



A Guide for Chaplains Confronted with Torture

International Commission of Catholic Prison Pastoral Care

Foreword to Guide for Chaplains Confronted with Torture



I am pleased to write this short foreword to the basic Guide for Chaplains Confronted with Torture prepared by the International Commission of Catholic Prison Pastoral Care. Priests and lay pastoral workers are often able to go to places in prison inaccessible to human rights activists and even to monitoring agencies. Moreover, they usually enjoy great trust amongst the prisoners. This booklet sets out the dilemma of the dual obligations that chaplains have, similar to physicians assigned to penal institutions. Their primary responsibility is to the person who has confided in them and to be able to continue to minister to the incarcerated. However, they also have an obligation to prevent and speak out against torture.

This Guide reminds the reader that the prohibition against torture is absolute. It describes a range of physical and psychological acts that could be considered torture. It also lists a variety of actions that a prison pastoral care worker might take in response to the observation of torture, including resort to the international human rights machinery. The Guide also recognizes the importance of preventive programs, collaboration with the prison authorities in improving conditions, and working together with other human rights or religious organizations. It is hoped that this straightforward practical Guide will form the basis of sensitization classes and discussion groups in training courses.

I am particularly happy to endorse this Guide as I have great respect for the work of the members of the International Commission on Catholic Prison Pastoral Care. The ICCPPC has signed a memorandum with the UN Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment. I look forward to other forms of practical cooperation in countries of special concern.

Manfred Nowak
UN Special Rapporteur on Torture
and Other Cruel, Inhuman or Degrading Treatment
Vienna, Austria, February 2010

The ICCPPC Guide for Chaplains Confronted with Torture

This document was prepared to serve as a guide for Chaplains and Prison Pastoral Care Workers to prevent and combat torture and other cruel, inhuman and degrading treatment and punishment, discovered in prison. Based on experiences of good practice of prison chaplains (e.g., Brazil) and international documents pertaining to torture, it aims to help pastoral workers take practical steps in the prevention and combating of torture and other forms of ill-treatment.

Introduction

At the XIIth World Congress of the International Commission of Catholic Prison Pastoral Care in Rome in September 2007, the United Nations Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Prof. Manfred Nowak, reported on his activities. During the subsequent discussion among the more than 200 participants from 62 countries from all five continents, it turned out that prison chaplains, in several parts of the world, are confronted with the tragic fact that torture takes place in the prisons where they work. A memorandum of cooperation has subsequently been signed between the ICCPPC and the Special Rapporteur to combat this problem.

How to react in such a situation: How to proceed

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

The prohibition of torture is absolute. There can be no justification for it. Torture is condemned in the Universal Declaration of Human Rights, in detail in the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment (UNCAT), by regional human rights treaties and by national law.

His Holiness Pope Benedict XVI has stressed: “Public authorities must be ever vigilant, eschewing any means of punishment or corrections that either undermine or debase the human dignity of prisoners. In this regard, I reiterate that the prohibition against torture cannot be contravened under any circumstances” (Address to participants at the XII ICCPPC World Congress, 6 September, 2007).

Why should religious representatives be involved in prevention and combat of torture and other ill-treatment in places of detention?

Prison pastoral care workers are among the few who can continuously enter into closed institutions like prisons, for this reason they must be conscious of their human rights responsibilities. The action of the Church in the prevention of torture rests on two grounds:

- The basic understanding that promoting the dignity of human





life is part of the gospel. Thus religious assistance must include upholding human rights.

- A passive attitude towards acts of torture could be well interpreted as acquiescence and over time such an attitude legitimises human rights violations as socially acceptable.

Here, an possible dilemma must be faced, because often as long as the members of the religious groups who visit prison do not draw attention to the possible violations of human rights, they can coexist peacefully with the prison staff, but once they start speaking out against ill-treatment they may become persona non grata to the prison administration.

The greatest possible objectivity of prison pastoral workers in relation to the administration of the prison is fundamental to ensure the effectiveness of their complaints.

Moreover, the situation can become even more difficult when the chaplain is considered a member of the staff (even paid by the prison administration), because he/she might not be able to speak out against the government without any consequences. In this situation, even though the prison pastoral workers are not obliged to compromise their objectivity, it may be better that the local pastoral committee make an alliance with other organizations to pursue any grievances to preserve the prison pastoral worker's primary mission of care and visitation.

It is clear that there is no simple answer which applies under all circumstances. Always, common sense is required to find an appropriate response. It depends on many factual circumstances: are the acts of torture committed by some few officers or are they accepted as part of the whole system? How strong is the position of the church and of prison chaplains in the context of the national structures? Is there a functioning national system to report on and prevent torture? How can the victim best be protected? Is there a dual responsibility problem with respect to his/her status as a civil servant? The duty toward to his clerical authority? The secret of confessional?

The protection of the victim must always be considered first and foremost but also the possible prevention of future acts of torture and the need to make the perpetrators accountable must be taken into account, as well as the prison pastoral worker's own safety .

Torture, under the UN Conventions, has a clear definition. Torture is not bad prison condition. Torture is the intended physical and/or psychological harm done to others with the intention of punishing them or getting information from them.

However, torture has many faces and, besides direct violence against the victim, can consist of not providing the necessary food or water or not allowing the doctor to see a sick or injured inmate.

Psychological violence, threatening execution or being kept in dungeon like conditions can also be considered torture.

What is torture, what is cruel, inhuman or degrading treatment or punishment in a legal sense?

Following the basic definition of the United Nations Convention Against Torture (19 the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions. Following this definition, three essential elements are needed:

1. The inflicting of severe mental or physical pain or suffering
2. By or with the consent or acquiescence of the state authorities
3. For a specific purpose, such as gaining information, punishment or intimidation

Cruel, inhuman or degrading treatment or punishment consists of only two elements:

1. Intentional exposure to significant mental or physical pain or suffering
2. By or with the consent or acquiescence of the state authorities

Torture is, thus, distinguished from other forms of ill-treatment by the severe degree of suffering as well as by the need for a purposive element. Torture can be grouped into physical and psychological.

The physical torture method most often employed are beatings with batons, sticks, whips, stones; kicking; throwing against a wall; electroshocks; suffocation; repeated dunking in water; burning with cigarettes; or exposure to extremely low or high temperatures. A number of torture techniques do not leave visible physical marks on the body (fierce beatings on soles of the feet), but nevertheless can have a detrimental effect upon the internal organs as well as on the psychological integrity of the victim. It also includes acts of sadism committed by prison guards for no particular purpose.

Psychological torture includes the intentional deprivation of food, water, sleep, and sanitary facilities, sensory deprivation, as well as absolute communication prohibition, intimidation techniques such as forced presence during torture of other people, threat of execution or a simulated execution, continuous humiliation and terrorisation, maintenance of physical stress positions, being left naked or standing in the elements for extended periods or being kept in dungeon-like conditions (deprived of air and light). Sexual violence (rape, beating of scrotum, insertion of rods in vagina or anus) are both physical and psychological torture,





even if threatened or directed to loved ones. Even the extended wearing of restraint devices or the deliberate placement of vulnerable prisoners in overcrowded cells of violent inmates can be considered torture if done for punishment or intimidation. It is therefore important to be familiar with the UN Standard Minimum Rules for the Treatment of Offenders.

Of course, there are many prisons which might be considered inhuman or degrading. Many acts of violence, if not most violence, are committed by inmates against their fellow inmates. Protecting vulnerable inmates against violence of other inmates is an indispensable task of the penal system. The State has a responsibility for safe conditions for all inmates (including homosexuals) and the conduct of prison personnel, and may have to put a prisoner in protective custody (for example, paedophile offenders).

Torture can also happen in non-punitive custodial settings: juvenile detention facilities, old people's homes or psychiatric institutions (where a general inhuman environment and overuse of restraint devices should be considered), military institutions and places of detention for foreigners (camps for refugees and internally displaced persons). Particular attention must be given to vulnerable prisoners with special needs (disabled prisoners, the elderly, or mentally challenged) and women, who are often sadistically abused.

However, for the purpose of the reporting torture, an element of discrimination or specific victimisation is generally considered necessary. In some countries, corporal punishment (even amputation) is legal. This remains controversial, as is the treatment of mentally ill persons in some closed institutions, even in developed countries. The lawful execution of prisoners has been considered by some (the method used or the long, indeterminate periods on death row) as cruel and inhuman treatment. Non-judicial executions by law-enforcement officers are universally condemned, including those undertaken by inmates on the orders of or with the collusion of officers. Abusive handling of suspected terrorists has also aroused international condemnation. Particularly where the situation is ambiguous (or controversial), it is most important to provide consistent information establishing the essential elements.

In the case of persons who have been tortured as well as in cases of prisoners who have disappeared, the role of prison pastoral workers can be very important in terms of comforting relatives but also helping to establish evidence of circumstances of disappearance, searching for the truth collecting evidence and establishing guilt.

Who practises torture?

According to the Convention Against Torture (CAT) definition, only public officials can act as torturers, or at least, the torture must be done with their acquiescence. Nevertheless, commonly a pastoral worker faces situations where inmates are subject to acts akin to torture by other inmates. There are two different situations here. The inmate who tortures another inmate

could be doing it on behalf of a correctional officer. In that case, as the act meets the CAT definition, the public official and inmate have both committed acts of torture and must eventually be subject to a trial. But in the case of conflicts among inmates that end up in acts similar to torture without the consent of correctional officers, another crime either of assault or battery, rape, murder, etc. may have been committed and should be prosecuted. Only in very few jurisdictions have superintendents been successfully prosecuted for maintaining inhuman conditions; nonetheless prison pastoral workers may seek to point out such conditions to the church hierarchy, legislators, or international bodies, always in compliance with the general principles below.

Why does torture take place in prison?

Torture is still a means widely used to get confessions or information from alleged offenders and inmates, despite its proven ineffectiveness. More often, torture occurs as a result of conflicts between correctional officers and inmates, so it commonly serves as a punishment for insubordinate inmates.

The fact that the prison population is behind bars makes them invisible to public scrutiny, unless the prison pastoral care workers and others ensure that proper complaint procedures are followed and information is carefully kept for administrative and investigative bodies, judges and other supervisory institutions, including international bodies and human rights non-governmental organizations, thereby combating impunity.

When does torture take place?

Many cases of torture take place during the arrest, either at the victim's house, on the street, in order to make the alleged offender provide information, or to induce terror predisposing the prisoner for interrogation at the police station. Torture also often occurs during transfer of the prisoner from one facility to another. It is thus important to make contact with those just arrived at the prison.

Where in prison are the tortured prisoners more likely to be found?

Torture can occur in any spot within the prison. Therefore, accessing every place of the facility where inmates are kept is fundamental to ensure that no torture is being done. Especially the infirmary room, arrival section, the disciplinary and isolation cells are the most likely places to encounter the victims of torture.

What is to be done? – General principles

First and foremost: protection of the victim.

If a prisoner says he has suffered torture from a guard, the prisoner might face several risks. One is that he might not be able to establish proof and he himself is then prosecuted for spreading false information. Another risk is that the guards might “punish” him for his denunciation.





If a prison chaplain is told by an inmate that he was tortured, the chaplain should proceed only with full accord of the inmate. If the inmate tells him about atrocities but at the same time asks the chaplain not to use this information, this can lead to a conflict of conscience for the chaplain.

In principle, the protection of the victim should be considered first and foremost. What is to be done next, depends on many circumstances: how credible is the report of the inmate? is clear evidence given? are there witnesses? is it a single case or part of a bigger problem? is the prison system on the whole human-rights oriented and the reported case a singular phenomenon, or is it part of a torture “epidemic”? was the case reported to other people as well? to a human rights group? to a lawyer? And most importantly what exactly has the pastoral care worker personally witnessed?

Networking

A “single fighter” is always much more vulnerable than a group. If torture is a more widespread phenomenon in a given context, it is advisable to look for “allies”: church superiors, religious communities, prison officers who are human-rights oriented, members of civil society, the media, human rights groups, politicians, government officials. In many countries there are National Commissions for the Prevention of Torture or Ombudsmen.

The prevention of torture and monitoring of places of detention can happen on several levels: by official mixed commissions, NGOs, and individuals who report to official organs. In the Philippines, for example, prison chaplains are running projects on awareness raising and on the application of international standards in the field of administration of justice. Prevention and threat of exposure are as important as the prosecution of the torture acts already committed (which also has a preventive aspect).

Principle of subsidiarity

If acts of torture are to be denounced, this should be done (only with the prisoner’s permission and his request) at the next level of authority within the prison system, which seems to be able and willing to solve the problem. Where acts of torture are committed by a single guard (or a small group) and the prison chaplain knows that the prison governor does not accept these acts and is willing to react properly, the chaplain should contact the governor in that matter. If the governor has no credible and strong position, then the governor's superior in the administration might be the right person to address. The national order of responsibility shall normally be observed, particularly if the chaplain is part of the government structure. At the same time, the chaplain should inform his clerical superiors. However, if appropriate national action cannot be expected, international procedures are available.

Of course, the prisoner has a right to utilize the internal complaint

procedures and to notify the judiciary, the prison inspectorate and the prosecutor's office.

Acting in accordance with legal principles

Legal principles shall always be observed. Hearsay or rumors are not sufficient to act upon. Credible evidence is necessary. Corroboration is better. Details are important. False accusations must be avoided as well as being manipulated for personal, political or criminal purposes. On the other hand, cooperation in an investigation or judicial trial where personal knowledge (unless given in a confessional) or eyewitness testimony is required should voluntarily be given, unless the process is clearly unfair and prejudicial.

Practical guidelines

- Do no harm: certain dangers are inherent to human rights and pastoral work. However, prison chaplains should exercise great care and not create unnecessary risks for those they leave behind
- Exercise good judgment
- Respect the authorities and the staff in charge
- Inform the pastoral prison care coordinator of the problem discovered and follow the agreed way of proceeding
- Be clear about the limitations of your work; do not make promises that you are unable to keep
- Informed consent: as a rule, no representation must be made without an informed consent of the person providing information (victim, relatives, witnesses). Informed consent means fully understanding the benefits as well as the possible risks or negative consequences of any action taken..
- Security: interviews should be conducted in a way that renders it impossible for the authorities to identify the source of information (e.g., in places with a small number of detainees, all inmates should be interviewed the same way).
- All conversations with inmates should be conducted in private, beyond the hearing of officers.

How to proceed when someone complains of having been tortured

If it is believed that there is the possibility of finding a torture victim in prison, it is best to bring along other persons, a doctor or even a trusted official authority to corroborate the facts of the case.

The team should bring along material to register the testimony such as notebooks, complaint forms, and if lawful, photograph or video cameras, and tape recorders, as this will help to ensure an effective investigation and punishment. The individual case approach implies listening to the victim, seeing the wounds and empathising with his/her sufferings.





Prejudice as well as gullibility should be avoided, in other words, respect what the alleged victim says, but do not make assessments or judgments yet. At this preliminary stage, there are no truths or lies, just an allegation that needs to be investigated.

It does happen that a prisoner will make up a story by saying that he has been tortured to achieve something, such as being transferred to another section of the prison or even to another prison where he wants to go. The false accusation of torture could even be a plot to start a riot or a disturbance in collusion with part of the staff against the prison administrator. The pastoral care worker must be cautious of being used by prisoners to achieve objectives other than an investigation on torture.

The case should not be publicised on the basis of hearsay, without investigating as much as the pastoral worker can about the accusation; nor should he or she become a stepping stone to achieve goals other than the preservation of the dignity of human life.

Listen to the victim carefully and ask him/her to describe the events in as much detail as they can. If the pastoral worker finds the case is indeed credible, it is recommended to ask whether the victim wants to keep quiet or bring the case before an investigation body and/or correction authorities. If the victim wants to take the case to both disciplinary and criminal investigative bodies, the pastoral worker may encourage him to fill out an official complaint form.

If there are witnesses at hand, they might also sign the form and give their own written version of the events.

It is important to take notes in great detail such as the victim's full name, the alleged perpetrators' name, time, place, date of the alleged event, if there are wounds and on which part of the body they can be found, how the events happened, and if the prison's director was aware of the events and any subsequent actions taken.

What information should be recorded?

Interviewing a victim of torture is an extremely sensitive task, as it requires finding the balance between collecting accurate, good quality information and respecting the victim's difficulty to talk about a traumatic experience.

The following points can only serve as a guideline; requirements have to be adapted in each particular context. However, the account given should answer the following questions:

1. WHO did WHAT to WHOM?
2. WHEN, WHERE, WHY and HOW?

The information collected should reach a high level of detail and not leave unexplained gaps or inconsistencies.

The forms filled out and signed by the victim and the witnesses can in many countries be accompanied by a formal, clear, and short statement

of the prison pastoral care agency. The prison pastoral care representatives may describe the facts that they have seen and heard from the victim and the witnesses; the description should be in the conditional tense when summarizing the allegations. If the pastoral care agency hands over the formal complaints to the proper authority, the representative to whom the document was given should countersign a copy which will indicate it was received and serve as a record for the archive of subsequent actions taken. It is important to create a databank as a general register of all complaints that the prison pastoral care has received. This may also be useful for international human rights organisations and other organs concerned with torture.

One of the first things to ensure, if there is a obvious evidence of torture, is to demand a medical examination to establish the facts for the investigation and guarantee the accountability of the perpetrators.

The official charge of accusation is undertaken by the prosecutor, so the pastoral worker is only an informant, the person who brings the complaints from the prisoners and exerts pressure to start an investigation or a trial.

It is important to try and ensure that the victim will be out of harm's way before carrying on with the case. Often, the torturer and the custodian are the same person, so it becomes a problem because a grievance can aggravate the situation of the victim.

If this is the situation, the pastoral care worker should take the complaint confidentially and then only to an independent body of investigation.

Depending on the legal framework, it may be wise for the pastoral agent to obtain a proxy from the victim for him/herself or a lawyer to move the case along; it enables them to speak on behalf of the victim and makes them safe from any retraction by the victim or anyone saying they were not allowed to intervene on behalf of the victim..

It is equally as important to denounce a case of torture as it is to follow up the situation with the victim and also to pursue the further phases of investigation and trial. In addition, compensation and restitution are, of course, important to the person who has suffered.

As for the victim, returning to see him/her, helps to prevent retaliation and gives them more confidence in the prison pastoral care system.

Regarding the actual investigative or judicial proceedings, because of the lack of conclusive evidence as well as corporate collusion among criminal justice personnel, in other words the prosecutors and the judges sometimes tend to resist charging public officers, making it difficult to proceed with most of the cases. Therefore, it is very important to observe the acts of the authorities during the investigation and the trial.

Collaboration: Building a coalition of a country's human rights organisation

New alliances – especially with unexpected partners – can strengthen the efforts of human rights advocates in multiple ways. It is said “Win over





a former adversary and you have not only gained an ally you have lost an opponent”. Open channels of communication that had been closed and you lessen the possibility of conflict and abuse. Build relationships with groups outside your sector and lend credibility to your cause and attract new audiences. Reach across international borders and you build an alliance that is stronger, more flexible, and has more political clout. Strategic collaboration can make advocates more prepared, more powerful and more representative of the communities they serve. It can give them legitimacy in the mainstream, in media and in government. When the human rights advocates have a powerful, diverse array of allies and are no longer working in isolation, their work is much more difficult to assail.

How to implement effective measures to prevent Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

There are two important approaches to be pursued for the eradication of torture. One is combating the torture by speaking out when it occurs and bringing the grievances before the court or other organs in charge of investigating the cases (i.e., reporting findings to the judiciary or any other investigative body).

The other one is by preventing the practice of torture. Constantly visiting the prisons is indubitably one important way to prevent torture. On one hand it is a warning to the prison staff that someone cares about the integrity of the prisoner, that the violation of their human rights will not be tolerated and that the perpetrator will be held accountable. On the other hand it is an alert to prisoners that an external organism is there to ensure their integrity.

The regular presence of the pastoral worker in prisons is already a means to prevent torture, as long as he is acknowledged as someone who will not permit any ill-treatment against inmates.

Advocacy for improvement of prison conditions at the highest levels of government can be very effective in the long term. The advocacy group can submit proposals and put pressure on the state authorities to create legal and regulatory frameworks to prevent and eradicate torture and other inhuman conditions and ill treatment. For Catholic prison pastoral workers, it is a good idea do this in alliance with the Bishops' Conference and also by joining other organisations committed to human rights. Sometimes outrage must be expressed in clear and strong terms in response to scandalous cases.

Persuasion tactics

Persuasion tactics are used to end human rights abuses without confrontation, without demonising the abusers or those facilitating abuse. Often abusers simply need to be spoken to in order to end their participation in human rights violations.

While intervention tactics are often associated with denunciations and protests, some of the most dramatic successes in ending human rights

abuses have resulted from negotiation and persuasion. Through pressure that is at times quiet and other times more practical, advocates are able to make significant improvements in human rights, often very quickly. These tactics use non-adversarial relationships with governments, even offering concrete assistance to end the abuse or inhuman conditions. They put respected community leaders in the forefront of negotiations or education efforts. They operate in an atmosphere of collaboration.

People and relationships are an essential resource to consider when evaluating the range of tactics available. Who is close to your target? Who has their respect? Who can influence your target?

Different levels of action, national – international **National level**

The range of national procedures depends on the country in question, but could include

- Criminal proceedings (aimed at convicting the perpetrator)
- Civil proceedings (seeking financial compensation from the perpetrator)
- Disciplinary proceedings of the perpetrator
- Special procedures before national human rights commissions, ombudsman institutions, etc.

It is important to keep in mind that international procedures for individual complaints generally require the exhaustion of national remedies! It is important to examine closely the national situation and suggest appropriate reforms on basis of a systemic diagnosis. The action plan should cover state institutions, including parliamentary representatives, non-governmental organizations and the media.

Pastoral workers can also push for the legislation and independent supervisory bodies, in order to implement the Optional Protocol of the UN Convention Against Torture, OPCAT (and other regional conventions) as well as to impact public policy, promote human rights standards and to establish appropriate institutions.

Joint training of correctional officials and pastoral care workers can lead to a better mutual understanding, a better knowledge of international requirements, best practices and appreciation of the difficulties of implementing change within the system.

Public education against human rights abuses and the consequences of ill-treatment of prisoners is very important to create an atmosphere of support for the prevention of torture, even in times of acts of terrorism. Special courses should be offered to police, corrections staff, public prosecutors and judges in the use of force, in the handling of arrested persons, proper care of prisoners, conflict mediation and the use of alternatives to imprisonment to avoid overcrowding and degrading treatment. In addition the use of Internet-based continued education and simulation exercises can provide new knowledge and insights.





The new Internet technologies offer the opportunities for wide-based networking and resources to pastoral care workers advocacy groups. ICCPPC and other human rights NGOs offer wide-ranging information and resource links (www.iccppc.org).

International level

What can you achieve by reporting allegations of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to international human rights mechanisms?

- Drawing attention to a particular situation for the international community to take action
- Initiate constructive dialogue towards long-term improvements in a country
- Combating impunity, holding perpetrators to account
- Seeking remedy for an individual victim

Conditions to ensure effectiveness in the struggle against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in prison:

- The right to religious assistance must be reinforced by law, otherwise the religious programs will always be precarious and could be revoked anytime by the administration of the prison.
- The local prison pastoral care workers should be able to act objectively vis-à-vis the prison system;
- No undue restrictions shall be imposed as to where the prison pastoral worker can access the prison facility: The right to religious assistance implies that all the places of the prison will be accessed to check if there is a prisoner there in need of religious or humanitarian assistance. Wherever an inmate might be, there the chaplain must go!

Annex I: Excellent guides include:

Camille Giffard, *The Torture Reporting Handbook*, How to document and respond to allegations of torture within the international system for the protection of human rights, Human Rights Center, University of Essex, 2000. Available in Arabic, English, French, Spanish and Russian.

Association For The Prevention of Torture (APT): *Monitoring places of detention: a practical guide for NGOs*.

UN Office of the High Commissioner of Human Rights, *Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or degrading treatment or Punishment*, Professional Training Series no. 8, New York, Geneva, 2001.

UN Office of the High Commissioner for Human Rights, *Human*

Rights and Prisons – A manual on Human Rights Training for Prison Officials, Professional Training Series no. 9, Geneva 2003.

Amnesty International, Combating Torture: A manual for action, London, 2003, available on www.amnesty.org in English.

The Center for Victims of Torture, New Tactics in Human Rights – A Resource for Practitioners, Minneapolis – Minnesota, USA, available on www.newtactics.org

Interights - Prohibition of Torture an Inhuman or Degrading Treatment or Punishment under the European Convention on Human Rights (Article 3) – Manual for Lawyers – London 2007

Annex II: International level

The range of instruments and procedures at the international level is very wide. A distinction can be made by considering the origin and the function of the body in question.

1. Treaty bodies:

Treaty bodies are created by an agreement (named treaty, convention, covenant or charter) between a number of states. They are created to supervise State obligations stemming from the treaty. For instance, the United Nations Convention against Torture set up the Committee Against Torture, as competent for checking a country's respect for those obligations. Consequently the treaty body's mandate is limited to states that are party to the treaty.

2. Non-treaty mechanisms:

These mechanisms are not created for supervising a specific treaty. They might be a political body consisting of state representatives (e.g., United Nations Human Rights Council), or they are set up by a resolution of such political bodies. Therefore it is automatically competent for examining the situation of all states that are members of United Nations. For instance, the Special Rapporteur on Torture was created by a resolution of the predecessor of the United Nations Human Rights Council (the United Nations Commission on Human Rights).

Functions of the mechanism

1. Reporting functions:

Certain treaty bodies receive periodic state reports, giving account of the conformity with the obligations stemming from the respective treaty. The treaty body evaluates the situation and provides the country with its comments and recommendations. The presentation of the reports and the treaty body's recommendations are public and accredited NGOs participate by presenting alternative information to the state reports.

2. Complaint procedures:

The complaint procedures have proved to be a very effective instrument. The procedure is a judicial or litigation-style process, which aims





to establish whether or not, a state has violated his human rights of an individual granted by the relevant treaty.

Reporting mechanisms in the United Nations System

The Human Rights Council complaint procedure

In 2007 the Council established a new Complaint Procedure to address consistent patterns of gross and reliably attested violations of all human rights and fundamental freedoms, in any part of the world, under any circumstances.

Special Rapporteur on Torture

The Special Rapporteur is an independent expert, who presents an overall picture of the practice of torture to the UN Human Rights Council. His mandate covers all countries, irrespective of whether a State has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The mandate comprises three main activities: transmitting urgent appeals to States with regard to individuals reported to be at risk of torture, as well as communications on past alleged cases of torture; undertaking fact-finding country visits; and submitting annual reports on activities. To fulfill his mandate the Rapporteur receives information from individuals, NGOs and governments.

The UN Treaty Bodies

Treaty bodies were created to supervise the implementation by state parties of their obligations of certain UN human rights treaties.

Committee Against Torture

The Committee Against Torture (CAT) is the body of independent experts that monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by its State parties.

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention and then every four years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations”.

Optional Protocol to the Convention against Torture and other Cruel, Inhuman Treatment or Punishment, OPCAT

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment is an important addition to the United Nations Convention Against Torture (1984). It establishes an international inspection system for places of detention modeled on the system which has existed in Europe since 1987 (see below Council of Europe).

The Optional Protocol establishes a system of regular visits to places of detention conducted by independent international and national bodies, which, together, conduct regular visits to all places of detention in all States Parties and recommend to the authorities establishment of effective

measures to prevent torture and ill-treatment and improve the conditions of detention of all persons deprived of liberty.

At the international level, the OPCAT creates a new international preventive body, the UN Subcommittee for the Prevention of Torture. At the national level, States Parties have to create or designate National Preventive Mechanisms (NPMs) within one year of ratification of the OPCAT.

To see the state of ratifications and for further reading: www.apt.ch

In addition to the reporting procedure, the Convention establishes three other mechanisms through which the Committee performs its monitoring functions: the Committee may also, if the State in question has made a special declaration under Art 22 CAT, consider individual complaints or communications from individuals claiming that their rights under the Convention have been violated, undertake inquiries, and consider inter-state complaints.

Human Rights Committee

The Human Rights Committee is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State Parties. All State Parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Covenant and then whenever the Committee requests (usually every four years). The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations".

In addition to the reporting procedure, the First Optional Protocol to the Covenant gives the Committee competence to examine individual complaints regarding alleged violations of the Covenant by State Parties to the Protocol.

The reporting system of the European Committee for the Prevention of Torture

The Committee was founded on the basis of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987). The CPT members are independent and impartial experts from a variety of backgrounds.

The CPT visits places of detention (e.g., prisons and juvenile detention centres, police stations, holding centres for immigration detainees and psychiatric hospitals), to see how persons deprived of their liberty are treated and, if necessary, to recommend improvements to States. Under the Convention, CPT delegations have unlimited access to places of detention and the right to move inside such places without restriction. They interview persons deprived of their liberty in private and communicate freely with anyone who can provide information. The recommendations which the CPT may formulate on the basis of facts found during the visit, are included in a report which is sent to the State concerned. This report is





the starting point for an ongoing dialogue with the State concerned.

The CPT has two guiding principles: cooperation and confidentiality. Cooperation with the national authority is at the heart of the Convention, as the aim is to protect persons deprived of their liberty rather than to condemn States for abuses. The Committee therefore meets in camera and its reports are strictly confidential. Nevertheless, if a country fails to cooperate or refuses to improve the situation in the light of the Committee's recommendations, the CPT may decide to make a public statement.

Complaint Procedure - The European Convention on Human Rights

The European Court of Human Rights in Strasbourg was established under the European Convention on Human Rights of 1950 to monitor compliance by Signatory Parties.

The Inter-American Court and Commission on Human Rights

In contrast to the European human rights system, individual citizens of the OAS member states are not allowed to take cases directly to the Court: individuals who believe that their rights have been violated must first lodge a complaint with the Commission and have that body rule on the admissibility of the claim. If the case is ruled admissible and the state deemed at fault, the Commission will generally serve the state with a list of recommendations to make amends for the violation. Only if the state fails to abide by these recommendations, or if the Commission decides that the case is of particular importance or legal interest, will the case be referred to the Court. The presentation of a case before the Court can therefore be considered a measure of last resort, taken only after the Commission has failed to resolve the matter in a noncontentious fashion.

In addition to ratifying the Convention, a state party must voluntarily submit to the Court's jurisdiction for it to be competent to hear a case involving that state.

The African Commission and Court on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights, in existence since 1986, is established under the African Charter on Human and Peoples' Rights (the African Charter) rather than a Constitutive Act of the African Union. It is the premier African human rights body, with responsibility for monitoring and promoting compliance with the African Charter. The African Court on Human and Peoples' Rights was established in 2006 to supplement the work of the Commission, following the entry into force of a protocol to the African Charter providing for its creation.

The Special Rapporteur on Prisons and Detention Conditions in Africa

See http://www.achpr.org/english/_info/prison_mand..html

Where to find further information:

23 Frequently Asked Questions for treaty body complaint procedures:

<http://www2.ohchr.org/english/bodies/petitions/docs/23faq.pdf>

Torture Reporting Handbook:

<http://www.essex.ac.uk/Torturehandbook/>

Special Rapporteur on Torture:

<http://www2.ohchr.org/english/issues/torture/rapporteur/>

United Nations treaty body database

<http://tb.ohchr.org/default.aspx>

Human Rights Council

<http://www2.ohchr.org/english/bodies/chr/complaints.htm>

Committee against Torture

<http://www2.ohchr.org/english/bodies/cat/index.htm>

Association for the Prevention of Torture:

<http://www.ap.t.ch>

European Committee for the Prevention of Torture

www.cpt.coe.int

Annex IV: OPCAT

The Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 18 December 2002 by the UN General Assembly, is a valuable international instrument aimed at preventing the practice of torture and other forms of ill-treatment against persons deprived of their liberty. This document establishes, for the first time within the realm of existing human rights mechanisms, a dual preventive system of regular visits to places of detention to be carried out by a UN International Subcommittee and by one or several independent national preventive bodies designated by each State Party. The Optional Protocol counts has received the necessary 20 ratifications and/or accessions required for its entry into force on 22 June 2006.

The International Catholic Commission of Prison Pastoral Care has been strongly advocating for the adoption of this document in a number of countries. The role of its office in Brazil, for example, deserves particular mention as it has been actively involved in a variety of activities to promote the ratification and implementation of the Optional Protocol in that country.

OPCAT Country Status Ratification and Implementation

There are currently 44 States Parties and 27 Signatories to the Optional Protocol., <http://www.ap.t.ch/> - links:

OPCAT Country Status (Info)

OPCAT Ratification Status

National Preventive Mechanisms



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**Subsequent inputs were obtained from a number of
experts to whom we express our deepest gratitude**



**The printing of this booklet was made possible
by the Austrian Ministry of Justice and
the non-governmental organization
“Hope behind Bars”**

