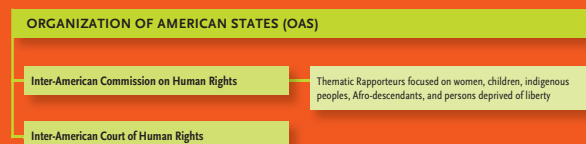
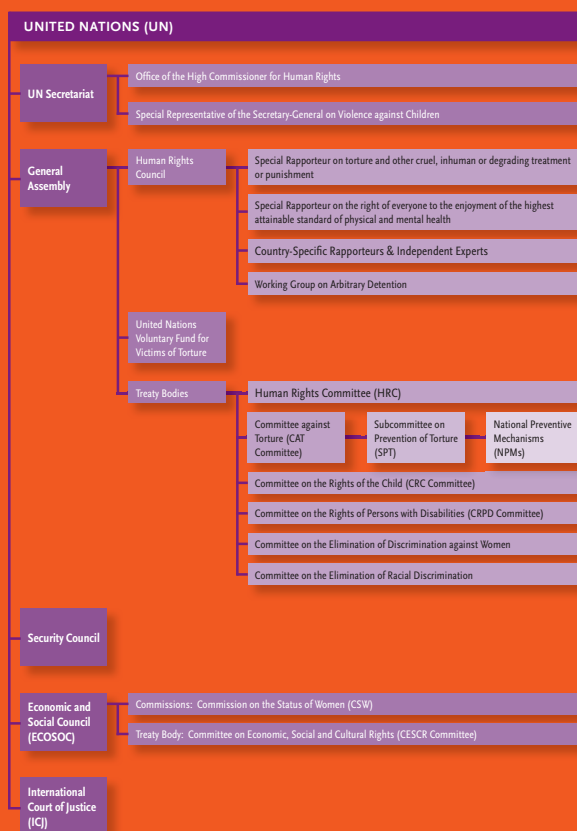


TWENTY MECHANISMS FOR ADDRESSING TORTURE IN HEALTH CARE



**OPEN SOCIETY
FOUNDATIONS**

TWENTY MECHANISMS FOR ADDRESSING TORTURE IN HEALTH CARE



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ACKNOWLEDGMENTS

Authors

- | Christian Triantaphyllis
- | Tamar Ezer
- | Jonathan Cohen

Reviewers and Contributors

- | Monica Arango
- | Volha Baraulia
- | Iain Byrne
- | Alejandra Cardenas
- | Amanda Carroll
- | Lydia Guterman
- | Tirza Leibowitz
- | Diederik Lohman
- | Tatyana Margolin
- | Priti Patel
- | Clara Sandoval
- | Roxanne Saucier
- | Paul Silva
- | Elisa Slattery
- | Adriaan van Es
- | Christina Zampas

ABBREVIATIONS

African Charter	African Charter on Human and Peoples' Rights
ACHPR	African Commission on Human and Peoples' Rights
African Court	The African Court on Human and Peoples' Rights
American Convention	American Convention on Human Rights
American Declaration the Commissioner	American Declaration of the Rights and Duties of Man Commissioner for Human Rights
CAT Committee	Committee against Torture
CRC Committee	Committee on the Rights of the Child
CRPD Committee	Committee on the Rights of Persons with Disabilities
Convention against Torture	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CPT	European Committee for the Prevention of Torture
Convention for the Prevention of Torture	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HRC	Human Rights Committee
the Council	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
OHCHR	Office of the High Commissioner for Human Rights
OPCAT	The Optional Protocol to the Convention against Torture
OAU	Organization of African Unity
OAS	Organization of American States
the Protocol	The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights
SRP-Africa	Special Rapporteur on Prisons and Conditions of Detention in Africa
Special Rapporteur	Special Rapporteur on Torture
SPT	Subcommittee on Prevention of Torture
UN	United Nations
ECOSOC	United Nations Economic and Social Council
the Fund	United Nations Voluntary Fund for Victims of Torture
UPR	Universal Periodic Review
WGAD	Working Group on Arbitrary Detention

INTRODUCTION

Health care settings should be places where human rights are realized. Yet, too often, they are places where human rights are severely abused, sometimes amounting to torture or cruel, inhuman, and degrading treatment. This abuse is especially prevalent in the care of socially marginalized groups—people living with HIV, ethnic minorities, sexual and gender minorities, people who use drugs, and people with intellectual disabilities or mental health problems—who may be deemed “deviant,” “incompetent,” and in need of evaluation or “curative” treatment through the health care system.

International law explicitly protects patients in health settings against torture.¹ Most human rights prohibitions against torture encompass abuses ranging from torture to cruel and inhuman treatment to degrading treatment. There are a number of factors that distinguish between these three categories of abuse: (1) the severity of pain or suffering that is inflicted; (2) the intention and purpose of the infliction of the pain or suffering; and (3) the lawful sanctions inherent in or incidental to the pain or suffering. This manual is concerned with addressing any conduct covered by these categories in health care settings. This includes prisons, detention centers, and any other sites in which health care is provided.

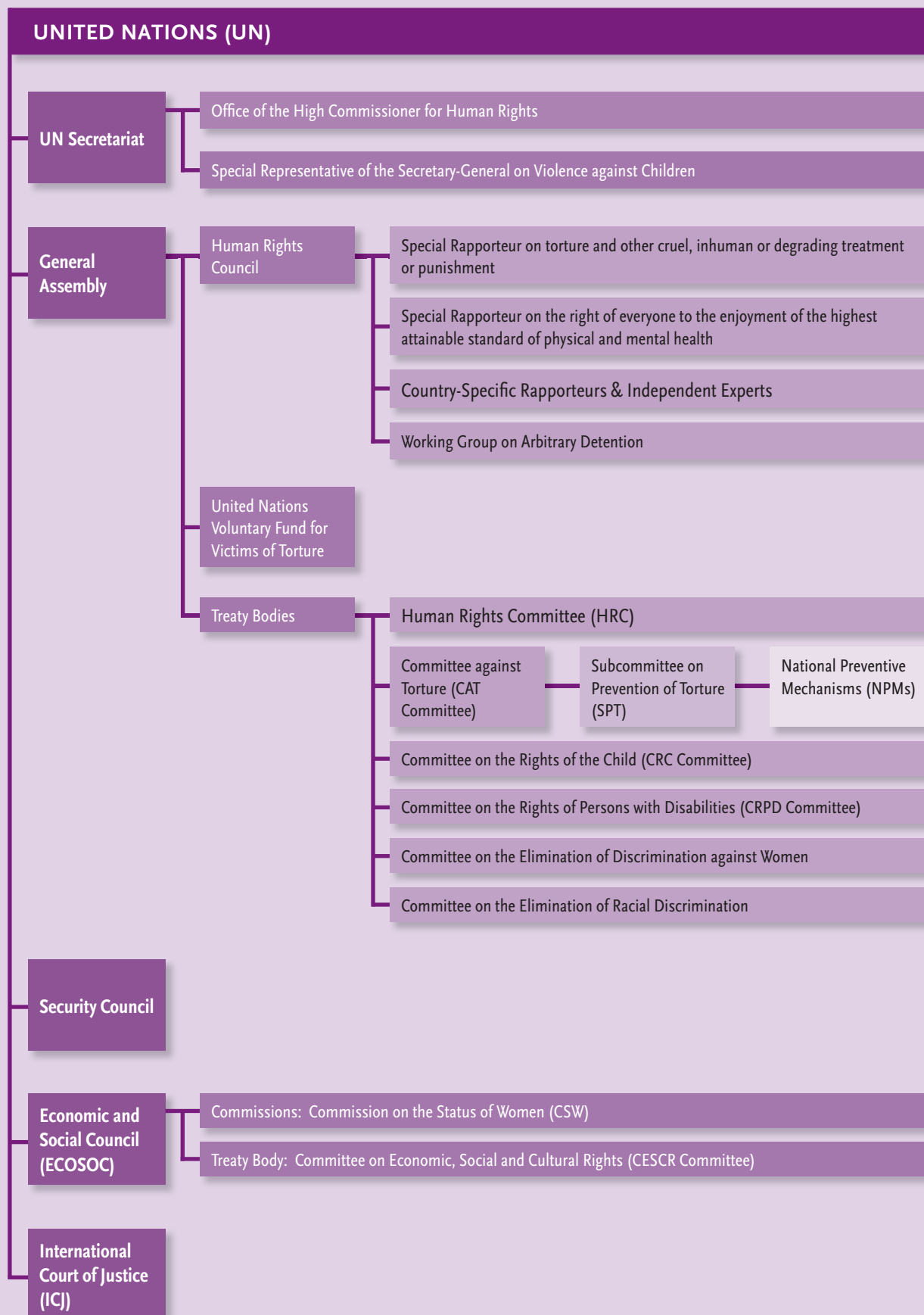
There are many national, regional, and international mechanisms designed to promote accountability for and to prevent torture and cruel, inhuman, and degrading treatment, yet these mechanisms are rarely applied to health facilities. While human rights abuses, such as forced sterilization and abortion, denial of essential pain relief, and the use of involuntary detention as “treatment,” involve a host of different rights violations, advocacy through anti-torture mechanisms provides an additional, important tool for combating such abuses. This manual is designed as a resource for organizations that advocate against abuse in health care—including international, regional, and national human rights organizations; groups focused on particular health care abuses; anti-torture groups; and the treaty bodies themselves.

This manual describes 20 anti-torture mechanisms from the United Nations (UN) and from African, European, and Inter-American human rights systems and provides illustrative examples to explain how to use these mechanisms to fight torture in health settings.² It provides a brief introduction

-
1. As the United Nations Human Rights Committee explained, the non-derogable prohibition against torture and cruel, inhuman, and degrading treatment “protects, in particular, children, pupils, and patients in teaching and medical institutions.” UN Human Rights Committee, General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Article 7), 3/10/1992, para. 5.
 2. Currently, there is no Asian regional human rights system, but some Asian countries are part of the United Nations system.

to each system and examines the treaty-based and charter-based organs that address torture in each system. A set of questions accompanies each mechanism, exploring its mandate, procedure, possibilities for engagement, and prior work on torture in health care. The manual also includes a glossary of basic human rights terms.

THE UN SYSTEM AND INTERNATIONAL MECHANISMS



This diagram is not exhaustive. It focuses on the mechanisms in the manual and situates them among a few other human rights bodies of interest.

THE UN SYSTEM AND INTERNATIONAL MECHANISMS

In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights, which condemned torture and other cruel, inhuman or degrading treatment. The UN set up a two-track system to monitor compliance with this principle against torture. The human rights system consists of charter-based organs and treaty-based organs.

Charter-based organs include those that are related to the bodies created in the Charter of the United Nations, such as the Human Rights Council, the Special Rapporteur on Torture, Country-Specific Rapporteurs and Independent Experts, the Working Group on Arbitrary Detention, and the UN Voluntary Fund for Victims of Torture. Treaty-based organs include those that are created by the various human rights treaties between countries. For example, the Human Rights Committee (HRC) monitors a country's compliance with the International Covenant on Civil and Political Rights, and the Committee Against Torture (CAT) monitors a country's compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Also part of the UN system is the Office of the High Commissioner for Human Rights (OHCHR). Established in 1993, the OHCHR is principally responsible for promoting and protecting human rights in UN Member States. The OHCHR plays a role in setting standards and in monitoring and implementation of human rights norms. The OHCHR also adopts measures with the broad goal of improving the human rights situation in modern society.

1. Office of the High Commissioner for Human Rights (OHCHR)

A. What is this mechanism responsible for?

The OHCHR is based on the General Assembly's resolution 48/141, the Charter of the United Nations, the Universal Declaration of Human Rights and subsequent human rights instruments, the Vienna Declaration and Programme of Action, the 1993 World Conference on Human Rights, and the 2005 World Summit Outcome Document.

The OHCHR is mandated to prevent human rights violations, secure respect for all human rights, promote international cooperation to protect human rights, and strengthen the UN system in the field of human rights. Additionally, the OHCHR encourages UN agencies to

incorporate a human rights approach in all the work they carry out. For more information, see <http://www.ohchr.org/EN/Pages/WelcomePage.aspx>.

B. What does this mechanism do?

- **Provides assistance to governments and UN agencies**

The OHCHR provides expertise and technical trainings to governments through its United Nations Technical Cooperation Programme (the Programme), which helps implement international human rights standards on the ground. The Programme works on activities that focus on the administration of justice, legislative reform, the electoral process, and the strengthening of national structures that have a direct impact on supporting human rights and the rule of law.

The OHCHR also supports the work of UN human rights mechanisms, such as the Human Rights Council and the core treaty bodies set up for monitoring States Parties' compliance with international human rights treaties. For a list of UN organizations that receive support from the OHCHR, see <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>.

- **Forms partnerships**

The OHCHR works with governments, civil society, national human rights institutions, and other UN entities and international organizations to promote and protect human rights. The OHCHR's Civil Society Unit specifically provides an entry point for nongovernmental organizations (NGOs) wishing to contact the OHCHR on matters relating to the promotion and protection of human rights. In addition, at the request of States Parties, countries receive tailored advice on appropriate constitutional or legislative frameworks regarding the establishment of national human rights institutions.

- **Implements human rights efforts in the field**

The OHCHR has a very active human rights presence in the field. Through its various country offices around the world, the OHCHR participates in activities that involve public reporting, provide technical assistance, and monitor and develop long-term national capacities to address human rights issues.

For more information about the work of the OHCHR, see <http://www.ohchr.org/EN/ABOUTUS/Pages/WhatWeDo.aspx>.

C. How can NGOs engage with this mechanism?

- **Collaborate**

NGOs can receive the OHCHR's expertise on important human rights issues to facilitate the implementation of human rights activities. For a detailed analysis of the type of assistance NGOs can receive from the OHCHR, see <http://www.ohchr.org/Documents/Publications/NgoHandbook/ngohandbook1.pdf>.

- **Lodge complaints**

NGOs can lodge complaints alleged under the international human rights treaties to the OHCHR. In addition, NGOs can lodge human rights complaints to the Human Rights Council branch of the OHCHR. For more information about sending complaints to the OHCHR, including sample questionnaires and information about what to include in the complaint, see <http://www.ohchr.org/Documents/Publications/NgoHandbook/ngohandbook8.pdf>.

NGOs may submit human rights complaints under these three mechanisms:

- The international human rights treaties (petitions)
- The Special Procedures mechanisms of the Human Rights Council
- The complaint procedure of the Human Rights Council

D. Which countries does this mechanism cover?

This mechanism covers all UN Member States. For a list of UN Member States, see <http://www.un.org/en/members/>.

E. Who are the people behind this mechanism?

The current UN High Commissioner for Human Rights, Navanethem Pillay, who is from South Africa, was appointed in September 2008. Ms. Pillay is a leading international human rights expert. She has sat as a judge on the International Criminal Court in The Hague, on the International Criminal Tribunal for Rwanda, and on the South African High Court. In 1967, Ms. Pillay became the first woman to start a law practice in her home province of Natal, where she acted as a defense attorney for anti-apartheid activists, exposing torture and helping to establish key rights for prisoners on Robben Island.

F. How do I contact this mechanism?

For general inquiries:

Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais des Nations | 8–14, avenue de la Paix | CH-1211 Geneva 10, Switzerland
Phone: +41 22 917 9000 | E-mail: InfoDesk@ohchr.org

To send a complaint under the Human Right Council's complaint procedure:

Human Rights Council Branch (complaint procedure)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais des Nations | 8–14, avenue de la Paix | CH-1211 Geneva 10, Switzerland
Phone: +41 22 917 9011 | E-mail: CP@ohchr.org

To send a complaint under the international human rights treaties:

Petitions Team
[Specify which human rights treaty body you wish to contact.]
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais des Nations | 8–14, avenue de la Paix | CH-1211 Geneva 10, Switzerland
Fax: +41 22 917 9022 (for urgent matters; include all relevant documents as hard copies)
E-mail: tb-petitions@ohchr.org

To contact the Civil Society Section:

Phone: +41 22 917 9656 | E-mail: civilsocietyunit@ohchr.org

2. Human Rights Council

A. What is this mechanism responsible for?

The purpose of the Human Rights Council (the Council), which was established by the General Assembly's resolution 60/251, is to address human rights violations and make recommendations about them. The Council reaffirms and recalls the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture, and other human rights instruments. As an intergovernmental body in the UN system, it works closely with the OHCHR and is involved with UN Special Procedures. The Special Procedures are mechanisms used by the Council to address either specific country situations or thematic issues in all parts of the world. The OHCHR provides these mechanisms with resources to help fulfill their mandates. For more information, see <http://www2.ohchr.org/english/bodies/hrcouncil/>.

Article 5 of the Universal Declaration of Human Rights emphasizes that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” ICCPR Article 7 also states “that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.” In addition, the Convention against Torture provides the following anti-torture provisions:

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

Article 2: *Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. 3. An order from a superior officer or a public authority may not be invoked as a justification of torture.*

Article 4: *Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.*

Article 10(1): *Each State Party shall ensure that education and information regarding the prohibition against torture [and cruel, inhuman, degrading treatment or punishment] are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.*

Article 10(2): *Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.*

B. What does this mechanism do?

- **Implements Special Procedures**

The Council addresses specific country situations or thematic issues through its Special Procedures mechanism. Special Procedures refers to either an individual, such as a

Special Rapporteur or an Independent Expert, or a working group made up of several people who examine, monitor, advise, and report on human rights situations.

Special Procedures can receive information on specific allegations of human rights violations and send urgent appeals regarding an allegation to the accused government(s) asking for clarification. Special Procedures can also carry out country visits to investigate alleged human rights abuses. After visiting a country, a report is issued containing findings and recommendations. Please see the Country-Specific Rapporteurs and Independent Experts and the Working Group on Arbitrary Detention sections of this manual for more information.

- **Issues annual reports**

The Council issues annual reports that address specific human rights concerns, list the Council's decisions, and otherwise describe its activities.

- **Collects information on human rights violations**

The Council gathers and examines information on human rights violations through its Advisory Committee. The Advisory Committee communicates with States, human rights institutions, NGOs, and other civil society entities in order to determine human rights issues that need to be addressed. The Advisory Committee has up to two sessions for a maximum of 10 working days per year.

- **Reviews UN Member States' human rights records through the Universal Periodic Review**

The Universal Periodic Review (UPR) is the process by which the human rights records of all UN Member States are reviewed. Forty-eight States are reviewed each year, and each Member State is reviewed once every four years. For a list of UPR reviews by country and year, see <http://www.ohchr.org/EN/HRBodies/UPR/Documents/uprlist.pdf>.

The UPR Working Group, which consists of the 47 members of the Council, conducts the reviews. Any UN Member State can participate in discussions with the States under review. A State's review is based on information provided by that State, information acquired from the reports of independent human rights experts and groups, and information from NGOs and national human rights institutions.

The UPR emphasizes equal treatment for all countries and provides an opportunity for each State to report what actions it has taken to improve the human rights situation in-country. In addition, as part of the UPR process, the Council identifies and shares best practices in human rights.

An Outcome Report is issued after a State has been reviewed and after the reviewed State has had the opportunity to make preliminary comments on the recommendations,

which it may either accept or reject. The Outcome Report must be adopted at a plenary session of the Council. During the plenary session, the State under review can reply to questions and issues that were not adequately addressed by the UPR Working Group and can also respond to recommendations raised by Member States during the review. Time is provided to Member and Observer States that wish to express their opinions on the Outcome Report. NGOs may make general comments.

C. How and when does this mechanism meet?

UPR Working Group sessions take place three times a year for a period of two weeks in Geneva, Switzerland. For more information on the sessions, see <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRSessions.aspx>.

D. How can NGOs engage with this mechanism?

- **Participate in the UPR**

NGOs can submit information, which can be added to the report of the other stakeholders and be considered during the UPR. NGOs can also attend the UPR Working Group sessions and make statements at the regular session of the Council when a State's Outcome Report is considered.

NGOs that are in consultative status with the UN Economic and Social Council (ECOSOC) can be accredited to participate in the session of the UPR Working Group as Observers, which enables NGOs to observe the proceedings. Although NGOs cannot make oral or written statements, participating provides an opportunity to share information and monitor the proceedings.

- **Provide information to the Advisory Committee**

The Advisory Committee communicates with States, human rights institutions, NGOs, and other civil society entities about current human rights issues.

For more information about how NGOs can engage with this mechanism, please see the Working Group on Arbitrary Detention, the Special Rapporteur on Torture, and the Country-Specific Rapporteurs and Independent Experts sections of this manual.

E. Which countries does this mechanism cover?

The Council is made up of 47 Member States, with staggered terms of three years. For a list of current Member States, see <http://www2.ohchr.org/english/bodies/hrcouncil/membership.htm>.

Member States are responsible for strengthening human rights in UN Member States throughout the world. For a list of UN Member States, see <http://www.un.org/en/members/>.

F. Who are the people behind this mechanism?

The Officers of the Council include the President, Rapporteur, and Vice Presidents. Factors considered when electing these Officers include their voluntary pledges and commitments to the promotion and protection of human rights and to the upholding of the highest standards in the promotion and protection of human rights. For a list of the 2012 Officers, see <http://www2.ohchr.org/english/bodies/hrcouncil/6thBureau.htm>.

G. How does this mechanism take action?

The following examples are excerpts from reviews that this mechanism has produced relevant to torture in health care:

13. HIV is a serious health issue for men who have sex with men (MSM). A group study which was conducted among MSM in the most populous region of Guyana showed a rate of infection of 21% with a transmission through men who have sex with men estimated at 18%. The Government has also acknowledged that men who have sex with men are also a vulnerable group. The problem is that there is an inconsistent response to LGBT [Lesbian, Gay, Bisexual and Transgender] persons who are in need of health care and related social services since there is an accepted norm of discrimination. There are some health care professionals who would exercise their own discretion in terms of how they treat LGBT persons. The persons who are discriminated against do not have recourse to any remedies within the health system.

—Guyana, 2010

17. Under Kyrgyz law, people who use drugs and/or are dependent on them are inscribed on a narcological periods registry... Health care workers must share confidential information about patients receiving drug dependence treatment upon official request by the police, investigative bodies, the public prosecutor or a court. Failing to protect fully the confidentiality of patients receiving treatment for drug dependence creates a disincentive for people to seek health services if this may result in investigation and possible prosecution by law enforcement authorities.

—Kyrgyz Republic, 2010

29. *Discrimination based on sexual orientation or gender identity is pervasive and perpetrated with impunity... LGBT people report both direct and indirect discrimination in their interactions with health care professionals in Kyrgyzstan; this includes not only intolerant and stigmatizing behaviour, but also denial of medical care, particularly experienced by transgender people.*

—Kyrgyz Republic, 2010

67. *Continue measures for the prevention of forced sterilization and provision of legal remedies to victims of such violations (Mexico); guarantee that no women belonging to minority groups, including Roma, can be subject to practices of forced sterilization and that victims of such practices are provided with the necessary reparation (Cuba);*

68. *Proceed to carry out impartial and independent investigations of all complaints from women alleging to have been subjected to forced sterilization in order to determine who is responsible and bring them to justice (Cuba); take concrete steps to investigate the allegations, including legal action, and to prevent reoccurrence of the coercive sterilization of Roma women and compensate victims (Japan);*

69. *Monitor health centres to ensure that patients provide fully informed consent before any sterilization procedure is carried out and that the complaints filed on grounds of coerced sterilization are duly investigated and victims are granted effective remedies (Azerbaijan)....*

—Slovakia, 2010

For information about the actions of this mechanism, please see the Working Group on Arbitrary Detention, the Special Rapporteur on Torture, and the Country-Specific Rapporteurs and Independent Experts sections of this manual.

H. How do I contact this mechanism?

Office of the United Nations High Commissioner for Human Rights (OHCHR)
Civil Society Section
Phone: +41 22 917 9656 | E-mail: civilsociety@ohchr.org

To send a complaint under the Human Rights Council's complaint procedure:

Human Rights Council and Treaties Division
Complaint Procedure
OHCHR-UNOG
Palais des Nations | CH-1211 Geneva 10, Switzerland
Fax: +41 22 917 9011 | E-mail: CP@ohchr.org

3. Special Rapporteur on Torture

A. What is this mechanism responsible for?

The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Special Rapporteur) carries out the Council's mandate expressed in resolution 8/8 of June 2008. In addition, the Special Rapporteur promotes the following international treaties and principles:

- **International Covenant on Civil and Political Rights**

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

- **Convention against Torture**

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

Article 2: *Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. 3. An order from a superior officer or a public authority may not be invoked as a justification of torture.*

Article 4: *Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.*

Article 10(1): Each State Party shall ensure that education and information regarding the prohibition against torture [and cruel, inhuman, degrading treatment or punishment are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

Article 10(2): Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Principle 2: It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 6: No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

B. What does this mechanism do?

- **Investigates States Parties**

The Special Rapporteur undertakes fact-finding country visits. Visits are undertaken only at the invitation of a Government, but the Special Rapporteur may solicit an invitation based on the gravity of the allegations. The Special Rapporteur does not require the exhaustion of domestic remedies to act. The Special Rapporteur comments on the information discovered while investigating States Parties by issuing General Recommendations.

- **Submits allegation letters**

If the Special Rapporteur receives information regarding allegations of torture, in situations that do not require immediate action, the Special Rapporteur will send the Government of the nation concerned an allegation letter. The Special Rapporteur requests the Government to explain the allegations and to forward information on the status of any investigation.

- **Produces annual reports**

The Special Rapporteur prepares annual reports on its activities, its mandate, and its methods of work to the Council and the General Assembly.

- **Makes urgent appeals**

The Special Rapporteur transmits urgent appeals to States concerning individuals believed to be at risk of torture.

C. How can NGOs engage with this mechanism?

- **Lodge complaints**

NGOs or individuals submit to the Special Rapporteur complaints that concern allegations of torture or pleas for urgent appeals. The Special Rapporteur will act upon receiving credible information that suggests that an individual or a group of individuals is at risk of torture at the hands, consent, or acquiescence of public officials. For more information about how to lodge a complaint, including a model questionnaire, see <http://www2.ohchr.org/english/issues/torture/rapporteur/model.htm>.

- **Meet with the Special Rapporteur during country visits**

During country visits, the Special Rapporteur meets with NGOs, representatives of the legal profession, and alleged victims and relatives of victims to gain a firsthand account of the situation concerning torture. These meetings assist the Special Rapporteur in making recommendations and identifying factors that may be contributing to torture.

D. Which countries does this mechanism cover?

The Special Rapporteur covers all countries regardless of whether a State has ratified the Convention against Torture. For a list of UN Member States, see <http://www.un.org/en/members/>.

E. Who are the people behind this mechanism?

Juan Mendez, an Argentine human rights lawyer, was appointed Special Rapporteur on November 1, 2010.

F. How does this mechanism take action?

The following examples are excerpts from statements, conclusions and recommendations, and country reports that this mechanism has produced relevant to torture in health care. (For more information see <http://www2.ohchr.org/english/issues/torture/rapporteur/index.htm>.)

**STATEMENTS FROM THE FORMER SPECIAL RAPPORTEUR,
MANFRED NOWAK (AUSTRIA), 2004–2010**

In addition, persons with disabilities have been disproportionately exposed to medical experimentation and intrusive and irreversible medical treatments without their consent. Examples include sterilization, abortion and interventions aiming to correct or alleviate a disability, such as electroshock treatment and mind-altering drugs including neuroleptics.... From a torture mandate point of view a State party to the convention has to take specific measures to ensure that comprehensive information about possible medical treatments or intervention and their consequences is provided to persons with disabilities, that they give their explicit consent in a verifiable form and that no pressure is put on them to consent.

—63rd Session of the General Assembly, 2008

57. Drug users are particularly vulnerable when deprived of their liberty. One of the questions in this context concerns withdrawal symptoms and to what extent they may qualify as torture or ill-treatment. There can be no doubt that withdrawal symptoms can cause severe pain and suffering if not alleviated by appropriate medical treatment, and the potential for abuse of withdrawal symptoms, in particular in custody situations, is evident....

58. Whereas the World Health Organization (WHO), the United Nations Office on Drugs and Crime and UNAIDS all concur that the therapy is the most effective intervention available for the treatment of opioid dependence and a critical component of efforts to prevent the spread of HIV among injecting drug users, that it considerably reduces mortality and epidemics among drug users and that it improves uptake and adherence to antiretroviral treatment for HIV-positive opiate drug users, in some developing and transitional countries, the most effective treatments for opiate addiction are available to fewer than 1 per cent of those in need....

59. In this regard, the Special Rapporteur wishes to recall the WHO/United Nations Office on Drugs and Crime Principles of Drug Dependence Treatment of March 2008, which explicitly refer to the need to view drug dependence as any other health-care condition, in terms of the standards of ethical treatment and stress that drug addicts enjoy the right to autonomy and privacy. Access to treatment and care services needs to be ensured also for the patients not motivated to stop drug use or relapsing after





treatment, as well as during detention periods in prison. The principles also emphasize that drug dependence treatment should in general be voluntary and that, if it is part of State-imposed penal sanctions, the patient should have the possibility to reject treatment. The Special Rapporteur underlines the requirement of consent in this respect and recalls that the Committee on Economic, Social and Cultural Rights interpreted article 12 of the Covenant on Economic, Social and Cultural Rights to include “the right to be free from [...] non-consensual medical treatment and experimentation” and stressed that States had the obligation to refrain from applying coercive medical treatments, unless on an exceptional basis in line with applicable international standards.

68. Worldwide, millions of people continue to suffer from often severe pain, although already in 1961, the Single Convention, in its preamble, recognized that “the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes,” and its articles 4 and 21 further referred to the need for drugs to be available for medical purposes and the treatment of the sick. At its twentieth special session, the General Assembly, in its Guiding Principles of Drug Demand Reduction, more firmly declared the commitment of States to ensure adequate availability of narcotic drugs for the treatment of pain. In its resolution 2005/25 on treatment of pain using opioid analgesics, the Economic and Social Council recognized the importance of improving the treatment of pain, including by the use of opioid analgesics, as advocated by WHO, especially in developing countries, and called upon Member States to remove barriers to the medical use of such analgesics, taking fully into account the need to prevent their diversion for illicit use.

69. However, access to narcotic drugs is still severely restricted and sometimes unavailable, in particular in the global South. WHO notes that “approximately 80 per cent of the world’s population has either no, or insufficient access to, treatment for moderate to severe pain. This is true for both developing and industrialized countries. Each year tens of millions of patients suffer moderate to severe pain without treatment: 0.8 million end-stage HIV/AIDS patients, about 4 million terminal cancer patients, patients suffering injuries, caused by accidents and violence, patients recovering from surgery, women in labour, patients with chronic illnesses and paediatric patients.”



70. The Board again urges all Governments concerned to identify the impediments in their countries to the adequate use of opioid analgesics for the treatment of pain and to take steps to improve the availability of those narcotic drugs for medical purposes, in accordance with the pertinent recommendations of WHO.”

—Human Rights Council, Seventh Session, 2008

CONCLUSIONS AND RECOMMENDATIONS

71. With regard to human rights and drug policies, the Special Rapporteur wishes to recall that, from a human rights perspective, drug dependence should be treated like any other health-care condition. Consequently, he would like to reiterate that denial of medical treatment and/or absence of access to medical care in custodial situations may constitute cruel, inhuman or degrading treatment or punishment and is therefore prohibited under international human rights law. Equally, subjecting persons to treatment or testing without their consent may constitute a violation of the right to physical integrity....

72. Similarly, the Special Rapporteur is of the opinion that the *de facto* denial of access to pain relief, if it causes severe pain and suffering, constitutes cruel, inhuman or degrading treatment or punishment.

74. Regarding the review process ... the Special Rapporteur recommends that States and the relevant United Nations agencies reassess their policies, bearing in mind the following points: (a) States should ensure that their legal frameworks governing drug dependence treatment and rehabilitation services are in full compliance with international human rights norms;... (e) Given that lack of access to pain treatment and opioid analgesics for patients in need might amount to cruel, inhuman and degrading treatment, all measures should be taken to ensure full access and to overcome current regulatory, educational and attitudinal obstacles to ensure full access to palliative care.

—Human Rights Council, Seventh Session, 2008

70. The Board again urges all Governments concerned to identify the impediments in their countries to the adequate use of opioid analgesics for the treatment of pain and to take steps to improve the availability of those narcotic drugs for medical purposes, in accordance with the pertinent recommendations of WHO.”

—Human Rights Council, Seventh Session, 2008

COUNTRY REPORTS

Many reports indicate that in one colony, Stepnogorsk Prison Hospital, officials, including the highest levels of management, participate in what is described as brutal medical “check-ups” for newcomers. The Special Rapporteur received consistent descriptions of how the personnel, with the support of convicts cooperating with the management, beat newcomers and would forcibly insert a rubber tube into their anus, officially for medical and hygiene purposes. There were also reports of rape. This treatment is exacerbated by the fact that many of the people arriving in the hospital are ill. Some interviewees indicated that the “welcome treatment” was adapted to target their “weak points,” that is, their illness. Detainees in several institutions indicated that they were so afraid of going back to the prison hospital that they would rather not get any medical treatment at all.

—Republic of Kazakhstan, 2009

The Special Rapporteur witnessed one case of a person who had been shot in his back when he tried to escape after armed robbery, and where the medicine with which the hospital had provided the detainee had not been administered. This withholding of the medicine, according to the accompanying forensic doctor, might put the life of the detainee at risk because the wounds could become infected.

—Togo, 2008

The Special Rapporteur was received by Dr. Angela Donciuc, who provided the following information: The hospital hosted more than 700 patients, who were separated according to different regimes. Criminals with psychiatric impairments and persons with acute psychiatric problems had to undergo forced treatment in the most restraint regime. Forced treatment of criminals was based on a court decision and the length of the treatment was determined by the judge.... Patients under forced treatment are under permanent supervision. The clinic did not use any physical restraint mechanisms; in case of violent behaviour or aggression, the patients received medication. Dr. Donciuc explained that no complaint mechanism was necessary since the patients did not complain.... According to the medical doctor of the team of the Special Rapporteur, who examined some of the patients' dossier, including the children, receive a very high daily dose of tranquilizer. The closed ward was in a deplorable state where the patients appeared to be in apathy, owing to extensive use of medication.

—Republic of Moldova, 2009

G. How do I contact this mechanism?

Special Rapporteur on Torture
c/o Office of the United Nations High Commissioner for Human Rights (OHCHR)
United Nations Office at Geneva
CH-1211 Geneva 10, Switzerland
E-mail: urgent-action@ohchr.org; sr-torture@ohchr.org

4. Country-Specific Rapporteurs and Independent Experts

A. What is this mechanism responsible for?

Country-Specific Rapporteurs and Independent Experts carry out the Special Procedures mechanism of the Council. Each Rapporteur and Independent Expert is assigned to a specific country to monitor, advise, and report on human rights violations in that country. Like the Special Rapporteur on Torture, Country-Specific Rapporteurs and Independent Experts promote the following international treaties and principles that are relevant to the issue of torture in health care:

- **International Covenant on Civil and Political Rights**

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

- **Convention against Torture**

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

Article 2: Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. 3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 4: Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

Article 10(1): Each State Party shall ensure that education and information regarding the prohibition against torture [and cruel, inhuman, degrading treatment or punishment] are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

Article 10(2): Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Principle 2: It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 6: No person under any form of detention or imprisonment shall

be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

B. What does this mechanism do?

- **Investigates States Parties**

Country-Specific Rapporteurs and Independent Experts undertake fact-finding country visits to investigate potential human rights violations at the national level. The Rapporteur or Independent Expert sends a letter to the Government requesting to visit the country and, if the government agrees, the Rapporteur or Independent Expert can begin the investigation. Some countries have standing invitations, which means that the country is prepared to receive an investigatory visit at any time.

During the country visit, the Country-Specific Rapporteur or Independent Expert can meet with national and local authorities, members of the national human rights institution, NGOs, civil society organizations, victims of human rights violations, the United Nations, and the press (when giving a press conference at the end of the mission). The Country-Specific Rapporteur or Independent Expert comments on the information discovered while investigating the country by issuing a mission report to the Council, which includes his or her findings and recommendations.

C. How can NGOs engage with this mechanism?

- **Meet with the Country-Specific Rapporteurs or Independent Experts during country visits**

During country visits, the Country-Specific Rapporteur or Independent Expert can meet with NGOs to gain a firsthand account of the human rights situation in the country. These meetings assist the Rapporteur or Independent Expert in issuing his or her mission report to the Council.

D. Which countries does this mechanism cover?

There are currently nine Country-Specific Rapporteurs and Independent Experts. Their countries are noted below, along with their dates of appointment:

- Cambodia, 1993
- Côte d'Ivoire, 2011
- Democratic People's Republic of Korea, 2004
- Haiti, 1995
- The Islamic Republic of Iran, 2011

- Myanmar, 2008
- Palestinian Territories, 1993
- Somalia, 1993
- Sudan, 2009

E. Who are the people behind this mechanism?

Under Article 39 of the Human Rights Council's Resolution 5/1, factors taken into account when selecting Country-Specific Rapporteurs and Independent Experts include expertise, experience in the field of the mandate, independence, impartiality, personal integrity, and objectivity. For a list of the current Country-Specific Rapporteurs and Independent Experts, see <http://www2.ohchr.org/english/bodies/chr/special/countries.htm>.

F. How does this mechanism take action?

The following example is an excerpt from a country report that this mechanism has produced relevant to torture in health care:

(a) South Darfur

...On 8 December 2007 two girls aged 12 from Al Neem IDP camp, were abducted and raped by two gunmen while fetching firewood near the camp. One was released the same day while the other was kept for four days during which time she was continuously beaten and raped. The latter was examined at a local hospital but doctors concluded that there was no evidence that she had sexual intercourse. As a result, relatives did not lodge a complaint with the police. Nevertheless, a suspect was apparently arrested in connection with the incident but managed to escape from custody.

(i) Summary Executions and Attempted Summary Executions

...The victim was shot in his right arm after he failed to comply with the demands of the assailants for millet. After receiving treatment at an INGO clinic, he was referred to the Geneina hospital for additional treatment. However, the doctor on duty refused to attend to him without a Form 8, which was not available at the hospital. A copy of the form was later obtained from the police and the victim was eventually admitted at the hospital.

—Sudan, 2008

5. Working Group on Arbitrary Detention

A. What is this mechanism responsible for?

The Working Group on Arbitrary Detention (WGAD) carries out the Council's mandate expressed in its decision 2006/10, and works in coordination with other mechanisms of the Council, with other competent UN bodies, and with treaty bodies.

The 2006/10 decision enables the WGAD “to investigate cases of deprivation of liberty imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned.”

In addition, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment emphasizes that “no person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.” For more information, see <http://www.ohchr.org/EN/Issues/Detention/Pages/WGADIndex.aspx>.

B. What does this mechanism do?

- **Investigates States Parties**

The WGAD investigate cases of deprivation of liberty that is inconsistent with standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned, provided that no final decision has been taken in such cases by domestic courts. The WGAD can also conduct field missions upon the invitation of a State government.

- **Considers complaints**

The WGAD seeks and receives information from national governments, NGOs, and individuals with concerns about the deprivation of liberty and torture.

- **Produces annual reports**

The WGAD prepares an annual report for the Council, presenting its activities, findings, conclusions, and recommendations on the different institutions, legal insufficiencies, policies, and judicial practices, which, in its opinion, are the cause of arbitrary deprivation of liberty. To view the 2009 annual report, see http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.30_AEV.pdf.

- **Makes urgent appeals**

The WGAD has an “urgent action” procedure for cases in which there are reliable allegations that a person is being detained arbitrarily and that the alleged violations may be time-sensitive regarding loss of life, life-threatening situations, or either imminent or ongoing damage of a very grave nature to the victim in the event of the continuation of the detention. In such cases, the WGAD sends communications to the Government of the State in question to ensure that the detained person’s rights are not deprived arbitrarily and that the detained person has access to fair proceedings before an impartial tribunal.

C. How and when does this mechanism meet?

The WGAD holds three sessions per year, each lasting between five and eight working days.

D. How can NGOs engage with this mechanism?

- **Lodge individual complaints**

The WGAD acts on information submitted by individuals, their families, their representatives, or an NGO claiming a case of arbitrary detention. The WGAD forwards complaints on to the Government concerned in order to initiate communications about the allegations. To view the model questionnaire used to submit a complaint, see http://www2.ohchr.org/english/issues/detention/docs/WGADQuestionnaire_en.doc.

E. Which countries does this mechanism cover?

For a list of UN Member States, see <http://www.un.org/en/members/>.

F. Who are the people behind this mechanism?

As of June 2012, the current WGAD members are Mr. Malick El Hadji Sow, Chair-Rapporteur (Senegal), Ms. Shaheen Sardar Ali, Vice Chair (Pakistan), Mr. Roberto Garretón (Chile), Mr. Mads Andenas (Norway), and Mr. Vladimir Tochilovsky (Ukraine).

G. How does this mechanism take action?

The following examples are excerpts from reports that this mechanism has produced relevant to torture in health care:

In the consideration of individual communications under its mandate the Working Group applies the following criteria: (a) Psychiatric detention as an administrative measure may be regarded as deprivation of liberty when the person concerned is placed in a closed establishment which he may not leave freely. Whether the conditions of someone being held in a psychiatric institution amounts to deprivation of liberty, within the meaning of its mandate, will be assessed by the Working Group on a case-by-case basis.

—Report of the Working Group on Arbitrary Detention, 2005

The Working Group has also been informed by several sources that, in some countries, the disabled, drug addicts and people suffering from AIDS are detained in places that are incompatible with their state of health, sometimes without treatment and without it having been established that their detention is justified on medical or public health grounds. The Group is concerned because it is vulnerable persons that are involved, people who are often stigmatized by social stereotypes; but it is concerned above all because often such administrative detention is not subject to judicial supervision.

With regard to persons deprived of their liberty on health grounds, the Working Group considers that in any event all persons affected by such measures must have judicial means of challenging their detention.

—Report of the Working Group on Arbitrary Detention, 2004

H. How do I contact this mechanism?

For individual case or cases (include the model questionnaire, if possible):

Working Group on Arbitrary Detention
c/o Office of the United Nations High Commissioner for Human Rights (OHCHR)
United Nations Office at Geneva
8–14, avenue de la Paix | CH-1211 Geneva 10, Switzerland
Fax: +41 22 917 9006 | E-mail: wgad@ohchr.org

6. Human Rights Committee

A. What is this mechanism responsible for?

The Human Rights Committee (HRC) monitors compliance with the International Covenant on Civil and Political Rights (ICCPR) and its two optional protocols. For more information, see <http://www2.ohchr.org/english/bodies/hrc/>.

B. What do this mechanism's treaty provisions say about torture?

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

C. What does this mechanism do?

- **Considers state reports**

Under Article 40 of the ICCPR, States Parties submit reports every five years explaining how they have adopted and facilitated rights recognized in the ICCPR. The reports are subsequently examined by the HRC in public meetings through discussions with representatives of each State Party whose report is under consideration.

- **Considers individual complaints**

For countries that have ratified the First Optional Protocol, the HRC considers individual complaints with regard to alleged violations of the ICCPR. Individuals who claim that any of their rights pursuant to the ICCPR have been violated and who have exhausted all available domestic remedies may submit a written communication to the ICCPR for consideration. (See Articles 1 and 2 of the First Optional Protocol at <http://www2.ohchr.org/english/law/ccpr-one.htm>.)

For more information about complaint procedures and enforcement, see <http://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf>.

D. How and when does this mechanism meet?

The HRC meets three times a year, usually in March at the UN headquarters in New York and in July and November at the UN Office in Geneva. At each meeting, the HRC considers a list of countries to review. For more information about past sessions and a list of which countries will be reviewed in future sessions, see <http://www2.ohchr.org/english/bodies/hrc/sessions.htm>.

Every country is considered for review every four years. The HRC sends a letter to the country that it is scheduled for review and sometimes will issue a press release about the review or

visit. For more information about the HRC's sessions, see <http://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf>.

E. How can NGOs engage with this mechanism?

- **Be prepared**

Find out when your country is scheduled for review by periodically checking the list at <http://www2.ohchr.org/english/bodies/hrc/sessions.htm>.

- **Submit shadow reports**

NGOs can submit shadow reports to the HRC on any aspect of a Government's compliance with the ICCPR. Shadow reports often track the content of the State's official report. Shadow reports should be submitted through the HRC Secretariat based at the OHCHR in Geneva, which keeps a calendar of HRC sessions. Shadow reports should be submitted in writing, preferably well in advance of the session. The HRC sets aside the first morning meeting of each session and lunchtime periods to allow representatives of NGOs to provide information to HRC members.

NGOs should keep in mind that committees within the HRC put together Lists of Issues Prior to Reporting (LOIPR) that are to be considered at the session. Generally, these LOIPRs are developed approximately six months in advance of the actual review of the periodic report. If your issue is not on the LOIPR, it will not be considered during the review. For a sample LOIPR, see <http://www.converge.org.nz/pma/CCPR-C-NZL-Q-5.pdf>.

- **Lodge individual complaints**

An individual or an NGO can submit complaints to the HRC under the Optional Protocol. Anyone can lodge a complaint with the HRC against a State Party to the treaty, claiming that his or her rights under the relevant treaty have been violated.

The complaint does not have to take any particular form, but it should be in writing and signed and should provide basic personal information (name, nationality, and date of birth) and specify the State Party against which the complaint is directed. If a person brings the claim on behalf of another person, the claim should include the victim's written consent or state clearly why such consent cannot be provided.

Claims should be written in English, Spanish, or French and include all the facts of the claim in chronological order. It is crucial that the account of the abuse be as complete as possible and that the complaint contain all information relevant to the case. Complaints should also detail the steps that have been taken to exhaust the remedies available in-country and indicate whether the case has been submitted to another means of international investigation.

Complaints must also explain the ways in which the facts outlined violate the ICCPR. Supply all documents of relevance to the claim and any arguments, especially administrative or judicial decisions on the claim by national authorities. It is also helpful to provide copies of relevant national laws.

For more information about filing individual complaints, including model complaint forms, see <http://www2.ohchr.org/english/bodies/petitions/individual.htm>.

F. Which countries does this mechanism cover?

This mechanism covers all countries that are parties to the ICCPR. For a list of countries that have ratified the ICCPR, see http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

For a list of countries that have ratified the Optional Protocol to the ICCPR, see http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en.

For a list of countries that have ratified the Second Optional Protocol to the ICCPR, see http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en.

G. Who are the people behind this mechanism?

According to ICCPR Article 28, the HRC consists of 18 elected members. The HRC is composed of nationals of the States Parties to the ICCPR who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience. HRC members are typically professors, judges, public-interest lawyers, former diplomats, Rapporteurs, and other human rights advocates. For a list of the HRC's current members, see <http://www2.ohchr.org/english/bodies/hrc/members.htm>.

H. How does this mechanism take action?

The following examples are excerpts from general comments, concluding observations, and case law that this mechanism has produced relevant to torture in health care:

GENERAL COMMENTS

General Comment No. 7: Article 7, para. 2 (16th Session, 1982):

[T]he article clearly protects not only persons arrested or imprisoned, but also pupils and patients in educational and medical institutions.

General Comment No. 20: Article 7, paras. 2, 5, and 7 (44th Session, 1992):

The aim of the provisions of article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual.

The prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim ... [and] protects, in particular, children, pupils and patients in teaching and medical institutions.

Article 7 expressly prohibits medical or scientific experimentation without the free consent of the person concerned. The Committee also observes that special protection in regard to such experiments is necessary in the case of persons not capable of giving valid consent, and in particular those under any form of detention or imprisonment. Such persons should not be subjected to any medical or scientific experimentation that may be detrimental to their health. .

General Comment No. 21: Article 10, para. 3 (44th Session, 1992):

Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant. Thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.

CONCLUDING OBSERVATIONS

On 17 May 2002, the President of Georgia issued decree No. 240 on measures to strengthen the protection of human rights in Georgia. The promulgation of this decree is a direct consequence of the concluding observations of the Human Rights Committee. With reference to this specific topic, we think it important to draw the Committee's attention to the following instructions set out in this instrument: ... (e) to organize special training for experts and medical personnel with a view to identifying and documenting cases of torture....

—Georgia, 2003

The State party should develop alternative sentences to imprisonment. In addition, the State party should establish an independent inspectorate to carry out regular visits to all detention centres. That inspectorate should include elements independent of the Government, to ensure transparency and observance of articles 7 and 10 of the Covenant, and should be charged with making all the necessary proposals concerning ways of improving detainees' rights and detention conditions, including access to health care.

—Togo, 2002

The Committee particularly stresses the state in the Forensic-Psychiatric Ward of the Zenica Prison and the Sokolac Psychiatric Clinic. It considers that Bosnia-Herzegovina should pay more attention to improvement of material and hygienic conditions in detention and prison facilities and mental health institutions in both Entities, and to work faster on international standards fulfillment.

—Bosnia and Herzegovina, 2008

The State party should improve the material and hygienic conditions in detention facilities, prisons and mental health institutions ... and ensure sufficient staffing levels, as well as regular exercise and out-of-cell activities for inmates, and adequate treatment of mental health patients.

—Bosnia and Herzegovina, 2006

Despite the oral and written answers provided by the delegation, the Committee remains concerned at reports of forced or coerced sterilization of Roma women. In particular, the Committee regrets that in its written answers submitted after the oral consideration of the report, the State party does not clearly deny or admit breaches of the principle of full and informed consent but asserts that an investigation related to maternity wards and gynecology departments of 12 hospitals did not result in findings of infringements of "medical indication" of sterilization. The reference made, in the same submission, to "the fact that not all administrative acts were fulfilled in every case" appears to amount to an implicit admission of breaches of the requirement of informed consent.





The State party should adopt all necessary measures to investigate all alleged cases of coerced or forced sterilization, publicize the findings, provide effective remedies to victims and prevent any instances of sterilization without full and informed consent.

—Slovakia, 2003

The Committee is concerned about recent reports of forced sterilizations, particularly of indigenous women in rural areas and women from the most vulnerable social sectors.

The State party must take the necessary measures to ensure that persons who undergo surgical contraception procedures are fully informed and give their consent freely.

—Peru, 2000

The Committee, while acknowledging the abolition of forced sterilization of disabled women, regrets that the law has not provided for a right of compensation to persons who were subjected to forced sterilization, and recommends that the necessary legal steps be taken.

—Japan, 1998

CASE LAW

In K.L. v. Peru, the HRC stated that denial of a therapeutic abortion is a violation of the right to be free from cruel, inhuman, degrading treatment or punishment and recognized the ongoing psychological harms of such a denial.

—K. L. v. Peru, CCPR/C/85/D/1153/2003

I. How do I contact this mechanism?

Human Rights Committee (CCPR)

Human Rights Treaties Division (HRTD)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais Wilson – 52, rue des Pâquis | CH-1201 Geneva, Switzerland

Mailing address

UNOG-OHCHR

CH-1211 Geneva 10, Switzerland

Tel.: +41 22 917 92 61 | Fax: +41 22 917 90 08 | E-mail: ccpr@ohchr.org**For individual complaints**

Petitions Team

Office of the High Commissioner for Human Rights

United Nations Office at Geneva

1211 Geneva 10, Switzerland

Fax: + 41 22 917 9022 (particularly for urgent matters) | E-mail: petitions@ohchr.org

Patrice Gillibert

Secretariat of the Human Rights Committee

Office of the United Nations High Commissioner for Human Rights (OHCHR)

United Nations Office at Geneva

CH-1211 Geneva 10, Switzerland

Phone: +41 22 917 9249 | Fax: +41 22 917 9006 | E-mail: pgillibert@ohchr.org

7. Committee Against Torture

A. What is this mechanism responsible for?

The Committee Against Torture (CAT Committee) monitors compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention). According to Article 4 of the Convention, the CAT Committee has jurisdiction over offenses of torture (a) when the offenses are committed in any territory of a State Party; (b) when the alleged offender is a national of that State; or (c) when the victim is a national of that State if that State considers it appropriate. For more information, see <http://www2.ohchr.org/english/bodies/cat/>.

B. What do this mechanism's treaty provisions say about torture?

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

Article 2: *Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. 3. An order from a superior officer or a public authority may not be invoked as a justification of torture.*

Article 4: *Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.*

Article 10(1): *Each State Party shall ensure that education and information regarding the prohibition against torture [and cruel, inhuman, degrading treatment or punishment] are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.*

Article 10(2): *Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.*

C. What does this mechanism do?

- **Considers State reports**

Article 19 asserts that States shall submit to the CAT Committee reports on the measures they have taken to comply with the Convention, within one year after the Convention's entry into force. States shall submit additional reports every four years on any new measures taken to comply with the Convention.

- **Considers inter-State complaints**

Article 21 enables a State Party to claim that another State Party is not fulfilling its obligations under the Convention. If a State Party feels that another State Party is not complying with the Convention, that Party may, by written communication, bring the matter to the attention of the other State Party. Within three months after the receipt of the communication, the receiving State shall give the State that sent the communication an explanation or other written statement clarifying the matter, which should reference domestic procedures and remedies taken. If the matter is not adjusted to the satisfaction of both State Parties within six months, either State shall have the right to refer the matter to the CAT Committee. The Committee will address a referred matter only after all domestic remedies have been exhausted.

It should be noted, however, that this procedure is rarely used, as States do not like to file complaints against other States, due to political and diplomatic reasons.

- **Considers individual complaints**

Under Article 22, a State Party may declare that the CAT Committee may receive and consider communications from or on behalf of individuals who claim to be victims of a violation by a State Party to the Convention. The individual, however, must have exhausted all available domestic remedies before resorting to the CAT.

- **Investigates States Parties**

Under Article 20, the CAT Committee can invite a State Party to cooperate in an examination concerning any well-founded indications that torture is being practiced in the territory of a State Party. The CAT Committee can designate one or more of its members to make a confidential inquiry and report back to the committee. The inquiry may include a visit to the State Party's territory. After examining the findings, the CAT Committee shall transmit these findings to the State Party concerned, together with any comments or suggestions that seem appropriate.

This procedure is optional, however, because when ratifying the Convention, a State may declare that it does not recognize Article 20. In that case, the CAT may not exercise these investigatory powers with respect to that State Party.

For more information on State reports, inter-State complaints, individual complaints, and investigations of States Parties, see <http://www.ohchr.org/Documents/Publications/FactSheet17en.pdf>.

D. How and when does this mechanism meet?

The CAT Committee meets twice a year for three-week sessions, usually in May and November at the UN Office in Geneva. For more information about the sessions, see <http://www2.ohchr.org/english/bodies/cat/sessions.htm>.

E. How can NGOs engage with this mechanism?

- **Submit shadow reports**

The CAT Committee encourages NGOs to submit consolidated reports with factual, reliable, precise, and clear information that is relevant to its mandate and the consideration of the State Party's report. The information must identify the submitting NGO, as anonymous information is not accepted. Submissions must be sent electronically to the Secretariat, and hard copies should be distributed to the members. During sessions, the CAT Committee meets with NGOs for briefings prior to the consideration of the State Party's report.

- **Lodge individual complaints**

The CAT Committee can receive and consider communications from or on behalf of individuals who claim to be victims of a violation by a State Party to the Convention. The individual, however, must have exhausted all available domestic remedies before resorting to the CAT Committee.

For more information about submitting individual complaints, see <http://www2.ohchr.org/english/bodies/cat/procedure.htm> and <http://www.ohchr.org/Documents/Publications/FactSheet17en.pdf>.

F. Which countries does this mechanism cover?

For a list of countries that have signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, see http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en.

G. Who are the people behind this mechanism?

According to Article 17, the CAT consists of 10 Independent Experts of high moral standing and recognized competence in the field of human rights. The experts are elected by the States Parties, with consideration being given to equitable geographical distribution and to the usefulness of having some members with legal experience.

Committee members are typically professors, judges, public-interest lawyers, former diplomats, and other human rights advocates. For a list of the current members, see <http://www2.ohchr.org/english/bodies/cat/members.htm>.

H. How does this mechanism take action?

The following examples are excerpts from general comments and concluding observations that this mechanism has produced relevant to torture in health care:

GENERAL COMMENTS

General Comment No. 2: Article 2, para. 21 (39th Session, 2007):

The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. State Parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of... health status.

State reports frequently lack specific and sufficient information on the implementation of the Convention with respect to women.... The contexts in which women are at risk include deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes.

CONCLUDING OBSERVATIONS

[The Committee] further requests information on the existing training programmes for law enforcement officials and on monitoring mechanisms in mental health and other welfare institutions as well as on the measures to prevent and prohibit the production, trade and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment.

—South Africa, 2006

The Committee also welcomes the fact that the Senegalese delegation, on behalf of the authorities of the State party, has undertaken to ensure that measures are taken to provide for the training of personnel performing the functions listed in article 10 of the Convention, particularly medical personnel, and to complete the procedure regarding the declaration provided for under article 22 of the Convention.

—Senegal, 1996

The Committee recommends that the State party:... Reinforce human rights education and promotion activities regarding the prohibition of torture, particularly for law enforcement and medical personnel, and introduce training in these subjects in official education programmes.

—Moldova, 2003

The Committee is concerned at reports that hospitalized patients, including children, who are unable to pay their medical expenses are detained in hospitals for several months until they are able to pay. The Committee is alarmed at the conditions under which such patients are held, particularly the fact that they are denied food and medical treatment.

The State party should take urgent steps to release persons detained in hospitals, in accordance with article 16 of the Convention and article 11 of the International Covenant on Civil and Political Rights, to which Burundi is a party, and which states that “no one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.”

—Burundi, 2007

The Committee is deeply concerned about allegations of continued involuntary sterilization of Roma women.

The State party should:

- (a) Take urgent measures to investigate promptly, impartially, thoroughly and effectively all allegations of involuntary sterilization of Roma women, prosecute and punish the perpetrators and provide the victims with fair and adequate compensation;*
- (b) Effectively enforce the Health-care Act (2004) by issuing guidelines and conducting training of public officials, including on the criminal liability of medical personnel conducting sterilizations without free, full and informed consent, and on how to obtain such consent from women undergoing sterilization.*

—Slovakia, 2009

The Committee notes the State party's acknowledgment that poor and inadequate treatment takes place in some institutions and remains concerned at the reports of treatment of children and adults with mental or physical disability, especially at the forceful internment and long-term restraint used in institutions that amount to torture or cruel, inhumane and degrading treatment or punishment in social-protections institutions for persons with mental disability and psychiatric hospitals. The Committee is concerned that no investigation seems to have been initiated with respect to treatment of persons with disability in institutions amounting to torture or inhuman or degrading treatment.

—Serbia, 2009

The Committee notes the information and clarification provided by the delegation in respect of the Social Affairs Centres, including that the State party has agreed with UNICEF and the OHCHR Cambodia Country Office to conduct an assessment of the existing policies, procedures and practices in the referral, placement, management, rehabilitation and reintegration of children, women and vulnerable persons in Social Affairs Centres and Youth Rehabilitation Centres across the country. However, the Committee expresses its serious concern at continuing reports of round-ups by law enforcement officials in the streets and the subsequent holding of people, including sex





workers, victims of trafficking, people who use drugs, homeless people, beggars, street children and mentally ill persons, in Social Affairs Centres, against their will and without any legal basis and judicial warrant. In addition, the Committee notes with particular concern allegations of a consistent pattern of arbitrary detention and abuse in Prey Speu between late 2006 and 2008, including torture, rape, beatings, reported incidences of suicide, and even reported killings committed by social affairs guards against detainees. The Committee is further concerned at the lack of information as to any initiative on the part of the State party to undertake a thorough investigation into such allegations.

The Committee urges the State party to put a complete end to any form of arbitrary and unlawful detention of persons, especially in Social Affairs Centres, including Prey Speu. The State party should ensure that all relevant governmental departments respect the right not to be arbitrarily detained on the basis of social status in the view of the Government and without any legal basis and judicial warrant. The State party should also ensure that officials/guards and other involved in arbitrary detention and abuse are immediately investigated and prosecuted for such acts and that redress is provided to victims.

The State party should, as a matter of urgency, conduct an independent investigation into the allegations of serious human rights violations, including torture, in Prey Speu between late 2006 and 2008. Furthermore, the Committee encourages the State party, in cooperation with relevant partners, to find sustainable and humane alternatives for disadvantaged and vulnerable groups, including persons living and working in the streets, and to provide such groups with the type of assistance they require.

—Cambodia, 2010

I. How do I contact this mechanism?

Committee against Torture (CAT)

Human Rights Treaties Division (HRTD)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais Wilson – 52, rue des Pâquis | CH-1201 Geneva, Switzerland

Mailing address

UNOG-OHCHR

CH-1211 Geneva 10, Switzerland

Tel.: +41 22 917 97 06 | Fax: +41 22 917 90 08 | E-mail: at@ohchr.org

For individual complaints

Petitions Team
 Office of the High Commissioner for Human Rights
 United Nations Office at Geneva
 1211 Geneva 10, Switzerland
 Fax: + 41 22 917 9022 (particularly for urgent matters) | E-mail: petitions@ohchr.org

Joao Nataf
 Human Rights Officer
 Secretariat of the Committee Against Torture
 Office of the United Nations High Commissioner for Human Rights (OHCHR)
 Palais des Nations | CH-1211 Geneva 10, Switzerland
 Phone: +41 22 917 9102 | Fax +41 22 917 9008 | E-mail: jnataf@ohchr.org

Cassy Corvalan
 Administrative Assistant
 Secretariat of the Committee Against Torture
 Office of the United Nations High Commissioner for Human Rights (OHCHR)
 Palais des Nations | CH-1211 Geneva 10, Switzerland
 Phone: +41 22 917 9706 | Fax: +41 22 917 9008 | E-mail: bcorvalan@ohchr.org

For individual complaints

Petitions
 Secretariat of the Committee Against Torture
 Office of the United Nations High Commissioner for Human Rights (OHCHR)
 Palais des Nations
 CH-1211 Geneva 10, Switzerland
 Phone: +41 22 917 9000 | Fax: +41 22 917 9008 | E-mail: TB-petitions@ohchr.org

8. Subcommittee on Prevention of Torture

A. What is this mechanism responsible for?

The Optional Protocol to the Convention against Torture (OPCAT) establishes a system of regular visits by independent national and international bodies to places of detention in order to prevent torture and other cruel, inhuman, or degrading treatment or punishment. To implement this mandate, OPCAT has created two mechanisms: the Subcommittee on Prevention of Torture (SPT) and National Preventive Mechanisms (NPMs). NPMs are described in section 9.

The SPT has two functions: to conduct visits to all places of detention in States that are party to the OPCAT and to provide advisory assistance to States Parties and NPMs. In addition, the SPT cooperates with relevant UN organs and mechanisms and with national, regional, and international organizations. For more information about the SPT, see <http://www2.ohchr.org/english/bodies/cat/opcat/>.

B. What does this mechanism do?

- **Conducts visits**

Under the OPCAT, the SPT has unrestricted access to all places of detention, such as police stations, prisons, immigration detention centers, mental health and social care institutions, and any other places where people are being or may be deprived of their liberty.

The SPT must be able to conduct private interviews with persons in detention (or otherwise deprived of their liberty) without witnesses and with any other person who may contribute to the SPT's information gathering, including government officials, NGOs, NPMs, and custodial staff. People who provide information to the SPT are protected against retaliation or sanctions.

- **Provides assistance and advice**

The SPT assists and advises States Parties on the establishment of NPMs. It also assists the NPMs in implementing guidelines and helps them remain independent, assert their power, and strengthen protections against ill-treatment of detainees.

- **Produces follow-up reports**

After the visit, the SPT produces a report with recommendations, which is sent confidentially to the State Party. The SPT may then request that the State Party make the report public. For an example of a follow-up report, see http://www2.ohchr.org/english/bodies/cat/opcat/docs/ReportMexico_en.doc.

- **Produces annual reports**

The SPT prepares an annual report and presents it to the CAT every April/May in order to keep the CAT updated as to the SPT's activities. For an example of an annual report, see <http://www2.ohchr.org/English/bodies/cat/opcat/annual.htm>.

C. How and when does this mechanism meet?

The SPT meets three times a year for week-long sessions at the UN Office in Geneva. For more information about the sessions, see <http://www2.ohchr.org/english/bodies/cat/opcat/sessions.htm>.

D. How can NGOs engage with this mechanism?

During their visits, SPT members can meet with NGOs if they feel that the NGOs can provide information relevant to the SPT mandate and/or the facility visits the SPT members will undertake during the visit.

E. Which countries does this mechanism cover?

For a list of countries that have signed the OPCAT, see http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&lang=en.

F. Who are the people behind this mechanism?

Article 5 states that the SPT shall consist of 10 members, chosen from among persons of high moral character and with proven professional experience in the field of human rights.

SPT members are typically lawyers, doctors, inspection experts, and professionals in the various fields relevant to the treatment of persons deprived of their liberty. For a list of the current members of the SPT, see <http://www2.ohchr.org/english/bodies/cat/opcat/membership.htm>.

G. How does this mechanism take action?

The following examples are excerpts from sample reports that this mechanism has produced relevant to torture in health care:

The SPT recommends that, since there are no staff members present in police facilities with the medical qualifications necessary to assess the health needs of persons deprived of liberty, requests for access to a doctor must be granted without delay and without prior filtering by police officers.

Some requests were on the grounds of serious withdrawal symptoms, including fits and fainting. In Malé Custodial detainees told the delegation that they had witnessed three fits of a fellow detainee; he was— according to the report of other detainees— taken out of the cell, placed in handcuffs in the yard and given no medical attention. Furthermore, during its visit the delegation saw one detainee having a fit. Several police officers were around but did not intervene in any way, indicating lack of training of staff in management of health problems among detainees. In all probability the attack reflected a withdrawal condition underlining the insufficient management of serious withdrawal condition that must be very common among detainees since more than 75% of all incarcerations were reportedly linked to drug offences....





The delegation members interviewed prisoners in Maafushi Prison and in Malé Remand Centre who had longstanding psychiatric conditions, including in the period of offences. The SPT notes that the Maldives do not have mental health legislation and no specialized facility to keep psychiatric offenders. The SPT recommends that the Maldivian authorities adopt mental health legislation to ensure that deprivation of liberty of persons suffering of psychiatric conditions is given a firm legal basis. If a specialized facility is not established, it should be ensured that all psychiatric offenders serving long term sentences are attended on a regular basis preferably with continuity of care provided by the same psychiatrist.

—The Maldives, 2009

As to care of persons in need of psychiatric or psychological assistance, the delegation noted with concern that staff members in a remand prison visited by the delegation alleged that psychiatric hospitals in particular had a tendency to return to remand prison detainees who, in their opinion, would still require more intensive medical attention than was possible for the remand prison to offer. In SPT's view, this practice may compromise the health and safety of the detainee, as well as place staff without medical training under such a responsibility of care that they should not be required to assume. The SPT recommends that the authorities ensure that the detainees requiring medical attention in a hospital are not returned to the remand prison before it can be ensured that their state of health corresponds to the level of care that the remand prison may offer.

—Sweden, 2008

H. How do I contact this mechanism?

OPCAT Research Team

University of Bristol Law School

Wills Memorial Building

Queens Road | Bristol BS8 1RJ, United Kingdom

Phone : +44 117 954 5330 | Fax: +44 117 925 1870 | E-mail: Elina.Steinerte@bristol.ac.uk

Patrice Gillibert
 Secretary, Subcommittee on Prevention of Torture
 Office of the United Nations High Commissioner for Human Rights (OHCHR)
 United Nations Office at Geneva
 CH-1211 Geneva 10, Switzerland
 Phone: +41 22 917 9249 | Fax: +41 22 917 9006 | E-mail: pgillibert@ohchr.org

Secretariat of the Subcommittee on Prevention of Torture
 UNOG-OHCHR
 CH-1211 Geneva 10, Switzerland
 Tel: +41 22 917 93 32 | Fax: +41 22 917 90 22 | E-mail: opcat@ohchr.org
 Internet: <http://www.ohchr.org>

9. The National Preventive Mechanisms

The OPCAT establishes a system of regular visits by independent national and international bodies to places of detention in order to prevent torture and other cruel, inhuman, or degrading treatment or punishment. To implement this mandate, OPCAT has created two mechanisms: the SPT (described in section 8) and NPMs.

According to Article 3 of the OPCAT, States Parties have one year after ratifying OPCAT to establish one or more independent NPMs that will conduct visits to domestic closed settings.

A. What is this mechanism responsible for?

NPMs were created to prevent torture at the domestic level. In places that do not have domestic monitoring mechanisms in place, NPMs introduce the concept of independent monitoring in closed settings. In places with existing monitoring groups, they complement existing oversight with their own expertise and with access to the SPT's resources and its members' expertise. NPMs should complement rather than replace existing systems of oversight; their establishment should not preclude the creation or operation of other systems.

For more information about NPMs, see <http://www2.ohchr.org/english/law/cat-one.htm> and <http://www2.ohchr.org/english/law/cat-one.htm#part4>.

B. What does this mechanism do?

NPMs are tasked with regularly visiting places of detention to ensure that the human right of detainees to be free of torture or degrading treatment is respected. NPMs can also make recommendations to the relevant authorities on ways to improve treatment and conditions of persons in detention. Finally, they can submit proposals and observations regarding existing or draft legislation.

In order to enable NPMs to fulfill their mission, States Parties must grant them access to any relevant information on the numbers of persons detained, location of places of detention, treatment of persons in detention, and conditions of detention. NPMs are to be granted access to all places of detention and their installations and facilities and also granted the opportunity to conduct private interviews with detainees. NPMs have the right to have contact with the SPT, to provide the SPT with information, and to schedule meetings with members of the SPT.

NPMs are required to produce reports following their visits and also produce an annual report. When necessary, the annual report should contain recommendations addressed to relevant authorities.

C. How and when does this mechanism meet?

Each NPM determines the frequency of its own visits.

D. How can NGOs engage with this mechanism?

Members of NGOs can become members of NPMs. In addition, NGOs can contact NPMs to bring particular issues to their attention.

E. Which countries does this mechanism cover?

All Member States of the OPCAT are tasked with creating NPMs. For a list of countries that have signed the OPCAT, see http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&lang=en.

F. Who are the people behind this mechanism?

Each NPM has its own membership. In creating NPMs, States Parties should take all necessary measures to ensure that members have the required capabilities and professional knowledge. They should strive for a gender balance and the adequate representation of ethnic and minority groups in the country. Members of NPMs should ensure that they do not hold or acquire positions that raise questions concerning conflicts of interest.

G. How does this mechanism take action?

States Parties to the OPCAT have the task of publishing and disseminating the annual reports of their NPMs.

The following is an excerpt from a report that this mechanism has produced relevant to torture in health care:

The prison health service was also an issue verified during each visit of the National Preventive Mechanism. The functioning of prison outpatient units and the observance of inmates' right to health care were verified. The need to increase the health care personnel was emphasized on numerous occasions, as such an increase would improve the access of inmates to health care services. For example, the medical personnel in the Pre-trial Detention Centre in Warsaw-Mokotów was overburdened with work, due to the difficulties in recruiting doctors and nurses willing to work in a hospital functioning at the penitentiary establishment. As a result, during the visit to the internal diseases ward, the representatives of the Human Rights Defender found an inmate with a post-acute withdrawal syndrome, tied with straps and guarded by a person deprived of liberty who was employed to do cleaning work. Such a situation is a consequence of the lack of a room for patients in need of intensive care or frequent checks of their condition. Furthermore, the visiting persons were concerned by the fact that all patients of the forensic psychiatry ward are in locked cells, though there is no medical justification for such a measure. They are not offered any form of activity, which may adversely impact their health. The practice of placing the persons under psychiatric observation and mentally ill in the same cell, and leaving patients tied with straps in the night-time, was considered inappropriate. In addition, the visiting persons pointed to the necessity of furnishing the establishment in additional medical equipment for the hospital (a cardiac sonographer, C-arm X-ray necessary for orthopaedic surgeries). The bathrooms in surgery wards of the hospital should be adjusted to the needs of physically handicapped patients.

—Poland, 2009

H. How do I contact this mechanism?

For a list of NPMs and their contact information, see <http://www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm>.

10. Committee on the Rights of the Child

A. What is this mechanism responsible for?

The Committee on the Rights of the Child (CRC Committee) is a body of experts that monitors the application of the Convention on the Rights of the Child (the Convention) by States Parties. Furthermore, the CRC Committee monitors implementation of two Optional Protocols to the Convention: on involvement of children in armed conflict and on sale of children, child

prostitution, and child pornography. For more information, see <http://www2.ohchr.org/english/bodies/crc/>.

Convention on the Rights of the Child

Article 37: *States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.*

Article 39: *States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.*

B. What does this mechanism do?

- **Examines reports submitted by States Parties**

The CRC Committee examines regular reports that are submitted to it by States Parties regarding how the Convention is being implemented. After examining each report, the Committee writes Concluding Observations in order to list its concerns and recommendations to the State Party.

- **Holds pre-session working groups**

Before the CRC Committee reviews a State Party's report, its pre-sessional working group meets privately with UN agencies, NGOs, and other human rights organizations that have submitted additional information to the committee. As a result, the pre-session working group drafts a list of issues to inform the State Party's Government as to which issues will be emphasized during discussions.

- **Adopts general comments**

The CRC Committee adopts general comments according to provisions of the Convention to assist States Parties in meeting its obligations to the Convention and to help international organizations support the rights recognized in the Convention.

C. How and when does this mechanism meet?

The CRC Committee meets at the UN Offices in Geneva and holds three sessions per year consisting of a three-week plenary and a one-week pre-sessional working group.

D. How can NGOs engage with this mechanism?

- **Submit shadow reports and participate in the pre-sessional working group**

The CRC Committee receives reports from NGOs about how the Convention is being implemented in a particular country. For more information on how to submit a report, see <http://www2.ohchr.org/english/bodies/petitions/index.htm>.

After reviewing these reports, the CRC Committee will invite selected NGOs to participate in its pre-sessional working group. For more information about participating in the pre-sessional working group, see <http://www2.ohchr.org/english/bodies/crc/workingmethods.htm>.

In addition, for detailed information about the potential involvement of NGOs with the CRC, see <http://www2.ohchr.org/english/bodies/crc/docs/Guide-NGO-E.pdf>.

E. Which countries does this mechanism cover?

For a list of the countries that have ratified the Convention, see http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

For a list of the countries that have ratified the Optional Protocol to the Convention on the involvement of children in Armed Conflict, see http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en.

For a list of the countries that have ratified the Optional Protocol to the Convention on the sale of children, child prostitution, and child pornography, see http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en.

F. Who are the people behind this mechanism?

The CRC Committee consists of 18 Independent Experts who are recognized in the field of human rights. Members are elected for a term of four years by States Parties and may be reelected if nominated. For a list of the Committee's current Independent Experts, see <http://www2.ohchr.org/english/bodies/crc/members.htm>.

G. How does this mechanism take action?

The following examples are excerpts from general comments and concluding observations that this mechanism has produced relevant to torture in health care:

General Comment No. 3: HIV/AIDS and the Rights of the Child, para. 29 (32nd Session, 2003): 29. States parties must, nonetheless, ensure that children do not serve as research subjects until an intervention has already been thoroughly tested on adults. Rights and ethical concerns have arisen in relation to HIV/AIDS biomedical research, HIV/ADS operations, and social, cultural and behavioural research. Children have been subjected to unnecessary or inappropriately designed research with little or no voice to either refuse or consent to participation.

CONCLUDING OBSERVATIONS

44. The Committee welcomes the programmes of development of social services aimed at the deinstitutionalization of children and the shifting towards decentralized and community-based services with a view to improving living standards that are conducive to reintegration. However, the Committee remains concerned that children may be removed from their families because of their health status, or placed in institutions by parents in difficult economic situations.

—Albania, 2005

In light of article 19 of the Convention, the Committee recommends that the State party:... Strengthen measures to encourage reporting of instances of child abuse in all institutions— including ... psychiatric hospitals ... and to prosecute the authors of these acts.

—Azerbaijan, 2006

H. How do I contact this mechanism?

NGO Group for the Convention on the Rights of the Child

1, rue de Varembe | CH-1202 Geneva, Switzerland

Phone: +41 22 740 4730 | Fax: +41 22 740 1145 | E-mail: ngocrc-lup@bluewin.ch

11. Committee on the Rights of Persons with Disabilities

A. What is this mechanism responsible for?

The Committee on the Rights of Persons with Disabilities (CRPD Committee) is a body of experts that monitors the application of the Convention on the Rights of Persons with Disabilities (CRPD) by States Parties. For more information, see <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>.

The CRPD Committee is mandated to consider reports submitted by States Parties on CRPD implementation. It also examines individual complaints with regard to alleged violations of the CRPD by States Parties to the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

- **Convention on the Rights of Persons with Disabilities**

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

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

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

B. What does this mechanism do?

- **Examines reports submitted by States Parties**

The CRPD Committee examines regular reports that are submitted to it by States Parties regarding how the CRPD is being implemented in-country (Article 35). The first reports must be issued within two years after the entry into force of the CRPD for the State concerned, and from then on at least every four years and whenever the committee so requests. After examining each report, the committee makes suggestions and general recommendations on the report and forwards these to the State Party concerned. For reporting guidelines, see <http://www.ohchr.org/Documents/HRBodies/CRPD/CRPD-C-2-3.pdf>.

- **Examines complaints submitted by individuals and conducts inquiries**

According to the Optional Protocol to the Convention, the CRPD Committee can review individual complaints (“communications”) regarding alleged violations of the Convention by States Parties to the Optional Protocol. It can also conduct inquiries

based on reliable information indicating grave or systematic violations by a State Party to the Optional Protocol.

- **Adopts general comments**

The CRPD Committee may adopt general comments according to the Convention in order to assist States Parties in meeting its obligations to the Convention and to help international organizations support the rights recognized in the Convention.

C. How and when does this mechanism meet?

The CRPD Committee meets twice a year for one-week sessions, usually in February and October, at the UN Office in Geneva.

D. How can NGOs engage with this mechanism?

- **Submit shadow reports and provide input to the list of issues and concluding observations**

The CRPD Committee receives reports from NGOs about how the CRPD is being implemented in a particular country. By submitting reports, NGOs provide an alternative source of information to that of States Parties regarding implementation, which helps focus the list of issues and consideration of the country reports. NGOs may also provide input to the compilation of the list of issues drawn up for each State Party, to the pre-sessional working groups once they are established for this committee, and to the concluding observations made by the CRPD Committee based on the consideration of each State Party's report.

- **Lodge individual complaints**

Individuals under the jurisdiction of a State Party to the Optional Protocol can lodge complaints with the CRPD regarding violations of the CRPD by that State Party.

For guidelines on effective engagement of NGOs in the reporting process, see the International Disability Alliance's *Guidance Document: Effective Use of International Human Rights Monitoring Mechanisms to Protect the Rights of Persons with Disabilities and Influencing the List of Issues to be Prepared by the CRPD Committee* at <http://uscd.org/index.cfm/crpd-information>. See also <http://www2.ohchr.org/SPdocs/CRPD/CRPD.C.4.2.doc>.

E. Which countries does this mechanism cover?

For a list of the countries that have ratified the Convention on the Rights of Persons with Disabilities, see http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en.

For a list of the countries that have ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities, see http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&lang=en.

See also UN Enable at <http://www.un.org/disabilities/>.

F. Who are the people behind this mechanism?

The CRPD Committee consists of 18 Independent Experts from various countries around the world that are States Parties to the Convention on the Rights of Persons with Disabilities and who have recognized competence and experience in the field of disability rights. For a list of the CRPD Committee's current Independent Experts, see <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Membership.aspx>.

G. How does this mechanism take action?

The following is an excerpt from a press release issued jointly by the CRPD Committee, the CAT Committee, and other UN bodies monitoring torture:

A number of independent experts from several United Nations mechanisms [including the CRPD] ... recalled today that persons with disabilities continue to run an increased risk of falling victim to abuse and neglect in a number of contexts: many are involuntarily confined for long periods, at times without legal basis and proper review mechanisms and in inadequate conditions; inside institutions they are often subjected to restraint, sometimes severe forms of restraint, physical, mental and sexual violence, and seclusion; moreover, persons with disabilities are especially vulnerable to violence and abuse, including sexual abuse, inside the home, at the hands of family members, caregivers, health professionals and members of the community. Finally, they risk being exposed to medical experimentation and intrusive and irreversible medical treatments without their consent.

**“Joint Statement on the Occasion of the United Nations International Day
in Support of Victims of Torture,” 2009**

H. How do I contact this mechanism?

Secretariat of the Committee on the Rights of People with Disabilities (CRPD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
United Nations Office at Geneva
CH-1211 Geneva 10, Switzerland
Phone: +41 22 917 9703 | E-mail: crpd@ohchr.org

12. UN Voluntary Fund for Victims of Torture

A. What is this mechanism responsible for?

The UN Voluntary Fund for Victims of Torture (the Fund) was established by General Assembly resolution 36/151 in 1981. The resolution enables the Fund to receive “voluntary contributions for distribution, through established channels of assistance, as humanitarian, legal and financial aid to individuals whose human rights have been seriously violated as a result of torture and to relatives of such victims, priority being given to aid to victims of violations by States in which the human rights situation has been subject to resolutions or decisions adopted either by the Assembly, the Economic and Social Council or the Commission on Human Rights.” For more information, see <http://www.ohchr.org/EN/Issues/Pages/TortureFundMain.aspx>.

B. What does this mechanism do?

- **Receives and distributes funding**

The Fund receives voluntary contributions from governments, NGOs, and individuals for distribution to NGOs providing humanitarian assistance to victims of torture and members of their family. The type of humanitarian assistance provided by NGOs includes psychological, medical, social, legal, and economic relief.

- **Provides grants**

Subject to its budget, the Fund can provide grants to fund training for professionals or to organize conferences and seminars with a special focus on the treatment of victims of torture. To better understand the potentially funded project, members of the Board or of the Fund’s Secretariat will visit the project and meet with staff members of the organization implementing the project and also meet with victims of torture or members of their families who have been assisted with the Fund’s grant.

Each year, grant applications must be received by April 1 to be considered by the Board of Trustees in October.

C. How and when does this mechanism meet?

The Fund’s Board of Trustees holds annual sessions, usually in October. For more information on the Fund’s annual session, see <http://www.ohchr.org/EN/Issues/Pages/TortureFundDecisionMaking.aspx>.

D. How can NGOs engage with this mechanism?

- **Provide humanitarian assistance**

The Fund distributes money to NGOs that provide humanitarian assistance to victims of torture and to members of their families. The type of humanitarian assistance provided by NGOs includes psychological, medical, social, legal, and economic relief.

- **Contribute to the Fund**

NGOs, other private or public entities, and individuals can make financial contributions to the Fund. For more information about how to contribute, see <http://www.ohchr.org/EN/Issues/Pages/TortureFundContributions.aspx>.

- **Apply for grants**

Only NGOs can apply for grants from the Fund, with the stated purpose of facilitating projects that benefit victims of torture. Projects may provide direct medical, psychological, social, economic, legal, humanitarian, educational, or legal assistance or may include activities that raise awareness among torture victims of the services provided by organizations, through, for example, the publication of leaflets and websites.

Applications for grants must be sent to the Fund by April 1 of each year. For more information on grants, including requirements for first-time applications and budget guidelines, see <http://www.ohchr.org/EN/Issues/Pages/TortureFundGuidelines.aspx#1>.

For an online application, see <http://www.ohchr.org/EN/Issues/Pages/onlineapplications.aspx>.

E. Which countries does this mechanism cover?

For a list of UN Member States, see <http://www.un.org/en/members/>.

F. Who are the people behind this mechanism?

The Fund is managed by the UN Secretary-General and an advisory Board of Trustees, whose five members have significant experience in the field of human rights.

G. How does this mechanism take action?

The following examples are excerpts from annual reports which the Secretary-General has produced to explain the Fund's activities relating to torture in health care and sent to the General Assembly and the Human Rights Council:

B. Mandate of the Fund

2. *The Fund receives voluntary contributions from Governments, non-governmental organizations and individuals. In accordance with the practice established by its Board of Trustees in 1982, the Fund provides grants to non-governmental organizations that submit projects involving medical, psychological, social, financial, legal and humanitarian or other forms of assistance to torture victims and their relatives.*

D. Admissibility criteria

4. *Project admissibility criteria are outlined in the guidelines of the Fund. They require a project to be presented by a non-governmental organization. The beneficiaries must be direct victims of torture and/or direct family members. Priority is given to projects providing direct assistance to torture victims, which could consist in medical or psychological assistance. ... Depending on the funds available, the Fund may finance projects to organize training programmes, seminars or conferences to allow health-care professionals or other service providers to exchange best practices. However, grant requests for projects involving investigation, research, studies, publications or similar activities are not admissible.*

—Report of the Secretary-General, 2009

In spite of the limited resources available, and in accordance with recommendation 3 of the Office of Internal Oversight Services on the evaluation of the Fund, the Board continued its practice of financing training and seminars, thus allowing health professionals, social workers, lawyers and other service providers to exchange experiences and develop new strategies to address the needs of torture victims.

—Report of the Secretary-General, 2009

H. How do I contact this mechanism?

Secretariat of the UN Voluntary Fund for Victims of Torture
Office of the United Nations High Commissioner for Human Rights (OHCHR)
United Nations Office at Geneva
8–14, avenue de la Paix | CH-1211 Geneva 10, Switzerland
Phone: + 41 22 917 9315 | Fax: + 41 22 917 9317 | Email: unvfvt@ohchr.org

To make contributions

Trésorerie

Nations Unies

Palais des Nations | CH-1211 Geneva 10, Switzerland

THE AFRICAN SYSTEM

AFRICAN UNION

African Commission on Human and Peoples' Rights (ACHPR)

Special Rapporteur on Prisons and Conditions of Detention in Africa

Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons in Africa

Africa Court on Human and Peoples' Rights

African Committee of Experts on the Rights and Welfare of the Child

This diagram is not exhaustive. It focuses on the mechanisms in the manual and situates them among a few other human rights bodies of interest.

THE AFRICAN SYSTEM

The foundation of the human rights system in Africa was established in 1986 when the African Charter on Human Rights and Peoples' Rights (the African Charter) was entered into force under the African Union. The African Commission on Human and Peoples' Rights (ACHPR) protects human rights by monitoring the compliance of States Parties with the African Charter. The African Charter additionally mandates ACHPR to "draw inspiration from international law on human and peoples' rights."

When drafted, the African Charter was influenced by UN human rights instruments and African traditions. The African Charter specifically encourages international cooperation by recognizing human rights principles set forth in the Charter of the United Nations and the Universal Declaration of Human Rights. Additionally, the preamble states that the African States Parties of the Organization of African Unity should take into consideration "the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights."

The African Charter sets forth rights, such as the respect for democracy, human rights, and the rule of law, but, unlike other human rights systems, also emphasizes duties. Other unique aspects of the African Charter are that it codifies people's rights and individual rights; it protects economic, social, and cultural rights; and it allows States Parties to limit the rights expressed in the Charter.

The African human rights system is still relatively new in comparison to the European and UN systems. The Special Rapporteur on Prisons and Conditions of Detention in Africa (the SRP-Africa), which was established in 1996 to promote and protect human rights and examine situations where persons are deprived of their liberty, has only held a handful of sessions and has not yet carried out missions in many African nations. In addition, the African Court on Human and Peoples' Rights (the African Court) was established in 2002 to support the ACHPR in monitoring compliance with the African Charter. The African Court only governs countries that have further ratified the Protocol to the African Charter on the Establishment of an African Court (the Protocol). Unlike the ACHPR, the African Court can issue final and binding decisions.

Yet, the African human rights system is growing and becoming more active, as evidenced by the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines). The Robben Island Guidelines were drafted and signed in 2002 on Robben Island, with contributions from several African nations, the African Commission, African-based NGOs, international NGOs, African police services, African subregional institutions, and African and international experts. The Robben Island Guidelines urge

the ACHPR to endorse the guidelines in order to further the fight against torture within Africa and to promote human rights culture in African nations. The continuous growth and strengthening of human rights systems in Africa is vital in preventing torture in health care settings.

13. African Commission on Human and Peoples' Rights

A. What is this mechanism responsible for?

The ACHPR monitors compliance with the African Charter. For more information, see <http://www.achpr.org>.

B. What do this mechanism's treaty provisions say about torture?

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

C. What does this mechanism do?

- **Considers state reports**

Under Article 62 of the African Charter, States Parties “shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter.” The reports are subsequently considered during ordinary sessions through discussions with representatives of each State Party whose report is under consideration.

- **Considers inter-State complaints**

Under Article 47, if a State Party has good reason to believe that another State Party has violated the ACHPR, it can voice its concern by sending written communication on the matter to that State, to the Secretary General of the Organization of African Unity (OAU), and to the Chairman of the ACHPR. Within three months, the State receiving the communication should explain the alleged violation and provide information regarding any law, procedure, or redress concerning the matter that it has taken since receiving the communication. If the matter has not been settled after three months, either State has the right to submit the matter to the ACHPR Chairman and notify the other States involved. The ACHPR shall address a referred matter only after all domestic remedies have been exhausted.

According to Article 51, the ACHPR can request all relevant information from the States concerned. After reviewing this information, the ACHPR will send a report to the States concerned and to the Assembly of Heads of State and Government.

- **Considers individual complaints**

According to Article 55, before each session the ACHPR will consider communications it received that did not come from States Parties. From these, the ACHPR will choose which reports of violations of the African Charter to discuss during the session.

D. How and when does this mechanism meet?

The ACHPR meets twice a year and may hold additional sessions in extraordinary circumstances. For more on the ACHPR sessions, see http://www.achpr.org/english/_info/past_en.html.

E. How can NGOs engage with this mechanism?

- To fully engage with the African Commission, NGOs need to obtain observer status. For details on how to acquire observer status, please see: <http://www.achpr.org/sessions/25th/resolutions/33/>. NGOs do not need observer status to lodge complaints, but do need observer status to make public statements at the Commission sessions and to submit shadow reports.

- **Submit shadow reports**

NGOs can submit shadow reports when States Parties present their periodic reports to the ACHPR. For an example of a shadow report, see http://www.iwgia.org/graphics/Synkron-Library/Documents/InternationalProcesses/ACHR/Shadow%20reports/uganda_achpr_supp_rep_may09_eng.pdf.

- **Lodge complaints**

The ACHPR accepts the complaints from NGOs or individuals that it receives before each session. The ACHPR will consider a complaint if a majority of its members votes in favor of considering the complaint. According to Article 56, however, the commission will consider a complaint only if the complaint meets the following requirements:

- 1) The complaint indicates its author(s) even if the latter requests anonymity.
- 2) The complaint is compatible with the Charter of the OAU or with the present Charter.
- 3) The complaint is not written in disparaging or insulting language directed against the State concerned and its institutions or against the OAU.
- 4) The complaint is not based exclusively on news disseminated through the mass media.

- 5) The complaint is sent after local remedies, if any, are exhausted, unless that procedure is unduly prolonged.
- 6) The complaint is submitted within a reasonable period after local remedies are exhausted.
- 7) The complaint does not deal with cases that have been settled by the States involved in accordance with the principles of the Charter of the United Nations, the Charter of the OAU, or the provisions of the present Charter.

If the ACHPR finds that the complaint involves a serious violation of human and people's rights, the ACHPR shall notify the Assembly of Heads of State and Government of these special cases. The State must respond to the complaint within four months, and the ACHPR will show the State's response to the author of the complaint, who can then offer additional information. The Assembly of Heads of State and Government can also request that the ACHPR begin an in-depth study of these special cases and make a factual report, accompanied by the commission's findings and recommendations.

- **Lobby the ACHPR**

Human rights activists are encouraged to lobby the ACHPR by meeting with ACHPR members. For example, try to arrange a meeting in the home country of an ACHPR member to discuss your own human rights work and the instances of torture in health care settings that people in Africa face.

Human rights activists can also send the ACHPR information that will help its members understand the issue of torture in health care. Effective methods of educating ACHPR members about human rights violations include offering international precedents from other human rights systems (such as the decisions of the European Court of Human Rights) or information on torture in health care settings in other African countries. Such information will carry particular weight when sent from an African country, but make it clear that you are offering this information only for reference purposes and are not asking the ACHPR to take action.

F. Which countries does this mechanism cover?

For a list of countries that have ratified the African Charter, see http://www.achpr.org/english/ratifications/ratification_african%20charter.pdf.

G. Who are the people behind this mechanism?

The ACHPR is composed of 11 members elected by secret ballot by the Assembly of Heads of State and Government for a six-year renewable term. According to Article 31, the members

of the ACHPR shall be African personalities of the highest reputation, known for their high morality, integrity, impartiality, and competence in matters of human and people's rights, with particular consideration being given to persons with legal experience.

For a list of the current ACHPR members, see http://www.achpr.org/english/List%20of%20Commissioners/list_updated-2010.pdf.

H. How does this mechanism take action?

The following example is an excerpt from a resolution that this mechanism has produced relevant to torture in health care:

States should: ... [e]ncourage professional legal and medical bodies, to concern themselves with issues of the prohibition and prevention of torture, cruel, inhuman and degrading treatment or punishment. (para. 39)

—Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, 2002

I. How do I contact this mechanism?

Dr. Mary Maboreke

Secretary to the African Commission on Human and Peoples' Rights

Kairaba Avenue | PO Box 673 | Banjul, The Gambia

Phone: +220 4392 962 | Fax: +220 4390 764 | E-mail: achpr@achpr.org

To contact individual members of the African Commission, see http://www.achpr.org/english/List%20of%20Commissioners/list_updated-2010.pdf.

14. African Court on Human and Peoples' Rights

A. What is this mechanism responsible for?

The African Court complements the ACHPR in monitoring compliance with the African Charter and the Protocol. In addition, actions may be brought before the African Court on the basis of any international human rights treaties that have been ratified by the State Party in question. For more information, see <http://www.african-court.org/en/>.

B. What do this mechanism's treaty provisions say about torture?

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

—African Charter on Human and Peoples' Rights

Article 3: *The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.*

—Protocol to the African Charter on Human and Peoples' Rights
on the Establishment of an African Court on Human and Peoples' Rights

C. What does this mechanism do?

- **Issues advisory opinions**

Under Article 4 of the Protocol, a State Party of the OAU, the OAU and any of its organs, or any African organization recognized by the OAU can request the African Court to provide an opinion on any legal matter relating to the African Charter or to any other relevant human rights instruments, as long as the subject matter of the opinion is not related to a matter being examined by the ACHPR.

- **Considers individual complaints**

The African Court can consider complaints lodged by individuals. If the Court finds that there has been a violation of human rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation. For more information, see <http://www.african-court.org/en/contact/>.

D. Where does this mechanism meet?

The African Court's seat is located in Arusha, Tanzania.

E. How can NGOs engage with this mechanism?

- **Request advisory opinions**

According to Article 5 of the Protocol, any African NGO that has been recognized by the OAU can request advisory opinions, provided that, at the time of ratifying of the Protocol or thereafter, the State at issue has made a declaration accepting the jurisdiction of the African Court to hear such cases.

- **Lodge complaints**

Complaints can only be made in terms of Rule 33 of the Rules of the Court, in accordance with Article 5 of the Protocol, as read with Article 34(6). The Court can receive complaints made by the following:

- 1) The ACHPR
- 2) A State Party before the ACHPR (either as applicant or respondent)
- 3) A State Party whose citizen is a victim of a human rights violation
- 4) An African intergovernmental organization
- 5) An individual or NGO in terms of Article 34(6) of the Protocol. Article 34(6) states: “At the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5 (3) of this Protocol. The Court shall not receive any petition under article 5 (3) involving a State Party which has not made such a declaration.”
- 6) A State Party with an interest in a case may apply to be allowed to join in, according to Rule 53 of the African Court. Rule 53 states:
 1. *An application for leave to intervene, in accordance with article 5 (2) of the Protocol shall be filed as soon as possible, and, in any case, before the closure of the written proceedings.*
 2. *The application shall state the names of the Applicant’s representatives. It shall specify the case to which it relates, and shall set out:*
 - a) *the legal interest which, in the view of the State applying to intervene, has been affected;*
 - b) *the precise object of the intervention; and*
 - c) *the basis of the jurisdiction which, in the view of the State applying to intervene, exists between it and the parties to the case.*
 3. *The application shall be accompanied by a list of the supporting documents attached thereto and shall be duly reasoned.*
 4. *Certified copies of the application for leave to intervene shall be communicated forthwith to the parties to the case, who shall be entitled to submit their written observations within a time-limit to be fixed by the Court, or by the President if the Court is not in session. The Registrar shall also transmit copies of the application to any other concerned entity mentioned in Rule 35 of these Rules.*
 5. *If the Court rules that the application is admissible, it shall fix a time limit within which the intervening State shall submit its written observations. Such observations shall be forwarded by the Registrar to the parties to the case, who shall be entitled to file written observations in reply within the timeframe fixed by the Court.*
 6. *The intervening State shall be entitled, in the course of the oral proceedings, if any, to present its submissions in respect of the subject of the intervention.*

For more information, see <http://www.african-court.org/en/court/mandate/lodging-complaints/>.

- **Observe the ACHPR**

According to Article 5, the African Court can entitle African NGOs that have an interest in the claim with observer status before the ACHPR. The African Court can also entitle individuals to institute cases directly before the ACHPR.

F. Which countries does this mechanism cover?

The following states are subject to the African Court's jurisdiction: Algeria, Burkina Faso, Burundi, Côte D'Ivoire, Comoros, Gabon, Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, South Africa, Senegal, Tanzania, Togo, and Uganda. For a list of countries that have ratified the Protocol, see http://www.achpr.org/english/ratifications/ratification_court.pdf.

G. Who are the people behind this mechanism?

According to Article 11, the African Court consists of 11 judges who are nationals of States Parties of the OAU and who have high moral character and recognized practical, judicial, or academic experience in the field of human and people's rights.

For a list of the current Court judges, see <http://www.african-court.org/en/court/judges/>.

H. How does this mechanism take action?

For details about the Court's latest judgments, see <http://www.african-court.org/en/cases/latest-judgments/>.

I. How do I contact this mechanism?

African Court on Human and Peoples' Rights

PO Box 6724 | Arusha, Tanzania

Phone: +255 732 97 95 09; +255 732 97 95 51 | Fax: +255 732 97 95 03

E-mail: info@african-court.org | registrarsoffice@african-court.org

15. Special Rapporteur on Prisons and Conditions of Detention in Africa

A. What is this mechanism responsible for?

The ACHPR established the SRP-Africa in 1996 to carry out the ACHPR's mandate to promote and protect human rights in States Parties to the African Charter. In 1997, a working group

further refined the mandate of the SRP-Africa to empower it to “examine the situation of persons deprived of their liberty within the territories of States Parties to the African Charter on Human and Peoples’ Rights.” For more information, see http://www.achpr.org/english/_info/index_prison_en.html.

B. What does this mechanism do?

- **Investigates conditions of detention**

The SRP-Africa can visit prisons and assess conditions of detention in Africa and make recommendations for improving them. The SRP-Africa can seek and receive information from States Parties to the African Charter, individuals, and NGOs to determine when and where to begin an investigation.

- **Makes recommendations**

The SRP-Africa can advocate adherence to the African Charter and international human rights norms concerning the rights and conditions of persons deprived of their liberty. It can also make appropriate recommendations to satisfy the African Charter and international law and standards.

In addition, the SRP-Africa can make recommendations to the ACHPR regarding communications filed by individuals who have been deprived of their liberty by their families or representatives and also those filed by NGOs or other concerned persons or institutions.

- **Conducts studies**

The SRP-Africa shall conduct studies into conditions or situations contributing to human rights violations of prisons deprived of their liberty and recommend preventive measures.

- **Submits annual reports**

The SRP-Africa submits an annual report to the ACHPR, which is published and disseminated in accordance with the provisions of the African Charter.

C. How can NGOs engage with this mechanism?

- **Provide information to the SRP-Africa**

During an investigation of cases or situations within its mandate, the SRP-Africa seeks to receive information from NGOs and from other relevant bodies. The SRP-Africa can use these communications with NGOs to advocate adherence to the African Charter

and international human rights norms concerning the rights and conditions of persons deprived of their liberty. It can also make appropriate recommendations to satisfy the African Charter and international law and standards.

D. Which countries does this mechanism cover?

For a list of countries that have ratified the African Charter, see http://www.achpr.org/english/ratifications/ratification_african%20charter.pdf.

E. How does this mechanism take action?

The following example is an excerpt from a country report that this mechanism produced relevant to torture in health care:

If a defendant is certified not competent to stand trial and /or lacks criminal responsibility the charges are withdrawn and he/she is referred to a State psychiatric hospital for indefinite hospitalization.... It is often overlooked that none of these defendants have been tried and convicted of the original charge, yet the discharge procedure assumes that he/she is indeed guilty and has to be treated like a dangerous felon.

—South Africa, 2004

F. How do I contact this mechanism?

African Commission on Human and Peoples' Rights

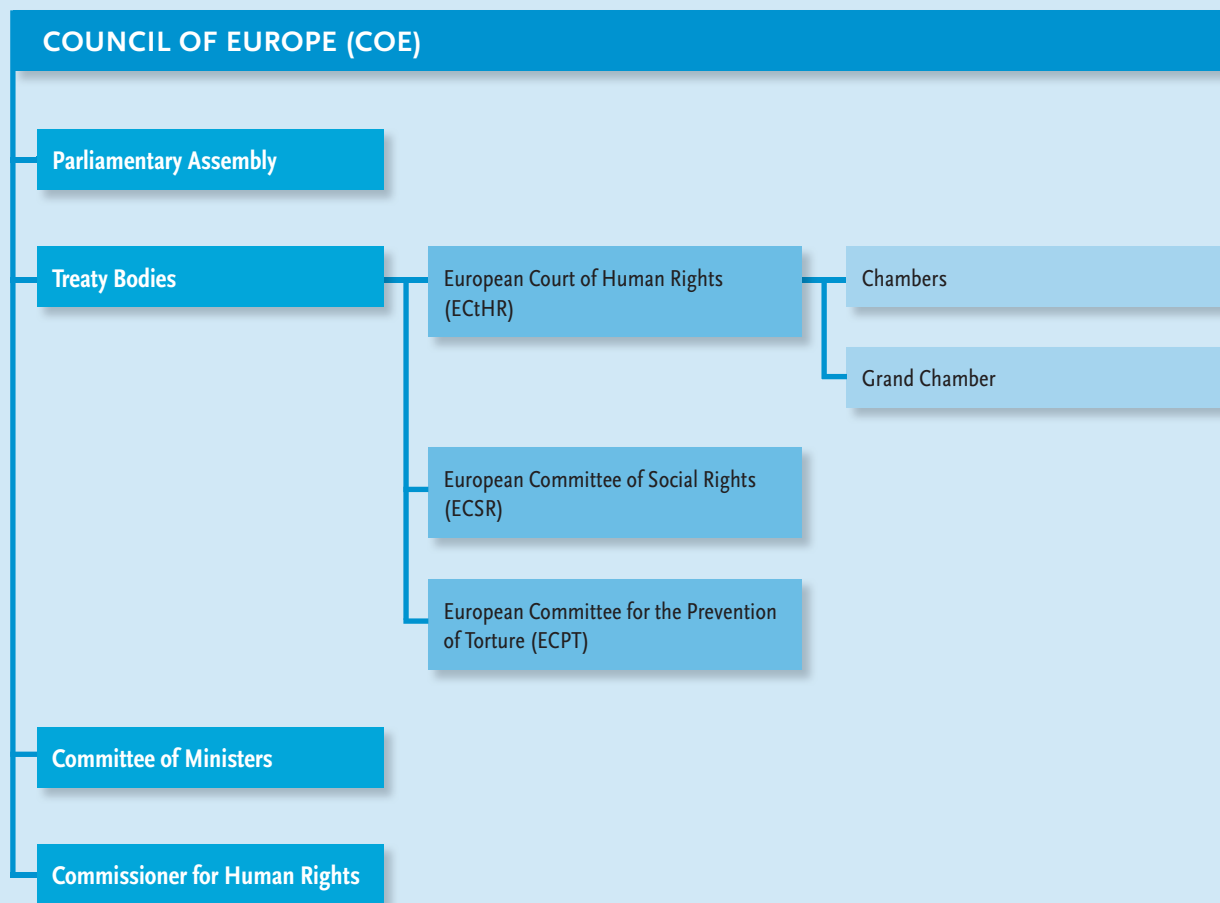
31 Bijilo Annex Layout, Kombo North District

Western Region

PO Box 673 | Banjul, The Gambia

Phone: +220 4410 505; +220 4410 506 | Fax: +220 4410 504 | E-mail: achpr@achpr.org

THE EUROPEAN SYSTEM



This diagram is not exhaustive. It focuses on the mechanisms in the manual and situates them among a few other human rights bodies of interest.

THE EUROPEAN SYSTEM

The European human rights system is known for its progressive and active human rights institutions. It is the earliest regional human rights system, created in 1949 with the establishment of the Council of Europe (COE), which encompassed 10 Western European countries. The European human rights system now covers most European countries and oversees treaty bodies and promotional activities.

The Committee of Ministers is the decision-making body of the COE and is composed of the foreign ministers of all COE Member States or their permanent representatives. In addition to supervising the treaty bodies, the Committee of Ministers makes separate recommendations to Member States on matters for which there is an agreed “common policy.” Some of these recommendations are provided by the COE’s Parliamentary Assembly, a consultative body composed of representatives of Parliaments and Member States.

The most widely known institution is the European Court of Human Rights (ECtHR), which consists of smaller trial chambers and a plenary Grand Chamber. The European Court was established in 1950 under the European Convention for the Protection of Human Rights and Fundamental Freedoms (also known as the European Convention on Human Rights or the ECHR). It monitors compliance with the ECHR and its Protocols. The ECtHR issues advisory opinions and adjudicates disputes between States and complaints of individual human rights violations. As a result, the Court has established an extensive amount of case law. The COE’s Committee of Ministers is responsible for monitoring implementation of judgments made by the ECtHR.

The Commissioner for Human Rights (the Commissioner) works within the European system to promote human rights. An independent institution within the COE, the Commissioner carries out investigations of States Parties by conducting missions to evaluate human rights violations. The Commissioner also provides educational materials to States Parties.

The European human rights system emphasizes the prevention of torture through the ECHR’s drafting and ratification of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Convention for the Prevention of Torture). The European Committee for the Prevention of Torture (ECPT) monitors compliance with the Convention through nonjudicial means by visiting places of detention to examine how persons deprived of their liberty are treated and to recommend improvements to States Parties.

16. European Court of Human Rights

A. What is this mechanism responsible for?

The ECtHR monitors compliance with the ECHR and its Protocols. Under Article 46, para. 1, of the ECHR, States “undertake to abide by the final judgment of the Court in any case to which they are parties.” For more information, see <http://www.echr.coe.int/echr/>.

In addition, all States Parties to the COE are parties to the ECHR and are subject to the jurisdiction of the ECtHR. On June 1, 2010, Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms added the European Union as a party to the ECHR.

B. What do the mechanism’s treaty provisions say about torture?

Article 3, Prohibition of torture: *No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*

1 Travaux Préparatoires 116–7: During the drafting of the Convention, compulsory sterilization was considered to be a breach of Article 3.

C. What does this mechanism do?

- **Issues advisory opinions**

Under Article 47, the Committee of Ministers can request the Court to provide an advisory opinion on any legal matter relating to the ECHR.

- **Considers inter-State complaints**

Under Article 33, the Court may consider an application lodged by one State Party against another.

- **Considers individual complaints**

Under Article 34, the Court may consider an application lodged by any person, NGO, or group of individuals claiming to be the victim of a violation by one of the States Parties of the rights set forth in the ECHR or the Protocols.

D. How and when does this mechanism meet?

The Court convenes upon receiving an admissible application under the ECHR. The Grand Chamber, the Chambers, and the Committees sit full-time.

E. How can NGOs engage with this mechanism?

- **Lodge individual complaints**

Under Article 34, the ECtHR may consider an application lodged by an NGO or individual claiming to be the victim of a violation by one of the States Parties of the rights set forth in the ECHR or the Protocols. To date, individuals have lodged almost all of the applications considered by the Court.

The individual should send the ECtHR a completed application form with the requisite documents. Cases can only be brought to the ECtHR after domestic remedies have been exhausted.

An applicant's allegations must concern one or more of the rights defined in the Convention. The Court cannot examine complaints concerning violations of any other rights. According to the ECtHR, "applications must also be lodged within six months following the last judicial decision in the case, which will usually be a judgment by the highest court in the country concerned. The applicant must be, personally and directly, a victim of a violation of the Convention. It should not be forgotten, of course, that applications can only be lodged against one or more of the States Parties to the Convention, and not against any third State or against an individual."

For more information about applying to the ECtHR, see <http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Application+pack/> and also http://www.echr.coe.int/NR/rdonlyres/37C26BF0-EE46-437E-B810-EA900D18D49B/o/ENG_QR.pdf.

For an online application, see <http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Application+form+online/>.

F. Which countries does this mechanism cover?

For a list of countries that have ratified the ECHR, see <http://conventions.coe.int/Treaty/Commun/ListeTableauCourt.asp?MA=3&CM=16&CL=ENG>.

G. Who are the people behind this mechanism?

The Court consists of a number of judges equal to that of the States Parties to the ECHR. According to Article 21, the judges shall be of high moral character and must either be qualified for appointment to high judicial office or be recognized as a competent jurist.

For a list of the Court's current judges, see <http://www.echr.coe.int/ECHR/EN/Header/The+Court/The+Court/Judges+of+the+Court>

H. How does this mechanism take action?

The following are summaries of sample case law that this mechanism has produced relevant to torture in health care:

Failure to provide adequate medical treatment to persons deprived of their liberty on criminal law or mental health grounds may violate Article 3, the prohibition against torture or inhuman and degrading treatment (*Hurtado v. Switzerland* [Series A No. 280-A, 28 Jan. 94]; *Ilhan v. Turkey* [2002] 34 EHRR 36). The Court considers that the position of inferiority and powerlessness that is typical of patients confined in psychiatric hospitals calls for increased vigilance in reviewing compliance with the ECHR (*Herczegflav v. Austria*).

Examples of breaches of Article 3 include the continued detention of a cancer sufferer where it caused “particularly acute hardship” (*Mouisel v. France* [2004] 38 EHRR 34); significant defects in the medical care provided to a mentally ill prisoner known to be suicide risk (*Keenan v. UK* [2001] 33 EHRR 48); systematic failings in relation to the death of a person addicted to heroin in prison (*McGlinchey v. UK* [2003] 37 EHRR 821); and pre-trial detention conditions where there is overcrowding, sleep deprivation, and lack of natural air and light (*Yakovenko v. Ukraine* [App. No. 15825/06, 25 Oct. 2007]).

The Court found inhuman treatment when a lack of medical assistance to a prisoner gives rise to a medical emergency or otherwise exposes the victim to “severe or prolonged pain.” (*McGlinchey v. UK* [2003] 37 EHRR 821). The Court found degrading treatment where there is no medical emergency on the basis of humiliation, stress, and anxiety suffered by prisoners due to lack of medical treatment (*Sarban v. Moldova* [App. No. 3456/05, 4 Oct. 2005]; *Hummatov v. Azerbaijan* [App. Nos. 9852/03 and 13413/04, 29 Nov. 2007]); (*Khudobin v. Russia* [App. No. 59696/00, 2006]).

I. How do I contact this mechanism?

European Court of Human Rights
Council of Europe
67075 Strasbourg-Cedex, France
Phone: +33 3 88 41 20 18 | Fax: +33 3 88 41 27 30

To submit an online application to the Court, see <http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Application+form+online/>.

17. European Committee for the Prevention of Torture

A. What is this mechanism responsible for?

The mandate of the European Committee for the Prevention of Torture (CPT) is set forth by Article 1 of the Convention for the Prevention of Torture. The CPT monitors compliance with the prohibition of torture as provided for in Article 3 of the Convention.

For more information, see <http://www.cpt.coe.int/en/>.

B. What do this mechanism's treaty provisions say about torture?

Article 1: The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.

C. What does this mechanism do?

- **Investigates States Parties**

Under Article 1, the CPT visits States Parties to examine the treatment of persons deprived of their liberty and protect such persons from torture and from inhuman or degrading treatment or punishment. In addition, Article 7 enables the CPT to organize visits to States Parties if it seems required under the circumstances. According to Article 8, the CPT must inform the Government of the State Party concerned of its intention to visit. The CPT shall have unlimited access to any place where persons are deprived of their liberty.

According to Article 9, after visiting a State Party, the CPT shall write a report on facts discovered during the visit and will consider any observations made by the State Party concerned. The committee will then send a letter to the State Party recommending necessary changes. If the State Party does not comply with the CPT's recommended changes, the CPT can consider making a public statement with the State's permission.

- **Writes general reports**

Under Article 12, the CPT shall write a annual general report on its activities and submit it to the Consultative Assembly and non-States Parties of the COE, which is not a party to the Convention for the Prevention of Torture. This general report is also made public.

D. How and when does this mechanism meet?

The CPT meets periodically in private and also visits States Parties. For summary descriptions of CPT visits, see <http://www.cpt.coe.int/en/visits.htm>.

E. How can NGOs engage with this mechanism?

- **Provide information to the Committee**

The COE has encouraged the CPT to collaborate with NGOs. The CPT is encouraged to contact those NGOs in the visited countries that are recognized for their work to prevent torture in health care. NGOs should seek to engage in meetings with the CPT and submit information pertaining to violations of the Convention for the Prevention of Torture.

- **Encourage investigations by the Committee**

In urgent situations, NGOs should encourage the CPT to embark on ad hoc visits to States Parties concerned. Also, NGOs can pressure governments to publish reports written by the CPT, although the State Party will not be obligated to publish the report.

F. Which countries does this mechanism cover?

For a list of countries that have ratified the Convention for the Prevention of Torture, see <http://www.cpt.coe.int/en/states.htm>.

G. Who are the people behind this mechanism?

According to Article 4, the CPT consists of as many members as there are States Parties. These persons are of high moral character and known for their competence or professional experience in the field of human rights.

CPT members are typically public-interest lawyers, doctors, psychiatrists, sociologists, professors, and specialists in prison or police matters. For a list of current CPT members, see <http://www.cpt.coe.int/en/members.htm>.

H. How does this mechanism take action?

The following examples include excerpts from a general report that this mechanism produced relevant to torture in health care:

16th General Report on the CPT's activities (covering the period August 1, 2005 to July 31, 2006):

37. As a matter of principle, hospitals should be safe places for both patients and staff. Psychiatric patients should be treated with respect and dignity, and in a safe, humane manner that respects their choices and self-determination. The absence of violence and abuse, of patients by staff or between patients, constitutes a minimum requirement.





43. Voluntary patients should only be restrained with their consent. If the application of restraint to a voluntary patient is deemed necessary and the patient disagrees, the legal status of the patient should be reviewed.

14th General Report on the CPT's activities (covering the period August 1, 2003 to July 31, 2004):

8. The ad hoc visit to Romania in June 2004 focused on the situation of patients at Poiana Mare Psychiatric Hospital, an establishment already visited by the CPT in 1995 and 1999. The Committee had received alarming reports in the course of 2004, according to which a considerable number of patients had recently died at the hospital as a result of hypothermia and/or malnutrition.

Appendix 1: Each Party to the Convention must permit visits to any place within its jurisdiction "where persons are deprived of their liberty by a public authority." The CPT's mandate thus extends beyond prisons and police stations to encompass, for example, psychiatric institutions, detention areas at military barracks, holding centres for asylum seekers or other categories of foreigners, and places in which young persons may be deprived of their liberty by judicial or administrative order.

I. How do I contact this mechanism?

Secretariat of the European Committee for the Prevention of Torture
Council of Europe
F-67075 Strasbourg Cedex, France
Phone: +33 3 88 41 39 39 | Fax: +33 3 88 41 27 72 | E-mail: cptdoc@coe.int
Website: www.cpt.coe.int

For more information about various country staff, see <http://www.cpt.coe.int/en/contact-us.htm>.

18. Commissioner for Human Rights

A. What is this mechanism responsible for?

The Commissioner for Human Rights (the Commissioner) carries out the mandate expressed in Resolution (99) 50 on the Council of Europe Commissioner for Human Rights. The Resolution states that the Commissioner should

- foster the effective observance of human rights, and assist member states in the implementation of Council of Europe human rights standards;
- promote education in and awareness of human rights in Council of Europe member states;
- identify possible shortcomings in the law and practice concerning human rights;
- facilitate the activities of national ombudsperson institutions and other human rights structures; and
- provide advice and information regarding the protection of human rights across the region.

For more information, see http://www.coe.int/t/commissioner/default_en.asp.

B. What does this mechanism do?

- **Investigates State Parties**

The Commissioner regularly investigates COE States Parties in order to raise the standard of human rights protection. These investigations consist of meeting with government officials and with members of human rights protection institutions and the civil society. After an investigation, the Commissioner issues a report describing how to improve the State Party's human rights situation and distributes the report to the policy-making and NGO communities and to the media.

The Commissioner then makes follow-up visits to ensure that the State Party of concern has made the improvements recommended in the Commissioner's original report. The Commissioner writes a follow-up report assessing the improvements.

Furthermore, the Commissioner carries out contact visits to countries to bolster relations with the authorities and to examine problem areas without issuing general reports. For more information about the Commissioner's past visits, see http://www.coe.int/t/commissioner/WCD/visitreportsbycountry_en.asp#.

- **Makes recommendations and promotes human rights**

The Commissioner can issue recommendations regarding a State Party's specific human rights issue, either by request of national bodies or on his own initiative. The Commissioner may give opinions on draft laws and specific practices.

The Commissioner also promotes human rights awareness in COE States Parties by organizing seminars and events on various human rights themes. The Commissioner maintains working relations with the national ombudsman and national human rights institutions and also organizes biennial roundtables with these human rights actors.

For more information about the Commissioner's areas of focus, see http://www.coe.int/t/commissioner/Activities/themes/default_en.asp.

C. How can NGOs engage with this mechanism?

- **Provide information to the Commissioner**

According to Article 5, the Commissioner will act on relevant information it receives from individuals and NGOs. When the Commissioner investigates a State Party, NGOs can also meet with the Commissioner. After an investigation, the Commissioner issues and distributes a report to the NGOs.

- **Promote human rights**

The Commissioner actively maintains working relations with NGOs within States Parties. NGOs are invited to assist the Commissioner in organizing roundtables, seminars, and events on human rights topics and are also invited to attend these sessions.

- **Lodge complaints about compliance**

Although rarely done, NGOs can submit to the Committee of Ministers complaints that explain how a State is not in compliance with a judgment of the ECtHR. For more information, see http://www.coe.int/t/cm/aboutCM_en.asp.

- **Protect human rights defenders**

One of the roles of the Commissioner is to improve the protection of human rights defenders and promote their activities. According to the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, COE States Parties must be committed to the effective protection of human rights defenders and their work, especially in situations of danger. Specifically, the Commissioner should provide strong and effective protection for human rights defenders by

- acting upon information received from human rights defenders;
- meeting with defenders during his country visits and reporting publicly on the situation of human rights defenders;
- intervening in an effort to find solutions for complex, dangerous issues that defenders may face; and
- working closely with intergovernmental organizations and institutions that support and defend human rights.

D. Which countries does this mechanism cover?

The Commissioner covers the 47 Member States of the COE. For a list of these Member States, see <http://www.coe.int/aboutCoe/index.asp?page=47pays1europe&l=en>.

E. Who are the people behind this mechanism?

Commissioner Thomas Hammarberg, the current Commissioner at the time of this publication, has worked in the human rights field for several decades, including in governmental and nongovernmental positions. For a complete list of the people in the Office of the Commissioner, see http://www.coe.int/t/commissioner/Office/whoswho_en.asp#.

F. How does this mechanism take action?

The following examples are excerpts from country reports and recommendations that this mechanism has produced relevant to torture in health care:

COUNTRY REPORTS

2.6 Allegations of forced sterilization of Roma women: 51. In September 2004, the Office of the Public Defender of Rights began investigating allegations that some 87 women in the Czech Republic may have been subjected to sterilisation procedures without their full and informed consent. In December 2005, the Public Defender of Rights issued a report concluding that “The Public Defender of Rights is convinced that in the Czech Republic, the problem of sexual sterilisation—carried out either with unacceptable motivation or illegally—exists, and that Czech society stands before the task of coming to grips with this reality.” The Public Defender of Rights recommends three areas of change: changes to the Czech domestic law to better anchor the principle of informed consent, supplementary measures to ensure a change of culture with regard to informed consent in the medical community and a simplified procedure for compensation to victims.

Conclusions: 53. The Commissioner welcomes the investigation and the report issued by the Czech Public Defender of Rights on forced sterilization, containing his findings and proposals for change. He notes that the Public Defender of Rights confirmed the existence of this practice and that a Court has declared it illegal in a recent case. The Commissioner draws attention to the recommendations he made in October 2003, which deal with legislation, access to medical files, improvement of health care and setting up mechanisms to offer redress to victims. These recommendations may be of use to the Czech Government when reviewing their own legislation and directives on the subject.

—Czech Republic, 2006

Inclusion of Persons with Disabilities: 58. Strengthen the legal protection of patients' rights by adoption and implementation of the envisaged law on rights of patients. To ensure that the patients' ombudsmen established by the law are independent from the hospital and mandated to communicate in private with patients.

—Macedonia, 2008

4. The involuntary sterilization of Roma women: 32. The issue of allegations of forced or coerced sterilisation of Roma women and girls in the Slovak Republic was examined by the Commissioner in his recommendation of October 2003. The Commissioner concluded that on the basis of the available information, it could reasonably be assumed that cases of sterilisations had taken place, particularly in the eastern part of the Slovak Republic, without informed consent. The Commissioner noted that the information available did not suggest that an active or organised government policy of improper sterilisations had existed (at least since the end of the Communist regime). However, in the Commissioner's opinion, the Slovak Government had an objective responsibility in the matter for failing to put in place adequate legislation and for failing to exercise appropriate supervision for sterilisation practices. The Commissioner made a number of recommendations to the Slovak authorities concerning new legislation, access to medical files, improving the country's health care system to include gynaecological and obstetrical medical services, and consideration given to the setting up of an independent commission to offer redress.

—Slovak Republic, 2006

RECOMMENDATIONS

4. There have been a series of allegations of forced or coerced sterilizations of Roma women and other violations in the field of reproductive health in the Slovak Republic, particularly in eastern parts of the country....

13. It was noted that in the Slovak Republic, the majority of sterilizations are, as a rule, performed in public hospitals by medical doctors who are public employees. They are asked to do hard work in working conditions which are often difficult and not conducive to the thorough and careful provision of explanations and counsel to patients. As regards possible motivations by individual doctors to perform sterilisations





without a valid, prior, informed consent, it was noted that they may range from real, sensitive concern for their patient's health to paternalistic or even racist attitudes of the individual practitioner.

53. 1. The Commissioner recommends the rapid adoption of new legislation introducing and sufficiently specifying the requirement of free and informed consent for medical acts, including sterilizations, in line with the requirements of international law.

**—Recommendation of the Commissioner for Human Rights
Concerning Certain Aspects of Law and Practices Relating to Sterilization of
Women in the Slovak Republic, 2003**

Although states should provide free emergency health care regardless of legal status, there is no agreement on what treatment falls inside this narrow and often undefined category. A UK parliamentary inquiry reported that although the Health Department categorised maternity care as 'immediately necessary treatment,' the patients remained liable for charges 'and the debt should be pursued in the normal way.' In some cases, vulnerable patients such as pregnant women and people with HIV/AIDS had been refused hospital treatment. In the case of HIV/AIDS, the inquiry noted the negative consequences of refusal in terms of cost and risk of infection; people wait until they were treatable as an emergency, at which point their viral load had increased.

—The Human Rights of Irregular Migrants in Europe, Strasbourg, 2007

G. How do I contact this mechanism?

Office of the Commissioner for Human Rights

Council of Europe

F-67075 Strasbourg Cedex, France

Phone: + 33 3 88 41 34 21 | Fax: + 33 3 90 21 50 53 | E-mail: commissioner@coe.int

THE INTER-AMERICAN SYSTEM

ORGANIZATION OF AMERICAN STATES (OAS)

Inter-American Commission on Human Rights

Thematic Rapporteurs focused on women, children, indigenous peoples, Afro-descendants, and persons deprived of liberty

Inter-American Court of Human Rights

This diagram is not exhaustive. It focuses on the mechanisms in the manual and situates them among a few other human rights bodies of interest.

THE INTER-AMERICAN SYSTEM

The Inter-American human rights system emerged in 1948 at the Ninth International Conference of American States held in Bogotá, Columbia. During this conference, the American Declaration of the Rights and Duties of Man (American Declaration) was adopted, predating the Universal Declaration of Human Rights by a few months. It includes both human rights and duties and covers civil, political, economic, social, and cultural rights. The American Declaration was subsequently held to define the human rights referred to in the Charter for the Organization of American States (the Charter).

The Charter functions as the constitution of the Organization of American States (OAS), a regional, intergovernmental organization composed of all sovereign states of the Americas. The Charter is a multilateral treaty, which opened for signature in 1948 and entered into force in 1951. In 1970, the Protocol of Buenos Aires amended the Charter and established the Inter-American Commission on Human Rights as a formal organ of the OAS, with full legitimacy. According to Article 106 of the Charter, the mandate of the Inter-American Commission on Human Rights is “to promote the observance and protection of human rights and serve as a consultative organ.” The Charter further tasked the American Convention on Human Rights (American Convention) to define “the structure, competence and procedure” of the Commission.

The American Convention was opened for signature in 1969 and entered into force in 1978. It provides greater detail on the functioning of the Commission and creates the Inter-American Court of Human Rights (Article 33). The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights are the two main organs of the Inter-American human rights system. Because the Commission is an organ of both the American Convention and the OAS Charter, it applies to all members of the OAS. The Court, however, is only legally binding on States Parties to the American Convention, who further agree to the Court’s jurisdiction. The Commission and Court each consist of seven members, elected in their personal capacities as human rights experts. The Commission is based at the headquarters of the OAS in Washington, DC; the Court sits in San Jose, Costa Rica.

19. The Inter-American Commission on Human Rights

A. What is this mechanism responsible for?

The Inter-American Commission of Human Rights was created by a resolution of the Fifth Meeting of Consultation of the Ministers of Foreign Affairs in 1959. The Council of the OAS approved the resolution in 1960. The powers and functions of the Commission were expanded

in 1965, and the Commission became a formal organ of the OAS in 1970. The American Convention further clarified the role and organization of the Commission in 1978. The Commission is responsible for examining human rights in the countries within the prevue of the OAS and for submitting annual reports to that body regarding human rights. It is further responsible for bringing issues to the attention of the Inter-American Court of Human Rights. Additionally, it responds to inquiries from Member States on human rights matters and can take action on individual petitions and communications under both the American Declaration and American Convention.

B. What do the mechanism's treaty provisions say about torture?

- **American Convention on Human Rights**

Article 5: Right to Humane Treatment:

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

- **Inter-American Convention to Prevent and Punish Torture**

Article 2: *For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.*

The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.

C. What does this mechanism do?

- **Issues special reports**

The Commission observes the human rights practices in Member States and publishes special reports when appropriate. On-site visits are carried out to more thoroughly investigate a specific situation. The result of such a visit is usually a report describing the human rights situation observed, and the report is sent to the General Assembly.

- **Disseminates information**

In order to raise public consciousness, the Commission carries out and publishes studies on various human rights issues. The Commission also holds conferences with Governments, academic institutions, etc.

- **Considers individual petitions**

Pursuant to Articles 41 and 54 of the American Convention, the Commission receives, analyzes, and investigates individual petitions. The Commission addresses alleged violations of the American Convention and other treaties, in relation to States that have ratified the Convention, and of alleged violations of the American Declaration, in relation to States that have not ratified the Convention.

- **Makes recommendations**

The Commission recommends to the OAS the adoption of measures that would benefit the protection of human rights. The Commission can request that States Parties adopt “precautionary measures” in order to prevent irreparable harm to human rights. It can also request that the Court order “provisional measures” to protect persons from danger in certain urgent cases, even when the case has yet to be submitted to the Court.

- **Submits cases**

The Commission can submit cases to the Inter-American Court of Human Rights, appear before the Court in litigation, and request Advisory Opinions from the Court on matters of interpretation of the American Convention.

- **Oversees Rapporteurs and Working Groups**

The Commission oversees several Rapporteurships and Working Groups. The ones potentially relevant to torture in health care include the Unit for Human Rights Defenders, the Rapporteurship on the Rights of Women, the Rapporteurship on the Rights of Migrant Workers and Their Families, the Rapporteurship on the Rights of the Child, the Rapporteurship on the Rights of Indigenous Peoples, the Rapporteurship on

the Rights of Persons Deprived of Liberty in the Americas, and the Rapporteurship on the Rights of Afro-Descendants and Against Racial Discrimination.

D. How and when does this mechanism meet?

The Commission is a permanent body of the OAS, although the commissioners are not permanently based in Washington, DC and are only available for the Commission's ordinary and extraordinary meetings.

E. How can NGOs engage with this mechanism?

- **Present petitions**

According to Article 23 of the Rules of Procedure of the Inter-American Commission on Human Rights, "Any person or groups of persons or nongovernmental entity legally recognized in one or more of the Member States of the OAS may submit petitions to the Commission, on their own behalf or on the behalf of third persons, concerning alleged violations of a human right."

- **Request thematic hearings**

NGOs may request thematic hearings to treat particular subjects of relevance in the Americas (or may request country hearings). NGOs can also present reports to the Commission.

F. Which countries does this mechanism cover?

This mechanism covers all 35 independent countries of the Americas, and issues relevant to the American Declaration can be brought on behalf of all of these countries. The American Convention only binds the 25 countries that ratified it. For a list of all OAS Member States, see http://www.oas.org/en/about/member_states.asp.

G. Who are the people behind this mechanism?

The Commission consists of seven members who have expertise in the area of human rights. The General Assembly of the OAS elects them from a list compiled by the Member States. Each Member State can propose as many as three candidates. At least one of the candidates must be from a State other than the State that is proposing the candidacy. Commission members are elected for four-year terms and may be reelected only once.

For a list of the current Commission members, see <http://www.cidh.oas.org/personal.eng.htm>.

H. How do I contact this mechanism?

Executive Secretariat of the Inter-American Commission on Human Rights

1889 F Street, NW | Washington, DC 20006, USA

Phone: +1 202 458 6002 | Fax: +1 202 458 3992 | E-mail: cidhoea@oas.org

20. The Inter-American Court of Human Rights

A. What is this mechanism responsible for?

The Inter-American Court of Human Rights was established by the American Convention. The Court is responsible for applying and interpreting the American Convention and any other Convention that recognizes its jurisdiction. It has the authority to hear individual cases and also to provide Member States with advisory opinions.

B. What do the mechanism's treaty provisions say about torture?

- **American Convention on Human Rights**

Article 5. Right to Humane Treatment:

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

- **Inter-American Convention to Prevent and Punish Torture**

Article 2: *For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as*

a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.

C. What does this mechanism do?

- **Exercises contentious jurisdiction**

According to Article 61(1) of the American Convention, only States Parties to the Convention that have also expressly accepted the jurisdiction of the Court and the Commission have the right to submit a case to the Inter-American Court of Human Rights. A State Party or the Commission must first submit an application to the Court. After the Court issues a judgment, it is final. Because the Court must submit periodic reports to the OAS, it does, however, have the power to monitor the compliance of States Parties to its judgments.

- **Exercises advisory jurisdiction**

The Member States of the OAS and its bodies can engage with the Court through its advisory powers. This provision allows the Court to deal with matters that arise through the application of the American Convention or other human rights treaties, irrespective of which States are parties. The Court can make advisory reports as it sees fit (Article 41[b,c]) and can offer advisory services to Member States at their request (Article 41[e]).

- **Grants provisional measures**

The Court may grant provisional measures for issues that have already been submitted to the Court and also for those pending at the Commission that have not yet been submitted to the Court but could be submitted because the State in question has ratified the Convention and accepted the jurisdiction of the Court. The provisional measures can only be applied in cases of extreme gravity and urgency, when deemed necessary in order to avoid irreparable damages to people.

D. How and when does this mechanism meet?

The Court holds regular sessions, according to the Article 11 of the Rules of Procedure for the Inter-American Court of Human Rights, at dates decided in the previous session. (In 2011, the Court will hold regular sessions from May to December.) An Extraordinary Session may also

be called by the President, either on his or her own initiative or upon the request of a majority of the judges.

E. How can NGOs engage with this mechanism?

The Court does not consider petitions of individuals or organizations. Those interested must contact the Inter-American Commission of Human Rights, which has the power to present petitions to the Court. Once cases are before the Court, however, the victims and their lawyers (usually NGOs) have standing before the Court to defend their cases, ask for precautionary measures, present amicus briefs, etc.

F. Which countries does this mechanism cover?

The Court covers the 22 States that have explicitly recognized the Court's jurisdiction. However, not all these states recognize the Court's authority to adjudicate both. For a list of those States, see <http://www.cidh.org/basicos/english/Basic4.Amer.Conv.Ratif.htm>.

G. Who are the people behind this mechanism?

The Court consists of seven judges, pursuant to Chapter VIII of the American Convention. The OAS General Assembly elects them for six-year terms. No individual State may have two judges on the Court at any time. Any State that goes before the Court that does not have a judge representing it may appoint an ad hoc judge to hear its case.

H. How does this mechanism take action?

The following examples are summaries of case law that this mechanism has produced relevant to torture in health care:

In a case involving a young man who died from mistreatment and abuse in a Brazilian psychiatric facility, the Court found a violation of Article 5, the Right to Humane Treatment. "The infringement of the right to physical and psychological integrity of the human person is a type of violation which has varying connotation and which encompasses torture and other types of mistreatment or cruel, inhumane, or degrading treatment whose physical and psychological consequences may have different degrees of intensity according to the extrinsic and intrinsic factors which should be proven in each specific situation." Additionally, the Court found that not only was Ximenes-Lopes' right to be free from cruel, inhuman, and degrading treatment violated, but so were those of his family, "as a product of the particular circumstances of the violations





were those of his family, “as a product of the particular circumstances of the violations perpetrated against their beloved and because of the subsequent actions or omissions of the State authorities concerning the facts.” This case is further significant because it establishes State responsibility for violations in private health care facilities. Because health is a “public good,” States have the obligation to regulate and monitor the provision of health care services.

—*Ximenes-Lopes v. Brazil*, 2006

The Court found a violation of Article 5, the Right to Humane Treatment, in a case in which a meningitis patient died the day after the administration of morphine, and there was no proper investigation or “judicial answer” to clear up the circumstances of her death. The Court ordered the adoption of measures “aimed at supervising and monitoring the rendering of health services and at promoting the protection of the right to life, to humane treatment, and to the health of the individuals who are under medical treatment.” The Court recognized the “close emotional link” between the bereaved parents and their daughter, considering them victims of acts committed in violation of Article 5.

—*Albán-Cornejo v. Ecuador*, 2007

The Court found a violation of Article 5, the Right to Humane Treatment, in a case in which a man with a bullet wound and in state custody was denied proper medical treatment and died.

—*Vera Vera v. Ecuador*, 2011

I. How do I contact this mechanism?

Inter-American Court of Human Rights

Avenue 10, Street 45–47, Los Yoses, San Pedro, San Jose, Costa Rica

Phone: +506 2527 1600 | Fax: +506 2234 0584 | E-mail: corteidh@corteidh.or.cr

GLOSSARY

A

Accession

Acceptance by a nonsignatory State of the opportunity to become a party to a treaty and to be legally bound by it. The State makes such acceptance by depositing an “instrument of accession.” Accession has the same legal effect as **ratification**. Unlike ratification, accession is a one-step process.

Actio Popularis (“public action”)

A legal action brought by any member of a community in vindication of a public interest.

Adoption

The formal act by which negotiating parties establish the form and content of a treaty—for example, by voting on the content, initialing, signing, etc. Adoption may also be the mechanism used to establish the form and content of amendments to a treaty or regulations under a treaty. Treaties negotiated within an international organization are usually adopted by resolution of the representative organ of that organization. For example, treaties negotiated under the auspices of the United Nations or any of its bodies are adopted by a resolution of the General Assembly of the United Nations.

C

Concluding Observations

Recommendations by a treaty’s enforcement mechanism on the actions a State should take in ensuring compliance with the treaty’s obligations. Concluding Observations generally follow the submission of a State’s **country report** and a constructive dialogue with State representatives.

Convention

A term used interchangeably with treaty, but also meaning specifically a treaty binding a broad number of nations. Conventions are normally open to the participation of a large number of States or to the entire international community. Usually, the instruments negotiated under the auspices of an international organization are called conventions, as are instruments adopted by an organ of an international organization.

Country Report

A State’s report to the enforcement mechanism of a particular treaty on the progress the State has made in implementing the treaty.

Customary International Law

One of the sources of international law, consisting of rules of law derived from the consistent conduct of States acting in the belief that the law requires them to act that way. As a result, customary international law can be discerned through observation of the widespread repetition of similar international acts by States over time (State practice). These acts must result from the State's sense of obligation, must be performed by a significant number of States, and must not be rejected by a significant number of States. A particular category of customary international law, **jus cogens** refers to a principle of international law so fundamental that no State may opt out of it by way of treaty or otherwise. Examples of jus cogens may include prohibitions against slavery, genocide, torture, and crimes against humanity. Additional examples may include the principle of non-refoulement of refugees and, debatably, the right to humanitarian intervention.

D

De Facto ("in reality")

A situation or condition that exists but that may not be explicitly expressed by law. For example, a law that is neutral on paper may, in reality, be enforced in a discriminatory manner based on social or cultural contexts.

De Jure ("by right")

A situation or condition that is based on a principle of law, such as those detailed in ratified treaties.

Declaration

An interpretative declaration is a declaration by a State as to its understanding of some matter covered by a treaty or its interpretation of a particular provision. Unlike **reservations**, declarations merely clarify a State's position and do not purport to exclude or modify the legal effect of a treaty.

Discrimination

The act of distinguishing between persons on the basis of race, sex, religion, political opinions, national or social origin, minority status, or personal antipathy.

Domestication

Process by which an international treaty is incorporated into domestic legislation.

E

Entry into Force

The moment in time when a treaty becomes legally binding on the parties to the treaty. The provisions of the treaty determine the moment of its **entry into force**, which may be a specific date or a date on which a specified number of **ratifications**, approvals, acceptances, or **accessions** have been deposited with the depositary.

Exhaustion of Domestic Remedies

The requirement to pursue all means available to seek protection from future human rights violations and obtain justice for past abuses before the submission of a complaint on behalf of a victim to any regional or international tribunal. There are limited exceptions to this requirement, as domestic remedies may be unavailable, ineffective (as in a sham proceeding), or unreasonably delayed.

G

General Comments and Recommendations

Interpretive texts issued by a treaty's enforcement mechanism concerning the content of particular rights. Although these texts are not legally binding, they are widely regarded as authoritative and have significant legal weight.

H

Human Rights

Universal legal guarantees for all human beings, set out in international standards, protecting human dignity and fundamental freedoms and privileges. Human rights cannot be waived or taken away.

Human rights Covenants/Conventions

Treaties concerning human rights issues that are legally binding on the States that ratify them.

Human Rights Declarations

Statements of nonbinding human rights norms and principles (which, in some cases, may reflect binding *customary international law*).

I

International Human Rights Law

Codification of legal provisions governing human rights in various international and regional human rights instruments.

International Law

The set of rules and legal instruments that are regarded and accepted as binding agreements between nations. International law is typically divided into public international law and private international law. According to Article 38(1)(d) of the Statute of the International Court of Justice, the sources of such law are (a) custom; (b) treaties; (c) general principles of law; and (d) judicial decisions and juristic writings.

Interpretive declaration

Declaration by a state as to its understanding of some matter covered by a treaty. Unlike **reservations** (see below), declarations merely clarify a state's position and do not purport to exclude or modify the legal effect of a treaty.

J Jus Cogens (“compelling law”)

Describes a peremptory principle of international law from which no derogation by treaty is permitted (for example, the prohibition on torture).

M Monitoring

Term often used interchangeably with “fact finding” and “investigation” and generally intended to mean the tracking and/or gathering of information about government practices and actions related to human rights.

P Party

A State or other entity with treaty-making capacity that has expressed its consent to be bound by a treaty by an act of **ratification**, acceptance, approval, or **accession**, etc., and that has entered the treaty into force. According to Article 2(1)(g) of the Vienna Convention, 1969, after **entry into force**, the State or entity is bound by the treaty under **international law**.

Protocol

Refers to a section in a treaty that clarifies terms, adds additional text as amendments, or establishes new obligations, which, for example, may be quantitative targets for nations to achieve.

Public International Law

Body of laws that establishes the framework and the criteria for identifying States as the principal actors in the international legal system regarding the acquisition of territory, state immunity, and the legal responsibility of States in their conduct with each other. Public international law also applies to the treatment of individuals within State boundaries and includes issues of human rights, the treatment of aliens, the rights of refugees, international crimes, and nationality. It further includes the maintenance of international peace and security, arms control, the pacific settlement of disputes, and the regulation of the use of force in international relations. International human rights law, international humanitarian law, refugee law, and international criminal law are all branches of public international law.

R

Ratification

A party's formal acceptance of the rights and obligations of a treaty, which, after the treaty has entered into force, legally binds that party. State ratification requires two steps: (a) the execution of an instrument of ratification, acceptance, or approval by the Head of State, Head of Government, or Minister for Foreign Affairs, expressing the intent of the State to be bound by the relevant treaty; and (b) for multilateral treaties, the deposit of the instrument with the depositary; for bilateral treaties, the exchange of the instruments between parties.

Reservation

A statement made by a State by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that State. A reservation may enable a State to participate in a multilateral treaty in which it would otherwise be unable or unwilling to participate. States can make reservations to a treaty when they sign, ratify, accept, approve, or accede to it. When a State makes a reservation upon signing, it must confirm the reservation upon **ratification**, acceptance, or approval. Because a reservation purports to modify the legal obligations of a State, it must be signed by the Head of State, Head of Government, or Minister for Foreign Affairs. Reservations cannot be contrary to the object and purpose of the treaty. Some treaties prohibit reservations or only permit specified reservations.

Respect, Protect, and Fulfill

A Government's obligations with respect to rights.

Respect: Government must not act directly counter to the human rights standard.

Protect: Government must act to stop others from violating the human rights standard.

Fulfill: Government has an affirmative duty to take appropriate measures to ensure that the human rights standard is attained.

S

Self executing treaty

A treaty that does not require implementing legislation for its provisions to have effect in domestic law.

Shadow Report

An independent NGO's submission to a treaty enforcement mechanism to help it assess a State's compliance with that treaty.

Signatory

A party that has signed an agreement and agrees to an obligation but is not yet legally bound by a treaty.

Signature

The expression of a State's willingness to continue the treaty-making process and proceed to **ratification**. Although the provisions of the treaty are not yet legally binding on a **signatory** State, its signature creates an obligation to refrain in good faith from acts that would defeat the object and purpose of the treaty.

Special Procedures

Mechanisms of the Human Rights Council—including **Special Rapporteurs** and **Working Groups**—that clarify communication with countries and conduct country missions to address country-specific human rights violations or thematic issues.

Special Rapporteurs

Individuals appointed by the Human Rights Council to investigate human rights violations and present an annual report that contains recommendations for action. There are both country-specific and thematic Special Rapporteurs, including one concerned with people's right to the highest attainable standard of health.

T

Treaty

A formal agreement entered into by two or more nations that is binding upon them. A bilateral treaty is a treaty between two parties. A multilateral treaty is a treaty between more than two parties.

W

Working Groups

Small committees appointed by the Human Rights Council to address a particular human rights issue. Working groups write to Governments about urgent cases and help prevent future human rights violations by developing clarifying criteria on what constitutes a violation.

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Special Rapporteur on Prisons and Conditions of Detention in Africa

http://www.achpr.org/english/_info/index_prison_en.html

African Court on Human and Peoples' Rights

<http://www.african-court.org/en/>

Centre for Human Rights

http://www.chr.up.ac.za/hr_docs/african/docs/achpr/achpr77.doc

Council of Europe Commissioner of Human Rights

http://www.coe.int/t/commissioner/default_en.asp

Member States

<http://conventions.coe.int/Treaty/Commun/ListeTableauCourt.asp?MA=3&CM=16&CL=ENG>

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

<http://www.cpt.coe.int/en/>

European Court of Human Rights

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<http://www2.ohchr.org/english/bodies/petitions/individual.htm>

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

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

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Health care settings should be places where human rights are realized. Yet, across the world, health systems often serve as venues of punishment, coercion, and violations of basic human rights, sometimes amounting to torture or cruel, inhuman, and degrading treatment. This abuse is especially prevalent in the care of socially marginalized groups—people living with HIV, ethnic minorities, sexual and gender minorities, people who use drugs, and people with intellectual disabilities or mental health problems.

There are many national, regional, and international mechanisms designed to prevent torture and cruel, inhuman, and degrading treatment, yet these mechanisms are rarely applied to health facilities. This manual describes 20 anti-torture mechanisms from the United Nations and African, European, and Inter-American human rights systems. It provides illustrative examples on how to use these mechanisms to fight torture in health settings. It is designed as a resource to help advocates fight against abuse in health care at the international, regional, and national level.

