



Preventing Torture



An Operational Guide for
National Human Rights Institutions



ASIA PACIFIC FORUM
ADVANCING HUMAN RIGHTS IN OUR REGION



OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

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Preventing Torture: An Operational Guide for National Human Rights Institutions

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Cover photographs: *The memories of the wires* by Mounir Zok (centre), man in detention (left) and detention centre officials (bottom) by the APF / Michael Power.

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Preventing Torture: An Operational Guide for National Human Rights Institutions is a joint publication of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Association for the Prevention of Torture (APT) and the Asia Pacific Forum of National Human Rights Institutions (APF).

The Guide was written by Barbara Bernath. It adapts and builds on information included in the *Torture Prevention* CD-Rom, produced as part of the APT-OHCHR Actors for Change Project (2005). The OHCHR, APT and APF would like to thank Francesca Albanese, Citlalin Castañeda, Kieren Fitzpatrick, Kate Fox, James Iliffe, Ahmed Motala, Suraina Pasha, Chris Sidoti, Safir Syed and Lisa Thompson for their contributions.

Foreword

This Guide is the outcome of cooperation between the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Association for the Prevention of Torture (APT) and the Asia Pacific Forum of National Human Rights Institutions (APF). It builds on the results of and the experience accumulated during previous joint training endeavours: namely, the APT-OHCHR Actors for Change Project (2005–2007) and the APT-APF training programmes for national human rights institutions (NHRIs) in the Asia Pacific region.

Since the adoption of the Universal Declaration of Human Rights in 1948, the prohibition of torture has been universally understood to mean that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (article 5). The prohibition of torture is also complemented by the obligation to prevent torture, and both are internationally recognized in the United Nations Convention against Torture and its Optional Protocol. The latter, moreover, assists States parties to meet this obligation by setting up a system of regular visits to places of detention by independent international and national bodies.

Indeed, the Optional Protocol provides NHRIs with a potentially powerful monitoring and implementation role. The Secretary-General has also encouraged States parties to strengthen the mandate and capacity of NHRIs to enable them to fulfil this role effectively.

As cornerstones of national systems for the promotion and protection of human rights, empowered, credible and properly established NHRIs are well placed to actively engage and cooperate with national actors in the prevention of torture. This Guide has been designed as a practical tool to support them in their concrete activities to prevent torture. It presents a whole range of useful information, such as good practices. This Guide is part of an integrated CD-Rom package, which also includes associated audio-visual resources.

I hope that this publication will foster a greater understanding of how to prevent such horrendous violations of human rights and human dignity, and increase the capacity and role of NHRIs in doing so.



Navanethem Pillay
United Nations High Commissioner for Human Rights

List of abbreviations

| | |
|--------------|--|
| ACJ | Advisory Council of Jurists of the Asia Pacific Forum of National Human Rights Institutions |
| APF | Asia Pacific Forum of National Human Rights Institutions |
| APT | Association for the Prevention of Torture |
| ICC | International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights |
| NGO | Non-governmental organization |
| NHRI | National human rights institution |
| NPM | National preventive mechanism under the Optional Protocol to the Convention against Torture |
| OHCHR | Office of the United Nations High Commissioner for Human Rights |
| UPR | Universal periodic review |

Introduction for users

The Office of the United Nations High Commissioner for Human Rights (OHCHR), the Association for the Prevention of Torture (APT) and the Asia Pacific Forum of National Human Rights Institutions (APF) are pleased to present *Preventing Torture: An Operational Guide for National Human Rights Institutions*.

This Guide aims to support and strengthen the work of national human rights institutions (NHRIs) – whether they are human rights commissions or ombudsman offices – in the prevention of torture, especially NHRIs that are fully compliant with the Paris Principles.¹

While NHRIs that do not fully comply with the Paris Principles can still play an important role in the prevention of torture, fully compliant NHRIs are more able to engage in this preventive work with legitimacy, credibility and, therefore, with greater effectiveness.²

RATIONALE

NHRIs are a vital part of strong national human rights protection systems and play a key role in linking the international and domestic human rights systems. Their mandate means that they can engage with all relevant actors at the national level, as well as interact with international mechanisms, in order to contribute to the prevention of torture.

Although NHRIs have broad mandates which require them to protect and promote all human rights for all persons, there are strong arguments for NHRIs to devote special attention to the prevention of torture.

Torture is one of the most horrendous violations of a person's human rights. It is an attack on the very essence of a person's dignity. However, while there is an absolute prohibition on torture under international law, it continues to be widely practised in all parts of the world. Combating torture therefore requires the active involvement of many actors, including NHRIs.

A focus on prevention can present both challenges and opportunities for NHRIs. Most NHRIs operate predominantly as “reactive” bodies that respond to complaints brought to them by individuals or organizations, rather than initiating investigations or other preventive actions. While moving from this reactive focus can be challenging, it is important to note that NHRIs do have a mandate to undertake preventive actions, such as promoting legal reform, running training programmes and raising public awareness. Placing greater emphasis on torture prevention therefore offers NHRIs the opportunity to strike a balance between the different aspects of their mandate and to engage in preventive actions in a more strategic way.

Monitoring places of detention is an area where NHRIs may experience the most difficulty in balancing their traditional protective mandate with a preventive approach. This might be particularly challenging for NHRIs that have been designated as the national preventive mechanism (NPM) under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The system of regular, unannounced, preventive visits established under the Optional Protocol obviously differs significantly in its objectives, scope and methodology from investigative visits carried out by NHRIs to document and respond to individual complaints. However, the Optional Protocol includes certain guarantees and powers that can help resolve this challenge.

1 Principles relating to the status and functioning of national institutions for protection and promotion of human rights (General Assembly resolution 48/134 of 20 December 1993).

2 Today there are more than 100 NHRIs worldwide; 65 of which are accredited as being in compliance with the Paris Principles. Compliance is assessed through a thorough accreditation process carried out by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), under the auspices of OHCHR. NHRIs that are deemed to comply with the Paris Principles are accredited with “A status” and enjoy special standing at the international level, in recognition of their legitimacy and effectiveness.

The Nairobi Declaration, adopted during the Ninth International Conference of National Institutions for the Promotion and Protection of Human Rights in October 2008, addresses the role of NHRIs in the administration of justice and encourages their involvement in torture prevention. Indeed, several provisions of the Nairobi Declaration are directly relevant for torture prevention, such as providing training for law enforcement and correctional staff; conducting unannounced visits to police stations and places of detention; reviewing standards and procedures; and promoting ratification of the Convention against Torture and its Optional Protocol. The annual review of the implementation of Nairobi Declaration during ICC meetings provides an additional motivation for NHRIs to be more actively involved in the prevention of torture.

BACKGROUND

The publication of this Manual is a direct follow-up to two significant activities. The first was the joint APT-OHCHR Actors for Change project (2005–2007), which aimed to strengthen the capacity of NHRIs in the field of conflict prevention and torture prevention. APT was the partner of OHCHR in all phases of the project relating to torture prevention. The training course on torture prevention had three components: an eight-week distance learning course, with learning materials provided on CD-Rom; regional workshops that brought participants together for face-to-face discussion and practical training; and “Plans of Action on Torture Prevention” drafted by participants for their respective NHRIs. Courses were held in all four regions of the world, involving some 90 participants from 52 NHRIs.³

The second activity was consideration of a reference on torture by the APF Advisory Council of Jurists in 2005, with expert support provided by APT. Since that time APF and APT have worked in partnership to design and deliver national training programmes for NHRIs in the Asia Pacific region. The core focus of the training is to build understanding of the United Nations Convention against Torture and its Optional Protocol and to provide technical advice and training to APF member institutions and other key stakeholders on implementation of the Convention against Torture and its Optional Protocol. A particular focus of the training is to discuss the potential role of NHRIs as NPMs.⁴

Both training programmes have been evaluated as an “unqualified success”⁵ and APT, APF and OHCHR jointly decided that the content of the two courses should be compiled, modified and made available to NHRIs in a hard-copy manual and a companion CD-Rom.



Image: National Human Rights Commission of Malaysia

- 3 15 NHRIs from Asia-Pacific (Afghanistan, Australia, Fiji, India, Indonesia, Iran (Islamic Republic of), Malaysia, Maldives, Mongolia, New Zealand, Palestine, Philippines, Republic of Korea, Sri Lanka and Thailand), 14 NHRIs from Europe (Bulgaria, Denmark, Finland, Georgia, Germany, Greece, Ireland, Kosovo, Latvia, Northern Ireland, Poland, Portugal, Spain and the former Yugoslav Republic of Macedonia), 13 NHRIs from French-speaking countries (Burkina Faso, Canada (Québec), Cameroon, Democratic Republic of the Congo, Haiti, Mali, Morocco, Mauritius, Niger, Rwanda, Senegal and Togo) and 10 NHRIs from Latin America (Bolivia (Plurinational State of), Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay and Peru).
- 4 APF-APT joint projects have included representatives from the NHRIs of Indonesia, Maldives, Nepal, Philippines, Thailand and Timor-Leste.
- 5 Evaluation of the Strengthening of National Human Rights Institutions (OHCHR) project, Executive Summary (March 2008).

OBJECTIVES AND CONTENT

The Guide is designed to be a practical toolkit to support NHRIs as they plan and undertake concrete activities to prevent torture in their country. The guide begins by explaining the concept of torture prevention and highlights the importance of engaging in a global, integrated strategy to prevent torture.

The Guide is divided into two key parts. The first section provides the legal context for the prevention of torture, including the definition of torture and the relevant international and regional instruments that prohibit torture. The second section outlines the practical steps that NHRIs can undertake to prevent torture. Examples of good practices from different NHRIs have been included to illustrate effective ways of putting torture prevention strategies into action. Each chapter includes key questions, the legal basis for the involvement of NHRIs, discussion of the major issues and options for further reading.

The companion CD-Rom contains a range of useful documents and resource materials. It also features interviews with representatives from NHRIs describing their work to prevent torture, as well as interviews with leading international experts. The resource also includes short training spots on beginning a visit to a place of detention and interviewing a person deprived of their liberty.

Introduction:

The concept of torture prevention and its application

KEY QUESTIONS

- Do States have an obligation to prevent torture?
- How is the prevention of torture defined?
- What are the key elements of an effective torture prevention strategy?
- How can NHRIs contribute to the prevention of torture?



1. INTRODUCTION: A DUTY TO PREVENT

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” states article 5 of the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948.

The prohibition of torture and other forms of ill-treatment has a special status in the international protection of human rights. It is included in a number of international and regional treaties and also forms part of customary international law, binding all States.

The prohibition of torture is absolute and can never be justified in any circumstance. This prohibition is non-derogable, which means that a State is not permitted to temporarily limit the prohibition on torture under any circumstance whatsoever, whether a state of war, internal political instability or any other public emergency. Further, the prohibition of torture is also recognized as a peremptory norm of international law, or *jus cogens*. In other words, it overrides any inconsistent provision in another treaty or customary law.

Considering the particular importance placed on the prohibition of torture, the traditional obligations of States **to respect, to protect and to fulfil** human rights is complemented by a further **obligation to prevent torture** and other forms of ill-treatment.⁶ States are required **to take positive measures to prevent its occurrence**.⁷ “In the case of torture, the requirement that States expeditiously institute national implementing measures is an integral part of the international obligation to prohibit this practice.”⁸

6 In its general comment No.31: The nature of the general legal obligation imposed on States Parties to the Covenant, the Human Rights Committee stated that “[a]rticle 2 requires that States Parties adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations” (para. 7). It further added that “[i]n general, the purposes of the Covenant would be defeated without an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant” (para. 17).

7 In the case of *Velasquez Rodriguez*, the Inter-American Court of Human Rights recognized that as a consequence of this obligation, “the States must prevent, investigate and punish any violation of the rights recognized by the Convention” (para. 166); *Velasquez Rodriguez* case (29 July 1988); Inter-Am.Ct.H.R. (Ser.C.) No. 4 (1988). In its general comment No.20, the Human Rights Committee “notes that it is not sufficient for the implementation of article 7 to prohibit such treatment or punishment or to make it a crime. States Parties should inform the Committee of the legislative, administrative, judicial and other measures they take to prevent and punish acts of torture (...)” (para. 8).

8 International Criminal Tribunal for the former Yugoslavia; *Prosecutor v. Furundzija* (10 December 1998); Case No. IT-95-17/I-T (para. 149).

The United Nations Convention against Torture also places an explicit obligation on States parties to prevent torture and other forms of ill-treatment. According to article 2.1, “[e]ach State Party shall take effective legislative, administrative, judicial and other measures to prevent acts of torture in any territory under its jurisdiction”, while article 16 requires that “[e]ach State Party shall undertake to prevent (...) other acts of cruel, inhuman or degrading treatment or punishment.” Its Optional Protocol sets out a mechanism to assist States parties to meet these obligations by establishing a system of regular visits to places of detention by independent international and national bodies.

Although States have a duty to prevent torture, it is often not applied in practice and there is commonly a lack of understanding about the concept of torture prevention. This introduction defines torture prevention, outlines an integrated strategy to prevent torture and describes the preventive role that NHRIs can play.

2. WHAT DOES “TORTURE PREVENTION” MEAN?

2.1. Defining “prevention of torture”

According to the Chambers Dictionary, “to prevent” means “to stop (someone from doing something, or something from happening), to hinder, to stop the occurrence of, to make impossible, to avert.”

In public health, prevention is a common strategy in the fight against diseases, aimed at avoiding the emergence, development and spread of epidemics.

Crime prevention “comprises strategies and measures that seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society by intervening to influence their multiple causes.”⁹



Image: International Committee of the Red Cross / Fred Clarke

9 United Nations Guidelines for the Prevention of Crime, Economic and Social Council resolution 2002/13, para. 3. The paragraph continues: “The enforcement of laws, sentences and corrections, while also performing preventive functions, falls outside the scope of the Guidelines.”

These definitions, while instructive, are insufficient to properly define the concept of prevention in relation to torture and other forms of ill-treatment.

At a time where many interventions in the fight against torture are described as “prevention”, it is important to distinguish between two different forms of torture prevention. This distinction is based on when the intervention occurs and the approach that is employed.

Direct prevention (mitigation) aims to **prevent torture from occurring** by reducing the risk factors and eliminating possible causes. This intervention happens before torture takes place and aims to address the root causes that can lead to torture and ill-treatment, through training, education and regular monitoring of places of detention. Direct prevention is forward-looking and, over the long term, aims to create an environment where torture is not likely to occur.¹⁰

Indirect prevention (deterrence) takes place once cases of torture or ill-treatment have already occurred and is focused on **avoiding the repetition of such acts**. Through investigation and documentation of past cases, denunciation, litigation, prosecution and sanction of the perpetrators, as well as reparation for victims, indirect prevention aims to convince potential torturers that the “costs” of torturing are greater than any possible “benefits”.

It is important to bear this distinction in mind as these two approaches employ very distinct strategies and methodologies. They are, however, complementary and both should form part of an integrated programme to prevent torture.

2.2. Analysing the risk factors

In order to effectively address the root causes of torture and other forms of ill-treatment, a direct preventive strategy should begin with a thorough analysis of risk factors (those conditions that increase the possibility of torture occurring).

The general **political environment** is an important factor to consider, as a lack of political will to prohibit torture, a lack of openness of governance, a lack of respect for the rule of law and high levels of corruption can all increase the risk of torture. The same is true for the **social and cultural environment**. Where there is a culture of violence, or high public support to “get tough” on crime, the risk of torture occurring is also increased.

The national **legal framework** should also be analysed. In countries where torture is prohibited in the Constitution and in law, as well as being a specific offence under the criminal code, the risk of torture might be lower than in countries where this is not the case. The analysis should also focus on the rules and regulations that apply to places where persons are deprived of their liberty, as well as the existence of appropriate legal safeguards. In addition, the way in which the legal framework is implemented in practice should be closely analysed.

The organization and functioning of the **criminal justice system** is another important factor to consider. The level of independence of the judiciary, as well as the level of reliance on confessions in the criminal justice system, will have a direct influence on the risk of torture. As the risk of torture is higher during the initial period of detention, particular attention should be paid to law enforcement authorities. In this regard, the institutional culture, the role and functioning of the police and recruitment and training processes for officers can all positively or negatively influence the risk of torture.

Finally, the overall **institutional environment** should be included in the analysis. The level of accountability and transparency of the authorities, the existence of public policies regarding crime prevention and the effectiveness of complaints mechanisms are factors that can reduce the risk of torture, along with effective independent external actors, such as NHRIs and civil society organizations.

¹⁰ In the medical field, this is called “primary prevention” (i.e. all the measures taken to reduce the risk of occurrence of a disease).

Situations of risk

Any situation where a person is deprived of his or her liberty and when there is an imbalance of power, in which one person is totally dependent on another, constitutes a situation of risk.¹¹

The risk of being tortured or ill-treated is higher at certain times during the period of a person's detention, such as the initial period of arrest and police custody, as well as during transfer from one place of detention to another. Situations where persons deprived of their liberty are held out of contact with others can also increase the risk of torture or ill-treatment, in particular incommunicado detention or solitary confinement.

The risk of torture and other forms of ill-treatment exists within any closed facility; not only prisons and police stations but also, for example, psychiatric facilities, juvenile detention centres, immigration detention centres and transit zones in international ports.

Potential victims

It can be difficult to identify persons or groups who are at greater risk of torture and ill-treatment, as this can vary significantly according to the national context. In fact, any person could potentially be at risk. In general, however, vulnerable and disadvantaged groups within society – such as minority groups (racial, ethnic, religious or linguistic), women, minors, migrants, people with disabilities, the homeless and the poor – commonly face a higher risk of torture and ill-treatment.

An effective preventive strategy requires a certain level of political will to combat torture, which is publicly stated and able to be monitored. In an environment where torture is systematically used to silence political opposition, prevention initiatives are likely to fail or be used for political propaganda.

It is important to stress that no State is immune from the risk of torture and ill-treatment. As a result, there is always a need to be vigilant and to develop and implement effective preventive strategies.

3. THE THREE COMPONENTS OF AN INTEGRATED PREVENTIVE STRATEGY

The development of a comprehensive strategy for torture prevention requires an integrated approach, composed of three interrelated elements:

- a legal framework that prohibits torture
- effective implementation of this legal framework
- mechanisms to monitor the legal framework and its implementation.

The fight against torture has, for a long time, focused on the first two elements of this strategy, in particular the enactment of laws and litigation of cases. An effective legal framework is an essential part of any programme to combat torture. However, the mere existence of laws and regulations is not sufficient to prevent torture; they also need to be properly understood and rigorously applied.

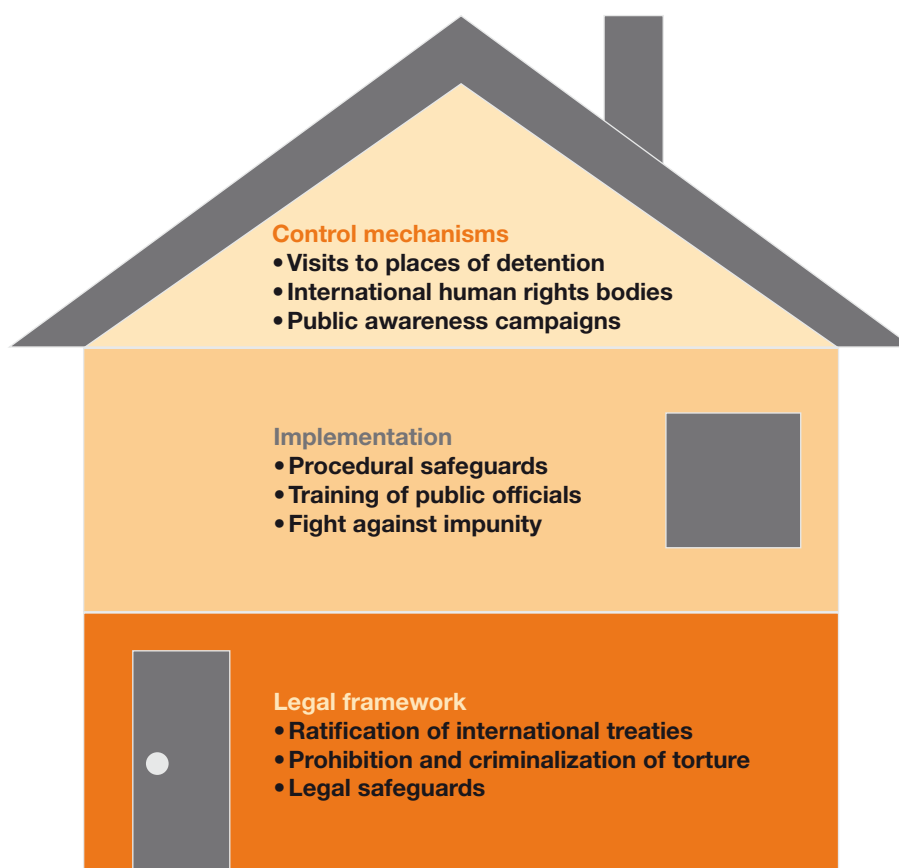
A significant emphasis has also been placed on ending impunity (exemption from punishment for a criminal act) through the use of national and international criminal law. This line of action is an important indirect prevention strategy that must be complemented by other approaches to effectively address the root causes of torture.

This is why an integrated torture prevention strategy requires a third element, which is focused on direct prevention and employing non-confrontational and non-judicial control mechanisms. These mechanisms

11 See the concept of "powerlessness" developed by the Special Rapporteur on Torture (E/CN.4/2006/6, paras. 39 and 40). Article 10.1 of the International Covenant on Civil and Political Rights establishes a link between the rights to liberty and personal integrity and states that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

can include, for example, regular and unannounced monitoring of places of detention by independent bodies and public education campaigns to build community awareness and support for the prevention of torture and ill-treatment.

This integrated preventive strategy can be depicted in the form of a house, where the legal framework forms the foundation, implementation of the framework creates the walls and the control mechanisms provide the protective roof.



Existence of a comprehensive legal framework

A strong legal framework to prohibit torture is a critical component of any torture prevention strategy. The legal framework should reflect relevant international human rights standards and include specific provisions to prohibit and prevent torture.

States can draw on the international legal framework by:

- ratifying relevant international human rights treaties
- integrating international human rights treaties into national law
- respecting soft law¹² in relation to the prohibition of torture and deprivation of liberty.

¹² “Soft law” is a term used to refer to documents which are not binding at international law (i.e. whose status is less than that of a treaty concluded under the 1969 Vienna Convention on the Law of Treaties). Examples include resolutions of bodies such as the General Assembly and Human Rights Council, as well as action plans, codes of practice, guidelines, rules or statements of principles produced by international or regional expert meetings. Treaty bodies’ jurisprudence and concluding observations can also be considered as soft law. Such instruments and recommendations have an undeniable moral force and provide practical guidance to States in their conduct. Their value rests on their recognition and acceptance by a large number of States and, even without binding effect, they may be seen as declaratory of broadly accepted goals and principles within the international community.

At the domestic level, States should adopt explicit legislative provisions that:

- prohibit any act of torture and stipulate that no exceptional circumstance may be invoked to justify torture (possibly at the Constitutional level)
- make acts of torture, wherever in the world they are committed, a specific offence under criminal law
- include appropriate penalties to punish the crime of torture
- stipulate that an order from a superior may not be invoked to justify torture
- make inadmissible in legal proceedings evidence that is gathered through the use of torture.

In addition, the following legal safeguards for persons deprived of their liberty should be provided:

- the right to have family members or a third party informed of their whereabouts following their arrest
- the right to have access to a lawyer and to have the lawyer present during interrogation
- the right to have access to a medical doctor, possibly of own choosing
- the right to remain silent
- the right to be brought before a magistrate or judge within a reasonable period of time
- the right to challenge the legality of their detention and treatment
- the right to be informed of these rights in language that is understandable to them.

Implementation of the legal framework

Effective implementation requires practical measures to be taken on a range of levels to ensure that national laws regarding torture and ill-treatment are respected in practice.

Training and education

The different actors involved in implementing the legal framework, and in particular those within the criminal justice system (such as law enforcement officials, judges and detaining authorities), will require proper training – both initial and ongoing – regarding the normative framework and the development of operational practices that respect these norms.

Procedural measures

Procedural safeguards should be put in place and operate as intended, in particular for persons deprived of their liberty. This could include ensuring that all registers in places of detention are properly maintained and that there is a regular review of police codes of conducts.

Investigation and punishment

Allegations of torture must be promptly, impartially and effectively investigated¹³, even in the absence of a formal complaint, and “the investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might be involved.”¹⁴

Any breach of the law must be appropriately sanctioned. When this does not occur, a culture of impunity develops which can undermine both the force of the law and its implementation.

13 See the jurisprudence of the Human Rights Committee, in particular *Rodriguez v. Uruguay*, Human Rights Committee, Communication 322/1988, views adopted on 19 July 1994; and *Vadivel Sathasivam and Ms Parathesi Saraswathi v. Sri Lanka*, Human Rights Committee, Communication 1436/2005, views adopted on 8 July 2008.

14 See *Blanco Abad v. Spain*, Committee against Torture, Communication 59/1996, views adopted on 14 May 1998. On the scope of investigation, see *M'Barek v. Tunisia*, Committee against Torture, Communication 60/1996, views adopted on 10 November 1999.

Taking action to tackle impunity is even more important in relation to torture and ill-treatment, as it is absolutely prohibited under all circumstances.

The following actions should be taken:

- strengthening the independence of the judiciary
- establishing effective and accessible complaints mechanisms
- ensuring access to free legal aid and legal assistance
- promptly and effectively investigating allegations of torture or ill-treatment
- ensuring those who breach the law are punished.

Reparation for victims

Victims of torture and ill-treatment should be provided with full and effective reparation, including restitution, compensation, rehabilitation, satisfaction and a guarantee of non-repetition.¹⁵

Financial compensation should be provided for economically assessable damages. Satisfaction can include a variety of measures, such as an official declaration to restore the dignity of the victim, a public apology or a commemoration and tribute to victims.



¹⁵ See the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147 of 16 December 2005).

Control mechanisms

In addition to an effective legal framework, there is also a need to establish control mechanisms, as the risk of torture is present in all countries at all times. Control mechanisms can help identify areas of potential risk and propose possible safeguards.

Internal administrative control mechanisms which are set up within an institution – such as police inspection services or prison inspection services – help monitor the functioning of State institutions and their respect for legislative norms and regulations. While very useful, internal control mechanisms are, by themselves, insufficient for this preventive work as they lack independence and have a more administrative monitoring function.

In addition to internal control mechanisms, it is essential to set up independent mechanisms to visit places of detention. The mere fact that independent bodies can enter places of detention, at any time, has a strong deterrent effect. The objective of these visits is not to document cases of torture or denounce the situation or the authorities. Instead the aim is to analyse the overall functioning of places of detention and provide constructive recommendations aimed at improving the treatment and conditions of detained persons.

The international human rights system also provides an important control mechanism, with relevant treaty bodies able to review and make recommendations regarding the State's legal framework and its implementation.

Finally, the media and civil society organizations can contribute to an effective system of checks and balances to prevent and prohibit torture. Responsible media reporting, public education campaigns and targeted awareness-raising initiatives can build greater knowledge and understanding of the issues, influence public opinion and help change the attitudes of stakeholders and decision makers.

4. THE RELEVANCE OF TORTURE PREVENTION TO NHRIs

NHRIs are usually ideally placed to contribute at each level of an integrated strategy to prevent torture and ill-treatment in their country.

NHRIs can contribute to the development of an effective legal framework by:

- encouraging the State to ratify relevant international human rights treaties
- advocating legal reforms to make torture a criminal offence and to prevent its use by public officials.

NHRIs can contribute to implementation of the legal framework by:

- reviewing detention procedures
- investigating allegations of torture
- contributing to training programmes for relevant public officials.

NHRIs can contribute to, and act as, control mechanisms by:

- cooperating with international bodies
- monitoring places of detention
- promoting public awareness.

WATCH

Go to the *Preventing Torture* CD-Rom to watch more on the role of NHRIs to prevent torture and ill-treatment of people in places of detention.

Click on 'Feature materials' and then select 'Item 1 – NHRIs: Confronting the challenge'.

**KEY POINTS: INTRODUCTION**

- States have an obligation to prevent torture.
- There is an important distinction between direct prevention (measures taken before torture occurs to stop it from happening) and indirect prevention (measures taken after torture has occurred to avoid its repetition).
- Preventing torture requires an integrated strategy involving three key elements: a strong legal framework, effective implementation of the legal framework and control mechanisms to monitor and support the legal framework and its implementation.

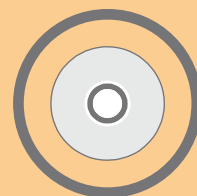
**FURTHER READING****IN THE CD-ROM**

Committee against Torture, general comment No. 2, Implementation of article 2 by States Parties

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; General Assembly resolution 60/147 of 16 December 2005

12-Point Programme for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Agents of the State; Amnesty International; 2005 (revised)

***Preventing Torture in the 21st Century*; Essex Human Rights Review (Vol. 6, No. 1); Human Rights Centre, University of Essex; 2009**





Part I

Prohibition of torture: The legal background



Chapter 1: What is torture?

Chapter 2: International and regional instruments
on torture and other forms of ill-treatment

Chapter 1:

What is torture?

KEY QUESTIONS

- **What is the definition of torture?**
- **Can torture be justified in exceptional cases?**
- **Is cruel, inhuman or degrading treatment or punishment also prohibited?**



1. DEFINITION OF TORTURE

It is important to stress at the outset that the legal definition of torture differs quite significantly from the way the term is commonly used in the media or in general conversation, which often emphasizes the intensity of pain and suffering inflicted.

Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides the internationally agreed legal definition of torture:

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.

This definition contains three cumulative elements:

- the intentional infliction of severe mental or physical suffering
- by a public official, who is directly or indirectly involved
- for a specific purpose.

In some cases, a broader definition of torture, covering a wider range of situations, may apply under another international, regional or national law. When a broader definition applies, the Convention's definition cannot be used to narrow it. Its articles 1.2 and 16.2 specifically provide that its provisions are without prejudice to provisions contained in any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment. For instance, the definition of torture in the Inter-American Convention to Prevent and Punish Torture goes further by not requiring the pain or suffering to be "severe"; by referring to "any other purpose" rather than just "such purpose as"; and by including the reference to methods "intended to obliterate the personality of the victim or diminish his physical or mental capacities", irrespective of whether such methods cause pain or suffering.

It is important to note that many international torture prevention mechanisms stress the importance of a gender-sensitive interpretation of torture and the need to pay particular attention to questions such as rape in detention, violence against pregnant women and denial of reproductive rights, which have long been recognized as falling under the Convention's definition. It is also worth noting that "with the consent or acquiescence of a public official or other person acting in an official capacity" has been

interpreted¹⁶ to mean that privately inflicted harm against women, children or groups may be covered under the definition if severe pain or suffering is caused and if the State fails to act with due diligence to prevent or protect individuals, since it would be committed for a discriminatory purpose.

Lawful sanctions

The definition of torture provided in the Convention explicitly excludes “pain or suffering arising only from, inherent or incidental to lawful sanctions.” The lawfulness of the sanction should be determined by reference to both national and international standards, including the United Nations Standard Minimum Rules for the Treatment of Detainees (which was specifically referred to in the 1975 United Nations Declaration on the Protection of All Persons from Being Subjected to Torture). This approach recognizes both the absolute nature of the prohibition of torture and the need for consistency in its application.

The issue of corporal punishment has been raised by some States under the so-called “lawful sanctions” clause. However, this clause cannot be used to justify the use of corporal punishments under domestic law. It has been firmly established that corporal punishments are prohibited under international law, in general, and the Convention against Torture in particular.

2. ABSOLUTE PROHIBITION OF TORTURE

Some human rights can be restricted under certain circumstances (for example, for the protection of public order) if the restriction is provided for by law, is for a public interest, is necessary to protect the rights of others or the community, and is proportionate. The circumstances under which these restrictions may apply are specifically and exhaustively listed in various human rights treaties.

Some treaties also provide a special ability to derogate from certain human rights during an officially declared public emergency. Derogate means to pass laws or take actions that would ordinarily violate those rights.

Torture, however, is absolutely prohibited and can never be justified under any circumstances whatsoever. Relevant international treaties unanimously exclude the freedom from torture and ill-treatment from derogation and restriction clauses.

Customary international law, which applies to all States, including those that have not ratified relevant human rights or international humanitarian law treaties, considers the prohibition of torture to be a peremptory norm, or *jus cogens*. This means that no exception or derogation to the prohibition is permitted in any circumstance, even a state of war, the threat of war, internal political instability or public emergency. Necessity, self-defence and other defences are not accepted in any case of torture, no matter how extreme or grave the circumstances.

In addition to the legal arguments, there are also solid moral and ethical grounds for rejecting any act of torture.

Defusing attempts to justify torture

The absolute prohibition of torture is sometimes questioned by people on the grounds of security or counter-terrorism, often using a hypothetical “ticking bomb” scenario. This scenario involves the police capturing a terrorist whom they suspect has placed a bomb that is about to explode in the middle of a large city. The police believe that only torture will make the suspect disclose the information needed to prevent the deaths of thousands of people. The question is posed: “May the person be tortured?”

This hypothetical situation operates by manipulating the emotional reactions of the audience and assumes that:

16 See Committee against Torture’s general comment No. 2 (para.18).

- there is a known threat
- the attack is imminent
- the attack will kill a large number of people
- the person in custody is the perpetrator of the attack
- the person has information that will prevent the attack
- only torturing the person will provide the information in time to prevent the attack.

In real life situations, however, one or more of these assumptions is always invalid. On the last point, for example, the scenario assumes that the suspect will provide valuable information under torture. In reality, torture is inherently unreliable for obtaining accurate information. Professional interrogators have repeatedly emphasized the point that interrogation can be conducted much more effectively without the use of torture.

The assumptions that underpin the “ticking bomb” argument can also, by extension, be used to try and justify torture in a wider range of situations. For instance, we might ask ourselves if our reaction to the “ticking bomb” scenario would be different if we were not sure whether the suspect was actually connected with the bomb plot, or whether s/he was in fact connected to terrorism at all; whether the suspect had any reliable information about the threat; if the threat was several days or a week away; or whether the threat was even real.

The scenario also contains some hidden assumptions that should be defused.

- The motive of the torturer is to get the necessary information, with the genuine intention of saving lives.

However, even if the torturer did begin with the genuine motive of obtaining information, torture corrupts the perpetrator. This is an inherent part of the act of torture. Further, the assumption that the objective is purely to gather information is too simplistic. In real life situations other motivations and emotions, such as anger, punishment and the exercise of power, can take over.

- It is an isolated situation, not to be repeated regularly.

However, it is part of the nature of torture that any authorization of such acts invariably leads to a slippery slope, where the use of torture becomes more widespread within the institution.¹⁷

3. OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT

As outlined previously, for an act to be deemed torture under the Convention against Torture, it should include three cumulative elements:

- the intentional infliction of severe mental or physical suffering
- by a public official, who is directly or indirectly involved
- for a specific purpose.

This definition raises the question of how to classify and respond to acts that fall short of satisfying all three criteria. For instance, what about an act that is not inflicted “intentionally” but occurs because of negligence? What about an act that does not occur for a specific purpose? What about an act that inflicts pain or suffering not considered “severe”?

In these situations the prohibition of other forms of cruel, inhuman or degrading treatment or punishment may apply. As with torture, this prohibition is also absolute and non-derogable.

17 *Defusing the Ticking Bomb Scenario: Why we must say NO to torture, always*; Association for the Prevention of Torture; 2007; pp. 13–16.

Article 16.1 of the Convention against Torture requires that “each State Party shall undertake to prevent (...) other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

Therefore, any act that falls short of the definition of torture because it lacks one or more of the criteria may still be covered under the prohibition outlined in article 16 of the Convention against Torture.¹⁸

Governments and officials sometimes assume that, because these forms of cruel, inhuman or degrading treatment or punishment do not come within the definition of torture, there is some leeway in whether they may be permitted in extreme circumstances. Such assumptions are completely wrong.

Under international law, there is no leeway regarding the prohibition of all forms of cruel, inhuman or degrading treatment or punishment. International law prohibits all such treatment, in all circumstances. This is true under international human rights law and international humanitarian law, which prohibits the ill-treatment of persons deprived of their liberty everywhere and at all times.

KEY POINTS: CHAPTER 1

- **Article 1 of the Convention against Torture defines torture using three cumulative elements: the intentional infliction of severe mental or physical pain; with the direct or indirect involvement of a public official; for a specific purpose.**
- **Torture is prohibited under international law and can never be justified. The prohibition on torture is absolute and non-derogable.**
- **Cruel, inhuman or degrading treatment or punishment is also absolutely prohibited and non-derogable.**



FURTHER READING

IN THE CD-ROM

Human Rights Committee, general comment No. 20: replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (art. 7); 10 March 1992

***Combating Torture: A Manual for Action*; Amnesty International; 2003**

***Torture in International Law: A Guide to Jurisprudence*; Association for the Prevention of Torture, Center for Justice and International Law; 2008**

***Defusing the Ticking Bomb Scenario: Why we must say NO to torture, always*; Association for the Prevention of Torture; 2007**



¹⁸ See *Kostadin Nikolov Keremedchiv v. Bulgaria*, Committee against Torture, Communication 257/2004, views adopted on 11 November 2008.

Chapter 2:

International and regional instruments on torture and other forms of ill-treatment

KEY QUESTIONS

- **Is the absolute prohibition of torture enshrined in international treaties?**
- **Which provisions of the Convention against Torture contain concrete preventive actions?**
- **What other international and regional treaties are relevant to the prevention of torture? What 'soft law' standards apply?**



1. PROHIBITION OF TORTURE AND OTHER FORMS OF ILL-TREATMENT IN INTERNATIONAL TREATIES

There are a number of international and regional instruments that absolutely prohibit torture and ill-treatment.

1.1. Universal Declaration of Human Rights

The unequivocal prohibition on torture is included in the founding document of the international human rights system: the Universal Declaration of Human Rights.

Its article 5 states: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The Universal Declaration of Human Rights also says that people have the right to “an effective remedy” if their rights are violated.

The Universal Declaration of Human Rights, which sets out the basic human rights standards that apply to all States, forms part of customary international law.¹⁹

1.2. International Covenant on Civil and Political Rights

Article 7 of the International Covenant on Civil and Political Rights provides that no person “shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

In addition, article 10 states: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

The Covenant provides that anyone claiming that their rights have been violated shall have an effective legal remedy. Further, no derogation is allowed regarding the right not to be subjected to torture and other forms of ill-treatment.

¹⁹ One of the sources of international law applicable in the International Court of Justice, according to Article 38 (1)(b) of the Statute of the Court, is “international custom, as evidence of a general practice accepted as law.” The formation of customary international law requires consistent State practice and supporting *opinio juris* (i.e. a belief that the practice in question “is rendered obligatory by the existence of a rule of law requiring it”); see North Sea Cases, ICJ Rep. (1969) 44, para.77).

The Covenant establishes the Human Rights Committee, which monitors the implementation of the rights set out in the treaty. It does this by examining the reports of States parties, as well as individual communications/complaints received under the treaty's Optional Protocol. The jurisprudence, general comments and concluding observations adopted by the Human Rights Committee provide important interpretive guidance on the obligations and rights set out in the Covenant.

The Covenant is an international treaty that binds all States that have ratified it. The high number of States parties to the Covenant (165 in April 2010) indicates the overwhelming acceptance of the human rights standards that it contains.

1.3. United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is the most comprehensive international treaty dealing with torture.

It contains a series of important provisions in relation to the absolute prohibition of torture and establishes the Committee against Torture to monitor the implementation of treaty obligations by States parties. The Committee examines the reports of States parties and individual complaints. The Committee's concluding observations and its views on individual communications provide an additional aid in interpreting the Convention.

In April 2010, 146 States had ratified the Convention.

1.3.1. Definition of torture

Article 1 of the Convention provides a definition of torture that contains the following three key elements:

- the intentional infliction of severe mental or physical pain or suffering
- with the direct or indirect involvement of a public official
- for a specific purpose.

This definition is considered to be limited in some respects. It confines torture to acts committed by, or in some way involving, agents of the State. If non-State agents carry out torture, public officials must be involved in some way for the State to be held responsible. Article 1 of the Convention against Torture says the act must occur "at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."²⁰

The fact that specific acts of torture are not itemized in the Convention is, however, one of the strengths of the treaty. A list could never fully itemize or describe every possible method of torture that may be used now or in the future.

1.3.2. Obligation to take preventive measures

According to article 2 of the Convention, each State party has an obligation to take all necessary measures to prevent acts of torture. This includes legislative, administrative and judicial measures, as well as any other measures that may be appropriate.

This is a legally binding obligation and, when reporting to the Committee against Torture, States parties are required to explain what steps they have taken to implement this obligation.

²⁰ See *Elmi v. Australia*, Committee against Torture, Communication 120/1998 (views adopted on 14 May 1999), which relates to the definition of "public official" under article 1 of the Convention. In exceptional circumstances where State authority is wholly lacking (Somalia had no central Government at that time), acts by groups exercising quasi-judicial authority could fall within the definition of article 1.

NHRIs can also refer to this obligation when planning and undertaking activities to prevent torture and ill-treatment of persons deprived of their liberty.

1.3.3. No justification for torture – ever

Article 2.2 of the Convention states that “no exceptional circumstances whatsoever” can justify torture. This includes war or the threat of war, political instability, combating terrorism or any other emergency.

Orders from a superior officer are also not a justification for torture. Law enforcement and detaining officials should receive training that clearly highlights their obligation to refuse such orders.

1.3.4. Non-refoulement

Article 3 of the Convention sets out the principle of non-refoulement, which requires States to not expel, return or extradite a person to another State if there are “substantial grounds” for believing that the person would be in danger of being subjected to torture.

The principle of non-refoulement is an illustration of the absolute prohibition of torture and other forms of ill-treatment. It has been undermined in recent years by the practice of some States to seek diplomatic assurances when there are known risks that the person being returned may be subjected to torture or ill-treatment. This practice has been used in the context of the so-called war on terror, with the sending State seeking assurances from the receiving State that the individual in question will not be tortured or subjected to other forms of ill-treatment. This practice is considered to violate the principle of non-refoulement and is not permissible.

1.3.5. Specific crime of torture

Article 4 of the Convention requires each State party to ensure that torture is included as a specific crime in their national criminal law.

Some States argue that this is unnecessary, as acts of torture would already be covered by existing offences in their criminal codes.



Image: International Rehabilitation Council for Torture Victims

However, this provision is essential because:

- torture is not just a form of violent assault, it is an exercise of power over a victim that does not correspond to any other criminal offence
- defining torture as a crime underlines the specific nature and gravity of the offence
- making torture a specific offence provides a clear warning to officials that the practice is punishable, thereby providing an important deterrent
- it emphasizes the need for appropriate punishment, taking into account the gravity of the offence
- enhances the ability of responsible officials to monitor the specific crime of torture.

The Committee against Torture requires that States parties use, as a minimum, the definition of torture included in article 1 of the Convention.

1.3.6. Universal jurisdiction

The Convention obliges each State party to establish its jurisdiction over the crime of torture, irrespective of whether the crime was committed outside its borders and regardless of the alleged perpetrator's nationality, country of residence or absence of any other relationship with the country (articles 5–9). If the State is unable to prosecute the offence, it is required to extradite the alleged perpetrator to a State which is able and willing to prosecute such a crime. This principle of universal jurisdiction constitutes one of the most important aspects of the Convention.²¹

Where torture is part of a widespread or systematic attack, or takes place in an armed conflict, those responsible for torture might also be tried by the International Criminal Court, as torture is regarded as a crime against humanity and a war crime. However, many more States have ratified the Convention against Torture, which covers all acts of torture and creates the obligation to exercise universal jurisdiction.

1.3.7. Training officials

Article 10 of the Convention requires States parties to take steps to ensure that all law enforcement personnel, medical personnel, public officials and others involved in the deprivation of liberty receive education and information on the prohibition and prevention of torture.

1.3.8. Review of detention procedures

Under article 11 of the Convention, States parties are required to keep under systematic review interrogation rules, instructions, methods and practices, as well as custody procedures. These should comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

1.3.9. Prompt investigation

According to article 12 of the Convention, each State party must establish prompt and impartial investigations whenever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction. This means that, even in the absence of a formal complaint, the relevant authorities must undertake an impartial, effective, independent and thorough investigation as soon as they receive information indicating any instance of torture or ill-treatment.

²¹ See the decision of the Committee against Torture dealing with the trial of Hissène Habré in Senegal (*Suleymane Guengueng and others v. Senegal*, Committee against Torture, Communication 181/2001, views adopted on 17 May 2006).

1.3.10. Right of victims to complain and obtain redress

The Convention provides that victims of torture have the right to complain and to have their case investigated promptly and impartially (article 13), as well as to receive redress and adequate compensation (article 14). This also includes the right to rehabilitation that is as full as possible.²²

1.3.11. Inadmissible evidence

According to article 15 of the Convention, any evidence gathered as a result of torture must be deemed inadmissible in legal proceedings. This provision is extremely important because, by making such statements inadmissible in court proceedings, one of the primary aims of torture becomes redundant.

1.3.12. Optional Protocol to the Convention against Torture

The Convention against Torture is complemented by an Optional Protocol, which was adopted in 2002 and entered into force in 2006. The Optional Protocol does not establish new normative standards. Instead, it reinforces the specific obligations for prevention of torture in articles 2 and 16 of the Convention by establishing a system of regular visits to places of detention by international and national bodies.

WATCH

Go to the *Preventing Torture* CD-Rom to watch **Victor Rodriguez Rescia**, Chair of the Subcommittee on Prevention of Torture, discussing the definition of torture set out in the Convention against Torture.

Click on 'Feature materials' and then select 'Item 2 – Defining torture'.



1.4. Other treaties

A number of other international human rights treaties contain similar prohibitions of torture and other ill-treatment.

The Convention on the Rights of the Child contains a specific provision in relation to torture and ill-treatment of children (article 37), as does the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 10) and the Convention on the Rights of Persons with Disabilities (article 15).

Although there is no specific provision on torture included in the Convention on the Elimination of All Forms of Discrimination against Women, the relevant United Nations treaty body has adopted a general recommendation on violence against women that deals with torture (General Recommendation 19, 1992).

International refugee law also provides an important source of international human rights law that is highly relevant to the issue of torture. The right to seek asylum in another country is one of the fundamental protections for anyone who faces the danger of persecution. There is a total prohibition on any Government returning a person to a country where they would be in danger of serious human rights violations, and torture in particular. This is the principle of non-refoulement, which is specifically mentioned in the Convention against Torture.

²² See jurisprudence on articles 13 and 14 (*Hajrizi Dzemajl et al. v. Yugoslavia*, Committee against Torture, Communication 161/2000, views adopted on 21 November 2002; *Jovica Dimitrov v. Serbia and Montenegro*, Human Rights Committee, Communication 171/2000, views adopted on 3 May 2005; *Danilo Dimitrijevic v. Serbia and Montenegro*, Human Rights Committee, Communication 172/2000, views adopted on 16 November 2005; *Dragan Dimitrijevic v. Serbia and Montenegro*, Human Rights Committee, Communication 207/2002, views adopted on 24 November 2004; *Slobodan & Ljiljana Nikolic v. Serbia and Montenegro*, Human Rights Committee, Communication 174/2000, views adopted on 24 November 2005).

Although they are not strictly human rights treaties, the Geneva Conventions, which apply in times of armed conflict, also contain a clear and unambiguous prohibition of torture in their common article 3.

The Rome Statute of the International Criminal Court also explicitly lists torture as a crime against humanity that falls under the jurisdiction of the Court. Article 7(2)(e) defines torture as “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.” This definition is broader than that in the Convention against Torture, as it includes acts committed by both State and non-State actors and does not require “purpose” as an objective of the torture.

2. PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT IN REGIONAL INSTRUMENTS

There are four general regional human rights treaties – in Europe, Africa, Arab countries and the Americas – which each contain a clear and unequivocal prohibition of torture. There are also two regional treaties – in Europe and the Americas – that deal specifically with torture.

2.1. European Convention on Human Rights

The European Convention on Human Rights, adopted in 1950, is a regional treaty under the auspices of the Council of Europe. Article 3 states:

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

The Council of Europe has also adopted a treaty dealing specifically with torture: the European Convention for the Prevention of Torture (1987). This treaty does not create any new norms but does establish a visiting Committee (see chapter 7 for more information).

2.2. Treaties under the Organization of American States

The American Convention on Human Rights, adopted in 1969, is a regional treaty under the auspices of the Organization of American States. Article 5 states:

Every person has the right to have his physical, mental, and moral integrity respected. 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.

The Organization of American States has also adopted a specific instrument on torture: the Inter-American Convention to Prevent and Punish Torture (1985). The Convention contains the following detailed definition of 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.

This definition goes further than the one contained in the Convention against Torture by not requiring the pain or suffering to be “severe”; by referring to “any other purpose” rather than “such purpose as”; and by including the reference to methods “intended to obliterate the personality of the victim or diminish his physical or mental capacities”, irrespective of whether such methods cause pain or suffering.

The Convention also specifically states that any public official who carries out torture – or who orders it or fails to prevent it – is guilty of a crime and that acting under orders is no defence to the crime. The Convention provides for an absolute prohibition of torture that cannot be suspended under any circumstances.

The Inter-American Convention further requires that:

- police and other public officials are trained to prevent torture
- allegations of torture are investigated and that criminal prosecutions will occur where appropriate
- laws are passed to provide compensation for torture victims
- statements extracted under torture are not admissible as evidence in legal proceedings
- States prosecute or extradite alleged torturers.

The Convention also requires States parties to take effective measures to prevent and punish other cruel, inhuman or degrading treatment or punishment.

While the Convention does not contain a separate enforcement mechanism, the Inter-American Commission on Human Rights has an obligation to report on the practice of torture in Member States and the Inter-American Court has taken on jurisdiction of this treaty.

2.3. African Charter on Human and Peoples' Rights

The African Charter, adopted by the Organization of African Unity in 1981, states:

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.

2.4. Arab Charter on Human Rights

Article 8 of the Arab Charter on Human Rights, adopted by the League of Arab States on 22 May 2004 and entered into force 15 March 2008, provides that:

1. No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment.

2. Each State party shall protect every individual subject to its jurisdiction from such practices and shall take effective measures to prevent them. The commission of, or participation in, such acts shall be regarded as crimes that are punishable by law and not subject to any statute of limitations. Each State party shall guarantee in its legal system redress for any victim of torture and the right to rehabilitation and compensation.

3. GENERAL STANDARDS

In addition to these various treaties, there are a number of general standards and professional principles that are highly relevant to the prevention of torture.

These soft law standards cannot be legally enforced in the same way as treaty obligations. However, they provide detailed and useful guidelines for interpreting terms such as “cruel, inhuman or degrading treatment or punishment”, as well as for implementing treaty obligations.

The Committee against Torture, for example, makes reference to the United Nations Standard Minimum Rules for the Treatment of Prisoners, when examining steps taken by States parties to implement article 11 of the Convention against Torture, which requires them to keep their detention procedures under review.

3.1. United Nations standards

The United Nations has developed a number of standards related to the prevention of torture, including:

- Standard Minimum Rules for the Treatment of Prisoners
- Basic Principles for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- Rules for the Protection of Juveniles Deprived of their Liberty
- Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)
- 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
- Model Autopsy Rules
- Code of Conduct for Law Enforcement Officials
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

3.2. Regional standards

Council of Europe

The Council of Europe has established a number of instruments related to the prevention of torture and, in addition, a number of recommendations have been adopted by the Committee of Ministers.

The most relevant standards include:

- the European Prison Rules (revised in January 2006)
- the Declaration on the Police
- the European Code for Police Ethics
- standards developed by the European Committee for the Prevention of Torture.

In 2001, the European Union also adopted Guidelines on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Organization of American States

In March 2008, the Inter-American Commission on Human Rights adopted a set of Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

African Union

The African Commission on Human and Peoples' Rights adopted Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines).

It also adopted Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, which include provisions on the prevention of torture.

KEY POINTS: CHAPTER 2

- Torture is prohibited in a number of international human rights treaties.
- The Convention against Torture contains a series of provisions on prevention measures.
- Regional instruments in Africa, the Americas, Arab countries and Europe also prohibit torture.
- ‘Soft law’ standards, both international and regional, complement the prohibition of torture and other ill-treatment.



FURTHER READING

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The UN Committee against Torture: An Assessment; Chris Inglese, Kluwer Law International; 2001

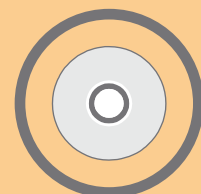


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Torture in International Law: A Guide to Jurisprudence; Association for the Prevention of Torture and the Center for Justice and International Law; 2008

Article 3 of the European Convention on Human Rights: A Practitioner's Handbook; Ugur Erdal and Hasan Bakirci, World Organisation Against Torture (OMCT) Handbook Series Vol. 1; 2006

The Prohibition of Torture and Ill-Treatment in the Inter-American Human Rights System: A Handbook for Victims and Their Advocates; Diego Rodríguez-Pinzón and Claudia Martín, World Organisation Against Torture (OMCT) Handbook Series Vol. 2; 2006

The Prohibition of Torture and Ill-Treatment in the African Human Rights System: A Handbook for Victims and Their Advocates; Frans Viljoen and Chidi Odinkalu, World Organisation Against Torture (OMCT) Handbook Series Vol. 3; 2006

Part II

Preventing torture: NHRIs in action



- Section I:** Promoting an effective legal framework
- Section II:** Contributing to the implementation of the legal framework
- Section III:** Acting as a control mechanism
- Section IV:** Cross-cutting actions

Introduction to Part II

The primary responsibility to prevent torture rests with the State, which has a clear duty to take all measures to prevent torture and other forms of ill-treatment.

NHRIs, which are a key element of strong national human rights protection system, can play a crucial role by ensuring that the State upholds this obligation.

Part II describes in detail the practical actions that NHRIs can take under each of the three dimensions of an integrated torture prevention strategy. In addition, a fourth section presents a selection of cross-cutting actions for NHRIs to consider. Each chapter includes examples of good practices from NHRIs in different parts of the world.

Section I: Promoting an effective legal framework

Chapter 3: Promoting legal and procedural reforms

Section II: Contributing to the implementation of the legal framework

Chapter 4: Investigating allegations of torture

Chapter 5: Interviewing

Chapter 6: Training public officials

Section III: Acting as a control mechanism

Chapter 7: Cooperating with international mechanisms

Chapter 8: Monitoring places of detention

Chapter 9: Promoting public awareness

Section IV: Cross-cutting actions

Chapter 10: NHRIs and the Optional Protocol to the Convention against Torture

Chapter 11: Public inquiries

Section I

Promoting an effective legal framework



Chapter 3: Promoting legal and procedural reforms

Chapter 3: Promoting legal and procedural reforms

KEY QUESTIONS

- What type of legal reforms should NHRIs promote in relation to the prevention of torture?
- What fundamental safeguards should NHRIs promote regarding transparency of places of detention?
- What other detention procedures should NHRIs promote?



LEGAL BASIS FOR NHRI INVOLVEMENT

Paris Principles

Competence and responsibilities

3. A national institution shall, inter alia, have the following responsibilities:

- (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without any referral, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights. The national institution may decide to publicize them. These opinions, recommendations, proposals and reports as well as any prerogative of the national institution, shall relate to the following area:
 - (i) Any legislative or administrative provisions, as well as provisions relating to the judicial organization, intended to preserve and extend the protection of human rights. In that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights. It shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures
- (b) To promote and ensure the harmonization of national legislation, regulations and practices with the international instruments to which the State is a party, and their effective implementation
- (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and their effective implementation



ACJ Reference on Torture

Ratification of relevant international instruments

NHRIs should stress the importance of ratifying all relevant treaties regarding torture, including the International Covenant on Civil and Political Rights, its First Optional Protocol, the Convention against Torture and the Optional Protocol. In particular, they should stress the importance of individuals having a right to make a complaint to relevant international bodies



and therefore the importance of their States becoming party to the First Optional Protocol to the International Covenant on Civil and Political Rights and making a declaration under article 22 of the Convention against Torture.

Legislative implementation of international obligations in domestic law

NHRIs should urge their State to:

- **include a comprehensive definition of the term torture in domestic legislation**
- **ensure that torture is a specific criminal offence under domestic law**
- **recognize customary international law as informing domestic law**
- **give legislative effect to the non-refoulement principle, including the prohibition of the return of person to a country in which they may face torture or other cruel, inhuman or degrading treatment or punishment**
- **enact legislation asserting jurisdiction over the extraterritorial acts of torture committed by nationals and non nationals.**

Interrogation standards

NHRIs should promote the Minimum Interrogation Standards (MIS) developed by the ACJ and work to make sure that public officials involved in interrogations are fully informed with regard to these MIS and trained to use them effectively.

INTRODUCTION

A country's legal framework provides the foundation for any effective strategy to prevent torture. This legal framework includes international treaties that the State has ratified, as well as domestic laws that it has enacted.

NHRIs have an important role to play in promoting the ratification of relevant international human rights treaties. They also have a strong advisory mandate that allows them to review existing legislation, propose amendments or recommend new legislation to support the prevention of torture.

In addition, NHRIs can advocate for detention procedures that meet international norms and provide effective safeguards.

1. PROMOTING RATIFICATION OF INTERNATIONAL TREATIES

NHRIs should review whether their country has ratified all key international treaties related to torture, and in particular:

- the Convention against Torture (including articles 21 and 22) and its Optional Protocol
- the International Covenant on Civil and Political Rights and its Optional Protocol

Where appropriate, regional treaties should also be considered (see chapter 2 for more information).

If a State has not ratified these core treaties, NHRIs can develop and pursue a strategy to promote ratification. This can include making a formal recommendation to the Government to ratify certain treaties, actively lobbying governmental and parliamentary representatives and building public awareness on the issue.

*The **National Human Rights Commission of Rwanda** has actively lobbied its Government to ratify the Convention against Torture. On 15 December 2008, Rwanda became the 146th State party to the Convention.*

2. PROMOTING LEGAL REFORM

The Convention against Torture contains a number of important measures that contribute to the prevention of torture. When a State ratifies the treaty it is obliged to implement these measures in its domestic laws and policies.

NHRIs in these countries have an important role to play to assess whether the national legal framework meets the requirements set out in the Convention against Torture. When this is not the case, NHRIs should use their mandate to promote the necessary legal reforms.

In countries with a monist system – where international obligations directly form part of the national legal framework – NHRIs should monitor the situation to assess whether these obligations are respected in practice.

Criminalization of torture (article 4)

Article 1 of the Convention against Torture provides a clear definition of torture. This definition makes torture distinct from other crimes such as assault, rape or murder, although there may be some overlap with these crimes.

The three key elements of the definition of torture include:

- that severe pain or suffering – physical or psychological – is inflicted intentionally
- it is committed by agents of the State, or with its consent or acquiescence
- for a specific purpose, such as obtaining information, punishment or intimidation.

The Convention against Torture requires States parties to make torture a specific offence in their national criminal law. The Committee against Torture recommends that States use, as a minimum, the definition provided in the Convention.

If it does not already exist, NHRIs should advocate that a specific crime of torture is included in their country's criminal code, in accordance with article 1 of the Convention.

The Convention also requires States to ensure that the crime of torture is punishable with a penalty that takes into account the extremely grave nature of the offence.

Inadmissibility of evidence obtained by torture (article 15)

The criminal law should clearly state that any evidence obtained under torture is inadmissible in criminal proceedings brought against that person. NHRIs should ensure that this law is respected in practice.

Universal jurisdiction to trial torturers (articles 5–9)

NHRIs should ensure that legislation exists to enable the State to prosecute any alleged torturer in its territory, irrespective of whether the crime was committed outside its borders and regardless of the alleged perpetrator's nationality, country of residence or absence of any other relationship with the country. If the State is unable to prosecute the offence, it is required to extradite the person to a State which is able and willing to prosecute such a crime.

Non-refoulement (article 3)

NHRIs should monitor whether domestic laws, as well as relevant policies and practices, are sufficient to respect and uphold the principle of non-refoulement, which is a key obligation of States parties under the Convention.

*In his capacity as Acting Chairperson of the Law Reform and Development Commission, the **Ombudsman of Namibia** has requested the Commission to make protection from torture a top priority. A workshop was held in April 2009 to prepare a report and a draft bill on torture, which the Ombudsman will submit to the Cabinet Committee on Legislation for tabling in Parliament.*

*The **Afghanistan Independent Human Rights Commission** was a member of the Committee responsible for drafting the Law of Prisons and Detention Centers, which was adopted by the Afghan Parliament in July 2007. The Commission currently serves as a member of the Prisons High Council and successfully advocated for a civil society representative to also serve on the Council.*

3. REFORMING DETENTION PROCEDURES

Establishing a legal framework that includes the provisions outlined above is an essential component in prohibiting and preventing acts of torture and other forms of ill-treatment. However, detailed and concrete procedures are also required to ensure that the legal framework works effectively in practice. It may even be appropriate to include some of the most important procedures in the law itself.

As torture nearly always takes place in secret, promoting greater transparency of places of detention is a substantial step towards prevention because it removes many of the opportunities for torture to occur. In addition, there are a number of other procedures that can provide important safeguards and help reduce the risk of ill-treatment of persons deprived of their liberty.

NHRIs should actively promote and support the adoption of detention procedures that bring greater transparency and provide practical safeguards.

3.1. Detention procedures contributing to transparency

The Committee against Torture, the Human Rights Committee and regional mechanisms recommend the adoption of a number of procedural safeguards that aim to reduce the risk of torture and ill-treatment in places of detention.²³

No unauthorized places of detention

Persons deprived of liberty should not be held in unauthorized places of detention. Unauthorized places of detention have no procedures or records and therefore provide no institutional protection to the detainee. It should be a criminal offence to hold persons deprived of their liberty in unauthorized places of detention.

No incommunicado detention

Incommunicado detention – which occurs when a person is isolated and has no contact with the outside world – creates an environment that is conducive to torture, especially when the situation is prolonged. All persons deprived of their liberty should be allowed to receive visits from a lawyer, family members

²³ See the Committee against Torture's general comment No. 2 on the implementation of article 2 by States Parties, in particular paragraph 13, which states: "[c]ertain basic guarantees apply to all persons deprived of their liberty (...). Such guarantees include, inter alia, maintaining an official register of detainees, the right of detainees to be informed of their rights, the right promptly to receive independent legal assistance, independent medical assistance, and to contact relatives (...)." See also the Human Rights Committee's general comment No. 20 concerning prohibition of torture and cruel treatment or punishment (article 7).

and others. Any exceptions should be clearly specified in law and should be of limited duration, with oversight by the judiciary.²⁴

Right to inform a third party

It is essential that persons who have been arrested are allowed to contact a family member, friend, lawyer, consulate representative or any person of their choice and inform them of their arrest and where they are being held.

Access to a lawyer

Ensuring that a person has access to a lawyer immediately following his or her arrest, especially during interrogation, can significantly reduce the risk of torture. In addition, a lawyer will be able to provide advice about the legality of their client's detention and take action on any complaints that may be made. Access to a lawyer should include the right to contact and be visited by a lawyer and, in principle, the right to have the lawyer present during interrogation.

Access to a medical doctor

The right to receive a medical examination by an independent medical doctor – and, if possible, a doctor of the person's own choice – also helps reduce a culture of secrecy from developing in places of detention. A medical examination can establish the physical condition of the person at the time of his or her arrest or detention. This can be a significant deterrent against torture and can also help to detect torture if it does occur. The medical examination can also establish if the person suffers from any health problems that might be aggravated by detention.²⁵ The results of the medical examination should be formally recorded by the detaining authorities and also be made available to the person and his or her lawyer.



24 In its general comment No. 20, the Human Rights Committee states that “[p]rovisions should also be made against incommunicado detention” (para. 11). See also *Polay Campos v. Peru*, Human Rights Committee, Communication 577/1994, views adopted on 6 November 1997.

25 See *Mr. C. v. Australia*, Human Rights Committee, Communication 900/1999, views adopted on 28 October 2002; and *Albert Wilson v. Philippines*, Human Rights Committee, Communication 868/1999, views adopted on 30 October 2003.

Appearing before a judge

Anyone who is arrested should be brought promptly before a judge. The judge should ensure that the person's arrest and detention are legal. The judge will also be able to investigate any complaint that the person may raise. Even in the absence of a formal complaint, the judge should be able to take action *ex officio* if there are visible injuries or other indications that torture or ill-treatment may have occurred.

3.2. Other detention procedures

The following detention procedures focus specifically on the deprivation of liberty by police officials. They set out recommended best practices by international and regional mechanisms, such as the European Committee for the Prevention of Torture.

In 2006, the Asia Pacific Forum of National Human Rights Institutions adopted detailed procedural standards on interrogation – the Minimum Interrogation Standards – developed by its Advisory Council of Jurists.

Registers

Maintaining official registers provides a crucial safeguard for detainees. They are an important tool for recording the location of each person throughout the period of their detention, as well as making sure that proper detention procedures are followed. Registers should be kept rigorously in all places of detention and police stations. The registers should be readily accessible to all concerned parties.²⁶ Gaps and inconsistencies in register entries can alert monitoring teams to potential risks for torture or ill-treatment.

Separating interrogation and custody

Interrogation and custody should be the responsibility of different bodies. Different agencies have different priorities, different areas of expertise and different chains of commands. The involvement of different agencies can help protect detainees from the possibility that the conditions of their detention will be used to influence their behaviour during interrogation. In addition, each agency can act as a check on the work of the other.

Code of conduct for interrogations

There should be a code of conduct which sets out detailed and specific standards for the conduct of police interviews. The code should address issues such as the permissible length of the interview, rest periods, the location and identity of persons to be present during the interview and interviewing a person under the influence of drugs. The process of developing this code is useful in itself as it encourages police officials to consider what practices are appropriate and effective for their work. The code of conduct should be publicly available and provided to all persons deprived of their liberty.

Audio and/or video recording of interrogations

Audio or video recording not only brings greater transparency to the interrogation process, it can also provide significant advantages for the police. Audio or video recording helps monitor and ensure that an established code of conduct is followed by police during interrogations.

²⁶ In its general comment No. 20, the Human Rights Committee states that “[t]o guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention, and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends” (para. 11).

Independent inspection mechanisms

Regular and unannounced visits to all places of detention by independent monitoring bodies helps prevent a culture of secrecy from developing and provides an important safeguard for persons deprived of their liberty.

WATCH

Go to the *Preventing Torture* CD-Rom to watch more on how NHRIs can promote reforms to laws and policies to prevent torture and ill-treatment.

Click on 'Feature materials' and then select 'Item 3 – NHRIs: Reforming laws and policies'.



KEY POINTS: CHAPTER 3

- NHRIs can promote ratification of relevant international human rights treaties, such as the Convention against Torture and its Optional Protocol.
- NHRIs can promote legal reform, in particular making torture a crime under domestic law.
- NHRIs can promote reform of detention procedures.



FURTHER READING

Criminalisation of Torture: State Obligations under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Sir Nigel Rodley and Matt Pollard; E.H.R.L.R. Issue 2, Sweet and Maxwell; 2006



IN THE CD-ROM

Committee against Torture, general comment No. 2, Implementation of article 2 by States Parties

Human Rights Committee, general comment No. 20: replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (art. 7)

Advisory Council of Jurists Reference on Torture (includes Minimum Interrogation Standards); Asia Pacific Forum of National Human Rights Institutions; 2005

Bringing the International Prohibition of Torture Home: National Implementation Guide for the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; The Redress Trust; 2006

Torture in International Law: A Guide to Jurisprudence; Association for the Prevention of Torture and the Center for Justice and International Law; 2008

The Right of Access to Lawyers for Persons Deprived of Liberty; Legal Briefing Series, Association for the Prevention of Torture; March 2010





Section II

Contributing to the implementation of the legal framework



Chapter 4: Investigating allegations of torture

Chapter 5: Interviewing

Chapter 6: Training public officials

Chapter 4:

Investigating allegations of torture

KEY QUESTIONS

- **What type of information helps assess the credibility of a victim's testimony?**
- **What other type of information should be collected when investigating allegations of torture?**
- **How should information about allegations of torture be recorded?**



LEGAL BASIS FOR NHRI INVOLVEMENT

Paris Principles

Methods of operation

Within the framework of its operation, the national institution shall:

- a) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence**

Additional principles concerning the status of commissions with quasi-judicial competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations.



INTRODUCTION

Investigating and documenting allegations of torture is critical in any strategy to prevent torture. NHRIs should investigate and document any complaints they receive from victims of their relatives, as well as initiate their own investigations if they believe that torture or ill-treatment may be occurring in certain places of detention.

It is important to note that victims of torture can suffer serious physical and psychological damage. As a result, they may be reluctant to talk about their experience.

1. COLLECTING INFORMATION

When a person claims to be victim of torture, it is important to collect all possible information that might help support the allegation.

The first step is to conduct an interview with the alleged victim as promptly as possible (see chapter 5 for more information). Following the interview, it is crucial to check the information you have collected and assess the reliability of the allegations made.²⁷

To help you make this assessment, it is important to consider if:

- the testimony is convincing and internally consistent
- the testimony is consistent with information from other independent sources
- the testimony corresponds to known patterns of torture and ill-treatment
- other testimonies corroborate the victim's statement
- other physical corroboration is found during on-site visits
- there is medical evidence of torture
- there are physical indicators of torture (however, the absence of physical signs does not mean that torture did not occur)
- there are psychological indicators of torture.

The testimony is convincing and internally consistent

In some allegations of torture it may be difficult to find evidence other than the testimony of the victim. If the victim's account sounds true – in other words, the account is consistent and does not contradict itself – this will provide an important first step in your inquiries. Where possible, this account should be matched with other types of information that may provide corroboration. It is essential, therefore, to gather as much detailed information as possible.

It is important to bear in mind the particular difficulties involved in taking statements from victims of torture, as many will have been traumatized by the experience. They may give inaccurate information because they are ashamed of what has been done to them or they may be reluctant to disclose information for other reasons. Their distress may also cause them to appear evasive. People who have been victims of sexual assault may feel particularly ashamed and unable to speak about the experience.

The testimony is consistent with information from other independent sources

The testimony corresponds to known patterns of torture and ill-treatment

It can often be difficult to cross-check the details of a specific allegation of torture, however, it is possible to check it against information that is already known. This information might relate to agencies that are likely to commit torture, to places where torture is likely to occur and to allegations of torture that have been reported in the past.

Other testimonies corroborate the victim's statement

By its very nature, torture is almost always carried out in secret. As a result it can be difficult to find and interview the sort of witnesses that might be available when investigating other human rights violations.

However, there are still potential witnesses who may be able to corroborate a victim's allegation of torture including:

- people who were present when the victim was taken into custody. They might provide information about who took the victim away, when this happened, how the person was treated and the physical condition of the person at that time.

²⁷ Complete accuracy is seldom expected of torture victims. See *Kisoki v. Sweden*, Committee against Torture, Communication 41/1996, views adopted on 8 May 1996.

- people who were detained with the victim. They might provide information about who took the person for interrogation, when the person was interrogated, how long the interrogation lasted, the physical condition of the victim before and after interrogation and the account the victim gave to them at the time.
- prison officials or law enforcement officers who may have been present during the torture and who object to its use. They may be willing to provide information on a confidential basis.

Information found during visits to places of detention

NHRIs that have access to places of detention can gather corroborating information when they undertake visits in response to an allegation of torture. During these visits, NHRI representatives can verify the description of the building and rooms, check the registers and verify other information, such as the date and time of a person's admission, removal from the cell and the names of guards on duty.



There is medical evidence of torture

There are four types of potential medical evidence that can be used to corroborate allegations of torture. They include:

- a medical examination of the victim at the time, or shortly after, the torture is alleged to have taken place
- a physical examination of the victim at the time s/he made the complaint
- a psychological examination of the victim
- a post-mortem examination (autopsy).

Medical evidence should be treated with caution as a medical examination alone cannot prove an allegation of torture. However, it may be consistent with the allegation and can therefore provide important corroborating information. It is recommended that any medical evidence is gathered and compiled by a physician with proper forensic skills.

NHRIs might face difficulties in finding appropriately qualified medical personnel. Indeed, some NHRIs may face a situation where there are no skilled forensic medical personnel in the country. In this case, one possible solution may be to seek outside assistance to train medical personnel in forensic skills.

In other countries, there might be a lack of independent forensic medical personnel, particularly if they all work for government agencies and/or provide forensic expertise for the police or public prosecutor. NHRIs will then have to assess whether they, and the victim, can trust the independence and professionalism of these personnel.

There are physical signs of torture

Medical examination of victims of torture must be left to medical professionals. However, with experience, a human rights investigator can come to recognize some of the most common signs of torture.

It is often useful to take photographs of the physical signs of torture, if the victim gives his or her consent. However, such photographs should not identify the person (for example, by showing the face). Several pictures should be taken to record all aspects of these physical signs. Clear colour photographs, taken in good lights, can form part of the corroborating evidence and be provided to medical personnel for professional evaluation. It is important to take close-up photographs of the injuries and wide-angle photographs showing the location of the injuries on specific parts of the body.

Some of the common types of torture, and the physical signs that result from this, include:

- **beating and other blunt violence**, which can cause broken bones, bruises, scars and tramline stripes (from beatings with a cane or stick)
- **beatings on the sole of the feet**, which can result in intermittent pain in the feet and legs, tingling and “pins and needles” in the legs and feet, as well as hard, rough scars on the soles
- **burning**, which can leave scars of varying shapes and sizes
- **suspension**, which causes a burning sensation and sharp pains in the arms and legs
- **electrical torture**, which can cause changes to the skin and splintering or loss of teeth
- partial suffocation with water, which can lead to chronic bronchitis
- **sexual torture**, which can result in injuries to the genital area, irregular periods, spontaneous abortions, testicular pain, anal itching, sexually transmitted disease and sexual dysfunction.

Image: Palestinian Independent Commission for Human Rights



The absence of physical signs of torture does not mean that torture has not taken place. Some methods of torture do not leave any physical signs, such as sensory deprivation and other forms of psychological torture.

There are psychological signs of torture

All torture will have psychological effects on a person. Indeed, a primary purpose of torture is to exercise power over a helpless victim with the aim of degrading, dehumanizing and disintegrating his or her personality. The impact of this experience can continue long after the physical scars of torture have healed.

There are two distinct, although closely linked, aspects to consider when it comes to gathering evidence of psychological signs of torture. It is important to be clear if you are collecting **evidence of psychological torture** or whether you are collecting **psychological evidence of torture**.

The term “psychological torture” refers to methods of torture that do not involve direct physical pain. These methods can include threats of death, mock execution or sensory deprivation. In these cases, there will be no physical evidence of torture and the psychological signs may be the only evidence available to you.

On the other hand, the psychological evidence of torture refers to the mental health consequences of torture, regardless of whether the torture was physical, mental or a combination of both.

The psychological effect of torture is sometimes described as post-traumatic stress disorder. However, some psychologists dispute this description, believing that it is too culturally rooted in Western society. Victims of torture from other cultures may not suffer exactly the same combination of symptoms and they believe it may be not helpful to use labels in this way.

However, people who have been tortured may:

- have constant distressing recollections of the event
- experience recurrent nightmares of the event
- feel distress at things that remind them of their torture
- try to avoid situations that will remind them of their torture
- be unable to remember aspects of what happened
- feel detached from the world around them.

These responses can manifest in a number of physical symptoms, such as:

- difficulty sleeping
- irritability or anger
- difficulty concentrating
- hyper-vigilance
- exaggerated startled response.

It is important to determine whether a person shows symptoms of psychological trauma and whether this correlates with his or her allegations of torture.

WATCH

Go to the *Preventing Torture* CD-Rom to watch more on NHRIs and their role to investigate allegations of torture and ill-treatment.

Click on ‘Feature materials’ and then select ‘Item 4 – NHRIs: Investigating allegations’.



2. RECORDING INFORMATION

The only purpose for NHRIs to gather information about allegations of torture is so it can be recorded and used. Statements and interviews with victims should be written down.

All the information gathered in relation to an allegation of torture should be properly recorded in a file, including:

- testimonies
- statements or complaints
- medical records
- photographs
- affidavits
- information and responses from the authorities
- other information (such as reports from on-site visits to places of detention).

In addition, NHRIs should also keep reports of torture and ill-treatment from other sources, including:

- decisions in relevant court cases
- reports prepared by non-governmental organizations
- reports of international and regional bodies (such as the United Nations Special Rapporteur on Torture or the European Committee for the Prevention of Torture)
- media reports of torture.

This information is useful to help to cross-check allegations and identify patterns of abuses.

All information collected should be formally recorded using a standard format that allows others within the NHRI to analyse and use it appropriately. A standard reporting format allows for cross-checking between different cases and establishing patterns of torture and ill-treatment.

NHRIs that have the capacity to do so should maintain a computer database or spreadsheet of complaints of torture they have received.

Records with confidential information should be kept in a secure location at all times. As an additional precaution, NHRIs can consider identifying files by numbers, rather than by names, with the corresponding list of names filed separately from the substantive records.

*On 10 August 1993, in response to concerns over the poor quality of post-mortem inquiries, the **National Human Rights Commission of India** instructed Chief Ministers of States that all post-mortems of custodial deaths must be videotaped and sent to the Commission.*

The NHRC expressed its concern over deliberate cover-ups, noting that “a systematic attempt is being made to suppress the truth and the report is merely the police version of the incident. The post-mortem report was intended to be the most valuable record and considerable importance was being placed on this document in drawing conclusions about the death.”

The NHRC also highlighted its concerns about pressure being placed on the medical profession by police officials. “The Commission is of a prima-facie view that the local doctor succumbs to police pressure which leads to distortion of the facts. The Commission would like that all post-mortem examinations done in respect of deaths in police custody and in jails should be video-filmed and cassettes be sent to the Commission along with the post-mortem report. The Commission is alive to the fact that the process of video-filming will involve extra cost but you would agree that human life is more valuable than the cost of video filming and such occasions should be very limited.”

KEY POINTS: CHAPTER 4

- Internal consistency of a testimony is an important element that can support allegations of torture. Other corroborating information should also be sought.
- Medical documentation, as well physical or psychological signs of torture, can provide further evidence of torture.
- Formally recording the evidence gathered is crucial.



FURTHER READING

IN THE CD-ROM

National Human Rights Institutions: Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, Professional Training Series No. 4; OHCHR; 1995

Training Manual on Human Rights Monitoring; Professional Training Series No. 7; OHCHR; 2001

Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Professional Training Series No. 8; OHCHR; 2001

The Torture Reporting Handbook, Camille Giffard, Human Rights Centre, University of Essex; 2000



Chapter 5: Interviewing

KEY QUESTIONS

- What is the purpose of interviewing a victim or a witness?
- How should you prepare for an interview?
- What are the key issues to consider when conducting an interview?
- What are the specific challenges involved in interviewing victims of trauma?



LEGAL BASIS FOR NHRI INVOLVEMENT

Paris Principles

Methods of operation

Within the framework of its operation, the national institution shall:

- b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence



INTRODUCTION

There are a number of different situations where representatives of NHRIs will be required to conduct an interview, including:

- as part of a formal or official inquiry
- when a person visits the office of the NHRI to file a complaint
- during a visit to a place of detention
- in the course of field investigation
- in a meeting with an official.

Preparing for and conducting interviews should always be done with the specific context in mind. Applying all of the following practices may not be possible in every situation; however, the key principles are worth noting.

1. PURPOSE OF AN INTERVIEW

An interview allows you to:

- gather many different pieces of information from a single interviewee
- respond to information that the interviewee gives you
- cross-check information that you already have
- assess whether the interviewee is credible
- provide the interviewee with the chance to tell their story.

A key challenge you can face is that the reason you are conducting the interview may not be the same as the reason the interviewee agreed to speak with you. As a result, what the interviewee wants to tell you may not be the information you are looking to collect. In these situations you should pursue your objective at the same time as respecting the interviewee's wish to share information that is important to them. You have no power to make someone tell you something they do not want to share.

Gather many pieces of information from a single interviewee

An interview allows people to describe events that they have experienced. At the simplest level, someone you are interviewing might primarily talk about something that has happened to them. However, they may also have knowledge of other people's cases and the information they provide may help corroborate another person's testimony. It may also help determine whether there is a pattern of torture or if it is a systemic practice.

Respond to information that the interviewee provides

One of the benefits of conducting interviews is the opportunity to respond directly to information that is provided by the interviewee and to ask follow-up questions. This interaction with the interviewee may help you to understand an issue in greater detail or provide new and revealing information on an issue that you had not anticipated.

Cross-check information

Interviews may also allow you to cross-check and confirm – or not – information that you have collected from other person.



Image: APF / Michael Power

Assess whether the witness is credible

The interview process provides you with an important opportunity to assess the credibility of the person and the information they are providing. While it is difficult to describe precisely how you assess this, there is no doubt that a face-to-face interview is more effective than relying on a written statement. This is why courts rely on oral testimonies of witnesses rather than just written statements. When someone is telling their own story in their own words, it allows you to determine whether you think they are telling the truth. An interview also allows you to ask difficult questions, which a person who is not telling the truth might prefer to avoid. It also requires the interviewee to respond to questions immediately, rather than having time to prepare a written response. Asking the same question in different ways can also help test whether the person's story is consistent.

Allow witnesses to tell their story

Victims of human rights violations often feel that they have been neglected, marginalized and forgotten. Sometimes the violations they have suffered will be the cause of stigma and isolation from their communities. Often they will not have had the chance to tell their story to authorities. The interview might be the first opportunity for the person to talk about their experience. Therefore, listening is more important than asking questions.

2. PROTECTION OF INTERVIEWEES

When conducting interviews with victims or witnesses, it is important to consider their need for protection.

While there can be no complete assurance that the interviewee will not face retaliation or reprisals after the interview, several measures may be taken to protect the person, such as:

- interviewing a significant number of people to avoid focusing attention on the one person
- conducting the interview in a safe place where surveillance is minimal
- asking what security precautions the person believes should be taken at the start and the end of the interview
- inviting the person to keep in contact with you after the interview
- in places of detention, conducting a follow-up visit shortly after the interview and meeting with the same detainees
- never referring explicitly during the interview to statements made by other persons and never revealing the identity of witnesses.

3. PREPARING FOR AN INTERVIEW

Many potential difficulties encountered in interviews can be effectively managed through proper preparation. Developing a pre-interview planning routine will often not require much time and, after a while, can become second nature.

When interviewing a victim or a witness of torture or ill-treatment, it is important to follow ethical principles and for the interview to be as predictable as possible. This allows the interviewee to feel empowered. This is particularly important for victims, as torture and ill-treatment often creates strong and persistent feelings of powerlessness. When preparing for the interview, the interviewer should always be conscious of helping to empower the victim.

The location

If you are carrying out the interview in the office of the NHRI, the surroundings should be as comfortable and welcoming as possible, with a glass of water or a cup of tea or coffee to offer the person.

If you are not interviewing the person in your own offices, select a location that provides the greatest sense of privacy and minimizes the potential for eavesdropping or retaliation. The room should be as comfortable as possible and should not have negative associations for the interviewee. In places of detention, the interview should be conducted in a location where the person can feel confident that the conversation cannot be overheard. Ask the person if s/he feels comfortable and safe.

Selecting an interviewer

It is important to select the most appropriate person from the NHRI to conduct the interview. Issues such as gender, knowledge of the issues or the case, language skills and sensitivity to cultural differences are important considerations. In some cases, there may be no choice about who will conduct the interview. However, it is always important to reflect on how the interviewee may perceive the interviewer and whether this could create some barriers to conducting an effective interview. Ask the person if s/he feels comfortable being interviewed by a man or woman. If there is no option, the interviewer should describe his or her experience in dealing with such cases and reassure the person that s/he is sensitive to the difficulty of talking about a traumatic experience.

Duration of the interview

It is important for victims of torture to have enough time to tell their story at their own pace and in their own words, without being rushed or interrupted. A failure to appreciate this might mean some people are reluctant to talk. At the same time, the session should not be too long, as this could be stressful for the victim. Therefore, a balance needs to be struck between these two competing demands. In addition, it may be necessary to conduct more than one interview in order to have the story told in full. The possibility of subsequent interviews should be considered in this planning stage. However, as it may not always be possible to conduct more than one interview, you should seek to gather as much essential information as possible by asking the right open-ended questions.

Learning about the case

The interview may relate to an incident about which you already have some knowledge. If so, you should compile and review any available information, such as media reports, reports prepared by non-governmental organizations or civil society groups or notes from interviews with other witnesses.

Preparing questions

Sometimes you may not know in advance the topic of the interview or the person you will be interviewing; for instance when a person arrives at the office of the NHRI and wishes to make a complaint. In most cases, however, you will know what the interview is about and can prepare some questions.

Questions should be open-ended and non-leading. They should also focus on the key elements of *who*, *what*, *when*, *where*, *how* and *why*.

However, you should not rely too heavily on a prepared questionnaire or incident sheet. It can help to memorize the key questions. Eye contact and establishing rapport with the interviewee are more important than working through a set list of questions. You can, however, refer to this list at the end of the interview to make sure that you have asked all the important questions.

In most cases you will want to interview a person privately, in order to ensure the confidentiality of the interview process. However, a victim may want to be accompanied by a person of trust and this request should be respected.

4. CONDUCTING AN INTERVIEW

4.1. General considerations

Conducting an interview is a sensitive task which requires the interviewer to have:

- an ability to listen
- patience
- objectivity
- empathy
- critical distance
- memory
- an ability to reformulate.

Confidentiality and security

The issue of confidentiality should be clarified at the beginning of the interview and must be respected by the interviewer. You should clearly explain how the information will be used (such as in an internal report, external report or communication with authorities) and whether it will be necessary to use the name and personal details of the interviewee. You will also need to obtain the informed consent of the interviewee. During the interview, you should not mention sources of any other information (unless the source is public) and you should keep the identity of other witnesses confidential.



Working with an interpreter

The interview should be conducted in the language that the interviewee finds most comfortable and with an interviewer who is fluent in that language. If this not possible, you may need to arrange for an interpreter to be present.

Interpreting is a difficult job and simply having knowledge of both languages may not be sufficient. In some situations, it might be difficult to find an interpreter who is seen as impartial. The interviewer should discuss the situation with the interviewee to find out if there are any reasons that would make a particular interpreter unsuitable.

Preparation for the interview is important and the interviewer should explain the ground rules to the interpreter in private, before the interview commences. This can also be an opportunity to go through the proposed list of interview questions. Interpreters must be reminded that all information discussed during the interview is strictly confidential.

Interviewers should remember to speak directly to, and listen to, the interviewee, as there can often be a tendency to talk “through” the interpreter. A great deal can be learned by observing the interviewee, even if you do not understand the language. It is also important to frame questions in the second person, rather than the third person, when speaking through an interpreter (for example, “What did you do?” rather than “What happened to him next?”).

It can also be useful to prepare a code of practice for interpreters. This is not only useful for the work of the interviewer and the interpreter; it can also help the interviewee to better understand the role and responsibilities of the interpreter. Further, the code of practice could be signed by the interpreter and a copy given to the interviewee in a language s/he understands.

In places of detention, this issue of confidentiality is even more important in building a relationship of trust with the detainee. Accordingly, prison officers, other prison staff and other detainees should not be used for interpretation.

Taking notes

A thorough record of the interview should be kept and, at the very least, notes need to be taken. The notes should be in direct speech and use the exact words of the interviewee to the greatest possible extent. Confirm with the interviewee that the information recorded is accurate. This does not mean reading the entire notes of the interview; only those parts where there may be some uncertainty.

Tape recording the interview presents serious security concerns that should be closely considered. If security conditions permit, tape recording may be better than written notes as it provides a word-for-word record of the whole interview. However, transcribing the interview afterwards can be time-consuming and, therefore, it might be sufficient to transcribe only the most relevant sections of the interview.

Taking notes or taping the interview should always be agreed with the interviewee at the start of the interview. When conducting interviews in places of detention, the use of an audio tape may present an unacceptable level of risk to the interviewee. Even if the interviewee does agree to the interview being taped, s/he may not be as open and forthcoming as might otherwise have been the case. It is better to have a full and frank interview, taking written notes, than a limited interview that is taped.

If an interviewee chooses not to be taped at the beginning of the interview, it is always possible to ask later on in the interview, when s/he is feeling more settled, whether it is possible to tape the remainder of the interview. Alternatively, an interviewee might be prepared to speak briefly on tape at the conclusion of an untaped interview.

When taping interviews, appropriate technical preparation should be taken, such as checking batteries, ensuring there are sufficient blank tapes and testing the equipment. Even if an interview is being taped, written notes should also be taken.

The information collected in the interview can be used to complete an incident sheet or included in some other format for recording data.

4.2. Different stages of the interview

Starting the interview

The start of the interview is crucial for establishing rapport with the interviewee and building a sense of confidence and trust. How you introduce yourself is very important and also shows respect for the interviewee. You know why you want to conduct the interview, however, the interviewee may not.

The introduction allows you to explain who you are, the role of the NHRI, what information you are looking to collect and what you will do with the information after the interview. It is important to make no threat or promise and not to create any false expectations. It is essential to clearly explain what you can do and what you cannot do.

You should clearly explain what will be done with the information the interviewee provides (whether it will be used in an internal or external report or shared with the authorities) and discuss the extent to which the interviewee may require the information to remain confidential. While most interviewees may not object to the details of their case being included in a public report, they may want their personal details, or any information that may identify them, to remain confidential. You should ensure that the interviewee provides his or her informed consent to the disclosure of this information and record this at the beginning of the interview notes.

The interview should start with an open question, such as “What would like to tell me about?” Some victims of torture can be confused or distressed, while others may have so much they want to say that they do not know how to start. Encourage the interviewee to tell their story in a logical, possibly chronologically, sequence. This can be done by inviting the interviewee to “Start at the beginning ...” and then continue by asking “What happened next?”

If something is unclear, do not interrupt unless it is absolutely necessary. Make a note and come back to the question later on. You may need to collect specific details on particular aspects of the story but the first priority is to listen to the story as a whole.

Conducting the interview

Open and non-leading questions should be used during the early stages of the interview.

An open question is one that invites a person to provide a detailed response, rather than a simple answer of “yes”, “no” or a short fact. Open questions also give control of the conversation to the interviewee, as it allows him or her to choose how much information is shared.

A leading question is one where the suggested answer is contained within the question. For example, instead of asking “Did the police torture you?”, you should ask “How did the police treat you?”

As the interview progresses, you may need to ask some closed questions to clarify or confirm certain information.

The interviewer also has to be careful not to coach the interviewee by suggesting answers to questions or lines of evidence.

The art of listening is crucial to conducting effective interviews. The following principles provide a useful guide when interviewing victims of torture.

- Let the interviewee narrate his or her story. They know what they want to say. Do not dominate the conversation and do not talk too much yourself.

- Listen to the person. Good listening means hearing what the interviewee is actually saying, not what you think s/he is saying.
- Ask questions that respond to what the person is telling you. Do not simply move through a set list of questions and ignore what you are being told.
- Be sensitive to how the interviewee feels about the information they are sharing with you and be sensitive to non-verbal signs, such as body language.
- Allow moments of silence in the interview – do not rush the person.
- Be aware of your own body language.
- Maintain a friendly, polite and sympathetic attitude towards the interviewee.
- Be sensitive to cultural differences in questioning and being questioned.

Even if you want to probe for information – or if you do not believe the story you are being told – it is important to respect the interviewee and allow them to tell their story in their own words and at their own pace.

The presence of an additional person at the interview can be considered, although this should be done with the agreement of the interviewee. This person can confirm that the interview was freely given and that the interviewee was not subjected to any pressure from the interviewer. S/he can help monitor the level of stress of the interviewee and assess whether there is a need to take a break or to postpone the interview to a later time. This person can also take notes of the interview, allowing the interviewer to concentrate solely on the interview and building rapport with the interviewee.

Closing the interview

It is advisable to collect standard information about the person – such as name, address, occupation, ethnicity and age – at the end of the interview. This overcomes the risk that the interview begins like an interrogation.

Before closing the interview, you should clearly explain what will happen next and what you will do with the information you have recorded. You should check that the interviewee has understood this. It is also essential to clarify whether the information was given anonymously or whether the interviewee is willing to consent to the use of the information and his or her name.

It is important to close the interview with an open question, such as “Do you have anything else to add?” This reminds the interviewee that it is his or her last chance to speak and it may prompt additional important information.

The interviewer should also establish a process for keeping in contact with the interviewee, either by telephone or through a reliable contact. The interviewee should know how to contact the NHRI – quickly and at any time – in the event of threats or reprisal or in order to provide additional information.

WATCH

Go to the *Preventing Torture* CD-Rom to watch a **role play** that highlights good practice approaches when interviewing a person in a place of detention.

Click on ‘Feature materials’ and then select ‘Item 5 – Role play: Interviewing a person in detention’.



5. AFTER THE INTERVIEW

Immediate follow-up

It can be difficult to set aside time to think about an interview immediately after it has finished, particularly if you are conducting a number of interviews in quick succession. However, it is helpful to take a few minutes to go over your interview notes. This can provide ideas for other people to interview or additional sources of information about the same event.

Write up the interview notes, or transcribe the interview recording, as soon as possible. The advantage is that you are more likely to remember information that may not be clear in your notes. It might also give you the chance to go back to the interviewee if you have further questions.

In writing up your notes, you should use direct speech and the exact words of the interviewee as much as possible. The best evidence is what the person actually said, not how you interpreted or summarized the information. In writing up these notes, it is preferable to compile the information in chronological order.

Statements and affidavits

A statement is simply a written account of an incident provided by a person and using their own words. An affidavit is a sworn statement. This means that the person has sworn, in front of a lawyer or judicial officer, that the contents of the statement are true. Nothing can guarantee that an affidavit is true, although it does carry more weight as evidence than interview notes. There are also legal sanctions for false declarations made under oath.

Whether the information you obtain is in the form of a statement or affidavit will depend on the mandate of the NHRI and/or the purpose for collecting the information. If the information is to be included in an internal or external report, then it may be sufficient to collect a statement from an interviewee. However, if the information is intended for use in legal proceedings, such as a criminal prosecution, or it is the basis of a formal complaint, then it may be necessary to obtain an affidavit.

It is easier to prepare an affidavit if you decide before the interview that this is what you intend to do. Begin by inviting the interviewee to tell their story slowly. The interviewee should describe only what they have seen, heard or experienced directly, not what they have been told by others. You should write only what you are told and refrain from adding anything or imposing your own interpretation. As far as possible, an affidavit should be in direct speech and use the person's own words. Each legal system will require an affidavit to be prepared according to a certain format. Unfortunately this may sometimes require the use of language that is more complex than strictly necessary.

6. INTERVIEWING VICTIMS OF TRAUMA

Interviewing victims of trauma

People who have survived extreme events will often suffer a serious stress reaction, usually called post-traumatic stress disorder (PTSD).

PTSD is usually divided into two phases:

- an acute phase, where common symptoms include flashbacks, nightmares and intrusive thoughts
- a chronic phase, which follows the acute phase if treatment is not provided and can include symptoms such as depression and lack of concentration.

When a person is in the chronic phase of PTSD they may not realize that the symptoms they are experiencing are related to the trauma s/he has suffered.

Other characteristics that a person who has gone through a traumatic event might display include:

- constantly recalling the event
- trying to avoid remembering the event
- physical symptoms, such as insomnia, irritability or hyper-vigilance.

All of these factors can pose challenges when conducting an interview. For example, if someone is short of sleep or has difficulty concentrating it may be hard for them to sustain an interview over an extended period of time. In this situation it might be preferable to have several short interviews.

It will also be challenging to conduct an interview with a person who is trying to avoid remembering the event. In some situations, it is not a conscious decision to block the memory. It can be common for people who have gone through traumatic experiences to suffer amnesia. The interview process, while painful, may actually help someone overcome this response, although this must be handled in a sensitive and sympathetic way

In some circumstances, an interviewee may also begin to re-experience the traumatic event. As an interviewer, you must be alert to this possibility. If it appears that the interviewee is reliving or awakening memories of the experience, stop the interview immediately and discuss this with the person.

Interviewing victims of torture

Interviewing victims of torture is an extremely delicate process. As an interviewer, you must be prepared to deal with difficult emotions and be able to empathize with the victim. Individuals should not be forced to talk about their experience if it makes them feel uncomfortable. Further, torture survivors may have difficulty remembering specific details and inconsistencies may arise.

As mentioned above, the interview process may have the effect of reawakening traumatic memories for the person. If this occurs, it is important to stop the interview, express your concern and awareness of what the person is experiencing and clarify the confidential nature of the interview. It may be necessary to take a break from the interview to let the person recover or to come back at another time for a second interview.

Interviewing victims of rape

Victims of rape and other forms of sexual violence are also likely to suffer from trauma. Some psychologists call this rape trauma syndrome (RTS).

RTS is usually divided into three phases:

- the impact phase, where the victim is likely to experience a wide range of emotional reactions, which may be openly expressed or kept under tight control
- the acute phase, where symptoms are similar to the acute phase of PTSD and include flashbacks, fear and intrusive thoughts; further, the physical consequences of rape can be very distressing, particularly the fear of HIV infection or other sexually transmitted diseases
- the chronic phase, which like PTSD, will follow the acute phase if treatment is not provided.

Constant reassurance can do no harm to rape victims and others affected by trauma. If they are willing to talk, invite them to discuss how their emotional reactions are linked to what they have suffered. However, ask them to tell you the details of their experience only when they are ready.

People who have been raped often share similar responses to victims of torture. Low self-esteem is a common characteristic. This is partly a psychological consequence of the trauma but also frequently a reflection of social attitudes which can hold rape victims partly to blame. Therefore, when conducting an interview, it is crucial to be non-judgmental and to place no hint of blame on the person. Rape victims may not want to talk about what happened to them; do not force them.

Interviewing persons deprived of liberty (see also chapter 8)

Interviews with people in places of detention are different from interviews carried out in the privacy and security of the NHRI office. The importance of gaining the trust of the interviewee cannot be stressed enough. It is even more important to not do anything that could betray that trust. All precautions should be taken so the safety and security of the interviewee is not compromised. These interviews should be conducted without a witness and take place in a private location, out of sight and hearing of others.

The purpose of conducting interviews in places of detention can vary, especially if they form part of a preventive visit. As the detainee may not fully understand the purpose of the interview, and have particular expectations relating to their individual situation, it is important that you clearly explain its aim at the outset. As the interviewer, you should also describe what you can do and what you cannot do. Further, you should not make any promise that you cannot keep or raise false expectations.

Persons deprived of their liberty who have suffered torture should be asked whether the information they provide can be used and, if so, in what way. For example, you should clearly ask for the person's consent regarding the use of his or her name. However, because of a fear of reprisal, s/he may prefer that the information is kept anonymous.

WATCH

Go to the *Preventing Torture* CD-Rom to watch **Professor Manfred Nowak, United Nations Special Rapporteur on Torture**, discussing some of the steps involved in interviewing people held in places of detention.

Click on 'Feature materials' and then select 'Item 6 – Conducting interviews in places of detention'.



Interviewing women

It might be difficult for a man to interview a woman, even when the subject matter of the interview is not sensitive. A woman is often more willing to talk to another woman. This consideration is especially important when discussing an experience of sexual assault. It is difficult enough for a woman to talk to anyone about an experience of this nature and a man, however sympathetic, is likely to trigger fears and feelings of vulnerability associated with the assault. Therefore, it is very important to ask the interviewee about her preferences in this regard.

Interviewing children

Children perceive the world very differently from adults and this fact should be appreciated when preparing to interview a child. The issue of power relations should also be carefully considered, as a child will always feel inferior to an adult interviewer and is therefore more likely to provide compliant answers.

The age and developmental stage of the child must also be taken into account, as this will greatly influence the child's capacity to tell his or her story. For instance, can the child talk freely and uninterrupted? Or is s/he better able to respond to specific questions?

If the interview relates to an allegation of physical abuse, a child is likely to feel anxious and reticent to discuss the issue. It is important to be extremely patient. Often several interviews will be necessary before a child will trust you sufficiently to confide in you. It may also be helpful to consider using other methods of communication, such as drawing or using pictures or images (sad faces / smiley faces).

The child should be asked whether s/he has a preference regarding the gender of the interviewer. During an interview, you should also be attentive to signs that the child is growing anxious or overwhelmed and, when necessary, offer a break.

KEY POINTS: CHAPTER 5

- **Interviewing is important for a number of purposes, such as collecting information, assessing its credibility and cross-checking.**
- **It is crucial to prepare for an interview and to be clear about what you hope to achieve.**
- **Interviewing is a delicate task and a primary goal is to build rapport with the interviewee. Basic principles should be followed in terms of opening the interview, asking open and non-leading questions, closing the interview and respecting confidentiality.**
- **Follow-up is essential, for example by preparing an affidavit or identifying other people to interview.**
- **Interviewing victims of trauma poses specific challenges; an interviewer needs to be prepared for this and know how to respond appropriately.**



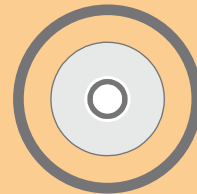
FURTHER READING

IN THE CD-ROM

Training Manual on Human Rights Monitoring (see Chapter VIII: Interviewing); Professional Training Series No. 7; OHCHR; 2001

Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Professional Training Series No. 8; OHCHR; 2001

The Torture Reporting Handbook; Camille Giffard, Human Rights Centre, University of Essex; 2000



Chapter 6:

Training public officials

KEY QUESTIONS

- What type of training activities can NHRIs undertake to assist in the prevention of torture and ill-treatment?
- What are the advantages and disadvantages for NHRIs in directly delivering training courses for public officials?



LEGAL BASIS FOR NHRI INVOLVEMENT

Paris Principles

Competence and responsibilities

3. A national institution shall, inter alia, have the following responsibilities:
 - f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles.



ACJ Reference on Torture

Training and education

NHRIs should take an active role in educating all sectors of the community. For example lawyers, journalists, doctors, medical personnel, teachers, police, the military, senior public officials, the judiciary and legislators, on the meaning and application of the international law on torture, cruel, inhuman or degrading treatment or punishment.

Convention against Torture

Article 10

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

Standard Minimum Rules for the Treatment of Prisoners

Rule 47

1. The personnel shall possess an adequate standard of education and intelligence.
2. Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.
3. After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals."



Rules for the Protection of Juveniles Deprived of their Liberty

Rule 85

The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present rules.

INTRODUCTION

Providing professional training programmes for public officials is a critical strategy to help prevent torture and ill-treatment of persons deprived of their liberty.²⁸

All personnel involved in the arrest, interrogation and detention of persons should receive training on human rights and, in particular, on the absolute prohibition of torture. NHRIs can play an important role in contributing to the provision of this training by developing training tools and delivering training courses.

However, it is important to note that training programmes offered by NHRIs will generally only be useful when there is clear political will to prevent torture.

In these cases, training programmes should be integrated into the general work and procedure of the institution, whether it is a police service or prison service. To achieve the greatest impact, the training programme should have the strong endorsement and support of that institution's leadership.

When torture occurs at the instigation of an institution's authorities, or is tolerated by them, training will not be the right approach. It may in fact be counterproductive as it provides an opportunity for the institution's leadership to publicly promote that they are making efforts to prevent torture.

Police officers and prison warders may also be hostile to what they view as outside interference in how they do their job. They may resent receiving training from representatives of NHRIs, whom they might consider to be idealists with no practical understanding of the difficulty of their job.

It is therefore important for NHRIs to carefully consider their strategy for the development and delivery of training programmes. In some cases the NHRI may not be the most appropriate organization to provide training. Instead it could contribute to the development and revision of curricula and training materials, as well as monitor and evaluate the effectiveness of training programmes.

1. DEVELOPING AND REVISING TRAINING CURRICULA AND MATERIALS

Ensuring that human rights standards and principles are included in training curricula for public officials involved in the arrest, interrogation and detention of people deprived of their liberty is an essential preventive measure.

According to the Convention against Torture, States parties have a duty to ensure that information on the prohibition and prevention of torture is included in training programmes for law enforcement and other public officials.

28 See Human Rights Committee general comment No. 20: "Enforcement personnel, medical personnel, police officers and any person involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training. States Parties should inform the Committee of the instruction and training given and the way in which the prohibition of article 7 forms an integral part of the operational rules and ethical standards to be followed by such persons" (para. 10).

NHRIs can monitor how this obligation is implemented in practice. They can assess whether human rights training, in general, and the prevention of torture, in particular, are properly integrated in the basic training curricula for police officers, prison officers, army personnel and others. In addition, the curricula and course materials for ongoing professional training for these groups should also be reviewed.

Where human rights training programmes and materials are non-existent or insufficient, NHRIs can contribute to the development or revision of curricula, in cooperation with the relevant training authorities.

It is important to underline the point that training in human rights and torture prevention should not only provide law enforcement agencies with valuable theoretical knowledge. It should also offer them practical information and skills that will be useful in their daily work. Human rights and torture prevention training should therefore be seen as an integral part of operational training.

For example, torture prevention should form a core part of basic training with police officers in a number of key operational areas, such as:

- arrest
- interrogation
- investigation
- maintenance of public order and demonstration.



Image: Human Rights Commission of the Maldives

In addition to developing and revising curricula, NHRIs can also contribute to the development and revision of other training materials, such as brochures on the prevention of torture or “train the trainer” manuals.

*The **Advisory Commission on Human Rights from Luxembourg** has launched a project to thoroughly review the human rights training curricula of the police and other public officials involved in the deprivation of liberty. The Commission’s report will include recommendations to revise these curricula.*

*The **Afghanistan Independent Human Rights Commission** has translated the Guidance Notes on Prison Reform into the two official languages of Afghanistan, Persian and Pashtu. The Guidance Notes have been published by the International Centre for Prison Studies, King’s College London, 2004.*

*As part of its prison reform project, the **Kenya National Commission on Human Rights** has organized regular human rights training programmes for prison officers. However, realizing that there was a need to introduce human rights training at the entry level, the Commission worked in collaboration with the Kenya Prisons Staff Training College to include a module on human rights in the basic training curricula. A more detailed module will be developed to provide information on United Nations standards for treatment of offenders and other aspects related to imprisonment and conditions of prisons.*

2. DELIVERING TRAINING COURSES

NHRIs can consider delivering training courses for professional groups directly involved in deprivation of liberty, such as police, prison officers or army personnel. However, because of the strong collective ethos of these groups, it is usually preferable for officials to be trained on human rights and torture prevention by people from their own profession.



Image: APF / Michael Power

Another option is to establish a mixed training team, composed of representatives from the NHRI and representatives from the professional group. Alternatively, NHRIs can focus on developing and running “train the trainer” courses, with regular follow-up and evaluation included as part of this strategy.

Where appropriate, NHRIs can be involved in directly training public officials. In taking on this role, NHRIs should take account of the following principles.

- **Needs assessment:** The content, structure and methodology of the training programme should be tailored to meet the identified needs of the organization.
- **Selection of participants:** Training must be available for officials who have direct contact with detainees, not just high-ranking officers or new recruits receiving basic training.
- **Objectives:** Training should have a practical focus to assist officers in their daily work and help them respond to operational challenges that they face.
- **Evaluation:** Monitoring the impact of training should be integrated into the training process and could include follow-up visits, questionnaires or mentoring.

The **Venezuelan Ombudsman (Defensoría del Pueblo)** has signed an agreement with a non-governmental organization (*Red de Apoyo por la Justicia y la Paz*) to jointly train 5,000 police officers in human rights and torture prevention.

The **National Human Rights Commission of Korea** conducts training on core international and national human rights standards regarding correctional systems. The training is based on a case study approach. Working through practical examples, participants examine real life situations from different points of view, including that of the detainee, and reflect on established practices. Since 2004, the Commission has trained 2,617 correction officers and conducted a three-day human rights training workshop for trainers in detention facilities.

WATCH

Go to the *Preventing Torture* CD-Rom to watch more on NHRIs and their role to train law enforcement officials on the prevention of torture and ill-treatment.

Click on ‘Feature materials’ and then select ‘Item 7 – NHRIs: Training law enforcement officials’.



KEY POINTS: CHAPTER 6

- Training public officials is an important way that NHRIs can contribute to the prevention of torture.
- NHRIs can be involved in developing and revising training curricula and relevant training material on torture prevention.
- NHRIs can develop and deliver training courses which is based on a needs assessment, contains practical content, involves relevant participants and includes evaluation.



FURTHER READING

Combating Torture: A Manual for Judges and Prosecutors; Conor Foley, Human Rights Centre, University of Essex; 2003

To Serve and to Protect: Human Rights and Humanitarian Law for Police and Security Forces; International Committee of the Red Cross; 1998

Police and Human Rights: A Manual for Teachers, Resources Persons and Participants in Human Rights Programmes; Ralph Crashaw, Kluwer Law International; 1999

A Human Rights Approach to Prison Management: Handbook for Prison Staff; Andrew Coyle; International Centre for Prison Studies; 2002

Understanding Policing; Amnesty International, Netherlands; 2007



IN THE CD-ROM

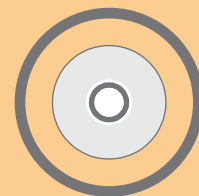
National Human Rights Institutions: Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, Professional Training Series No. 4; OHCHR; 1995

Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police; Professional Training Series No. 5; OHCHR; 1997

Human Rights and Law Enforcement: A Trainer's Guide on Human Rights for the Police; Professional Training Series No. 5/Add. 2; OHCHR; 2002

Human Rights in the Administration of Justice: A Manual of Human Rights for Judges, Prosecutors and Lawyers; Professional Training Series No. 9; OHCHR, in cooperation with the International Bar Association; 2003

Training Package for Prison Officials. Human Rights and Prisons: A Manual on Human Rights Training for Prison Officials; Professional Training Series No. 11; OHCHR; 2005



Section III Acting as a control mechanism



Chapter 7: Cooperating with international mechanisms

Chapter 8: Monitoring places of detention

Chapter 9: Promoting public awareness

Chapter 7:

Cooperating with international mechanisms

KEY QUESTIONS

- Does interaction with treaty bodies – and the United Nations Committee against Torture in particular – go beyond submitting shadow reports?
- What opportunities exist for NHRIs to interact with the United Nations Human Rights Council, in particular in the universal periodic review and with the Special Rapporteur on Torture?
- Do NHRIs have a role to play in regional complaints mechanisms?
- How can NHRIs interact with international and regional visiting bodies?



LEGAL BASIS FOR NHRI INVOLVEMENT

Paris Principles

Competence and responsibilities

3. A national institution shall, inter alia, have the following responsibilities:
 - d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence.
 - e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights system.



ACJ Reference on Torture

International bodies

NHRIs should encourage their State to issue a standing invitation to the United Nations Special Rapporteur on Torture and other relevant Rapporteurs of the United Nations to make visits and reports.

NHRIs should urge their States to ensure that the reporting requirements under relevant international treaties are up-to-date. They might also consider drafting shadow reports.

NHRIs should urge their States to implement all recommendations and conclusions made in reports prepared by the relevant monitoring committees and Special Rapporteurs. In this respect, NHRIs have a supportive role to play.

INTRODUCTION

Most of the human rights instruments prohibiting torture (described in chapter 2) have established various mechanisms to monitor their implementation. NHRIs can contribute to the work of these mechanisms by providing alternative sources of information and by monitoring the implementation of their recommendations.

The first two sections of this chapter examine mechanisms established within the United Nations human rights system. A difference is traditionally made between the mechanisms established under the Human Rights Council and applicable to all States (called Charter-based bodies) and mechanisms set up under a specific treaty (called treaty-based bodies) that are applicable only to States that have ratified these treaties. The mandate of the Committee against Torture will also be examined in detail. The third section of this chapter examines regional complaints mechanisms, while the final section looks at the role of visiting mechanisms which have specific mandates focusing on torture prevention.

1. UNITED NATIONS TREATY BODIES

Human rights treaty bodies are committees of independent experts that monitor the implementation of international human rights treaties. They are created by the treaty that they monitor and their main function is to consider the reports of States parties.

Some treaty bodies can examine individual complaints (a quasi-judicial function). However, this is usually dependent on the State party accepting this provision of the treaty. The treaty body can issue its views following the examination of a complaint, although this is not a legally binding decision.

While this section will examine in detail the role and function of the Committee against Torture, it is important to note that the Human Rights Committee plays an important role in torture prevention. As part of their torture prevention strategy, NHRIs should strive to cooperate closely with this body both in the reporting procedure and its individual complaints procedure.

| Treaty Body | Treaty | Examination of reports | Individual complaints |
|--|--|------------------------|--|
| Human Rights Committee | International Covenant on Civil and Political Rights (1966) | Yes | First Optional Protocol (1966) |
| Committee on Economic, Social and Cultural Rights | International Covenant on Economic, Social and Cultural Rights (1966) | Yes | Optional Protocol (2008) ²⁹ |
| Committee on the Elimination of Racial Discrimination | International Convention on the Elimination of All Forms of Racial Discrimination (1965) | Yes | Article 14 |
| Committee on the Elimination of Discrimination against Women | Convention on the Elimination of All Forms of Discrimination against Women (1979) | Yes | Optional Protocol (1999) |
| Committee against Torture | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984) | Yes | Article 22 |



²⁹ This protocol is not yet in force (February 2010).

| Treaty Body | Treaty | Examination of reports | Individual complaints |
|--|---|------------------------|-----------------------|
| Committee on the Rights of the Child | Convention on the Rights of the Child (1989) | Yes | No |
| Committee on Migrant Workers | International Convention on the Rights of All Migrant Workers and Members of Their Families (1990) | Yes ³⁰ | Article 77 |
| Subcommittee on Prevention of Torture | Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment (2002) | No | No |
| Committee on the Rights of Persons with Disabilities | Convention on the Rights of Persons with Disabilities (2006) | Yes | Optional Protocol |
| Committee on Enforced Disappearances ³¹ | International Convention for the Protection of All Persons from Enforced Disappearances (2006) | Yes | Article 31 |

1.1. Role of NHRIs in the treaty body reporting procedure

Each treaty establishes a reporting procedure which requires States parties to regularly present a report on their compliance with, and implementation of, their treaty obligations. Some treaty bodies have pre-session meetings during which they adopt a list of questions that the State will be required to answer. The report is then examined during a public session of the treaty body, in the presence of a delegation of the State party, which considers all information provided by the State and information received from other sources. Based on this process, treaty bodies adopt concluding observations, which refer to the positive aspects of the State's implementation and areas where they recommend the State to take further action.

1.1.1. Pre-reporting procedure

NHRIs can play an important role in the pre-reporting process. In particular they can discuss the reporting process with their Government and help ensure that the State's report is submitted on time.

*The **Uganda Human Rights Commission** included in previous annual reports a list of overdue reports to United Nations treaty bodies. As this backlog was the result of a lack of Government resources, the Commission, OHCHR and UNDP worked cooperatively with the authorities to build their capacity to prepare the reports.*

1.1.2. Reporting procedure

The role of NHRIs in the reporting procedure can differ from one treaty body to another. However, as a minimum, NHRIs can:

- submit their own independent report on the State's compliance with, and implementation of, the treaty
- attend the session when the State reports to the treaty body.

30 The individual complaints procedure has not yet been accepted by a sufficient number of States Parties to make it operational (February 2010).

31 This Committee has not yet been established (February 2010).

State reports and shadow reports

NHRIs may contribute information for inclusion in the State's reports to treaty bodies. Increasingly treaty bodies expect that NHRIs will be consulted in the preparation of reports by States parties. However, NHRIs should refrain from preparing a report on behalf of the State, as it is crucial that they do not compromise their standing as an independent, oversight body.

NHRIs can also draft an alternative report (known as a "shadow report") and submit this directly to the treaty body. NHRIs might also include comments on the report prepared by the Government, if there is sufficient time to do so. State reports are supposed to be made public six weeks before the treaty body meets.

A shadow report can follow the structure of the Convention, considering each article and highlighting areas of progress or concern regarding implementation of its provisions by the State. It can also focus on particular issues. However, the report should be balanced and consider both positive and negative developments. If the Government has taken constructive steps towards the promotion and protection of human rights, these should be acknowledged.

Shadow reports should also suggest questions and issues that the treaty body can raise in discussion with the State, as well as propose recommendations that the treaty body could consider making to the State in its concluding observations.

Other possible contribution

Some treaty bodies allow NHRIs additional opportunities to participate in the reporting process, such as:

- holding a private meeting with the treaty body

*The **Office of the Public Defender (Ombudsman) of Georgia** participated in a meeting with the Human Rights Committee in November 2007.*

- submitting information to assist with drafting the written list of issues sent to the State before the session

***Defensor de Pueblo de Bolivia** submitted a report regarding the list of issues prior to a session of the Committee on Migrants Workers in November 2007.*

- making a statement during the plenary session

*In August 2005, the **Zambian National Human Rights Commission** made an oral presentation to the Committee for the Elimination of Racial Discrimination, a practice followed by other NHRIs (**Northern Ireland**, 2005; **South Africa**, 2006; **Republic of Korea** and **New Zealand**, 2007; **Philippines**, 2008). The recommendations proposed by the NHRIs had significant influence on the development of concluding observations.*

*At a session of the Committee for the Elimination of Discrimination against Women, the **Northern Ireland Human Rights Commission** was allocated a specific time slot after the NGO session and was provided with different seating arrangements from State and NGO delegations.*

1.1.3. Follow-up to the reporting procedure

NHRIs have a key role to play in the follow-up to the reporting process. They can translate, publish and disseminate the concluding observations adopted by the treaty bodies. They can also encourage the Government to implement the recommendations made by the treaty body, as well as monitor the Government's progress in this area.

In 2004, the **German Institute of Human Rights** organized a series of four follow-up conferences with key national stakeholders to discuss the implementation of the concluding observations adopted on Germany by four treaty bodies (Human Rights Committee, Committee against Torture, Committee on the Rights of the Child and Committee on the Elimination of Discrimination against Women).³² Minutes and recommendations adopted by the conferences were distributed to key actors and to treaty bodies.

In 2006, the **Canadian Human Rights Commission** urged the Government to implement the concluding observations of the Human Rights Committee and repeal a section from the Canadian Human Rights Act.

1.2. Role of NHRIs and treaty body complaints procedure

1.2.1. Treaty bodies complaints procedure

Five Committees/treaty bodies³³ can consider complaints from people who believe their rights have been violated under the relevant treaty. Complaints may be brought only against States which have recognized the competence of the Committee to consider complaints from individuals. Depending on the treaty concerned, the State party recognizes the Committee's competence by making a declaration under an article of the treaty or by becoming a party to an Optional Protocol.

Anyone can lodge a complaint with a Committee against a State that satisfies these conditions. A complaint may also be brought on behalf of another person if his or her consent is obtained or if the author can justify acting without such consent. There is no formal time limit for filing a complaint. However, it is preferable for complaints to be submitted as soon as possible after exhausting domestic remedies. In urgent situations the committees may request through the State party to grant "interim measures" to prevent "irreparable harm". Such requests are normally issued to prevent actions that cannot be undone, like the execution of a death sentence or the deportation of an individual facing risk of torture.

Complaints are considered on the basis of the written information supplied by the complainant, or his or her representative, and the State party in closed meetings. The committees' decisions on individual complaints are included in their annual reports. If a violation is found, the State is requested to provide an effective remedy and respond to the Committee within a set deadline. The remedy recommended will depend on the violations found. The State has a good faith obligation to implement the Committee's findings and grant appropriate remedies.

A member of each committee, called a Special Rapporteur, regularly reports to it on the implementation of each decision and this is published in the committees' reports. The Special Rapporteur encourages the State to implement the decision of the Committee by issuing specific requests, writing regular reminders for information, consulting with representatives of the State and, on occasion, visiting the country concerned. The Human Rights Council also encourages States to implement the committees' decisions through the universal periodic review.

Although some States do not comply with the decisions of committees, a significant number have granted a variety of remedies to complainants following the decisions. Many have provided compensation, released complainants from prison, reopened criminal cases, stopped the deportation of individuals, granted residence permits, commuted death sentences and amended legislation and policies which were held to contravene the treaties.

32 See: *Examination of State Reporting by Human Rights Treaty Bodies: An Example of Follow-Up at the National Level by National Human Rights Institutions* by Frauke Seidensticker, German Institute for Human Rights (2005).

33 The Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee against Torture, the Committee on the Elimination of Discrimination against Women, and the Committee on the Rights of Persons with Disabilities. In the future, the Committee on Migrant Workers and the Committee on Enforced Disappearances may also consider individual complaints.

2.1.2. Role of NHRIs in the treaty body complaints procedure

If the State has accepted the individual complaints procedure, NHRIs can raise public awareness about this provision of the treaty and can consider assisting individuals to submit complaints. Depending on their mandate, NHRIs may also be able to submit cases to treaty bodies on behalf of individuals.

They can disseminate decisions of treaty bodies concerning individual complaints, as well as follow-up on these decisions and try to ensure that the Government implements them.

The conclusions of these treaty bodies also provide an important source of jurisprudence that can be useful for the work of NHRIs.

*In 2007, the **Australian Human Rights Commission** drew on jurisprudence of the Human Rights Committee in its finding that 58 federal laws were in breach of Australia's human rights obligations.*

WATCH

Go to the *Preventing Torture* CD-Rom to watch more on how NHRIs can engage effectively with the international human rights system on issues concerning torture and ill-treatment.

Click on 'Feature materials' and then select 'Item 9 – NHRIs: Working with the international human rights system'.



1.3. NHRIs and the Committee against Torture

The Convention against Torture establishes the Committee against Torture, a body that monitors the performance of States parties in meeting their obligations under the treaty. The Committee has a broad mandate. Not only does it examine reports submitted by States parties, it can also carry out confidential inquiries into allegations of systematic torture, examine individual complaints (where States have accepted this procedure) and make general comments to help States, NHRIs and others interpret and understand the treaty.

1.3.1. State reporting procedure

States parties have an obligation to submit a report to the Committee against Torture every four years, setting out what steps they have taken to implement their obligations under the treaty. As with reports prepared for other treaty bodies, NHRIs may be consulted in the preparation of the State party's report.

NHRIs can also submit their own shadow report to the Committee, as well as provide information for the written list of issues sent to the State party prior to consideration of the report. The list of issues is adopted one session prior to the session during which the Committee considers the State's report.

The Committee's website includes information on the participation of NHRIs (and NGOs) in the reporting process.³⁴

Since 2005, NHRIs that have submitted written information may also have a private meeting with the Committee a day prior to the dialogue with the State delegation. These one-hour briefings provide NHRIs with the opportunity to highlight and update the Committee on key issues.

³⁴ See: www2.ohchr.org/english/bodies/cat/follow_up_ngo.htm.

NHRIs cannot intervene during the Committee's examination of the State's report and its dialogue with the State delegation. However, as these meetings are public, NHRIs may attend as observers, even if they have not submitted written information.

NHRIs can also play an important role by disseminating the Committee's concluding observations to the general public, as well as key stakeholders and relevant authorities. They can consider hosting follow-up meetings to discuss the concluding observations and strategies to implement the recommendations made by the Committee. NHRIs can also monitor and assist the State to implement the recommendations made by the Committee.

The Committee adopted a follow-up procedure in 2003 which requires States parties to provide information on the steps they have taken to implement its recommendations. NHRIs may also submit written information to the Committee under this follow-up procedure.

*In November 2008, the **Kenya National Commission on Human Rights** submitted a report commenting on the Government's initial report to Committee. Representatives from the Commission also attended the session, which was noted in the concluding observations.*

*In May 2009, the **New Zealand Human Rights Commission** submitted a shadow report and had a private meeting with the Committee prior to the dialogue session with the State delegation.*

WATCH

Go to the *Preventing Torture* CD-Rom to watch **Rosslyn Noonan, ICC Chair and Chief Commissioner with the New Zealand Human Rights Commission**, discussing the importance of NHRIs engaging with the Committee against Torture.

Click on 'Feature materials' and then select 'Item 10 – Engaging with the Committee against Torture'.



1.3.2. Committee's inquiry procedure

The Committee against Torture can carry out a confidential inquiry into torture if it receives reliable information that torture is being systematically practised in a certain country. Such an inquiry might include a visit to the country concerned.

Although the report of the inquiry will be confidential, a summary of the inquiry report is provided in the Committee's annual report. In addition, the very fact that an investigation takes place can by itself have a positive impact. A limited number of countries do not want the Committee to conduct such inquiries and have therefore submitted a reservation to the relevant article – article 20 – when ratifying the Convention against Torture.

Following the country visit, the Committee will determine whether or not the practice of torture is systematic. The Committee has developed the following criteria to establish what is meant by "systematic":

- Torture is habitual, widespread and deliberate in at least a considerable part of the territory.
- This may or may not be the result of direct Government policy.
- Failure to enact laws preventing torture may also add to the systematic nature of torture.

Role of NHRIs regarding inquiry procedure

NHRIs can provide the Committee with reliable information about the systematic use of torture in the country and also provide support to assist with its inquiries. Prior to and during the visit, NHRIs can meet with the delegation and provide additional information, mindful of the confidential nature of the inquiry. This information could include suggestions regarding places of detention to visit, allegations of torture and issues that should be raised by the Committee with the State.

1.3.3. Individual complaints

It may be possible for the Committee against Torture to hear individual complaints if the relevant State has accepted this procedure under article 22 of the Convention against Torture. If this is the case, an individual can bring a complaint of torture or ill-treatment. Alternatively, the person's relatives, a designated representative or the NHRI can bring the complaint if the victim is unable to do so. There is no time limit on making a complaint. However, the alleged violation must have taken place after the State accepted the complaints procedure.

In addition to allegations of torture or ill-treatment, an individual may also complain if the State has failed to meet its obligations under the Convention against Torture. The most serious complaints might involve:

- a threat to expel someone to a country where they are in danger of torture
- a failure to promptly and effectively investigate an allegation of torture
- a failure to grant redress to a victim of torture
- use of a statement made as a result of torture in court proceedings.

The Committee will not investigate a complaint when:

- the State has not accepted the individual communications procedure
- the communication is anonymous
- the communication is “an abuse of the right of submission of such communications”
- the matter complained of is not covered under the Convention against Torture
- the same matter has been, or is being, examined by another international procedure
- domestic remedies have not been exhausted (domestic remedies might be considered to be exhausted when procedures are unreasonably prolonged).

Role of NHRIs regarding individual complaints

NHRIs can lobby their States to accept the individual communications procedure under article 22 of the Convention against Torture. If it has been accepted, NHRIs can raise public awareness about how the procedure works and what is involved in making a complaint. They can also assist individuals to submit complaints to the Committee, as well as follow-up the examination of complaints and monitor the response of the State.

1.3.4. General comments

The Committee can adopt general comments to help States interpret their obligations under the Convention. To date it has adopted general comments in relation to article 2 and article 3 of the Convention.

NHRIs may be consulted on draft general comments and encouraged to submit their responses to the Committee. They can also recommend that the Committee consider an issue where a general comment is required or would be useful.

In 2007, the Committee wrote a letter to the ICC Chair requesting comments from NHRIs on the draft general comment on article 2. A number of NHRIs reviewed the draft general comment and submitted responses to the Committee.

2. MECHANISMS UNDER THE UNITED NATIONS HUMAN RIGHTS COUNCIL

The Human Rights Council is a permanent United Nations body aimed at strengthening the promotion and protection of human rights around the world. It was created in 2006 to replace the Commission on Human Rights. The new Council has been given a clear mandate to undertake its work based on the principles of universality, equality, non-selectivity and objectivity.

The Human Rights Council is composed of 47 Member States elected by the General Assembly through secret ballot. The most important and innovative aspect of the Council is the universal periodic review, a process which examines the human rights situation of all Member States on a regular basis. The Human Rights Council also assumes the special procedures created under the former Commission on Human Rights.

NHRIs that have been accredited as complying with the Paris Principles (“A status”) have been recognized with the following participation rights in the Human Rights Council:

- separate accreditation status (different from States and from NGOs)
- the right to speak under all items of the Council’s agenda
- the right to make written statements for inclusion in the official record of meetings
- dedicated seating.



2.1. Special procedures

The fact-finding and investigatory mechanisms of the Human Rights Council are collectively known as the special procedures. These include Special Rapporteurs, Special Representatives of the Secretary-General and working groups mandated by the Human Rights Council with the aim of documenting human rights violations on particular themes or country situations.

The strength of these special procedures lies in their independence; mandate holders are human rights experts appointed in an individual capacity.

The following special procedures are of particular relevance for the prevention of torture:

- Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
- Working Group on Arbitrary Detention
- Working Group on Enforced or Involuntary Disappearances
- Special Rapporteur on extrajudicial, summary or arbitrary detention
- Special Rapporteur on the promotion and protection of fundamental freedoms while countering terrorism
- Special Rapporteur on violence against women, its causes and consequences
- Representative of the Secretary-General on the human rights of internally displaced persons

In relation to torture prevention, the most important of these special procedures is the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

2.1.1. Special Rapporteur on Torture

The Special Rapporteur on Torture is an independent expert who reports to the Human Rights Council and to the General Assembly.

The role of the Special Rapporteur is to engage Governments in dialogue about credible allegations of torture and to conduct fact-finding visits.

Dialogue

The dialogue that the Special Rapporteur establishes with Governments is based on two types of communications.

- **Urgent appeals** request the Government to respond urgently to information that an individual may be at risk of torture. This is a non-accusatory procedure, which generally requests the Government to take certain steps to prevent possible incidents of torture without adopting a position on the alleged risks.
- **Letters of allegations** bring to the attention of the Government cases of individuals or groups alleging torture or ill-treatment. The Government is requested to clarify the substance of the allegations and to forward information on the status of any investigation. Depending on the reply, the Special Rapporteur may decide to conduct further inquiries or make recommendations.

It is important to note that, unlike other United Nations human rights mechanisms, it is not necessary for a victim to exhaust all domestic remedies before submitting allegations of torture to the Special Rapporteur.

The Special Rapporteur's annual report, which is provided to the Human Rights Council and to the General Assembly, includes an overview of all communications sent and received during the year. The report may also examine key thematic issues – such as impunity, counter-terrorism measures, guarantees for persons deprived of their liberty and non-refoulement – and propose recommendations.

Fact-finding visits

The Special Rapporteur does not have an automatic right to undertake a fact-finding visit to a country (unlike the Subcommittee on Prevention of Torture established under the Optional Protocol). Instead, the Special Rapporteur can visit only following an invitation from a Government.



During the fact-finding visit, the Special Rapporteur will have contact with a wide range of stakeholders, such as Government officials, NGOs, alleged victims and relatives, and can visit places of detention, such as prison and police stations. The report of the fact-finding visit includes conclusions on the country situation and makes recommendations to the Government.

WATCH

Go to the *Preventing Torture* CD-Rom to watch Professor Manfred Nowak, discussing his role as United Nations Special Rapporteur on Torture.

Click on 'Feature materials' and then select 'Item 8 – The role of the United Nations Special Rapporteur on Torture'.



2.1.2. Contribution of NHRIs to the work of the Special Rapporteur on Torture

NHRIs are key dialogue partners for the Special Rapporteur. They can provide the Special Rapporteur with reliable information, assist with preparations for a fact-finding visit, monitor implementation of recommendations and undertake other follow-up action following a visit.

Providing information

NHRIs can provide an independent and credible source of information for the Special Rapporteur. They can prepare information on individual cases or on the broader human rights situation that could form the basis of the Special Rapporteur's communications to the Government. They can also draw attention to issues of concern in legislation or draft legislation.

In addition, NHRIs can suggest specific issues or topics to be the subject of a thematic study by the Special Rapporteur.

Fact-finding visit

NHRIs can recommend that the Government invite the Special Rapporteur to undertake an official fact-finding visit. In preparing for a country visit, the NHRI should provide a report of relevant information to the Special Rapporteur, as well as propose suitable interlocutors.

During the visit, the Special Rapporteur will usually meet representatives of the NHRI. This provides an important opportunity for the NHRI to present recent and updated information regarding torture and other forms of ill-treatment in the country. It also allows the NHRI to advise the Special Rapporteur on particular places of detention to visit.

Following up on reports and recommendations

As relay mechanisms at the country level, NHRIs have an important role to play in following-up on the report issued by the Special Rapporteur following the fact-finding visit. NHRIs should translate, if necessary, and widely disseminate the report to all key stakeholders. Importantly, they can also monitor steps taken by the State to implement recommendations made by the Special Rapporteur.

NHRIs can organize follow-up seminars or roundtable discussions on the report and its recommendations, as well as draw on the report when preparing advice, recommendations and reports to the Government, Parliament or relevant authorities. It can also be a valuable resource for NHRIs when they prepare their strategic work plan or formulate a national human rights action plan.

Finally, NHRIs can regularly communicate with the Special Rapporteur and provide information on progress that has occurred in the implementation of recommendations from the report.

*Following a 2006 visit to **Paraguay**, which included a meeting with the Ombudsman (**Defensor del Pueblo**), the Special Rapporteur issued the following recommendation: “The Office of the Ombudsman is encouraged to assume a more proactive role in the probe of torture allegations and initiation of prosecutions of those responsible, as well as ensuring victims’ right to compensation. The Special Rapporteur emphasizes the importance of the Office’s independence when it comes to human rights protection, and calls upon all actors involved to comply with this requirement” (A/HRC/7/3/Add.3).*

2.2. Universal periodic review

2.2.1. The UPR procedure

The UPR is a new mechanism, in operation since 2008, which examines the human rights records of all United Nations Member States once every four years.

The review is based on three types of information:

- a report submitted by the State, in writing and oral presentation
- a compilation of all United Nations and treaty body documents, comments and recommendations regarding the State, which is prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR)
- a summary of credible and reliable information provided by national stakeholders such as NHRIs, NGOs, civil society groups and academic institutions, which is also prepared by OHCHR.

Each State is reviewed during a three-hour session of a working group of the Human Rights Council, consisting of all 47 Member States of the Council. The review takes the form of an interactive dialogue between the State delegation and the members of the Council, as well as any other State. The review addresses a broad range of human rights topics and can include discussion of the State’s laws, policies and practices in relation to torture and other forms of ill-treatment.

A report is then prepared by a troika of three Member States of the Council and discussed in a half-hour session of the working group. The report of the working group is then adopted by the Human Rights Council during its next session, following a one-hour discussion in a plenary meeting of the Council.

2.2.2. The role of NHRIs in the UPR

NHRIs have been recognized with a specific role in the UPR procedure. They provide an important source of independent information on the country's human rights situation, including the situation regarding torture and ill-treatment of persons deprived of their liberty. It is therefore very important that NHRIs make use of their opportunity to contribute to the UPR process.

Preparation for the review

Given their mandate, NHRIs are able to collect and compile independent, reliable and well-documented information on the human rights situation in their country. This information can form the basis of their report to the UPR.

The Human Rights Council has issued detailed guidelines regarding the structure and length of reports, along with deadlines for their submission.³⁵ NHRIs can, at the least, submit their latest annual report or relevant thematic reports.

The documents submitted by NHRIs and other national stakeholders are available in full on the website of the Human Rights Council and are summarized in a compiled format prepared by OHCHR. The report can also be publicly presented at the national level in preparation of the review.

In addition, NHRIs can propose questions and issues that Member States might raise during the review of the State, as well as suggest concrete recommendations that the UPR procedure could make to the State.

Review of the State

The human rights situation is reviewed by the working group of the Human Rights Council, which takes the form of an interactive dialogue with the State delegation. This dialogue is open only to Member and Observer States of the Human Rights Council. NHRIs are not able to take part in the dialogue, although they are able to attend the session as observers. This provides them with a further opportunity to lobby Member States and propose questions and recommendations.

Adoption of the report

NHRIs can participate in the general debate on the report of each State review, which occurs during the following session of the Human Rights Council. As NHRIs cannot contribute to the dialogue during the review of the State, it is important that they make use of opportunity to contribute to the discussion at this plenary session. In fact, many NHRIs are already engaging constructively in this forum to raise issues and propose concrete recommendations.

Follow-up on recommendations

The role of NHRIs goes beyond participation in the UPR reporting and review process. As key national stakeholders, they are uniquely placed to follow-up on the implementation of recommendations made by the Human Rights Council. NHRIs can engage with the State and civil society on the most appropriate and effective ways to monitor implementation and follow-up to the UPR procedure.

In addition, NHRIs are well placed to disseminate the outcome of the UPR process at the national level by developing relevant education and awareness-raising programmes.

*Azerbaijan participated in the UPR session held in February 2009. Prior to this, the **Commissioner for Human Rights (Ombudsman)** initiated a series of awareness-raising activities in the country, including meetings with relevant authorities and civil society and a one-day workshop, which included expert participation from the Irish Human Rights Commission and the OHCHR Regional*

35 See: www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx.

Coordinator for the South Caucasus. The Ombudsman also translated into Azeri all relevant United Nations information material on the UPR process.

The Ombudsman prepared a report to the UPR, based on a broad and inclusive consultation process. One-day meetings with all relevant stakeholders were organized in 2008, across each of the country's 54 districts. The Ombudsman report was prepared according to the OHCHR guidelines and was referred to extensively in the summary document prepared by OHCHR.

During the review of Azerbaijan, 58 delegations made statements. The draft report adopted at the end of the review included 32 recommendations. The final report was adopted by the Human Rights Council in June 2009, with the Ombudsman attending the session. The Ombudsman's Office intends to translate the recommendations into Azeri and organize follow-up consultations with the authorities on their implementation.

2.3. Human Rights Council complaint procedure

2.3.1. The complaint procedure

A new complaint procedure has been established under the Human Rights Council to address consistent patterns of gross and reliably attested violations of all human rights, which occur in any part of the world and under any circumstances.

Economic and Social Council resolution 1503 from 1970 provides the basis for the establishment of this new procedure, which retains its confidential nature. It also requires a complainant to exhaust all domestic remedies before lodging a complaint with the Human Rights Council. The complaint procedure does not result in an individual judgement or an individual remedy, rather it aims instead to address systemic patterns of human rights violation.

The complaint procedure establishes two distinct working groups: the Working Group on Communications and the Working Group on Situations.

The Working Group on Communications, composed of five independent experts, is given the role to assess the admissibility and the merits of communications it receives. All admissible communications and recommendations are transmitted to the Working Group on Situations.

The Working Group on Situations is composed of five members appointed by regional groups from Members States of the Human Rights Council. It presents the Council with a report on consistent patterns of gross and reliably attested violations of human rights and makes recommendations on the course of action to take. The Council examines reports of the Working Group on Situations in a confidential manner and then takes a decision concerning each situation brought to its attention.

2.3.2. The contribution of NHRIs to the complaints procedure

NHRIs can raise awareness at the national level about the complaints procedure, how it works, possible outcomes and the fact that it is a confidential process. NHRIs can also submit information when they have evidence of consistent patterns of human rights violations, such as torture and ill-treatment.

3. REGIONAL COMPLAINTS MECHANISMS

Three regional systems for the protection of human rights – the European, African and Inter-American systems – have adopted a two-body mechanism for the examination of individual complaints, consisting of a Commission and a Court.

The Commissions are quasi-judicial bodies, with the power to issue decisions and recommendations. The Courts have the power to issue legally enforceable judgments. Reforms to the European system in 1999 mean that complaints in this jurisdiction are now made directly to the European Court of Human Rights.

3.1. Overview of regional complaint mechanisms

3.1.1. The European system

Individual complaints are submitted directly to the European Court of Human Rights.

For the Court to consider a complaint:

- it must be covered by the European Convention
- domestic remedies must be exhausted (or unreasonably prolonged)
- it must be submitted within six months of a decision by domestic authorities
- it must not have been considered by another international complaints procedure.

3.1.2. The African system

The African Commission on Human and Peoples' Rights was set up to monitor compliance with the African Charter on Human and Peoples' Rights. It can also examine individual or collective complaints.

For the Commission to consider a complaint:

- it must not be anonymous
- it must be covered by the African Charter
- it must not be based exclusively on reports in the mass media
- domestic remedies must be exhausted
- it must be submitted within a reasonable period of time once domestic remedies have been exhausted.

In 1998, a Protocol to establish an African Court of Human Rights was adopted. This came into force in 2004, but its functioning has been delayed by the decision to merge it with the African Court of Justice of the African Union.

The Court will be able to examine complaints submitted by:

- the Commission
- the State party which has lodged a complaint to the Court
- the State party against which a complaint has been lodged
- the State party whose citizen is a victim of a human rights violation
- African intergovernmental organizations.

The African Court will also be able to examine complaints from NGOs and individuals if the State concerned has made a declaration to accept this.

3.1.3. The Inter-American system

The Inter-American human rights system has two procedures: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

Complaints to the Commission can be based on the American Convention on Human Rights or on fundamental human rights standards, especially the American Declaration on the Rights and Duties of Man. The latter would apply if the State involved in the complaint was not a party to the Convention.

In addition, the Commission has responsibility for monitoring adherence to the Inter-American Convention to Prevent and Punish Torture.

Complaints can be referred to the Court only if:

- they concern a State party to the Convention, and
- the State party has accepted the jurisdiction of the Court.

3.2. The role of NHRIs in the regional complaint mechanisms

NHRIs can make use of regional complaints mechanisms in a number of ways. They can assist individuals to submit complaints or they can file cases directly. They can also present *amicus curiae* briefs. In addition, NHRIs can seek affiliated or accredited status before regional mechanisms to present evidence and advocate their views.

*In April 2008, the **Irish Human Rights Commission, on behalf of the European Group of NHRIs**, submitted an *amicus curiae* brief to the European Court of Human Rights in the case of *DD v. Lithuania*. This was the first such application before an international Court made by a regional grouping of NHRIs.*

*Following on from this submission, the European Group of NHRIs developed a procedure for monitoring cases before the European Court of Human Rights. Cases involving priority areas of concern dealing with systemic human rights issues are now tracked and reviewed on a periodic basis, helping identify strategic cases suitable for an *amicus curiae* intervention. Where a case meets these criteria, the Irish Commission on Human Rights, as Chair of the regional group, refers the case to the relevant NHRI of the respondent State, or to the European Group if no NHRI exists in that country.*

NHRIs also have a role to raise public awareness of the outcome of complaints at the national level and to disseminate case law to legal and judicial stakeholders. In addition, NHRIs should closely monitor the implementation of the decisions and judgements by the authorities.

*The **Guatemalan Ombudsman** (*Procurador de los Derechos Humanos*) is assisting individuals to bring cases to the Inter-American Commission on Human Rights.*

4. VISITING MECHANISMS

Most international mechanisms are reactive and intervene only after torture or ill-treatment has already occurred. Recently, however, mechanisms have been established that perform an important preventive role, especially through a system of visits by independent experts to places of detention.

4.1. Optional Protocol to the Convention against Torture

The Optional Protocol to the Convention against Torture was adopted by the United Nations General Assembly in December 2002 and came into force in June 2006.

The Optional Protocol establishes a system of regular visits to all places of detention undertaken by two types of mechanisms:

- the Subcommittee on Prevention of Torture
- “national preventive mechanisms” (NPMs) established in each State that has ratified the Optional Protocol.

The Optional Protocol breaks new ground in the human rights system for three main reasons.

Firstly, the emphasis is placed firmly on prevention, through a proactive system of visits to place of detention, rather than reacting once violations have occurred.

Secondly, it establishes a complementary approach between preventive efforts at the international and the national level, creating an innovative “triangular” relationship between State authorities, the Subcommittee on Prevention of Torture and the NPM.

Finally, the approach is based on working cooperatively with States to prevent violations and to improve the protection of persons deprived of their liberty, rather than on public condemnation. States are required

to enter into an ongoing dialogue with both the Subcommittee and the NPM on the implementation of recommendations.

Given the importance of the Optional Protocol in the field of torture prevention, chapter 10 deals specifically with the issue of NHRIs and the Optional Protocol. The following information provides some introductory information about the Optional Protocol.

4.1.1. The Subcommittee on Prevention of Torture

The Subcommittee on Prevention of Torture is an expert body composed of 10 independent members, although the number of members will increase to 25 in October 2010.³⁶

The Subcommittee has a dual mandate to visit places of detention in States that have ratified the Optional Protocol and to provide advice and assistance regarding the establishment of NPMs in those countries.

One of the innovative features of the Optional Protocol is that the Subcommittee can carry out country visits and inspect places of detention without the prior authorization of the State.

During these visits, the Subcommittee will engage in dialogue with State authorities and with the NPM with a view to strengthening the protection of persons deprived of their liberty from torture and ill-treatment. Country visits also provide a unique opportunity for the Subcommittee to engage directly with other relevant national actors, in particular NHRIs and civil society.

During the country visit, the Subcommittee on Prevention of Torture will make unannounced visits to particular places of detention. The aim is to analyse the root causes of torture and ill-treatment, identify indicators that may point to possible future abuses and discuss possible safeguards.

Following the country visit, the Subcommittee will draft a report and prepare recommendations, which are submitted in confidence to the Government. States can, however, authorize the publication of the Subcommittee's report. For instance, the Subcommittee on Prevention of Torture visited the Maldives in December 2007 and the Government made the Subcommittee's report public immediately after receiving it in February 2009. Sweden, which the Subcommittee visited in April 2008, authorized publication of the report in July 2008, as well as publishing its reply to the Subcommittee (January 2009).

If a State fails to cooperate, the Subcommittee on Prevention of Torture can ask the Committee against Torture to make a public statement or to publish the report.

The Subcommittee also publishes an annual report, which is publicly available. In its first annual report, adopted in 2008, the Subcommittee provided an overview of its activities and prepared "Preliminary guidelines for the ongoing development of national preventative mechanisms".

The Optional Protocol also provides for the Subcommittee on Prevention of Torture to cooperate with international and regional bodies in its work.

WATCH

Go to the *Preventing Torture* CD-Rom to watch **Victor Rodriguez Rescia**, Chair of the Subcommittee on Prevention of Torture, discussing the Optional Protocol to the Convention against Torture and the role of the Subcommittee.

Click on 'Feature materials' and then select 'Item 11 – The role of the Subcommittee on Prevention of Torture.'



36 Article 5.1 of the Optional Protocol provides that the number of members of the Subcommittee increases to 25 following ratification by 50 States parties. This occurred in September 2009 when Switzerland ratified the Optional Protocol.

4.1.2. National preventive mechanisms

A State that has ratified the Optional Protocol is required to designate or establish one or several national preventive mechanisms (NPM). The Optional Protocol contains no specific requirement or guidance regarding the structure of NPMs.

A State may therefore:

- set up an entirely new Optional Protocol-based mechanism
- designate an existing body (for example, the NHRI or ombudsman)
- designate several mechanisms, which can include existing or new bodies.

Chapter 10 provides a detailed analysis of some of the challenges faced by NHRIs that are designated as a NPM.

NPMs have a mandate to conduct regular, unannounced visits to all places where persons are deprived of their liberty. They can also present observations on draft or existing legislation relevant to the prevention of torture. NPMs are also required to prepare an annual report of their activities, which should be made public and disseminated by the authorities.

NPMs should be independent from the State and its authorities, both from a financial and a functional point of view. The mandate of NPMs should be reflected in their composition. They should be gender-balanced and include representatives of minority groups, as well as members from a variety of professional backgrounds.

4.1.3. Powers to visit places of detention

For the first time in an international treaty, the Optional Protocol provides powers and guarantees for NPMs and the Subcommittee on Prevention of Torture to carry out visits to places of detention.

Under the Optional Protocol, both the Subcommittee and NPMs have the authority to visit any place where persons are deprived of their liberty, such as:

- prisons
- police cells
- pretrial detention centres
- juvenile detention centres
- administrative detention centres
- military detention facilities
- detention centres for migrants and asylum-seekers
- temporary detention points in ports or airports
- border checkpoints
- medical institutions
- psychiatric institutions.

During these visits they are able to:

- interview any detainee in private
- interview any relevant officials
- interview family members of a detainee
- examine the records of all detainees
- examine documents, such as disciplinary rules and prison records
- inspect the entire premises of the place of detention.

4.2. Regional visiting bodies

4.2.1. The European Committee for the Prevention of Torture

The European Convention for the Prevention of Torture, adopted by the Council of Europe in 1987, establishes the Committee for the Prevention of Torture.

The European Committee for the Prevention of Torture has a mandate to visit any place of detention in all Member States of the Council of Europe. It can carry out two types of visits:

- periodic visits, which take place on a regular, five-year basis; the alphabetical list of countries to be visited the following year is published at the end of the previous year
- ad hoc visits, which take place in response to a specific event and commonly occur at short notice.

The European Committee can visit, at any time, any place where people are deprived of their liberty. This includes places such as prisons and police cells, as well as psychiatric hospitals and homes for children and older people. It can enter any institution that it chooses without restriction. It can communicate freely and confidentially with people deprived of their liberty and with anyone else who may be able to provide relevant information.

After its visit, the European Committee will prepare a report with recommendations, which is submitted to the State for its response. Although this reporting process initially occurred confidentially, it has now become accepted that States will authorize publication of the reports. It can also issue a public statement if the Government does not cooperate (and has done so on five occasions).

In its general report of activities, the European Committee has also adopted a series of standards on issues such as police custody, imprisonment, health care services in prisons, involuntary placement in psychiatric establishments, young people deprived of their liberty, safeguards for irregular migrants deprived of their liberty and combating impunity.

4.2.2. Visiting mechanisms in the Americas

The Inter-American Commission on Human Rights can carry out country visits to States parties to the Inter-American Convention on Human Rights in order to investigate specific cases of human rights violations.

In 2004, the Commission established the position of the Special Rapporteur on the Rights of Persons Deprived of their Freedom, who has the right to carry out visits to places of detention “without prior notice to prison authorities”.

The Special Rapporteur can also issue public reports and recommendations regarding a particular place of detention, or a specific country or the region, as well as undertake follow-up visits.

4.2.3. The Special Rapporteur on Prisons and Conditions of Detention in Africa

This position was established by the African Commission on Human and Peoples’ Rights in 1996. The Special Rapporteur has the mandate to examine the state of prisons in Africa and to make recommendations to improve conditions. An annual report of the Special Rapporteur’s activities is prepared and presented to the Commission.

4.2.4. Contribution of NHRIs to regional visiting bodies

NHRIs can provide independent information regarding the situation of torture in their country on a regular basis to visiting bodies, or in advance of a country visit when this is known. Regional bodies usually meet with NHRIs during their visit. This provides an important opportunity to present recent information and exchange views about particular needs and priorities regarding torture prevention. NHRIs are also

uniquely placed to follow-up on the implementation of recommendations made by visiting bodies, provided the reports are published.

*During its first periodic visit to Montenegro in September 2008, the Committee for the Prevention of Torture held a meeting with the **Human Rights and Freedoms Ombudsman of the Republic of Montenegro**.*

*During a visit to Ethiopia in 2004, the Special Rapporteur on Prisons and Conditions of Detention in Africa met the **Ethiopian Human Rights Commission**, which also provided some logistical assistance prior to the visit.*

KEY POINTS: CHAPTER 7

NHRIs can contribute to the effective work of international and regional bodies. They can submit independent and credible information, participate in review procedures and follow up on recommendations.

Interaction with the following mechanisms is important for the prevention of torture and ill-treatment:

- **United Nations Human Rights Council**, in particular the universal periodic review
- **Treaty bodies**, in particular the Committee against Torture
- **Special procedures**, in particular the United Nations Special Rapporteur on Torture
- **Regional complaints mechanisms**
- **Visiting mechanisms** at the international level, such as the Subcommittee on Prevention of Torture, and the regional level.



FURTHER READING

IN THE CD-ROM

The Role of National Human Rights Institutions in the United Nations Treaty Body Process; Marei Müller and Frauke Seidensticker, German Institute for Human Rights; 2007

National Human Rights Institutions and the UN Human Rights Council; ICC Position Paper Volume I (27 June 2006)

National Human Rights Institutions and the Special Procedures and Universal Periodic Review Mechanism; ICC Position Paper Volume II (22 September 2006)

Engagement of National Human Rights Institutions with the Universal Periodic Review Mechanism; ICC Position Paper Volume III (Draft, March 2007)

Engagement of National Human Rights Institutions with the Special Procedures; ICC Position Paper Volume IV (Draft, March 2007)

Working with the United Nations Human Rights Programme: A Handbook for Civil Society; OHCHR; 2008



Chapter 8: Monitoring places of detention

KEY QUESTIONS

- What is the difference between preventive and investigative monitoring?
- What steps should be taken to prepare for a visit to a place of detention?
- What are the different steps involved in carrying out a visit?
- What type of reporting is required following a visit?



LEGAL BASIS FOR NHRI INVOLVEMENT

Paris Principles

Competence and responsibilities

3. A national institution shall, inter alia, have the following responsibilities:

- (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral (...). These opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (ii) Any situation of violation of human rights which it decides to take up
 - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and where, necessary, expressing an opinion on the positions and reactions of the government.
- (b) To promote and ensure the harmonization of national legislation, regulations and practices with the international instruments to which the State is Party and their effective implementation.



ACJ Reference on Torture

Alternative measures to combat torture

NHRIs should work with the Governments to improve the current infrastructure of detention facilities so as to ensure that human dignity is respected.

Monitoring

NHRIs should also take a proactive role in monitoring detention facilities. In order to facilitate this role, NHRIs (and any other monitoring agencies) should have free and unfettered access to all places of detention, the ability to interview persons in private and full access to all relevant documentation. The monitoring team should be multi-disciplinary and include lawyers and medical personnel.

INTRODUCTION

While the Paris Principles do not expressly mention “monitoring” as a key mandate of NHRIs, one of their fundamental roles is to investigate violations of human rights, including those that occur in places of detention.

NHRIs can monitor places of detention as part of an overall investigation strategy or as a specific thematic activity.

*In April 2004, the **Consultative Council on Human Rights of Morocco** (Conseil consultatif des droits de l'homme) published a report on *The Situation in Prisons, based on visits to 50 places of detention. The report provided a detailed analysis of all aspects of detention: material conditions, staff, overcrowding, services provided, contacts with outside world, rehabilitation programmes and activities and the treatment of detainees.**

NHRIs can establish a regular programme to monitor places of detention, based on the goal of prevention rather than investigation. Regular preventive visits to places of detention constitute one of the most effective means of preventing torture and ill-treatment. Some NHRIs have already established a regular system to monitor places of detention, while others have been designated as national preventive mechanisms (NPMs) under the Optional Protocol to the Convention against Torture (read more in chapter 10).

The preventive nature of these visits distinguishes them in purpose and methodology from other types of visits that NHRIs may conduct and, in particular, from visits to investigate or document individual complaints made by detainees.

Characteristics of preventive visits

- **Regular visits rather than one-off visits**
These visits are part of a systematic and ongoing process, which means that visits to any given place of detention will occur on a regular basis.
- **Proactive rather than reactive**
These visits take place before, rather than in response to, a specific event or a complaint from a detainee. They can take place at any time, even when there is no apparent problem.³⁷
- **Global rather than individual**
These visits do not attempt to respond to individual cases. Instead the focus is to analyse the place of detention as a system and assess all aspects related to the deprivation of liberty. The aim is to identify those aspects of detention which could lead to the torture or ill-treatment of detainees or other forms of human rights violations.
- **Based on cooperation rather than denunciation**
The visits are part of an ongoing and constructive dialogue with the relevant authorities, providing concrete recommendations to improve the detention system over the long term.

This chapter outlines a methodology for monitoring places of detention that can be applied by those NHRIs that have the legal mandate to perform this role.

There are certain powers that NHRIs require in order to effectively undertake preventive monitoring of detention facilities. These powers have been expressly set out, for the first time, in the Optional Protocol and include:

- undertaking regular and unannounced visits to all places of detention
- access to all types of places where persons are deprived of their liberty

³⁷ This does not prevent NHRIs from carrying out visits in response to specific events.

- access to all facilities within the place of detention
- access to all necessary records and information
- access to all persons deprived of their liberty and to any other person
- liberty to choose the persons to interview and the location where the interview is carried out
- the ability to interview detainees in private.

When some of these powers are not granted, NHRIs should carefully weigh up the advantages and disadvantages of engaging in preventive monitoring activities. It is especially important that NHRIs are given the authority to conduct interviews with detainees in private.

Basic principles of monitoring

- **Do no harm**

Persons deprived of their liberty are particularly vulnerable and their safety should always be a primary consideration. Visiting teams should not take any action that could endanger an individual or a group. Poorly planned visits – or visits that do not follow basic principles and methodology – can potentially do more harm than good.

- **Respect the authorities and persons deprived of their liberty**

Visiting teams should always respect the role and functions of the detaining authorities. Establishing mutual respect with the staff and management of the detention centre is the basis for building a constructive relationship and effective working practices. Detainees should also be treated with respect and courtesy.

- **Respect confidentiality**

It is critical that all members of the visiting team, including interpreters, respect the confidentiality of information provided by detainees during private interviews. No information should be released without the express consent of the detainee.

- **Respect security**

There are three aspects to the issue of security. Firstly, the visiting team should respect the security requirements of the facility and conform to internal rules. Secondly, the security of detainees – which is closely linked to the issue of confidentiality – should be a priority. Finally, members of the visiting team must address the issue of their own security. The issue of personal safety may be raised by the authorities as a reason to not allow access to specific parts of a facility or to conduct interviews with certain detainees. It is ultimately the responsibility of each member of the visiting team to determine how they respond to this advice.

- **Be objective and credible**

Visiting teams must strive to record available and observable facts and to engage with both staff and detainees in an independent and impartial way. Visitors should also be perceived as being impartial. The mandate of the visiting team – both what it can and cannot do – should be clearly explained to staff and detainees and no promises or undertakings should be made that cannot be kept.

- **Be consistent and persistent**

The legitimacy and credibility of the NHRI monitoring function will be established over time. This requires consistency, continuity and patience. The same methodology should be used consistently during its regular programme of visits to all places of detention.

1. BEFORE THE VISIT

1.1. Negotiating access

Most NHRIs have some access to places of detention as part of their general mandate. When this is not the case, the NHRI will need to negotiate access directly with the relevant authorities. The best way of ensuring long-term access to places of detention is to establish a memorandum of understanding with the relevant ministries or government departments (usually the Ministry of Interior and the Ministry of Justice, although it may also extend to ministries of health, immigration, social care and others). The memorandum of understanding should explicitly guarantee the NHRI the powers it needs for effective monitoring (see above). In particular, it should include the guarantee of unrestricted access at any time and the ability to conduct interviews in private with detainees selected by the visiting team.

1.2. Establishing a monitoring programme

In establishing a monitoring programme, NHRIs should first prepare a list all types of places of detention that should be visited. The list should include the type of facility (prison, pretrial detention facility, etc.), its holding capacity (official and actual) and its location. Ideally, NHRIs should visit all places where people are, or may be, deprived of their liberty: prisons, police stations, mental health institutions, juvenile detention facilities, military facilities, immigration detention centres and others.

After compiling this initial list, NHRIs then need to select the places of detention that they intend to visit. This could include:

- a cross-section of different categories of facilities by region or at the national level
- a selection of places based on certain criteria, such as:
 - complaints received (or lack of complaints)
 - high levels of risks (those with vulnerable populations or known places of interrogation)
 - remote locations.

*As part of its 2004 report assessing the situation in prisons, the **Consultative Council on Human Rights of Morocco** established the following criteria to select the prisons that it would visit:*

- *recently built prisons*
- *prisons not visited since 1996*
- *severely overcrowded prisons*
- *prisons in remote locations*
- *two large capacity prisons*
- *one prison that had experienced a fire.*

The programme of visits will also depend on the type and length of the visits that the NHRI intends to conduct. Ideally NHRIs should undertake a combination of in-depth visits, that last several days and analyse all aspects of conditions and treatment in a facility, as well as short, unannounced visits that provide a general overview of the detention situation.

As part of a regular monitoring programme, it is important to determine how regularly different places of detention will be visited. Ideally, places of detention should be visited once a year and those facilities that present higher risks should be visited more frequently.

1.3. Developing practical tools

NHRIs may decide to develop practical tools to assist them undertake visits, such as checklists or questionnaires for interviews. These tools can help ensure that a consistent approach is used during each visit to places of detention, especially when there are different visiting teams from the NHRI. They should, however, provide a general guide for the visit, rather than setting out a format to be strictly followed. Monitoring places of detention requires the ability to adapt to a variety of situations and to respond to the specific circumstances of particular detention facilities.

*The **Philippines Commission on Human Rights** carries out regular visits to all prisons in order to assess conditions against national and international human rights standards for the treatment of prisoners and detainees. The Commission has developed a set of guidelines for detention monitoring in order to standardize their inspection procedure.*

1.4. Preparing for the visit

It is crucial that NHRIs set aside adequate time to prepare for the visit, as this ensures that the visiting team can make greatest use of the time they spend in the detention facility.

1.4.1. Defining the objective of the visit

During the initial visit to a place of detention, the goal of the NHRI should be to gain an overview of the conditions of detention and the treatment of detainees in the facility, as well as to collect information on the most pressing problems.

During following visits, the visiting team may decide to concentrate on specific aspects of the detention facility, such as its complaint system, its disciplinary procedures, medical care or violence between prisoners.



Image: APF / Michael Power

1.4.2. Establishing the visiting team and organizing the work

In setting up the visiting team, NHRIs should consider:

- the type of expertise needed, based on the objectives of the visit and the type of facility being visited (participation of a medical doctor is often useful)
- gender balance
- the size of the visiting team (generally between two and eight persons)
- identifying a team leader
- the division of tasks between team members and ensuring each person understands their specific responsibilities during the course of the visit.

*In 2007, the **National Human Rights Commission of Korea** monitored six detention centres and two juvenile detention centres. The visits were undertaken by monitoring teams that included a Commissioner, medical doctors, lawyers, NGO representatives and investigators from the Commission.*

1.4.3. Collecting available information

Before a visit, the visiting team should seek to compile and review all available information about the particular place of detention, such as:

- reports from other organizations
- media reports
- the number and type of complaints received by the NHRI or other complaint handling bodies (the absence of complaints can also be revealing).

It is important to make sure that all team members share and review this information before undertaking the visit.

1.4.4. Establishing prior contacts

Before the visit, the NHRI should consider contacting other groups or individuals who have information to share about the particular place of detention, such as NGOs, family members of detainees, lawyers and those released from detention.

The NHRI may also choose to announce a visit in advance. While NHRIs are mandated to carry out unannounced visits to places of detention, there are some situations where announcing a visit in advance may be beneficial (for example, to ensure the presence of the prison governor).

2. UNDERTAKING A VISIT

In order to properly evaluate the conditions of detention and the treatment of detainees, NHRIs need to cross-check different sources of information (a process known as “triangulation”), including:

- information from the authorities and other sources
- information from persons deprived of their liberty
- the observations of the visiting team.

2.1. Conducting the visit

A preventive visit to a place of detention should contain the following steps:

- an initial talk with the person in charge of the facility
- a tour of the premises

- consultation of registers
- interviews with detainees in private
- a final talk with the person in charge.

2.1.1. Initial talk with the person in charge

The visit usually begins with an initial talk with the person in charge of the facility, or if s/he is not present, the person next in charge.

This discussion is an important first step in establishing a constructive dialogue with the authorities and also provides an opportunity to:

- introduce the mandate of the NHRI and the visiting team
- explain the objectives of the visit
- explain the working method for the visit, in particular the need to hold interviews in private with selected detainees
- explain how information collected during the visit will be used
- ask for recent and specific information
- ask the person in charge of the facility for their opinion about the challenges they encounter in their work and possible solutions.

WATCH

Go to the *Preventing Torture* CD-Rom to watch a **role play** that highlights good practice approaches when holding an initial conversation with the person in charge of a place of detention prior to conducting a preventive visit.

Click on 'Feature materials' and then select 'Item 12 – Role play: Initial conversation with person in charge of a place of detention'.



2.1.2. Tour of the premises

After the initial talk, the visiting team should undertake a tour of the premises. A short introductory tour of the entire facility helps to provide a sense of the overall design and layout of the centre, as well as the location of different facilities used by the detainees. It also enables the visiting team to gain a first impression of the atmosphere of the place.

Following the general tour, the visiting team can break into smaller groups to more thoroughly inspect specific areas of the centre, such as the kitchen, the infirmary, disciplinary cells, dormitories and sanitary facilities.

2.1.3. Consultation of registers

One or more members of the team should consult the registers and other documents held on file. This consultation is best done at the beginning of the visit, as information obtained from the registers can be verified, if necessary, during the course of the visit and during interviews with detainees. There are a number of different registers kept in places of detention but, in the context of preventing torture and ill-treatment, registers of incidents and registers of disciplinary measures are of particular importance. Other documents – such as internal rules, staff lists and working schedules – are also important and provide an understanding of how the centre functions.

2.1.4. Interviewing detainees

The most important part of any visit is the time spent talking in private with detainees and hearing directly about their treatment and their experience of the conditions in detention.

The interview process is a delicate exercise which aims to establish a relationship of trust between the interviewer and the detainee (see chapter 5 for more information on preparing for and conducting interviews).

The visiting team, and not the authorities, must select the detainees who will be interviewed. Ideally, in order to have a representative sample of detainees in the centre, a significant number of interviews should be conducted (for example, ten per cent of all detainees).

The visiting team may decide to select a random sample of detainees based on the register (for example, every tenth person listed). Alternatively, the team might decide to select a representative sample of detainees based on previous information or a specific situation (for example, recently-arrived detainees or detainees held under disciplinary sanctions).

A combination of both random and critical selection helps ensure that an appropriate cross-section of detainees are interviewed and can contribute information to the preventive monitoring process. The visiting team should make sure that they do not speak only with those detainees who seek to make contact with them.

Ensuring the confidentiality of the interview is essential. The interview should be held out of hearing, and preferably out of sight, of staff and other detainees. The choice of location for the interview is also crucial, both for confidentiality and to build trust. Any location that would equate the visitor with detention centre staff, such as administrative offices, should be avoided.

Conducting individual interviews can be a time-consuming process. In order to optimize the time available to the visiting team, it may be useful to hold a combination of individual interviews and group discussions with detainees.

Group discussions enable the visiting team to have contact with more detainees and are useful to hear about common concerns, get a sense of the mood or culture within the place and identify individual detainees to interview in private. However, as there is no confidentiality, group interviews exclude the possibility of discussing more sensitive issues. It is important to ensure that there is no disclosure during group discussions of any information that may pose a risk of harm to an individual.

2.1.5. Discussions with staff

In addition to talking with the person in charge of the facility, it is also important for the visiting team to speak with different members of staff. Although it might be difficult to carry out interviews in private, in particular with security staff, the visiting delegation should try to talk with a representative selection of staff. Other staff, members, such as medical doctors and social workers, should also be interviewed.

Staff members can all contribute very important information. They can raise issues for further investigation, as well as contribute their own suggestions or opinions about problems within the place. Talking with staff is also important in order to cross-check information or allegations received from other sources.

Finally, any opportunity during the visit to engage in conversation with staff and detainees, including informal talks, should be taken.

2.1.6. Final talk with the person in charge

It is important to formally end the visit with a talk with the person in charge of the facility. This should be arranged beforehand and the visiting team should set aside some time to debrief and share their findings prior to this meeting. The aim of the final talk is to provide a summary of facts found and specific issues identified. Urgent cases should be raised immediately, although it may be wise to address very serious

cases directly to more senior officials. The final talk should also mention the steps that will follow the visit, including the preparation of a written report of the visit which will be sent to the relevant authorities.

The Ombudsman of Peru (Defensoría del Pueblo) conducts regular, unannounced visits to the 1,000 police stations and 84 prisons in the country. Some police stations, such as those in areas with a high crime rate and where many complaints were received, are visited more frequently than others. These visits are sometimes carried out at night or on the weekend. In addition, the Ombudsman may also carry out visits to military bases, mental health institutions and centres of administrative detention.

WATCH

Go to the *Preventing Torture* CD-Rom to watch **Dr Silvia Casale**, former President of the European Committee for the Prevention of Torture and former Chair of the Subcommittee on Prevention of Torture, discussing the steps involved in undertaking an effective preventive visit to a place of detention.

Click on 'Feature materials' and then select 'Item 13 – Undertaking a preventive visit to a place of detention'.



3. AFTER THE VISIT

3.1. Reporting

The visit is not an end in itself but rather the first step in a long-term process of improving the treatment of detainees and the conditions of detention. Visits should be followed by credible reports addressed to the relevant authorities, which include practical recommendations for change.

3.1.1. Internal reporting

NHRIs should develop a standard reporting format for visits to places of detention. These notes provide a clear, fact-based account of the visit and contribute to the development of institutional knowledge. They are particularly important when NHRIs plan thematic reports that cover several visits.

3.1.2. Visit report

Visit reports are usually confidential and addressed to the person in charge of the facility visited. They should be prepared shortly after the visit and not be unnecessarily long. A good report will be structured thematically and, when discussing areas of concern, include the facts found, an analysis of the problem and the proposed recommendations.

Visit reports can also be sent to the higher authorities (such as the relevant government department or ministry) and eventually made public. When reports are made public, they should be easily accessible and widely disseminated.

It is important to ensure that the reports do not disclose confidential information or any information that may result in a risk of harm to the person who provided the information.

3.1.3. Thematic reports

In addition to their reports on specific visits, NHRIs can also prepare thematic reports that consider specific issues (for instance, medical services or police violence) over a certain period of time and across different types of places of detention. This approach provides a more analytical view that can help identify patterns of problems and highlight contributing factors in different places. They should also

include practical recommendations to bring about systemic change. Thematic reports should initially be sent to the relevant authorities for comment and then made public and widely disseminated through the media.

*In 2008, the **Australian Human Rights Commission** published a report on issues related to immigration detention. It provides a summary of observations following visits to the country's nine immigration detention facilities and interviews with people in community detention.*

3.2. Drafting good recommendations

The quality and usefulness of recommendations developed following visits to places of detention should be assessed against the following ten interrelated and mutually reinforcing criteria (the double SMART model).

Specific: each recommendation should address only one specific issue

Measurable: the evaluation of the implementation should be as easy as possible

Achievable: each recommendation should be realistic and feasible

Results-oriented: the actions suggested should lead to a concrete result

Time-bound: it should mention a realistic timeframe

AND

Solution-suggestive: Wherever possible, recommendations should propose credible solutions

Mindful of prioritization, sequencing and risks: it might be useful to address more urgent recommendations first and reserve others for subsequent reports.

Argued: recommendations should be based on high-quality, objective evidence and analysis and refer to standards

Real-cause responsive: recommendations should address the cause of the problem, rather than the symptoms

Targeted: recommendations should be directed to specific institutions/actors rather than to “the authorities”

In practice, it might be difficult to draft recommendations that comply with all the double SMART criteria, however, NHRIs should take sufficient time to consider them carefully. Drafting good recommendations is essential as it provides a solid basis for an ongoing dialogue with the authorities and enables NHRIs to follow-up on their implementation.

3.3. Annual report

NHRIs are usually required to present an annual report of their activities to the Parliament. Annual reports provide an opportunity for the NHRI to summarize its key human rights concerns and present recommendations that require legislative intervention. Among other issues, an annual report can draw attention to concerns regarding the treatment of detainees and conditions of detention. The annual report should be made available to the media and, more broadly, to the general public.

*The **Afghanistan Independent Human Rights Commission** has the mandate to monitor on a monthly basis places such as police custodials, detention centres and jails. The visiting team examines the overall conditions of detention and the treatment of persons deprived of liberty, as well as conducting face-to-face interviews in private with those detainees wishing to make a complaint.*

WATCH

Go to the *Preventing Torture* CD-Rom to watch more on NHRIs and their role to monitor places of detention.

Click on 'Feature materials' and then select 'Item 14 – NHRIs: Monitoring places of detention'.



KEY POINTS: CHAPTER 8

- Monitoring places of detention through regular visits should respect basic principles, in particular the principle to “do no harm”.
- Visits to places of detention should be well planned in terms of reviewing available information, dividing tasks between team members and making prior contacts.
- Key steps involved in conducting a visit include: initial talk with the person in charge, tour of the premises, consultation of registers, private interviews with detainees, final talk with the person in charge.
- Reporting on visits and preparing recommendations is crucial as a follow-up mechanism and for establishing an ongoing dialogue with the relevant authorities.



FURTHER READING

IN THE CD-ROM

Making Standards Work: An International Handbook on Good Prison Practice; Penal Reform International; 2001

Monitoring Places of Detention: A Practical Guide; Association for the Prevention of Torture; 2004

Detention Monitoring Briefing No. 1: Making Effective Recommendations; Association for the Prevention of Torture; 2008

Detention Monitoring Briefing No. 2: The Selection of Persons to Interview in the Context of Preventive Detention Monitoring; Association for the Prevention of Torture; 2009

Detention Monitoring Briefing No. 3: Using Interpreters in Detention Monitoring; Association for the Prevention of Torture; 2009

Visiting places of detention: What role for physicians and other health professionals?; Association for the Prevention of Torture; 2008

Training Manual on Human Rights Monitoring (see Chapter IX: Visits to Persons in Detention and Chapter XX: Reporting); Professional Training Series No. 7; OHCHR; 2001



Chapter 9:

Promoting public awareness

KEY QUESTIONS

- How can NHRIs engage in effective public education on torture prevention?
- What activities can help build public awareness on torture prevention?
- What are the advantages of initiating awareness raising activities for persons deprived of their liberty?



LEGAL BASIS FOR NHRI INVOLVEMENT

Paris Principles

Competence and responsibilities

3. A national institution shall, inter alia, have the following responsibilities:

- g) To publicize human rights (...), by increasing public awareness, especially through information and education and by making use of all press organs.**



INTRODUCTION

Promoting community awareness of, and respect for, human rights is one of the core functions of NHRIs. This makes them ideally placed to initiate public education programmes that promote awareness of the prohibition of torture and build community support for the prevention of torture.

Public education programmes and awareness-raising campaigns are important because they can influence stakeholders and decision makers and contribute to community-wide attitudinal change.

Awareness-raising activities usually have more impact when they are conducted in partnership with others, in particular with civil society, community leaders or other relevant groups. The media are also a crucial partner. Networking and close consultation with these different partners is an important component of any successful public awareness programme.

1. PUBLIC EDUCATION

It is obvious that people need to understand what rights they have in order to ensure that those rights are respected by the authorities. However, those who are most vulnerable to torture and ill treatment – for instance, people who are poor, have low education or belong to minority groups – are also those who are least likely to have a proper understanding of their rights.

There is a clear need to ensure that people of all backgrounds know their rights. When people are aware of the obligations that the Government and other authorities have to them, and when those obligations are not met, they can be held to account.

When planning a public education programme, NHRIs should define a specific objective and the group or groups they intend to reach. For example, a targeted campaign might have a goal of helping homeless young people know their rights if they are arrested by the police.

These education initiatives are generally most effective when they are conducted in partnership with others working in the field. Therefore NHRIs should consider building networks with a wide range of groups and professionals, such as social workers, charity organizations, human rights NGOs or professional associations of doctors and lawyers.

Once the objective for the education programme has been defined, the next step is to consider the best way to communicate with the target group. This will obviously vary considerably, depending on the group.

If, for instance, the programme aims to reach homeless young people, it could include strategies such as:

- placing leaflets or posters in key places, including police stations or youth centres
- running street theatre sessions
- distributing caps, T-shirts or pocket cards
- establishing and promoting a free information hotline
- holding information sessions in youth centres, accommodation centres or other places where young people gather.

2. PUBLIC AWARENESS CAMPAIGNS

As part of their mandate to promote human rights, NHRIs should seek to raise awareness among the general public about the absolute prohibition on torture and the right of all persons, in particular those deprived of their liberty, not to be tortured or ill-treated.³⁸

Torture and ill-treatment almost always occurs out of public view. As a result, these issues may be rarely discussed in the media or other public settings and there may be little awareness that such practices occur. NHRIs can play an important role in bringing the issue of torture out of the shadows and into the public domain. Public awareness and community support can be a crucial factor in bringing about changes to laws, policies and practices.

In most countries around the world, community attitudes to detainees can vary from indifference to suspicion and even antipathy. These feelings are usually reinforced by public discourse on issues of security and law and order that can legitimate poor treatment of detainees. Similarly, public opinion can sometimes view certain forms of violent behaviour, for example during interrogation, as an acceptable part of police work. This perception can be reinforced by television programmes that show police violence as a normal, or even necessary, part of policing.

This is why it is important for NHRIs to regularly communicate the message that torture is never acceptable and that all persons deprived of their liberty deserve humane treatment. One of the best ways to address the community at large is through global public awareness campaigns that engage journalists and opinion leaders.

An effective public education campaign will be based on an agreed communication strategy, which will include a specific objective, a clear and simple message, the main methods of communication and the timeframe for the campaign.

38 In its general comment No. 20, the Human Rights Committee asks to “be informed how States parties disseminate, to the population at large, relevant information concerning the ban on torture and the treatment prohibited by article 7” (para. 10). The Committee against Torture also notes that “it is important that the general population be educated on the history, scope and necessity of the non-derogable prohibition of torture and ill-treatment” (general comment No. 2, para. 25).

Some avenues that NHRIs can use to communicate with the general public include:

- holding a major press conference to encourage news reporting on the issue
- mobilizing leading public figures in support of the campaign, which could also include testimonies of victims
- preparing opinion editorials and Letters to the Editor
- developing community awareness spots for radio and television
- placing advertisements in major newspapers
- incorporating the issue into popular television drama series or radio programmes
- distributing posters and leaflets
- organizing a public petition.

It is important to select an appropriate time to launch the campaign. One option is to use the momentum created by various international days, such as

- International Day in Support of Victims of Torture; 26 June
- Human Rights Day; 10 December
- World AIDS Day (for a campaign on issues related to HIV/AIDS in prisons); 1 December.

*To celebrate the 60th anniversary of the Universal Declaration of Human Rights, OHCHR launched the Dignity and Justice for Detainees Week, on 6–12 October 2008. The **Uganda Human Rights Commission** used the occasion to implement a wide range of activities.*

The Commission launched the week with a public procession through the capital, Kampala, attracting over 200 marchers from civil society organizations, the police, prison officials, government ministries, Commission staff, students, academics, journalists and the public. The procession drew attention to the rights of detainees and, at the end of the six-kilometre march, speeches were made by a representative of the Chief Justice and representatives from the Commission and NGOs.

During the week, the Commission organized a Round Table Stakeholders Meeting on the promotion and protection of the rights of inmates. The meeting brought together 60 participants from civil society, the prison services, the Ministry of Internal Affairs and Parliament and received significant coverage in the print and electronic media.

WATCH

Go to the *Preventing Torture* CD-Rom to watch **Graeme Innes**, from the Australian Human Rights Commission, discussing how NHRIs can engage the media to promote awareness and action on human rights issues.

Click on 'Feature materials' and then select 'Item 15 – Promoting public awareness'.



3. RAISING AWARENESS AMONG PERSONS DEPRIVED OF THEIR LIBERTY

NHRIs can also consider running education programmes that provide information to persons deprived of their liberty and those who are most at risk of torture or ill-treatment.

This could include information about existing guarantees and procedures, as well as rights during arrest, interrogation and in detention. It may also include information about contacting the NHRI or making a complaint.

This information could be distributed through:

- leaflets or booklets on the rights of prisoners
- pocket cards on the rights of inmates
- posters displayed in police stations and prisons

*In **Sierra Leone**, the **Human Rights Commission** published and distributed a pocket book on the rights of prisoners.*

*The **Ombudsman in Peru** (*Defensoría del Pueblo*) launched a poster campaign on the rights of detainees with the slogan “Defend your rights – Detention only affects your liberty”.*



Image: APF / Michael Power

KEY POINTS: CHAPTER 9

- Educating the general public about the prohibition and prevention of torture is an important preventive action.
- Public education campaigns can help raise awareness about the issue and provide important momentum for change.
- Awareness-raising activities can also focus on persons deprived of liberty and those who are most at risk of torture and ill-treatment.



FURTHER READING

IN THE CD-ROM

Media Communications Toolkit; Institute for Media, Policy and Civil Society; 2001

Developing Effective Media Communication Skills; Institute for Media, Policy and Civil Society; 2001



Section IV Cross-cutting actions



**Chapter 10: NHRIs and the Optional Protocol
to the Convention against Torture**

Chapter 11: Public inquiries

Chapter 10: NHRIs and the Optional Protocol to the Convention against Torture

KEY QUESTIONS

- **How can NHRIs promote ratification of the Optional Protocol to the Convention against Torture, as well as open debate on the options for a national preventive mechanism?**
- **What are the challenges for NHRIs in being designated as a national preventive mechanism?**
- **How can NHRIs not designated as a national preventive mechanism cooperate with the Optional Protocol's bodies?**



1. INTRODUCTION

The Optional Protocol to the Convention against Torture aims to prevent torture and ill-treatment by establishing a system of regular visits to places of detention. These visits are undertaken by an international body, the Subcommittee on Prevention of Torture, and by a national preventive mechanism (NPM). The Optional Protocol represents an important new instrument for the prevention of torture and offers several different roles that NHRIs can play (see chapter 7 for more information)

2. PROMOTING THE OPTIONAL PROTOCOL

2.1. Role of NHRIs in the ratification of the Optional Protocol

As part of their general mandate to promote ratification of international instruments, NHRIs can be actively involved in promoting ratification of the Optional Protocol. This can be done through formal recommendations to the Government, discussing the importance of the Optional Protocol in its annual or thematic reports, lobbying relevant Government Ministers and Members of Parliament and raising awareness and building support with different stakeholders and the public.

*The **National Human Rights Commission of Korea** submitted several recommendations to the Government on signing and ratifying the Optional Protocol. In November 2006, it held a symposium on Ratification of the Optional Protocol and its Impact on the Human Rights of the Detainees.*

*At the initiative of the **South African Human Rights Commission**, an ad hoc Committee on Torture with a mandate to lobby for the ratification of the Optional Protocol was established. It is composed of representatives from the Government, Parliament, civil society organizations and existing visiting bodies.*

When discussing ratification of the Optional Protocol, consideration should also be given to the practical steps involved in implementing the treaty and, in particular, the possible options for establishing or designating a NPM.

2.2. Consultation process regarding possible NPM

Under the Optional Protocol, NPMs have a mandate to carry out regular preventive visits to all places where persons are deprived of their liberty. They are also required to make recommendations to the authorities on the prevention of torture and to submit observations on relevant existing or draft legislation.

In order for them to perform this mandate, States parties must guarantee NPMs functional independence, as well as the independence of their members. They must also make available the necessary resources for the effective functioning of the NPM. They must ensure that NPM members have the required capabilities and professional knowledge to perform the role. In addition, NPMs must be granted certain powers regarding access to places of detention, access to information and access to persons deprived of their liberty.

The Optional Protocol does not prescribe any particular organizational form for NPMs. States are able to decide the most suitable option, taking into account their national, social, political and economical context. It is incumbent on States to thoroughly analyse and assess the various options available to them.

This analysis should be undertaken in an open and transparent manner. In its first annual report, the Subcommittee on Prevention of Torture developed “preliminary guidelines for the ongoing development of national preventive mechanisms” which recommended that these bodies should be established by a public, inclusive and transparent process.

NHRIs should be part of this consultation process, together with other national actors, such as relevant Government officials, existing monitoring bodies, human rights NGOs, trade unions, professional organizations and Members of Parliament.

Ideally, the consultation process should start with an inventory of existing visiting bodies within the country, including a detailed analysis of their ability to meet the Optional Protocol's requirements. This inventory can provide a useful starting point for developing recommendations on possible options for the NPM.

Based on this analysis, and on the consultation process, States can then decide their preferred model for the NPM. This could include:

- the establishment of an entirely new Optional Protocol-based mechanism
- the designation of an existing body
- the designation of several mechanisms, either existing bodies, new bodies or a combination of both.

*In **Paraguay**, following the State's ratification of the Optional Protocol, a three-day national seminar was held that brought together hundreds of representatives from the governmental and non-governmental sectors. At the end of the forum, a 13-member NPM drafting committee was established by consensus, comprising government and civil society representatives. After six months of consultations, a draft law to create the National Commission to Prevent Torture was presented to the Congress. In its second annual report, the Subcommittee on Prevention of Torture “noted with appreciation that the process of development of the draft law establishing the NPM has been characterized by openness, transparency and inclusivity” (CAT/C/42/2, para. 38).*

*In May 2008, the Attorney General's Office of **Australia** invited stakeholders to share their views on whether Australia should accede to the Optional Protocol. During the consultation process (known as the National Interest Analysis), several institutions, including the **Australian Human Rights Commission**, presented their positions. These written submissions will serve as a basis for further discussions on the most appropriate NPM option in Australia.*

2.3. Consideration of NHRIs as NPM

When there is an independent NHRI operating in the country, designating the NHRI as the NPM is an option available to the Government. Its independence, existing mandate and functioning, as well as the level of credibility and legitimacy it has established with the authorities and the broader society, should be carefully examined.

Existing NHRIs do not necessarily meet all the requirements of the Optional Protocol. Amendments to legislation, organizational restructuring and the provision of additional human, logistical and financial resources are almost always needed if an existing human rights commission or ombudsman's office is to assume the role of NPM.

Furthermore, taking up a new mandate with a focus on prevention, rather than protection or investigation, will require the NHRI to review its working methods, structure and professional composition. In some cases, aspects of the NHRI work may make it inappropriate for designation as the NPM. This might be the case for NHRIs that are predominantly reactive in nature, where the main focus is handling individual complaints, or NHRIs which primarily undertake research or human rights education and promotion.

The Nairobi Declaration, adopted during the Ninth International Conference of National Institutions for the Promotion and Protection of Human Rights in October 2008, states that NHRIs should encourage their Governments "to consider their designation as national preventive mechanisms, only if the necessary powers and resources are made available to them."

There a number of issues that should be examined carefully when considering the designation of an existing NHRI as a NPM, including:

- having a specific mandate to carry out preventive visits
- having sufficient resources to carry out full programme of regular visits
- guaranteed access to all places of detention
- guaranteed access to relevant information
- the right to conduct interviews with detainees in private
- independence
- relevant professional expertise
- the right to make recommendations to Government and relevant authorities and to receive a considered response
- the right to publish reports
- necessary privileges and immunities
- whether there are other bodies carrying out visits to places of detention.

An assessment of these issues can help identify what additional legal measures, restructuring and resources may be required for the NHRI to comply with the requirements of the Optional Protocol.

Furthermore, the process leading to the designation of the NHRI as NPM should be open, inclusive and transparent.

WATCH

Go to the *Preventing Torture* CD-Rom to watch **Mark Thomson, Secretary-General of the Association for the Prevention of Torture**, discussing the key issues that NHRIs should consider before taking on the role of national preventive mechanism.

Click on 'Feature materials' and then select 'Item 16 – National preventive mechanisms: Issues for NHRIs to consider'.



3. NHRIS DESIGNATED AS NPM

3.1. Different NPM structures

There are three different ways in which NHRIs have been designated as NPMs under the Optional Protocol.

3.1.1. NHRI as the sole NPM

This option can be found in the different regions in the world.

Americas

Ombudsman of Costa Rica, National Human Rights Commission of Mexico

Africa

Human Rights Commission of Mali, National Human Rights Commission of Mauritius

Asia

Human Rights Commission of the Maldives

Europe

Ombudsperson's office in Albania, Armenia, Azerbaijan, Cyprus, Czech Republic, Estonia, Poland

3.1.2. NHRI as the NPM, in coordination with others

Under this model, the NHRI is officially designated as the NPM but conducts its mandate in formal cooperation with others, in particular with civil society organizations. This model is commonly referred to as the 'Ombudsman +' structure.

*In **Slovenia**, the tasks and powers of the NPM are carried out by the **Human Rights Ombudsman, in cooperation with NGOs**. In accordance with the legislation, NGOs registered in Slovenia can participate in carrying out inspections in places of where people are deprived of their liberty. The participating NGOs are selected by the Ombudsman on the basis of a public tender and a cooperation contract is signed between the Ombudsman and each NGO.*

3.1.3. NHRI designated one of several NPMs

States have the possibility to designate several NPMs, either on a regional or thematic basis. Under this model, the NHRI can be one of several NPMs and may also act as a coordinating body.

*In **New Zealand**, the following bodies have been designated as NPMs: the Ombudsman, the Independent Police Conduct Authority, the Children's Commissioner and the Inspector of Service Penal Establishments. The **New Zealand Human Rights Commission** has been given the coordinating role as the **Central National Preventive Mechanism**.*

*In **Sweden**, the **Parliamentary Ombudsmen** and the **Chancellor of Justice** have both been designated as NPMs.*

3.2. Specific challenges faced by NHRIs designated as NPM

Designating an existing NHRI as a NPM raises specific challenges in terms of the organization's resources, mandate and composition.

3.2.1. Resources

According to the Optional Protocol, States should make available the necessary resources for the effective functioning of the NPM. Designating an existing NHRI as the NPM should not be viewed by the Government as an economical way of implementing its responsibilities under the Optional Protocol. As highlighted in the Nairobi Declaration, NHRIs can undertake this additional mandate only if they are provided with the necessary human and financial resources.

3.2.2. Mandate

NHRIs have a mandate to handle complaints and to investigate and document cases of human rights violations. Undertaking the role of NPM, which involves regular preventive visits and establishing a constructive dialogue with authorities, may require the NHRI to make significant conceptual and structural changes. The NHRI should take time to reflect on the new mandate and ensure that all staff members have a clear understanding of the preventive approach. It is also advisable to establish a separate unit within the NHRI to take on this preventive function. This can help avoid confusion among the authorities or detainees about the specific mandate of the NPM.

The fact that the NHRI already undertakes visits to places of detention is not, in itself, sufficient to ensure that these visits will meet the requirements of the Optional Protocol. The preventive visits described in the Optional Protocol differ in their objectives and their approach from other types of visits, in particular visits to investigate complaints of torture and ill-treatment.

While undertaking preventive visits, NHRIs will hear allegations of torture and ill-treatment. These should be recorded and analysed to develop an understanding of systemic gaps within the centre and to guide the development of recommendations to the authorities. Although NPM visits do not document these cases, NHRIs should have a clearly defined process in place to refer serious cases to the relevant unit within the NHRI (the complaints unit) or to an appropriate external body for follow-up and investigation.

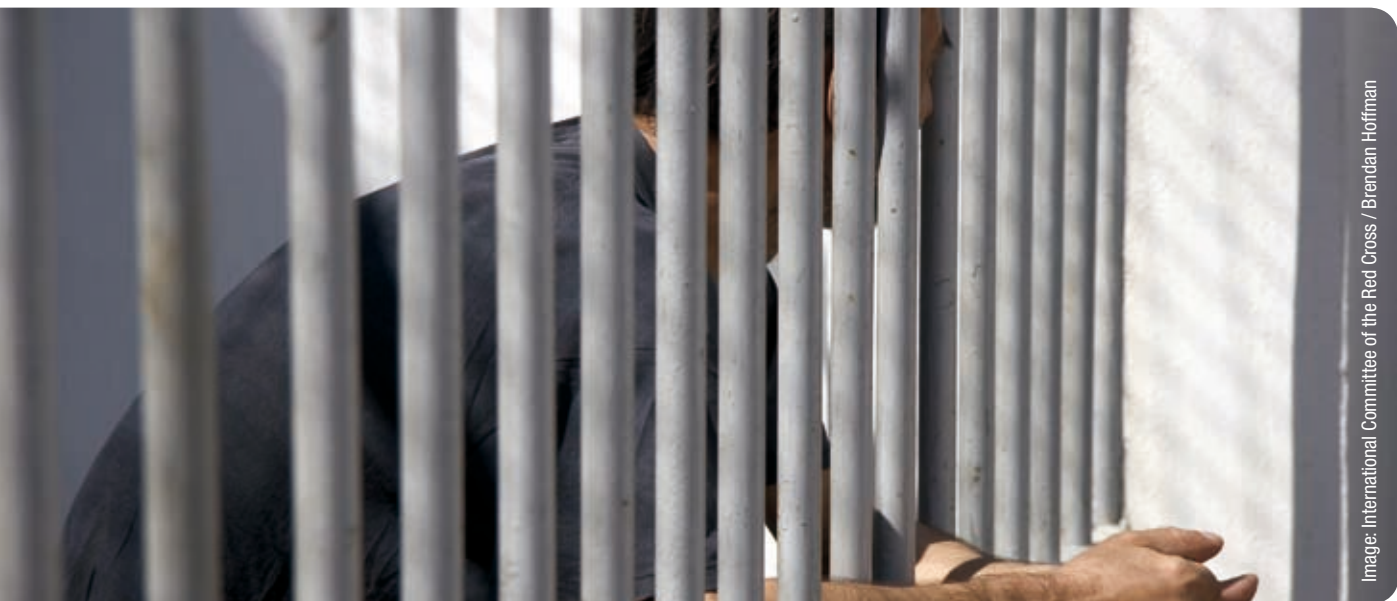


Image: International Committee of the Red Cross / Brendan Hoffman

3.2.3. Composition

In order to conduct effective preventive monitoring, NPMs need to draw on the expertise of members from diverse professional backgrounds. Some NHRIs may already have a mix of relevant professional skills and training. However many human rights commissions and, in particular, many Ombudsman's Offices are predominantly made up of lawyers and lack expertise in certain areas, especially in the medical field. As a result, the capacity to hire external experts to assist in this monitoring work is crucial.

3.2.4. Annual report

NPMs are required to publish an annual report of their activities. This should preferably be a separate annual report or, at the least, a separate chapter in the annual report of the NHRI.

*In the **Czech Republic**, the **Ombudsman (Public Defender of Rights)** has been designated as NPM following a revision of the mandate, the provision of additional financial resources and the establishment of a new unit, comprising six staff, within the Office.*

*In **Sweden**, the two bodies designated as NPMs objected to their designation through submissions to Parliament. The **Parliamentary Ombudsmen** have the mandate to carry out unannounced visits and initiate investigations but consider that, as the institution is complaints-driven and mostly reactive in character, its ability to carry out the preventive work required by the Optional Protocol is limited. The **Chancellor of Justice** has wide supervisory powers but is a reactive institution, composed of lawyers, which had not been given sufficient additional resources to perform this additional task.*

During its visit to Sweden in March 2008, the Subcommittee on Prevention of Torture held discussions with both NPMs. In its report, the Subcommittee considered that there was a need for a “profound re-examination” of the designation and stated that “visiting methodology should reflect a preventive approach, which although complementary, differs substantially from their current, complaint-driven activities. The Swedish authorities should also ensure that these bodies receive the necessary additional resources and training to function as NPMs” (CAT/OP/SWE/1, para. 38). The Swedish Government has replied that budgetary issues will be dealt with in the framework of the annual budgetary processes by the Parliament and Government (CAT/OP/SWE/1/Add.1, para. 3).

WATCH

Go to the *Preventing Torture* CD-Rom to watch two examples of NHRIs – in the Maldives and New Zealand – that are acting as national preventive mechanisms.

Click on ‘Feature materials’ and then select ‘Item 17 – NHRIs: Case studies of two NPMs’.



3.3. Interaction between designated NPM and the Subcommittee on Prevention of Torture

The Optional Protocol provides for direct contact between the Subcommittee on Prevention of Torture and NPMs. When designated as the NPM, NHRIs can interact with the Subcommittee in several ways.

- **NPMs and the Subcommittee on Prevention of Torture can have direct contact** (articles 20 (f), 11 (b)(ii), 12 (c))

NPMs can provide information to the Subcommittee on their mandate and functioning, as well as on their priority areas for the prevention of torture. They should also send their annual reports to the Subcommittee.

The Subcommittee on Prevention of Torture and NPMs can have direct contact in the form of meetings, which can be held on a confidential basis if necessary. States parties to the Optional Protocol have an obligation to facilitate and encourage direct contact between their NPMs and the Subcommittee.

In the case of a country visit by the Subcommittee on Prevention of Torture, NPMs should establish contact with the Subcommittee at an early stage, provide concrete information regarding

priorities and specific places of detention to visit and offer advice on the implementation of Optional Protocol's requirements. During the visit, the Subcommittee and the NPM should have direct contact. Following the visit, NPMs can lobby the Government to publish the report of the Subcommittee, as well as closely monitor the implementation of its recommendations.

*During visits to Mauritius (October 2007) and the Maldives (December 2007) the Subcommittee on Prevention of Torture delegation met with representatives of the **National Human Rights Commissions of Mauritius and the Maldives**, which had been designated as NPMs.*

*The **Human Rights Commission of Mexico** held a meeting with the Subcommittee on Prevention of Torture during the session of the Subcommittee in Geneva in November 2007. During its visit to Mexico (27 August–12 September 2008), the Subcommittee met with the NPM Unit of the Human Rights Commission.*

- **Subcommittee on Prevention of Torture has a mandate to assist NPMs** (articles 11 (b)(iii) and (iv))
The Optional Protocol sets out an important role for the Subcommittee to assist NPMs critically evaluate their needs and capacity to strengthen protections for persons deprived of their liberty. The Subcommittee can also provide advice and training to NPMs and make recommendations to the State on its effective functioning. This advisory role is potentially very important; however, it is still embryonic at this early stage of the Optional Protocol's implementation. In its first annual report, the Subcommittee on Prevention of Torture prepared "Preliminary guidelines for the ongoing development of national preventative mechanisms" and is considering how it may develop this role further.

WATCH

Go to the *Preventing Torture* CD-Rom to watch **Victor Rodriguez Rescia**, Chair of the Subcommittee on Prevention of Torture, discussing some of the key elements of an effective national preventive mechanism.

Click on 'Feature materials' and then select 'Item 18 – Operating an effective NPM'.



4. CONTRIBUTION OF NON-NPM NHRIS TO THE OPTIONAL PROTOCOL'S BODIES

Even when NHRIs are not designated as NPMs, they can still make an important contribution to effective implementation of the Optional Protocol.

4.1. Cooperation with the Subcommittee on Prevention of Torture

With regard to the Subcommittee on Prevention of Torture, NHRIs can provide credible information regarding the situation of torture and ill-treatment in their country. They can also provide the Subcommittee with independent information on the mandate and functioning of the NPM, as well as on the implementation of recommendations submitted by the NPM.

During a country visit, NHRIs should meet with the Subcommittee delegation to present recent information and discuss relevant issues in regard to torture prevention.

4.2. Contact with the NPM

NHRIs can play a complementary and supporting role with the organization, or organizations, designated as the NPM.

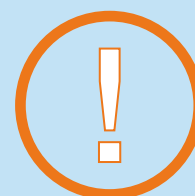
They should establish direct and regular contact with the NPM and, if necessary assist the NPM to develop its mandate by sharing their experience and methodologies. NHRIs can also assist the NPM in developing effective ways of working with the authorities and establishing a constructive, ongoing dialogue.

NHRIs can bring issues of torture and ill-treatment to the attention of the NPM. In those countries where the NHRI also has visiting powers, it should consider sharing information and coordinating its work with the NPM in order to avoid duplication. NHRIs should also monitor the functioning of NPMs, their independence and their effectiveness.

*In France, the designation of the **Ombudsman (Médiateur de la République)** was initially considered as an option for the NPM. However, in 2007, the decision was made to create an entirely new body to carry out the NPM mandate: the **General Inspector of Places of Detention (Contrôleur général des lieux de privation de liberté)**. The Inspector is in regular dialogue with other relevant bodies and has signed an agreement with the Ombudsman that aims to clarify the division of tasks and avoid duplication.*

KEY POINTS: CHAPTER 10

- NHRIs can play an important role to promote the Optional Protocol, by advocating ratification and participating in broad and inclusive consultations on possible NPMs.
- NHRIs may be designated as the NPM; either as the sole NPM, in cooperation with NGOs or as one of several NPMs. This double mandate can present particular challenges for NHRIs.
- NHRIs not designated as the NPM can contribute to the work of the NPM and the work of the Subcommittee on Prevention of Torture.



FURTHER READING

IN THE CD-ROM

First Annual Report; Subcommittee on Prevention of Torture (CAT/C/40/2)
(from February 2007 to March 2008)

Second Annual Report; Subcommittee on Prevention of Torture (CAT/C/42/2)
(from February 2008 to March 2009)

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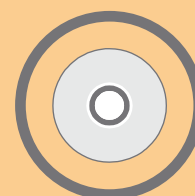
Report on the visit of the Subcommittee on Prevention of Torture to Sweden
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Guide on the Establishment and Designation of National Preventive Mechanisms; Association for the Prevention of Torture; 2006

Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Implementation Manual (revised edition); Association for the Prevention of Torture and Inter-American Institute of Human Rights; 2010

National Human Rights Commissions and Ombudspersons' Offices / Ombudsmen as National Preventive Mechanisms; Association for the Prevention of Torture; 2008



Chapter 11:

Public inquiries

KEY QUESTIONS

- **What are the advantages and disadvantages of NHRIs conducting a public inquiry on torture and ill-treatment?**
- **What steps are involved in establishing and running an effective public inquiry?**



LEGAL BASIS FOR NHRI INVOLVEMENT

Paris Principles

Competence and responsibilities

3. A national institution shall, inter alia, have the following responsibilities:

- (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matter concerning the promotion and protection of human rights. The national institution may decide to publicize them.**



1. INTRODUCTION

Conducting a public inquiry on systemic violations of human rights, such as torture and ill-treatment, can be a very effective strategy for NHRIs. This approach allows NHRIs to go beyond the investigation of individual complaints. By gathering information and evidence from a variety of sources, a NHRI can identify the underlying factors that contribute to the violation of human rights and propose recommendations for positive change. Because the inquiry process is public, it can also help raise community awareness of the issue and build understanding and support for recommendations made by the NHRI.

2. ADVANTAGES AND DISADVANTAGES OF A PUBLIC INQUIRY ON TORTURE

2.1. Advantages

A public inquiry is a comprehensive process that allows NHRIs to perform several functions at the same time.

Handle a large number of complaints

A public inquiry on torture and ill-treatment in detention enables the NHRI to deal in a streamlined and cost-effective way with a large number of individual cases. The proactive nature of the inquiry might also mean that the NHRI receives complaints from individuals who, for various reasons, may not otherwise

have made a formal complaint (such as lack of knowledge or lack of ability to address a petition). This is especially true for vulnerable groups, such as young people, migrants or foreign detainees.

Investigate systemic causes of torture

In many cases torture and ill-treatment occur because of inadequate systems that allow or overlook such acts, rather than the misbehaviour of isolated individuals. A public inquiry helps the NHRI to identify the underlying factors that contribute to torture and ill-treatment and address systemic problems.

Analyse national laws and policies

A public inquiry provides an opportunity for the NHRI to analyse existing national laws and regulations and assess whether or not they meet the State's obligations under relevant international human rights treaties. In addition, the inquiry might review and assess the policies and programmes that operate in places of detention.

Educate and raise awareness

A public inquiry can be a powerful education tool to raise awareness among the general public, as well as detained persons and professional groups, about the absolute prohibition of torture. It can also build greater understanding and appreciation of a problem that is not necessarily understood as a human rights issue, namely the treatment of persons in detention.

Develop effective recommendations

The recommendations from a public inquiry, which draw on evidence, analysis and research, will be credible and provide clear and practical steps to address the systemic issues that contribute to torture and ill-treatment in places of detention. In addition, media coverage and public engagement in the process are also likely to generate some pressure for change. If there is a high level of public and media scrutiny when the report is released, the Government will be obliged to respond to the report and its recommendations.

2.2. Disadvantages

Resources

An effective public inquiry requires a significant investment of time, expertise and human and financial resources. The resources needed will depend on the scale of the inquiry (regional or national), its breadth (focused on specific places of detention or different types of detention facilities) and on the materials that need to be produced. In terms of human resources, a number of full-time and/or part-time staff will be required to conduct the inquiry, including administrative staff. The public inquiry may also require the support of a media officer and the services of expert consultants.

Cooperation of witnesses

Torture and ill-treatment is a very sensitive issue. Speaking about their experiences can be a very difficult and traumatizing process for victims. They may prefer to speak in confidential sessions, with one or two interviewers, rather than in a public hearing. Victims and witnesses may also fear reprisals. In addition, it might be difficult to gain the cooperation of key officials and representatives from relevant institutions.

A one-off activity rather than a process

A public inquiry puts the issue of torture and ill-treatment in the public spotlight for a very specific period of time. However, because torture and ill-treatment is often a structural problem, a more permanent and regular oversight process might be more effective in bringing about long-term positive change.

3. STEPS TO UNDERTAKE A PUBLIC INQUIRY

Defining terms of reference

An important first step is to define the aim, scope and the timeframe of the public inquiry. While this can be a detailed process, clearly defined terms of reference are a critical component of a focused and effective inquiry.

Launching the inquiry

The public inquiry should be officially launched by the NHRI, with detailed information about the aims, objectives and conduct of the inquiry provided to all relevant stakeholders.

Research and analysis

All relevant national laws and regulations should be compiled, as well as international and regional standards and jurisprudence. This forms a basis to assess the extent to which the State is meeting its international obligations to prevent torture.

Individual complaints

All relevant complaints received through the public inquiry should be compiled and assessed to identify systemic factors that contribute to torture and ill-treatment in places of detention.

Public hearings

Public hearings should invite the participation of a broad range of individuals and organizations, including victims of torture or their relatives, human rights NGOs, lawyers, police officers, staff and officials from relevant detention centres and representatives from government agencies.



Image: APF / Michael Power

Visits to places of detention

Given that the risk of torture and ill-treatment is highest for persons deprived of their liberty, the public inquiry will need to include thorough inspections of different places of detention.

Interviews with persons deprived of liberty

Depending on its scope, a central part of the public inquiry will involve interviews with persons deprived of their liberty. Focus group discussions should be conducted with detainees. However, it is crucial that the NHRI also conducts interviews in private with a large and representative selection of detainees.

Preparation of a report and recommendations

Preparing a final report is an important outcome for the public inquiry, although it may not necessarily be the only one. It is important to consider the structure of the report in the early stages of the inquiry, as this may influence the methodology of the inquiry process. Preparing a report is time-consuming and this should not be underestimated in the planning stages of the inquiry.

An effective, successful report will consider the following elements.

- **Style and language:** The report should be accessible to the main target audiences. Sentences should be short and concise, avoiding superlatives and stereotypes. Recommendations should address the authorities responsible for their implementation and it should be relatively easy to translate them into policies or laws.
- **Content:** All the issues outlined in the terms of reference should be addressed in the report. Findings and conclusions should be firmly based on the evidence received. The report should not only describe facts but also contain an analysis of the issues, the legal framework and any identified shortcomings. A summary report is useful.
- **Format and timing:** The format of the report is important in terms of increasing publicity and impact. Associated resources, such as a summary report, should be considered early in the process. The timing of the report's release should build upon the interest and momentum created by the inquiry.

Follow-up

The NHRI should establish a dialogue with the relevant authorities to discuss steps to implement the report's recommendations. They should also closely monitor any developments related to the inquiry.

*In 2005, the **National Human Rights Commission of Mongolia** conducted a year-long public inquiry on torture. The inquiry examined the effectiveness of national legislation, scrutinized procedures and regulations designed to prevent torture and ill-treatment, analysed the factors contributing to illegal actions and developed recommendations to address systemic problems.*

The inquiry included dialogues with the judiciary, defence attorneys, prosecutors, police officers, citizens and NGO representatives. The Commission organized meetings with around 600 law enforcement officers, collected testimonies from individuals, undertook monitoring visits to prisons and pretrial detention facilities, conducted surveys with 1,400 detainees, held interviews with 100 individuals and received more than 50 complaints.

Evidence gathered during the public inquiry, and documented in the inquiry report, served as the basis for the enactment of legislation to prohibit torture.



In 2004, the **Australian Human Rights Commission** published, *A last resort?*, the report of its national inquiry into children in immigration detention. The inquiry was established to examine whether laws requiring the detention of asylum-seeking children and their treatment in immigration detention met Australia's obligations under international law.

The Commission visited all immigration detention facilities in Australia; organized 29 focus groups with over 200 children, parents and other former detainees; held 61 public hearings and 24 confidential sessions; and received 346 submissions. The draft report was provided to the authorities for their comments, before the final report was publicly released.

WATCH

Go to the *Preventing Torture* CD-Rom to watch more on how NHRIs can use national inquiries to build awareness and promote action to prevent torture and ill-treatment of people in detention.

Click on 'Feature materials' and then select 'Item 19 – NHRIs: Creating change through national inquiries'.



KEY POINTS: CHAPTER 11

- Conducting a public inquiry on torture and other forms of ill-treatment allows NHRIs to perform several functions simultaneously; however, it also presents challenges that should be considered.
- Holding a public inquiry on torture involves certain steps, such as defining the inquiry's terms of reference, research and analysis, holding public hearings, visiting places of detention, conducting private interviews with detainees and preparing a report and recommendations.



FURTHER READING

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Going Public: Strategies for an Effective National Inquiry (DVD); Asia Pacific Forum of National Human Rights Institutions; 2008



Summary

Introduction: The concept of torture prevention and its application

- States have an obligation to prevent torture.
- There is an important distinction between direct prevention (measures taken before torture occurs to avoid it happening) and indirect prevention (measures taken after torture has occurred to avoid its repetition).
- Preventing torture requires an integrated strategy involving three key elements: a strong legal framework, effective implementation of the legal framework and control mechanisms to monitor and support the legal framework and its implementation.

Chapter 1: What is torture?

- Article 1 of the Convention against Torture defines torture using three cumulative elements: the intentional infliction of severe mental or physical pain; with the direct or indirect involvement of a public official; for a specific purpose.
- Torture is prohibited under international law and can never be justified. The prohibition on torture is absolute and non-derogable.
- Cruel, inhuman or degrading treatment or punishment is also absolutely prohibited and non-derogable.

Chapter 2: International and regional instruments on torture and other forms of ill-treatment

- Torture is prohibited in a number of international human rights treaties.
- The Convention against Torture contains a series of provisions on prevention measures.
- Regional instruments in Africa, the Americas, Arab countries and Europe also prohibit torture.
- Soft law standards, both international and regional, complement the prohibition of torture and other ill-treatment.

Chapter 3: Promoting legal and procedural reforms

- NHRIs can promote ratification of relevant international human rights treaties, such as the Convention against Torture and its Optional Protocol.
- NHRIs can promote legal reform, in particular making torture a crime under domestic law.
- NHRIs can promote reform of detention procedures.

Chapter 4: Investigating allegations of torture

- Internal consistency of a testimony is an important element that can support allegations of torture. Other corroborating information should also be sought.
- Medical documentation, as well physical or psychological signs of torture, can provide further evidence of torture.
- Formally recording the evidence gathered is crucial.

Chapter 5: Interviewing

- Interviewing is important for a number of purposes, such as collecting information, assessing its credibility and cross-checking.
- It is crucial to prepare for an interview and to be clear about what you hope to achieve.
- Interviewing is a delicate task and a primary goal is to build rapport with the interviewee. Basic principles should be followed in terms of opening the interview, asking open and non-leading questions, closing the interview and respecting confidentiality.
- Follow-up is essential, for example by preparing an affidavit or identifying other people to interview.
- Interviewing victims of trauma poses specific challenges; an interviewer needs to be prepared for this and know how to respond appropriately.

Chapter 6: Training public officials

- Training public officials is an important way that NHRIs can contribute to the prevention of torture.
- NHRIs can be involved in developing and revising training curricula and relevant training material on torture prevention.
- NHRIs can develop and deliver training courses which is based on a needs assessment, contains practical content, involves relevant participants and includes evaluation.

Chapter 7: Cooperating with international bodies

NHRIs can contribute to the effective work of international and regional bodies. They can submit independent and credible information, participate in review procedures and follow up on recommendations.

Interaction with the following mechanisms is important for the prevention of torture and ill-treatment:

- **United Nations Human Rights Council**, in particular the universal periodic review
- **Treaty bodies**, in particular the Committee against Torture
- **Special procedures**, in particular the United Nations Special Rapporteur on Torture
- **Regional complaints mechanisms**
- **Visiting mechanisms at the international level**, such as the Subcommittee on Prevention of Torture, and the regional level.

Chapter 8: Monitoring places of detention

- Monitoring places of detention through regular visits should respect basic principles, in particular the principle to “do no harm”.
- Visits to places of detention should be well planned in terms of reviewing available information, dividing tasks between team members and making prior contacts.
- Key steps involved in conducting a visit include: initial talk with the person in charge, tour of the premises, consultation of registers, private interviews with detainees, final talk with the person in charge.
- Reporting on visits and preparing recommendations is crucial as a follow-up mechanism and for establishing an ongoing dialogue with the relevant authorities.

Chapter 9: Promoting public awareness

- Educating the general public about the prohibition and prevention of torture is an important preventive action.
- Public education campaigns can help raise awareness about the issue and provide important momentum for change.
- Awareness-raising activities can also focus on persons deprived of liberty and those who are most at risk of torture and ill-treatment.

Chapter 10: NHRIs and the Optional Protocol to the Convention against Torture

- NHRIs can play an important role to promote the Optional Protocol, by advocating ratification and participating in broad and inclusive consultations on possible NPMs.
- NHRIs may be designated as the NPM; either as the sole NPM, in cooperation with NGOs or as one of several NPMs. This double mandate can present particular challenges for NHRIs.
- NHRIs not designated as the NPM can contribute to the work of the NPM and the work of the Subcommittee on Prevention of Torture.

Chapter 11: Public inquiries

- Conducting a public inquiry on torture and other forms of ill-treatment allows NHRIs to perform several functions simultaneously; however, it also presents challenges that should be considered.
- Holding a public inquiry on torture involves certain steps, such as defining the inquiry's terms of reference, research and analysis, holding public hearings, visiting places of detention, conducting private interviews with detainees and preparing a report and recommendations.

Readings available in the CD-Rom

United Nations instruments and standards

Universal Declaration of Human Rights

Treaties

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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

International Covenant on Civil and Political Rights

Convention on the Rights of the Child

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

Convention on the Rights of Persons with Disabilities

Other standards

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

Standard Minimum Rules for the Treatment of Prisoners

Key documents

Committee against Torture, general comment No. 2 on implementation of article 2 by States Parties

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Report on the visit of the Subcommittee on Prevention of Torture to the Maldives (10–17 December 2007)

Report on the visit of the Subcommittee on Prevention of Torture to Sweden (10–14 March 2008)

Regional instruments and standards

Africa

African Charter on Human and Peoples' Rights

Robben Island Guidelines for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa

Americas

Inter-American Convention to Prevent and Punish Torture

Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas

Europe

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

The CPT Standards (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment)

European Prison Rules

Reports and resources

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