detention.

### **C. Conditions of Detention**

States should:

33. Take steps to ensure that the treatment of all persons deprived of their liberty are in conformity with international standards guided by the UN Standard Minimum Rules for the Treatment of Prisoners.<sup>67</sup>
34. Take steps to improve conditions in places of detention, which do not conform to international standards.
35. Take steps to ensure that pre-trial detainees are held separately from convicted persons.

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<sup>67</sup> UN ECOSOC Res. 663 C (XXIV), 31 July 1957, amended by UN ECOSOC Res. 2076 (LXII), 13 May 1977

36. Take steps to ensure that juveniles, women, and other vulnerable groups are held in appropriate and separate detention facilities.
37. Take steps to reduce overcrowding in places of detention by, inter alia, encouraging the use of non-custodial sentences for minor crimes.

#### **D. Mechanisms of Oversight**

States should:

38. Ensure and support the independence and impartiality of the judiciary including by ensuring that there is no interference in the judiciary and judicial proceedings, guided by the UN Basic Principles on the Independence of the Judiciary.<sup>68</sup>
39. Encourage professional legal and medical bodies to concern themselves with issues of the prohibition and prevention of torture, cruel, inhuman and degrading treatment or punishment.
40. Establish and support effective and accessible complaint mechanisms which are independent from detention and enforcement authorities and which are empowered to receive, investigate and take appropriate action on allegations of torture, cruel, inhuman or degrading treatment or punishment.
41. Establish, support and strengthen independent national institutions such as human rights commissions, ombudspersons and commissions of parliamentarians, with the mandate to conduct visits to all places of detention and to generally address the issue of the prevention of torture, cruel, inhuman and degrading treatment or punishment, guided by the UN Paris Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights.<sup>69</sup>
42. Encourage and facilitate visits by NGOs to places of detention.

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<sup>68</sup> UN Doc. E/CN.4/1995/39

<sup>69</sup> UN A/Res/48/134, 20 Dec. 1993



43. Support the adoption of an Optional Protocol to the UNCAT to create an international visiting mechanism with the mandate to visit all places where people are deprived of their liberty by a State Party.
44. Examine the feasibility of developing regional mechanisms for the prevention of torture and ill-treatment.

## **E. Training and Empowerment**

45. Establish and support training and awareness-raising programmes which reflect human rights standards and emphasise the concerns of vulnerable groups.
46. Devise, promote and support codes of conduct and ethics and develop training tools for law enforcement and security personnel, and other relevant officials in contact with persons deprived of their liberty such as lawyers and medical personnel.

## **F. Civil Society Education and Empowerment**

- a. Public education initiatives, awareness-raising campaigns regarding the prohibition and prevention of torture and the rights of detained persons shall be encouraged and supported.
47. The work of NGOs and of the media in public education, the dissemination of information and awareness-raising concerning the prohibition and prevention of torture and other forms of ill-treatment shall be encouraged and supported.

## PART III: RESPONDING TO THE NEEDS OF VICTIMS

48. Ensure that alleged victims of torture, cruel, inhuman and degrading treatment or punishment, witnesses, those conducting the investigation, other human rights defenders and families are protected from violence, threats of violence or any other form of intimidation or reprisal that may arise pursuant to the report or investigation.
49. The obligation upon the State to offer reparation to victims exists irrespective of whether a successful criminal prosecution can or has been brought. Thus all States should ensure that all victims of torture and their dependents are:
  - a) Offered appropriate medical care;
  - b) Have access to appropriate social and medical rehabilitation;
  - c) Provided with appropriate levels of compensation and support;
50. In addition there should also be a recognition that families and communities which have also been affected by the torture and ill-treatment received by one of its members can also be considered as victims.





**UNIVERSAL  
DECLARATION  
OF HUMAN  
RIGHTS**

Dignity and justice for all of us