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The Association for the Prevention of Torture (APT) is a non-governmental organisation based in Geneva, whose mandate is to prevent torture and ill-treatment. The APT seeks to ensure that norms forbidding torture are respected and to reinforce means for the prevention of torture, such as visits to places of detention. In 1997, in the series "Prevention of Torture in Europe", the APT published a brochure by Didier Rouget on universal and European mechanisms to combat torture. The present brochure updates and complements this former brochure by presenting mechanisms created within regional organisations in Africa (Organisation of African Unity) and in Latin America (Organisation of American States).

As a complement to this brochure, the APT produced a compilation of all texts concerning the prohibition of torture and/or establishing a mechanism to fight against torture at the international level. This compilation is to be found on our internet site: www.apr.ch

Founded in 1977
by Jean-Jacques Gautier

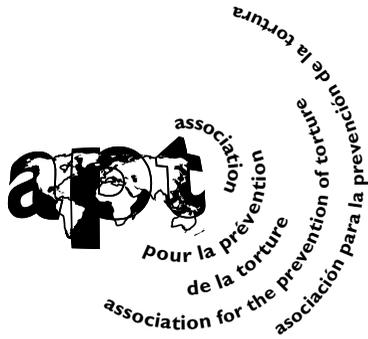
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Preventing Torture

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International and Regional Mechanisms to Combat Torture

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FOREWORD

The Association for the Prevention of Torture (APT) is a non-governmental organisation based in Geneva, whose mandate is to prevent torture and ill-treatment. The APT seeks to ensure that norms forbidding torture are respected and to reinforce means for the prevention of torture, such as visits to places of detention. Thus, the APT is at the origin of the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (ECPT) which was adopted by the Council of Europe in 1987 and entered into force in 1989. The APT is actively engaged in the adoption of a similar mechanism at the universal level, the draft Optional Protocol to the United Nations Convention against Torture. The APT is currently carrying out projects in Africa, Europe and Latin America.

This brochure, simple and easy to read, aims to give an overview of existing international mechanisms to combat torture. It updates and complements brochure No. 2 of the handbook "The prevention of torture in Europe". That brochure, "International, European and National Mechanisms to Combat Torture", was published in 1997 by Didier Rouget. In the first part, this brochure presents existing mechanisms at the universal level, within the United Nations or other world organisations. Then, it presents mechanisms created within the different regional organisations, not only in Europe but also in Africa under the Organisation of African Unity (OAU) and in Latin America within the Organisation of American States (OAS).

This brochure is meant to be a practical tool for all interested in combating torture and ill-treatment, be they non-governmental organisations, private persons or professional groups.

As a complement to this brochure, the APT produced a compilation of all texts concerning the prohibition of torture and/or establishing a mechanism to fight against torture at the international level. This compilation is to be found on our internet site: www.apr.ch

LIST OF ABBREVIATIONS

APT	Association for the Prevention of Torture
CAT	United Nations Committee against Torture
CIS	Commonwealth of Independent States
CPT	European Committee for the Prevention of Torture
ECHR	European Convention on Human Rights
ECPT	European Convention for the Prevention of Torture
EU	European Union
HRC	Human Rights Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
ILO	International Labour Organisation
IPU	Inter-Parliamentary Union
NGO	Non-governmental organisation
OAS	Organisation of American States
OAU	Organisation of African Unity
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organisation for Security and Co-operation in Europe
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation

INTRODUCTION

Throughout history, in many civilisations all over the world, torture has been used as a legal means of extracting confessions and punishing convicted persons. Only at the beginning of the 18th century did European States abolish the use of torture. In 1874 Victor Hugo proclaimed that it was no longer used in Europe.

In actual fact, whether prohibited or not, torture and other forms of ill-treatment have never ceased. Innumerable conflicts and tensions all over the world foster their continued widespread use. Since they persist and governments are incapable of putting an end to this particularly serious violation of the rights of the human person even within their own borders, it is clearly necessary to fight torture on an international scale.

Accordingly, Article 5 of the Universal Declaration of Human Rights adopted on 10 December 1948 by the General Assembly of the United Nations solemnly proclaims that

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

This prohibition was reaffirmed by the instruments conferring general protection of the rights of the person and by many world-wide and regional declarations.¹ It is an **absolute** one, for it obliges all States everywhere and at all times, both in peace and war. No exceptional circumstances of any kind - neither a state of war nor the threat of war, neither domestic political instability nor any other emergency - may be invoked to justify ill-treatment.

The prohibition of torture is regarded as an imperative rule of international law. To make it effective, specific international and regional mechanisms have been devised to fight against torture. They will be considered in this brochure.

**I.
PROHIBITION
OF TORTURE AND
OTHER FORMS
OF ILL-TREATMENT**

A. DEFINITION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT

1. Torture

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

This definition specifies the three elements constituting torture:

- intensity of the suffering
- deliberate intention
- specific goal

To define the other types of prohibited treatment, the human rights protection bodies have elaborated a distinction between the concepts of torture, inhuman treatment and degrading treatment, depending on the intensity of the suffering inflicted on the victims. Thus, “all torture must be inhuman and degrading treatment and inhuman treatment also degrading”.¹ According to the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**, adopted by the General Assembly of the United Nations on 9 November 1988, the expression “cruel, inhuman or degrading treatment or punishment” should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.

2. Inhuman treatment

Inhuman treatment is the inflicting of physical or mental suffering of a particular intensity.² Within this framework, ill-treatment of detainees and violence committed during arrest, police custody or questioning have been qualified as inhuman treatment. Similarly, total cellular confinement — both social and sensory — of the detainees, which can result in destruction of the personality, constitutes a form of inhuman treatment which cannot be justified by the demands of security.³ Long-term solitary confinement also constitutes inhuman treatment.⁴

■ 3. Degrading treatment

Degrading treatment is defined as ill-treatment which creates in the victim a feeling of fear, anguish or inferiority such as to humiliate or debase him either in his own eyes or those of others, and eventually to break his physical or moral resistance.⁵ Thus, the following constitute degrading treatment: the subjecting of detainees to insults of a racist character by penitentiary staff⁶ or policemen, or the forcing by public officials of a person remanded in custody to wear soiled clothing.⁷

■ 4. Respect for the dignity of persons deprived of their liberty.

In order to strengthen the protection of persons deprived of their freedom against all forms of ill-treatment, the right of detainees to be treated with respect for the inherent dignity of the human being is asserted.⁸

By virtue of its preventive role, the European Committee for the Prevention of Torture (CPT) is not satisfied merely to note and report the existence of torture or ill-treatment; it has also to identify the risk factors leading to ill-treatment and, to do this, must determine whether conditions or circumstances are at hand — either general or specific, taken in isolation or in combination — which are likely to degenerate into inadmissible practices or treatment. Thus, through its findings, the Committee enriches case-law since now, in order to assess a situation, the conditions of detention as a whole must be taken into account; for they can, especially through their combined effect, constitute inhuman and degrading treatment. For example, for the CPT, the cumulative effect of overcrowding in a penitentiary establishment, an inadequate programme of activities, and the lack of sanitary installations amount to inhuman and degrading treatment.⁹

B. STATE OBLIGATIONS AS TO THE PROHIBITION OF TORTURE

To fight torture effectively States should at one and the same time prevent, repress and compensate. These obligations complement each other and have been spelled out by the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

1. Prevention

States must **prevent** the practice of torture: not only refrain from practising torture but also do everything appropriate, especially in legislation, administration, the judicial system, education and information, to prevent it. Every State must ensure that the prohibition of torture forms an integral part of the training of civilian and military law enforcement personnel, medical professionals and all other persons who may be involved in the custody, treatment or interrogation of detainees. A statement obtained under torture may never be invoked as evidence in any proceedings, except against a person accused of torture as evidence that a statement was made. Every State must keep methods of interrogation, custody and treatment of detained persons under systematic review. And lastly, as regards prevention, no person should be expelled, turned back or extradited to a country where he/she would be in danger of torture.

2. Repression

States must **repress** the practice of torture. The criminal law of every State must ensure that acts of torture are offences punishable by appropriate penalties. Torture is inexcusable in any circumstances, however exceptional. A person who commits torture may not invoke orders from a superior officer or a public authority as justification. States must do everything necessary to establish that they are competent to try perpetrators of all acts of torture, especially by one of their own nationals, wherever he/she acted, and even more importantly, all cases whose perpetrator is on their territory and has not been extradited. At the request of another State, States are duty-bound to extradite persons who commit acts of torture. States must afford each other the greatest possible mutual judicial assistance.

3. Compensation

States must **compensate** torture victims for damage inflicted and grant them the means necessary for their fullest possible rehabilitation. Every State must conduct an immediate impartial examination whenever there are reasonable grounds to believe that an act of torture has been committed. It must ensure that the victim is entitled to lodge a complaint and that the complainant and wit-

I. PROHIBITION OF TORTURE AND OTHER FORMS OF ILL-TREATMENT

B. STATE OBLIGATIONS AS TO THE PROHIBITION OF TORTURE

nesses are protected. And it must guarantee that the victim or his/her successors in title receive fair and adequate compensation and indemnification.

II. INTERNATIONAL MECHANISMS TO COMBAT TORTURE

A. THE UNITED NATIONS

The United Nations has drafted **treaties** to protect the rights of the person. Several contain prohibitions of torture and other ill-treatment, such as the following:

- **the International Covenant on Civil and Political Rights,**
- **the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,**
- **the International Convention on the Elimination of All Forms of Racial Discrimination,**
- **the Convention on the Rights of the Child,**
- **the International Convention on the Suppression and Punishment of the Crime of Apartheid.²**

These treaties bind the States which have ratified them, provide for mechanisms for their application, and establish **Committees** to monitor whether the obligations they institute are respected. The powers of the Committees may vary, but all of them examine **reports** by States on the implementation of their obligations. Some of the Committees are also authorised to examine communications from individuals or States, and so have quasi-judicial status. Lastly, the Committee against Torture is empowered under certain conditions to make visits and on-the-spot investigations.

Besides these procedures instituted by treaty there are mechanisms instituted by the **Commission on Human Rights**. This is a political body created in 1946 by the Economic and Social Council of the United Nations under Article 68 of its Charter, and composed of representatives of 53 member States. It is competent to examine the rights of the person in various countries, adopt resolutions thereon and set up mechanisms to protect human rights by appointing **special rapporteurs** or **working groups** for a country or specific subject.

Action to prevent torture in particular States can be taken through United Nations **technical assistance and consultancy services**.

Lastly, certain United Nations entities such as the General Assembly, the Economic and Social Council and the Committee on Crime Prevention and Control may adopt **recommendations**. Although there is in theory no obligation to comply with these, they may sometimes carry great political weight, and are important because they make it possible to lay down rules for the protection of the rights of the person.

■ The following are the **Principal recommendations adopted by the General Assembly of the United Nations for the protection of persons deprived of liberty:**

- the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 9 December 1975.
- the Standard Minimum Rules for the Treatment of Prisoners, approved 31 July 1957 and 13 May 1977,
- the Code of Conduct for Law Enforcement officials, adopted 17 December 1979,
- the 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, adopted 18 December 1982,
- the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, adopted 9 December 1988,
- the Principles on the Effective Protection and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted 15 December 1989.

■ 1. Mechanisms established by Treaty

■ 1.1. The Convention against Torture

The **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** was adopted on 10 December 1984 and entered into force on 26 June 1987. As of 31 March 2000, 119 States Parties had ratified it.

Article 1 of the Convention defines torture as follows:

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

The Convention specifies in Articles 2 to 16 inclusive the precise obligations of the States as regards the prohibition of torture, and especially the absolute prohibition of torture, the obligations not to expel or return persons to a country where they are in danger of being tortured, to prosecute or extradite perpetrators of acts of torture, to keep the rules and methods of interrogation under systematic review, to set in motion impartial investigations of alleged acts of torture, and not to admit statements obtained under torture as evidence.

To monitor adherence to these obligations the Convention has formed the **Committee against Torture**, which is composed of ten independent experts elected by the States Parties and serving in an individual capacity.

■ Examination of the States’ reports

All States Parties to the Convention are required to submit **reports** to the Committee on the measures they are taking to implement the commitments assumed by signing the treaty. The first report has to be submitted one year after the Convention enters into force for the State concerned; subsequent reports must be submitted every four years. The Committee may also require additional reports or further information.

The Committee examines the reports at a public meeting. When questioning a State Party’s delegation the Committee may use any pertinent information given to its members by, for example, non-governmental organisations. At the conclusion of this examination the Committee may make whatever general comments on the report that it considers appropriate and make recommendations to the State in question.

■ Inquiry and visit procedures

Article 20 of the Convention empowers the Committee against Torture to receive information of and **inquire** into allegations of the **systematic practice of torture** in States Parties. A State Party to the Convention may however declare when ratifying or adhering to the Convention that it does not recognise the Committee as competent in this respect. As of 31 March 2000, 9 States had made such a declaration.

For all States that have accepted the procedure detailed in Article 20 the Committee may, if it believes that it has received credible information that torture is systematically practised in a State Party, charge one or more of its members to proceed to a **confidential inquiry** in which it asks the State concerned to cooperate. The inquiry may include a **visit** to the territory of that State, with its permission.

All the Committee's work in this inquiry is confidential. At the end of the proceedings the Committee may, after consulting the State concerned, publish a **summary account** in its annual report of the results of the inquiry. This has been done twice, regarding Turkey and Egypt respectively.

■ Individual communications

The Convention against Torture recognises the right of **individuals** to submit **communications** to the Committee reporting the violation of one or more of its provisions by a State Party. Under Article 22 of the Convention the accused State must have expressly recognised the competence of the Committee to receive and consider individual communications. As of 31 March 2000, 41 States had recognised this competence.

After examining whether the communication is admissible, bringing it to the attention of the State concerned and receiving its explanations, the Committee **forwards its views** to the State and individual concerned, and includes in its annual report a summary of the communications received and, if need be, its views on them. The Committee has received about 100 communications of this kind, many of them from refugees pleading not to be deported to a country in which they risk being tortured.

■ State communications

According to Article 21 of the Convention the Committee may receive **communications** in which a State Party claims that another State Party is not fulfilling its obligations under the Convention. For this to occur the two States must expressly have recognised the Committee's competence to receive and consider such communications. So far, none of the 43 States that have recognised this competence has made use of it.

1.2. The International Covenant on Civil and Political Rights

The **International Covenant on Civil and Political Rights** was adopted on 16 December 1966 and entered into force on 23 March 1976. On the same dates an Optional Protocol to the Covenant was adopted and entered into force, so making the Human Rights Committee competent to receive individual communications. As of 31 March 2000, 144 States were parties to the Covenant and 95 to its Optional Protocol.

Article 7 of the Covenant provides that

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

Furthermore, Article 10, paragraph 1 provides that

“All persons deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

To verify that the States Parties are implementing these provisions the Covenant has appointed a **Human Rights Committee** of 18 independent experts designated by the States Parties and serving in an individual capacity.

Examination of the States’ reports

All States Parties to the Covenant must submit a **report** on the steps they are taking to grant the rights recognised by the Treaty. Their first report must be made at the end of one year, and subsequent reports every five years thereafter. After examining the report the Committee must send its comments and recommendations to the State concerned.

Individual Communications

The States Parties which have adhered to the Optional Protocol to the Covenant have thereby acknowledged the Committee’s competence to receive **individual communications** denouncing the violation by a State of one of the rights recognised by the Covenant. The jurisprudence in respect of Article 7 is quite considerable and it numbers more than one hundred cases.

State communications

The Committee may also receive **State communications**. Under Article 41 of the Covenant the two States in question must have accepted the Committee’s competence to receive and consider such communications. As of 31 March 2000, 45 States had recognised that competence but none of them had made use of it.

■ 1.3. The International Convention on the Elimination of all Forms of Racial Discrimination

The **International Convention on the Elimination of All Forms of Racial Discrimination** was adopted on 21 December 1965 and entered into force on 4 January 1969. As of 31 March 2000, its States Parties numbered 155.

The **Committee on the Elimination of Racial Discrimination**, composed of 18 impartial experts, is the body charged with monitoring the application of the Convention.

According to its Article 5 the

“States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without discrimination as to race, colour or national or ethnic origin, to equality before the law notably in the enjoyment of the following rights:

b) The right to security of person and protection by the State against violence and bodily harm, whether inflicted by government officials or by any individual, group or institution;”.

■ Examination of reports from States

Each State Party has undertaken to send the Committee on the Elimination of Racial Discrimination a **report** on the legislative, judicial and administrative measures taken to give effect to the provisions of the Convention. The initial report has to be submitted at the end of one year, and subsequent ones every two years thereafter.

■ Communications from States and Individuals

The Committee is empowered to receive **State communications** but has received none so far. It may also examine **individual communications** in so far as States have recognised, in accordance with Article 14 of the Convention, that it is competent to do so. As of 31 March 2000, 27 States had recognised this.

■ 1.4. The Convention on the Rights of the Child

The **Convention on the Rights of the Child** was adopted on 20 November 1989 and entered into force on 2 September 1990. Of all the United Nations Conventions on the rights of persons, it is the one most ratified; as of 31 March 2000, no fewer than 191 States were parties to it.

Article 37 of the Convention stipulates that:

“States Parties shall ensure that a) no child shall be subjected to torture or any other cruel, inhuman or degrading treatment or punishment.”

To monitor the implementation of the Convention by the States Parties, a **Committee on the Rights of the Child**, composed of 10 independent experts, has been formed.

■ Examination of States' reports

The Committee on the Rights of the Child is empowered only to examine the reports submitted by each State Party - the initial report being submitted after one year, the others every five years thereafter. After examining the reports the Committee adopts suggestions and recommendations.

■ 2. Mechanisms instituted by the Commission on Human Rights

Unlike the treaty procedures, the mechanisms instituted by the Commission on Human Rights affect all members of the United Nations. Within the limits of its mandate the United Nations **Commission on Human Rights** has developed its own system of supervising respect for human rights and monitoring and following up violations of them. Many of its procedures have fortified international mechanisms for combating torture.

Ever since it was formed in 1946 the Commission on Human Rights has exposed violations of human rights and called States to account for them, but only since 1967 has it been able to inquire into gross violations of the rights of the person and study "flagrant and systematic" violations of those rights.

Communications on these may be made by any person or group of persons who can reasonably be presumed to be a victim of violations, or from any individual or group of individuals having direct and certain knowledge of such violations. In accordance with procedure **1235** (the so-called "**public procedure**") a **working group** or **rappporteur** may be appointed to hear testimony, collect information and report to the Commission, and may visit the country concerned with the prior agreement of its government.

Since 1970, under procedure **1503** (the so-called "**confidential procedure**") the Commission may order an inquiry by a **special committee**. The express consent of the State is necessary. The special committee's report may contain "any observations and suggestions which it deems appropriate".

Ever since the 1980s the Commission on Human Rights has appointed **working groups** and **special rapporteurs** to study cases of violation of human rights or the situation in certain countries and make pertinent recommendations. The most important of these officials in the campaign against torture is the Special Rapporteur on Torture.

■ 2.1. The United Nations Special Rapporteur on Torture

In 1985 the Committee decided to appoint a **Special Rapporteur to examine questions relevant to torture** and report on its frequency and extent. His/her competence extends to all member States of the United Nations. He/she submits an **annual report**, with recommendations, to the Commission on Human Rights.

■ Communications to governments

On the basis of information from individuals or groups of individuals, and from government and or non-government sources, the Special Rapporteur sends **communications** to governments. The Rapporteur receives a great deal of information from individuals or non-governmental organisations citing cases of torture or serious ill-treatment. Whenever these allegations are sufficiently detailed and not obviously groundless the Special Rapporteur has to forward them to the government concerned with a request for its observations. He/she may also discuss the allegations in private with governments, non-governmental organisations, individuals and groups, and hear witnesses on the allegations. Communications received, and the comments of the States concerned, are included in his/her annual report.

■ Urgent action procedure

In some of the cases brought to his/her notice the Special Rapporteur adopts the **urgent action procedure** whereby he/she intervenes immediately with the government concerned "for purely humanitarian reasons, in order to ensure protection of individuals' physical and mental integrity and that the treatment to which they were subjected during their detention was human."

■ Visits

Lastly, the Special Rapporteur on Torture may, with the agreement of the government concerned, visit a country to gather first-hand information on cases and situations within his/her province and find suitable measures to avoid a repetition of these cases and to effect improvements. These missions are "purely consultative" and are regarded as an excellent means of observing the situation and making recommendations tailored to the needs of the country in question."

■ 2.2. Other thematic mechanisms

Other thematic mechanisms set up by the Commission on Human Rights relate to the protection of persons deprived of liberty and may therefore be useful in the campaign against torture.

Thus in 1980 the Commission introduced the first thematic mechanism, the **Working Group on Enforced and Involuntary Disappearances**. It is composed of five experts appointed in an individual capacity and representing the five regions of the globe. Its task is to deal with the individual cases it uncovers, examine the incidence of disappearances in certain countries and study the phenomenon of disappearances *per se*. It receives and examines communications and forwards them to governments, requesting them to carry out an investigation and keep it informed. It can also make on-site visits with the consent of the State concerned. The working group submits annual reports to the Commission on Human Rights.

The **Special Rapporteur on Extra-Legal, Arbitrary and Summary Executions** was appointed by the Commission on Human Rights in 1982 to intervene in all cases where the right to life is violated, especially where death supervenes as a result of torture during detention. He/she receives allegations, forwards urgent appeals, and may effect on-site missions of inquiry and visit persons deprived of liberty, provided the State in question gives permission. He/she submits an annual report to the Commission.

In 1991 the Commission on Human Rights formed the **Working Group on Arbitrary Detention**, composed of five independent experts, to investigate cases of detention imposed arbitrarily or in any other manner incompatible with international norms. It is competent to receive allegations, forward urgent appeals to governments and, with the permission of the State concerned, visit its territory and make inquiries there. The Working Group submits an annual report to the Commission on Human Rights.

■ 3. The United Nations Voluntary Fund for Victims of Torture

The General Assembly Resolution 36/151 of 1981 instituted the **United Nations Voluntary Fund for Victims of Torture**, which began to operate in 1983. It is funded solely by voluntary contributions from governments, private organisations, institutions and individuals in order to give humanitarian, legal and financial aid to victims of torture, promote their rehabilitation and train specialists in their treatment.

In 1999 subsidies of almost USD 5 millions were distributed, going to 113 projects realised in about 50 countries. Most of the subsidies serve to finance therapy and rehabilitation, in particular medical treatment, physiotherapy and psychiatric care, and social and economic aid, to victims of torture and their families. The Fund has also financed training for medical specialists in special techniques for the treatment of victims of torture.

■ 4. A proposed Universal Mechanism for the Prevention of Torture

In 1992 the Commission on Human Rights formed a working group of representatives of States, organisations for the protection of human rights, and non-governmental organisations, to draft an **Optional Protocol to the United Nations Convention against Torture**. The intention was to extend to the whole world the mechanism established by the European Convention for the Prevention of Torture, by means of a **universal system of visits** to places in the territory of the States Parties where persons deprived of liberty are held, with the aim of preventing torture and other cruel, inhuman or degrading treatment or punishment. The second reading of the draft protocol began in 1996. The Working Group's activities continue.

■ 5. The International Criminal Court

On 17 July 1998 in Rome, 120 of the 160 States represented at the Plenipotentiary Conference to adopt the statute of the Court approved the treaty on the establishment of an **International Criminal Court (ICC)**. This **permanent** Court, which shall have its seat in **the Hague**, shall come into being once at least 60 States have ratified the treaty. It shall have jurisdiction with respect to persons who have committed four categories of international crime: genocide, crimes against humanity, war crimes and crimes of aggression.

It shall have power to exercise its jurisdiction if the State on whose territory the crime was committed, or the State of which the accused is a national, is party to the treaty. Complaints may be lodged with the Court by a State Party to the treaty or by the Security Council or on the initiative of the Prosecutor. In the latter case, the Prosecutor may act only on the specific authorization of a pre-trial chamber of judges. However, a State Party may, for a transitional period of seven years, refuse the jurisdiction of the Court in respect of war crimes.

B. THE INTERNATIONAL COMMITTEE OF THE RED CROSS

The International Committee of the Red Cross (ICRC) is an impartial private humanitarian body founded in Geneva in 1863. Its aim is to provide protection and assistance to civilian and military victims of armed conflicts. It is the founder of the international law now codified essentially by the four Geneva Conventions of 1949 and the two Protocols of 1977, all of which protect various categories of victims of international and non-international armed conflicts. It is active in many forms of protection and assistance. In particular, its representatives visit prisoners and check that they are not being subjected to torture, which is prohibited by the four Geneva Conventions and their two Additional Protocols.

Thus the common Article 3 of the four Geneva Conventions of 1949, which applies to non-international armed conflicts, prohibits :

“at any time and in any place whatsoever...violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture”.

1. ICRC action in case of armed conflict

The **Geneva Conventions** of 12 August 1949 provide that representatives of the **International Committee of the Red Cross** are authorised to “**go to all places** where protected persons may be, particularly to places of internment, imprisonment and labour, and shall have access to all premises occupied by prisoners of war; they shall be allowed to go to the places of departure, passage and arrival of prisoners who are being transferred”. In these places ICRC representatives check, *inter alia*, that the right to life, the physical integrity and the dignity of prisoners of war and civilian internees are respected absolutely. The States bound by the Geneva Conventions have undertaken to respect this obligation at all times and in all places.

In case of **international armed conflict** between States Parties to the Geneva Conventions the ICRC is mandated to **visit** the sites where protected persons, **prisoners of war** or **civilian internees** are held. When the two parties in conflict are also parties to Additional Protocol I of 8 June 1977 to the Geneva Conventions the ICRC’s powers also apply in case of a **national war of liberation**.

In **non-international armed conflicts** the ICRC offers its services to the conflicting parties and only with their consent does it have access to places of detention.

■ 2. ICRC action in case of internal strife or tensions

Article VI, paragraph 5 of the Statutes of the International Red Cross and Red Crescent Movement states that the ICRC “is a neutral institution whose humanitarian work is carried out particularly in time of international and other armed conflicts or internal strife”, and which attempts at all times “to ensure the protection of and assistance to military and civilian victims of such events and of their direct results”. On this basis the ICRC may take **humanitarian** initiatives and offer its services to the States concerned, and ever since 1919, in **situations of internal strife and tensions** the ICRC has been able to organise visits to “**political detainees**” or **security detainees** by concluding special agreements with the States involved. Situations of internal strife are those where there is not, strictly speaking, a non-international armed conflict but there is serious or long-standing confrontation including acts of violence. Internal tensions are serious tense situations of a political, religious, racial, social, economic, etc. nature or the effects of previous armed conflicts or internal strife.

Thus, since 1919 the ICRC has visited more than 500,000 detainees in 80 countries, as well as those in situations covered by the Geneva Conventions. In contrast to the “contractual” situations, regulated by treaty, of international conflicts, the State to which the ICRC offers its services in internal strife and tensions has no formal obligation to accept them. The ICRC has to negotiate and rely on States’ goodwill. If at the end of a visit it transpires that detainees are being subjected to torture or other ill-treatment and the State refuses to improve this situation the ICRC has no means of exerting pressure on the national authorities.

■ 3. How ICRC visits are conducted

The ICRC’s **neutrality, independence and impartiality** and **trust and cooperation** between it and the national authorities are, thus, regarded as essential to the success of ICRC visits.

The ICRC requires that its delegates be given access to all places of detention, whether temporary or permanent, official or unofficial, and civilian or military, such as prisons, barracks, transit centres, police stations, rehabilitation centres, etc.

ICRC delegates must be completely free to choose what places they wish to visit. No limit may be placed on the duration or frequency of their visits. These may not be prohibited except by reason of imperative military necessity, and then only exceptionally and temporarily.

The purpose of their visits is to assess and if need be improve the material and psychological conditions of detention and treatment at the sites, and to do everything possible to prevent torture and other kinds of inhuman treatment.

ICRC delegates require to be able to talk freely and without witnesses with any prisoners they wish, and to return to places of detention as regularly as need be.

Visits must be carried out in a **confidential** manner and the **reports** on them must also be confidential. The ICRC reserves the right to publish the whole of the report if it is made public only in part.

At the end of a visit ICRC delegates have an interview with the governor of the place of detention and ask him/her to take any necessary first steps without delay to improve conditions of detention there. In addition, the responsible minister is sent a full report about once every year on conditions of detention in the country.

C. OTHER INTERNATIONAL PROCEDURES

1. UNESCO

The **United Nations Educational, Scientific and Cultural Organisation** (UNESCO) is a Paris-based specialised institution of the United Nations which began operations on 4 November 1946. It is active in education, science, culture and information.

Examination of individual communications

Individuals or associations may send UNESCO communications about violations of the **Convention against Discrimination in Education** of 14 December 1960. On 26 April 1978, the Executive Council of UNESCO extended this **complaints** procedure to violations of fundamental rights, including torture and ill-treatment, in matters in which UNESCO is competent.

The Executive Board has appointed its Committee on Conventions and Recommendations in the Domain of Education to examine communications of this kind concerning either individual **cases** or **questions** relating to “massive, systematic and flagrant” violations of human rights in education, science, culture and information. Exchanges of views with the State involved, and subsequent recommendations, are confidential.

The **cases**, that is, individual communications, are examined by the Committee on a confidential basis. **Questions** relating to “massive, systematic and flagrant violations of human rights and fundamental freedoms” are referred to a plenary sitting of the Executive Board and may be examined at a public meeting.

2. The International Labour Organisation

The **International Labour Organisation** (ILO), founded on 11 April 1919, has become a specialised institution of the United Nations dealing with labour law and freedom of association. Its secretariat is the International Labour Office in Geneva.

In the context of Convention No. 87 on Freedom of Association and Protection of the Right to Organise, and Convention No. 98 on the Right to Organise and Collective Bargaining, adopted in 1948 and 1949 respectively by the **International Labour Organisation**, trade unionists deprived of liberty must be protected.

Petitions by occupational organisations

Under Articles 24 and 25 of the ILO Constitution, **occupational organisations** may **petition** the International Labour Office if a State fails to observe a convention it has ratified. If the ILO receives no statement at all, or no statement

deemed satisfactory, from the government so complained of, the Governing Body of the ILO may make public the complaint, and the reply received, if any. In practice, on each point complained of the Governing Body states in its conclusions the extent to which it considers the complaint has been satisfactorily settled or whether, on the contrary, further action or explanation is needed.

■ **Complaints by governments**

Articles 26 to 29 and 31 to 34 of the ILO Constitution provide for a procedure for the examination of complaints from member States, whereby any member State may lodge a complaint with the ILO against another member State which in its opinion is not satisfactorily implementing a Convention - provided both States have ratified the Convention.

■ **Visit procedure**

The ILO may intervene in accordance with Conventions No. 87 and No. 89 by sending **missions** (commissions of inquiry and direct contact) of ILO representatives to countries in which trade unionists are detained. They demand access to the place of detention to examine the conditions of imprisonment and take action to ensure that the imprisoned trade unionists are treated in a way consistent with human dignity.

■ **The Committee on Freedom of Association**

In 1951 the ILO Governing Body decided to form the Committee on Freedom of Association to examine complaints of violation of the principles of free association from governments or occupational organisations against any State including States that have not ratified Conventions Nos. 87 and 98. After examining such complaints the Committee sends the ILO Governing Body its recommendations. If the case calls for further examination the Committee may decide, if the government concerned agrees, to pass it to the UN/ILO Fact Finding and Conciliation Commission on Freedom of Association.

■ **3. The Inter-Parliamentary Union**

The **Inter-Parliamentary Union (IPU)** was founded in 1889. It is an **international non-governmental organisation** of representatives of parliaments of sovereign States.

■ **Complaints by members of national parliaments**

In 1976 the IPU established the **Committee on the Human Rights of Parliamentarians**, which can receive **complaints** from members of national parliaments subjected to arbitrary treatment such as torture and ill-treatment, and whose rights either as individuals or in their special capacity of parliamentarians

are infringed. The Committee takes action to put a speedy end to any arbitrary treatment of a Member of Parliament, ensure his/her protection and if need be obtain compensation for him/her.

On receipt of the comments of the State concerned the Committee may also proceed to **hearings** and even propose to send **on-site missions**. After confidential examination of the case, if negotiations with the authorities of that country are fruitless, the Committee may make a public report to the IPU Council at an open meeting on the circumstances of the Member of Parliament and recommend action to be taken.

If a settlement judged to be satisfactory is not found within a reasonable time a case may remain on the Council's agenda. The Council meets twice a year and may adopt and make public **resolutions** expressing the concern of IPU members and making recommendations for suitable action.

**III.
AFRICAN
MECHANISMS
TO COMBAT
TORTURE**

The Organisation of African Unity (OAU), with headquarters in Addis Ababa, Ethiopia, was created in 1963. As at 31 March 2000, the OAU counted 54 member States.

The Conference of Heads of State and Government of the OAU, which was held on 28 June 1981 in Nairobi, Kenya, unanimously adopted the **African Charter on Human and Peoples' Rights**, which came into force on 21 October 1986. As at 31 March 2000, the Charter had 53 States Parties (that is, all the member States of the OAU except Morocco).

According to Article 5 of the Charter:

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

A. THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

Article 30 of the Charter provides for the creation of an **African Commission on Human and Peoples' Rights** to promote and protect these rights in Africa. Its headquarters are in Banjul in Gambia. It consists of 11 members who are elected for a six-year renewable period by the Commission of Heads of State and Government, on the basis of a list submitted by the States Parties to the Charter. The members are experts serving in a personal capacity.

The **African Commission on Human and Peoples' Rights** has a very broad mandate: to collect documents; to undertake studies and research, to organise seminars, symposia and conferences, to disseminate information; to formulate and lay down principles and rules aimed at solving legal problems relating to human rights. In particular, it has published **declarations** on the right to a fair trial and on respect for humanitarian law. The Commission may also interpret all the provisions of the Charter at the request of one of the States Parties or an institution of the OAU. It may resort to any appropriate method of investigation, and organise on-site visits in order to assess the human rights situation in a particular country.

Examination of country reports

The Commission also has the task of examining the **reports** which the States Parties to the Charter must submit to it every two years.

■ State communications

A State Party which believes that another State Party has violated the provisions of the Charter may refer the matter to the Commission. After having tried all appropriate means to reach an **amicable solution** based on the respect of human and peoples' rights, the Commission prepares, within a reasonable period of time, a **report** stating the facts and its findings.

■ Other communications

The Commission may also receive communications from individuals, groups of individuals, non-governmental organisations or other entities alleging a violation by a State Party of the rights and liberties enshrined in the Charter. After having examined the admissibility of such a communication, the Commission communicates its **findings**. When it recognises that there has been a violation of the provisions of the Charter, the Commission may invite the government of the State concerned to accept the necessary consequences, or to take appropriate measures to repair the injury caused, or to pursue efforts to reach an amicable solution to the case.

B. SPECIAL RAPPORTEURS

The Commission may appoint **Special Rapporteurs** for specific themes, who fulfil their mandate within the framework of the African Charter on Human and Peoples' Rights and report to the Commission on their activities.

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

In October 1996 a Special Rapporteur on Prisons and Conditions of Detention in Africa was appointed for a two-year mandate renewable by the Commission. The mandate has since been renewed twice.

The Special Rapporteur is empowered to examine the situation of people deprived of their freedom, evaluate the conditions of detention and make recommendations with a view to their improvement. He/she is authorised to receive and to seek information on **cases** or **situations** relating to his/her field of competence. The Rapporteur collects information from the States Parties to the Charter, from individuals, national and international organisations and institutions and other concerned bodies. He/she may, at the request of the Commission, make **recommendations** concerning the communications received from people who have been deprived of their liberty, the families, representatives of NGOs or other concerned persons or institutions. He/she can propose **urgent actions** and put in place **rapid alert** mechanisms to avert disasters and epidemics in places of detention.

Visits

The Special Rapporteur must be afforded all the necessary assistance and co-operation in order to carry out **visits** to places of detention and must receive information from persons deprived of their freedom, their families or representatives, governmental or non-governmental organisations. After a visit within a particular country, the Rapporteur draws up a visit **report** in which he/she sets forth his/her findings, drawing attention to what in his/her view were the main problems encountered. Lastly, he/she addresses a series of **recommendations** to the State visited.

2. The Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions

In October 1994 the Commission appointed a **Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions**, for a mandate of two years renewable by the Commission. The Rapporteur was, in particular, charged with proposing the setting up of a system for compiling an inventory of cases of extra-judicial, summary or arbitrary executions in African States and with **inquiring**

into all serious allegations which are submitted to him/her. To this end, the Rapporteur may establish **direct contact** with the families of the victims and NGOs engaged in collecting information. On-site **visits** may be organised. The Rapporteur transmits his/her **assessment** to the Commission, which then decides how to follow up the case.

The Special Rapporteur also requested that an **early alert mechanism** be established in collaboration with NGOs having observer status with the Commission, in order to warn of imminent executions; this would lead to an **urgent action** being carried out in respect of the State concerned.

C. TOWARDS THE SETTING UP OF AN AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

The optional Protocol to the African Charter on Human and Peoples' Rights on the establishment of an **African Court on Human and Peoples' Rights** was adopted by the Conference of Heads of State and Government of the OAU on 9 June 1998 in Ouagadougou. The Protocol needs 15 ratifications for it to enter it force. As at 31 March 2000 only three States had ratified it.

The Protocol provides for the creation of a Court composed of 11 independent judges nominated by the Conference of Heads of State and Government. Cases may be submitted to the Court by the **Commission** or by the **States Parties** and, in exceptional conditions, directly by **individuals, groups of individuals** and **non-governmental organisations**. The Court renders **judgements** which are binding on the States concerned. The Court also has the power to render **advisory opinions**.

**IV.
EUROPEAN
MECHANISMS
TO COMBAT
TORTURE**

A. THE COUNCIL OF EUROPE

The **Council of Europe** was founded in 1949 and in December 1997 comprised 40 member States. Its headquarters are in Strasbourg. It has three fundamental principles: human rights, democracy and the rule of law. It has elaborated many instruments for the protection of human rights, of which the most important to prevention of torture are the **European Convention on Human Rights and Fundamental Freedoms** and the **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**.

Certain organs of the Council of Europe, especially its Parliamentary Assembly and Committee of Ministers, have adopted many **resolutions** and **recommendations** which, although not mandatory, still give greater protection to the dignity of persons deprived of liberty, and greater respect for their rights. For instance, in 1973 the Committee of Ministers adopted (and in 1987 revised) the **European Prison Rules**, the application of which has been supervised since 1981 by the Committee for Co-operation in Prison Affairs. In May 1979 the Parliamentary Assembly adopted the **Declaration on the Police** and in 1995 Recommendation 1257 on **conditions of detention** in member States.

Article 56 of the Assembly's Rules of Procedure allows individuals to make **petitions** to the President of the Parliamentary Assembly of the Council of Europe.

1. The European Convention on Human Rights

The Convention for Protection of Human Rights and Fundamental Freedoms, usually called the **European Convention on Human Rights**, was signed on 4 November 1950 and entered into force on 3 September 1953. As of December 1997 39 States had ratified it. It defines the rights and freedoms that each State Party agrees to recognise as belonging to all persons under its jurisdiction. The Convention was supplemented by protocols, some of which guarantee supplementary rights.

According to Article 31 of the Convention:

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

Applications from States and individuals

The system established by the Convention organises a jurisdictional control of State application of its provisions, in which the European Court of Human Rights, which is an entity delivering supranational judgements, makes final decisions having the force of *res judicata* and therefore binding on the States implicated.

To ensure respect for the rights and freedoms guaranteed by the Convention, and especially for its Article 3, the Convention envisages a judicial mechanism intended to give rulings on **State and individual applications**.

Because of the growing number of applications and the lengthy procedures, the mechanism provided for by the 1950 Convention was revised by protocol No. 11, which entered into force on 1 November 1998. Under the reformed mechanism, applications are examined by a single body, the **European Court of Human Rights**, which has its permanent headquarters in Strasbourg. The Court consists of a number of judges equal to the number of States Parties to the Convention. The judges are independent and are elected for a six-year renewable mandate by the Parliamentary Assembly of the Council of Europe.

Under Article 33 of the Convention, any State Party may lodge directly with the Court an application alleging a breach by another Contracting State of the provisions of the Convention, and thus of Article 3. Similarly, in pursuance of Article 34 of the Convention, any individual claiming to be a victim of a violation of the Convention by a State Party may lodge an application with the Court.

The applications are examined by the Court which first gives an opinion on their **admissibility**. If the application is admissible, the Court establishes the facts and puts itself at the interested parties' disposal with a view to reaching a **friendly settlement** of the case. Should it fail to do so, the case is brought before a **Chamber** of the Court, made up of seven judges, which delivers a **judgement** binding on the State concerned. Within three months of delivery of the judgement, any party may, in exceptional cases, request that the case be referred to the **Grand Chamber** of the Court, which is composed of 17 judges and renders a final judgement.

When it finds that the Convention has indeed not been observed, the Court may grant the victim an indemnity to compensate him/her for material and moral damage.

The **Committee of Ministers** of the Council of Europe, the political body made up of member States' representatives, has the task of supervising the execution by States of the Court's decisions.

■ 2. The European Convention for the Prevention of Torture

In 1976, drawing his inspiration from the activities of the International Committee of the Red Cross, the founder of APT Jean-Jacques Gautier suggested a convention initiating a system of visits to all places of detention by independent experts authorised to make recommendations to governments with the aim of preventing torture or other kinds of ill-treatment. This proposal was supported by the Parliamentary Assembly of the Council of Europe in 1983, and led to the adoption of

the **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment** by the Committee of Ministers on 28 November 1987. The Convention entered into force on 1 February 1989 and was binding, as of 31 March 2000, on forty of the forty-one member States composing the Council of Europe.

■ 2.1 The features of the system

The Convention proposed to set up a non-judicial preventive mechanism based on visits. For this purpose it formed the **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment** (CPT), composed of as many independent and impartial experts as there were States Parties, and drawn from various professions - lawyers, ex-members of parliament, physicians, specialists in penal administration, etc.

The Committee exists to prevent the ill-treatment of persons deprived of liberty, and is accordingly authorised to visit at any time **all places** under the jurisdiction of the contracting States where persons are deprived of liberty by a public authority, for example police and gendarmerie stations, public or private hospitals admitting interned patients, administrative detention centres for foreigners and disciplinary premises in military enclosures.

The essential feature of the Convention is the principle of **co-operation** between the Committee and the States Parties, for the mechanism is not designed to condemn persons deprived of liberty but to help States to protect them. This principle obliges States to supply Committee members with any information and resources needed to fulfil their mission, not to hinder their work, and especially to grant them access to places of detention. The corollary of this co-operation is that the entire procedure of the visit and report shall be **confidential**.

■ 2.2. The conduct of visits

Article 7 of the Convention provides for **periodic visits** to all States Parties. Some ten days before the intended date of the journey the Committee notifies the government concerned, through a "liaison officer" appointed by the State Party, of its intention to visit a country. The list of places to be visited is made known to the liaison officer only two days before the arrival of the delegation. During the visit, however, the Committee may decide to make impromptu visits, even at night, to places other than those initially listed. The Committee is entitled, if it finds it necessary, to make immediate observations, in the course of the visit, to the person in charge of the establishment visited and/or to the national authorities, to improve the treatment of the persons there. When the Committee is informed of an emergency requiring an immediate visit it may organise an **ad hoc visit** which appears to be "essential in the circumstances".

Article 8 of the Convention allows the Committee's delegations to visit **any** of these places **they wish, at any time**. Members of the delegations are entitled to go anywhere they like in such places without hindrance and to **communicate freely without any witness** with persons deprived of liberty. They may also freely make contact with any persons who they believe may be able to give them useful information, such as heads and other staff of establishments visited, members of the family and close associates of detainees, lawyers, physicians, representatives of non-governmental organisations, ombudsmen, etc.

The delegations of the Committee charged with making visits are headed by Committee members who are accompanied by experts (specialists in penal administration, physicians, police officers, etc.), interpreters and members of the CPT Secretariat. A delegation may split up into sub-groups of two or three persons so as to visit more places. Visits to large establishments such as prisons may last several days.

■ 2.3 The follow-up to visits

At the end of the visit the Committee makes a **report** and any **recommendations** it deems necessary to give greater protection to persons deprived of liberty. This report asks the government concerned to send its **comments** in reply, within six months. The CPT also asks for a follow-up report to be sent to it within one year of the dispatch of its original report. The Committee may also consult the national authorities about the way in which they have implemented its recommendations. An **ongoing dialogue** should therefore develop between the Committee and the States Parties.

Under Article 11 of the Convention the information gathered by the Committee during a visit and its report and consultations with the State Party concerned are **confidential**. The Convention nevertheless provides that each State involved may authorise publication of the Committee's reports and the government's replies. Since the Convention entered into force most States have authorised such publication. The Committee may also make a **public statement** if a State does not co-operate or refuses to improve the situation in the light of the Committee's recommendations. The Committee has already made two such statements, in December 1992 and December 1996, on the situation in Turkey.

B. THE EUROPEAN UNION

The **European Union** (EU) of fifteen members has as its goal political union in foreign policy and security, and economic and monetary union. Human rights in general, and the abolition of torture in particular, are therefore not an EU priority. Nevertheless, in the Maastricht Treaty of 7 February 1992 on the EU, the Union undertook to “respect fundamental rights, as guaranteed in the European Convention on Human Rights and resulting from the constitutional traditions common to the Member States, as general principles of Community law”. The European Union likewise affirms in Article 2 of its Declaration of Fundamental Rights and Freedoms adopted on 12 April 1989 that “no one shall be subjected to torture or inhuman or degrading treatment or punishment.”

The Maastricht Treaty also instituted, in its Article 138D, for all natural and artificial persons residing in a member State the right of **petition to the European Parliament** “on a matter which comes within the Community’s fields of activity and which affects him, her or it directly”. Individual petitions made to the President of the European Parliament are passed to the Committee on Petitions, which decides whether they are justified. The President of the Parliament then intercedes directly with the Commission, the Council or the national authorities, inviting them to take any necessary action. The **conclusions** of the Committee on Petitions are made known to the petitioners. Petitions may be allocated to the **parliamentary committees**, which may if they so decide incorporate them in their reports.

The Committee on Civil Liberties and Internal Affairs of the European Parliament has also proposed to ask the European **Ombudsman**, in the exercise of the powers conferred upon him by the treaty and in close co-operation with the ombudsmen of the member States in which this institution exists, to take appropriate action on complaints sent to him of violations of human rights in penal establishments in the Union.

C. THE ORGANISATION FOR SECURITY AND CO-OPERATION IN EUROPE

In 1994 the **Organisation for Security and Co-operation in Europe** (OSCE) replaced the Conference on Security and Co-operation in Europe (CSCE) which met for the first time in Helsinki in August 1975. The OSCE has 55 member States - all European States plus the United States and Canada. Human rights ("the human dimension") are a basic element of the organisation and are increasingly important to it. The OSCE's "human dimension" has several times led it to call for the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

Inter-State procedures

The OSCE member States have undertaken to adopt effective measures for the prevention of torture. They must also give priority to investigating and taking suitable action on, in accordance with the provisions and procedures agreed upon for effective application of their undertakings relating to the OSCE's human dimension, all cases of torture and other inhuman or degrading treatment or punishment brought to their attention through official channels or any other reliable source of information.

The OSCE member States have undertaken to exchange **information** and answer in writing requests for information relating to the human dimension within ten days of a request to that effect from another State Party. They have also undertaken to hold **bilateral meetings** within one week of a request to that effect made by another State Party.

OSCE missions of experts

A State Party may ask for the assistance of an OSCE **mission of experts** to look into or help to settle a question or problem arising from the human dimension. The Warsaw-based **Office for Democratic Institutions and Human Rights** (ODIHR), an OSCE institution, will notify all States Parties of the formation of a mission of experts. That mission will be able to make inquiries or furnish consulting services. To do its work it may enter the territory of the State without delay, hold discussions there and travel freely therein, and meet freely with officials, non-governmental organisations and any individual or group from whom it may wish to get information. The mission may also obtain information in confidence from any individual, group or organisation on questions with which the mission is dealing. Its members will take care that their work remains confidential. The mission of experts must inform the host State of its conclusions as soon as it can, if possible within three weeks of being formed. Within three weeks of receiving these conclusions the host State must communicate the observations of the mission of experts to the other States Parties together with its own comments. These observations and the host State's comments may be discussed by the **Senior Council** of the OSCE.

■ OSCE missions of rapporteurs

A State Party may ask another State to extend an invitation to an OSCE **mission of experts**. If the State so asked does not answer this request within 10 days, or if the mission of experts fails to solve the problem it is considering, the State making the request may, with the support of five other States, ask for an OSCE **mission of rapporteurs** to be formed.

This mission has to establish the facts, report on them and say how it believes the question raised might be answered. Within three weeks of the rapporteurs' appointment the report, containing a statement of the facts together with suggestions or opinions, must be submitted to the State(s) concerned, which has/have three weeks to comment on it to the ODIHR, which then sends the report and comments to all States Parties. The report remains confidential until the end of the next meeting of the Senior Council, which decides what follow-up action, if any, should be taken.

If a State Party feels that there is a particularly serious danger in another State Party that OSCE human dimension provisions will be disregarded it may, with the support of at least nine other States, begin the procedure for the appointment of a **mission of rapporteurs**. The Senior Council may, at the request of any State Party, decide to form an OSCE mission of experts or rapporteurs.

■ Other procedures

In case of flagrant, grave or persistent violation of undertakings concerning the human dimension, the Permanent Council of the OCSE may take appropriate measures, if necessary without the consent of the State concerned, consisting of **political statements** or other measures of a political nature applied outside the territory of that State.

The OSCE may also organise **long-term missions** to member States and **training programmes** there favouring in-depth action, especially for the prevention of torture. Finally, a **Panel of Experts for the Prevention of Torture**, which met for the first time in June 1998, was set up to give advice on programmes and activities that ODIHR may launch to combat torture in the member States.

D. COMMONWEALTH OF INDEPENDENT STATES

On the break-up of the Soviet Union, the **Commonwealth of Independent States** (CIS), with twelve member States, was established by the Minsk Declaration of 8 December 1991 and by the Alma Ata Accord of 21 December 1991. However, since 1998 in particular, the CIS has been encountering considerable difficulties.

The CIS Charter was adopted on 22 January 1993 in Minsk. Article 33 provides for the setting up of a **Commission of Human Rights of the Commonwealth of Independent States** with headquarters in Minsk. In accordance with the Commission's Statute, which was adopted on 24 September 1993 by the Council of Heads of State of the CIS, the Commission consists of one representative of each State Party assisted by a deputy. It may form **working groups** of experts in order to examine specific questions. Information and advice may be requested from competent national and international organisations. In addition, the Commission has jurisdiction to examine **petitions** from **States** or from **individuals** or **non-governmental organisations** concerning alleged human rights violations by one of the States Parties.

The **Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States** was adopted on 26 May 1995 in Minsk by the twelve Heads of State of the CIS. Article 3 of the Convention prohibits torture and other forms of ill-treatment. The CIS Human Rights Commission, whose Statute was integrated into the Convention, is charged with ensuring respect for and implementation of the Convention's provisions by the States Parties.

**V.
INTER-AMERICAN
MECHANISMS TO
COMBAT TORTURE**

The **Organisation of American States** (OAS) was established on 30 April 1948 in Bogotá, Colombia, with the adoption of the OAS Charter by the ninth Conference of American States. At present, the OAS has 35 member States including Cuba, which has been excluded from all the Organisation's activities since 1962.

On 2 May 1948 the ninth Conference of American States proclaimed the **American Declaration of the Rights and Duties of Man**, which establishes:

"Article 1. Every human being has the right... to the security of his person.

Article 25. Every individual who has been deprived of his liberty... also has the right to humane treatment during the time he is in custody.

Article 26. ... every person accused of an offence has the right... not to receive cruel, infamous or unusual punishment."

In 1959, the **Inter-American Commission on Human Rights** was established and its Statutes were approved by the OAS Council on 25 May 1960. On 27 February 1967, in implementation of the Protocol of Buenos Aires, the Commission became a permanent body of the organisation. It comprises seven members elected in a personal capacity for a four-year term by the OAS General Assembly. Its headquarters are in Washington in the United States.

On 22 November 1969 in San José, Costa Rica, the OAS member States adopted the **American Convention on Human Rights** which came into force on 18 July 1978. It stipulates:

"Article 5. Right to humane treatment

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

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."

By 31 March 2000 the American Convention had 25 States Parties.

The Inter-American Commission on Human Rights has a dual role, one within the framework of the OAS Charter and the other in implementation of the American Convention on Human Rights.

A. ACTIVITIES OF THE COMMISSION WITHIN THE FRAMEWORK OF THE OAS CHARTER

Within the framework of the **Charter of the OAS**, the Inter-American Commission on Human Rights has the function of promoting respect for human rights as defined by the American Declaration of the Rights and Duties of Man. Its competence thus extends to all the member States of the Organisation. The Commission may address recommendations to one of these States and study concrete situations of the violation of human rights, in particular by drawing up **reports**.

Visits

In order to carry out on-site **visits** with the agreement of the State concerned, a **Special Commission** is set up consisting of members of the Commission. During such an inquiry, the members of the Special Commission may talk freely and in private with people, groups, associations or institutions and move freely throughout all the territory of the country. They have access to prisons and to all other places of detention or interrogation; they may interview in private people deprived of their freedom and may use all appropriate means to collect, record or reproduce information which they deem necessary. Following the mission a **report** is drawn up and sent to the government concerned for it to communicate its comments. These are then attached to or incorporated into the final report.

Individual petitions

Originally the American Declaration was adopted in the form of a recommendation, without mandatory force. However, after having served as the basis for the activities of the Inter-American Human Rights Commission, the Declaration became the reference tool by which to interpret the human rights enshrined in the Charter. Since 1965 the Commission has been recognised as competent to examine, on the basis of the Declaration, **individual petitions** received from any person, group of people or non-governmental organisation. At the end of the procedure, the Commission adopts a report, called the "**final decision**", which consists of a statement of the facts, its conclusions and the recommendations which it deems useful and the deadline for their implementation. If the State does not adopt the measures recommended within the given time frame, the Commission may publish the decision.

Working Group on Prisons

In 1994 the Commission established a **Working Group on Prisons**, made up of two of its members, to carry out a study on the situation in prisons and places of detention, and to draw up suggestions and recommendations for the States on this issue.

B. THE AMERICAN CONVENTION ON HUMAN RIGHTS

With the entry into force of the **American Convention on Human Rights**, the Commission became one of the bodies of the Convention. It has the function of examining **individual petitions** lodged against the States, which recognised as of right this competence of the Commission by becoming party to the Convention. Such petitions may come not just from the victims of violations of the Convention, but also from any other person or group of persons or certain non-governmental organisations. On the other hand, the Commission has an optional jurisdiction as regards **State communications**. Both the applicant State and the respondent State must be party to the Convention and have recognised the competence of the Commission to give a ruling on such petitions.

Once the Commission has declared a petition **admissible**, it examines the applicant's allegations and the information provided by the government. At any stage during examination of the petition, the Commission may place itself at the disposal of the parties concerned with a view to reaching a **friendly settlement**. If no settlement is reached, the Commission draws up a report setting forth the facts and stating its conclusions. The report is transmitted to the States in question, which then have three months to comply with it or to react. During this period, the case may also be submitted to the Inter-American Court of Human Rights, either by the Commission or by the States concerned.

When a case is not submitted to the Court, and has not been the subject of a friendly settlement, the Commission may set forth its **opinion** and **conclusions** concerning the question submitted for its consideration. When it has concluded that there was a violation of the Convention, the Commission shall, where appropriate, make **recommendations** and prescribe a period within which the State is to take the measures incumbent on it to remedy the situation examined.

Inter-American Court of Human Rights

The Convention established the **Inter-American Court of Human Rights** which consists of seven judges elected in an individual capacity by the States party to the Convention. The judges are elected for a six-year term and may be re-elected only once. The headquarters of the Court are in San José, Costa Rica.

The Court has an **adjudicative jurisdiction** which is subordinate to prior acceptance by the States party to the Convention. Only the States Parties and the Commission have the right to submit a case to the Court, not individuals. The Court renders **judgements** which are binding on the States, in which it recognises whether a right or a liberty guaranteed by the Convention has been violated, and may rule that an indemnity be paid to repair the injury caused to the victim. When the Court recognises that a right or liberty protected by the Convention has been violated, it may also rule that the injured party be ensured the enjoyment of the right or liberty that was violated.

The Inter-American Court has, in accordance with Article 64 of the Convention, a significant **advisory competence** regarding the interpretation of the American Convention on Human Rights and all other treaties concerning the protection of human rights in the American States. The organs of the OAS, the member States of the Organisation and the Commission may **consult** the Court for advice. The Court, at the request of a member State, may provide that State with opinions regarding the compatibility of any one of its laws with the Convention and with the other aforesaid treaties.

■ C. INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE

The **Inter-American Convention to Prevent and Punish Torture** was adopted on 9 December 1985 and entered into force on 28 February 1987. As at 31 March 2000 it had 16 States Parties. The **Convention** sets forth the States' duties as regards the prohibition of torture and other forms of ill-treatment. It stipulates that the States Parties shall undertake to **report** to the Inter-American Commission on Human Rights on the legislative, judicial, administrative and other measures they adopt in application of the Convention.

D. OTHER CONVENTIONS OF THE OAS

1. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women

The **Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women** was adopted on 9 June 1994 and entered into force on 5 March 1995. As at 31 March 2000, it comprised 28 States Parties. These have undertaken to submit **information** to the **Inter-American Commission of Women** on the measures taken to prevent and prohibit violence against women. The Convention also establishes that any person, group of persons or non-governmental organisation may lodge **petitions** with the **Inter-American Commission on Human Rights** concerning the violation by a State Party of Article 7 of the Convention, which obliges the States Parties to condemn, prevent, punish and eradicate all forms of violence against women. These petitions are considered by the Commission in accordance with the procedure established by the American Convention on Human Rights and the Statutes and Regulations of the Commission.

2. The Inter-American Convention on the Forced Disappearance of Persons

In accordance with the **Inter-American Convention on the Forced Disappearance of Persons**, which was adopted on 9 June 1994 and came into force on 28 March 1996, the petitions received by the Inter-American Commission on Human Rights alleging the forced disappearance of persons shall be subject to the procedures established in the American Convention on Human Rights and to the Statutes and Regulations of the Commission and to the Statutes and Regulations of the Inter-American Court. As at 31 March 2000 the Convention had eight States Parties.

APPENDIX

COMPARATIVE CHART OF THE THREE REGIONAL COURTS OF HUMAN RIGHTS*

African Court of Human and Peoples' Rights

Judges	Personalities, nationals of the States Parties to the Protocol, elected on a personal basis
Number of judges	11
Election of judges	Election by the Assembly of Heads of State and Government of the OAU
Term of Office	Six years, renewable once
Performance of the functions of judges	Permanent for the President. During the sessions for the other judges
Power of the Court	Judicatory and advisory
Power <i>ratione personae</i> (Who is entitled to submit cases to the Court ?)	<p>Mandatory power</p> <ul style="list-style-type: none"> • African Commission on Human Rights • States Parties • African Intergovernmental Organisations <p>Optional power</p> <ul style="list-style-type: none"> • Individuals and NGOs having observer status with the African Commission on Human Rights
Power <i>ratione materiae</i>	Power bound to the interpretation and implementation of the Charter, the Protocol and any other instrument concerning Human Rights

Inter-American Court of Human Rights

Personalities, nationals of the States Parties to the Inter-American Convention on Human Rights, elected on an individual capacity

7

Election by the States parties to the Convention at the General Assembly of the OAS

Six years, renewable once

Permanent for the President. During the sessions for the other judges

Judicatory (optional) and advisory

Mandatory power

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Optional power

- States Parties
- Inter-American Commission on Human Rights ¹⁰

Power bound to the implementation and interpretation of the Inter-American Convention on Human Rights

European Court of Human Rights

Personalities, nationals of the States Parties to the European Convention on Human Rights, elected on a personal basis

Same number as States Parties (41)

Election by the Parliamentary Assembly of the Council of Europe

Six years, renewable without limitation

Permanent

Judicatory and advisory

Mandatory power

- High contracting parties
- Individuals, groups of individuals and NGOs claiming to be victims of a violation of a right guaranteed by the European Convention on Human Rights

Optional power

Issues concerning the interpretation and implementation of the European Convention on Human Rights and its protocols

African Court of Human and Peoples' Rights

Conditions of the hearing	In public. Exceptionally, in camera
Consideration of cases	Contradictory
Type of decisions	Judgements, decided by majority
Possibility of appeal ?	No, but possibility of interpretation or reviewing under certain conditions
Execution of judgement	Voluntary, supervision of the Council of Ministers

Inter-American Court of Human Rights

In public. Exceptionally, in camera

Contradictory

Judgements, decided by majority of the judges

No, but request for interpretation possible

Voluntary

European Court of Human Rights

In public, barring exceptional circumstances

Contradictory

Judgements, decided by majority

Possibility of sending the case to the Grand Chamber

Voluntary, supervision of the Committee of Ministers

* This chart has been published as an appendix in the brochure «The African Court on Human and Peoples' Rights – Presentation, analysis and commentary: the Protocol to the African Charter on Human and Peoples' Rights, establishing the Court»; Geneva, January 2000.

⑩ Individuals, groups of individuals and NGOs legally recognised are only entitled to submit cases to the Commission, which, if the case arises, at the end of the proceedings, transmits them to the Court for judgement.

USEFUL ADDRESSES

1. International organisations

International Committee of the Red Cross

17 Avenue de la Paix, 1211 Geneva, Switzerland
Telephone (41) 22 734 60 01 Fax (41) 22 734 82 80
E-mail: webmaster.gva@icrc.org
Website: www.icr.org

International Labour Office

4 Route des Morillons, 1211 Geneva 22, Switzerland
Telephone (41) 22 799 71 54 Fax (41) 22 798 86 65
E-mail: webinfo@ilo.org
Website: www.ilo.org

United Nations Office of the High Commissioner for Human Rights

Office of the United Nations
8-14 Avenue de la Paix, 1211 Geneva 10, Switzerland
Telephone (41) 22 917 12 34 Fax (41) 22 917 01 23
E-mail: webadmin.hachr@unog.ch
Website: www.unhchr.ch

United Nations High Commissioner for Refugees

P.O. Box 2500, 1211 Geneva 2, Switzerland
Telephone (41) 22 739 81 11 Fax (41) 22 739 73 67
Website: www.unhcr.ch

UNESCO

7 Place Fontenay, 75007 Paris, France
Telephone (33) 1 45 68 10 00
Website: www.unesco.org

2. Regional organisations

Council of Europe

P.O. Box 431 R 6, 67006 Strasbourg Cedex, France
Website: www.coe.int

European Court of Human Rights

Telephone (33) 3 88 41 20 32 Fax (33) 3 88 41 27 91
Website: www.echr.coe.int

European Committee for the Prevention of Torture (CPT)

Telephone (33) 3 88 41 23 88 Fax (33) 3 88 41 27 72

E-mail: cpt.doc@coe.int
Website: www.cpt.coe.int

European Parliament

L-2929, Luxembourg
Telephone (352) 4300-1 Fax (352) 43 70 09
Website: www.europa.eu.int

Organisation for Security and Co-operation in Europe

Office for Democratic Institutions and Human Rights
Krucza 36/Współna 6, 00-522 Warsaw, Poland
Telephone (48) 2 625 41 50 or 625 42 93 Fax (48) 2 625 43 57
E-mail: office@odhr.osce.waw.pl
Website: www.osce.org/inst/odhr.htm

Organisation of African Unity

P.O. Box 3243, Addis Ababa, Ethiopia
Telephone (251.1) 51.77.00 Fax (251.1) 51.78.44

African Commission on Human and Peoples' Rights

Kairaba Avenue, P.O. Box 673, Banjul, Gambia
Telephone (220) 392 962 Fax (220) 390 764

Organisation of American States

17 th St. and Constitution Avenue NW,
Washington DC, 20006, United States
Telephone (202) 458 37 54 Fax (202) 458 64 21
Website : www.oas.org

Inter-American Commission on Human Rights

1889 F St. NW, Washington DC, 20006, United States
Telephone (202) 458 60 02 Fax (202) 458 39 92
Website : www.cidh.org

Inter-American Court of Human Rights

Apartado Postal 6906-1000, San José, Costa Rica
Telephone (506) 234 05 81 Fax (506) 234 05 84
Website : <http://corteidh-oea.nu.or.cr/ci>
E-mail : corteidh@racsa.co.cr

3. Non-governmental organisations

Amnesty International (International Secretariat)

1 Easton Street, London WC1X 8 DJ, United Kingdom
Telephone (44) 171 413 55 00 Fax (44) 171 956 11 57
E-mail: amnestyis@amnesty.org
Website: www.amnesty.org

Association for the Prevention of Torture (APT)

10 Route de Ferney, P.O. Box 2267, 1211 Geneva 2, Switzerland
Telephone (41) 22 734 20 88 Fax (41) 22 734 56 49
E-mail: apt@apt.ch
Website: www.apt.ch

Human Rights Watch

485 Fifth Avenue, 3rd Floor, New York, NY 10017, USA
Telephone (1) 212 290 47 00 Fax (1) 212 736 13 00
E-mail: hrwny@hrw.org
Website: www.hrw.org

International Commission of Jurists

81A, av. de Châtelaine, P.O. Box 216, 1219 Geneva, Switzerland
Telephone (41) 22.979.38.00 Fax (41) 22 979 38 01
Email: info@icj.org
Website: www.icj.org

International Federation of League of Human Rights (FIDH)

17 Passage de la Main d'Or, 75011 Paris, France
Telephone (33) 1 43 55 25 18 Fax (33) 1 43 55 18 80
E-mail: fidh@hol.fr
Website: www.fidh.imagnet.fr

International Federation of Action by Christians for the Abolition of Torture (Fi.ACAT)

27 Rue de Maubeuge, 75009 Paris, France
Telephone (33) 1 42 80 01 60 Fax (33) 1 42 80 20 89
E-mail: fi.acat@wanadoo.fr

International Helsinki Federation for Human Rights

Wickenburggasse 14/7, 1080 Vienna, Austria
Telephone: (43) 1 408 88 22 Fax: (43) 1 408 88 22 50
E-mail: office@ihf-hr.org
Web site: www.ihf-hr.org

Inter-Parliamentary Union (IPU)

Place du Petit-Saconnex, P.O. Box 438
1211 Geneva 19, Switzerland
Telephone (41 22) 734 41 50 Fax (41 22) 733 31 41
Email: postbox@mail.ipu.org
Website: www.ipu.org

International Rehabilitation Council for Torture Victims

Borgergade 13, P.O. Box 2107, 1014 Copenhagen, Denmark
Telephone: (45) 33 76 06 00 Fax: (45) 33 76 05 00
E-mail: irct@irct.org
Website: www.irct.org

International Service for Human Rights

1 rue de Varembé, P.O. Box 16, 1211 Geneva 20, Switzerland
Telephone: (41 22) 733 51 23 Fax: (41 22) 733 08 26
Email: ISHR@worldcom.ch

Working Together for Human Rights

31 Cour Emile Zola, 69100 Lyon Villeurbanne, France
Telephone (33) 472 44 24 99 Fax (33) 478 93 33 53
Email: agir-ensemble@asi.fr

World Organisation against Torture

(OMCT - SOS Torture)

8, rue du Vieux-Billard, P.O. Box 21, 1211 Geneva 8, Switzerland
Telephone (41 22) 809 49 39 Fax (41 22) 809 49 29
E-mail : omct@jprolink.ch
Website: www.omct.org

Penal Reform International

169 Clapham Road, London SW9 0PU, United Kingdom
Telephone: (44) 171 582 6500 Fax: (44) 171 735 4666
E-mail: Headofsecretariat@pri.org.uk

The Redress Trust

6 Queen Square, London WC1N 3AR, United Kingdom
Telephone: 44 (0) 171 278 9502 Fax: 44 (0) 171 278 9410
E-mail: redresstrust@gn.apc.org
Website: www.redress.org

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¹ European Commission of Human Rights, the Greek Case, report of 18 November 1969.

² European Commission of Human Rights, afore-mentioned Greek Case; European Court of Human Rights, Tyrer judgement of 25 April 1978.

³ European Commission of Human Rights, case of Kröcher and Möller vs. Switzerland, report of 16 December 1982.

⁴ HRC, case of D. Marais vs. Madagascar, decision of 24 March 1983.

⁵ European Court of Human Rights, Tyrer judgement of 25 April 1978; Campbell and Cosans judgement of 25 February 1982.

⁶ European Commission of Human Rights, case of Hilton vs. United Kingdom, 5 March 1976.

⁷ European Commission of Human Rights, case of Hurtado vs. Switzerland, report of 8 July 1993.

⁸ ICCPR Art. 10 § 1: CRC Art. 37 c); AmDRDM Art. 25; AmCHR Art. 5 § 2; CHRCIS Art. 5 § 4).

⁹ CPT/Inf (91) 15, paragraphs 57 and 229; CPT/Inf (93) 2, paragraph 93; CPT/Inf (94) 15, paragraph 85.

